



# The Political, Security and Human Rights Situation in Afghanistan

*Report on fact-finding mission to  
Kabul and Mazar-i-Sharif, Afghanistan  
and Islamabad, Pakistan*

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**The Danish Immigration Service**  
Rymsgade 53  
DK-2100 Copenhagen Ø

Phone: + 45 35 36 66 00  
Website: [www.udlst.dk](http://www.udlst.dk)  
E-mail: [dok@udlst.dk](mailto:dok@udlst.dk)

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## **ABBREVIATIONS**

<b>ACBAR:</b>	Agency Coordinating Body for Afghan Relief
<b>A.I.A.:</b>	Afghanistan Interim Administration (22.12.01-22.06.02)
<b>AIHRC:</b>	Afghanistan Independent Human Rights Commission
<b>A.T.A:</b>	Afghan Transitional Administration (post-22.6.02")
<b>AWA:</b>	Association of Women of Afghanistan
<b>CCA:</b>	Cooperation Centre for Afghanistan
<b>DACAAR:</b>	Danish Committee for Aid to Afghan Refugees
<b>EU:</b>	The European Union
<b>ICG:</b>	International Crisis Group
<b>IDP:</b>	Internally Displaced Persons
<b>IHRLG:</b>	International Human Rights Law Group
<b>IOM:</b>	International Organization for Migration
<b>ISAF:</b>	International Security Assistance Force
<b>KHAD:</b>	Khidamat-i-Ittala'at-i-Dawlati (The Ministry for State Security under Communist Rule in Afghanistan)
<b>NGO:</b>	Non-Governmental Organization
<b>PDPA:</b>	People's Democratic Party of Afghanistan (the former Afghan Communist party)
<b>UIFSA:</b>	United Islamic Front for the Salvation of Afghanistan (The Northern Alliance)
<b>UN:</b>	United Nations
<b>UNAMA:</b>	United Nations Assistance Mission to Afghanistan
<b>UNHCR:</b>	United Nations High Commissioner for Refugees

## **1. INTRODUCTION**

In recent years the number of asylum seekers from Afghanistan has accounted for a large proportion of the total number of asylum seekers in Denmark - in 2001 approximately 25% - being just over 2000 registered asylum seekers. In Norway the number of registered asylum seekers from Afghanistan almost doubled compared to year 2000, when 326 asylum seekers were registered, with 603 asylum seekers being registered in 2001.

The Danish Immigration Service and The Danish Refugee Council have previously undertaken a total of three missions to consider the asylum-related situation in Afghanistan in November 1997, January 2001 and May 2002. The Norwegian Directorate of Immigration participated in the mission in January 2001 which was restricted to visiting Pakistan, partly because at the time there was some uncertainty as to how the security situation in Afghanistan would develop in connection with the adoption of new UN-sanctions against the Taliban-regime on 19 December 2000, partly because a large number of the UN-organizations and international and national NGOs then working in Afghanistan, had their headquarters in either Islamabad or Peshawar in Pakistan. The mission in May 2002, which was a joint mission for the Danish Migration Service and The Danish Refugee Council, was limited to Kabul in Afghanistan, and the mission also consulted organizations with headquarters in Peshawar and Islamabad in Pakistan.

As a follow-up to the mission in May 2002 and to obtain information about the current situation in Afghanistan after the "Emergency Loya Jirga" and the appointment of the transitional administration in June 2002, the Danish Immigration Service in cooperation with the Danish Refugee Council and the Norwegian Directorate of Immigration decided to undertake another fact-finding mission to Afghanistan and Pakistan. The mission took place during the period from 22 September to 5 October 2002. The delegation visited Kabul and Mazar-i-Sharif in Afghanistan and Islamabad in Pakistan.

The criteria for selecting sources included the representativeness of the sources, their competency and knowledge in relation to the issues to be investigated. The aim was to have a broad range of sources, so that both international independent organizations and local organizations were included. Background information was also gathered about the sources from relevant organizations and contacts in Afghanistan and Denmark. The number of sources consulted depended on the complexity of the issues and the amount of time available to the delegation. In terms of the selection of sources it should be noted that there are only a few organizations, apart from the UN-organizations UNAMA and UNHCR, involved in the monitoring of human rights. Only the local Afghan NGO Cooperation Centre for Afghanistan (CCA), and to some extent the international NGO International Human Rights Law Group (IHRLG) are directly involved in the monitoring of human rights.

### **1.1 Latest developments in Afghanistan**

The so-called "Emergency Loya Jirga"<sup>1</sup>, a traditional council of older tribal leaders, took place in Kabul from 10 to 21 June 2002. The council consisted of about 1600 people, with more than 1000 being appointed or elected at the meetings held in the districts and towns all over Afghanistan prior to the council meeting, with the remainder being elected from the representatives for the civilian population, individual personalities, religious leaders, intellectuals, women's representatives and representatives of religious minorities in Afghanistan and abroad.<sup>2</sup> The council elected Hamid Karzai as President and ended with "en bloc" approval of the majority of the cabinet, nominated by Karzai to act as a transitional administration which, according to the Bonn Agreement, would be taking over from the interim administration after 22 June 2002.

A resolution by the UN Security Council extended the presence of the international security forces (ISAF) by six months from 20 June 2002, and as per this date Turkey took over the command of the security forces from Great Britain.

On 6 July 2002 Haji Abdul Qadir, Vice President and Minister of National Reconstruction, was assassinated by a group of armed men when leaving his office in Kabul, only ten days after being appointed to the new cabinet. Qadir, who was the second-most prominent Pashtun in the administration (after Karzai, the President), was one of three vice presidents appointed by Karzai - the others being the Minister for the Defence Mohammed Fahim, a Tajik, and Abdul Karim Khalili, a Hazara. According to several sources, including representatives of the international security forces, the assassination was seen as an attempt to undermine the administration. As a result of the murder of Qadir, the American authorities in Afghanistan announced on 23 July 2002 that they would arrange for armed guards from the American special troops to protect President Karzai.<sup>3</sup>

Towards the end of June and throughout the month of July 2002 there was a significant increase in confrontations among the various factions throughout the country. These wars obstructed humanitarian operations in several northern and central provinces and caused a number of international aid organizations to withdraw from these areas.<sup>4</sup>

There continued to be reports about resistance from al-Qaida and Taliban forces in some pockets in the southern and south-eastern areas of Afghanistan, and military actions still occur in these areas, carried out by the coalition forces as part of "the war against terrorism". During an American military visit to Afghanistan towards the end of August it was mentioned that the USA has not as yet set a deadline for withdrawal of troops from Afghanistan.<sup>5</sup>

On 5 September 2002 a car bomb exploded in the centre of Kabul and caused serious destruction and killed more than 20 people. On the same day, there was an assassination attempt on President Karzai during a visit he paid to the governor of Kandahar.

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<sup>1</sup> According to the Bonn Agreement, the Emergency Loya Jirga had to take place within 6 months of establishing the interim administration. The Emergency Loya Jirga had to appoint a transitional administration and administrative body to govern Afghanistan - until a fully representative government could be elected, which was to be no more than 2 years after the Loya Jirga had taken place.

<sup>2</sup> ICG Afghanistan Briefing, *The Afghan Transitional Administration, Prospects and Perils*, 30 July 2002.

<sup>3</sup> Keesing's Record of World Events, online edition, *Assassination of Vice President*, July 2002.

<sup>4</sup> Ibid.

<sup>5</sup> Keesing's Record of World Events, online edition, *Statement on widening of conflict*, August 2002.

## **1.2 Terms of reference for fact-finding mission to Afghanistan**

The mission gathered information and undertook investigations according to the following terms of reference:

### **Political Situation**

- Political situation in general after appointment of the transitional administration
- Exercise of political and administration functions in Kabul/the provinces
- Position and influence of the Taliban today

The situation of people who served the Taliban in the past (voluntarily or otherwise).

The possibility of amnesty for former Taliban fighters and its implementation in practice

- Situation of persons associated with the former communist government
- Situation of persons previously in opposition to/in conflict with The Northern Alliance  
Persons evading military service with The Northern Alliance
- Any new political groupings
- The existence of an intelligence service and its role/position in the current system

### **Security Situation**

- Security situation in general
- Regional differences
- Forced recruitment, if any - which regions/forces
- Demobilization
- Building a national army and police force

### **Human Rights Situation**

- Human rights situation in general
- National Human Rights Commission
- Re-introduction of parts of the Constitution of 1964
- Existence of a judicial system and any regional differences, including the function of local judicial authorities, if applicable
- Social and economic situation  
The importance of social networks  
Access to resources

- Ethnic groups

Persecution based on ethnicity and any regional differences in this regard

The possibility of ethnic groups settling in areas other than their area of origin when they return

- Religious freedom

Secularisation of the Afghan society

Situation of religious minorities

- Situation of Women

General comments concerning physical security

Access to work and education

Arranged marriages

Availability of support organizations for women

### **Issue of Documentation**

- Issuing of passports
- National ID-cards
- Marriage certificates

### **Issues Concerning Law of Domestic Relations**

- Weddings, marriage and divorce
- Custody of children

### **Entry to and Exit from the Country**

## **2. POLITICAL SITUATION**

### ***2.1 Political situation in general after appointment of the transitional administration***

The Norwegian ambassador advised that the political process is progressing in accordance with the agreements made during the negotiations in Bonn in December 2001. The elections scheduled to take place in the year 2004 will be the next milestone in the political process, with these elections also putting pressure on current developments towards making the political process work until then. It was the opinion of the Norwegian ambassador that the political process will take its course in Kabul but that it is not clear to what extent the local warlords in the provinces will have an influence on the process, all depending on developments in the security situation. At present it is clear that a national army and police force will not be established before elections.

According to the Norwegian ambassador it is a matter of opinion whether President Karzai can currently be considered to be in a strong or a weak position. Some sources feel that the president's position has been weakened because he did not take the opportunity at the Loya Jirga to reduce the power of the Pansjir-group in the government, whereas others think that the president's position was strengthened during the Loya Jirga because he avoided a military confrontation through clever diplomatic tactics.

The neighbouring countries of Iran and Pakistan have both expressed their support for Karzai. Musharraf, the president of Pakistan, has officially said that Pakistan does not support Hekmatyar<sup>6</sup> against Karzai.

The role of the Pashtuns in the upcoming process will be the deciding factor, according to the Norwegian ambassador. They make up between 40 and 45% of the population; however, they consist of a number of tribes/groups which at present are not cooperating. In the opinion of the Norwegian ambassador, the Americans currently have a dual role in Afghanistan, as on the one hand they use the individual warlords in the fight against al-Qaida and the Taliban, whilst on the other hand they are the main contributors towards the reconstruction of Afghanistan.

The next few months will give an indication of the prospects of holding elections. For this purpose, the warlords will need to place themselves in political groupings. Elections are likely to take place in the first half of 2004.

The Norwegian ambassador further advised that under the Bonn Agreement it was arranged that a number of commissions be established for the purpose of reviewing the existing legislation, including a Constitutional Commission, to start preparing a new constitution. Several of the people appointed as leaders of this commission are living abroad, and so far the commission has not started its work. A Judicial Commission, established just before the Loya Jirga, has had new members appointed, and accordingly this work has not commenced. Finally, it is intended to establish a Civil

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<sup>6</sup> Gulbuddin Hekmatyar is leader of the radical islamic party, Hezbe-Islami

Service Commission, which has also not commenced working. The only commission, which has been established and has started working, is the National Human Rights Commission (AIHRC).

The coordinator of UNAMA's Civil Affairs branch found that the Bonn Agreement had resulted in a government with a strong representation of Pansjir-Tajiks. According to this source, the Loya Jirga in June 2002 should have attempted to create a balance of the political power of the various ethnic groups, but that did not happen. Preparations for the Loya Jirga were inadequate. One week before the Loya Jirga, there had been no discussions and no tactical concept of the issues to be achieved.

On the first day of the Loya Jirga, the former king withdrew his candidature for the leadership as a result of American pressure. Younis Qanooni, a Tajik and a representative for the Northern Alliance<sup>7</sup>, then resigned from the position of Minister of the Interior. Thus, both sides of the political leadership stepped back and opened the way for a discussion to take place, but this opportunity was not seized. On the second day of the Loya Jirga, Karzai was re-elected as President with a landslide victory. The following days of the Loya Jirga turned into political chaos, as the chairman (the leader of the Loya Jirga-commission) was incapable of conducting the meeting, and there were no instructions from Karzai as to meeting guidelines. Discussions took place for several days on a range of different issues, including the procedures for electing the national assembly, without achieving any concrete results. On the last day of the Loya Jirga, Karzai presented a list of ministers, comprising the old Mujaheddin-leaders, including the Pansjiris. According to the source, Karzai omitted to take the opportunity to stipulate that in future the political rules had to be more democratic.

Accordingly, the Loya Jirga ended up giving increased legitimacy to the old Mujaheddin-leaders. The position of Minister of the Interior was given to a Pashtun who, according to the source, is considered to be a weak elderly man, and as such the control of the armed forces, security and the police is still with the Pansjiris, according to the source. The outcome is an underdeveloped state, in control of Kabul but not much more.

A Western diplomat pointed out that after the Loya Jirga in June 2002 many Afghans had expressed frustration at the process, both as regards the election to the Loya Jirga and also that there had been no leverage on the decisions made at the Loya Jirga. Most of the decisions had been made outside the meeting. According to the diplomat, there are primarily two large groups involved in the political process. Firstly, there is a group of predominantly Islamites who have been living in Afghanistan and the neighbouring countries for a long time, and secondly a group who have lived a long time in Western countries. It is a very difficult task to make these two groups function in unison. The first group - the Islamites - are presently controlling the armed forces in Afghanistan, whereas the second group is more liberal and supports free and just elections. In addition to this, the current political situation in Afghanistan is characterized by the issue of ethnicity, which in turn affects the leaders in power.

The analyst from International Crisis Group (ICG) found, that the present political situation in Afghanistan is influenced by local warlords and that there is no central power. In certain regions of Afghanistan the local warlords have a long history and have had a role as local leaders. According

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<sup>7</sup> The Northern Alliance is a grouping of predominantly ethnic Tajiks, Uzbeks and factions of Hazaras who were joining forces fighting against the Taliban. The Northern Alliance is also known as the United Islamic Front for the Salvation of Afghanistan (UIFSA).

to the source, there are no political parties as such in Afghanistan, but rather guerrillas and militia, and the situation is now very similar to the situation during the Mujaheddin-period. According to the source, the influence in Afghanistan of the neighbouring countries - particularly Pakistan - is still significant. Former Mujaheddin-groups and their leaders are still based in Pakistan, according to the source. The source mentioned Hekmatyar as an example, who has always been based in Peshawar in Pakistan. The source further pointed out that there continues to be a general lack of confidence in the USA, and it is thought that the Americans only have a short-term motive for their presence in Afghanistan. According to the source, the current transitional administration is thought to be puppets of the USA.

The head of ACBAR pointed out that the current government is a coalition, consisting of a mix of representatives of the pro-western Diaspora, former NGO-people, representatives for the warlords, representatives for the former communist regime as well as people who were formerly working for the Taliban regime. According to the source, the government is doing a good job in terms of making things work out. Reconstruction has commenced, business and trade have picked up, and the economy is improving. However, according to the source, political stability is still fragile and should be assessed on a daily basis. In this context, the source pointed to the incidents occurring now and again, including the bomb in the centre of Kabul in early September 2002. It remains uncertain who was behind this, but there are rumours that it was Islamic fundamentalists. The source also mentioned that there continue to be power struggles in the regional areas.

### ***2.2 Exercise of political and administrative functions in Kabul/the Provinces***

The special representative from the EU advised that the central government does not as yet have the capacity to exercise control in the provinces. After the Bonn-negotiations there have been a series of regional conflicts caused by individual commandants. Several of these conflicts concern rights to customs duties and levies. The central government does not have a military force, and these commandants must be convinced that they need to adapt, which is a slow process. The conflicts occur in various parts of Afghanistan where regional leaders are in control, but according to the source the situation is particularly problematic in the northern regions.

In the opinion of the Norwegian ambassador, the question as to whether the central government's political and administrative functions will penetrate to the provinces will greatly depend on assistance being available to the provinces during the coming winter months, thereby making it possible to buy the loyalty of the warlords. Should this not happen, the prospects of building the state will be weakened and the peace process be endangered. In this context, the Norwegian ambassador reminded us that the Bonn Agreement was signed only 10 months ago. The Norwegian chargé d'affaires added that the Finance Minister has made provisions for increased taxes and revenue to the central government, as 70-80% of the taxes and duties currently levied in Afghanistan will never reach the central government. The Chargé d'affaires further mentioned that most of the 455 recommendations made in connection with the Loya Jirga related to this revenue.

According to the Norwegian ambassador, the back-to-school programme is one that is successful in the provinces and is working in many parts of the country. In terms of rebuilding the infrastructure, a road project linking Herat, Kandahar, Jalalabad and Kabul is under way thanks to funding from the USA, Japan and Saudi Arabia.

The coordinator of UNAMA's Civil Affairs branch believed that the regional leaders do not consider the central state as being a neutral power but rather as a power dominated by political ethnic groups. The regional leaders are interested in having as much control as they possibly can, particularly in relation to taxes and revenue, but also in terms of the military and administration. This is especially the case with the Pashtun leaders, who are split into factions and do not form a united group.

In the **Pashtun provinces**, the leaders belong to a range of different groupings. According to the source, some Pashtun leaders are former heads of security and military commandants, also holding these positions under the Taliban and having now received token nomination as local representatives by the central government. In other regions, where the central government have tried to appoint local leaders, e.g. in the **Laghman and Kunar**-provinces, it took three to four months before the governors were able to take up their positions. In the **Logar**-province south of Kabul, the former governor has officially been removed from his post, but has not as yet vacated his official residence. On two occasions, the Minister of the Interior has visited the region together with the newly appointed governor, but it has still not been possible to remove the former governor from the post. In the Pashtun regions, it is generally the local councils - shuras - who control the administration.

According to the coordinator of UNAMA's Civil Affairs Branch, the **Wardak**-province is controlled by a person affiliated with Hezb-e-Islami and supported by Fahim, the Minister for the Defence. In this region the local shuras are on the defensive. In the opinion of the source, that makes for dangerous politics, as it has the potential to develop into guerrilla war against the central authority. There are also groups in the eastern areas around **Jalalabad** that are supported by the Minister for Defence. According to the coordinator of UNAMA's Civil Affairs branch, this is the first time in the history of Afghanistan that people from the Northern Alliance interfere in the Pashtun area in the south.

In the Nangarhar-province the Pashais<sup>8</sup> make up the strongest military group. The local commandant, Hazrat Ali, who comes from Nuristan, has the support of the USA as part of the fight against al-Qaida.

The coordinator of UNAMA's Civil Affairs branch said that in **Herat**, the control is completely in the hands of the governor, Ismael Khan who, according to the source, has a monthly income of 70 million US dollars from the border trade with Iran and Turkmenistan. It is rumoured that of this amount the governor has transferred a total of five million US dollars (two lots of 2.5 million USD) to the central government as a once only payment and that any further transfer to Kabul must be based on negotiations and that there will be no fixed monthly transfer. In the provinces, there is a flurry of activity in the fields of building and construction, and teachers, civil servants and soldiers are being paid for their work. According to the source, the positions in the local administration are filled through nepotism, and the source added that it is an oppressing regime where people who publicly criticise the local leaders, are imprisoned. It has also been reported, that torture takes place in the prisons.

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<sup>8</sup> The Pashaias is an ethnic group originating in the eastern Afghanistan

According to the coordinator of UNAMA's Civil Affairs branch, there is no direct control from Kabul with the **north-eastern region**. The Pansjiris control the Pansjir Valley, the Takhar and Kunduz provinces, but the source indicated that this is a political group of Pansjiries who are not controlled by the central government.

The coordinator of UNAMA's Civil Affairs branch advised that the power in **the northern provinces** is divided between Dostum (Junbesh)<sup>9</sup> and Mohammad Atta (Jamiat)<sup>10</sup>. The latter group is supported by Fahim, the Minister for the Defence. Earlier, Junbesh had its stronghold in Mazar, but as the majority of this group was in exile and has had to reorganize, Jamiat is currently the stronger group and is controlling the town of Mazar,

whereas Junbesh is on the defensive. According to the source, the two groups have a common interest against the central government as regards sharing of the revenue from the trade taking place on "the Freedom Bridge"<sup>11</sup>, and they have made an agreement about this.

In relation to the northern regions, the head of the office of UNHCR in Mazar-i-Sharif advised that the civil administration can hardly be said to be functioning. The administration does not take on responsibility for any activities in the region and does not pay wages to employees on a regular basis. UNHCR is active in the area and is assisting the different ministries at the local level; however, the various local branches do not seem to communicate and there is no coordination as such.

The International Crisis Group found that in the areas outside of Kabul, where no American troops are present, Kazai's government is very fragile. According to the source, a long road still lies ahead before the central government will gain power in the provinces, something that would also have an impact on the time required to build up a national army. Taxes are levied by the local warlords who control their own territories. The source characterized the political leadership outside of Kabul as being a mixed bag of influence by governors, local warlords, tribal leaders and other local leaders, including the Mullahs.

The head of ACBAR found that on the one hand, the central government in Kabul does not have a great deal of power in the provinces, but on the other hand that there is a certain amount of loyalty towards the central government. E.g., all offices in the provinces are displaying a picture of Karzai. According to the source, the governor in Kandahar - Gul Agha - seems to be loyal to the central government and is cooperating with Kabul. There are some coalition activities in the south-eastern regions; however, the previously massive interference from the neighbouring Pakistan now appears to have diminished. In the western region - Herat - directions from Kabul are ignored by the local governor Ismael Khan, who has his own army and his own people in the local administration. There are numerous problems for local NGO-people in this region, especially women, who have been instructed to register with the authorities and to attend a meeting, where they were taught how to conduct themselves. Compared to the province of Balkh and Mazar-i-Sharif, the situation is now slightly better than at the beginning of the year. The province of Balkh and the town of Mazar are controlled by Mohammed Atta (Jamiat), but the administration in the entire northern region is

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<sup>9</sup> General Abdul Rashid Dostum is the leader of the political party Junbesh-e-Milli, which is dominated by Uzbeks.

<sup>10</sup> Mohammed Atta is a prominent commandant in the Jamiat-e-Islami party, which is dominated by Tajiks.

<sup>11</sup> The bridge over the Amu Darya river near Hayratan on the border between Afghanistan and Uzbekistan.

divided between Dostum and Atta supporters. In the Paktia province in the south, the source said, there are currently two governors, because the local leaders have not accepted the person appointed by the central government.

The programme manager from DACAAR advised that in some areas in the southern and eastern corners of Afghanistan - e.g. in the provinces of Ghazni and Laghman - it is difficult to work out who holds the power locally. The central government is trying to appoint its own representatives as governors as well as for the local administrative positions; however, the reality is that in certain areas some local leaders are in control.

### **2.3 The position and influence of the Taliban today**

The coordinator of UNAMA's Civil Affairs Branch explained that the Taliban still exists in the rural areas as priests but not as a political movement. The strength of the Taliban movement is based on the Uleema<sup>12</sup> - conservative Muslims - and Taliban groups can still be found in Uruzgan and the tribal areas of Pakistan. In this context the source pointed out that Al-Qaida has no political interest in Afghanistan today - they are only interested in the country as a "safe haven" for their network.

The UNHCR-Kabul also emphasized that at present the Taliban does not exist as a powerful movement, but that there are groups who have been closely associated with the movement and who now constitute a security problem and engage in activities, especially in the provinces of Zabul, Paktia and Khost, in the southern and south-eastern regions of Afghanistan. There are some elements, who have been closely affiliated with the Taliban throughout the country, and there continue to be attacks by radical, fundamentalist forces.

According to the Norwegian ambassador, the Taliban remains a latent concept in Afghanistan. It is no longer a movement as such, but it may become an alternative to some form of future political Pashtun movement, if the disenchantment with the current government grows. The ambassador stressed that the Pashtun groups would not be rising; it would be the individual Pashtun commandants.

According to ICG, it would not be possible for the Taliban movement to become a significant political organization again. The movement has no formal influence in Afghanistan today, and according to the source, it never really was a proper organization but rather a movement incorporating several different elements. According to ICG, the activities of the Taliban movement were mainly organized from outside.

#### **2.3.1 The situation for people who served the Taliban in the past (voluntarily or otherwise)**

The human rights advisor and advisor for political affairs in UNAMA advised that UNAMA is currently undertaking an investigation of the situation relating to the possibility of forced recruitment to the Taliban movement, particularly in the southern regions where it has been rumoured that young men have been recruited and sent to the front line. A number of young men are currently in prison in Afghanistan, and it may be a case of people who have been forcibly recruited, but the investigation has not as yet been finalised by UNAMA.

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<sup>12</sup> Uleema is the name of conservative Muslim scholars from the Koran Schools (Madrasas). They believe that the Sharia laws should form the basis for the laws of the country, and accordingly, their primary role is to interpret Sharia.

Sources representing international aid workers advised that many Pashtuns are in prison in Afghanistan suspected of having served the Taliban. No organizations have access to these prisoners, who are kept under poor conditions, and no legal actions against them have been initiated. Aid workers are waiting for permission from the authorities to investigate further, including finding out what form of activities the prisoners may have been involved in.

The Norwegian chargé d'affaires said that he had visited the prison in Sheberghan in May 2002, and according to the source, a number of young men of both Pakistani and Afghan origin were held there, suspected of being affiliated with al-Qaida and the Taliban, and that so far no steps had been made to bring them before a court.

The head of the UNHCR office in Mazar-i-Sharif said that the issue of being suspected of having served the Taliban continues to be a major concern for many Pashtuns who fled the northern regions and are now living as internally displaced persons in camps around Kandahar (Spin Boldak). Many of these internally displaced persons are still not willing to return to the northern regions of Afghanistan for fear of reprisals from the local population (cf. also section 4.6 about ethnic groups).

The coordinator of UNAMA's Civil Affairs Branch explained that former Taliban people, who previously held high positions and were leaders in the provinces or the central region, are now risking persecution - in Kabul as well as in the northern regions - unless they are part of a powerful network. If they return to the villages, where they are known to be part of the Taliban, rank and file Taliban members may have problems. According to the source, the Taliban was an organized group with a clearly defined structure. It was obvious who gave the orders, and people who were actively involved in the movement - often against their own groups - are known locally. According to the source, they should stay away from their area or origin, but may return to other regions.

According to the same source, in some areas Uzbeks, Tajiks and Hazaras also were affiliated with the Taliban. These people may also experience problems in their original regions depending on their family network. In order to avoid problems, it is necessary to have "insurance" on both sides in relation to family connections and social networks (cf. also section 4.5). The source further pointed out that many former Taliban fighters have now been picked up by and have affiliated with factions of the Northern Alliance, including groupings around Sayyaf<sup>13</sup>.

The Director of the Cooperation Centre for Afghanistan (CCA) reported that a large number of people in Afghanistan have served the Taliban, including large groups of the population who were not directly involved in the Taliban movement. According to CCA such persons do not have problems in Afghanistan today. However, for those who were commandants and leaders and who participated in mass murders and injustice against the population, the situation is different. As for the forced recruitment under the Taliban, CCA said that in the non-Pashtun areas, the Taliban demanded money instead of people, because in those areas they were not convinced of the loyalty of the people. CCA stressed that the current authorities have not initiated any legal proceedings against persons who are known to have committed injustices under the Taliban.

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<sup>13</sup> Rasoul Sayyaf is the leader of the predominantly Pashtun militia Ittihad-i-Islami, previously strongly supported by Saudi Arabia.

It was the opinion of the ICG that the population of Afghanistan have had to change sides and loyalties several times under successive leaders, and that the question whether or not a person served the Taliban, would not form the basis for conflict. A significant number of people had been more or less forced to be loyal to the Taliban movement, and according to the source, taken on its own, this fact would not cause any problems today. In this connection ICG emphasized that there was a certain degree of law and order under the Taliban regime and that the Taliban disarmed many local brigades, leading to increased stability in certain regions

ICG further stressed that it is not a question of profiling in terms of the Taliban - e.g. former members of the religious police (Vice and Virtue) would not be more at risk than others - but that the vital issue is ethnicity. Today there are instances of persecution of Pashtuns based on ethnicity, and according to the source, it is not

important whether or not the groups persecuted were former members of the Taliban. The important fact is that they are Pashtuns (cf. also section 4.6).

The coordinator of ACBAR advised that many former Taliban, employed in administrative positions, have "changed hats" today and are now occupying the same positions as they did during the Taliban regime.

The DACAAR programme manager also mentioned that in many areas in the southern belt of Afghanistan, the people employed in the local administration today are the same as those before and under the Taliban rule.

### **2.3.2 The possibility of amnesty for former Taliban fighters and the implementation in practice**

According to UNAMA (the senior human rights advisor, the political advisor and the coordinator of the Civil Affairs Branch) no amnesties have been granted to former members of the Taliban.

The UNHCR-Kabul did not know of any amnesty for former members of the Taliban; they referred to the presidential decree on return in dignity (Article 3)<sup>14</sup>, which includes an amnesty for criminal actions - provided it does not involve human rights injustices - committed prior to 22 December 2001. According to UNHCR, this article also covers former members of the Taliban, where legal action has not been instituted against individuals on the basis on human rights violations. UNHCR are monitoring returned Afghans, and so far there have been no reports of incidents where these people have been called to account for such actions or incidents where this article has been applied against the authorities.

### **2.4 The situation for persons associated with the former communist government**

UNHCR, the Deputy Chief of Mission in Kabul, stressed that UNCHR knows of only a few former communists who have returned to Afghanistan, and he continued, that as long as such strong polarisation exists between the different groupings in Afghanistan, former members of PDPA might also experience problems. It was also the opinion of UNHCR that the picture is blurred - it can be

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<sup>14</sup> See Decree of the President of the Afghan Interim Administration, No. 297, date 13.03.1380 (3 June 2002) (cr. Annex 3).

quite difficult to distinguish between private acts of revenge and the acts of revenge which are related to activities which the person concerned carried out for the communist government. As an example he mentioned that a public servant, who had re-allocated land for the communists, might be at risk because he might be identified with this action. The situation will depend on the extent to which the person in question was representing the communist party - acting on behalf of the party - in a particular area. The source repeated that it might be extremely difficult to distinguish between injustices based on a person's past as a communist and injustices being the result of personal vendettas. The source also mentioned that the situation in general is very unstable and rarely static which in his opinion means that it is not possible to foresee what the situation will be in say 5 years. Old conflicts might reignite, and considering the current lack of legal security, there is no guarantee of security for anybody. Each issue must be determined on the basis of a concrete assessment.

In the opinion of the source it is clear that not all former members of PDPA are able to return to Afghanistan, just as it is not all former PDPA members that risk persecution, if they return. The more purely technical-administrative the position occupied during the communist regime, the safer the person would be. As an example, the source mentioned pilots. Some former communists would receive protection through their clans. In the towns, former communists would be more exposed, as the protection through clans is not as strong in town as it is in the rural districts.

The source mentioned two concrete examples, i.e. two young female communists who had been living in Azerbajdjan and who had not experienced any problems after returning to Afghanistan. A former high ranking communist, a Tajik General who has returned, has not had any problems so far after returning, but he is being closely monitored by UNHCR. The source also pointed out that the current Health Minister was previously a general under the communist rule.

The coordinator of UNAMA's Civil Affairs Branch said about the situation for former communists, that in general, the picture is not consistent. For instance, there are several high-ranking communists who are doing well under the new government. The deciding factor is the person's own network - whether a person has connections in the current power circles. It is predominantly the high profile ex-communists who need connections to the current rulers in order for them to manage.

KHAD people<sup>15</sup>, who were involved in torture in the prisons, are risking persecution. This is not so for the KHAD people who were employed in administrative positions. Local conditions, such as network and family, are vital in the concrete assessment.

As regards local-profile communists, the source said that their situation depends on their actual work and actions under the communist regime. People who as communists had been involved in injustices, violence, torture or killings, would have problems today. The source also said that the Taliban took a tough line against former communists, but those who survived the Taliban - and The Northern Alliance in 1992-96, would have nothing to fear from the current rulers because of a communist past. If, however, the person concerned had been "away" - away from Afghanistan - since the fall of the communists and now wanted to return, then it would depend on a very careful assessment - of the person's actual activities for the communist party as well as the person's own

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<sup>15</sup> KHAD was the name of the intelligence service under the communists. This service was set up as a Government Department.

network - whether the person concerned would be able to return without risking reprisals. A large proportion of the urban population fleeing in 1992-94 were communists.

An international source reported that Dostum is often accused of having been affiliated with the communists. The source had not heard any reports about former communists having had problems, as they had under Mujaheddin and the Taliban. Jamiat is intentionally calling Dostum and his people communists for political reasons.

Former civil servants under the communist government openly speak of their communist past, and many have returned, but the source also emphasized that the people who have returned to the northern regions are not high ranking, high profile communists. High ranking communists, who had influence, power, gave orders, senior

military people or people who held high-level administrative positions, have not returned to the northern regions. According to the source this could be due to the fact that former communists are mainly interested in coming to Kabul.

In the opinion of the source, former communists who were in the country during the period 1992-96, should basically be able to manage. But it depends on the former communist's actual activities during the communist regime, whether the person is now in danger of being persecuted. Former communists are risking revenge and reprisals from relatives of people against whom they have committed injustices whilst representing the communist regime. There are many former communists in the military ranks of Junbesh.

CCA said that there is no danger as such in Kabul for former communists. It may be difficult for well-known former communists to get work, but there is no risk of persecution as such. For former communists in the rural districts it is more difficult. Here the former communists risk harassment from the local population. High profile communists may be at risk. Today, some former communists are employed in administrative positions, but they are people who, because of their family connections, are not subject to reprisals although they used to be high profile communists.

The source pointed out that the situation for former communists, who had a high profile locally, would depend on their actual activities under communist government, including whether they were involved in actions and injustices against the civilian population. It was the opinion of the source that communists with a local profile, who were only seen as sports coaches and youth workers, educators, etc. may return to their place of origin without risking persecution. Locally known communists, who took part in arrests and injustices, will have problems.

The ICG analyst found that it is difficult to describe the situation in general for former communists. According to the source, very few communists remain. The source also believed that a high profile communist would not have survived the Taliban, and equally that it would not have been easy to survive as a well-known communist under the Mujaheddin. According to the source, "everybody" was against the communists. The source summarised the situation in saying that a former communist would either be dead or forgotten.

As regards people who had been employed in the KHAD the source said, that the worst part was over for former KHAD people in the sense that firstly there had been a civil war, where KHAD

people had been at risk, and since then there was the Taliban regime, equally placing them at risk. The source also added that many KHAD people had joined the Taliban or Mujaheddin.

DACAAR advised that presumably there are a few former communists in current administrative positions, but that the number is likely to be low. Former communists feel that they have to prove to the world that they are good Muslims. They are very cautious when moving around. They are not being harassed, but on the other hand, they have not been forgiven. Former communists are discriminated against in areas such as employment and housing.

ACBAR reported that there are ministers in the Afghan government who were previously affiliated with the communists. At the time, many people joined the communists simply because they had to be members of the communist party in order to get a job. The source also believed that it was difficult to recognize former communists so long after the fall of the communist government.

## ***2.5 The situation of persons previously in opposition to/in conflict with the Northern Alliance***

UNHCR, Kabul said that in their opinion people should be wary of persons who had pre-Taliban conflicts with the Northern Alliance.

An international source recommended taking great care in any matter relating to conduct, which might be or had been considered hostile towards the Northern Alliance.

Please also see Sections 2.2 and 4.1 dealing with the situation of political opponents in the provinces.

### **2.5.1 People evading military service with the Northern Alliance**

The coordinator of UNAMA's Civil Affairs Branch reported that it was easy for the Mujaheddin to recruit people in the 80's and early 90's. Accordingly, there were no serious consequences for people who wanted to desert from the various warlords during this period. According to the source, people who had left the Mujaheddin during this period, would not be at risk of reprisals today. After 1997 it became increasingly difficult for the Mujaheddin to recruit people, and as a result many warlords started forced recruitment of soldiers. It was the opinion of the source, that people who had deserted during this period, might have problems if they returned to their homeland. Accordingly, the source recommended that people in this situation should seek to take up residence in Kabul, and he also mentioned that the majority of returned Afghan refugees would choose to go to Kabul anyway.

UNHCR, Kabul believed that desertion from the Northern Alliance would be considered a serious offence although the source had no specific details on this issue.

An international source reported that concrete situations are of the utmost importance when assessing whether former deserters from the Northern Alliance are in danger of persecution when returning. The source believed that in general it would not cause any problems today for people who deserted in the early 1990's. However, if desertion was a result of clear political opposition to the Northern Alliance - and such opposition was known, or if the person had been considered to be opposing the Northern Alliance - then such person might still encounter problems.

CCA advised that the situation for people who had evaded forced recruitment to the Northern Alliance would entirely depend on whether the desertion had been recorded by the current, local

commandant and whether, consequently, such people would be at risk. There is no institutional memory.

### **2.6 Any new political groupings**

In terms of formation of new political parties, the process has hardly started, according to the Norwegian Chargé d'Affaires. Prior to the Loya Jirga in June 2002 very few moves had been made, however a certain amount of alliance building can be expected in the next few years in connection with a new Loya Jirga and elections in the spring of 2004.

Looking at the political development which started during the Loya Jirga in June 2002, it seems that three political groupings in particular might influence the future political development, according to the Norwegian ambassador. The ambassador estimated that the traditional Islam-based parties were currently the strongest. Within this group, the party formed by Wali Massoud, a brother of Ahmad Shah Massoud<sup>16</sup>, was mentioned as a possible actor. According to some sources, the former president Rabbani no longer plays any political part, whereas others believe that he might have a "come back", and he belongs to the traditional Islamic-based parties. There is also another group around the former king Zahir Shah, consisting predominantly of Pashtuns. Presently, there is no leader of this group, as the health situation of the king means that he is unable to take up the role of a leader, but some people in this circle have shown interest in building a network, and this group is considered to be interesting in terms of a possible political party. Now that the situation has calmed down, the king has moved into the presidential palace. The situation immediately after his return did not allow him to reoccupy the palace.

Karzai himself is seen as being too pro-western to lead the group, but according to the Norwegian chargé d'affaires, he needs to create a political foundation for himself with a view to the elections. According to the Norwegian ambassador, there is also an urban democratic group, consisting mainly of resource-rich and educated people. This group is not large, and at the present time it is not a proper political party. The formation of political parties in the future is expected to be a follow-on from the networks created in connection with the Loya Jirga process. It is partly a matter of fundamentalist groups, some more liberal-minded than others, consisting in the main of the Diaspora who, according to the source, has only limited understanding of the current situation of the country. At the moment, Karzai is considered to be the only viable candidate as a political leader. If the election in 2004 runs according to rules, the Pansjiris will definitely have reduced influence, but the role of the Defence Minister Fahim is not clear.

The special representative for the EU believed that it is too early to talk about new political parties in general in the current political process, apart from a party formed by Wali Massoud and the Minister of Education Younis Qanooni. In this context the source also mentioned that it is of vital importance for any new political parties in the current political process, not to be based on ethnicity or religion alone, and it is equally important that such parties do not have their own armed forces or militia. The source advised that there is no legislation in Afghanistan at present, setting out guidelines for political parties and the formation of such parties.

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<sup>16</sup> Ahmad Shad Massoud was a military leader in the Northern Alliance. He was assassinated during an attempt on 9 September 2001.

The coordinator of UNAMA's Civil Affairs Branch mentioned that democratic-liberal movements have emerged in intellectual circles in today's Afghanistan. These movements are allowed to exist without problems, provided they are not too "loud", but in the current political environment, such movements are probably choosing to operate in secret. The advisor further said that Wali Massoud is heading an attempt to establish a new multi-ethnic party - Nehzat-i-Melli - with a policy based on democratic values and the rights of women.

A western diplomatic source also said that secular political groups are emerging. There is room for such groups today, especially in Kabul, where the presence of a large number of foreigners makes it difficult to suppress these groups. Spokesmen for these groups are speaking freely, and they have told of harassment.

The harassment took the form of threats of arrests rather than serious violations.

An international source mentioned that General Malik<sup>17</sup> had advised that he was in the process of forming a new political party - the Peace and Justice Party. The establishment of such a party should be seen as a part of the current process, which is planned to conclude with the elections in 2004. However, the source believed that Malik's initiative could be considered to be a re-grouping within his own ranks rather than the establishment of a new party. In this context, the source mentioned that Malik is also supported by local commandants, particularly in the Faryab province. Dostum is concerned that Malik's initiative and the support given to him might create instability in the region.

The head of ACBAR mentioned that there is no legislation relating to the freedom of association. Consequently, it is difficult for political parties to organize. There is a need for a democratic platform, and the source believed that it would take a couple of generations before such a system would be in place in Afghanistan.

### ***2.7 The existence of an intelligence service***

According to the Norwegian chargé d'affaires, there was a lot of activity in connection with the Loya Jirga in June 2002. A large number of people were taking photos and were listening in. It is not clear if these agents were associated with the authorities. It is assumed more likely that the intelligence service is a parallel to the political conflict, where the various ethnically based groups have their own networks. There were serious complaints about harassment in connection with the Loya Jirga and disappointment that Karzai failed to follow up on the complaints. Many of the participants experienced problems because they spoke out, and there are rumours that the harassment was condoned by high ranking government officials.

The advisor of UNAMA's Civil Affairs Branch mentioned that there is an intelligence service in Afghanistan - National Security Directorate (Amniat). This service is not a ministerial department as such, although it effectively functions as such. It is not clear to whom the service reports, but according to the source, it is being controlled by the Pansjiri-Tajiks and probably by the Ministry of Defence, Fahim.

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<sup>17</sup> General Abdul Malik was second-in-command in the Junbesh-militia until he attempted to take over Dostum's power by making an agreement with the Taliban in 1997. He is generally thought to be responsible for the brutal massacre of up to 3,000 Taliban prisoners after having invited them to Mazar-i-Sharif. Source: Who is who. [www.afgha.com](http://www.afgha.com) online.

The same source also mentioned that Amniat carries out random arrests. UNAMA gave some examples, where this organization had intervened. It is a matter of typical cases where people were imprisoned because they complained that Pansjiris had seized their houses. There had been a number of such cases. There are also cases involving money.

UNAMA's political advisor also said that the organization has received a large number of complaints relating to random arrests by Amniat, including threatening of the people arrested. Nevertheless, the source did not feel that the intelligence service could be said to systematically violate human rights.

The same source advised, that officially Amniat is present throughout the country and reports to the authorities in Kabul. On the other hand the source pointed out that in some parts of the country, the local warlords control the intelligence service.

The project worker associated with the German police training project believed that the intelligence service holds executive powers and is authorised to carry out searches and arrests. As far as Amniat is concerned, the source believed that it reports to president Karzai. Apart from this, the Defence Minister and the Minister of the Interior each have their own intelligence service.

The Director of the Secretariat of Human Rights Commission and the Commissioner advised that in principle the intelligence service must obtain a court order to keep a person under arrest. The source said that cases against persons suspected of presenting a danger to the security of the country, are dealt with by a special court. In such cases, only a 2-instance process is possible. The source further said that the intelligence service is present everywhere in the country, but that it is controlled by the local authority, including the local commandants.

UNHCR, Kabul also said that the intelligence service is present in all areas of the country, in the government administration in provinces and districts, but that it is unclear how active the service is and exactly what its role is.

### **3. THE SECURITY SITUATION**

#### ***3.1 The security situation in general***

The majority of the sources consulted stressed that the current security in general is what causes the biggest concern for ordinary people. The UNHCR deputy chief of mission advised that there are incidences of some form of armed conflicts in all provinces. According to several sources, including UNAMA and the Norwegian chargé d'affaires, there are also some cases of abuse of power in the provinces. The coordinator of UNAMA's Civil Affairs Branch said that at the moment the local rulers are in a position where they are able to commit injustices against the general population without fear of punishment.

The EU-delegation special representative said that the security situation in Afghanistan in general is controlled by local warlords. Groups such as al-Qaida, remnants of the Taliban and groupings around Hekmatyar represent a minor danger. However, they are present in the regions close to Pakistan, i.e. the southern and eastern corner of Afghanistan, but here too the situation is improving. As far as the rest of the country is concerned, these groups are non-existent. The situation is not stable. There are incidents such as the bomb in Kabul in early September 2002 and the attempted assassination of the president at the same time, but there is no real pattern.

The Norwegian chargé d'affaires advised that in Kabul the security situation in general is reasonably good, and that normally there are no major incidents. In the rural areas, there are many negative activities, and the situation changes weekly and from one month to the next. The situation is particularly critical in the southern and south-eastern areas, whereas the areas around Kandahar and Herat are comparatively quiet. The major challenge for the authorities is centred around Mazar-i-Sharif and in the south and the east. As far as the international security forces, ISAF, are concerned, the chargé d'affaires said that the most recent compromise reached relating to the future of the forces, was an extension to 22 December 2002 under Turkish leadership. As for a geographical increase of the forces, the USA has now indicated that they are prepared to accept a geographical increase, if other countries join in, but it is doubtful whether the USA itself will contribute to any such increase. However, the USA has shown greater understanding of Karzai's requirements in terms of the security force and is therefore no longer opposing an increase. On the other hand, the USA has not indicated a higher level of commitment in terms of any such increase.

ICG found that the security situation in general is the same as under the Taliban regime, neither worse nor better. Karzai has turned out to be less effective in the provinces, but ICG believed that compared to the situation in 1992, the present situation is considerably better. In the early 1990's, nobody could be sure about which group would be bombing other groups, whereas today there is greater focus on the warlords' fight for political control of a particular geographical area.

The DACAAR programme manager believed that the situation varies greatly, and that in general the situation has deteriorated compared to the security situation under the Taliban regime. According to the source, the Taliban regime left a vacuum in terms of the balance of power in local areas. Under the Taliban, there was generally a lower level of local conflicts, whereas shortly

before its downfall, there was an increase in local conflicts. The Taliban disarmed large parts of the population, but as soon as the Taliban had gone, a large number of people started to carry weapons again.

Nevertheless, according to the source, when compared to the situation in Afghanistan before the Taliban, there are fewer people carrying weapons today.

### **3.2 Regional differences**

#### **Kabul**

Most sources pointed out that the presence of the international security forces (ISAF) in Kabul has the effect of ensuring generally good security in the capital. Some sources believed that their presence in the capital also has some effect in the rural areas.

The Norwegian chargé d'affaires said, that the security situation in **Kabul** is controlled by the international security forces (ISAF). There are sporadic explosions, however they are fairly rare contrary to what might be expected. There are many rumours as to who is behind these explosions. Some are of the opinion that they are caused by people closely associated with the authorities, whereas others point to Hekmatyar. These incidents have occurred throughout winter and spring, and it is rumoured that they aim to show that the authorities are unable to control the situation. The more serious incidents involve the killing of two ministers, and a bomb in early September 2002, where about 20 people were killed and 45 people injured. The methods used in these incidents are typical of terrorists, where a small bomb is first set off followed by a second, more lethal bomb.

The EU special representative also said that the situation in **Kabul** is stabilised through the presence of the international security forces, but that at present there is not the required financial and military capacity in the EU to increase these forces geographically.

#### **The South and Southeast**

In terms of the security situation outside Kabul, the Norwegian chargé d'affaires particularly pointed to **the southern and eastern** areas as being critical, including the provinces of Khost and Paktika. The disturbances range from general gangsterism to more organized forms of mafia-activities and can be seen in the context of the desperation over the ban on the production of poppies and the extremely low amount of compensation given to the farmers. In this context the sources pointed to the attempted assassination of the Defence Minister Fahim during his visit to Jalalabad in April 2002 and the assassination of Vice President Qadir in July 2002. Until his appointment as Vice President, Qadir was known to have had a different attitude to the production of poppies, as he previously supported this production, but after becoming Vice President, he supported the government's opposition to the production of poppies.

EU's special representative also stressed, that the situation in the southern and south-eastern regions is characterized by a good deal of unrest and that many Pashtuns in the region sympathise with the Taliban and Hekmatyar. However, the special representative did not believe that the current situation is serious.

UNHCR-Kabul said that the security situation in the provinces of Zabol, Khost, Ghazni and particularly **Uruzgan** continue to be problematic. There are quite a few activities carried out by the

radical groups who were previously affiliated with the Taliban. There are rumours that Hekmatyar is behind attacks in Zabul, but according to UNHCR this has not been confirmed. There is currently fierce fighting in Uruzgan, where the coalition forces are also involved, whereas the situation in Khost appears to be improving. In the province of Ghazni, there is fighting at night between the coalition forces and radical groups. According to UNHCR the security situation in these areas is forever changing, and the concentration of ex-Taliban fighters, who have their base in the tribal regions of Pakistan, is constantly moving around in the area.

CCA mentioned that particularly in Uruzgan many of the former local Taliban fighters are gathering again.

The DACAAR programme manager also pointed to the Ghazni province, where there is a significant amount of unrest whilst there is also a very high concentration of American troops trying to limit the number of conflicts.

According to the Norwegian chargé d'affaires, there is some unrest around Kandahar, which may be caused by the fact that in general, the Pashtun groups feel that they have been treated unfairly. In connection with the Loya Jirga, strong feelings were expressed by persons from Kandahar. Since that time, President Karzai has been travelling extensively in the region to build bridges between the different Pashtun groups.

The EU special representative also pointed out that there is a good deal of unrest around Kandahar, but that the presence in the area of the American specialist troops prevents it from developing into major conflicts.

### **The North**

Most sources pointed out that the security situation in the northern area around **Mazar-i-Sharif** continues to be tense in many places. The coordinator of UNAMA's Civil Affairs Branch said that the town is being cleaned for weapons at regular intervals, and that there have been four instances where UNAMA intervened to remove weapons from the town. According to the source, the town is currently controlled by proper police forces, but there is still a considerable level of unrest and crime.

According to the Norwegian chargé d'affaires, the various commandants have divided Mazar among themselves, but there continues to be great tension in the region and the future is very uncertain. This situation of insecurity has had negative consequences in terms of overseas aid, which puts a certain amount of pressure on the local warlords to maintain peace. Ethnic groups are still on the move, and many of the camps for internally displaced persons, which had previously been vacated, have now again been filled up by Pashtuns who are subjected to injustices by Tajiks and other ethnic groups as revenge relating to suspected affiliation with the Taliban. These injustices continue to take place in the north and cover a wide range of everything from beatings and rape of women to general harassment of children and adults.

The EU's special representative also believed that the entire northern region is an area in which there is a high number of clashes and where there is a potential for further unrest.

The head of the UNHCR office in Mazar-i-Sharif said that the security situation in the northern region has generally improved over the last month but that there are still problems with small

commandants. There are local clashes, and the security situation can change from one day to the next. The area is divided among Dostum (Junbesh), Atta (Jamiat) and Mohaqqueq<sup>18</sup> (Hezbe-Wahdat) forces. According to the source, the

leader of these forces is under immense pressure from the international community and has realized that it is necessary to improve the security situation in order to convince the foreign donors to start up some development projects in the region. However, the chiefs of the forces mentioned are not fully in control of the local commandants in the villages, and consequently, there continues to be some unrest and clashes in the region. According to the source, the clashes mainly relate to the access to resources, including land and particularly water resources. The source added that the water resources are used as a basis for levying taxes from the users, and if, for instance, the water is controlled by the Junbesh forces in an area, they are able to cut off Jamiat forces in another area from access to water.

### The West

Most sources pointed out that in general, the area around **Herat** is controlled by the local governor Ismael Khan. At the same time, the sources stressed that this is a suppressive regime, where political opposition is not tolerated (cf. also Section 2.2).

UNHCR- Kabul said that the most significant confrontation in Afghanistan since the change of government, happened near **Shindand** in the west during the months of June and July, where Pashtun groups were fighting against the forces of Ismael Khan. According to UNHCR, the confrontation was economy-based, being an issue of control of the border trade between Iran and Afghanistan, where the Pashtun forces challenged Ismael Khan's forces. Presently there is no fighting around Shindand. However, according to UNHCR, there is fighting in **Nimruz** between coalition forces and the remainder of the Taliban fighters, who have re-organized.

### Hazarajat - The Central Highland<sup>19</sup>

UNHCR-Kabul advised that there is some unrest in the Bamian province based on ownership of land and property. The governor in Bamian is a Hazara, whereas the Deputy governor is a Tajik, and there have been security-related clashes between the two groups. According to UNHCR, clashes relating to ownership occur both when Hazaras return from Iran and reclaim their former property, and when Tajiks return and reclaim properties taken over by Hazaras. Such clashes have been occurring especially in the area near Kahmard, which is controlled by a Tajik commandant loyal to Atta (Jamiat), and they have been directed against groups that are loyal to Khalili<sup>20</sup> (Hezbe-Wahdat).

CCA also mentioned that there are problems between Hazaras and Tajiks in Bamian because of a fight for access to land, property and businesses. Before the Taliban period, the Tajiks made up

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<sup>18</sup> Haji Mohammad Mohaqqueq is one of the leaders of the Hazara-based party Hezb-e-Wahdat. He is also the Minister for Planning in the transitional administration.

<sup>19</sup> The area known as Hazarajat covers the Bamian province and parts of the neighbouring provinces. The exact boundaries are the subject of discussions.

<sup>20</sup> Karim Khalili is the leader of the Hazara-based party of Hezb-e-Wahdat. Khalili is also one of three vice presidents in the transitional administration.

about 30-40% of the population in Bamian, according to CCA, and some of these people have now returned. According to

the source, there have also been reprisal attacks against Tajiks in Bamian because of Tajiks having joined the Taliban movement.

The coordinator of UNAMA's Civil Affairs Branch said that in Hazarajat there have been clashes between groups of Hazaras and Pashtuns in the border area in the south. According to the source, there have also been reports that small commandants - in the region near Daikundi and Panjab - are fighting and committing injustices against the local population, particularly women.

The head of ACBAR mentioned that the security situation in the Bamian province is problematic. No groups have been disarmed and there are still plenty of weapons in the province. According to ACBAR there were recent clashes (3-4 weeks prior to the arrival of the mission) between Harakat-e-Islami and Hezbe-Wahdat forces. This fighting has ceased.

### **Other regions**

According to the Norwegian chargé d'affaires there are a lot of rumours about increasing militarization in the **Pansjir Valley** staged by Fahim, the Minister of Defence. Many people are seeing this in relation to the political conflict in the government and as an indicator for what might happen in the future in Afghanistan.

According to the coordinator of UNAMA's Civil Affairs Branch the provinces of Kunduz and Takhar are relatively calm and the population feel secure, unless they are in opposition to the groups in power.

### **3.3 Forced recruitment, if any - which regions/forces**

The senior human rights advisor and the political advisor of UNAMA said that forced recruitment is currently taking place in the northern areas of Afghanistan.

An international source advised that the extent of forced recruitment is on the increase and should be seen in the context of the tension between the various factions in the northern region. The source has received reports indicating that the forced recruitment during the months of August of September 2002 took place particularly in the provinces of Sar-e-Pul, Jowjzan, Balkh and Samangan.

According to the source, forced recruitment is carried out in different ways. Firstly, it was reported, in late August young men were picked up from the street in Sar-e-Pul. Many of these were working for national NGOs. According to the source, forced recruitment is carried out by both sides - by the Junbesh as well as by the Jamiat forces. It is said that Atta has ordered 1000 new recruits to be found for the forces in the Balkh province, while Junbesh are recruiting especially in Samangan and Jowjzan. Other forms of forced recruitment consist of the commandant going to the villages where he negotiates a sum of money in exchange for men. Amounts as high as 10-20 million Afghani per person have been reported, (approximately between USD 220 and 445 per person). In some instances higher amounts have been mentioned. If the families are unable to pay, the young men are picked up. There are also reports of physical violence in the form of beatings of families.

According to the source, the local community often helps the family to pay. There are also examples of some families in an IDP-camp in the Samangan province having recently been asked to supply 20 recruits, but they only supplied three and sent the rest of the young men in the camp away from the area to another IDP-camp in the Kandahar region (Spin Boldak). There are rumours that forced recruitment involves people as young as 12-13 years, but according to reports, verified by the source, it was actually young men aged between 18 and 20 years.

The source also said that in May 2002, a decree was issued by the president about military service, which according to this decree, must take place voluntarily<sup>21</sup>. However, according to the source it seems unclear whether this decree has come into force, and how it is to be implemented in practice.

Finally, the source expressed concern, that the Pashtuns currently returning from western countries might become a primary target for forced recruitment in the northern regions. The source emphasized that there have not as yet been any examples of this happening, but that it is an issue, which gives cause for general concern.

According to CCA, forced recruitment to the Jamiat forces in Takhar province is also currently taking place. According to the source, these are forces belonging to the commandant Daoud, who is based in Kunduz. CCA has received reports that families, who refuse to supply a recruit, instead must pay 4 million Afghani (about USD 85).<sup>22</sup>

### **3.4 Demobilization**

The EU special representative said that there is currently no serious programme in place in Afghanistan with a view to demobilization. There are no UN-programmes, but a committee has been established consisting of Afghan government representatives and local leaders. The source stressed that job creation and demobilization are closely linked, and that apart from political willingness, the creation of new, labour-intensive jobs and training is needed. The two latter points require funding and it will be a long time before the conditions are met. In this connection, the source also pointed out that criminality will typically follow conflict, and that accordingly it is of vital importance to start up a process of demobilization.

The head of the UNHCR office in Mazar-i-Sharif also pointed out that disarmament and demobilization are closely linked to the creation of jobs. The lack of viable jobs in the northern regions gives rise to many instances of extortion by people carrying weapons, as they have no other means of income. In some districts in the Balkh province, a disarmament action took place, though with some success, but the source pointed out that as long as one faction is disarming another faction, there are only limited chances of success. In the opinion of the source, an impartial, internationally supported force is required for disarmament to be successful, and at the same time demobilization must be accompanied by alternatives in the form of employment, which is currently insufficient.

ICG also pointed out that as long as there are no funds for rebuilding and consequently employment, demobilization in Afghanistan will not be possible.

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<sup>21</sup> See Annex 4.

<sup>22</sup> This amount is the equivalent of two months' pay for a civil servant with academic education.

### **3.5 Building a national army and a police force**

The Norwegian ambassador advised that a national defence council (National Defence Council) has been established, consisting of all the warlords. It is intended that this council suggest plans for rebuilding of the defence force and the police force as recommended by the donor countries. The council has started its work, but if an actual dialogue concerning the future national defence and police force does not get under way soon, the plan for the rebuilding will be lost. The council members - the warlords - are also the people who to a large extent control the income from the narcotics trade and the levy of customs duties.

The Norwegian chargé d'affaires mentioned that the creation of the national army is progressing very slowly. There are currently discussions relating to the size of the army and its ethnic composition. A proposal has been made to include various ethnic groups in the army, but the size of the army causes many discussions. The Afghans have proposed a force of 140,000 men, which is the same percentage of the population in Afghanistan as the percentage of the American army in relation to the population of America. The question is, however, who should fund such a force in Afghanistan. The international group of donors have suggested a force of about 80,000 men.

The EU's special representative advised that less than 1,000 Afghans have had military training at present. There are currently no plans for the creation of a national army which have been approved by the government - the present plans were prepared by the donors. The EU's special representative mentioned two possible ways of building the army: either new volunteers could be trained or people could be picked from the existing militia. The source pointed out that the latter scenario would probably lead to the army being built up faster, but that in the end it would be a political choice.

ICG said that there are attempts at recruiting members of local militia for the national army, but that this procedure is not supported by the USA. As long as there is no funding for the rebuilding, nothing will happen. Furthermore, it will take some time to build a national army. In this connection the source pointed out that the international security forces would not stay in Afghanistan for ever.

A project worker attached to the German police training programme in Kabul said that since its start in April 2002, between 120 and 130 police officers have been trained under this programme, all being senior staff at the Police Academy in Kabul. The German project is not involved in working out the police practices, but is only giving advice and providing training. Currently, 1,500 new police officers are being recruited, and are to be trained under this programme. They will receive 1 year of training, whereas high-ranking police officers, lieutenants and commissioners will have three years of training. According to the source, the training in Afghanistan takes place according to German guidelines and UN standards.

The source said that the police in Afghanistan are following old laws dating back to the time of Daoud<sup>23</sup>, as no new decrees have been issued by Karzai relating to police operations. According to these laws, the police may hold persons for up to 5-6 days for interviews, before the person arrested is brought before a judge and transferred to a regular prison.

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<sup>23</sup> Mohammad Daoud was the president in Afghanistan from 1973 to 1978

The project worker associated with the German police training programme further said that the total police force in Afghanistan today include about 75,000 persons, of which nearly half (35,000) are trained police officers, with the balance (40,000) being conscript soldiers, who have only had limited training. About 65,000 of this force are based in the provinces, where they are controlled by the local governor. It is also up to the local governors to decide who should attend the German training programme in Kabul.

The coordinator of the International Human Rights Law Group said that there is no police force as such in the province. In Mazar-i-Sharif, Herat and Kandahar, where there is some form of police corps, the police officers belong to the local warlords' people.

## **4. THE HUMAN RIGHTS SITUATION**

### ***4.1 The human rights situation in general***

Most sources believed that violations of human rights still take place, particularly in the northern regions of Afghanistan. The commissioner of the National Human Rights Commission (AIHRC) believed that in general the human rights situation has improved since the downfall of the Taliban, but that outside Kabul the warlords control their areas and that political threats occur in the provinces.

The senior human rights advisor of UNAMA stressed that the main problem in Afghanistan today is not that the central government lacks the will to implement the requirements to observe human rights, as set out in the Bonn Agreement, but its lack of penetration - especially in the provinces, where there is no law and order at all. Of the greatest concern is the security situation - except for Kabul, where ISAF is present. Outside Kabul the country is controlled by local warlords, and according to the source, there is no law and order. Add to that the humanitarian crisis in Afghanistan which, according to the source, is severely curtailing economic and cultural rights, including access to food, housing, health and education.

According to the source, UNAMA is endeavouring to monitor the human rights situation throughout the country, and for this purpose they will be placing human rights workers in all their offices in the near future in order to more closely record future human rights violations. UNAMA is monitoring the human rights situation in general and any patterns in the injustices, which may be committed, rather than the specific cases. According to the source, people in opposition to the local commandants generally have problems. The stronger the local authority is, the stronger the intimidation - e.g. it is very strong in the west (cf. section 2.2). Where the local power is more fragmented, the intimidation is less severe, but in return the security situation is worse - e.g. in the south and southeast. In Kabul, there is a large presence of the international community and the international security forces (ISAF), which helps to improve security and limit intimidation. Nevertheless, at the Loya Jirga in Kabul in June 2002, some delegates were threatened. According to the source, this was the case with delegates who represented the civilian population and made critical comments during political discussions, and also representatives of the Loya Jirga commission, including those who were in charge of the process and tried to prevent local commandants from taking over the process.

The EU's special representative believed that in Afghanistan today there is a culture, where people committing injustices, go unpunished. There continue to be reports of human rights violations - particularly from the areas in the north - but according to the source, the situation is not as bad as it was during the period 1992-96. This, according to the source, is due to the strong international presence today, which is exerting a certain amount of pressure. The source said that there is a need for further investigation of these violations and that the international community has indicated that it is prepared to protect witnesses and support court cases relating to human rights violations. The

source hoped that accordingly, the Afghan government would soon ratify the Rome Statute<sup>24</sup>. The source further pointed out that there is nowhere to turn for the civilian population to make complaints about human rights violations. According to the source this is due to the fact that the current justice system in Afghanistan is very inadequate.

An international source believed that people, who have drawn attention to or witnessed human rights violations, are presently among the groups most at risk. The source had several examples of families, where the men who had given information about such situations had been subjected to mass rapes of their wives and daughters as a reprisal.

A Western diplomat said that several human rights organizations had expressed serious concern in relation to the policy of the USA in Afghanistan, where they "are betting on several horses". For the purpose of their war against terrorism, they are supporting local commandants, and there are rumours, that the Americans receive quite a lot of misinformation, which has led to the bombing of the political opponents of local commandants. As an example the source mentioned that 30 older leaders had been killed by American bombs on the road between Kandahar and Kabul in December 2001, when they were on their way to a political meeting. Everything pointed to this being an internal political clash. Both the Afghan president and the Foreign Minister have expressed their despair at this situation.

The Director of the Cooperation Centre for Afghanistan (CCA) believed that the human rights situation in general has improved in Afghanistan after the fall of the Taliban regime, but that it still gives cause for concern in certain areas. According to the source, the current government does not observe the human rights principles. In this connection, the source pointed to the course of the Loya Jirga process, which did not proceed as expected by the population. According to the source, the government was in charge of the process and was manipulating the agenda. The process had certain democratic aspects, accepted by people, but it did not meet democratic standards. CCA found that the situation is generally good in Kabul, as there is no harassment or political arrests, but in the provinces the commandants are powerful and influential, and in some areas, the government has no power. In this context the source pointed to the Uruzgan province and Herat, in particular (cf. Section 2.2).

### **4.2 The National Human Rights Commission**

The Head of the national human rights commission secretariat (Afghanistan Independent Human Rights Commission (AIHRC)) advised that the commission was a result of the Bonn Agreement and was authorized by a presidential decree from Karzai. The commission is independent and consists of 11 members, of which 5 are women, and is headed by Sima Samar, the former Minister for Women's Affairs in the interim administration. With a view to the safety of Sima Samar, the commission has moved to new premises on the outskirts of Kabul. This source also said that for the first two years, the commission will be funded by international donors, but after the election in 2004, the commission wages are supposed to be paid by the state.

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<sup>24</sup> The statute relating to the establishment of the international criminal court dated 17 July 1998 (Rome Statute of the International Criminal Court).

The senior adviser of UNAMA also said that the commission was established following a presidential decree, but that it is supposed later to be authorized by the future, new Constitution and that it is not supposed to be placed under the executive power, i.e. it must be independent.

The head of the National Human Rights Commission secretariat further said that the commission is still in its formative stage and is trying to consolidate itself. It is currently building up competence and preparing a strategy for future work. The commission has a broad mandate which on the one hand covers information and the dissemination of knowledge about the commission, the teaching of human rights principles, and on the other hand investigation, research and decisions relating to concrete cases. In the long term the commission is expecting to open 11 new local offices in the districts, including in Herat, Mazar-i-Sharif, Bamian, Gardez, Kandahar, Faizabad, etc.

According to the head of the secretariat, the commission has received more than 500 complaints relating to the last 2 years. The secretariat is preparing the cases and forwarding them to the commission members for decision. The majority of cases relate to economic conflicts and debt issues, and many concern matters of right of ownership, including issues about the lack of support from the police in relation to home occupations. In this context the source said that the government has now set up a commission to deal exclusively with issues relating to property disputes, and consequently this commission will be taking over this type of case. Out of the 500-plus cases referred to the commission, there are about 20 matters, according to the source, which directly relate to human rights issues, including several complaints concerning injustices against civilians committed by the various warlords. The commission may refer the cases to the courts or by means of counselling assist the conflicting parties in arriving at a solution. In this connection it was emphasized by the source that each case must be assessed within the framework of and with due respect for Afghan culture.

All sources consulted spoke positively about the human rights commission having been set up in accordance with the Bonn Agreement.

The senior advisor of UNAMA pointed out that the human rights commission has only recently been established and accordingly, it is not as yet very visible in the community. At this stage, the commission has not managed to build up the required competence, and also, there is insufficient funding. Furthermore, the commission has not created a system for the monitoring of the human rights situation in the country.

The Norwegian ambassador said that the only commission which so far has been established and started its work is the human rights commission; however, it was not his impression that it has regular meetings. He added that it is uncertain whether the government genuinely wants the commission to be effective, as Sima Samar, appointed the Chief of the commission, has been sidelined compared to her former post as the minister for women's affairs in the interim administration.

It was the opinion of a Western diplomat, that the commission had started its work and that the commission has a difficult task ahead. He also said that he considered the commission to be entirely independent. The big question about the future of the commission is the amount of impact given to its recommendations and views in relation to the government and the judicial system. In this context he considered it to be a problem, that the commission does not have sufficient funding to investigate the complaints so far received.

The coordinator of the International Human Rights Law Group believed that the persons appointed as members of the commission had the competence required to do a good job, and expected the commission to work independently. The most significant problem for the commission is the lack of funding and not least that the commission does not have a "Task Force" in terms of investigating and implementing human rights. This should be seen in relation to the current security problems in Afghanistan, where the government is only in control of Kabul, whereas the control of the rest of the country is divided among the various warlords. Furthermore, he pointed to the fact that the judicial system is inadequate. He was also concerned about the fact that there are no clear guidelines for procedure and competence as regards to whom the commission should submit its recommendations, and even more importantly whether those, to whom the matters are referred, have a duty to act. It was the opinion of the source that it would probably be some time before the results of the commission's work would be known. The coordinator was surprised that the government had set up another commission to deal with the investigation of reports of mass graves in the north, rather than referring the matter to the human rights commission. He further said that he found it exceedingly strange that the human rights commission had not reacted to this, nor had it instigated its own investigations.

### **4.3 Re-introduction of parts of the Constitution of 1964**

The Deputy Minister of Justice, Rasooli, advised that the Constitution of 1964 has been re-introduced, but that some of the provisions of the Constitution are no longer applicable, because the country has changed since 1964. As an example, the Constitution grants certain powers to the King; however, Afghanistan is not a Kingdom any more. The Deputy Minister of Justice further said that according to the Constitution, the Supreme Court of the country must have 9 judges. In reality, there are 65 Supreme Court judges. The Constitution further stipulates that the upper age limit for Supreme Court judges is 60 years. In actual fact there are judges who are over 70 years old.

The Deputy Minister of Justice further mentioned that currently Afghanistan is a law jungle. Consequently, the Ministry of Justice is in the process of perusing all the laws to assess, which laws should remain and which should be abolished. It is expected that all laws will have been perused in 2-3 months. Afghanistan has civil laws, criminal laws and a law on the judicial system, etc.

The Deputy Minister of Justice had heard that Karzai is considering reintroduction of the Law Commission. The former Law Commission was not active and was therefore dissolved. As a consequence, the Deputy Minister of Justice was sceptical regarding the reintroduction of the Law Commission.

The Director of the Secretariat of the Human Rights Commission and the Commissioner advised that all Taliban decrees have been abolished, and that it is the 1964 Constitution, which applies. They also pointed out that the Sharia laws are based on Islam, whereas the Constitution has been copied from another country. First and foremost, Afghanistan is an Islamic country, but the Taliban abused the Sharia laws. It is the hope of the human rights commission that the application of the Sharia laws will be limited, once the central government in Kabul is in control of the entire country.

The human rights advisor and the political advisor for UNAMA said that the 1964 Constitution is important as a reference framework, which can be used to support complaints relating to the violation of human rights. However, the implementation mechanisms are inadequate, particularly

the judicial system. Hence, the re-introduction of the 1964 Constitution does not in itself provide protection against extra-judicial executions, extortion or persecution by the local commandants. Furthermore, the Constitution does not protect women against cruelty or discrimination.

The Norwegian ambassador believed that there is a need for a revision of the 1964 Constitution. They are waiting for the Constitutional Commission, which has not as yet commenced its work. In this connection, the ambassador pointed to similar bad experiences with the Law Commission, which had to be restructured, because the commission consisted of government staff, who had to assess the laws.

The coordinator of the International Human Rights Law Group said that the reintroduction of the 1964 Constitution has not brought about the required separation of the judiciary and the executive powers in Afghanistan. Hence, the Bonn Agreement has not removed this problem.

#### ***4.4 The existence of a judicial system and any regional differences, including the function of any local judicial authorities***

The Deputy Minister of Justice advised that the country has a court system with 3 instances, which is working well. There is a primary court in each district, and a secondary court - the appeals court - in each province, and finally the third and last instance, the Supreme Court in Kabul. There is a Public Prosecution Department in each province. Everybody is entitled to a defence. There is a legal aid department associated with the Supreme Court, and the Supreme Court may decide to appoint a defence counsel for someone with limited means. A sentence may only be pronounced for matters which are clearly set out in the criminal law. Judges are appointed by the government - by Karzai. To become a judge, a person must be a graduate either from the Faculty of Law or from the Faculty for Islamic Law (Sharia law - a one-year course). Promotion of judges is decided by the Supreme Court. The decision of the Supreme Court is final, and the Supreme Court acts independently of the government. Only death sentences must be approved by the president.

According to the source, there are no local systems in the villages parallel to the nationwide judicial system. All villages are under the jurisdiction of a district court. Also, there are no longer any elder-councils. All conflicts are resolved by the district courts. The Deputy Minister of Justice added that it is a tradition, that the village councils decide on a range of matters. The Deputy Minister of Justice pointed out that he did not agree with this practice and it was his opinion that all legal conflicts should be placed before the courts.

The Deputy Minister of Justice advised that the processing time of the court system - the amount of time required for a case to proceed through the court system, from the district courts in the first instance and up to the Supreme Court in Kabul - depends on the actual case documentation and the type of case involved. For minor infringements, the processing time is 1-3 months. Serious offences must be processed within 6 months. The Deputy Minister of Justice added that there are still a large number of cases left over from the Taliban period, which means that there is a certain backlog at the Supreme Court.

A minimum of three judges are involved in each case before the Supreme Court. It was the opinion of the Deputy Minister of Justice that it does not cause any problems that the composition of the court may result in two judges having their professional background in Islamic law, and one having studied secular legislation - or vice versa. In certain cases, the Islamic law is applied in preference

to secular law. The Deputy Minister of Justice did not go into further detail on this issue but mentioned that according to the Koran there are certain types of cases, that should not be dealt with by women. These may be cases involving amputation or the death sentence, but cases of this type no longer occur since the fall of the Taliban. It was only under the Taliban, that sentences involving amputation or death were pronounced. It never happened before, nor after the Taliban. There are still provisions for amputation and the death sentence in the law, but such sentences are not applied in practice.

In addition to the ordinary courts, there are some special courts: the Court for Young Criminals, and the special family court that pronounces final sentences but has no punitive power. The family court makes non-criminal related decisions in matters regarding divorce, engagement and similar matters. The court carries out conciliation rather than judgments.

The Director of Secretariat of the human rights commission and the Commissioner said that the Sharia applies at all levels. The criminal law is Sharia law. It will therefore be a great challenge to incorporate human rights into the Sharia laws. All legislation in Afghanistan is Sharia law or civil law, but the Taliban abused the Sharia laws. As an example the sources mentioned that according to the Sharia laws there are 21 requirements which must be met before amputation can occur, and similarly there must be four witnesses to infidelity before it can be punished. According to the sources, in practice it would be impossible to comply with all requirements to apply the punishments prescribed by the Sharia laws. Neither before nor after, were the Sharia laws applied as they were under the Taliban regime.

The ordinary judicial system comprises three court instances. The sources explained the structure of the judicial system as outlined by the Deputy Minister of Justice (see above).

"Political crimes" are dealt with by a special court, and there are only two instances. Cases concerning political crimes are public cases. Political crimes were previously processed by the so-called revolution courts, but such courts no longer exist. The sources said that Amniat (the intelligence service) must obtain a court order from the secondary court in the province (2nd instance) in order to be allowed to search a house. In this connection the sources added that in general it is too early to assess where Afghanistan will "end up" in terms of human rights and the security of life and property.

Sources indicated that the Jirga – the tribal council – also decides on legal disputes and that its decisions must be carried out. Councils of elders rule on many cases involving property disputes and sexual matters. One example quoted was the case of a married woman who had been raped, where it was ruled that the offender's family should give the victim's family a young woman as compensation. According to the sources, this decision was an infringement of the young woman's human rights, but they thought it would take a long time to build up a system that protects girls against such injustices.

The Deputy Minister for Women's Affairs said that in cases where a woman is caught in adultery, the spouse decides her punishment. The Minister elaborated that women - especially in rural areas - were not allowed to go out alone, and that consequently the issue of adultery would often be hypothetical.

None of the sources consulted knew anything about any amputations or death sentences having taken place in accordance with the Sharia laws after the fall of the Taliban regime.

The human rights advisor and the political advisor from UNAMA said about the judicial system, that both the judicial system and the recently established human rights commission had a very weak presence in the Afghan community. One of the major problems is the fact that the actual power of the government, including extending the judicial system to areas outside Kabul, is diminished by the power of the warlords.

According to the sources, local conflicts are solved either by the council of elders or through violence. There is no uniform national judicial system. In larger towns there are district judges. His interpretation of the laws or the Sharia laws determines the law and order situation in a region, and accordingly the situation varies greatly from one region to another. The district judge does not reign supreme or independently, but is often instructed by the local governor or the political authority in the area.

The governing systems are traditional, and the individual citizen's case is frequently determined by the person's own political, tribal or family relationship.

An international source said that there is a lack of legal certainty in the country. Technically, there is a judicial system with judges and lawyers cooperating closely with the judicial system in Kabul. But when asked, the judges in Mazar-i-Sharif admit that the system does not work and that the courts do not cover the entire country, and furthermore that the decisions made by the courts do not outrank the decisions made by for instance the council of elders. The effectiveness of a court decision depends entirely on whether the local ruler agrees and is prepared to accept the sentence. Everything is decided by local commandants and the council of elders. In view of this situation, it is not particularly significant that the 1964 Constitution and the police regulations from the same period have been reintroduced, according to the source.

The source had the impression that the judges at the courts in the provinces were genuinely interested in cooperating with the judiciary and authorities in Kabul, but that the authorities in Kabul do not support the process. A few days prior to the conversation between the source and the delegation, the Chief of the Supreme Court in Kabul had said that the Sharia laws are still in force and will continue to be applied.

The coordinator of UNAMA's Civil Affairs Branch said that the judicial system does not function and does not provide protection, unless a person has influential connections. In this connection the source said that there is a large backlog of cases which have been referred from the provinces to the Supreme Court in Kabul. According to the source, there are tens of thousands of cases being referred to the higher courts in Kabul, without any steps being taken to process these cases. According to the source, this has been the situation for the last 10-15 years.

In the rural districts, the judicial system - its structure and efficiency - depends entirely on local conditions; whether there is political peace or unrest - but fundamentally there is impunity in the rural regions. At least those in power are acting locally without being punished.

UNHCR, Kabul, said that currently there are no reports relating to amputations or executions. The president of the Supreme Court has declared that amputations and executions will continue where

appropriate according to Sharia laws. It was also the president of the Supreme Court who recently issued an order prohibiting singing and dancing women from being shown (in Indian movies) on TV.

The EU's special representative mentioned that the judicial system is weak, bordering on the non-existent. There are no effective judicial remedies available against unjust actions, acts of infringement and injustices. The lack of judicial remedies does not relate only to human rights violations but also to ordinary civil law violations or criminal law infringements. Many Afghans believe that the Sharia laws should continue to apply - and say so in public - but there are no reports about the Sharia laws relating to amputations, executions and the like having been applied after the fall of the Taliban.

The coordinator for the International Human Rights Law Group said that there is no legal certainty in Afghanistan. According to the source there has been no overall improvement in the situation after the

fall of the Taliban. Even in Kabul, where the situation is generally considered to have improved most, there is no fundamental legal certainty. The legal system does not have the capacity to deal with the pending cases. When a decision by a district court has been appealed and brought before the appeals court (court in the province), it may take 2-3 years before a decision is made in the case. There are numerous examples of people having been held in custody for a period which exceeds the maximum penalty for the crime committed. As an example the source mentioned a person who had been retained for 7 months before the case came before the court for an offence which carries a maximum sentence of six months in prison.

The biggest problem is that the judges do not consider themselves as independent of the government and the administration. They see themselves as protecting the interests of the state rather than protecting the rights of the individual. In cases where a high ranking civil servant is to be charged and indicted, it is quite certain that the judge will not pursue the case against the person concerned. This happens throughout the country, but especially in the provinces. The source gave examples to the effect that the judicial system does not protect witnesses who are the victims of threats or injustice.

If an individual is seeking protection against injustice, the reaction of the police will then depend on whether the person has connection to influential persons. If a person knows someone in a position of power, and who uses this power, it may be possible to get the assistance of the police. Conversely, if the other party in the conflict has higher ranked connections, the victim will receive no assistance from the police.

In this context the source mentioned a case where a police officer on several occasions imprisoned the father of a young woman he wanted to marry, but who did not wish to marry the police officer. The family complained, and the Minister of Justice referred the matter to the court, but without doing anything else. A month later, the girl had still not received any decision by the court against the man, and the father was still being detained (illegally).

The Criminal Law is from 1976 and the same as the law in force under communist rule. The law does not have provisions for legal aid. The criminal law is not up to international human rights standards. For instance, the rules of criminal procedure do not allow for a defence attorney. It is

possible to apply for legal aid, but only in Kabul, even when the person accused is in custody in Kandahar. There are no provisions in the law for the appointment of a defence attorney. If the person charged cannot afford to pay for a lawyer, the case will be processed without a defence for the accused. The president of the Supreme Court is a Mullah with no professional legal knowledge. He is appointed by Karzai.

DACAAR advised that there is no effective judicial system. Conflicts are resolved mainly through networks, and the decisions depend on the individual's tribal or family connections.

#### **4.5 The social and economic Situation**

##### **4.5.1 The importance of social networks**

UNHCR, Kabul said that fundamental protection is dependent on personal and social networks.

The source advised that the availability of networks in the form of relatives is vital for a person's ability to live in a given area. The source said that Pashtuns from northern Afghanistan had tried to settle in Pashtun villages in other areas of the country, but that they had not been accepted by the local population. The villages are closed units, and no outsiders can settle in the rural areas, whereas the situation in the town is different. In larger cities the need for relatives in the area where people wish to live is not quite as strong. But the source stressed that generally speaking, it is necessary for Afghans to have relatives in the area where they wish to settle. This is even more so for women. Women are unable to move without having male relatives. Even the UNHCR cannot move locally employed women from other areas to better positions in Kabul, unless they have male relatives in Kabul with whom they can live.

The source believed that it might be possible for large families with a number of males to move to places, where they do not already have relatives or clan members. For families, where the head of the family is female, this option does not exist.

An international source said that the old patterns, enabling families to protect each other, have been upset, because so many people have been displaced and because of the economic situation, which makes it impossible for them to provide protection due to poverty. This means that the families with a female sole provider - widows - or children living alone, now have no protection.

In the towns a network in the neighbourhood is necessary in order to get protection. As regards personal networks in the town, many of the people who have returned - and who do not have a network - are especially at risk of being raped and assaulted. But it is even worse in the rural areas - particularly for women. The source mentioned that there are particularly vulnerable groups who are the subject of injustices irrespective of their ethnicity, but where the actual reason appears to be the person's lack of network. In this connection the source pointed out that it is a misconception that there has been a change in this situation just because the Taliban has been defeated.

Concerning the importance of networks, DACAAR said that persons/families without networks are extremely vulnerable and exposed. There is no judicial or police protection in the country, only personal networks. Even though many people have fled Afghanistan, there are still networks. Even a network spread over several countries - where a person has male relatives in other countries - may be effective and provide protection against e.g. harassment and arranged marriages, if it is known

that there are male family members who, although living abroad, are able to exert influence in such situations.

CCA said that for people, who are returning to the towns, the social network is less important in terms of being able to settle in towns other than the place of origin. The general problem, that everybody has to face, is the lack of employment, the economic situation in general and the lack of educational facilities for children. In the rural areas, people are closer. They live in extended families, and if a person does not have a family, that person is in danger of not being able to receive any help or assistance. There may be difficulties, however, the person is not in any real danger.

ICG mentioned that it is very difficult for returned refugees or internally displaced people to settle in areas, other than their areas of origin, and where they do not have a network. Accordingly, it is extremely difficult to settle in other regions, even when (e.g. as a Pashtun) people are settling in an area populated by a dominating ethnic group to which the person belongs. It will be impossible for Hazaras to settle in an area dominated by Pashtuns.

### **4.5.2 Access to resources**

All sources pointed to the fact that the access to land, water and housing in the rural areas is vital for survival. In the towns, access to jobs and housing are the essential requirements.

An international source said that many of the injustices taking place in northern Afghanistan are based on distribution of land rather than ethnicity, but that the warlords are using ethnicity as an excuse.

According to ICG, it is the issue of distribution of the scarce resources which causes problems and disputes. There is a shortage of food, water and housing. If there were no shortage of vital resources, there would be no fights, the source said.

The governor in Mazar-i-Sharif mentioned that many returning persons find that their houses have been demolished, and that the significant lack of housing is not covered by the contributions of the international aid organizations. The current agricultural production in the area is insufficient for subsistence, and there is a high level of unemployment. In addition, the infrastructure is totally inadequate and there are not enough hospitals.

The Chief of the Department for Repatriation in Mazar-i-Sharif said that there is a serious need for accommodation for the many people, who have returned. Also, there are no jobs for the large number of people, arriving in the town. Many have returned and found that their houses have been demolished. The 45,000 internally displaced persons, who have recently returned, will be suffering this winter. Some people have received two bags of grain from UNHCR, but that is not enough. The 45,000 internally displaced people are unable to settle in their villages of origin, and are therefore arriving in the cities. They are living in ruins and on building sites, and children are dying from diarrhoea, dysentery and viral diseases. In the rural districts, people are also suffering from the drought.

The Head of the UNHCR office in Mazar-i-Sharif said that there was a serious shortage of basic resources: housing, water and food. There are 500,000 people in the region who have no food, water or accommodation, and they are heading for the cities. This in turn means that they will be unable to settle down before the winter sets in. UNHCR expects to have completed 8,000 homes by

the end of November 2002. That is a small number compared to the estimated total requirement for new accommodation, which is 100,000 in Mazar-i-Sharif. The source further said that UNHCR is unable to provide accommodation and water for everybody, but is trying to assist the most vulnerable groups, typically the internally displaced who were unable to flee the country and instead were driven away to the "neighbouring village". Accordingly, UNHCR tries to make women their first priority. Most of the people are returning as "extended families" - i.e. 2-3 families together, although there are also tribes and small families.

Accommodation, water, land - and in the towns jobs - are the vital survival requirements, which must be met. There are also a large number of families with a female breadwinner. They are at the top of the UNHCR list of priorities. However, these families without males are unable to have their homes built without the assistance of family members or the local community.

The source feared that many repatriated people would resort to robbery and crime against the civilian population unless jobs are created by means of reconstruction projects.

The source said that UNHCR is cooperating with the Ministry for repatriation and the Ministry for reconstruction of the rural districts, but according to recent experiences, the administration is only just functioning, and certainly not at a level where the administration takes on sole responsibility for part of the work, and there is no coordination of activities by the administration.

In terms of access to land, the source mentioned that in order to obtain permission to establish a home, a person needs a guarantee from the village council to prove ownership of or permission to use the land. Only repatriated persons whose place of origin is Mazar-i-Sharif, will be able to obtain such permission; new arrivals who do not originally come from the area cannot get permission. Many repatriated people never get beyond Kabul. There are no repatriated people from other regions choosing to settle in Mazar-i-Sharif rather than in their area of origin.

According to the source, there are signs of destabilisation due to the high number of repatriated people. However, the majority of the people, who have returned, continue to live on their "return-package" from UNHCR, and at the same time there are many internally displaced people, who are unable to return to their homes, because they have been occupied by others. The situation may therefore change with the onset of winter, and when the assistance packages have been used up.

## **4.6 Ethnic groups**

### **4.6.1 Persecution based on ethnicity and any regional differences in this regard**

Most sources pointed out that ethnically based persecution of Pashtuns - particularly in the northern regions but also in some districts in Herat - are still taking place.

Several sources also said that the Kuchis make up a group currently in a difficult position. On the one hand they are being used as a political tool, because they are suspected of being affiliated with the Taliban, and accordingly they have been driven away from the traditional pastures for their cattle. And on the other, many Kuchis have lost their herds and consequently their means of subsistence due to the drought.

CCA advised that, generally speaking, there were no ethnic relationship problems between the Uzbeks, Tajiks and Hazaras, but that relations between the commandants cause problems. E.g., in

the northern areas, there are power struggles among three ethnically different commandants, Atta (Tajik), Dostum (Uzbek) and Mohaqqueq (Hazara).

### **Pashtuns**

EU's special representative said that ethnic persecution of Pashtuns in Afghanistan should be seen in the light of their suspected affiliation with the Taliban and al-Qaida. The situation may have improved now, and the violations being reported are no longer as many or as brutal as in November 2001. The situation still gives cause for concern, and there continue to be reports about injustices, especially in the northern areas, and according to the source these reports require closer investigation and follow-up.

The Norwegian ambassador said that in connection with the Loya Jirga many Pashtuns are said to have been chased out of areas where they were in a minority. The Norwegian ambassador added that in recent months, he has not had any reports of persecution of Pashtuns in the north.

The coordinator for UNAMA's Civil Affairs Branch believed that the injustices against Pashtuns peaked in November and December 2001. The source was unaware of more recent reports about large numbers of Pashtuns fleeing from the northern areas. According to the source, this was in part due to the fact that the rulers in the northern regions had come under pressure to discipline their own commandants, e.g. in the Baghlan province they have appointed new Pashtun commandants.

The senior human rights advisor for UNAMA said that the ethnic persecution of Pashtuns in areas where they are in a minority is politically based, as Pashtuns are being excluded from participating in the political process. According to the source, serious injustices against Pashtuns are continually being committed in pockets in the northern and western areas of Afghanistan, where they are in a minority, and the issue of what will happen to the Pashtuns who have fled these areas and are staying in the IDP-camps in Afghanistan remains unresolved. The monitoring of these areas has now been stepped up, but most of the Pashtuns who fled the areas earlier this year do not wish to return. Others who have attempted to return have left the area again and are back in the IDP-camps near the border with Pakistan around Chaman. The source did not have any figures to indicate how many of those who tried to return are now back in Chaman. The source added that the Minister of Repatriation is very concerned about the situation and is monitoring it closely.

An international source said that many of the people in the IDP-camp in Spin Boldak are being accused of having been affiliated with the Taliban, and that this is the reason why the commandants do not want them to return to the area. The source also said that violent attacks on Pashtuns in the northern areas, including looting of villages and mass-rapes of women, took place as late as end-May 2002, but that they have now ceased. There continue to be instances of harassment and cruelty against Pashtuns. According to the source, many Pashtuns have left the area, and those who stay have various reasons for doing so. Firstly, there was a group of Pashtuns who had resources and could therefore afford to buy protection. Others had connections to local commandants, and finally there is a group who have now left the area either because of the drought or because their resources have dried up and they can no longer afford to pay for their protection. According to the source, there is still quite a lot of discrimination against Pashtuns in the area. E.g., they have to pay high taxes. In many cases, according to the source, the discrimination is not just based on ethnicity, but it is also a case of fighting for scarce resources - land and water - and the local commandants using ethnicity as an excuse. The source also said, that a high percentage of the population in the

northern areas are Pashtuns - a total of about 25%, of which many live in the provinces of Sar-e-Pul and Balkh. According to the source, the Balkh province is probably the safest area for Pashtuns at the moment, partly because new prominent Pashtun leaders have been brought into the Pashtun communities by Dostum.

UNHCR-Kabul said that there are at present discrepancies between the information received from the northern areas and the information gathered through interviews with Pashtuns in the IDP-camps near Kandahar, as the latter are reporting about continued atrocities in the northern areas. According to the source, in September 2002 there were reports about new Pashtun refugees from the north and the west - from the regions in Faryab and Herat - and from Kunduz. According to the recently arrived refugees in the IDP-camp, there are incidents of harassment of Pashtuns, ranging from beatings to extortion of money by the local commandants and warlords.

According to the source, the government is concerned about the situation, and the UNHCR chief of mission has been to the northern areas to negotiate with three commandants who have agreed to the Pashtuns returning to the area. There is increased monitoring of the northern areas - especially the provinces of Kunduz, Baghlan and Takhar - where the incidents of injustice have now decreased or completely ceased. At the same time, a large number of Pashtuns have returned from Pakistan to these areas - e.g. the Pashtuns make up the largest ethnic group of people repatriated to the Kunduz province. According to UNHCR, a large number of Pashtuns returned to the area in June, July and August 2002, whereas earlier this year only Tajiks, Hazaras and Uzbeks were returning to these areas.

UNHCR-Mazar-i-Sharif said that there are also many success stories about Pashtuns, who are returning to the area. According to the source, there is still a considerable amount of discrimination against Pashtuns in terms of access to resources, particularly land, and there are incidents of certain forms of persecution, but generally the situation has improved since March 2002. The three most important commandants in the area have publicly spoken about the situation for Pashtuns, which appears to have helped to some extent. The source further said that the report from Human Rights Watch<sup>25</sup> has been translated into Dari and submitted to the commandants who, according to the source, cannot afford to attract strong international criticism. Furthermore, the source pointed to the problem of internally displaced Pashtuns in Kandahar (Spin Boldak). According to the source, the local commandants in the north believe that this group of IDPs have been active in the Taliban or al-Qaida movements, and for this reason the commandants do not wish to accept them back.

CCA found that the situation of Pashtuns in the northern areas has now improved, largely due to the presence of the international community. In this context, CCA referred to the HRW's investigation<sup>26</sup>, and that the central government has sent several delegations to the area. According to CCA, there are currently no violations or restrictions against Pashtuns in the northern areas. However, the Pashtuns who fled the area earlier are not convinced that they are able to return and remain in the IDP-camps near the border with Pakistan (Chaman) and the area around Kandahar (Spin Boldak). According to CCA, there are no recent refugees from the area.

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<sup>25</sup> See Human Rights Watch: Paying for the Taliban's Crimes: Abuses of Pashtuns in Northern Afghanistan, 22 April 2002.

<sup>26</sup> See the investigation in connection with the above report.

CCA further said, that there are a number of "revenge" attacks on Pashtuns in Herat, because the current governor - Ismael Khan (who is a Tajik) - was in prison during the Taliban regime. Similarly, the Pashtuns from Herat were not allowed to come to Kabul to participate in the Loya Jirga in June 2002, being refused permission to travel by Ismael Khan.

According to the source, there have also been confrontations between the forces of the Pashtun commandant Amanullah and Ismael Khan in the area around Shindand (cf. also Section 3.2). These confrontations

relate to a fight for the border trade in the area, according to CCA. Pashtuns have been evicted from their properties in the area around Shinand on the grounds that a new airport is to be built in this area. CCA has received reports of arrests and harassment of individual Pashtuns in Herat; however, the organization did not believe it to be a major problem being a Pashtun and living in the area. According to CCA, the Pashtuns "feel uncomfortable", but are not subjected to harassment in general. CCA also believed that the Pashtuns do not feel welcome in Kabul and prefer not to live there because of the present government, which they do not support. Pashtuns who live in Kabul have less chance of getting jobs in the state, according to the source. According to the source, it is not an established policy as such, but is a result of the government comprising many Tajiks, who do not cooperate with the Pashtuns.

### **Hazaras**

UNHCR-Kabul believed that the Hazaras have a marginal role in Afghanistan today and that discrimination against the group occurs. According to UNHCR this is a group that is currently managing, but generally speaking the Hazaras are more cautious than other groups, e.g. they do not go out after nightfall in Kabul. UNHCR found that the group is less protected than other groups and is more exposed to discrimination - although, according to the source, it has not been possible to accurately establish the form and extent of such discrimination. The UNHCR also stressed that the Hazaras are not considered to be prima-facie refugees, but that the organization is closely monitoring Hazaras who have been repatriated from Iran and Australia.<sup>27</sup>

The EU's special representative found that there is ongoing discrimination of Hazaras in Afghanistan today. According to the source, the discrimination is in the form of being refused access to high positions and discrimination in terms of access to education. In this context the source pointed out that the Hazaras are not a group who have networks in the neighbouring countries to look after them, but that their networks are limited to Afghanistan, particularly to the province of Bamian.

CCA said that the Hazaras no longer have problems in Afghanistan based on ethnicity, and that in general, the group considered itself to be free.

ACBAR also was of the opinion that the Hazaras do not have problems due to their ethnicity.

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<sup>27</sup> UNHCR is monitoring repatriated refugees from Iran and Australia in accordance with the three-party agreements.

### **Qizilbash**

UNHCR-Kabul said that the Qizilbash are a group who can feel secure, generally speaking, and who do not have problems. On the contrary, according to the source, many people from this minority group hold high positions in Afghanistan and are generally well regarded by the authorities. The group belongs to the Shia-Muslim minority.

CCA explained that the Qizilbash are an ethnic minority, originating in Iran. The group belongs to the Shia religion. According to CCA, they are generally well educated and wealthy, with many living abroad, whereas others hold high positions in the government administration in Afghanistan, including some high-ranking posts. According to the source, this group does not have problems in Afghanistan today.

### **Kazaks**

UNHCR advised that the Kazaks are primarily living in the northern areas of Afghanistan and as such they are exposed to the same risks as other groups in the area due to the security situation (cf. Section 3.2), but said that the group does not have problems based on their ethnicity.

CCA said that the Kazaks are not part of a compact group but that they are spread over the region of northern Afghanistan, where they identify themselves as Turkmen or Uzbeks. According to the source, a very limited number of people belong to this group, and the source was not aware of the group having any problems in Afghanistan today.

### **4.6.2 The possibility of ethnic groups settling in areas other than their areas of origin when they return**

The coordinator of UNAMA's Civil Affairs Branch advised that the support of the government would be required for any resettlement of ethnic groups in areas other than their areas of origin. In this connection the source was referring to the large group of Pashtun refugees who are currently living in the area around Kandahar and who do not wish to return to the northern areas. The crucial issue in connection with resettlement is the access to resources. There is widespread shortage of land and water in the rural areas in Afghanistan, which often leads to fighting about the scarce resources.

UNHCR, Kabul, said that Pashtuns from northern Afghanistan had attempted settlement in the Pashtun villages in other areas of the country, but that they had not been accepted by the local communities.

ICG also said, that it would be difficult to settle in an area other than a person's area of origin. This was the same for all ethnic groups - both when settling in areas, where they were in minority and when settling in other areas, where they belonged to the major ethnic group in that area. According to the source, the real problem is one of access to resources, especially water. If the resources were not scarce, there would be no fighting. The source compared the situation to that in the former Yugoslavia, emphasizing that contrary to the situation in Yugoslavia, ethnic groups in Afghanistan are generally more pragmatic, and they would not fight if there were sufficient resources.

See also the section on the social and economic situation, including access to resources (section 4.5.2).

## **4.7 Religious freedom**

### **4.7.1 Secularisation of the Afghan society**

The EU's special representative found that it is the Islamic attitude in general which is dictating the guidelines for acceptable conduct in the Afghan society today, and that there is an intolerant attitude to secularisation.

The coordinator of UNAMA's Civil Affairs Branch believed that Muslims behaving in a secular manner are in latent danger of reprisals. Non-Islamic/secular conduct is not acceptable in Afghanistan today. Depending on the political development, non-Islamic conduct may cause repercussions in the future, first and foremost in Kabul. According to the source, there is no doubt that the intelligence service (Amniat) is keeping an eye on which restaurants are selling alcohol - of which there are a few in Kabul - and which shops are selling controversial videos. There is a chance that raids may take place in the future. The source did not know of any such cases, but believed that there was a latent possibility of this happening.

The senior human rights advisor for UNAMA believed that there is presently opposition in the government against secularisation of the Afghan society. According to the Bonn Agreement, this is the aim, but the source said that it does not happen in practice.

UNHCR-Kabul found that compared to the Taliban period, there has been some secularisation. Currently, there is room for religious minorities such as Shias, Hindus and Sikhs. The UNHCR also pointed out that Afghanistan is an Islamic state, and a special department has been set up within the Ministry for Islamic Affairs for the promotion of virtue and combat of vices. (cf. also section 4.8). The source also mentioned the recent prohibition against showing singing and dancing (in Indian movies) on TV. In this connection, action has been taken to close a series of video shops.

According to CCA, no steps have been taken towards the secularisation of the Afghan society at this stage. It is a Muslim society, and Islamic groups are in power, but religious tolerance towards Shias, Ismaelites as well as Hindus and Sikhs is greater than in the past. Alcohol is still prohibited. There is also prohibition against videos showing dancing and a prohibition against female singers on TV and radio. According to the source, such videos are still being sold on the market despite the ban on showing them. Harassment may occur in this context, as the prohibition includes the sale of videos, but according to the source, this will depend on the situation of the person. The source did not know of any such cases. The source believed that it would not be a problem simply to possess such video tapes, but that threats might take place in this context. As regards the people selling such videos, the source assumed that the reaction by authorities would be limited to confiscating the illegal movies.

The coordinator of ACBAR believed that Islam is pervading all areas of the Afghan society today and that the religion is being used as a political tool. In this connection the source said that it has always been a strong element in Afghan culture to declare holy war (Jihad) against certain groups. The source also referred to the ban that has now been made on showing female singers and dancing on TV and to the recently established department for "virtue and vices" at ministerial level.

### **4.7.2 The situation of religious minorities**

UNHCR-Kabul believed that the situation of religious minorities such as the Shias as well as Hindus and Sikhs is generally good. According to UNHCR-Kabul a very limited number of Sikhs

have returned from Pakistan. It was a few women - widows - and the number of Sikhs in Afghanistan today is generally very limited. As regards the Christians, the UNHCR said that there are currently no Christians in Afghanistan. According to the source, there may be Christian Afghans who have fled from Afghanistan or who have converted abroad, but officially there is no Christian community in Afghanistan. In this connection UNHCR-Kabul pointed out that today it would not cause problems in itself to be working for a Christian NGO, contrary to the situation during the Taliban. However, Afghans, who are working for Christian NGOs, should be careful not to cause suspicion that they sympathise with Christian beliefs.

The EU's special representative also believed that the situation for Shias and non-Muslim groups such as Hindus and Sikhs is generally good today. However, there are very few people in Afghanistan today belonging to the two latter groups. Afghans who are working for foreign NGOs with a Christian background are also accepted, but Afghan Christians are not.

Similarly CCA said that today there is religious tolerance towards groups such as Shias, Ismaelis, Hindus and Sikhs as well as their right to practice their religion. According to CCA, the two latter groups have their own temples in Kabul. CCA had no reports of any harassment of the groups mentioned due to their religion from anywhere in Afghanistan. According to CCA, it is not permitted to convert from Islam to Christianity, and to do so carries the death penalty. CCA would not rule out that NGOs might have converted Muslims to Christianity, but if so this has not been discovered and any converts would have fled the country.

None of the sources consulted (including UNHCR and CCA) had any knowledge of the possible existence of Bahais or a Bahai community in Afghanistan.

### **4.8 The situation of women**

The Deputy Minister for Women's Affairs started by saying that the economic situation of the country is such that the country is not in a position to repatriate any more women from abroad. However, the government is supporting the endeavours to repatriate highly educated women to help in the rebuilding of the country, and the government is prepared to place women in positions of power. The Minister pointed to herself as being an example and said that she had recently returned to Afghanistan after spending 22 years in Germany. Only highly educated women are likely to obtain work. There is especially a need for female lawyers and journalists.

The Deputy Minister advised that the Minister for Islamic Affairs has set up a department for the promotion of virtue and the combat of vice, but that the department will be given a different name. The Deputy Minister assumed that this department, contrary to a similar department under the Taliban, would not be concerned with dress standards for women.

The Director of the Secretariat of the human rights commission and the Commissioner estimated that it would take a very long time to develop a system which protects young girls and women against violations. As an example of violation against women the source mentioned a case where a married woman had been raped and the local council of elders solved the matter by having the perpetrator's family give the violated family a young woman as compensation. The source said that this decision was a violation of the human rights of the young woman (cf. section 4.4).

The UNAMA human rights advisor and the political advisor said the local commandants and their people are discriminating and committing injustices against women. In general, the situation of

women continues to be very bad. According to the sources, there is an increasing tendency of the various political groups to create a political image based on their attitude to women. Thus, there are policies for tightening the standards of conduct for women as a means to remain in power. Issues relating to women's rights are used politically. The political use of issues relating to women's rights has intensified, and according to the source, will have a direct effect on women being able to exercise their civilian rights.

There are vast differences in the rights of women in the different regions of the country, e.g. when comparing the situation in Kabul to that in Herat. In this connection the sources said, that in Herat a range of conservative, Muslim rules for the conduct and work of women are currently being imposed.

The sources added that a Department has been set up in The Ministry for Islamic Affairs - for the promotion of moral conduct and combat of vice - which is particularly aimed at women and concerning the conduct of women. According to the source, the department has to instruct women regarding their way of dressing and their conduct.

The EU's special representative said that there has been some improvement in the situation of women since the fall of the Taliban. Today women and girls may go to school and receive education, even though there continue to be fewer girls than boys attending school. The source said that Afghan men should be encouraged to support the education of women.

The source found it difficult to say whether the development can be expected to continue in a positive direction. A lot depends on unknown factors. He believed that many women who have been appointed to public or political positions are better qualified than their male colleagues. On the other hand he stressed the fact that there is a big difference between the situation in Kabul and in the rest of Afghanistan. In this context he mentioned, that in Herat there had been a return to old attitudes.

The source said that the development might not necessarily be heading in the right direction and pointed out that a department had been set up within the Ministry for Islamic Affairs for the promotion of virtue and the combat of vice, something which recalls unpleasant associations with the religious police of the same name under the Taliban. However, the source stressed that information received pointed to the department not functioning as under the Taliban, but instead concentrating on working on the attitudes of women. Accordingly, 50-60 women are said to have been given the task of contacting women in the street and teaching them about the appropriate way to behave and to dress.

The Norwegian ambassador believed that he had noticed significant changes in the overall street picture in the last six months as regards the situation of women, whilst appreciating that Kabul is far ahead of the rest of Afghanistan. In terms of the establishment of a department - for the promotion of moral conduct and combat of vice - within the Ministry for Islamic Affairs, the ambassador suggested that this initiative should not simply be seen as a indication of suppression and control of women, but rather as an attempt at guiding women in terms of dress standards, etc.

The British embassy advised that a delegation of UK Members of Parliament had inspected a prison for women, and that the women were said to have been imprisoned for acts which are not considered to be an offence in Western countries, such as leaving their husband.

The Chief of the Afghan Women's Association (AWA) said that it is wrongly assumed by the West that the situation of women in Afghanistan has improved significantly. This conclusion is wrong. The delegations of Afghan women going to the USA and other Western countries to study, are seen by Western countries as an indication of liberation of Afghan women. In reality, however, all of these women have connections to the powers that be, and as such they are not an indication of an improvement in general of the situation of Afghan women. Even during the negotiations leading to the Bonn Agreement, there were people advocating that women should remain in a traditional, Muslim role. The changes in the situation of women, which have happened, cannot be seen as an indication of fundamental changes, of a new tolerance towards people with other attitudes; they are primarily minor adjustments to humour the Western donors. No serious changes in the life of women have taken place. Women are still being mistreated for not wearing a burka. There are only two women in the new government. Minor changes have taken place, but that is mainly due to the fact that the rulers have to accept women's rights in the current situation, and that will change when the international community is leaving Afghanistan.

The programme manager with DACAAR found that there have been certain improvements for women. For instance, they are no longer subjected to the actions previously carried out against women in the street by the Taliban, and women are now allowed to have a job, but in general the source believed that the situation of women in Afghanistan is only marginally better. As an example the source mentioned that there is once again a ban on female singing on TV in Kabul. However, she also mentioned that a similar ban is not being enforced in Kandahar.

ACBAR believed that the situation for women in Afghanistan has improved. Women have more freedom and are now allowed to go to work and go shopping. However, the increased freedom does not mean that women are completely free to move around, and many women are still wearing a burka for security reasons. That is the case in Kabul as well as in Herat. At the same time there are some young, determined women in Kabul who have removed the burka and are instead wearing a headscarf, leaving the face uncovered.

### **4.8.1 General comments concerning physical security**

The Deputy Minister for Women's Affairs said that the authorities are unable to guarantee the security of women - but that applies equally to the security of men. However, it is not possible for single women to return to Afghanistan.

The Deputy Minister mentioned that when women in Kabul are wearing the burka - with a few exceptions - it should not be seen as a problem. The burka is part of the culture of Afghan women, and many feel uncomfortable without it. The Deputy Minister also pointed out that it is up to the individual whether she wishes to wear a burka or not; she was wearing a headscarf herself rather than a burka. Finally the Deputy Minister said that some women wear a burka for security.

An international source advised, that for some time after the fall of the Taliban, there were frequent incidents of rape of women. These rapes were committed at random and did not follow ethnic lines. Women who have no male relatives for protection have serious problems. The source added that the number of prostitutes has increased. They are usually repatriated women, single female breadwinners and young women, sold by their family. Girls as young as 7 years are sold by families to weaving mills, for marriages where the girl will be a second wife and in reality work as a servant, and finally for prostitution.

In the cities it is necessary to have a network in the neighbourhood in order to get protection. As regards personal networks in the cities, many of the repatriated people - who do not have a network - are at extreme risk of rape and assaults. However, the situation is even worse in the rural districts - especially for women. The source stressed that it is wrong to assume that the situation of women has changed just because the Taliban has fallen. (See also section 4.5).

The head of the UNHCR office in Mazar said that women are unable to protect themselves without the assistance from male relatives. A woman must have social networks and many male relatives to achieve protection.

AWA said that there is no security for women at any level. Women have financial problems, work problems, especially if they have become accustomed to some degree of freedom while living outside Afghanistan. If the women go to the bazaar without wearing a burka, they risk threats or - if nobody interferes - actual physical punishment. The problems are evident in Kabul, but are even worse in the provinces. Even though the men have removed their long Taliban-beard, their attitudes have not changed. Women have nowhere to turn to obtain protection. Western countries think that the situation of women has improved significantly, but women are fundamentally still treated as they were before.

On the subject of the physical security of women, ICG said that in general women are not at risk as long as they are wearing a burka. But apart from that, the situation has not improved much. The general attitude towards women was formed during the Mujaheddin period, and there is therefore still oppression of women, even though the Taliban has gone.

DACAAR said that women are no longer at risk of random attacks in the street the way they were from the religious police under the Taliban.

### **4.8.2 Access to work and education**

The Deputy Minister of Women's Affairs said that the ministry is working for equality between the sexes. Everyone needs money, so the Ministry is encouraging women to get a job.

To support these efforts, the Ministry has arranged for 400 women to be employed in other Ministries. In addition to this, 16 activity centres have been set up in Kabul, where 70 women are involved as health workers, advising on family planning, etc. The Ministry is also providing training in bookkeeping, finance and investment for women. There are lawyers associated with the activity centres. In all programmes, widows are given first priority. The programmes listed are all in the Kabul province, but there are programmes in 10 of the districts of the province, and the Ministry is working to set up similar programmes for women in all provinces.

UNHCR, Kabul said that women are unable to move without having male relatives. Even UNHCR have had to give up moving female staff from other areas to a better job in Kabul if they do not have relatives, with whom they can live (cf. also section 4.5.1). It is not possible to be a female breadwinner for a family. The situation is worse for women with no education than for highly educated women. Highly educated women are able to manage, if they have networks.

On the subject of women in the northern area, one international source said that some women had been threatened. This was especially the case with doctors, professors, journalists and teachers who had formed a group to discuss and prepare for the participation of women in the Loya Jirga,

including discussing the issue of women's rights. Some had received threatening letters in which they were accused of being associated with Western organizations or of having spoken too freely. These highly educated women are prominent or conspicuous in the local community and as such are constantly being observed. Even though there is some improvement, female staff in national NGOs are still being impeded in performing their jobs, and they are called in for interviews and are being threatened by e.g. Jamiat-i-Islami. On the other hand the source mentioned that Dostum has issued a decree that women do not need to wear a burka at work.

Formally, there is equal access to education for both sexes in the sense that women are not excluded from applying to study e.g. at university. However, in practice many young women are unable to go to university, because their families are afraid of letting their daughters into the streets. Atta and Dostum are in favour of parents letting their daughters go to school.

AWA mentioned that now - contrary to the situation under the Taliban - women are again allowed to work. Especially refugee women with connection to the Northern Alliance have access to work. Single women may return to Afghanistan provided they have been guaranteed a job when they return.

As an example of the improved situation for women, DACAAR said that after the fall of the Taliban they are now again allowed to work. The source also gave the example that DACAAR is now able to hold meetings in the offices of the organization, with participation of the local female staff. It is not easy, and in the provinces everyone is very nervous, but it is possible. Previously, the local male staff members risked being beaten if it were discovered that they had attended meetings in the DACAAR local offices, also attended by women. Nevertheless, the female staff of the organization are still only able to travel, once a range of security measures have been made, arrangements relating to pick-up, accommodation, etc.

The source further said that Ismael Khan in Herat has ordered all women working for Western NGOs to register and attend a meeting to be instructed in how to conduct themselves.

ACBAR believed that the situation of women has improved. For instance, women are now allowed to take up paid work. Women are working in schools as teachers and office staff. In Herat, Ismael Khan has called in all women working for Westerners and has told them not to get too close to Westerners.

### **4.8.3 Arranged marriages**

The Deputy Minister for Women's Affairs said that the type of arranged marriages which took place under the Taliban do not occur any more. The Deputy Minister advised that women who are at risk of being forced to marry or who are already in an arranged marriage can contact the Ministry and get assistance and a lawyer. In general, the Ministry will endeavour to get women out of their homes and onto the labour market and in this way give women more independence.

If a woman finds herself in a situation where her family is forcing her into a marriage she does not want, the Ministry of Women's Affairs will support the girl and explain to the parents that it is important for the girl to be happy. If the family then insists on marrying off the girl, the Ministry can do nothing more, and most will then have to accept the marriage. In this connection the Deputy Minister said that the woman is not allowed to see her future husband before the wedding. The source also said that the woman can get a divorce if she is able to prove that the husband is violent,

but in that case she will lose her entitlement to her share of the dowry as well as any financial support from the husband.

The Director of the Secretariat of the Human Rights Commission and the Commissioner said that among other things, the human rights commission would be registering cases of arranged marriages.

UNAMA's Human Rights Advisor and the Political Advisor said that arranged marriages - where local commandants are forcing young women to marry them - is a frequent event. There are several cases of such arranged marriages in north-eastern Afghanistan, particularly in Badakshan. The source also mentioned that in certain areas this event is to some extent part of the local environment, which means that such arranged marriages are not even being reported. If the family of the young girl refuses to approve of the marriage between their daughter and the local commandant, they often receive death threats. According to the sources, there are numerous examples of such violations not being brought before the courts.

The sources also said that poverty has meant that there are instances where families marry off daughters less than 10 years old.

The sources mentioned that there is no protection against these injustices against women in the rural districts. This is especially due to the fact that there is rarely any reaction to violations in the local environment. A further problem, according to the sources, is the fact that very few people support women's rights, mainly because to be seen to do so may be a dangerous thing.

UNHCR, Kabul also said that there are reports about how poverty causes families to marry off their 14 year-old daughters to local commandants. This happens particularly in Jalalabad and Mazar.

AWA was of the opinion that arranged marriages, (and theft, murder and assaults) were more frequent than under the Taliban. Kidnappings by Mujaheddin happen every day. There are also more incidents of arranged marriages, where the local commandant or ruler does not use threats but instead offers to pay the family, and consequently the girl cannot refuse.

DACAAR advised that recently they had not heard of arranged marriages, where young girls are forced to marry older warlords or commandants. However, the source would not rule out that such marriages still take place in the north. On the other hand the source said that male prostitution, where young men/boys are sold to the warlords, has re-emerged.

ACBAR did not think that arranged marriages between young women and local commandants were currently taking place. There were, however, rumours of rape of Pashtun women committed by Uzbek soldiers, but in general few rumours of rape.

#### **4.8.4 Availability, if any, of support organizations for women**

The Deputy Minister for Women's Affairs said that if a woman is beaten by her husband, she can get assistance from a crisis centre in Kabul, which gives advice and refers her to the Ministry, where her case will be prepared and forwarded to the appeals court. There are only 25 places at the crisis centre for women who wish to leave their husband, but the Ministry is in the process of setting up 31 similar centres in the provinces.

UNHCR, Mazar-i-Sharif said that the organizations working with health and education programmes, can be said to be working with women indirectly, as it is often women who are involved in such programmes.

An international source said that there are many NGOs whose work is directly aimed at women, but that the great majority of NGOs are involved in embroidery and similar domestic craft activities. The source only knew of two NGOs in the Northern area which are directly involved in protection of women against violations and the like. These organizations are working under difficult conditions and have little direct cooperation with or influence on the government. As matters stand it is primarily a case of setting up "social clubs" which, under the guise of social activities and craft, are able to create a forum for women.

The source added that women are still being subjected to injustices by the local commandants in Mazar-i-Sharif, and that the local NGO's have no power whatsoever to support or protect the women. As an example of the violations against women in the area, the source mentioned that female staff at the hospital in Mazar have been raped and beaten by local commandants. The women have no means of protection against these injustices.

DACAAR said that there are no organizations, fighting for the rights of women, or any organizations where women can seek protection or assistance against violations by husbands or others. There is nowhere to go for women to seek support and protection, and in reality, they have no chance of getting a divorce from a violent husband, unless he wants a divorce.

DACAAR explained that it is not possible for new NGOs to offer support or assistance to women in the form of crisis centres and the like. The staff of such NGOs would be at risk of being killed or forced to leave the country.

ACBAR advised that the NGOs are simply offering training and education. They are unable to offer protection. However, there have been talks about setting up offices to deal with domestic violence and the like. The NGOs want to expand this work to include the provinces. The source said that many NGO's are aware of single women, but that it is not enough. There are a large number of widows in the country needing support.

## **5. ISSUE OF DOCUMENTATION**

DACAAR said about documentation in general, that the circulation of false documents is widespread. This particularly applies to examination certificates from universities, and especially small universities. As an example the source mentioned examination certificates from the University in Jalalabad.

### ***5.1 Issuing of passports***

For a detailed list of the different types of passports currently issued by the Afghan authorities, please see the Report of the Fact-finding Mission to Islamabad and Peshawar, Pakistan and Kabul, Afghanistan, 5 - 19 May 2002.

In connection with the application for the issue of passports, the Minister of the Interior advised that the applicant must produce an ID-card. When processing the application for a passport, the criminal records register will be checked to see whether the applicant has a criminal past.

UNHCR - Kabul also advised that the passport issuing authorities will check whether the applicant has been recorded in the criminal records register, before issuing a passport. Authorisation must also be sought from various authorities before a passport can be issued. Usually it takes 2-3 days from the time of lodging the application for a passport to be issued.

As regards application for a passport from Afghan diplomatic representations, the UNHCR-Kabul said that for 99% of the applicants getting a passport would not present a problem. The source suggested that this might be because it is difficult to check the criminal records in Afghanistan from abroad.

UNHCR-Kabul said that there are false passports in circulation. A person caught with a false Afghan passport, risks a prison sentence of 3 to 12 months.

### ***5.2 National ID-cards***

The Minister of the Interior said that a normal birth certificate is issued by the hospital where the person is born. As regards ID-cards (tazkara), such a card with photo attached will be issued when the person turns 7 years. This is because such a card is required in order to be able to start school. The ID-card will be replaced when the holder turns 18.

If a person does not have a birth certificate, an ID-card can be issued if persons certify before the authorities the identity of the person in question.

In Kabul ID-cards are only issued by the Ministry of the Interior. In the provinces, this is done at the governor's office. In the districts, they are issued by the "District Commissioner". ID-cards can also be issued by Afghan embassies abroad.

The ID-cards look the same everywhere in the country. The Ministry of the Interior finally said that the issuing authorities have used up all previous ID-forms. This has been the case since the end of the Taliban period. This is why the authorities are now issuing a form instead of the actual ID-card.

A copy of all ID-cards issued in places other than Kabul must be sent to the Ministry of the Interior in Kabul.

An ID-card must be presented in the following situations:

- when a person is caught breaking Afghan laws
- when applying for a passport
- when a person has problems with authorities
- when a person is applying for a job.

The Minister also said that there are plans to introduce a new system for the issue of national ID-cards. However, this system cannot be implemented until the necessary finances are available.

### ***5.3 Marriage certificates***

The Minister of the Interior advised that marriage certificates are issued by the courts.

The Deputy Minister of Justice said that most marriages take place without the involvement of the authorities. Consequently, for more than half of the marriages concluded, there is no marriage certificate. This particularly applies in the rural districts, where marriages take place in accordance with local traditions, which means that the wedding does not involve authorities, and as such, there is no record of the marriage, and no marriage certificate is issued.

## 6. ISSUES CONCERNING LAW OF DOMESTIC RELATIONS

### 6.1 *Weddings, Marriages and Divorces*

#### **Weddings, marriages**

The Deputy Minister of Justice advised that the age limit for marrying is 18 years for men and 16 for women. These age limits may be lower in the rural districts in accordance with local tradition. Please also see 4.8.3. An Afghan man may have 4 wives, but according to the Deputy Minister an Afghan man, under Islamic law, should only have one wife.

The Director of the Secretariat of the Human Rights Commission and the Commissioner advised that temporary marriages<sup>28</sup> are prohibited in Afghanistan.

#### **Divorces**

The Director of Secretariat of the Human Rights Commission and the Commissioner advised that a man can easily get divorced from his wife. This is done by a verbal declaration before the wife, in the presence of two witnesses. The declaration must be repeated three times.

According to the Director of the Secretariat of the Human Rights Commission and the Commissioner, a woman cannot get divorced as a general rule according to the Sharia laws, if the husband does not agree.

However, she may contact the council of elders or the court if she finds that her husband is impossible to live with. According to the Deputy Minister for Women this applies in cities as well as in the rural districts.

International Human Rights Law group said that divorces are rare. The importance of the family honour means that most women choose to tolerate domestic violence rather than seek a divorce. The source also added that most women are unaware of the opportunities available for obtaining a divorce.

The prerequisite for a woman to seek a divorce is that she must prove one of the following conditions:

- that the husband is unable to provide for the family,
- that the husband is violent towards her,
- that the husband is mentally ill,

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<sup>28</sup> Temporary marriages are permitted in e.g. Iran according to the Shiite branch of Islam. Such marriages are characterized by being entered into for a limited, specified period of time, e.g. one night or 50 years.

- that the husband is unable to give her children,
- or that the husband is abusing the consumption of alcohol or drugs.

The International Human Rights Law Group said that previously there were Family Courts, conciliating between spouses wanting a divorce. However, such courts were abolished during the Mujaheddin period.

The Deputy Minister for Women's Affairs and International Human Rights Group advised that if a husband wants to divorce his wife, he must pay money to his wife. On the other hand, he does not have to pay any money if the wife wants to divorce him.

The Deputy Minister said that if the husband divorces his wife simply in the presence of two witnesses, no divorce certificate would be issued. However, the woman must have a divorce certificate issued by the court in order for the divorce to be valid by law. Such a document is also required for her to re-marry. However, she cannot re-marry until three months after the divorce.

International Human Rights Group was of the opinion that 95% of divorces are not being brought before the court. That means that for 95% of all divorces there is no divorce certificate to prove the divorce.

DACAAR advised that there is no place for women to turn to, if she wants a divorce. She can return to her father's house, but in 99% of all cases the father will take her back to her husband out of regard for the family honour.

## **6.2 Parental custody**

The Director of the Secretariat of the Human Rights Commission and the Commissioner, and International Human Rights Law Group advised that in case of divorce the children go to the father. The husband might allow the wife to keep the children. Such permission will appear from the divorce certificate, if one exists, from the court. At any stage, the husband may demand that the children be returned to him.

The Deputy Minister for Women's Affairs added that the custody of children under the age of 2 years may remain with the mother, but that custody will automatically go to the father, once they turn 2 years. If the father of the children has died, the mother will keep the children provided she has a home and is able to provide for them. If the woman wants to re-marry, custody will be transferred to the husband's family.

## **7. ENTRY TO AND EXIT FROM THE COUNTRY**

UNHCR-Kabul advised that there are both official and unofficial border crossings between Afghanistan and the neighbouring countries. When crossing at the official border crossings, a person must hold valid travel documents. It is possible to cross the border between Afghanistan and Pakistan unofficially by paying a sum of money.

The source said that the Afghan Airline Ariana has regular flights between Kabul and Islamabad and Dubai. The Iranian airline Mohan Air is flying regularly between Iran and Kabul.

During the visit to Kabul, the delegation learned that Ariana has started a flight route between Kabul and Frankfurt.

## **PERSONS, ORGANISATIONS AND AUTHORITIES CONSULTED**

### **Kabul:**

**Minister of the Interior**, Taj Mohammad Wardak

**Ministry of Justice**, Deputy Minister, Mohammad Ashraf Rasooli

**Ministry of Women's Affairs**, Deputy Minister, Suraya Rahim

### **Afghanistan Independent Human Rights Commission:**

Director of secretariat, A. Aziz Ahmad

Commissioner, Ahmad Zia Langari

### **UNAMA, (United Nations Assistance Mission to Afghanistan):**

Senior Human Rights Advisor, Goran Fejic

Political Affairs Officer, Guido Galli

Coordinator of Civil Affairs, Anders Fänge

### **UNHCR:**

Deputy Chief of Mission, Daniel Endres

Senior Protection Officer, Zainab Sheika-Ali

Protection Officer, Thoshi Kawauchi

### **EU-Delegation:**

Special Representative, Francesc Vendrell

### **British Embassy:**

Vice-consul, Ian Reakes

**The Norwegian Embassy:**

Chargé d'affaires, Bjørn Johannessen

**German Police Training Project**, Kriminaloberrat, Thomas Züfle

**ACBAR, (Agency Coordination Body for Afghan Relief)**

Executive Coordinator, Rafael Robillard

Afghanistan Coordinator, Dr. Emal Stanizai

ACBAR, which was founded in 1988, coordinates NGO's working in Afghanistan and comprises both Afghan and international organisations.

**Association of Women of Afghanistan (AWA)**, President, Soraya Parluka

AWA is one of the oldest organizations for women in Afghanistan and dates back to 1965, when Sorya Parluka together with a few other women founded the organization. The organization is involved in women's rights at an ideological level as well as being involved in social work. During the Mujaheddin period (from 1992) and under the Taliban regime, the organization only had limited activities and was working in secret - during the Taliban regime e.g. they were involved in the education of girls and women in private schools. The current activities of the organization mainly consist of lobbying and advocacy, as well as the publishing of a journal. The organization receives limited funding from the German embassy which is paying for the office facilities, among other things.

**CCA (Cooperation Centre for Afghanistan)**, Executive Director, Said Sarwar Hussaini

CCA is an Afghan NGO, which is supported by several internal aid organizations, including NOVIB, Norwegian Church Aid, Church World Service, USAID and various UN organizations. The organization, which was founded in 1990, has had a human rights programme since 1994 and is particularly involved in activities concerning women, education and human rights. Its activities consist in particular of educational projects concerning human rights, and monitoring that such rights are observed. The organization has three regional offices in Afghanistan - in Kabul, Mazar-i-Sharif and Bamiyan.

**DACAAR (Danish Committee for Aid to Afghan Refugees)**

Programme Manager, Kerry Jane Wilson

DACAAR is a humanitarian NGO, founded in 1984 to assist Afghan refugees. The members of the organization are ASF (Arbejdernes Samarit Forbund/ Workers First Aid Union), the Danish Refugee Council and Mellempfolkeligt Samvirke (Danish Association for International Cooperation). The two main areas of DACAAR's activities in Afghanistan are currently an integrated agricultural development programme and a clean drinking water project. The programmes are financed mainly by DANIDA and the EU, but also with resources from various UN

bodies and private Christian organizations. DACAAR still has its headquarters in Peshawar and is active in large parts of eastern, southern and western Afghanistan.

**International Human Rights Law Group (IHLRG)**

Afghanistan Field Coordinator, A. Nader Nadery

The organization is part of an international NGO, which is mainly financed through American (USAID) funding, and has its headquarters in Washington DC. The office in Kabul, with 5 staff members, was established in February 2002 and is an extension of a similar project in Peshawar in Pakistan. At present, the organization has three projects under way, including a training programme for lawyers and judges, who need to brush up on their knowledge after having been away from their profession for some time, a human rights monitoring project, which is supposed to function as a pressure-group and among other things monitor the human rights situation in general in Afghanistan and the activities of the national human rights commission, as well as a project focusing on women's rights, aiming at female lawyers and judges.

**Mazar-i-Sharif:**

**The Governor of Balkh**, Mr Mohammed Ishaq Rahguzar

**Department for Repatriation of Balkh**, Head of Department, Mr. Ateequallah Ansari

**UNAMA**, Protection and Human Rights Officer, Reena Ghelani

**UNHCR-Suboffice**, Head, Michael J. Zwack

**IOM**, Administrative and Finance Officer, Johanna Klemm

**Islamabad:**

**The Norwegian Embassy:**

Ambassador, Tore Toreng

First Secretary, Eli Fryjordet

**International Crisis Group, (ICG)**, Analyst, Najum Mushtaq

The International Crisis Group is a private, multinational organization with the objective of consolidating the capacity of the international community to predict, understand and act to prevent conflicts. The ICG is based on field research and political analysts are based in a number of countries affected by conflicts - or countries in danger of being affected by conflicts - for the purpose of gathering information and prepare reports with recommendations for the international decision-makers. The Head of ICG is the former Finnish President Martti Ahtisaari, and Gareth Evans, the former Australian Minister of Foreign Affairs, has been its president and chief executive since January 2000. ICG's headquarters are based in Brussels, whilst the organization also has offices in a number of depressed countries. The ICG opened an office in Islamabad, Pakistan in January 2002 in order to monitor the situation in both Afghanistan and Pakistan. The ICG receives financial support from a range of governments, including Denmark, charitable foundations, companies and individual donors.

## **ANNEXES**

**Annex 1: Map of Afghanistan**

**Annex 2: Map of Afghanistan (administrative borders)**

**Annex 3: Decree of the President of the Afghan Interim Administration on Dignified Return of Refugees**

**Annex 4: Decree Issued by Interim Government Managing Military Services** (Printed in Hewad Newspaper, 11.05.2002, Kabul, Afghanistan)

**Annex 5: UNHCR-statistics of returned refugees to the northern regions, 1 April - 15 August 2002.**





**Annex 3: Decree of the President of the Afghan Interim Administration on Dignified Return of Refugees**

**Bilag 3: Decree of the President of the Afghan Interim Administration on Dignified Return of Refugees**

**Decree**

**of the President of the Afghan Interim Administration**

Ref No.(297)

Date: 13, 03, 1380

**On Dignified Return of Refugees**

**The Afghan Interim Administration, Confident** that the Bonn Agreement on Afghanistan dated 14.09.1380 (5 December 2001) has laid down the foundation for lasting peace, stability and social and economic progress in Afghanistan, safeguards the right and freedom of all returnees, observes the freedom of returnees to establish residence, to participate in the process of reconstruction, consolidation of peace, democracy and social development, AJA guarantees their safe and dignified return, expresses its gratitude and thankfulness to the countries that have given them refuge in the very difficult and hard days Afghanistan experienced, and expects that in conformity with the principle of voluntary repatriation, Afghans will be given the opportunity to decide freely to return to their country, and declares the following:

**Article 1.** Returning Afghan nationals, who were compelled to leave the country and found refuge in Iran, Pakistan and other countries of the world, will be warmly welcomed without any form of intimidation or discrimination.

**Article 2.** Returnees shall not be subject to harassment, intimidation, discrimination or persecution for reasons of race, religion, nationality and membership of a particular social group, political opinion or gender, and will be protected by the State.

**Article 3.** All returnees, irrespective of their political affiliations, are exempted from prosecution for all (with the exception of individual criminal accusations) criminal offenses committed up to 01.10.1380 (22 December 2001), prior to, or in exile against the internal and external security of the country, according to enacted laws.

**Article 4.** The provisions of Article 3 of this decree will not apply to those returnees who have committed acts constituting a crime against peace or humanity, or a war crime, as defined in international instruments, or to acts contrary to the purpose and principles of the United Nations.

**Article 5.** The recovery of movable and immovable properties such as land, houses, markets, shops, sarai, apartments and etc. will be effected through relevant legal organs.

**Article 6.** All returnees will be guaranteed the same human rights and fundamental freedoms enjoyed by other citizens.

**Article 7.** The implementation of the provisions of this decree is the responsibility of the Ministry of Repatriation; law and order organs are obliged to assist the Ministry of Repatriation in this task.

**Article 8.** UNHCR and other relevant international agencies will be allowed to monitor the treatment of returnees to ensure these meet recognized humanitarian law and human rights standards, and to ensure that commitments contained in this decree are implemented.

**Article 9.** This decree is valid as of 1.10.1380 (22 December 2001) and will be printed in the Official Gazette.

Hamid Karzai,  
President, Afghan Interim Administration

## Annex 4:

### ***Bilag 4: Decree Issued by Interim Government Managing Military Services (Trykt in Hewad Newspaper, 11.05. 2002, Kabul, Afghanistan)***

Printed in Hewad Newspaper 11.05.2002  
Kabul, Afghanistan

#### **Decree Issued by Interim Government Managing Military Services**

Bakhter News agency reports that for purpose of safeguarding the territorial integrity of the country, national sovereignty, taking care of the shrine religion of Islam and maintaining of the independence of the country, the Interim Government of Afghanistan issued a decree urging the foundation and establishment of a national military force, and declared the following to be accomplished:

1. All Afghan male national aged twenty two up to age thirty are offered to join and enter into military service on a voluntary and contract basis for a period of four years.
1. Military service of volunteers is regarded fulfilled upon the completion of four years of contracted military service.
1. Persons voluntarily joining military service (candidates to military service) upon completion of their first fixed period of military service and upon finishing the second term of the military service are to be issued a release certificate
1. Volunteers to military service, in addition of being provided with means of subsistence and lodging will receive a monthly pay of an equivalent to 30\$ in Afs during their training period and will be given an equivalent of 50\$ in Afs during their military duties.
1. The governor of the province bears responsibility to provide transportation means to the volunteers and send them without arms to the capital as planned
1. The Herat military chief commander in the presence of the ammunition officers is bound to equip each volunteer with four boys of cartridges for a rifle along with a rifle Kalashnikov, arrange his transport with the necessary security measures to the designated training centre where he will hand over his arms officially
1. The provincial military commissioners in consultation with the head of the public health department are bound to issue health certificates, arrange other documentation of the volunteers and transfer them.
1. Selection of volunteers to military service is decided by the competent delegation composed of the following members:
  1. Governor of the province, representative of the ministry of defence, provincial military chief commander, chief of provincial police department, chief of the national security of the province, provincial military commissioner, head of provincial public health department and the head of the local Shuras representatives.

-This decree comes into force upon its issuance.

Hamid Karzai  
President of the IAA

**Annex 5: UNHCR-statistics of returned refugees to the northern regions, 1 April - 15 August 2002**

UNHCR SO Mazar Refugee Returnees Statistics Assisted With Return Package In North		As of 15 August 02											
		April		May		June		July		15-Aug		Total for each DC	
		Family	Individuals	Family	Individuals	Family	Individuals	Family	Individuals	Family	Individuals	Family	Individuals
Mazar	497	2422	3124	14023	4305	19890	2452	12296	1299	6693	11677	55324	
PIK	77	354	1525	6515	4162	20129	5214	29639	2961	19351	13939	75988	
Kunduz	94	492	3107	10939	4859	20313	4293	22727	4273	21960	16626	76431	
Maimana	0	0	98	494	1497	8038	613	1000	130	185	2338	9717	
Samangan	0	0	98	441	332	1745	150	837	38	181	618	3204	
JowzJan	0	0	0	0	401	1735	1599	8481	587	3353	2587	13599	
Sar-i-Pol	0	0	0	0	364	1576	225	886	131	448	720	2910	
<b>Total</b>	<b>668</b>	<b>3268</b>	<b>7952</b>	<b>32412</b>	<b>15920</b>	<b>73426</b>	<b>14546</b>	<b>75866</b>	<b>9419</b>	<b>52171</b>	<b>48505</b>	<b>237173</b>	

\* Returnees are assisted through seven Distribution Centers in the Northern Region which runs by GTZ.

UNHCR SO Mazar/Field Section

**UNHCR SO Mazar**  
Voluntary Returnees Statistics to the Northern Region

As of 17 August 2002

Location	No. of Families	No. of Individual	Ethnicity Breakdown						
			Pashton	Tajik	Hazara	Baloch	Turkman	Uzbek	Others
Badakhshan	2701	4140	78	3597	112	6	5	313	29
Takhar	5959	23204	2228	7001	570	27	44	13163	171
Kunduz	12121	64229	28267	15335	3305	606	4573	10993	1150
Baghlan	16017	84519	27201	38795	13773	47	109	3684	970
Samangan	1076	5181	407	1371	2401	0	159	708	137
Balkh	6555	23677	1595	8527	2905	58	4122	4954	1525
Jowzjan	10392	50339	1434	7944	197	16	22680	16176	1892
Sar-i-Pul	1967	6841	876	1132	289	147	17	3267	1113
Faryab	9114	28450	6250	3512	58	12	7768	10371	381
<b>Total</b>	<b>64902</b>	<b>290580</b>	<b>68338</b>	<b>87314</b>	<b>23548</b>	<b>919</b>	<b>39477</b>	<b>63527</b>	<b>7388</b>

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