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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan*

Summary

The present report is submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and resolution 14/15 of 18 June 2010 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA).

There have been some gains as well as notable gaps and challenges in the situation of human rights in Afghanistan, including the rights of women, freedom from arbitrary detention and respect for fair trial rights, the right to personal freedom and security, the right to life, the right to education as well as ongoing peace and reconciliation processes in different regions and provinces of Afghanistan.

Civilians – men, women and children – continue to bear the brunt of the ongoing armed conflict. Anti-Government elements have increasingly targeted non-combatants as well as purely civilian locations, including roads, public marketplaces and mosques using improvised explosive devices (IEDs), suicide attacks and other indiscriminate tactics. Ordinary citizens working in a civilian capacity or suspected to be working for the Government or international military forces have repeatedly been targeted for assassination, subjected to threats and other forms of intimidation by anti-Government elements.

Conflict-related detainees continue to be subjected to mistreatment and abuse in some facilities run by Afghan security forces. Access to justice is impeded by security concerns, lack of legal aid services and the limited presence of defence lawyers in all parts of the country. While the increased presence of the Afghan National Police points to improvements in civilian policing, there is a dearth of adequate security forces in many

* Late submission.

rural communities Although the introduction of Afghan Local Police units has improved security in many rural communities, the programme has proved problematic in some locations, as the Afghan National Police have weak oversight and command and control over such forces.

As a result, official police investigations into misconduct by Afghan Local Police have been inconsistent and often have not led to disciplinary measures, expulsion from the force or prosecution. The prison population has continued to grow significantly, placing pressure on facilities. In November, the authorities carried out 14 executions, the first since June 2011.

While there has been progress in the implementation of laws designed to protect women, including the establishment of provincial-level offices to support enforcement of the landmark Law on Elimination of Violence against Women, the criminal justice system faces challenges in preventing violence against women. Entrenched discrimination, harmful practices and other forms of violence against women have continued to marginalize women and girls.

The Human Rights Unit of the United Nations Assistance Mission in Afghanistan (UNAMA/OHCHR) continues to work in close collaboration with the Afghan Independent Human Rights Commission (AIHRC); however, the long delay in finalizing the appointment of its commissioners had a negative impact on the work of AIHRC. UNAMA/OHCHR also supported Afghan civil society groups on initiatives such as the Afghan People's Dialogue on Peace, with a view to promoting inclusivity and accountability in peace processes.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and resolution 14/15 of 18 June 2010 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). Since the last report (A/HRC/19/47), the human rights situation in Afghanistan continues to be challenging, especially given the persistence of the armed conflict.

2. Civilian protection has declined in different parts of the country, even as the process of transitioning lead security responsibility from international military to Afghan National Security forces leadership has advanced throughout the last year. Anti-Government elements (AGEs) increasingly undertook unlawful means of warfare through increased use of improvised explosive devices (IEDs), suicide attacks and targeted killings that violated the basic right to life and international humanitarian law principles. Over 50 per cent of all civilian deaths and injuries result from the use of IEDs or tactics that employ these devices, such as suicide attacks.

3. While civilian casualties fell in the first five months of 2012,¹ this trend reversed from June, with AGEs increasingly targeting civilian locations and accelerating a campaign of targeted killings of civilians suspected of working for the Government or international military forces. UNAMA/OHCHR documented higher civilian casualties each month from June to November 2012, by the end of which civilian deaths and injuries had increased slightly as compared to the first eleven months of 2011.

4. AGEs were reported to have increased their influence and control in a number of districts in Afghanistan, where they introduced parallel judicial mechanisms carrying out serious human rights abuses with impunity, including executions, amputations, mutilations and severe beatings. Taliban officials threatened, intimidated and abducted residents they considered to be supporters of the Government and imposed illegal taxes on many communities. In some communities, AGEs restricted access to health care, including by disrupting polio awareness and vaccination campaigns, although overall attacks against schools and hospitals decreased significantly during 2012.

5. At the same time, there has been a marked reduction in civilian casualties resulting from security operations involving pro-Government forces (PGF). In a welcome move, the Government appointed a special advisor to the President on protection of civilians and established the Civilian Casualty Tracking Team in the Presidential Information Coordination Centre. Civilian casualties of ground engagement between PGFs and AGEs reduced by 24 per cent, while civilian casualties arising from targeted killings by insurgents doubled compared to the same period in 2011, with 638 civilians killed and 357 injured. While improved safeguards appear to have contributed to a significant reduction in civilian casualties resulting from PGF operations, efforts must be sustained and increased to ensure improved protection for civilians. It should be noted that 11 per cent of civilian casualties could not be attributed to any party to the conflict in 2012.

6. Civilian deaths and injuries and actions deemed to be against Islamic principles continue to be the focus of demonstrations and protests against the presence of international military forces in Afghanistan. In response to the inappropriate handling of the Holy Koran at the Bagram military base on 21 February 2012, protests and demonstrations erupted throughout Afghanistan. While a large number of protests were spontaneous and peaceful,

¹ UNAMA, *Afghanistan Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, (Kabul, 2012).

some turned violent, with 24 demonstrators killed and 179 injured during different demonstrations in north-eastern, eastern, southern and central regions. The demonstrators targeted local government offices, International Security Assistance Force (ISAF) bases, Provincial Reconstruction Team bases and international organizations. Four demonstrators were killed and 53 others wounded on 25 February during clashes with Afghan National Security Forces (ANSF) when a large group of protestors surrounded and tried to get inside the UNAMA compound in Kunduz.

7. Arbitrary detention and ill-treatment of detainees, particularly conflict-related detainees, remains a major concern. UNAMA/OHCHR has remained engaged on this issue, observing the Government and international response to its October 2011 report on treatment of conflict-related detainees in Afghan detention facilities *Treatment of Conflict-Related Detainees in Afghan Custody*.² The Afghan Independent Human Rights Commission (AIHRC) and other international organizations have also raised concerns about the treatment of detainees. The Ministry of Interior and the National Directorate of Security issued new guidelines and orders regarding human rights and established a joint monitoring committee with ISAF and AIHRC.

8. The prison population has continued to grow significantly, placing pressure on facilities and staff. According to official figures released by the Ministry of Interior and the Central Prisons Directorate in October 2012, the Central Prisons Directorate is housing 24,027 sentenced prisoners and detainees who have not yet been tried or had their cases finalized in the courts. In addition, the Ministry of Justice was housing 976 juvenile detainees and prisoners in Juvenile Rehabilitation Centres as at 20 October 2012.

9. Mindful that rule of law and political support to ensure accountability for serious violations of human rights and international criminal law remain weak, civil society organizations and the international community continue to stress the need for accountability and inclusivity as crucial elements in any peace and reconciliation processes, with a view to ensuring that the critical problem of impunity is addressed.

10. The Government took steps to strengthen enforcement mechanisms for laws to protect women, including the establishment of provincial officers to support the enforcement of the Law on Elimination of Violence against Women and issuing new guidelines for prosecutors in handling cases of runaway girls and forced and underage marriage. But harmful practices affecting women and girls remain endemic and the authorities too often fail to take action to protect women and girls, including owing to local allegiances and preferences for traditional norms.³ Many women and girls victims of violence do not come forward to register complaints, owing to their lack of knowledge of the law, fear of reprisal by the perpetrators, lack of trust in the police and judicial system, fear of being charged for “moral crimes” and running away from home and, more importantly, difficulty in accessing social services such as shelter, health and legal aid. Similarly, registration of cases of violence against women by police is not consistent and usually does not correspond precisely to crimes defined in the Law on Elimination of Violence against Women. The situation perpetuates impunity and undermines nascent gains made in the promotion of women’s rights.

² UNAMA, 2011, Kabul. Available from http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf.

³ See UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan* (Kabul, 2012). Available from <http://point.un.org/UNAMA/SitePages/VAWReport.aspx>.

11. Following a review of more than 250 capital punishment cases by a presidential committee, President Karzai approved the executions of 14 prisoners at the Pul-e-Charkhi prison in Kabul, on 20 and 21 November. These prisoners had been convicted of serious criminal offences ranging from murder and rape to national security crimes. Prior to these executions, the last instance of capital punishment in Afghanistan had been carried out in June 2011. OHCHR, as well as the international community in Afghanistan, expressed grave concerns over the decision, noting that the resumption of executions came amid growing concerns over deficiencies in the justice system, particularly a routine failure to meet international fair trial standards and due process guarantees under Afghan law. The justice system relies primarily on confessions, some obtained through the use of torture, raising concerns about the reliability and fairness of the processes that produce these convictions and sentences.

II. Protection of civilians

12. The civilian population remains severely affected by the ongoing armed conflict. While considering civilian casualties caused collectively by AGEs, it is important to note that AGEs are ordinarily composed of diverse groups and individuals that are not all necessarily members of the Taliban and most of whom do not have a single line of command. In general, AGEs are motivated by different ideologies and goals that propel them into engaging in acts of insurgency, which ultimately pose a threat to the enjoyment of fundamental rights and freedoms.

13. While civilian deaths and injuries resulting from conflict-related violence reduced in the first five months of 2012, this trend then reversed, with UNAMA/OHCHR documenting higher civilian casualties each month from June through November.

14. Between 1 January and 30 November 2012, UNAMA/OHCHR documented 7,066 civilian casualties (2,610 killed and 4,456 injured). Although the 2011 and 2012 total figures are very similar, there were fewer civilian casualties resulting from ground combat and military operations. There was, however, an increase in the number of casualties resulting from the deliberate targeting of civilians by AGEs. Owing to fewer ground engagements between PGFs and AGEs, there was a 24 per cent reduction in civilian casualties of such operations. This resulted both from the drawdown and redeployment of international military forces and the change in the tactics of AGEs, who increasingly targeted civilians or civilian locations rather than directly engaging pro-Government security forces.

15. The third tranche of the transition of control and lead security responsibilities from international military forces to ANSF progressed as planned, which places ANSF in a leadership role in over 75 per cent of the country. Reports indicate that there has been no significant deterioration of public order or security in areas in which the transition has taken place, although the continuing attacks targeting civilian locations in many transitioned areas remain a concern for civilian protection generally.

A. Anti-Government elements

16. Eighty-two per cent of all civilian casualties for the reporting period were attributed to AGEs, compared with 70 per cent for the same period in 2011. Between 1 January and 30 November 2012, IEDs and suicide attacks together accounted for 51 per cent of all Afghan civilian deaths and injuries.

17. Recent statements by the Taliban have increasingly raised the importance of reducing civilian casualties but have not resulted in any discernible reduction in the civilian

casualties caused by their tactics and those of other AGEs. Halting the use of victim-activated pressure-plate IEDs and suicide bombings, given their indiscriminate and disproportionate impact on civilians, would be a credible demonstration of the intent to reduce civilian casualties.⁴

18. AGEs continued to target civilians and indiscriminately launch attacks in civilian locations, such as mosques, city centres, public roads and civilian Government locations. In the first 11 months of 2012, UNAMA/OHCHR documented seven incidents of attacks targeting civilians in places of worship. In some instances, imams were deliberately targeted, including for performing funeral prayers for members of ANSF.

19. During Eid al-Adha prayers on 26 October, a 15-year-old suicide attacker wearing an Afghan National Army uniform detonated at the entrance to a mosque in Maimana, killing 40 civilians, including 6 children, and injuring 59 people, including 4 children. The attack was reportedly aimed at the Faryab Provincial Governor and high-ranking security officials. On 3 August, the Imam of Dawlat Zai village of Nangarhar province was killed in an IED attack, following threats previously received for performing funeral prayers for a private security guard who had been killed by the Taliban. On 14 August, three body-borne IEDs simultaneously targeted Afghan National Police vehicles at different civilian-populated points in Zaranj city of Nimruz province, which resulted in at least 30 civilian deaths and 130 others injured. On 4 September, in Nangarhar province, Dur Baba district, a suicide attacker detonated his suicide vest at a funeral ceremony, targeting the district governor. As a result of the attack, 19 civilians were killed and 71 others were wounded. On 23 November, a vehicle-borne IED in Meydan Shahr, Wardag province, killed at least 3 civilians and injured 101 others, including 16 women, 6 children and around 24 prisoners of the Provincial Prison.

20. On 8 July, 14 civilians were killed in two IED explosions in Arghasan district of Kandahar province. On 19 October, 18 women were killed in Dawlatabad district in Balkh province when a civilian bus they were travelling in drove over a pressure-plate IED planted on a busy public road. Victim-activated pressure plate IEDs function like massive indiscriminate anti-personnel land mines and are prohibited weapons under international law. A similar pressure-plate IED detonated against a minibus in Balkh province on 19 October, killing 15 civilians and injuring 19 of the passengers.

21. As many of these incidents show, AGEs increasingly targeted civilians, including Government officials, in clear violation of international humanitarian law. Such tactics were the second leading cause of deaths and injuries of civilians perceived by AGEs to be supporting the Government or international military forces. Between 1 January and 30 November 2012, targeted killings and attempted killings carried out by AGEs killed 641 and injured 359 civilians, more than double the casualties documented in the same period in 2011. On 13 July, the head of the Department of Women's Affairs in Laghman province, Hanifa Safi, was killed by a remote-controlled explosive device and members of her family injured. On 10 December, the acting head of the Department of Women's Affairs of Laghman province was killed, making her the second female head of this department in Laghman to be killed in five months. These women were targeted specifically for their high profile advocacy on women's rights, violence against women and human rights.

⁴ In a statement on 24 October, on the occasion of Eid al-Adha, Taliban leader Mullah Omar emphasized the imperative of protecting non-combatants.

B. Pro-Government forces

22. A decline was recorded in the number of civilian casualties attributed to PGF between 1 January and 30 November 2012. Seven per cent of civilian casualties resulted from PGF operations in 2012, compared with 15 per cent in the same period in 2011. Yet, civilian deaths resulting from air strikes continued to raise concern. In one such incident on 6 June, 18 civilians, including 9 children, died in Logar province when an international military helicopter fired on a civilian residence where AGEs had taken cover. On 16 September, a series of ISAF air strikes in Alingar district, Laghman province, killed four women, three girls and one boy and seriously wounded five women and three girls, while no insurgents were harmed or captured. On 23 March, a United States service member was charged with 17 counts of murder by a United States court over a mass shooting of civilians, mostly women and children, in two hamlets in Kandahar earlier in the month.

23. The lack of professionalism and misconduct by members of the Afghan Local Police (ALP) continue to raise concerns in different parts of the country. Members of ALP have been accused of repeatedly intimidating and harassing residents, including with threats of sexual abuse of women in Chental district in Balkh province. UNAMA/OHCHR has expressed concerns over increasing incidents of violence against women and human rights abuses perpetrated by members of the Afghan National Police (ANP) and ALP, particularly in remote areas and where known human rights abusers have been appointed as ALP/ANP commanders.

24. More positively, however, some Government officials were prosecuted for violence against women, including a prison director in Logar Province, who was convicted of raping a 15-year-old girl in 2010 and sentenced to 16 years' imprisonment. UNAMA/OHCHR also welcomed reports of the conviction, on 7 July, of two members of ANP accused of the gang rape of a 13-year-old girl in Badghis province. In November, a primary court in Kabul convicted and sentenced four members of ALP for their involvement in the abduction and gang rape of a teenage girl from Kunduz province and sentenced the four men to 16 years' imprisonment. Separately, two members of ALP who had been arrested for severely beating a man in October of last year, were convicted and sentenced to seven months' imprisonment by the City Court in Asadabad district, Kunar province.

C. Children and armed conflict

25. On 26 March, Afghanistan submitted its annual progress report to the Special Representative of the Secretary-General for Children and Armed Conflict on the implementation of the action plan on the prevention of underage recruitment and sexual violence against children. The report highlighted a decrease in reported incidents of abduction, sexual violence and denial of humanitarian access and noted that, while the Government has made progress in preventing child recruitment and other grave violations, AGEs continue to recruit and use children for purposes related to the ongoing conflict.

26. Children continue to suffer disproportionately as a result of the ongoing armed conflict. On average, more than 20 children were killed and injured per week across the country during 2012. Reports received and verified by the Country Task Force on Monitoring and Reporting on children affected by armed conflict show that at least 1,103 children were killed and injured during the first eleven months of the year. This figure, however, represents a near 22 per cent decrease compared to the same period in 2011.

27. In 2012, incidents involving IED detonations, suicide and rocket attacks, unexploded ordnances and explosive remnants of war resulted in a high number of children casualties. AGEs bore responsibility for most of the child casualties (69 per cent). Another 16 per cent

of the casualties were attributed to PGFs, including international military forces. The remaining 15 per cent could not be attributed to any party in the conflict owing to the nature of the incidents, such as crossfire. It is important to note that casualties attributed to AGEs increased by 15 per cent, while those attributed to PGFs decreased by 16 per cent in 2012. In 2012, nearly 200 children were killed and injured by detonations of unexploded ordnances and explosive remnants of war, mostly during the seasonal rains period. Children also lost lives and limbs through direct contact with unexploded ordnances and explosive remnants of war.

28. Targeting of children and schools is a direct violation of international humanitarian law and all parties to the conflict have an obligation to cease any such activities. Yet, AGEs continued to launch attacks on schools, especially targeting girls' school and their staff. The Country Task Force received reports on 102 incidents of attacks against schools and staff. Only 25 incidents, however, were verifiable due to concerns of insecurity and lack of resources. On 14 April, AGEs forcibly closed all schools in Andar and Dih Yak districts of Ghazni province. Hospitals, health clinics and health staff were also affected.

29. UNAMA/OHCHR received reports that AGEs were increasing recruitment and use of children for conflict-related activities, especially in the north-eastern region. ANSF reported that they had rescued several children who were reportedly being trained as suicide bombers. Of a total of 40 reported incidents of child recruitment received during the year, 118 boys had been arrested for allegedly helping an armed group, following recruitment into their ranks. ANSF, particularly ANP and ALP, also recruited boys to perform policing duties. In December, the Ministry of Interior's Director of Human Rights and Gender offered UNAMA unimpeded access to monitor their recruitment centres throughout Afghanistan. This will be one means to measure the rigorousness of training given to ANP recruits on the prohibition of child recruitment and vetting of ANP recruits.

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

30. The Afghan prison population has been growing, putting a strain on the already overcrowded system that was designed to hold 10,000 prisoners at any given time. October 2012 figures from the Ministry of Interior's Central Prison Directorate reveal that the Directorate is housing 24,027 sentenced prisoners and detainees. In addition, the Ministry of Justice is housing 976 juvenile detainees and prisoners in Juvenile Rehabilitation Centres in Afghanistan as of 20 October 2012. These statistics do not include the number of persons detained by the National Directorate of Security (NDS) and ANP, neither of which keeps regular public statistics of their detainee populations. These numbers continued to increase with the intensification of the conflict and security operations that result in arrests of persons on suspicion of national security crimes. Widespread arbitrary detention has long been a consequence of this situation, with lengthy pretrial detention of suspects for three months or longer without charge or opportunity to be brought before a judge. In some cases, suspects may be held by the arresting authority for over three months without ever seeing a prosecutor, knowing the charges against them or having the opportunity to go on trial.

31. Access to conflict-related detainees is often limited for legal aid lawyers, defence counsel and local human rights organizations, raising fair trial concerns. There is a serious shortage of defence lawyers compared to the number of detainees requiring legal representation. Although Afghan law gives detainees the right to access to defence counsel at the time of arrest, UNAMA/OHCHR found that NDS almost never allowed counsels to visit clients until after completion of the initial investigation.

32. In response to its report on the *Treatment of Conflict-Related Detainees in Afghan Custody*, UNAMA/OHCHR continued its detention observation programme to follow up on the report's findings. UNAMA human rights teams throughout Afghanistan organized advocacy meetings with authorities, including ANP, NDS and prosecutors, to support the Government in making positive improvements in the treatment of conflict-related detainees. Additionally, UNAMA/OHCHR provided human rights training to NDS and police personnel in 16 provinces and visited over 80 facilities managed by NDS, the Police and the Central Prison Directorate to reassess the treatment of conflict-related detainees. Encouragingly, NDS and the Ministry of Interior continued to provide UNAMA with unimpeded access to almost all detention facilities and detainees.

33. NDS responded to the UNAMA/OHCHR report from October 2011 by conducting their own investigations into allegations of torture and formed the new Human Rights Department reporting directly to the Director of National Security to investigate alleged human rights violations in their detention facilities. Directives were also issued in which NDS and police staff received instructions on protecting detainees' rights. This Department also conducted refresher training programmes for their personnel, including on human rights and humane treatment of detainees. All of the measures taken to investigate torture, however, were internal and did not lead to any dismissals or prosecutions. Human rights teams also organized interaction between defence lawyers and the detaining authorities to ensure that the detainees had access to a defence lawyer during the interrogation stage.

34. Following the publication of the report, ISAF suspended all transfers of detainees from international military custody to 16 NDS and ANP facilities where UNAMA had found compelling evidence that torture and ill-treatment had taken place. ISAF also designed and rolled out a six-phase detention facility inspection programme to support Afghan authorities in reforming their interrogation and detainee treatment practices prior to resuming transfers. From November 2011 to March 2012, ISAF completed inspections of 16 NDS and ANP detention facilities and re-certified eight for the purposes of transferring detainees.

35. On 17 March, AIHRC released a report, prepared in conjunction with the Open Society Foundation, on the treatment of conflict-related detainees in Afghanistan.⁵ Its findings were based on interviews conducted with over 100 conflict-related detainees held in NDS and Ministry of Interior facilities between February 2011 and January 2012. AIHRC found that torture and mistreatment had occurred in nine NDS and several ANP detention facilities. Four of the NDS facilities where AIHRC found that torture had occurred had also been identified by UNAMA/OHCHR in its report.⁶ Some of the documented instances of torture occurred after the release of the UNAMA/OHCHR report. In response, ISAF announced suspension of its detainee transfer programme to four facilities identified in the AIHRC report, pending further inspections and interviews of detainees at these facilities. Subsequently, ISAF resumed transfers of detainees from custody to eight fully certified facilities after remedial action by the authorities to prevent mistreatment. A Memorandum of Understanding was signed by the United States of America with the Government of Afghanistan with regard to tracking detainees transferred into Afghan custody.

⁵ See *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan* (2012).
<http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%20Final%2017-3-2012.pdf>

⁶ See UNAMA/OHCHR, *Treatment of Conflict-Related Detainees*.

36. Following agreement on the gradual transfer of Afghan nationals detained at the United States-controlled Detention Facility in Parwan to Afghan control, the United States and the Government of Afghanistan signed a Memorandum of Understanding on 9 March, which set out the modalities for the transfer. The Memorandum of Understanding foresees the establishment of a special legal regime of administrative detentions or internment that does not exist currently in Afghan laws. While it calls for this new legal provision to be consistent with Afghan international obligations, including the standards of international humanitarian law, there are serious concerns about oversight and accountability within the current detention framework under which ANSF operates. Concerns remain about the impact that a system of administrative detention would have overall on the rule of law, particularly on due process guarantees and the efficient administration of criminal justice.

IV. Violence against women

37. The Government made a number of important steps forward for the promotion and protection of women's rights. These included the establishment of provincial-level offices, staffed by the Attorney-General's Office, in Balkh, Bamiyan, Parwan, Kapisa, Badakhshan and Nangarhar (and previously Herat) to support enforcement of the landmark Law on Elimination of Violence against Women. The Attorney-General also issued two sets of guidelines to prosecutors in February and April for handling cases of runaway girls and underage or forced marriages. A Presidential Order also mandated the establishment of a steering committee to draft a National Action Plan on Women, Peace and Security, in accordance with Security Council resolution 1325 (2000). Nevertheless, incidents of violence against women remain endemic and women continue to face challenges to the full enjoyment of their economic, social and cultural rights. Harmful practices and violence against women have long prevented women from participating in public life, excluding them from political and decision-making processes.

38. On 11 December UNAMA released a report entitled *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*,⁷ in which it documented progress, challenges and gaps in the implementation of the Law on Elimination of Violence against Women.⁸ The report was based on more than 200 interviews and observation of numerous individual cases of violence against women and information received from police, prosecutors and judges from 22 provinces. It highlights both positive advances and continuing gaps in implementation of the law by judicial and law enforcement institutions. Although prosecutors and courts were increasingly applying the law in a growing number of reported incidents of violence against women, the overall use of the law remained low.

39. Incidents of violence against women remained largely underreported due to cultural restraints, social norms and taboos, customary practices and religious beliefs, discrimination against women (that leads to wider acceptance of violence against them), fear of social stigma and exclusion and, at times, threat to life. Prevailing insecurity and weak rule of law have further hampered women's access to formal justice institutions. Those cases that reach law enforcement and judicial authorities or receive public attention due to their egregious nature represent the tip of the iceberg of incidents of violence against

⁷ UNAMA, Kabul, 2012.

⁸ Enacted in August 2009, the Law on Elimination of Violence against Women criminalizes child marriage, forced marriage, selling and buying women for the purpose or under the pretext of marriage, *ba'ad* (giving away a woman or girl to settle a dispute), forced self-immolation and 17 other acts of violence against women, including rape and beating. It also specifies punishment for perpetrators.

women throughout the country. The UNAMA/OHCHR report noted an increase in incidents of violence against women reported to certain entities, such as AIHRC and provincial departments of women's affairs. AIHRC recorded 4,010 cases of violence against women from 21 March to 21 October 2012 throughout Afghanistan, compared to 2,299 cases the previous year. Increased reporting may not necessarily reflect an increase in actual incidents of violence against women, but it may be the result of growing public awareness and sensitization to violence against women and women's rights generally, through efforts of civil society organizations, the Government and international actors.

40. In 16 provinces where detailed information on application of the Law on Elimination of Violence against Women was available, police and prosecutors recorded 470 incidents of violence against women. This represents an increase in the number of incidents registered by police and prosecutors compared with the UNAMA findings in November 2011.⁹ Of those 470 incidents, prosecutors filed indictments in 163 cases, which resulted in conviction at trial in 100 cases (a 61 per cent success rate). Seventy-two of the 163 indictments (44 per cent) relied on the Law on Elimination of Violence against Women. Fifty-two of the 72 indictments that relied on the law (72 per cent) resulted in convictions at trial. This shows that, in the small number of investigations and prosecutions of cases of violence against women, use of the law was more likely to result in convictions.

41. Notwithstanding, while prosecutors registered more reported incidents of violence against women and city courts issued more convictions using the Law on Elimination of Violence against Women, when placed in the context of 4,010 reported incidents of violence against women recorded by AIHRC, the number of cases resolved through the judicial process using the law in the 16 provinces was very low.

42. Rather than following required legal procedures in all cases, ANP and prosecutor's offices continued to refer numerous cases, including serious crimes, to *jirgas* and *shuras* for advice or resolution, which often undermined implementation of the Law on Elimination of Violence against Women and reinforced harmful practices. Decisions of these mechanisms were observed to often be shaped by powerful men in local areas applying different procedures and making decisions based on a mix of tradition, varying interpretations of Islamic law and local power relations sometimes contrary to law and religious principles. As a result, vulnerable segments of society, especially women and children, sometimes faced further victimization. For example, a court may have sentenced a rapist to imprisonment while a community-based mechanism may have decided he should marry the victim or called for a *ba'ad* exchange. Based on the data available, UNAMA found that ANP from 22 provinces (excluding Kabul) registered a total of 740 reported incidents of violence against women from October 2011 to September 2012 – almost the same as previous findings. ANP forwarded 401 of these 740 incidents (54 per cent) to prosecutor's offices, with 312 withdrawn, sent to traditional dispute resolution or the legal department of the Ministry of Justice, mediated or under process. Although departments of women's affairs in many provinces have proved to be instrumental in providing an effective mechanism for many women victims of violence to report incidents, challenges in women's access to formal justice institutions remained numerous.

43. The practice of wrongful prosecution of women and girls for running away from home often to escape violence continued. Although running away or "home escape" is not a crime under Afghan law or in sharia law, law enforcement authorities often arrest and prosecute women and girls for this "moral crime", charging them with the qualified "intention" to commit *zina* (sexual intercourse outside of marriage) or "pre-emptive *zina*".

⁹ See UNAMA/OHCHR, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan* (Kabul, 2011).

ANP registered 62 “runaway” cases, prosecutors 31 cases and courts 9 cases. President Karzai’s reiteration, at an International Women’s Day event, on 11 March, of the Government’s commitment to promoting constitutional guarantees of gender equality and fundamental freedoms was particularly welcome. A decree issued on that occasion pardoned a number of female prisoners who had run away from home. Also, in September 2012, the Ministers of Justice and Women’s Affairs and the Deputy Interior Minister publicly condemned the practice, which condemnation was welcomed by national and international women’s rights organizations. Such official statements are critical but require full political support and effective implementation.

44. Reduced violence can empower more women to participate in public life and contribute to peace and reconciliation. Women’s rights activists fear that advances over the last decade could be negotiated away as the Government engages the Taliban and other insurgent groups in peace talks, although the Government has remained publicly steadfast in its commitment to women’s rights. Women in public life and those holding public office have been increasingly subjected to threats and intimidation. Afghan civil society have underscored that the time is conducive for a visit to Afghanistan of the United Nations Special Rapporteur on violence against women, its causes and consequences.

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

45. Attempts to begin a sustained political dialogue with the Taliban have been fraught with difficulties and the prospect of reaching consensus on formal peace talks with the Taliban has reached an impasse. In a message purported to be from Mullah Omar on the occasion of Eid al-Fitr, the Taliban leader emphasized the continuation of jihad, full withdrawal of international military forces and establishment of an Islamic Emirate.

46. The United Nations Security Council de-linked the Taliban from Al-Qaida in June, dividing the sanctions list from its resolution 1267 (1999) into two separate sanctions lists under its resolution 1988 (2011) for Taliban and 1989 (2011) for Al-Qaida. Also, on 19 July, in response to a request from the Government of Afghanistan, the 1988 Sanctions Committee approved the de-listing of Abdul Wasay Mu’tasim Agha, former Minister of Finance under the Taliban regime. A total of 20 individuals have been de-listed since 17 June 2011.

47. UNAMA continued to support the Afghan Peace and Reintegration Programme as an Afghan-led programme aimed at drawing lower-level fighters off the battlefield and to provide analytical, advisory and logistical support to the work of the High Peace Council, together with the United Nations Development Programme. Despite these positive steps, UNAMA is concerned that the lack of transparency and implementation of the standard procedures could undermine the reintegration process and the programme’s credibility and effectiveness. UNAMA also observed that the vetting process sometimes did not occur until late in the reintegration phase of the programme, rather than at the initial stage, as envisaged in the programme document and the standard operating procedure on vetting.

48. In an effort to promote an inclusive peace and reconciliation process, UNAMA/OHCHR will be supporting civil society to facilitate the second phase of the Afghan People’s Dialogue on Peace¹⁰ in 34 provinces. Similar to the first phase, Phase II of the dialogue will centre on focus group discussions with a wider number of people – 4,000

¹⁰ The findings from Phase 1 were documented in the report – *Afghan People’s Dialogue: Laying the Foundations for an Inclusive Peace Process*, published on 4 December 2011.

Afghan women, men and youth – with the aim of developing local road maps which will form a local blueprint for achieving sustainable peace in Afghanistan. The road maps will be used for advocacy by civil society and widely circulated among and discussed with local and national policymakers in order to influence Government policies and plans.

VI. Support to national institutions

49. Delays in the reappointment of commissioners of AIHRC appear have had a discernible impact on the institution. All nine commissioners have been working on an interim basis since December 2011.

50. President Karzai conducted multiple consultations with civil society on a process to nominate new commissioners, which resulted in NGO activists proposing names of individuals they considered suitable for AIHRC. This process became contentious among competing civil society factions throughout the first quarter of the year. President Karzai has not yet acted on the recommendations and no timetable for announcing appointments or the procedure for selecting new commissioners has been announced as of the time of writing.

51. Efforts by the international community, including the United Nations High Commissioner for Human Rights, have failed to resolve this situation. The Special Representative of the Secretary-General for Afghanistan and several embassies have continued to raise the need for a transparent process to promptly conclude the appointment of new commissioners, including in meetings and letters addressed to the President, in November and December 2012. For AIHRC to remain an independent and effective institution, the Government of Afghanistan must urgently resolve the question of appointments through a transparent process.

VII. Conclusion

52. **With support from the international community, the Government has made some positive strides in the promotion and protection of human rights. Nevertheless, significant challenges remain. Civilians continue to bear the brunt of the ongoing armed conflict and the security situation hinders access to justice, health care, education and other basic services. Concerns also remain about lack of due process, fair trial guarantees and mistreatment of conflict-related detainees. Institutions such as the police, prosecutor and courts need to be strengthened, to uphold and protect human rights. The Government authorities should ensure effective mechanisms are put in place to redress human rights violations and address issues of impunity. Afghan National Security Forces, including NDS, must be held accountable and subject to scrutiny by external and independent mechanisms, such as AIHRC. Civil society should be given a platform to promote and raise awareness about human rights, including women's rights, including in the peace and reconciliation process.**

VIII. Recommendations

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

54. The Government of Afghanistan should:

(a) Review the measures needed to provide meaningful protection to communities to counter the sharp rise in civilian casualties resulting from anti-Government elements' increased use of IEDs to target civilians;

(b) Ensure that local security institutions, with international support, institutionalize the protection of civilians and accountability mechanisms in their operations through initiatives such as the establishment of a civilian casualties mitigation centre;

(c) Take further concrete steps to strengthen rule of law institutions, particularly police and judiciary, in order to ensure that criminal activity is increasingly dealt with in a lawful manner by Government agencies. This includes investigation, prosecution and punishment of individuals carrying out unlawful punishments in parallel justice structures, particularly killings, as well as human rights abuses and other criminal acts carried out by anti-Government elements;

(d) Revise the Interim Criminal Procedure Code to guarantee the right of detainees to be brought promptly before a judge for an initial and periodic review of the lawfulness of pretrial detention, and the right of detainees to challenge the legality of their detention with a speedy court decision;

(e) Duly investigate human rights violations, especially the use of torture, and ensure that perpetrators are brought to justice and victims granted remedies;

(f) Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Afghanistan to assist in providing a comprehensive response to deter use of ill-treatment in detention facilities;

(g) Take measures to ensure effective vetting, recruitment, oversight and accountability mechanisms of ALP members, inter alia, to prevent human rights abuses and ensure lawful response to reported criminality by ALP;

(h) Protect fully the right of all children, especially girls, to access education, and ensure that all schools remain open and safe, by protecting the civilian nature of schools;

(i) Take greater steps to implement the 2009 Law on Elimination of Violence against Women and protect women's rights, including ensuring women's inclusion in public life and all peace and reconciliation processes, with equal opportunities in education and employment. The Government should invite the Special Rapporteur on violence against women, its causes and consequences, to visit the country;

(j) Reaffirm and demonstrate its commitment to justice and combating impunity. It should ensure that there is no amnesty for perpetrators of war crimes, crimes against humanity and gross violations of human rights in peace and reconciliation efforts;

(k) Promptly appoint commissioners to AIHRC on the basis of a genuinely transparent, impartial process, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

55. The High Commissioner recommends for anti-Government elements:

(a) The Taliban and other anti-Government elements must apply a definition of "civilian" that is consistent with international humanitarian law and

comply with international humanitarian law principles of distinction, proportionality and precautionary measures;

(b) Anti-Government elements should immediately cease targeting civilians, such as through deliberate attacks which are violations of international law.

56. The International Security Assistance Force should:

(a) Continue reviewing tactical directives and operational procedures, particularly those regulating the conduct of aerial attacks, with a view to preventing incidental loss of civilian life and injury and damage to civilian objects and providing reparations to civilian victims of attacks;

(b) Ensure full handover and training of ANSF on tactical directives, procedures and best practices that have been found to increase civilian protection successfully and continue working with ANSF to enhance their civilian casualty mitigation, reporting and analysis capacity by empowering the newly established Civilian Casualty Mitigation Team within ANSF structures;

(c) Ensure the transfer of essential protection tasks to ANSF, in particular, IED detection, disposal and tracking. Such capacity to take counter measures against IED development and use must be developed as a matter of urgency.
