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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND SECRETARY-GENERAL**

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

* Late submission.

Summary

The present report, submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006, describes the current human rights situation in Afghanistan and ongoing concerns, and contains recommendations to address them.

Afghanistan is one of the poorest countries in the world. The adoption of the Afghanistan National Development Strategy (ANDS) in 2008 serves as the country's poverty reduction strategy in which human rights are largely treated as a question of civil and political rights; the challenge now is to give greater attention to the human rights dimensions of economic and social development.

The escalation of the armed conflict in Afghanistan has had a significant impact on civilians in conflict-affected areas, in particular on those who are already vulnerable. The intensifying conflict has also resulted in a disturbing rise in civilian casualties and has contracted the space for humanitarian action. Long-standing discrimination against women and minority groups is manifest in their lack of access to justice and other basic services. Important gains made recently by women in the public sphere are in danger of receding. Mounting attacks on the freedom to express views that challenge existing power structures as well as social and religious norms that usually marginalize women cast doubts on the Government's ability to ensure a free and democratic space where human rights are fully respected. This is especially vital in an elections period. While important initiatives to reform the justice sector and improve the administration of justice were launched in 2008, the judicial system remains weak, corrupt and dysfunctional, and at times does not comply with international human rights obligations. Compounded by a surge in criminal violence and decline of public law enforcement authorities control over parts of the country, a culture of impunity prevails as demonstrated by the failure to prosecute perpetrators for past and contemporary human rights violations and abuses.

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I. INTRODUCTION

1. This report is submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). Since the last report by the High Commissioner, Afghans have continued to suffer significant rights deficits that pose serious challenges to the enjoyment of their human rights and to the country's long-term prospects for peace, stability, democracy, development and the rule of law.
2. Gross human rights violations remain a serious threat to continuing efforts to transform Afghan society. A culture of impunity prevails, and is deeply entrenched; this is manifested in the lack of political will to advance the transitional justice process to address past abuses as well as the absence of accountability for current human rights violations. Coupled with a weak, corrupt and dysfunctional judicial system, and wide recourse to traditional dispute-resolution mechanisms that do not comply with due process requirements, justice is effectively denied to the vast majority of Afghans.
3. In November 2008, the High Commissioner expressed concern regarding the resumption of the death penalty in Afghanistan, noting that law enforcement and judicial systems in the country fall short of internationally accepted standards guaranteeing due process and a fair trial.
4. The escalation of the armed conflict during 2008 has resulted in a substantial rise in the toll of civilian casualties and further erosion of the humanitarian space. Although certain measures have been taken to mitigate the impact of military operations, the limited ability of Afghan and other authorities to address the protection needs of at-risk civilians in war-affected areas remains a major concern. Not only does the conflict have a disproportionate impact on those who are vulnerable, but the deteriorating situation has undermined the people's confidence in the Government and hampered its ability to meet its human rights obligations, such as the provision of basic services, including security.
5. The political space to express dissenting political and other views has also been contracting during the reporting period. Ongoing attacks on freedom of expression, particularly in relation to media and human rights activists, are intrinsically linked to abusive power structures and deeply entrenched impunity. This pattern is all the more disquieting as elections are scheduled to take place in Afghanistan in 2009.
6. Other long-standing human rights problems in Afghanistan have not been adequately addressed. The deep-rooted discrimination against and marginalization of women and girls and of certain minorities, extreme poverty and patterns of social and economic development that do not address inequalities, continue to challenge entitlements to human rights such as health, food, water and sanitation, education, shelter and a means of livelihood.
7. The adoption at the International Conference in Support of Afghanistan, held in June 2008 in Paris, of Afghanistan's poverty reduction strategy paper, the Afghanistan National Development Strategy (ANDS), generated renewed momentum, in particular amongst donors, to assist the Government in its endeavour to address some endemic problems, such as poverty and marginalization, but these efforts would be strengthened by greater attention to the human rights dimensions of economic and social development.

II. POVERTY AND HUMAN RIGHTS

8. Afghanistan is one of the poorest countries in the world, with a poverty rate of 42 per cent. Another 20 per cent of Afghans are situated slightly above the poverty line, indicating a very high level of vulnerability.

9. Abusive power structures, weak governance, discrimination and marginalization contribute to alarming levels of poverty that impoverish the lives of millions of Afghans; 61 per cent of the population is said to be vulnerable to food insecurity. Serious drought, resulting in a poor harvest, as well as high prices for staple foods means that the right to food and to the highest attainable standard of health, especially among poor households, is being severely impacted. Afghanistan has deep inequities in the distribution of its wealth, and productive resources are concentrated in the hands of a few. Three decades of conflict have left vulnerable groups with limited or no access to land or to livelihoods or even basic social services, and subject to exploitation by those in power. A human rights analysis is crucial to the success of poverty reduction initiatives, particularly in regard to the factors that affect decision-making and resource allocation.

10. A positive step in 2008 was the adoption of the country's poverty reduction strategy paper, ANDS, which is also the vehicle to implement the Afghanistan Compact benchmarks. It was approved in June 2008 at the Paris Conference, during which donors indicated their commitment to assist the Government. To succeed as a poverty reduction strategy, all stakeholders, including the poor, must participate in its implementation, monitoring and evaluation. ANDS generally frames human rights in civil and political terms only and fails to identify the Government's obligations under the various treaties it has ratified. As the design stage is now complete, efforts need to be made so that human rights are duly taken into consideration in the implementation phase, particularly regarding economic and social development. Most sector strategies inadequately define how the situation of vulnerable groups will be addressed. Moreover, the poor will not benefit unless the requisite budgetary allocation is dedicated for essential service delivery to the most vulnerable sectors of society.

11. Given that all United Nations agencies will be involved in supporting the implementation of the ANDS, they should be encouraged to adopt the human rights-based approach (HRBA) to development as an efficient tool to address the needs of the people through the prism of rights and to support the efforts of the Government in meeting its obligations. As part of the ANDS implementation process, most provinces have adopted a Provincial Development Plan (PDP) to implement the objectives of ANDS. As part of the preparations for the United Nations Development Assistance Framework (UNDAF) process, the Office of the United Nations High Commissioner for Human Rights (OHCHR) piloted, with the support of UNAMA and the United Nations Action 2 Global Secretariat, a project in the provinces of Bamyan and Dai Kundi, which focused on the human rights dimension of poverty and how the implementation of ANDS could be used as a tool to facilitate the realization of human rights. Through HRBA and capacity-building activities, interest has been catalysed among all participating provincial development partners, including provincial government officials, civil society, and international development actors. This is particularly so for the value of HRBA in achieving sustainable development, improving aid coordination and effectiveness and mobilizing adequate resources for provinces that receive less attention because of their relative stability.

12. As noted in the report of the High Commissioner to the seventh session of the Council (A/HRC/7/27), an important initiative toward meeting the commitments set out in the Afghanistan Compact is the establishment, with the support of OHCHR, of a human rights unit within the Ministry of Justice. I am glad to note that the Government has identified the creation of this unit as a key step towards delivering on its commitments under the Compact with respect to human rights.

III. PROTECTION OF CIVILIANS

13. The armed conflict intensified significantly throughout 2008 with a corresponding rise in civilian casualties and a significant erosion of humanitarian space. UNAMA recorded a total of 2,014 civilian casualties between 1 January and 30 November 2008. This figure represents an increase of over 41 per cent on the deaths recorded in the same period in 2007. This makes the 2008 civilian death toll the highest of any year since the end of major hostilities after the fall of the Taliban regime at the end of 2001. In addition, civilians have suffered from injury, destruction of property and loss of livelihood, displacement, and disruption of access to education, health care and other essential services.

14. Of the 2,014 casualties reported, 1,106 (55 per cent) were allegedly caused by insurgents, 795 (39 per cent) by pro-Government forces and the remaining 113 (6 per cent) could not be attributed to either of the parties because, for example, some civilians died as a result of crossfire or were killed by unexploded ordnance. The majority of civilian casualties occurred in the south of Afghanistan, but high casualty figures have also been reported in the south-eastern, eastern, central and western regions.

A. Anti-Government elements

15. A large proportion of the overall increase in civilian casualties is due to insurgent actions. While it appears that the majority of suicide attacks have been directed against military or government targets, attacks are frequently carried out in crowded civilian areas with an apparent disregard for the safety of non-combatants. Throughout 2008, insurgents have shown an increasing willingness to inflict harm on civilians in such attacks.

16. The tactics of anti-Government elements also involve the direct targeting of civilians. Threats, intimidation and violence directed against individuals seen to be linked to the Government or the international community have intensified throughout the year.

17. Victims of such tactics include doctors, teachers, students, tribal elders, civilian government employees, former police and military personnel, and labourers involved in public-interest construction work. In several instances women, especially those in public life, have been singled out for attack. Substantial evidence exists that tactics used by insurgents point to a systematic campaign of violence and intimidation. There were 227 reported assassinations by insurgents up to October 2008; many of these were public executions. In October 2008, for example, 27 unarmed passengers allegedly linked to the Afghan National Security Forces were executed by insurgents in an attack on a bus in Kandahar.

18. There is also an increasingly high number of reported abductions and of threats targeting individuals linked to the Government or the international community. Such incidents appear to be spreading into areas previously seen as relatively calm, such as the North. There have been reports of threats against personnel, and forced closure of facilities and services in both health and education sectors, affecting hundreds of thousands civilians, in particular women and children. This campaign of intimidation severely impacts on the civilian population beyond those specifically targeted, instilling widespread fear and insecurity.

B. International and national security forces

19. Civilian casualties attributable to the Government of Afghanistan and international security forces are almost 33 per cent higher than the 559 reported in the same period in 2007. This increase occurred notwithstanding various measures to reduce the impact of the conflict on civilians, including internal as well as independent external investigations, after-action reviews, and the creation of mechanisms for reviewing trends and reducing the impact of war on civilians. Air attacks remain by far the most deadly tactic used by pro-Government forces. There is an urgent need to improve overall accountability procedures and the pro-Government forces' response to incidents of civilian casualties.

20. Air strikes present a particular threat to civilians unable to leave their homes and villages when fighting breaks out. There have been several high-profile incidents in which air strikes supporting combat operations by national and international forces led to a large number of dead civilians including numerous women and children. One such air strike in Shindand district in Herat Province in August 2008 resulted, reportedly, in 92 civilian casualties, including 62 children. In July 2008, an air strike on a wedding party resulted in 47 dead including 30 children, the majority of them girls. In November 2008 an air strike in Shah Wali Kot of Kandahar Province killed some 35 civilians and injured a further 37.

21. Practices regarding search-and-seizure operations, including night-time raids, have to some extent been adjusted to address repeatedly voiced concerns. Yet, serious issues remain, in particular regarding a number of joint Afghan and international operations in which excessive use of force has allegedly involved severe misconduct and in some cases resulted in the deaths of civilians.

C. Humanitarian access

22. As the conflict has intensified, humanitarian space has shrunk considerably. Large parts of the South, East and Central regions of Afghanistan are described in military circles as an "extreme risk" or a "hostile environment". Aid organizations and their staff have been subjected to a growing number of direct attacks, threats and intimidation.

23. Until the end of October 2008, 130 aid workers (124 national, 6 international) were kidnapped and a total of 38 aid workers were killed. Some highly publicized incidents have included an ambush on an International Rescue Committee vehicle in Logar Province in August 2008 in which three female international aid workers and their Afghan driver died and

for which the Taliban claimed responsibility. In September 2008, there was a suicide attack on a United Nations convoy in Spin Boldak in which two World Health Organization doctors involved in the polio-eradication campaign and one UNAMA driver were killed.

24. Insurgents have also targeted private transport companies and construction workers. According to the Agency Coordinating Body for Afghan Relief, an umbrella group of non-governmental organizations, the situation has “forced many aid agencies to restrict the scale and scope of their development and humanitarian operations”. This effectively means that women and children as well as vulnerable people in need of assistance are unable to realize their right to receive life-saving humanitarian support and basic social services, including health and education in particular for girls. In this regard, it is essential to clarify the scale and nature of the humanitarian case load in order to identify those who are most in need of assistance.

D. Conflict-related detention

25. The situation of persons arrested and detained in relation with the conflict remains of concern, in particular in view of the legal uncertainties regarding the basis for their continued detention. Detention of persons by international military forces in their operations is governed by the following rules: they may hold detainees for only 96 hours; the International Committee of the Red Cross must be informed; after 96 hours, detainees are to be either released or transferred to the Afghan authorities, generally, the National Department of Security (NDS). Some countries have signed Memorandums of Understanding (MoUs) with the Government regulating the transfer of such detainees and have obtained diplomatic assurances regarding their treatment, including that no transferee will be subject to the death penalty. The MoUs are not identical, but all provide for diplomatic representatives of that country, the Afghan Independent Human Rights Commission (AIHRC) and the International Committee of the Red Cross (ICRC) to have access to transferred detainees. There is however little information on the conditions and treatment of such detainees. NDS continues to operate without a public legal framework clearly defining its powers of investigation, arrest and detention, and rules applicable to its detention facilities. UNAMA has received complaints from individuals previously detained by NDS that they were tortured. The treatment of detainees by NDS, including those transferred from international military forces’ control, raises questions concerning responsibility of the relevant troop contributing countries under principles of international humanitarian and human rights law.

26. Individuals detained by Operation Enduring Freedom are held in a detention facility in Bagram Airbase governed by United States Department of Defense Directives. Detainees have no right to legal counsel or to trial before a court established by law and their status as combatants is to be determined by the Enemy Combatant Review Board. If qualified as an “enemy combatant”, detainees can only be released through the National Reconciliation Programme, transferred to the Ministry of Defense for prosecution by the Government of Afghanistan. Nationals of third countries are allegedly transferred to Guantánamo Bay Naval Base. Some individuals have reportedly been in detention at Bagram for as long as five years and some have allegedly been subjected to torture. According to former detainees at Bagram, there are approximately 630 detainees held there. ICRC has access to detainees, while UNAMA does not. At the end of 2008, Bagram authorities agreed to permit visitation rights to the relatives of certain detainees.

IV. DISCRIMINATION

27. Equal rights for women and men are enshrined in the Constitution of Afghanistan which, moreover, obliges the Government to respect international human rights laws and standards, including its obligations under the Convention on the Elimination of All Forms of Discrimination against Women ratified in 2003.

28. A National Action Plan for the Women of Afghanistan (NAPWA) was adopted in May 2008. Its implementation is considered an important benchmark for the promotion of gender equality within the 2006 Afghanistan Compact. ANDS recognizes gender as a cross-cutting issue and seeks to establish “greater gender equality by eliminating discrimination”. The reduction of women’s vulnerability to violence in both domestic and public life, and improved access to gender sensitive justice systems are key objectives of the ANDS.

A. Violence against women and access to justice

29. The Government is failing to adequately protect the rights of women in Afghanistan despite constitutional guarantees and its international obligations. While women have made important advances in the spheres of education, employment and political participation in the post-Taliban regime years, they continue to confront discriminatory laws, attitudes and practices. Of particular concern is the long history of violence against women and girls which impacts on their private and public lives. This violence is widespread and deeply rooted in conservative religious and traditional values in Afghan society whereby women’s second-class status is perpetuated as a result of systemic and systematic discrimination. Violence is tolerated or condoned within the family and community, within traditional and religious leadership circles as well as the formal and informal justice systems. The plight of women is exacerbated by growing lawlessness that can be attributed, partly, to the pervasive climate of impunity.

30. Violence against women and children and harmful traditional practices manifest themselves in various forms, such as rape, “honour killings”, early and forced marriage, sexual slavery (in particular when girls are given away in marriage to settle family debts or disputes), sexual abuse in detention, and female victims of violence criminalized by the justice system. Much of this violence is perpetrated within the family; however, local power-brokers, the formal and traditional justice systems, the police and prison authorities also play their part in reinforcing social control over women and in condoning such violence.

31. The rape of women and children remains widespread though its true extent is concealed by underreporting. Most perpetrators continue to go unpunished. Nevertheless, there are signs of increasing willingness on the part of victims to report rape, and of the authorities to investigate and prosecute some cases. A number of high-profile cases during 2008 again brought the problem of rape to public attention; this may contribute to removing the social stigma attached to rape and the problems faced by rape victims. In August 2008 the President called for “rapists to face the country’s most severe punishment”. This followed public outrage and demands for justice after a 12-year-old girl was raped in Sari Pul province. In this particular instance, an official inquiry led to the dismissal of several officials from their posts. Around the same time,

however, it came to light that two men, convicted by the Supreme Court of the gang rape in 2005 of a woman in Samangan province, had been released under a presidential pardon in April 2008. UNAMA expressed its grave concern that this pardon would send the negative message that perpetrators of violent crimes against women would not be held accountable.

32. Female victims of violence continue to have limited access to justice and effective redress mechanisms. Customary justice systems are only accessed by women accompanied by a male relative. The formal law enforcement and judicial systems still lack trained and qualified female officials in the police, courts and the legal profession. Services such as legal aid, social work, counselling and shelters are often inadequate. Women and girls continue to be prosecuted and detained for acts which do not constitute crimes under Afghan law. Thus, victims of sexual abuse find themselves criminalized under the offence of *zina* (consensual sex outside marriage) and victims of forced marriage are often prosecuted for the offence of “running away”. Failure to develop and implement appropriate legislation and policies to protect victims results in systematic re-victimization in the justice system. While some children and women are taken into custody for their alleged protection, it is apparent that there is no procedure for addressing these cases and for ensuring that the deprivation of liberty is used as last resort. Corruption has been cited as a further obstacle to obtaining justice, such as the influence of local power brokers or the payment of bribes by perpetrators to evade prosecution. Reform of the criminal justice system is therefore vital if the legal framework for protecting the rights of women is to be strengthened.

B. Threats to women in public life

33. Threats and intimidation against women in public life or who work outside the home have seen a dramatic increase. Most employment opportunities for women are found in government and international organizations, where they are increasingly targeted by anti-Government elements and to a lesser extent by their own families or communities as well as male colleagues. Department of Women’s Affairs representatives, members of the National Assembly and Senate as well as Provincial Councils, police, lawyers and journalists, and women working for national and international NGOs, have all reported harassment, including death-threat letters and phone calls. While it appears that different elements of the armed opposition are chiefly responsible for such attacks, it is not always clear whether women are specifically targeted as such, or as part of a more general campaign of intimidation against those working for the Government and international community or who are in favour of women’s rights. Many women in public life have been forced to curtail their activities or abandon their jobs, lacking confidence that the authorities are able or willing to provide them with protection. The assassination of the most prominent national female senior police officer, in Kandahar in September 2008, underscores the tremendous risks faced by women in public life.

C. Minority groups

34. The Constitution recognizes the principle that no individual or group should be discriminated against on the basis of their sex, ethnicity, tribe, religion or language. Afghanistan has four major ethnic groups: Pashtun, Hazara (Shia minority), Tajik and Uzbek, in addition to a myriad of other minorities based on tribal, linguistic and cultural differences, as well as small Hindu and Sikh religious minorities.

35. The Kuchis, or nomads, whose population is estimated at over 5 million by the Independent Directorate for the Affairs of the Kuchis (IDAK), are a social minority that has faced enduring discrimination. Their traditional livelihood is nomadic herding, although many now lead a semi-nomadic existence or have settled in communities. Some of the main challenges faced by Kuchis include access to pasture land, and basic services such as health care, education and employment. It is understood that in some provinces they have also been denied identity cards by the local authorities.

36. The rights of Kuchis are guaranteed under article 14 of the Constitution which obliges the Government to implement effective programmes to “improve economic, social and living conditions” of the Kuchis and to adopt measures for the “provision of housing and distribution of public estates to deserving citizens”. However, IDAK estimates that only 30 per cent of Kuchis have received their identity cards and are thus registered as citizens. Kuchis have been allocated 10 seats (7 for men and 3 for women) in the National Assembly (as they are predominantly Pashtun, this is also seen as benefiting one group with a higher percentage of seats). Without citizenship, the majority is unable to register to vote. A third measure, a 2007 Presidential Decree, granted the Kuchis the right to acquire 10 per cent of municipal housing and it allocated land to settled Kuchi communities. The slow and patchy implementation of this policy points to the gap between legal guarantees and their accomplishment.

37. The disruption of their nomadic lifestyle through conflict and drought, as well as a lack of clear government policy on land tenure and pasture rights, has brought the Kuchis into conflict with settled communities over access to land and resources. The Government has been unable to resolve a long-standing dispute between the Kuchis and settled Hazara populations over access to pasture lands in parts of the Central Region and Central Highlands. This year again witnessed violent clashes between the two groups in Behsud district of Maidan Wardak province, which, according to a joint Office of the United Nations High Commissioner for Refugees (UNHCR)-UNAMA mission, resulted in at least 23 deaths, the displacement of more than 6,000 families and destruction to property, which for the first time included mosques. These figures exclude victims among the Kuchis.

V. IMPUNITY

A. Transitional justice

38. Re-establishing the rule of law and ending impunity for past crimes remain crucial to combating a deeply entrenched culture of impunity that, in turn, is essential to securing a just and lasting peace. Individuals suspected of having committed gross human rights violations have still not been held to account and quite a number hold and continue to be appointed to high-ranking positions of authority, both at the central and local level. Not only is this a violation of Afghanistan’s international obligation to fight against impunity for serious international crimes, it also compromises public confidence in the Government and its international partners, undermines the legitimacy of public institutions, in particular law enforcement and judicial, and reinforces the prevailing impunity for human rights violations.

39. The Action Plan on Peace, Reconciliation and Justice adopted in 2005 represented the broad framework for addressing the past and building a society based on the rule of law. Its time frame indicated that it would meet its objectives by the end of 2008. The Action Plan has not

been implemented due to a lack of political support and willingness, on the part of both the Government and the international community, to address accountability as a core priority in the overall project to transform Afghanistan.

40. Serious concerns remain with respect to the Parliament's approval of the National Reconciliation Charter in 2007 which called on all parties, including the armed opposition, to strive towards national reconciliation. It offered immunity from prosecution to all those endorsing the initiative. This move perilously undermined transitional justice process objectives by denying victims their right to truth and reparation and by shielding perpetrators from accountability and appropriate forms of punishment.

41. A further concern is that the voice of Afghan civil society and of human rights organizations regarding the future of transitional justice in the country has been silenced through threats and harassment.

42. OHCHR has worked with UNAMA and Afghan partners on transitional justice issues. An extensive public-awareness campaign and a theatre project portraying the plight of victims was carried out in several provinces during 2008, in collaboration with the AIHRC. UNAMA produced a video based on the theatre production which was broadcast on Human Rights and Remembrance Day in Afghanistan.

43. Measures were taken to strengthen domestic forensic expertise in the investigation and preservation of mass grave sites. In early December 2008, the remains of the late President Daud Khan and 16 members of his family were officially identified, as noted by the Minister of Public Health. Concerns have been expressed that mass grave sites in the Dasht-i-lali area near Shiberghan were tampered with and material evidence destroyed. All measures must be taken so that all mass grave sites are secured without delay. Establishing the truth about the past, in accordance with international standards, remains of crucial importance.

B. Impunity and abuse of power

44. The failure to prosecute perpetrators of past crimes and continuing abuses seriously undermines the legitimacy of Afghan law enforcement and judicial institutions and has eroded the people's confidence in the rule of law. This has ultimately paved the way to the current situation in which impunity prevails.

45. UNAMA continues to receive complaints concerning the failure of the police to conduct proper investigations and to act impartially and independently with regard to human rights allegations. Similarly, prosecutors and judges are often reluctant to address cases that confront traditional practices or powerful local interests. Certain categories of citizens, such as girls, women and the poor, are more often than not excluded from the formal justice system, as judicial authorities do not give weight to their claims and systematically side with the power-brokers. Thus, the presumption of innocence and procedural fair trial requirements are often disrespected.

46. Rampant and institutionalized corruption, combined with weak internal oversight and discipline mechanisms, impede the ability of the judiciary to perform its functions independently and efficiently. The lack of properly trained personnel and material resources further limits their capacity to carry out their mandated functions. Factors such as institutions which do not abide by

the law - particularly in rural and war-affected areas, the ominous influence of warlords, local commanders and other local power-holders, and failure to ensure a secure environment for courts, victims and witnesses continue to undermine the independence and impartiality of the judicial authorities.

47. Traditional dispute resolution mechanisms (such as *jirga* and *shura*), though not recognized in the Constitution, are widely resorted to, especially in rural areas; this is due, in part, to limited access to, and confidence in, formal justice institutions. Although there are positive elements in traditional mechanisms in terms of community cohesion and accessibility, there are serious concerns with respect to due-process requirements, in particular for women, children and vulnerable groups.

48. Nevertheless, some positive developments have been noted, such as the drafting of a Bill on the Elimination of Violence against Women, in which the Ministry of Women's Affairs and civil society organizations have been involved. The Ministry of Justice's recent initiative to establish a State-funded legal aid system and the establishment of the Bar Association represent another important step forward. These measures should enhance the safeguarding of rights of defendants and the provision of legal representation for the most vulnerable.

49. Addressing impunity and further strengthening the rule of law is a priority in Afghanistan. There is a need for mechanisms, such as the advisory panel for appointments envisaged in the Action Plan for Peace, Justice and Reconciliation, to prevent those accused of having committed serious crimes from obtaining senior government posts. The forthcoming elections also present an opportunity for Afghans to take further steps to prevent persons accused of having committed serious offences under domestic and international law contesting seats in the Parliament.

VI. DEFICITS IN DEMOCRACY

A. Freedom of expression

50. The ability of media actors, civil society groups and other Afghan citizens to freely express their opinions and thoughts came under attack across Afghanistan throughout 2008. National and provincial government officials, anti-Government elements and different power-brokers all sought to restrict freedom of expression. Police and prosecutors generally proved ineffective at protecting freedom of expression given their apparent collusion with those in positions of power. The judiciary has not consistently provided protection, and, at times, has also been a factor in restricting the right to express opinions. Freedom of expression is often presented as threatening existing power structures, national security interests or Islamic values. Afghanistan's increasingly repressive and closed society has triggered self-censorship throughout the country and stifled criticism and debate.

51. Threats, intimidation and attacks persisted against journalists and others expressing opinions deemed unwelcome, as did attempts to stifle critical reporting on corruption and other issues deemed "sensitive". For instance, an Afghan radio-television presenter was dismissed by the Ministry of Information and Culture in May 2008 after he stated on television that freedom

of expression only existed on paper and that the media was a mere tool of the powerful. In July 2008, the National Directorate of Security (NDS) arrested and detained a television journalist who aired a critical review of the President's administration. The journalist eventually sought asylum abroad given fears that his life was under threat. Women journalists also continue to be specifically targeted.

52. Freedom of the media was also under significant threat in the areas affected by armed conflict. Kidnappings and killings of journalists continued. In June 2008, an Afghan BBC journalist working in Helmand province was abducted and killed. Though the Taliban claimed responsibility for the incident, the killing may have been linked to investigations into corruption. The killing led to 10 journalists leaving Helmand province.

53. A prominent case this year was that of Sayed Parveiz Kambashkh, a journalism student sentenced to death on the charge of insulting and disavowing Islam in January 2008. He was alleged to have downloaded, from the Internet, an article concerned with the status and rights of women, in the context of Islam, and disseminating this, with added commentary, to other students. The Appeals Court reduced his sentence to 20 years in October 2008, but upheld the conviction. In addition to the severity of the sentence, there are concerns over apparent irregularities in the conduct of the trial at both primary and appeal levels.

54. There are strong concerns that in the months leading up to the 2009 elections, the media will continue to self-censor or be pressured into broadcasting only views favourable to a certain political line and that candidates and citizens will not be permitted to fully express their opinions due to threats, intimidations and attacks. Setbacks to the media, and efforts to maintain freedom of expression, are of major concern. This is additionally regrettable given that the media, in recent years, had been flourishing.

B. Elections

55. Elections for President, Parliament and Provincial Councils are scheduled to take place in 2009. In anticipation, a staggered exercise to update voter registration was scheduled from October 2008 to March 2009 throughout the country.

56. An area of particular concern is the ability of women to exercise their right to participate in public life, which includes standing for office, supporting candidates, and voting. During the voter registration process, some women were unable to update or register to vote because registration centres were located almost exclusively in district centres. Cultural practices in many conservative and conflict-affected areas restricted women's freedom of movement. During voting, such problems are expected to be mitigated by having more polling locations, though many women will still not be able to participate due to restrictions on movement and lack of awareness of their rights. Adequate numbers of female staff to undertake outreach and civic education activities and to run women's voting centres are still lacking. Whether women will be able to stand for office in comparable numbers to the 2005 election cycle remains to be seen; increasing insecurity and renewed religious cultural pressure could reduce the number of women willing to participate.

57. Increased insecurity and direct hostility by anti-Government elements towards the electoral process is another worrying factor. In September 2008, the Taliban publicly stated its opposition to the electoral process. They were responsible for attacks on voter registration sites and personnel as well as destruction of voter registration materials during the registration phase. It is feared that candidates, their supporters, polling stations and electoral staff might be targeted by armed opposition elements. During the voter registration process, a number of voter registration centres were reportedly unable to open due to insecurity.

58. Careful consideration should be given to the vetting of candidates and handling of elections-related complaints. Lessons should be learned from the previous elections, when vetting failed to meet the expectations of the Afghan people and the complaints mechanism was overwhelmed, particularly when it came to handling complaints of fraud and ballot tampering on election day. Ensuring the integrity and independence of the vetting and complaints processes is vital to creating an environment conducive to the free exercise of the right of all Afghans to participate in elections.

VII. INSTITUTIONAL CAPACITY

A. Administration of justice

59. In early 2008, the National Justice Sector Strategy (NJSS) and National Justice Programme were launched. Both call for a comprehensive, coordinated approach to building the justice sector and improving the administration of justice. A new Criminal Procedure Code is being drafted. The United Nations Office on Drug and Crimes and the United States Department of State's Justice Support Sector Program chair a drafting group which includes key government officials and justice sector actors. Strong emphasis has been placed on compliance with international human rights standards. It is important that many of the gaps in the current legal framework, such as the absence of the right to be brought promptly before a court to have the legality of the detention reviewed, are addressed in the new Code.

60. Nonetheless, these positive initiatives have yet to significantly change the realities on the ground. Arbitrary arrest and detention persist, and fair trial standards and time limits continue to be breached. Furthermore, the justice system is under-resourced and its personnel under-qualified. Few defence counsels are available throughout the country, especially outside large urban centres. Similarly, prosecutors, and judges are said to be underrepresented. Despite several initiatives at district level, insufficient coordination between police, prosecutors, courts and detention facilities authorities continue to hamper the efficient administration of justice. Conditions in detention facilities have not noticeably improved and largely fail to meet international standards. Finally, Afghans generally remain unaware of their rights with respect to judicial processes and, when aware of their entitlements, are often not in a position to claim them particularly because of the shortage of defence counsels.

61. The current lack of confidence in the formal justice system's ability to deliver justice fairly and independently means that it is not trusted by Afghans to adjudicate disputes. As a result, the informal and traditional justice mechanisms continue to enjoy a higher level of confidence at the community level. There are concerns about these mechanisms' ability to deliver justice in a fair manner, and in particular to equally protect the rights of women, children and marginalized groups.

62. Insecurity has further hindered the development of the formal justice system. In conflict-affected areas, formal justice institutions are becoming increasingly inaccessible and dysfunctional due to frequent attacks by anti-Government elements. Consequently, in some rural districts where formal justice institutions are no longer present, the Taliban has reportedly been strengthened and is allegedly operating parallel judicial systems.

63. The death penalty continues to be applied and carried out in Afghanistan. In November 2008, 16 men were executed following a review by a special commission and the approval of the President. Many Afghans, including prominent public figures, strongly support the death penalty in the belief that it serves as a deterrent in the face of growing criminality. Given my grave concern that law enforcement and judicial systems fall short of international standards, I requested the President to halt any further executions and to rejoin the growing international consensus for a moratorium on the death penalty.

B. The National Human Rights Institution

64. In April 2008, a Statement of Principles was signed between the Afghan Independent Human Rights Commission and several United Nations entities in Afghanistan including UNAMA, OHCHR, UNHCR, the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM). Its main objective is to further enhance the capacity and performance of AIHRC through more coordinated United Nations support. By working more closely and in a complementary manner, it is expected that an effective human rights protection system based on national capacities will be developed in Afghanistan.

65. The AIHRC maintained its "A" status accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Previous concerns expressed by the ICC subcommittee remain, including inadequate and inconsistent financial support received by the AIHRC from the Government as well as the selection and appointment of Commissioners, a process that should ensure the pluralism and independence of the institution.

VIII. TECHNICAL COOPERATION

66. As part of its support to the ANDS process, the United Nations Country Team (UNCT) in Afghanistan commenced its preparation of the 2010-2013 United Nations Development Assistance Framework (UNDAF) in July 2008 after the launch, a month before, of the ANDS, which will serve as the United Nations Common Country Assessment (CCA). The full draft of UNDAF has identified three priority areas for the United Nations in Afghanistan: fostering good governance, peace and stability; sustainable livelihoods for women and men - agriculture, food security and income generation; and basic social services - education and health. Throughout the UNDAF process, OHCHR is assisting partners in applying HRBA to socio-economic development.

67. In the wake of the successful media programming joint project between OHCHR and the United Nations Development Programme's (UNDP) National Programme on Action for

Disability (NPAD), which was concluded in 2007, my Office provided a grant to a local disabled people's organization (DPO) to carry on the media programming project and extend it further to television programming and broadcasting into the more remote provinces of Afghanistan. In addition, early 2008 saw the completion of projects undertaken by three DPOs which were given grants under the fifth phase of the Assisting Communities Together scheme established jointly by OHCHR and UNDP.

68. The Government has put in place a Steering Committee to ensure the widest consultations with all relevant government stakeholders and civil society in preparation of its report under the Human Rights Council's universal periodic review scheduled for February 2009.

IX. CONCLUSION

69. Throughout 2008, efforts to transform Afghan society were seriously undermined by the intensification of the armed conflict, growing lawlessness, widespread abuse of power, violence against women and their persistent marginalization, and a significant clampdown on freedom of expression. These worrying trends are exacerbated by the lack of political will to address these deeply engrained problems. Impunity prevails. Abusive structures of society and the leeway given to traditional power brokers have further limited prospects for the realization of human rights, in particular for vulnerable groups.

70. It is widely recognized that the conflict cannot be overcome by military means alone. But the call for an integrated civilian-led strategy to ensure Afghanistan's long-term peace and security, opening the way to development, has yet to yield concrete results. The human rights challenges identified in this report need to be addressed rapidly and in a systematic and comprehensive manner. Delivering basic services cannot be dissociated from the imperative to hold accountable those in positions of power who violate human rights; the deep-rooted discrimination against and marginalization of women and girls and of minorities cannot be separated from alleviating the appalling levels of poverty. More should be done to strengthen national institutions' capacity to effectively deliver on their human rights obligations. Ultimately, this is the responsibility of the Government of Afghanistan but, in the Afghan context, the international community has particular responsibility to assist the Afghan authorities deliver on its commitments and to support civil society actors.

X. RECOMMENDATIONS

71. **The High Commissioner recommends that:**

(a) Further efforts should be made to integrate a human rights perspective into the implementation phase of poverty reduction and development strategies, both at the central and provincial levels, in particular with a view to addressing the situation of groups who face persistent discrimination. The implementation of the ANDS should be consistent with, and informed by, the Government of Afghanistan's national and international human rights obligations. These obligations must be expressly referred to in the ANDS' operationalization and in related monitoring and evaluation activities. Accordingly, the requisite budgetary allocation must be dedicated to ensure that groups marginalized by

discriminatory practices are prioritized. Means to collect and analyse disaggregated data to measure progress in poverty reduction for groups vulnerable to discrimination must accompany measures to ensure their participation in processes ostensibly designed for their benefit. The Government of Afghanistan, with the support of the international community, should ensure the prompt establishment of the proposed Human Rights Unit in the Ministry of Justice to coordinate these efforts, and dedicate adequate resources to ensure its long-term sustainability;

(b) Pro-Government forces and anti-Government elements should ensure greater respect for the protection of civilians, including women and children. Investigations and, where appropriate, prosecutions should be carried out swiftly and independently. National and international security forces must enhance their efforts to establish coherent and transparent systems of accountability, including with respect to conflict-related detention. Efforts should be made to influence insurgents to cease attacks against civilian targets and to enable the humanitarian community to regain and maintain critical humanitarian space;

(c) The Government of Afghanistan should actively support and promote the National Action Plan for Women in Afghanistan (NAPWA) together with the ANDS Gender-Equity Cross-Cutting Strategy to ensure that these are mainstreamed into the work of the Government. Current legal reform initiatives must incorporate international standards to provide greater protection to women and girls against all forms of violence, in both the private and public spheres, and must rapidly be translated into policies and concrete programmes. In the upcoming electoral period, specific measures should be taken to ensure the full participation of women in a safe and dignified manner;

(d) The Government of Afghanistan and its international partners must demonstrate their commitment to addressing impunity as a matter of priority. Upholding the rule of law and delivering justice is a key condition for any democratic society. It will also help foster greater confidence by the Afghan population in its public institutions. The independence and impartiality of law enforcement and judicial authorities must be guaranteed, and the necessary resources must be put at their disposal so that they can deliver justice efficiently and professionally. The Government and the international community should support civil society, in particular vis-à-vis initiatives to establish the truth with regard to the past, including through the forensic investigation of mass graves, and to promote reconciliation. They should recommit to the transitional justice process with special emphasis on assisting and strengthening government institutions, in particular through institutional reforms and fair and transparent appointments procedures;

(e) The Government of Afghanistan and the international community must nurture and protect civil society, women in public positions and media representatives, as critical components of democratic institution-building. Ensuring the integrity and independence of the upcoming electoral processes, including with respect to vetting of candidates is of vital importance. This will help create an environment that is conducive to Afghans being able to exercise freely their rights to receive and impart political and other information and to participate in elections;

(f) AIHRC should continue its vigilant role in monitoring, promoting and protecting human rights with the support of the international community. As indicated by the International Coordination Committee of National Human Rights Institutions, the Government of Afghanistan must earmark a minimum allocation in its national budget for the AIHRC and ensure that legislation is in place to protect its independence;

(g) The Government of Afghanistan is strongly urged to reinstate its moratorium on the death penalty, in particular in recognition of the shortcomings of the criminal justice system, and to join the ever-growing community of States around the world which have opted for moratoriums on the death penalty.
