



The political conditions, the security and human rights situation in Afghanistan

***Report on fact-finding mission
to Kabul, Afghanistan***

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The Danish Immigration Service
Ryesgade 53
2100 Copenhagen Ø

Phone: +45 35 36 66 00
Web: www.udlst.dk
E-mail: dok@udlst.dk

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1. Introduction

Afghanistan continues being one of the countries from which most asylum seekers come to Denmark. In 2003 a total of 664 (six hundred and sixty-four) Afghan citizens were registered as asylum seekers in Denmark. At the same time, the Danish Immigration Service is required to decide whether the large number of Afghan citizens, who in the meantime have received asylum residence permits in Denmark should have their residence permits extended. Against this background it was decided to carry out a fact-finding mission to Afghanistan with the aim of obtaining up-to-date information for use in assessing asylum claims and the extension of asylum residence permits for Afghan citizens.

The Foreign Ministry and Danish Refugee Council had previously carried out four missions to Afghanistan: November 1997, January 2001 and May and October 2002 respectively.

The purpose of the fact-finding mission was to collect updated information regarding the political conditions, the security situation and the human rights situation in the country since the previous fact-finding mission 18 months ago. An additional purpose was to obtain information on the status of reconstruction in Afghanistan.

The delegation consisted of Danish Refugee Council and the Danish Immigration Service. The mission took place between 20th March and 2nd April 2004. The delegation only visited the Afghan capital, Kabul.

The selection of sources was based on the competence and knowledge of the source and its ability to cover the themes under investigation. An attempt was made to meet with a wide number of sources in order to ensure that the points of view from independent international organizations, local organizations and representatives of foreign embassies and from the Afghan government were included in the report.

Sources were chosen against the experience of the Danish Refugee Council and those the Danish Immigration Service had obtained from earlier fact finding missions to Afghanistan. Additionally, the Danish Institute for Human Rights and the Office of the Representative of Denmark to Afghanistan in Kabul were consulted. The number of the sources that the mission consulted was selected with regards to the complexity of the topics and the time constraint.

The information given by the sources has been reproduced as literally as possible in the report. Each source is presented at the end of the report.

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1.1 Recent political and security related development

Between 13 December 2003 and 4 January 2004 a gathering of 502 delegates the so-called “Constitutional Loya Jirga” was held in Afghanistan. The purpose of the meeting was to agree on a new constitution¹, which was an important step in the Bonn agreement².

The new constitution provides guidelines for a political system with a strong president and with a parliamentary system with two chambers. Furthermore, the new constitution provides the possibility for the minorities to have their language recognized as the official language in the area where the majority of the population speaks the particular language. This is regarded as an improvement of the minority’s position³.

It follows from the constitution that men and women should receive equal treatment, and it is guaranteed that at least 25% of the members of the lower chamber should be women. It also appears that the laws should be in agreement with the faith and guidelines of Islam⁴.

At the end of March 2004, President Hamid Karzai, declared that combined presidential and parliamentary elections would be held in September 2004⁵. As of 1st April 2004, 1.8 million Afghans out of approximately 10 million persons had registered to vote. Approximately 29% of the registered persons were women⁶.

¹ BBC monitoring *Global Newswire South Asia Political File 14/12/2003*, United Nations General Assembly Security Council, *The Situation in Afghanistan and its implications for international peace and security*, 19 March 2004. “Jirga” is the traditional designation for the legislative council of the elders. The council is called the “Loya Jirga” when it is a large meeting of representatives from the society.

² The Bonn Agreement was agreed upon on 5 December 2001 by 23 Afghans, they included representatives for the Northern Alliance and other representatives of the Afghan people. It was agreed upon as a result of the so-called Bonn Negotiations, which were led by the UN General Secretary’s special representative in Afghanistan. The Bonn Agreement gives guidelines on how Afghanistan should be ruled in the period until it is possible to establish a government. Important parts of the Bonn Agreement are: that a new constitution has to be established and that free elections should be held. Other important aspects of the agreement are the reconstruction and reforms of the civil administration and the legal system, and the establishment of a national Afghan armed force and police force. It also appears from the Bonn Agreement that independent armed groups in Afghanistan should be demobilised and, if possible, be integrated into the national Afghan army. Another important aspect of the Bonn Agreement is to establish an independent Afghan human rights commission.

³ The Danish Ministry of Foreign Affairs, *Assessment of the agreed constitution and the Loya Jirga process in Afghanistan*, 7 January 2004

⁴ United Nations General Assembly Security Council, *The Situation in Afghanistan and its implications for international peace and security*, 19 March 2004

⁵ BBC-News, *Afghan poll delayed until September*, 28/03/2004

⁶ UNHCR, *Return Information Update 1-15 April 2004*, UNHCR OCM Afghanistan

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The security situation in Afghanistan deteriorated markedly during springtime in 2003. In April, an international employee of the International Red Cross (ICRC) was killed. Since then a number of emergency workers and government employees have been direct target by groups hostile to the government. Due to the deteriorating security situation, UN organizations and other emergency organizations have been forced to abandon their work in large parts of southern and South Eastern Afghanistan.

An international employee from the United Nation High Commissioner for Refugees (UNHCR) was killed in the Ghazni Province in November 2003, after which the UNHCR suspended its repatriation activities from Pakistan. Repatriations from Pakistan were first recommenced on 1 March 2004⁷. By 7 May 2004, roughly 1 million refugees had returned from Pakistan and roughly 700,000 had returned from Iran⁸.

In addition, during 2003 and 2004 there were several local clashes between groups supporting different warlords in various parts of the country.

There was a clash in the first week of April 2004 in Faryab Province and Mazar-e-Sharif between troops loyal to the Uzbek warlord General Abdul Rashid Dostum and troops loyal to the Tadjik warlord Mohammed Atta⁹ (see section 3.2.4 regarding northern and north western Afghanistan).

In Herat, which is in the western part of the country, and which for long had been characterized as one of the more stable areas of the country, skirmishes broke out in March 2004 between troops loyal to Herat's governor Ismail Khan, and troops loyal to the commander chosen by the government, General Zahir. The fights broke out when the governor's son and Minister for Aviation and Tourism, Mirwais Siddiq was killed (see section 3.2.5).

The American-led coalition forces are continuing their offensive against the Taliban and Al-Qaeda forces in the southern and South Western parts of the country¹⁰.

In August 2003, NATO took over the command of the International Safety Assistance Force (ISAF). In October 2003, ISAF received the mandate to install forces outside Kabul. For the time being, ISAF only controls one so-called Provisional Reconstruction Team (PRT) outside Kabul. It is expected that ISAF will take over three PRTs in

⁷ UNHCR, resumes repatriation from Pakistan to Afghanistan, UNHCR Briefing Notes 9/03/2004

⁸ UNHCR, Afghanistan, UNHCR briefing Notes 07/05/2004

⁹ IRIN Asia English reports 4/12/2004, General Abdul Rashid Dostum is the leader of the Junbesh-e-Milli party, which is dominated by Uzbeks. Mohammed Atta is a well-known commander belonging to the Jamiat-e-Islami party dominated by Tadjiks.

¹⁰ The American-led coalition forces led the war against the Taliban, and are continuing to fight against presumed Al-Qaeda and Taliban supporters in Afghanistan.

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Northern Afghanistan in the near future and that ISAF will play a securing role related to the preparations and holding of the coming elections in September (see section 3.1.1, ISAF's mandate and Provincial Reconstruction Teams)

During the last eighteen months, the production, trade and sale of opium in Afghanistan have grown markedly. This is seen as a considerable challenge to the country's development. It now appears that the opium production will be of almost 6,000 ton in 2004 thus reaching the same level as the production before the Taliban era. At the end of March 2004, the government began an opium eradication campaign in collaboration with the United Kingdom and the United States.

1.2 Abbreviations

AAWU	All Afghan Women Union
ACBAR	Agency Co-ordinating Body for Afghan Relief
AIHRC	Afghan Independent Human Rights Commission
ANA	Afghan National Army
CCA	Co-operation Centre for Afghanistan
DACAAR	Danish Committee for Aid to Afghan Refugees
EU	European Union
UN	United Nations
ICG	International Crisis Group
ICRC	International Committee for Red Cross
IOM	International Organization for Migration
ISAF	International Security Assistance Force
KHAD	Khidamat-i-Ittala'at-i-Dawlati (Ministry for State Security under the Communist government of Afghanistan)
MSF	Médecins sans Frontières
NGO	Non Governmental Organization
NSD	National Security Directorate
OHCHR	Office of the High Commissioner for Human Rights
PDPA	People's Democratic Party of Afghanistan
SCA	Swedish Committee for Afghanistan
PRT	Provincial Reconstruction Teams
UNAMA	United Nations Assistance Mission in Afghanistan
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization

2. Implementation of the new constitution and preparation of free elections

2.1 The Afghan Constitution

United Nations Assistance Mission in Afghanistan (UNAMA) stated that there were no serious security problems during the Constitutional Loya Jirga. There were local episodes, though related to the choice of delegates for the Constitutional Loya Jirga in which individuals were subject to pressure. According to the UNAMA there were less delegates in the Constitutional Loya Jirga from regions with security problems including Uruzgan Province in southern Afghanistan. However, participation from the southeast was good.

In connection with the Constitutional Loya Jirga, the UNAMA mentioned four points that should be noted:

- A constitution has been passed, which is adapted to the Afghan context and culture.
- During the political negotiations The Northern Alliance emerged as weakened, while the Pashtuns emerged as strengthened¹¹.
- The questions of ethnicity and language came markedly to the fore.
- President Karzai appeared strengthened.

The UNAMA was of the opinion that the immediate reaction to the passage of the Constitution was one of relief, even if the process left a kind of division within the government. The UNAMA now has a major task in preparing and organizing the coming elections in September 2004.

The International Crisis Group (ICG) like the UNAMA mentioned that the Tadjiks appeared divided during the Constitutional Loya Jirga. The Minister of Defence, Mohammed Qaseem Fahim supported President Karzai, while a group including among others Walli Massoud, who is Ahmad Shah Massoud's brother unsuccessfully tried to gather a majority against the constitution¹². This group also tried to woo General Dostum's. The Pashtuns appeared far more unified after the Constitutional Loya Jirga. The Royalists never managed to define their agenda clearly, and they finalized by backing up President Karzai¹³. On the basis of this, President Karzai managed to achieve a wide degree of support in favour of the constitution.

¹¹ The Northern Alliance is a group of predominantly ethnic Tadjiks, Uzbeks and Hazara factions, who fought together against the Taliban.

¹² Ahmad Shah Massoud was a military leader of the Northern Alliance. He was assassinated on 9th September 2001. He is now idolized in Afghanistan as a martyr of the war, and in many places his picture hangs side by side with the picture of President Hamid Karzai.

¹³ The Royalists are followers of the former King Zahir Shah and many of the royalists lived in exile with the king in Rome. The Royalists also took part in the Bonn negotiations.

2.2 Preparations for the elections

Several sources mentioned that it is a main determinant to Afghanistan how the holding of the elections in September will be carried out

The UNAMA mentioned that the implementation of free and fair elections is a very important part of the follow-up on the constitution. In this context, the source stressed that one of the main objectives of the coming elections is to ensure that they will be held in a trustworthy manner. This entails that different political parties and groups will be able to take part in the election without being exposed to harassment. According to the source the creation of good conditions for such free and fair elections depends partly on whether the Afghan civil administration will be sufficiently prepared and partly on the security situation in the country.

The UNAMA stressed that the adoption of the constitution has been a very important step in the right direction. Nevertheless, there continues to be no concrete policy or plan regarding the warlords. The UNAMA warned against not to believe, that the elections themselves would change the political situation and give the central government more power in the rural districts. The international community is pushing for the elections to be held as soon as possible, however, holding the elections without adequate preparations could mean that the elections, from the point of view of the local population, would appear untrustworthy.

The Norwegian Chargé d'Affaires pointed out that currently there are a number of provinces, particularly in southern and southeastern Afghanistan, where the security situation is so bad that it will be difficult to hold elections during the next six months.

The Danish Chargé d'Affaires added that the preparations for the elections have proceeded slowly. The source emphasized that it is of great significance for the political process in Afghanistan to what extent the elections are regarded as being free and fair by the Afghans.

2.3 The law of political parties and new political groups

The special representative of the European Union (EU) explained that although a new law of registration of political parties has been passed, the actual registration of political parties has been a rather slow process. According to the new law, parties connected to armed groups or militias cannot be registered. According to EU's representative, it is possible that problems will arise when some of the old political parties, which are connected to different mujaheddin groups wish to register, as the government will come under increased pressure in order to allow them to register. The source estimated that it would be more expedient if the law was used as a lever to compel political groups to disarm.

The source foresaw that a lot of small parties, some with the similar political programs, would stand for election. The source compared the situation in Afghanistan with other new democracies - and mentioned that a party called the National Unity Union,

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consisting of former Peoples Democratic Party of Afghanistan (PDPA) supporters has made an attempt to be registered but was not accepted.

The UNAMA explained that some former Jihadi parties had requested being exempted from registration and this had been discussed within the government¹⁴. The source took the view that the government will lose credibility and would seem unreliable if they exempted these Jihadi parties from registration.

The Afghan Minister of Justice explained that the majority of the law on elections had been passed and that the government is to pass the last part. The Ministry of Justice has received requests from many political parties who wish to register including former Jihadi parties. The sources explained that these parties could be registered if they are prepared to hand over their weapons. So far six parties have been approved. These are mainly intellectual parties formed by people who have returned to Afghanistan from the West (see list of parties registered, appendix 3).

The Minister of Justice explained that a former member of the central committee of the PDPA, Abdul Rashid Jalili leads one of the registered parties. The party was accepted due to its democratic party programme. Parties based on a communist ideology will not be registered.

¹⁴ Jihadi parties are political parties that are connected with mujaheddin groups.

3. The security situation

3.1 The general security situation

Most sources were of the opinion that the security situation, particularly for foreigners and for Afghans working for foreign nationals has become worse during the last 18 months.

The International Office for Migration (IOM) mentioned that the security situation got significantly worse in the middle of 2003. It has improved a little since then, but it is uncertain how the situation will develop during the next six months. There is always a risk that something may explode in a particular area. The source mentioned that an increasing number of Afghans are dissatisfied with the operations of the coalition forces in the southern and southeastern parts of Afghanistan. The source stressed that the preparations for the elections in September might lead to intensified instability.

The UNHCR mentioned that the security situation for people who support the government has become markedly worse since the beginning of 2003, when an employee from the ICRC was killed. Since then many aid workers have been the targets of attacks. The source found that the security situation has improved during the last two months but emphasized that it varies within each district, and that one should be aware of the fact that each district has its own specific power structure.

The EU Special Representative was of the opinion that the security situation had not changed significantly for the ordinary Afghan in the last eighteen months. The security situation for Afghans connected with foreign nationals however is not particularly good, especially outside Kabul where Taliban has increased their activities. The source stressed that there continues to be a complete lack of law and order throughout the country. The government does not control most provinces, which are ruled by powerful warlords. It is not only powerful warlords but also local commanders who use force and power against the civilians, for example in conflicts regarding private property.

The Norwegian Chargé d'Affaires found it problematic that areas with poor security experience little or no development. This increases dissatisfaction towards the government. The population in these areas is likely to turn against the government, which makes the security situation worse.

The Norwegian Chargé d'Affaires pointed out that the increase in opium cultivation and drug trafficking are factors, which undermine the country's security. There are strong political and financial powers involved, which will oppose against a reduction in the production of drugs. Opium is grown in 28 of 34 provinces. It is expected that 6000 tonnes of opium will be produced per year, meaning that the production will reach the same level as before the Taliban era. The opium eradication campaign can negatively influence the farmer's situation. Many of the opium farmers borrow money secured upon the expected harvest. If the farmer's crops are destroyed, poverty will increase enormously in the rural districts.

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The Danish Committee for Aid to Afghan Refugees (DACAAR) also mentioned that the security situation has got gradually worse since March 2003 when an international employee of the ICRC was killed. In May 2003 the Taliban leader, Mullah Omar published a decree that made aid organizations and allied local Afghans legitimate targets. This worsened the security situation for these groups. Other groups of civilians are to a lesser extent affected by the aggravated security situation. The organization has had to leave a number of provinces due to the aggravated security situation.

The Agency Coordinating Body for Afghan Relief (ACBAR) also mentioned that relief organizations and governmental authorities do not have access to parts of southern and southeastern areas. ACBAR explained that in areas with little security the local population has lost faith in the peace process because warlords are still in power, and because the central government does not respond to the situation.

ACBAR informed that the NGOs obtain security by creating networks with the local population through the local councils of elders (Shuras). The local population warns the NGOs if they become aware of any enemy activities or bomb attacks. In this way, NGOs do not have to enter into direct agreements with, or to get permission from warlords in order to work in a specific area.

3.1.1 The ISAF mandate and Provincial Reconstruction Teams

It appears from the Bonn Agreement, that the International Security Force (ISAF), until a national Afghan army is established, shall assure security within and around Kabul. The mandate of the force was extended on 13th October 2003 for the purpose of operating in other parts of the country. Provincial Reconstruction Teams (PRTs), which consist of small military and civilian units started as part of the coalition forces effort to ensure stability in the country. As of 19 March 2004 there were 11 PRTs in Afghanistan of which ten are part of the coalition forces. The PRT unit in Konduz is part of the ISAF. It is planned that the ISAF should take control over additional PRT units¹⁵.

The UNAMA stated that the ISAF still does not operate to any great extent outside Kabul, despite the fact that the number of peacekeeping forces in Afghanistan seems increased. According to the Danish Chargé d' Affaires in Afghanistan the ISAF has between 4000-5000 men.

The UNAMA informed that the mandate of the PRT units has never been clearly defined, and that PRT units operate in different ways. The PRT units can be divided into two groups: the northern group which has a stabilizing role within security, and the southern group which functions more as the military's "gentler hand". How well a PRT unit works depends on its resources, the local security situation, and to which extent importance is added to the security of the unit.

¹⁵ United Nations General Assembly Security Council, *The Situation in Afghanistan and its Implications for International Peace and Security*, 19 March 2000

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The source did not find that PRTs are the final solution to obtain increased security in Afghanistan. However, there are examples of PRTs improving safety standards in the areas in which they operate. The UNAMA mentioned as an example the British PRT in Mazar-e-Sharif and their work in maintaining the cease-fire among the contending parties. The source also mentioned the New Zealand PRT in Bamian, which has reduced pressure on the international aid community. The source underlined that it was positive that the PRT unit has separated its military and political activities. As an example of problems facing PRTs, the UNAMA mentioned the PRT unit in Asadabad, the provincial capital of Konar, which had to abandon its work, as it could not secure its own security.

The Danish Chargé d’Affaires in Afghanistan was also of the opinion that different PRT units deal with their tasks differently. The PRT units in southern and southeastern Afghanistan are mainly dealing with the implementation of rehabilitation projects, whereas other PRT units are primarily focused on improving the security situation to create a better context for the political and economic development. The source found that establishment of PRTs was a good solution for the country, even though it is not the optimal solution.

The Afghan Interior Ministry was of the opinion, that PRTs have had a positive influence on the development in the areas in which they operate especially in connection with the reconstruction of the country.

3.2 Security and the division of power in the different regions

3.2.1 Kabul

The UNAMA explained that the presence of the ISAF forces is the main reason for the relatively good security situation in Kabul.

The DACAAR mentioned that it is long time since there have been attacks directed against the civilian population in Kabul. The attacks that have taken place have been directed against the ISAF and other foreign players, for example the bombing of the ISAF in January 2004. The employees of the DACAAR live an almost normal life in Kabul and are free to travel around the city. They can, however, not go out during the night or visit places they do not know. Other international organizations have stricter security regulations for their employees than the DACAAR. The source mentioned that many of their local employees have returned to Afghanistan from Pakistan without their families. They do not want their families to return to Kabul due to the security situation, the cost of living and the level of crime.

The SCA informed that Kabul is a relatively peaceful city, and that the degree of crime is in the order one can expect in a city the size of Kabul. The source mentioned, though, that there has been bomb attacks in the city. The source found that the growth of the population in Kabul could decrease security situation considerably in the city.

3.2.2 The central areas

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The UNHCR explained, that two factions of the Hazara party, Hezb-e Wahdat, control the southern part of the central areas. There are clashes between the two factions, led by Karim Khalili and Mohammad Aqbari respectively. The conflicts are concerned with political control and money originating from toll and tax collection and with women, which in this connection is considered as an economic resource.

The southern part of Bamian Province and the northern districts and provinces of Uruzgan and Ghazni are controlled by Aqbari. Khalili controls the northern parts of Bamian Province together with Bamian city. There are constantly tensions between the two factions of Hezb-e Wahdat. In some districts this has resulted in open conflicts and smaller groups of the population have been internally displaced. Additionally, the source mentioned that the government hardly is represented in these districts and that approximately 300,000 returned refugees from Iran stay in these areas.

Nevertheless, the UNHCR was of the opinion that Bamian district and the city of Bamian, which are controlled by Khalili, are among the safest places in Afghanistan. In this area as already mentioned, the New Zealand PRT has had an influence on the security situation.

Previously there have been conflicts between Tadjiks and Hazaras, not only in Bamian district but also in the districts of Shiber and Yakaowlang. These conflicts no longer exist. The Tadjiks, who earlier had to flee from the region due to conflicts with the Hazaras have now returned and live in peace with the Hazaras. Moreover, the Tadjiks have been able to reclaim their houses.

The UNHCR mentioned that there have been fights in the northernmost district of Bamian province, Kamard. The local population has accused Aqbari for being behind these conflicts.

The UNHCR explained that in Ghazni province there had been tense relationships between the Hazaras and the Pashtuns, and between the Hazaras and the Kuuchis¹⁶. These conflicts were over the right to land and water, but have not resulted in major battles.

The UNAMA explained that it is a problem to gain access to regions in the Central Highland due to lack of infrastructure. The source found that there are still problematic areas in the Central Highland, and mentioned that in these parts of Afghanistan the central government has very little influence.

The SCA also mentioned that the Central Highland is an area of difficult access due to the poorly developed infrastructure - and found that the Central Highland in general is an underdeveloped area, but with no serious security problems. There are many NGOs who would like to work in the area, and quite a number of development projects are being implemented.

¹⁶ The Kuuchis are an Afghan nomadic people.

3.2.3 Southern, south eastern and eastern Afghanistan

The majority of the sources said that the security situation in southern, south eastern and eastern Afghanistan is deplorable, and as a result, many organizations do not operate in these parts of the country.

The IOM mentioned that they, like other UN organizations, cannot operate in most of the southern and southeastern areas. They found that the security situation in these areas is poor when it comes to foreigners and Afghans working with foreigners. However, the situation is reasonably good for the ordinary Afghans.

The UNHCR was also of the opinion that the security situation in southern Afghanistan is very unstable. They found that the central government has less control in the southern areas today than eighteen months ago. In April 2003 the UNHCR had access to 90% of the districts in the south. In November 2003 the organization only had access to 20% of the districts. The UNCHR explained that the lack of international organizations in these areas has the consequence that the local population is losing faith in the central government. The UNHCR do not advise people to return to the southern and southeastern parts of the country. Nevertheless some people do so, and according to the source these people certainly have a network to return to.

The UNCHR had limited information about the situation in the border areas between Afghanistan and Pakistan, and found that the security situation in Nangarhar in the east of Afghanistan is relatively stable. The organisation has access to half of the districts in the province.

The UNHCR was of the opinion that Taliban infiltrators in this area is representing a lower risk for the local population than for the international organizations, aid workers and people working within these groups. Nevertheless and due to their limited presence in the area, the UNHCR is not in a position to monitor the situation for the local population, or to offer them any protection. The UNHCR found that the local population perceives the Taliban infiltrators coming to their villages as a threat, due to the fact that Taliban intimidates the population in some areas.

According to the UNHCR, very few people return to the provinces of Kunar and Nuristan in eastern Afghanistan. Gulbuddin Hekmatyar's party Hezb-e Islami operates in these areas. The UNHCR explained that the organization currently does not have any fully functioning offices in Khost and Kunar due to the poor security situation there.

UNAMA also mentioned that the security situation has become worse in several districts in the southern, south eastern and eastern parts of Afghanistan. The organization mentioned that that security could decrease in these areas in the short term, due to the coalitions forces spring offensive, the opium eradication campaign and the upcoming elections. Plans are in operation for an opium eradication campaign in the provinces of Helmand, Kandahar and Nangarhar. The UNAMA found that the campaign will have a

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direct influence on the standard of living for the local population since the farmers do not have any other source of income.

The DACAAR was familiar with cases in southern Afghanistan where Taliban groups have intimidated the population. In 2003 such groups threatened to kill taxi drivers in Jalalabad who accepted foreigners as passengers in their taxis.

The SCA does not work in Kunar, Khost, Laghman or Paktika because the presence of the coalition forces causes instability. The SCA was worried that recently unknown perpetrators had attacked their schools for girls in the areas.

The SCA found that local warlords, who use all their means to maintain control and to exploit the local resources especially for the growing of opium, intimidate the local population. The source found that in some areas the security situation is very unstable and equivalent to the situation before Taliban achieved power. The SCA was informed that in the eastern provinces conflicts are particularly related to the access of land.

The ICG took the view that the local populations in southern, southeastern and eastern Afghanistan works under pressure from both Taliban and the coalition forces. Taliban put pressure on the civilian population not to work with the coalition forces and the coalition forces pressurise the civilian population not to work with Taliban.

3.2.4 Northern and northwestern Afghanistan

All sources explained that the security situation in northern Afghanistan is fairly good, but there are tensions between General Dostum and the Tadjik warlord, Mohammad Atta from Jamiat-e-Islami¹⁷.

The IOM informed that the security situation in Northern Afghanistan has been reasonably good for the last two years, but that the situation can change very quickly because of continual tensions between various warlords in the area.

The UNHCR explained that there are no major security problems in northern Afghanistan. The area is divided between General Dostum, Mohammad Atta and the Hezb-e-Wahdat party. Every year conflicts between the three factions cost casualties within military ranks, but do not affect civilians.

The UNHCR explained that the Uzbek-party, Junbesh-e-Milli that is led by General Dostum, now controls the entire Faryab province. This has according to the UNCHR contributed to the stabilization of the province. The human rights situation has improved, and General Dostum has allowed Pashtuns to return to the area. Also the Jowzjan province is controlled by Junbesh-e-Milli. The UNHCR informed that any person who

¹⁷ *Jamiat-e-Islami* is political party led by Burhanuddin Rabbani. It is dominated by Tadjiks. The party was founded in 1973. It was part of the resistance movement against communist forces in Afghanistan and against Taliban forces. Ahmad Shah Massoud is a well-known and recently assassinated commander of Jamiat-e-Islami.

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has been involved in conflicts with General Dostum might get into trouble when returning to villages in these provinces.

The UNHCR mentioned that still there is sporadic fighting in Sar-e-Pul province between Junbesh-e-Milli and Jamiat-e-Islami. These fights are not directly aimed at the civilian population, but might fall on them should they be in the wrong place at the wrong time. Badakshan, Kunduz, Balkh and Takar are relatively peaceful provinces. The situation in Mazar-e-Sharif city is however unstable according to the UNHCR.

The UNAMA also described the northern situation as relatively peaceful. However, the organization mentioned the continuing tensions between Mohammed Atta of Jamiat-e-Islami and General Dostum of Junbesh-e-Milli, which occasionally lead to battles.

The DACAAR also mentioned the conflicts between Mohammed Atta and General Dostum, and was of the opinion that the local conflicts often involve civilians. In the province of Badakshan the conflicts are related to the production of opium. In Faryab province there are local conflicts between local commanders.

The SCA described the security risk as relatively low in these areas. Like the other sources, the organization mentioned that the northern areas are characterized by conflicts between General Dostum and Mohammed Atta. There are daily incidental collisions in connection to this conflict. In the opinion of the SCA, the security situation is especially poor in the areas around Taloqan.

Upon the return of the delegation, in the first week of April 2004, new clashes took place in the Northern part of Afghanistan. Troops loyal to the Uzbek warlord in the north, General Dostum invaded Maimana, the provincial capital of Faryab. The Afghan government later sent troops from the Afghan National Army (ANA) to the area. Further clashes took place in the towns of Kod-e-Barq 20 kilometres from Mazar-e-Sharif in the Balkh province, between troops loyal to General Dostum and troops loyal to Mohammed Atta¹⁸.

3.2.5 Western Afghanistan

In Herat, in the western part of the country and which up to now has been regarded as one of the more stable regions, fights broke out on 21st March 2004 between troops loyal to Herat's governor, Ismail Khan and troops loyal to the government nominated commander General Zahir. The conflict arose as a result of an extended period of tensions between the two leaders and was initiated when the governor's son and Minister for Aviation and Tourism, Mirwais Siddiq was killed when trying to force his way into the general's palace. Subsequently the government sent troops from the ANA to Herat. The UN's Assistant Secretary General reported in March 2004 that the situation was stable but

¹⁸ IRIN Asia English reports 4/12/2004

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tense¹⁹. This episode was later mentioned at several occasions by the sources met by the delegation.

The UNAMA found that it will be necessary for the central government to restrict the exercise of power by governor Ismail Khan in Herat, and this could contribute to deteriorating security in western Afghanistan.

The DACAAR thought that the conflict in Herat was not unexpected, although the DACAAR previously had regarded the area as very safe. The conflict between Ismail Khan and the central government has been, according to the organisation build up over a longer period of time.

The ICG mentioned that President Karzai's decision to send troops to Herat could be a pretext for having government troops stationed in that area. The presence of government troops could entail, that the central government will have less difficulties in implementing administrative reforms in Herat.

3.3 The organized presence and expansion of the Taliban and al-Qaeda

In the opinion of the UNHCR, the Taliban infiltration in southern, south eastern and eastern districts consists of small groups, which cross the border on motorcycles from Pakistan and carry out attacks in Afghanistan. The UNHCR did not believe that Taliban has a proper organizational headquarter in Afghanistan. They confirmed the rumours that the Taliban had taken over control of several districts, but pointed out that had it been the case, it had been short-term operations.

The Norwegian Chargé d' Affaires stated that it is uncertain whether attacks in southern Afghanistan against the government are carried out by an organized Taliban structure. A lot of what is happening can be attributed to activities carried out by bandits. The Taliban infiltration is being used as a collective description for the hostilities in southern Afghanistan. Some of the participants in the attacks in the south probably concur with the ideology of the Taliban, but are not connected with the Taliban organization. The source was of the opinion that the slowness of the reconstruction and unrealistic expectations regarding reconstruction are strengthening the forces related to the Taliban. The source found it unlikely, however, that the international community will allow the reestablishment of the Taliban as a central power in Afghanistan.

The ICG was of the opinion that Taliban activities in southern Afghanistan are being controlled by a limited number of former Taliban commanders. The source was of the opinion that such activities cannot be carried out without the local authorities cooperation with the commanders. The source found that the activities were being coordinated both from the Pakistan and the Afghan side of the border. The ICG mentioned that no Taliban

¹⁹ United Nations Security Council, *Statement of Mr. Hedi Annabi Assistant Secretary-General for Peacekeeping Operations on the Situation in Afghanistan*, 24 March 2004

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groups have taken control of any district in the regions of Afghanistan, with the exception of short-term occupations of one or two districts in Paktika used by the Taliban for propaganda purposes. The ICG was of the opinion that no parallel Taliban administration exists in Afghanistan.

4. The development of the government's exercise of authority and the reconstructing of important Afghan state institutions

4.1 The central government's exercise of authority

A number of sources were of the opinion that the central government has increased its influence in the provinces during the last eighteen months. However, the sources pointed out that the local warlords continue to be very powerful in the provinces especially outside the provincial capitals.

The EU Special Representative to Afghanistan found that the central government has been able to slightly increase its influence outside Kabul, and amongst other things has been able to demand payment of taxes in some areas.

The UNAMA was of the opinion that the central government has increased its influence in the regions, but that it still has to consider the interests of the local warlords. As examples, the source mentioned that the bank and communication network has been extended to several provinces. Moreover, that representatives from the government meet regularly with provincial governors, that the road network to provinces has been renovated, and that access to markets has generally improved for the local population. However, the source was of the opinion that the government do not deliver the services that are expected by the population. The source mentioned that persons who encounter problems in the provinces often turned to international organizations such as the UNAMA for help, rather than to representatives of the government.

The source estimated that the fact that the central government had deployed the ANA in the conflict in Herat in 2004 could be seen as a test of the government's ability to exercise its control outside Kabul.

The UNAMA explained that no actual reformation of civilian administration has begun especially not in the provinces. The central government only has the power to appoint provincial governors, police personnel, etc. if the local ruler can accept them.

The IOM found that the central government only slowly increases its power outside the capital. In this context the organization pointed out that replacing civil servants from the provinces with civil servants loyal to the government is not in itself likely to increase governmental influence in the provinces. The source informed that most areas outside Kabul continue to be led by local warlords.

The UNHCR explained that the government has nominated local governors in 202 districts out of 354. In 152 districts the governors continue to be self-appointed. The source was of the opinion, that the nomination of a governor who supports the central government not necessarily means that the government has complete influence in the district concerned. As an example some governors have had to lock themselves up in their houses and protect themselves with armed security guards in order to stay in power

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in a district. The source pointed out that in southern Afghanistan there is only one district where the government has succeeded in installing a pro-government governor.

However, the source was of the opinion that progress is seen in the economic development of Kabul and other large cities. Compared to the situation under Taliban, appreciable improvements in the access to education and training have developed and as well in some areas the access to health facilities for the Afghan population has increased. Afghans begin investing in small businesses and are rebuilding their houses nationwide, which could be interpreted as a sign of the population being optimistic about their future.

The ICG pointed out that the relatively peaceful period under President Karzai has given various warlords the possibility of enriching and strengthening their position of power in the provinces. As a result several of them are supporting the President.

The Danish Chargé d’Affaires had the impression that the central government has increased its influence outside Kabul in the last 18 months, but that there are a several areas where it continues to have little or no influence. The source found that some important elements of the Bonn Agreement against all odds have been implemented, and that politically the country was going in the right direction. According to the source Presidents Karzai’s government has stayed joined because they see an interest in doing so. Although it is possible that the cohesion will weaken the closer the day of the elections emerges due to the fact that the different political factions will position themselves.

The Norwegian Chargé d’Affaires was of the opinion that the central government has increased its influence in the provinces during the last 18 months, but still it is not possible to talk about an actual control. The source mentioned that in many provinces and districts government appointed governors have replaced local governors. However, the fact that a government appointed governor has been installed does not necessarily mean that the government is controlling the district. In some provinces, power is in the hands of a warlord who disagrees with the central government in Kabul. The source named as examples the governor of Herat, Ismail Khan and General Dostum in northern Afghanistan.

The source mentioned that a great challenge for the country is to ensure the income for the central government. Many of the local warlords are not interested in sharing their profits with the central government. As an example, the governor in Herat, Ismail Khan earns 1 (one) million US dollars a day on border trade with Iran, while the central government is depending on substantial assistance from abroad.

Like other sources, the DACAAR was of the opinion that the government has increased its presence in the provinces, but that its influence in the provinces is minimal outside provincial capitals. The source explained that even if the governors in the districts are government employees, it does not guarantee that they are being supportive of the government. The sources said that “the cap” of a government official in Afghanistan is not particularly big, and can easily be taken off. Moreover, the sources reported that it has

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never been a tradition in Afghanistan that the cities have full control over the rural districts. It has always been the case that relatively autonomous local groups have decided individually whether or not they wanted to support the central power.

All Afghan Women Union (AAWU) was of the opinion that the local warlords continue being very powerful and pressuring the central government.

4.2 The reconstruction of the civil administration

A number of sources explained that in various districts the reformation of the civil administration have begun but in important parts of the civil administration the process is developing very slowly.

The UNAMA found that there has been some positive development in the civil administration during the last 18 months, and that several reforms have been carried out within the central administration. The source mentioned among other things the reformation of the Ministry of Defence, which is proceeding slowly but expediently. It was seen as a positive step that reform of the security services, the National Security Directorate (NSD) has begun. The source found, however, that reforming of the Ministry of the Interior are proceeding much too slowly, in spite of its importance. The source mentioned that the public administration and the legal system are areas that still lag behind. Moreover, the source was of the opinion that the country is deficient in the necessary administrative structure needed to support the political process.

The UNAMA mentioned that there is a large unfulfilled requirement for well-functioning state institutions. These do not exist outside Kabul and major cities. There are problems with the local warlords, who are still self-policing. For example, no new police chief can be nominated unless the local warlord agrees with the nomination. Heads of government departments are found among military personnel and not among civilians who are in position of the right qualifications to manage the reconstruction of a state administration.

The EU Special Representative pointed out that no civil administration has been set up until now – and no laws regarding civil administration have been passed. This means amongst others that public employees take advantage of their positions to employ family members, friends and people belonging to their own ethnic group. This practice presents a major obstacle in the fight against corruption.

The Norwegian Chargé d’Affaires was of the opinion that much has happened since the negotiations of the Bonn Agreement, and that major parts of the agreement have been fulfilled. The source found that reconstruction of state institutions has progressed, amongst other things the Ministry of Finance has made management plans. The source pointed out that the reason why many people are dissatisfied with the development is due to unrealistic expectations of how much can change in such short time. Thus the source found that the reforms in the civil and legal areas are proceeding very slowly including the reforms of the national defence and the establishment of a national army.

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The DACAAR found that there has been a clear improvement in the work of the ministries in which they are involved. This applies for example to the Ministry of Rural Development, which has become more and more established. The source explained that efficiency has improved since 90 (ninety) foreign specialists were employed in the Ministry.

The SCA and an international NGO both explained that a number of activities are being planned within the health sector. The government has launched a comprehensive project to ensure that all citizens have access to basic health facilities (see section 9.3.2).

The Deputy Minister of the Interior found that Afghanistan has made some progress in setting up state institutions. The Minister mentioned e.g. that the approval of the new constitution was a major success, likewise the approval of the new laws of procedures and treatment of prisoners. In the light of this development, he found that the commission for the reform of the legal system, the Judicial Reform Commission is well functioning²⁰. The Minister admitted at the same time that the Reconstruction Commission is not well-functioning, which is mainly due to lack of qualified personnel²¹.

4.2.1 The reconstruction of the legal system

Most of the sources were of the opinion that the reconstruction of the legal system is proceeding slowly and that the initiatives has not really had any effect yet. Various sources pointed out that lack of judges, especially in remote districts is a major problem.

The UNAMA mentioned that the establishment of an effective legal system has hitherto been a slow process. The slow development is partly a result of the lack of confidence in legal institutions. The initiatives in the legal field still have not had any effect. According to the UNAMA, there are some positive elements in the development, but a real reform of the legal system requires political will. A legal system is non-existent in many parts of the country. In most of the bigger cities there is, according to the UNAMA, a provincial court, which is the appeal court for district courts. However, not all the districts have a district court.

The UNAMA mentioned that the legal system on the administrative level is badly equipped. The physical infrastructure and facilities are poor. The wages of judges and other employees are low. The average monthly salary for a judge is only 35-40 US dollars. As a result judges depend on their families in order to survive economically, and therefore the risk of corruption is high. Consequently, some judges cannot settle down

²⁰ The Afghan Judicial Reform Commission was established in November 2002 as part of the Bonn Agreement. The main purpose of the commission is to propose reforms in the legal system of Afghanistan and to present their proposals to the government. UNAMA/UNDP, *Rebuilding the Justice Sector of Afghanistan*, January 2003

²¹ The Reconstruction Commission was established after the Bonn negotiations. The commission's main purpose was to define a strategy for the reconstruction of Afghanistan. This strategy was presented at the Donor Conference in Tokyo in January 2002. Department for International Development, *Government of United Kingdom*, 27 December 2001.

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and work in remote districts. The majority of judges do not have any law degree from either of the two law schools in Afghanistan, which are the Sharia Law School and the Faculty of Law. Instead, they are religiously trained in one of the religious schools (Madrasas). Moreover, the local warlords often appoint judges. As a result there is a concentration of judges in Kabul and it is difficult to recruit the required number of judges and prosecutors for the rural districts and in district courts – and not always is there both a judge and a prosecutor present.

The UNAMA mentioned that the passing of the new temporal administration of justice act has been a step in the right direction. It provides the possibility for transferring criminal cases from the district to the provincial courts, if there is no district court in a particular district. The UNAMA mentioned that the Judicial Reform Commission is training judges and prosecutors.

According to the EU Special Representative, the legal system is still in ruins. One cannot say that a proper legal system exists in Afghanistan. The Supreme Court is still in the hands of conservative extremists, who among other things are supported by Sayyaf²². There is no significant difference between the present Supreme Court's way of operating now and under the Taliban. The source mentioned that the legal system is slightly better in Kabul than in the provinces due to the physical infrastructure in Kabul.

The Italian Embassy explained that the main difference between the legal system 18 months ago and now is that the number of actors involved has increased. The source explained that it is not an easy task implementing international standards in Afghanistan, particularly in the justice sector due to the existence of many independent actors. As an example, it has been difficult to gather the involved actors in the same meeting. It is also difficult for the Minister of Justice to exercise authority over the attorney general. The source explained that the Afghan Judicial Reform Commission has identified various areas ready for reform: The criminal law, the laws concerning the prison system, legislation regarding juvenile delinquency and the jurisdiction of courts.

The source explained that the work on the criminal law is the next priority, and that it will take several years to establish a reform. Afghans themselves will carry out the work. The source explained further that a comprehensive training programme is being implemented for new lawyers, civil servants in the Ministry of Justice, and for active lawyers who are already practitioners.

The source estimated that there are about 1,000 trained judges and prosecutors in the country. The number in itself is not a problem, but the problem is that around half of the judges and prosecutors are located in Kabul. Due to low salaries it is very difficult to attract judges and prosecutors to the provinces, where the living conditions are more difficult and the personal security situation is poor. As part of the constitution, the government is obliged to deal with this problem, including ensuring the judges a proper salary. The source explained that the Ministry of Justice has recently presented a plan for

²² Abdul Rasul Sayyaf is the leader of the Ittehad-e-Islami party.

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the government proposing an increase of the salaries of judges in order to attract more judges to the provinces. The source mentioned that the approval of the new law on judicial procedures was as a positive step forward in the judicial field (see above).

The source mentioned that it has been planned to include the district courts in the Afghan Stabilization Programme. The aim of the programme is to rehabilitate the district administration including its physical infrastructure. In some districts no buildings exist for the legal administration. The rehabilitation programme will initially include 8 (eight) out of the existing 350 districts.

The source mentioned that it is problematic that the public administration lacks resources and carries out unsatisfactory work. Substantial improvements in the rule of law will require a substantial improvement in the general security situation, disarmament and the reconstruction of public infrastructure, including buildings etc. In addition, the source found that there is a need to pay attention to the existing secular laws, which are seldom in direct conflict with human rights. Many judges do not know these laws. Highly ranking judges are made aware of the existing secular laws, in the hope that they will make use of them. Often, judges do not have access to relevant legal texts, and rely on common sense and, what they call, Sharia law. The source explained that only judges who are able to read can be trained. Illiterate judges cannot be trained and one just has to wait until they leave their office.

The Afghan Minister of Justice was of the opinion that the reconstruction of the Afghan legal system is a very long process. He brought up that even western democracies needed several hundred years to build up their legal systems. The source was however of the opinion that the country was well on its way.

The President of the Supreme Court explained that the court system suffered considerable damage under the Taliban regime. This source also mentioned that there is a lack of judges. The present government is trying among others to improve the situation by re-employing the judges who were dismissed by the Taliban, but the low salaries for judges make it difficult to persuade the judges to take up their positions in the provinces. The President of the Supreme Court mentioned that President Karzai has been asked to consider the problem. The judges receive the same salaries as other state employees. A very highly placed judge can earn 200 US dollars per month. An average judge at the first instance usually earns 60-70 US dollars per month. There are 400 courts in the whole of Afghanistan, of which 30 are in Kabul.

The Lawyers Union of Afghanistan pointed out that the reconstruction of the legal system is needed on all levels. In the last 10 years, the legal system has been in ruins. It has been planned that the Legal Reform Commission should make new laws and revise the old ones. The Commission is providing a number of training courses, which are designed to train new personnel and new judges, and provides additional training for new judges who alone have been trained in Sharia law.

4.3 The establishment of a national police force and military force including progress in the disarmament process

4.3.1 The reconstruction of a national police force

Various sources explained that the implementation of a national police force is proceeding, but there continues to be problems with the way the police carries out its work.

The UNAMA explained that the training of the police is proceeding slowly, although results have been achieved. The Ministry of the Interior has established a human rights office, and two human rights officers have been placed in every district. These officers will monitor the human rights situation and train people in matters concerning human rights. The intention is that they should attend to complaints of encroachment. The source explained that this project is supported by the UNAMA and that 1.6 million US dollars have been allocated. Nevertheless, the source was of the opinion that the behaviour of the police is still a massive problem. There are continuously cases of abuses that are completely unacceptable. The source mentioned one case in which two or three members of the police had beaten up a little boy. The boy was hospitalised and the mother complained to the police and two people were arrested. Later the mother complained one more time telling that she had been threatened again and that someone had tried to take the boy out of the hospital. In the end, the two individuals who had been arrested in the case were set free without further prosecution.

The EU Special Representative explained that the work of the police has improved and that human rights are being discussed in the Ministry of the Interior. Germany has commenced a training programme for the police in which they concentrate on the training of trainers. The U.S.A. has also carried out short courses for the current police personnel. However, it is still a problem the way the police demonstrate their power, and corruption is still widespread although there are local differences. In Kabul, there is a legal system with a certain infrastructure, which does not exist in the provinces. There are examples of low-ranking commanders using force and extortion, or demanding road taxes or tolls, committing acts of violence, etc. The government is not in a position to interfere due to the lack of a regular national police force and a functioning legal system.

The ICG explained that six months ago the German training programme was the only programme designed to improve the working methods of the Afghan police. The U.S.A. has granted 50 million dollars for 7 regional training centres. If a well-focused recruitment programme will follow up the German and the American training programmes this will raise the standard of the police in the future. For the time being, commanders are working both for the police and the military. Attempts are made to train as many police personnel as possible before the presidential and parliamentary elections.

However, ICG found that apart from a few districts there have only been marginal improvements in the standards of the police. Often the police are only formally civilian, but in reality many of the policemen are former mujaheddins, especially in the provinces. In practice there is no difference between the police and the military and anybody can call

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himself “commander”. The ICG expressed concern, as to whether the police will be able to provide the necessary degree of protection during the coming elections.

The Interior Vice Minister found that improvements are occurring all the time. Within the police, every district now has a human rights office. Training centres have been established for police personnel in four districts, and will be extended to six districts. The aim is to improve the level of training for both the existing and the future police officers. The ministry of interior has planned to complete the training of 20,000 (twenty thousands) police officers in 2004 and for another 52,000 (fifty-two thousands) police officers in the first part of 2005. The total will be of 75,000 (seventy-five thousands) trained police officers. New recruits as well as the current police officers will be trained.

The Lawyers Union of Afghanistan explained that policemen from approximately 8 (eight) or 9 (nine) of Kabul’s 18 (eighteen) police districts have been trained. You can ask the police for help, but often there is no point in doing so. The source explained that it depends on where people live, whether or not they go to the police if they are being robbed in their home in Kabul. If you live in a district with a powerful warlord, you do not go to the police since there is a high risk that the warlord himself is behind the break-in.

4.3.2 Establishment of a national army

The EU Special Representative explained that the establishment of the ANA is proceeding very slowly. For the time being only 8,000 soldiers have been recruited. There is, however, some progress in the work of making a multi-ethnic army. For example, more and more Pashtuns are being accepted in the ANA. The source mentioned that it is a positive step that there has been a reshuffle in the Ministry of Defence and that the newly appointed Vice Minister for Defence is not a Mujaheddin.

The ICG explained that in Gardez in Paktia, the ANA was employed with the purpose of maintaining security in the city related to the appointment of government officers. The army was withdrawn later, but has returned. As a result the old power structure was challenged and the security situation in the town has improved.

Nevertheless, the source was of the opinion that the ANA was not a direct threat to the local warlords. Gardez is an example where the ANA was used to increase security, but at the same time the army is used against presumed Taliban supporters in southern Afghanistan. The ANA has not yet reached a size that seriously frightens the warlords. It is used against revolts, but is not permanently stationed anywhere outside Kabul.

4.3.3 The disarmament process

All the sources with whom the delegation spoke found that the disarmament process has not really embarked, even though it is a very important step in creating peace in Afghanistan.

According to the EU Special Representative, no real disarmament is going on. There has not been any substantial progress in this area, and in reality the authorities have not

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achieved anything. The government is trying to achieve 40% disarmament before the forthcoming presidential and parliamentary elections, but according to the source, the government still has not come up with a serious proposal within this area.

The Norwegian Chargé d'Affaires was also of the opinion that the disarmament process was proceeding slowly. The source explained that the disarmament of the many warlords is postponed because reforms in the Defence Ministry and the Ministry for the Interior, which are a prerequisite for the disarmament process, have not yet been implemented.

The ICG explained, along with other sources, that the disarmament process has not really begun, and found that it is a serious problem that Defence Minister Fahim continues to keep his forces in Kabul. According to the Bonn Agreement, the Pansjiri-Tadjik troops should have withdrawn from Kabul. This has not happened. The U.S.A and Japan have tried to persuade the Defence Minister, Fahim to remove his troops from Kabul and to disperse two divisions, but the Minister still has three divisions present in the city. According to the ICG, the problem is that if the Defence Minister chooses not to disperse any of his troops, the other warlords will not start to disarm their own forces too. The ICG did not think that one could expect President Karzai to put Defence Minister Fahim under pressure at the moment, since President Karzai needs the Defence Minister's full support in the government. For this reason the source believed that a disarmament process would not have any effect without considerable international support and pressure.

The ICG further mentioned that there is not really any disarmament or dispersal of troops taking place in Herat, but rather a tactical transfer of troops among the commanders, so they do not become too strong. In northern Afghanistan, an agreement has been made in order to dissolve some units controlled either by General Dostum or by Mohammed Atta. In southern Afghanistan very little is happening.

The ICG explained that the U.S.A has begun recruiting personnel to a reserve force, which will operate in southern Afghanistan. It has been planned that 3,000 (three thousands) soldiers should be trained for this force and ready by March 2004 and 5,000 (five thousands) men by June 2004. It is asserted that this force is multi-ethnic, but according to the ICG it consists mainly of Pashtuns. The uneven ethnic distribution of the soldiers in the reserve force might result in the Pashtun commanders will increase their military strength once again. The creation of this force is therefore contradicting with the efforts for disarmament.

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The ICG mentioned that the Afghan New Beginning Programme²³ claims to have disarmed and demobilized 5,000 men, but that many of these have reapplied to join the armed forces of local commanders. Moreover, the 5,000 men who were supposed to be disarmed and demilitarised include men who were already disarmed when the programme started. According to the ICG, it is almost up to people whether or not they want to disarm. There is a lack of external control with the demobilization. One of the few places where the disarmament and demobilization have proved successful is in Gardez. The ANA supported the disarmament by its military presence, which caused the local commander to accept the demobilization. However, apart from the situation in Gardez, no disarmament program anywhere has been supported by the use of the ANA.

The Vice Minister of the Interior explained that the disarmament and demobilization earlier did not live up to the expectations. The government has now become actively involved in the work and this is likely to have an effect in the near future. It has been planned to begin with the collection of heavy weapons. If 40% of the existing weapons will be collected it will be regarded as a success.

4.4 The Afghan Independent Human Rights Commission

The Afghan Independent Human Rights Commission (AIHRC) concentrate their work within five main areas: Training in human rights, the promotion of women's rights, the protection of children's rights, the monitoring and investigation, and transitional justice (for further information see section 10. Consulted persons, organizations and authorities).

The UNAMA supports the AIHRC, which according to the UNAMA is an important organization in the promotion of human rights. The Commission has established eight offices but cannot, according to the UNAMA, follow up on many of the complaints on the abuses of human rights because the perpetrator may be a warlord or a powerful person within or close to the government. The AIHRC receives complaints regarding arbitrary arrests and torture in prisons.

The EU Special Representative found that the establishment of the AIHRC is one of the best initiatives, which has been taken in the last two years in Afghanistan. The source was of the opinion that the AIHRC jealously guards its independence, and has a clearly developed strategy and aim and carries out a lot of good work. Nevertheless, the AIHRC is still in need of foreign support and economic assistance. The members of the AIHRC and employees receive threats from powerful people and are still lacking some professional experience.

²³ The Afghan New Beginning Programme (ANBP) was established by the Afghan government in collaboration with the Japanese government and the UN as a vehicle for implementing demobilization and reintegration throughout the country. The programme is intended to match the abilities, background and wishes of soldiers and officers with the reintegration possibilities, which are available in the different provinces. The Ministry of Foreign Affairs of Japan, *Statement by H.E. Hamid Karzai, President of Afghanistan; Tokyo Conference on Consolidation of Peace: Disarmament, Demobilization and Reintegration*, Tokyo 22 February 2003

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EU Special Representative stated that the AIHRC's regional offices are working well. The source explained, that the fact that the offices in Mazar and Herat are well functioning means that they are doing their best. Still, they cannot protect people who are subject to abuse, but they are good at monitoring and reporting violations. A more effective protection of people who are subject to abuse would require a properly operating legal system. At the same time powerful warlords counteract the work of the AIHRC. Some topics are sensitive to an extent that the AIHRC cannot raise them. This concerns cases involving conflicts with warlords. For this reason the AIHRC should be supported by human rights observers from the UN throughout the country.

The Norwegian Chargé d'Affaires stated that the work of the AIHRC has a positive effect. The AIHRC has established regional offices and is bringing up a lot of questions. The commission is not without power although their working conditions are restricted. The source mentioned the case of Shirpul, where a large residential district in Kabul was eliminated to provide houses for highly ranking civil servants. The people responsible were of high ranking and with connections to the government. The work of the AIHRC resulted in a commission being set up to investigate the case. However, the commission still has not come up with a conclusion, and houses are still being built in the area. The source was of the opinion that employees of the AIHRC are courageous, but work under complex conditions. They are threatened by powerful people and have to do a tricky balancing act in their work. The president has several times called Simar Samar, Manager of the AIHRC in order to account for the Commission's work.

The AIHRC mentioned that they receive complaints from Afghan citizens regarding executions without trials, arbitrary imprisonments, torture in prison, forced marriages, kidnapping of women and the forcible exclusion of women from education. More than 500 complaints concerning past human rights violations have been received by the Commission, which is also currently engaged in establishing a database in order to register the violations. The AIHRC is collaborating with the Office of the High Commissioner for Human Rights (OHCHR) in Geneva in order to provide documentation from the many and serious cases of human rights violations.

The AIHRC explained that even though they direct complains to the authorities, often nothing happens. In one very serious case, involving eight murders and eight cases of rape, the local governor did not want to persecute the perpetrators. Subsequently, the AIHRC approached the Minister of the Interior who did not react, and finally the President. None of these approaches have led to the prosecution of the perpetrators.

As an example of a case where the AIHRC have influenced the situation, they mentioned the Shirpul case, where the AIHRC was instrumental in having the chief of Kabul police dismissed. A report, concerning the illegal eviction of a group of families from their homes has, been submitted by the Commission. The report has led to the setting up of an independent commission to investigate the case. According to the source, it was necessary for the President to dismiss the chief of the Kabul police in order to retain his own credibility. Moreover, the AIHRC has initiated investigations against three provincial police chiefs and has later received threats from the police chiefs concerned.

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The AIHRC explained that one of the Commission's major problems is the ensuring of the employees safety. According to the AIHRC, the warlords all around the country do not implicitly accept the Commission reports, and instead they try to maintain their present positions and power. Investigators of the AIHRC have been attacked and shot at. The source himself was hiding for two weeks due to death threats in the wake of the publication of the Shirpul report.

5. The human rights situation

5.1 The human rights situation in general

The EU Special Representative found that President Karzai seems very keen on improving the human rights situation in Afghanistan, but problems continue to impede. Violations of human rights continue to occur throughout the country.

The Norwegian Chargé d' Affaires complained that many of the abuses that took place during the Taliban regime are continuing. In this connection the source brought up that the situation for women continues to be difficult.

The minister of justice mentioned that the road towards democratic conditions will be long. If Afghanistan is going to become a civilized country culture customs will have to change. This especially applies to the introduction of true political pluralism, equality between men and women, free elections, etc. According to the Minister of Justice, Afghanistan will have to begin from scratch in the hope of getting rid of fundamentalism and terrorism.

The Afghan Vice Minister of the Interior found that a considerable development has taken place regarding freedom of speech, press freedom and equal rights for men and women.

5.2 The rule of Law

5.2.1 The rule of law in general

A number of sources explained that the formal legal system in Afghanistan consists of three authorities: The district courts, 32 (thirty-two) provincial courts and the Supreme Court, which is situated in Kabul. Additionally there are special courts.

Almost all sources consulted by the delegation were of the opinion that no rule of law exists in any place in Afghanistan not even in Kabul.

The UNHCR found that there is no rule of law in any place in Afghanistan, but local mechanisms for the solving of conflicts exist. People with influential relatives are likely to find their way out of a conflict.

The UNHCR stated that the legal system is simply not in a position to offer any protection to women. In the provinces questions concerning women are still settled according to traditions. The state cannot offer any protection for individuals against persecution and violation. As an Afghan, you have to go to your network to find protection. In spite of the efforts to establish a legal system with a functioning police and courts, warlords continue to rule. This also applies for conflicts concerning land.

With regards to the rule of law, the UNAMA explained that access to the courts and to protection through the court system is seriously weakened by the decreased security situation. Court sentences are not enforced if the local warlord disagrees with the ruling.

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It was pointed out by the UNAMA that judges are intimidated in several districts. In many areas, judges and prosecutors are in need of protection.

The UNAMA was of the opinion that the institutions, which should protect people against assaults, are not powerful enough to do so if the perpetrators are warlords or powerful persons from the government or the police force. The UNAMA had knowledge of citizens who have outstanding with powerful individuals and therefore were not safe in Kabul, and have had to flee the country. There are cases where parents and siblings to the persecuted have been involved too.

The UNAMA was of the opinion that in the rural districts, it is the person with most weapons who has the last say, and not the courts, which is due to the weaknesses in the court system. Even the local councils of elders, the Shuras, are weakened by many years of war and now depend on the warlords. The UNAMA brought up that in Herat, Ismail Khan has considerable influence on the legal system. Should the court wish to free a person from prison, this only happens if Ismail Khan agrees. The UNAMA also mentioned the city, Mazar-e-Sharif, where it would be difficult for an independent law system to function. According to the organization it is the same case in the province of Bamian where different warlords are fighting against one another and no real government operating.

The ICG stated that the only way to obtain protection is by entering into an alliance with the local warlords in the region where one is resident. According to the source, such alliances are entered at village level or as personal agreements. The source was of the opinion that if protection cannot be obtained by a person he/she is in a very vulnerable situation.

One international NGO referred to a study showing that the implementation of the legislative system in Afghanistan does not live up to the international standards for human rights. The source pointed out that people who are being arrested are not informed about their right to legal advice or the right to external contact - and not always are they informed about the reason for being accused. Similarly, there are many examples of persons being accused and kept in custody for a period of time, which exceeds the maximum sentence for the particular crime. The source gave an example of a young boy who was kept in prison for 18 months for stealing a few chickens. As another example, the source mentioned a case where riots had occurred in Kabul, and a man from Herat who happened to be passing by became involved and ended up in prison. It was soon made clear that the man was not involved in the riots, but in spite of this he was imprisoned for 18 months. When his relatives tried to get in contact with the prosecutor, they were informed that the case files had been lost.

The international NGO was of the opinion that there is no rule of law anywhere in the country. Particularly, in areas which are controlled by powerful warlords. The lack of rule of law in the rural districts is a major problem. The solutions to local conflicts given by Shuras can be problematic. Examples where women have been given away in order to solve a conflict are not unusual. In the villages no one goes to the police for help, as they

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have no confidence in this authority. The situation is better in the larger cities due to the more developed infrastructure. The source mentioned that rarely there are counsels for the defence. A family do have the possibility to pay a law firm to provide a written defence, which could later be red out in court. The organization found nevertheless that there is a positive development in the legal system in Kabul and that there is a genuine interest in improving the rule of law. According to the source it is only possible to win a case if one has good contacts within the group of local people in power.

The international NGO was of the opinion that the judges need to be on good terms with the prosecuting authority and the police in order to keep their jobs. This makes it difficult for judges to work independently and impartially. The source said that it is the personal contacts of the people involved which decide the outcome of a case.

The Italian Embassy explained that there are major geographical differences in the ability of the legal system to provide rule of law and justice. The system is not satisfactory anywhere in the country, and even in Kabul that is regarded as the best functioning area considerable improvements are necessary. Everywhere in the country judges are subject to interference in their work. No judge is free to make rulings solely according to his own judgement. This lack of independence also applies to the police. The source pointed out that the legal system including the police and other administrative offices are influenced by the general security situation in the country.

According to the source, local warlords can cause problems for even the most committed judge. However, in Kabul judges are under less pressure than is the case in the provinces. From time to time even the government can put the court system under pressure. The source gave as an example the legal case that followed after the murder of an employee from the UNHCR. The case was pursued without the necessary guarantees of fair trial for the accused. The source believed that this happened because the government wanted to show vigour and reach a quick decision and punishment.

The President of the Supreme Court stated that formally the police are supposed to enforce the law and to ensure that the rulings of the courts are being implemented. However, in some remote districts there may be problems with local warlords. The source explained with regard to the rule of law and access to fair trial, that persons with difficulties in getting legal aid can receive help from the public authorities. The source explained that even people without means have the possibility of presenting a case to the Supreme Court in Kabul. The President of the Supreme Court however mentioned that it could be an obstacle that the directorate, which has the responsibility for providing legal aid to people without means is situated in Kabul. This makes it difficult for people in the provinces to get access to legal aid.

Regarding the question whether or not it can occur that a local warlord chooses to set aside or overrule a ruling of the court, the President of the Supreme Court stated that a court decision could be overruled. If a warlord ignores a ruling, one can complain to the authorities in Kabul who will raise the case with the warlord. Earlier, it happened that

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local warlords threatened a judge, but this problem no longer exists because all judges are now nominated in Kabul.

The Lawyers Union of Afghanistan stated that the court system is almost in a state of chaos. When meeting in court, it is possible to be confronted on the first day with a judge who is trained only in religious law. On the next day it might be a judge who has a law degree but uses Sharia law to protect himself against criticism. As a consequence, women continue to be imprisoned for infidelity. The source expected that in time the law reforms would have an impact that will change the present situation. The source explained that corruption is so widespread that access to legal institutions and to rule of law does not exist. Only a few percent of the cases come out with a just or correct ruling. Anybody can start a legal case, but it is the most powerful or influential person who will come out as the winner of the case.

Regarding the question whether or not the system is able to help Afghan citizens, the Lawyers Union of Afghanistan implied that it depends on whom one is seeking the system's protection against. The source added that the people who have always had weapons have now formally joined up with the government, but basically they continue to operate the same way as always. The Minister of the Interior has made certain changes and as a result the warlords keep a lower profile. Now they are wearing uniforms, but they are still warlords.

The source pointed out that in principle it is possible to ask the police for help, but it is considered pointless. The source explained that whether or not you go to the police to report a break-in in your home in Kabul depends on where you live. If you live in a district where a warlord is in power, you do not go to the police because there is a high probability that the warlord could be behind the break-in.

The source explained that in principle any ruling made by a district court can be appealed and taken to a provincial court and to the Supreme Court, but in reality there are only three ways of solving problems. The source named these in order of priority. The first is to go to the warlords, which means that you turn to the most powerful person in your local area with your problem. The most powerful person is the one who possess most weapons and controls the area/local community. If a warlord or a commander has decided that a certain case should be settled in a particular way, the district or provincial court will not make a ruling that will overrule this. The second is to go to the local tribal council. Tribal councils consist of people who are considered by the local population to be clever, reasonable individuals, and who can solve conflicts (see section 5.2.3 regarding Shuras and Jirgas). The third and last possibility is to turn to the formal legal system.

A number of sources pointed out that the existing legal system, particularly in relation to women, is inadequate and remains problematic (see also section 6.2.3 regarding the rule of law for women).

5.2.2 Application of laws – Sharia law and secular law

The UNAMA explained that in practice secular law, Sharia law, tribal law and local customs are applied. The Constitution solely implies that the country is Islamic. Sharia law is often practiced in courts and other laws are used as a supplement.

According to the UNAMA, Sharia law was used under the Taliban regime to apply strict punishments such as amputations and stoning, but these punishments have not been used after the fall of the Taliban. This is due to the fact that several evidences are required before this kind of punishment can be applied.

The EU Special Representative mentioned that Article 3 of the new constitution states that no law can be passed which is in conflict with the spirit and rules of Islam. In practice this means that no law in conflict with Sharia law can be applied. Thus, there is an inbuilt conflict within the constitution as the part concerning human rights is in conflict with Sharia law.

The Norwegian Chargé d’Affaires mentioned the following, with regards to the reconstruction of the legal system: Even if the constitution does not contain any reference to the Sharia law, it will be interpreted by the Supreme Court which is dominated by the priesthood, and who will use Sharia law as much as possible.

The Italian ambassador explained that secular law is above Sharia law. Thus, it is forbidden to use Sharia law when it conflicts with secular law. In this context it is problematic that most judges only possess religious training and have no training in secular law. The source mentioned that no punishments like amputation or stoning have been carried out the last two years. The source was of the opinion that the informal legal system can play an important role in the pacifying the fundamentalists because some Shuras might have moderate influence.

The President of the Supreme Court said that the old laws are still being practiced everywhere in the country. The source mentioned that Sharia laws and the Koran are applied in the courts in relation to penal cases and they are supplemented with secular law if necessary. The source mentioned that the Afghan government in collaboration with the Italians has made a new code of penal law but underlined that according to the new constitution, Afghan law may still not be in conflict with Islam.

The source explained that traditional punishments such as stoning or amputation were often applied under the Taliban regime because it was politically opportune, but without fulfilling the many conditions the Sharia law prescribes in order to apply such punishment. After the fall of the Taliban regime stoning and amputation were no longer used because many of the conditions required for proof were not fulfilled.

The Lawyers Union of Afghanistan explained that 30 (thirty) years ago Afghan law was based on French and Egyptian models. If the secular law could not be applied in a given area, they supplemented it with Sharia law. This practice was followed until the fall of Najibullah where all civil laws were repealed, and until the end of the Taliban regime only

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Sharia laws were employed. After the fall of the Taliban regime, the Afghan nation has been striving to reconstruct the legal system and to bring in new laws or to reintroduce laws from Najibullah's time. In the meantime, only Sharia laws are used in the provinces. The source also mentioned that punishment like amputation has not been used since the fall of the Taliban regime. The source pointed out that everybody deploys Sharia law even in Kabul. This extends to prosecutors, judges and defence lawyers.

5.2.3 Local courts/tribal councils – Shuras and Jirgas

A number of sources mentioned that the local councils of elders, the *Shuras*, and gathering of representatives from the local community, the *Jirgas*, play a major role in the solution of local conflicts, although the councils do not pass unambiguous rulings and are subordinate to the local power structure²⁴.

The UNAMA explained that the majority of disputes and conflicts are resolved by traditional mechanisms such as the Shuras and the Jirgas, without using the formal legal system.

An international NGO mentioned that the Shuras make decisions with respect to traditions and customs, and not with regard to secular laws. If there is a conflict in a district, people can go to the Shura, which is more effective than the official system. However there are examples from provinces of Paktika and Paktia where murder cases are closed after the perpetrators family, as penalty delivers a young female family member to the family of the assassinated. The woman is often treated at will.

The Italian ambassador explained that as a part of the law reform they are trying to include a law guiding the relationship between Shuras/Jirgas and the formal legal system. People have recognised that it is impossible to do away with the traditional institutions and are therefore trying to incorporate the Shuras into the formal legal system to the extent that their work are not in conflict with human rights.

The source was of the opinion that the informal mechanisms such as Shuras/Jirgas play a major role in the question of access to justice. The source added that civil cases could be solved more easily, quicker and more reliably by the informal mechanisms, although this does not apply in all provinces. In answer to the question what is needed for the Shuras and Jirgas to operate better, the source stated the following: It will be necessary to link the informal legal system with the formal system, and sentences made by the Shuras should be monitored in order to ensure that these are not contradictive to the human rights. This is the case when young girls are handed over as compensation. There is a need to train the members of the Shuras. The Shuras should not handle penal cases, which is the case today. The source pointed out that it is particularly necessary to transfer cases where women are involved to the formal legal system since women need the protection and legal aid offered by the formal system.

²⁴ A Shura is a council that consists of certain individuals chosen by a provincial town or tribe. A Jirga is a meeting, which is called for if large problems arise. The members of the Jirga come from different groups within the community among others the elders and most respected people.

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The President of the Supreme Court confirmed that the handing over of women as compensation in cases of murder occurs. The source explained that this practice is against Sharia law, and found that the perpetrator should be punished. The new government is trying to fight such traditional forms of punishment.

The Lawyers Union of Afghanistan explained that the members of the Shura wish to stand out as just and fair and are therefore trying to make rulings that will be generally accepted. Therefore the Shuras follow the accepted traditions and customs. Different districts solve conflicts in different ways according to local custom. The rulings made today are similar to rulings made years ago. The source also gave the above-mentioned example on how a case is solved by giving away young women.

5.2.4 The prison system

The EU Special Representative mentioned that prisons exist both under the control of the NSD and of the Ministry of Justice. Additionally, there are private prisons that are controlled by warlords or by the local police on which the government has no influence. The source mentioned that the new director of the NSD has acknowledged the bad conditions for people in custody and is keen to improve the conditions for people in prison.

The ICRC informed that the organization has access to the prisons of the central government and of the coalition in Afghanistan. The committee visits the Bagram prison, which is managed by the coalition forces, every second week. Between 900 (nine hundred) and 1,000 (one thousand) persons are held in custody in Sheberghan prison that is situated in the northern part of Afghanistan. After the Taliban surrendered in Kunduz in 2001 over 3,500 (three-thousand five-hundred) persons were arrested and transferred to the Sheberghan prison. Out of this group 900 (nine-hundred) persons are still being held in custody. Some of these people are Afghans from southern Afghanistan and others are from Pakistan. In the beginning of 2002 the situation in the prison was of a level that compelled the ICRC to provide food for the prisoners, but the situation has improved since. One of the main questions for the prisoners is how long they will be imprisoned, as their situation has not been clarified. The committee mentioned that there are about 100 (one hundred) female prisoners in Afghanistan of which 70-80 are held in the Central Herat Prison.

The UNAMA stated that prisons in Herat are well organised and well maintained.

An international NGO explained that the conditions for imprisoned women have improved. They are overseeing 31 (thirty-one) women who are imprisoned in Kabul. The organization found that the conditions in the prisons continue to give rise to criticism. In Kabul, 521 (five-hundred and twenty one) men are inmates in a prison that was built for 200 (two-hundred) occupants.

The prisons represent an area that was described by the Italian ambassador as very problematic. The prison system does not receive enough support from the international community. Donors are not interested in the prison system and outside Kabul the prison

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system has to be built from scratch. It is the intention to demilitarise the prison system, which according to the source will demand considerable training of prison personnel.

The Minister of Justice explained that certain improvements have been carried out in Afghan prisons. Among other things, an effort is underway in order to provide satisfactory food for the prisoners. Complaints boxes have been introduced where the prisoners can submit complaints about anything of their concern and they can make suggestions for improvements. International organizations have access to the prisons. The Afghan media can write freely about prison conditions if there is anything to criticize.

The source mentioned that 450 (four hundred and fifty) judges and prosecutors are being trained in jurisprudence and that the reconstruction of premises for the courts is in progress. The Pul-e Charki prison in Kabul is being renovated and has been renamed Kabul Central Prison.

5.2.5 The Use of torture

The Co-operation Centre for Afghanistan (CCA) had not heard that the present security forces should have used torture and committed mass murders like Khidamat-i-Ittala'at-i-Dawlati (KHAD), but found that the security forces' use of torture could not be excluded²⁵. The CCA informed that it is generally known that the warlords use torture in the provinces.

The Lawyers Union of Afghanistan stated that law forbids torture, but in practice the situation is different. In the regions governed by warlords, it is common that people in custody are beaten up until they confess the crime of which they are being accused. The punishment depends on the crime and on the captive's relationship with the commander. The source was of the opinion that the police force's use of torture in Kabul is less widespread because of the presence of journalists and western organisations, etc., but even there the police can behave roughly.

An international NGO stated that torture does take place in the police stations, but not in the prisons. Persons arrested by the police can expect to be beaten up until they confess to whatever they are being accused of. Moreover, people who are arrested on suspicion of infringing the law can often be detained for more than a week in the police station, even though the law prescribes that one should go before a judge within 24 hours.

5.3 Freedom of Speech

A number of sources believed that freedom of speech have improved after the fall of the Taliban regime, although there are still limits to which extent this "freedom" is exercised. Several sources referred to a case from June 2003 where two journalists were arrested and accused of blasphemy because they had written an article, which criticized the warlords for using Islam as justification for actions, which in reality had nothing to do with religion. The case was considered in a special commission for freedom of the press.

²⁵ The Ministry of National Security under the communist government in Afghanistan.

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President Karzai later freed the journalists while they were waiting for the trial. Afterwards both journalists left Afghanistan with their families and went to Pakistan. In Pakistan they were subject to harassment and since then, with the help of the UNHCR, they have obtained asylum in the West²⁶.

The EU Special Representative stated that there continue to be problems concerning freedom of speech. Any criticism of the government, individuals in the government or the warlords lead to problems. People who utter such criticism risk being exposed to various annoyances or threats, being beaten up, tortured or shot. Hence both the media and political activists practice a wide degree of self-censure. The source stated further that newspapers and journals that criticize prominent persons by name could experience problems. This means that even new political parties are careful in expressing public criticism.

The ICG was also of the opinion that people who openly reports on human rights risk reprisals. In this connection they mentioned that a reporter from Human Rights Watch Afghanistan was forced to flee the country, when a report criticizing human rights conditions in southern and central Afghanistan was published in July 2003.

The Norwegian Chargé d’Affaires was of the opinion that the medias work under difficult conditions. Journalists can be exposed to attacks if they write anything that can be interpreted as criticism of Islam or the government. The source also referred to the above-mentioned case of the two journalists.

The AIHRC said that freedom of speech has improved in Kabul, but its limits depend on who is being criticized. In this connection, the organization also mentioned the story of the two journalists.

The Lawyers Union of Afghanistan found that the nice picture painted by others regarding Afghan conditions with respect to freedom of speech was false. In Kabul everybody is very careful about what they say or write and in the provinces freedom of speech simply does not exist.

An international NGO also mentioned the case of the two journalists referred to earlier. The source said that as a result of the case, the press laws have been revised. However, the newly revised press laws have not yet been finally approved.

The National Union of Journalists found that there is a positive development in progress towards increased democracy in Afghanistan. The new government is working in the right direction. Around 270 newspapers and journals are being published. However, the source deplored that only a handful of these publications are of a reasonable quality. The new government has passed a law on freedom of the press that allows total freedom of speech. Some people however have been abusing the new freedom above the level that

²⁶ Reporters sans Frontières, *Afghanistan - 2004 Annual Report*.

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the source felt was reasonable. In this connection, the source was of the opinion that on one hand people in Afghanistan should be given the right to speak freely, but on the other hand people should act responsible and write with respect of the culture. This means that one should not write in a deprecatory manner and harm people's reputation and honour or religion. The source complained that these rules are not always being respected. In this connection the source explained, that it happens that someone might criticize the policy of the Defence Minister, Fahim, but not frequently because the originator of such articles would be exposed to threats. The result would be the same if a person criticised a warlord.

A local source mentioned that it would not be possible for a journalist to stay in Afghanistan if he/she had written an article in a newspaper linking people from the government with drug crimes.

The CCA stated that freedom of speech has improved considerably during the last three years, since it is now possible to publish newspapers and journals, however it is still not satisfactory. Related to this, the CCA mentioned various cases where critical journalism had led to harassment of journalists and to the closure of newspapers. A journalist in Herat wrote critically about people in power and their relationship to Islam in the newspaper Aftab. Both the journalist and the editor of Aftab were later beaten up. Another journalist was physically abused after having criticized people in power in a radio broadcast. Finally the CCA mentioned a case in which the newspaper Telaya in Pol-e Khumri had written critically about a governor who was accused of unlawful acquiring of archaeological material. No one was arrested but the newspaper was closed. The Association for the Defence of Afghan Writers' Rights protested against the closure and had the newspaper reopened.

The CCA was of the opinion that if one writes about people in power, the policy of the government, or about people in the government one will have problems. The organization explained that in spite of the current freedom of expression, a certain form of self-censure is necessary. Writing about specific persons can lead to problems. As an example, the organization mentioned a newspaper that had published a caricature of President Karzai. This resulted in the newspaper being closed. The editor was arrested and interrogated though only for a few hours.

The organization was of the opinion that freedom of speech in the provinces is even more limited. If one expresses criticism of powerful persons in the provinces, you or people close to you, risk being exposed to reprisals. Furthermore, the organization pointed out that in parts of southern and central Afghanistan freedom of speech simply is limited because no newspapers or journals are published at all.

The CCA explained that they have received threats from people in or close to the government. This occurred in 2003 when Afghanistan joined the International War Crimes Tribunal. At that time the CCA wrote about Afghanistan signing up, and that in the future the country would be in a better position to deal with war criminals. Immediately after, the CCA received threats from people who feared that the CCA would

denounce war criminals to the tribunal and who demanded that the CCA refrained from writing about the human rights situation in the country.

5.4 Freedom of Religion

The sources consulted by the delegation explained that Hindus and Sikhs can remain in Afghanistan without having problems owing to their religion, but that conversion from Islam to other religions is not allowed.

The EU Special Representative was aware of the fact that Ismaili Muslims had complained about being harassed during a "happening" they had arranged in connection with the preparations for the elections²⁷. The source had no information on Sikhs or Hindus being subject to any form of harassment, but was of the impression that the groups might be subject to discrimination. The source had no information concerning the situation for Christians.

The AIHRC mentioned that Sikhs and Hindus had some problems under the Taliban, but today they can generally practice their religion without encountering any major problems. The source explained that there are no reports on whether Christian families have any difficulties in practising their religion. However, people converting from Islam to other religions are sentenced to death.

An international NGO reported that religion in Afghanistan today is a very sensitive topic. The constitution underlines that Afghanistan is an Islamic society but that people who belongs to other religions can practice their religion within the limits of the law. The source mentioned that there are Hindus and Sikhs and a very small group of Christians in Afghanistan.

The CCA explained that Hindus and Sikhs can practice their religion without any risk of harassment. Conversion is not permitted and the CCA did not know of persons who have converted from Islam to other religions in Afghanistan. The CCA assumed that a person who has converted will in the first instance encounter problems with his/her own family and social network, which will not accept the conversion, and later he/she will get problems with the surrounding community (see section 6.9, persons in mixed marriages).

5.5 Freedom of movement and the importance of a network

All sources consulted were of the opinion that it is difficult to settle down in any town in Afghanistan if one does not have a helping network. In addition various sources were of the opinion that people who are persecuted in one area have difficulty in obtaining protection elsewhere. In this relation many sources referred to a case where a Pakistani/Afghan couple had been exposed to persecution and threats from their own

²⁷ The Ismailis have their roots in the Shia direction of Islam. They are a relatively small group and are based in the central and northern parts of Afghanistan. Ismailis regard the Aga Khan as their spiritual leader. United States Department of State, *Afghanistan; International Religious Freedom Report 2003*, February 2004.

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families due to their marriage. The couple had tried to settle in various places in Afghanistan, but they were finally forced to flee the country.

The IOM explained that Afghans from country districts are migrating to larger cities to look for work and housing. The source mentioned that apart from Kandahar, the population in the large towns is ethnically mixed. In spite of this it is rare that people try to settle down in towns where they do not have a network or where they have not lived earlier. The source was nevertheless of the opinion that the Afghan people are very mobile and do not have problems in settling down in a new place if possible.

The UNHCR explained that Kabul is the only town in Afghanistan where one can survive economically without having a network, but this requires a certain level of professional experience in order to get a job within a NGO or the like. The situation for single women however is complicated (see section 6.2.5).

The UNHCR found that an internal flight alternative is not possible in Afghanistan. The organization was of the opinion, that it is only possible to settle down in an area if there is a network that can assist in the establishment process and provide protection. One cannot use Kabul or any other city as an internal flight alternative if one has a conflict somewhere else in the country, because the networks of clans and the political networks are very closely linked up throughout Afghanistan, and the central government are not able to offer protection.

The UNHCR pointed out that women are dependent of a network in order to settle down in another place in the country. As a result, they do not have a real opportunity to move to another part of the country to avoid a forced marriage, etc. The UNHCR mentioned in this connection the case of the young Pakistani/Afghan couple that they are trying to resettle abroad. Further the UNHCR explained that it is necessary to have very good connections in order to return to the southern or southeastern Afghanistan in order to get the necessary protection against the Taliban.

The CCA declared that if one for any serious reason has got the negative attention of a warlord e.g. General Dostum, one will not be safe anywhere in Afghanistan not even in Kabul.

The Lawyers Union of Afghanistan stated that it depends entirely on a persons network as to whether one is protected. This is due to the fact that in case of a conflict people turn to the most powerful person in their local area with their problem.

The Vice Minister for Women Affairs explained, as did other sources, that women are completely dependent on their family's network in order to obtain protection (see section 6.2)

6. Special groups

6.1 Ethnic minorities

The UNHCR informed that internally displaced Pashtuns, returning to northern Afghanistan on "go and see" visits, have had security problems with the local warlords of the northern provinces of Faryab and Jowzjan²⁸. The source mentioned further, that some of the Pashtuns who have been repatriated to these areas have had problems in getting access to resources in the local community. The source added that a number of Pashtuns have expressed that they do not want to return to areas controlled by Panjshiris.

The UNHCR mentioned further that there are also ethnic conflicts in the Ghazni and Uruzgan provinces between the Hazaras and the Pashtuns. In some areas the Hazaras cannot travel through areas controlled by Pashtuns. Moreover the source stated that there have been tensions in Ghazni province between the Hazaras and Kuuchis, Afghanistan's nomadic people. These disputes were concerning the right to land and water and have not resulted in major fights.

The IOM mentioned that they have also been involved in "go and see" visits in northern Afghanistan. In connection with these visits there have been security problems for Pashtuns.

The CCA did not know of the presence of serious ethnic conflicts in Afghanistan.

6.2 Women's situation

6.2.1 The general situation for women

The UNHCR found that most areas in Afghanistan are still very conservative regarding the treatment of women. The source mentioned that especially in the Pashtun areas, women have almost no rights. It is the father or spouse who makes decisions on the woman's behalf. The source mentioned that women have a better change of getting work in Kabul than in other places. The source informed that the UNHCR currently is setting up a women's hostel in Kabul, but found that it is uncertain to what extent this hostel in the current situation will be able to offer protection to women.

The EU Special Representative was of the opinion that the situation for women, even in the towns, has changed very little over the last 18 months. The source mentioned that there are nevertheless regional differences. For example, the situation for women in Bamian is better than in other regions because it is accepted that women take an active part within politics. In the Pashtun regions the position of women is very bad. In many areas women for example cannot leave the house, either because they are not allowed or because they are afraid of being attacked and/or being raped. The sources drew attention to the fact that even if the new constitution prescribes that men and women are equal, it

²⁸ "Go and see" visits are visits, which are arranged in order to give internally displaced persons the possibility of returning to the districts which they come from, in order to see if they finally wish being repatriated.

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also states that no law should be passed which conflicts with the guidelines of Islam. Consequently, it will be difficult to change the situation for women.

The source was of the opinion that the latest developments in the country have only improved the situation for a small group of women. The source stated that the problem mainly is that women continue being uneducated and is not aware of their rights. The source explained that women are still subject to attacks and violence at home. They have restricted access to education because the husbands or fathers do not allow women to become educated or to work, and they are limited in their freedom of movement because in some areas women are still not allowed to leave their house. Moreover, there are reports saying that in some areas women are being kidnapped by warlords and raped or forced into marriages. The source was of the opinion that the work of the Ministry for Women's Affairs has improved as the ministry works more directly with strategic and political planning.

The Vice Minister for Women's Affairs found that in some areas there has been an improvement in the situation for women during the last eighteen months. Women can now study at the university, leave their homes, and they take part in cultural and political life. The source gave the following examples; women took part in the constitutional Loya Jirga, and there are two female ministers in the government and the country has female ambassadors. The source explained that 20 shops are now being managed by women and that women can work e.g. for the NGOs.

The source was of the opinion that the new constitution was a positive step in the direction of improving women's situation. The source found that it was positive that women and men should be treated equally according to the new constitution. The source explained that it is now an important part of the Ministry's work to implement the Constitution. The Ministry also works to introduce the legislation, which will support women. Among other things they are working to achieve that all marriages should be registered and that the age for marriage for both men and women should be 18 years. Currently the law states that women have to be 16 years and men 18 years old, but this rule can be ignored if the families agree upon doing so (see section 8.2, marriages).

However, the Vice Minister was of the view that there are still a lot of problems facing women in Afghanistan. Afghanistan is a male-dominated society, where traditions oppressing women still exist. In the opinion of the source it is very difficult to change the situation for women because 90% of the women is illiterate and therefore not aware of their rights. The source explained that most women in Afghanistan are not in control of the course of their own life. It is difficult for a woman to change her situation, as she is economically dependent upon her husband or father.

DACAAR was of the opinion that women in Afghanistan have more possibilities today compared to Taliban era. The source mentioned that in Kabul the number of women without a burca increases every day. However, the source had the impression that there is still a large amount of uncertainty about the future for women in Afghanistan and there continues being strong traditions that are limiting women's activities. As an example the

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source mentioned that some of the DACAAR's female employees cannot participate in supplementary training courses, since this would imply that they had to be in the same room as their male colleagues.

The AAWU found that on the surface there have been positive changes since the Taliban era. Today women have access to schools and a lot of women have been employed in various jobs. Moreover, a lot of women are beginning to be less limited in their choice of clothing.

However, the source found that the situation for the majority of women has not changed during the last 18 months and that in certain areas it has become worse. The source was of the opinion that one of the big problems for today's women is that they are economically dependent. Women are still subject to forced marriages, where young girls as young as nine years are forced to marry older men of 50-60 years of age. Furthermore many women have no access to work or basic health facilities.

6.2.2 Security for women

The UNHCR stated that in northern Afghanistan there has been an increase in the number of rapes of girls and women, and that similarly there has been an increase in trafficking of women and girls. The source mentioned that Saudi Arabia has returned 241 children to Afghanistan. The children were likely victims of human trafficking.

The UNHCR explained that many of the repatriated refugees have considerable debts when they return to Afghanistan. There are examples of repatriated refugees repaying their debts by giving away their daughters.

The UNHCR was of the opinion that the situation for Afghan women who have repatriated to Afghanistan is more difficult than for women in the refugee camps in Pakistan. As an example the source mentioned that a locally employed employee of the UNHCR had been forced to stop sending his daughter to school in Kabul, as she was subjected to harassment on her way to school.

The Vice Minister for Women said that the generally poor security situation in Afghanistan, the lack of demilitarisation and the constant presence of warlords imply, that a lot of women are afraid to walk in the street or to go to work. Women are subject to acts of revenge against themselves or their families and to mistreatment within the family.

The AIHRC explained that they have received reports concerning cases where local commanders have kidnapped women for forced marriages and rapes. The sources mentioned a case where a 16 year-old girl had been kidnapped in Mazar-e-Sharif (see section 6.2.3, the rule of law as applied to women).

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The AAWU explained that kidnapping of women is a major problem especially in Kabul. The source had personal knowledge of a case where a young girl was kidnapped in Kabul a few months ago. The family turned to the police, but nothing happened.

6.2.3 Rule of law as applied to women

A number of sources mentioned that there is a serious problem concerning women's access to the legal system, and that the application of rule of law for women is very poor. A number of sources referred in this context to the fact that in some areas a murder case is resolved by the family of the perpetrator by giving one or a several girls or women to the family of the murdered man.

The EU Special Representative said that the new constitution contains regulations regarding human rights and the rights of citizens, which are in agreement with international standards, including equal rights for men and women. In practice, the situation for women has only changed very little and not at all in the provinces. The source added that in general, women cannot get assistance by referring to the law. The legal status of women is very bad, especially in remote districts.

The UNHCR found that the situation for a woman who has violated the social norms in her family is very serious, because she will no longer have protection from her family. If she brings shame upon her family, she runs the risk of being killed. According to the source, there is no internal flight alternative available for such women.

The Vice Minister for Women's Affairs explained that in traditional families women are still not allowed to leave the house. In such a situation it is simply physically impossible for a woman who wishes to report a case to reach the police. The bare fact that she leaves the house without permission could result in her imprisonment. It is common that women who run away from their husbands end up in prison. This creates major problems for women because after being imprisoned they no longer are regarded as honourable. A girl who comes into conflict with her family cannot get protection anywhere.

The Vice Minister of Women's affairs explained that in situations where girls are kidnapped by local warlords, the family can turn to the police. The Ministry also operates a complaints unit, which takes up such cases. The unit has problems operating in areas where the government has no influence. According to the source, a father who murders or abuses his daughter will nevertheless go to prison.

The AIHRC was of the opinion that the existing legal system is not adequate and is problematic for women. The source explained that the AIHRC cannot do anything if a woman is forced into marriage. This does not apply, however, if a warlord has forced a girl to marry him against the family's wishes. However, the source complained that warlords often go free in such cases.

The AIHRC mentioned as an example a case from February 2004 in which a 16-year-old girl from the province had been kidnapped, raped and murdered. The case has been

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investigated and the girl's body was found and the perpetrator imprisoned. However, the penal case has still not been decided. The source predicted that the decision would depend upon which court the case is taken to. If the case is heard at a local district court, the source predicted that pressure will be put on the court and it will end up with a mild punishment for the perpetrator. The AIHRC is therefore working to transfer the case to Kabul where there is a greater chance that it will be subject to proper proceedings. The President for the Supreme Court is however against transferring the case from the province to Kabul.

The source also mentioned another case from Kabul in which a warlord kidnapped a girl with the intention to rape her. The case came to the attention of the ISAF that managed to prevent the rape and arrested the warlord. After two months, the warlord was freed without the case being taken to court. At the same time, the girl was held in custody and had to stay in prison with female criminals.

The AAUW found that women's access to rule of law has not improved substantially during the last 18 months. The source was of the opinion that the authorities can offer no protection to women. If a husband accuses his wife of infidelity, she will very often be imprisoned. The source explained that a man can order his spouse to leave if he wants to remarry, where after she will be forced to go and live with her family. The man can go to the police after two or three months and say that his wife has run away, and she will risk being imprisoned. The source explained that it is very rare that a man will grant his wife a divorce, partly in respect of his own honour and partly because he might have to pay money to the divorcee.

The source explained furthermore that women who have been in prison are later branded by the community and are considered as having brought shame to her family. They have major problems in being reintegrated and some end up as prostitutes. The source mentioned an example from Herat where a woman was arrested in the street and taken for a gynaecological examination because she had been talking to a man.

An international NGO explained that access to the legal system is especially difficult for women. Women who turn to the police run a considerable risk of running into trouble with the police.

The Lawyers Union of Afghanistan stated that women are very heavily punished for infidelity; likewise a lot of women are imprisoned accused of infidelity. Furthermore the source stated that women who wished to leave their husbands generally have no protection. A woman's husband can institute legal proceedings against her if he wants to.

The President of the Supreme Court nevertheless stated that women have access to the legal system on the same level as men. He stated that a woman who wishes to be granted a divorce should go to a certain family law court, which will deal with the case. If the husband does not wish to permit the divorce, it can be difficult for a woman to achieve it, but according to the source it is possible if she has weighty arguments. The source

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explained that a new law on marriage rules has been passed, which allows women to be divorced if their husbands have been missing for more than four years.

6.2.4 Forced marriages

According to the EU Special Representative, it is customary practice that young women are married against their will to older men, which contributes to a high incidence of suicide among young women.

An international NGO stated that marriages between minors are of common occurrence. Marriages between children of 7 years up to 15-17 years of age occur quite frequently. It is similarly common that 13 year-old girls already have children.

The Vice Minister for Women underlined that forced marriages are widespread. It is also common that a 12-year-old girl has to marry a 50-year-old man. A woman runs the risk of being murdered by her family, if she does not marry the person whom the family has chosen. The source said that it is not in reality possible for a young girl to seek support from the authorities or the police against a marriage her parents have decided upon.

The President of the Supreme Court stated that according to Islamic law, it is not permitted to force women to marry against their will. The source stated that a woman could always make a complaint to the courts in such a situation.

6.2.5 Single women

The UNHCR was of the opinion that Afghan culture does not include the concept "a single woman". A woman always belongs to a relative. For example, a widow will usually be married again, but can be treated very badly. The UNHCR has knowledge of a case where a group of single women had returned to Afghanistan from Iran, and the only way of ensuring their safety was if they remarried.

The UNHCR stated further that often the only way in which a single woman can return to Kabul is by getting married. The source explained that single women find it very difficult to get by. A survey on how different groups of repatriated refugees survived the winter in Afghanistan showed that female-headed households were the group, which found it significantly more difficult getting through the winter.

The EU Special Representative mentioned that it is very difficult for single women to settle down in Afghanistan. It is not possible without some kind of social network.

The Vice Minister for Women's Affairs explained that in the Afghan society single women's safety cannot be guaranteed. In Afghan society, there is no understanding of the concept "single woman". A woman, who returns to Afghanistan alone and lives alone risks being robbed, raped or murdered. If she is robbed people will believe that she has also been raped. The source explained that she returned from Germany without her husband after the fall of the Taliban. The Vice Minister is a highly educated woman who is married and has children. Nevertheless she was not able to settle down alone in Kabul,

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but had to get in contact with an uncle on her mother's side and ask if she could live in his house.

The AAWU found that a single woman can only settle in Kabul if she is very rich and can afford security guards and can get work within a NGO that is able to offer her protection, and is clever enough to know how to avoid problems. The source mentioned that a normal single woman will be getting problems if she returns to Afghanistan

6.2.6 Access to education and healthcare for women

The UNHCR found that women's access to education has been substantially improved since the fall of the Taliban.

The SCA pointed out the very large geographical differences in how many women are going to school. The big problem with schools for girls is that there are too few female teachers.

According to the EU Special Representative many women only have restricted access to medical assistance. It is expected that female health personnel, of whom there are not enough in the country, should examine women.

SCA explained that women's access to health facilities is a major problem because, apart from the usual problems in the healthcare system, there is a lack of female health personnel and many women do not want, or are not allowed being examined by male personnel.

The World Health Organization (WHO) confirmed that the lack of female health personnel is a big problem, since it is part of Afghan culture that only women are allowed to examine women. The cultural customs thus prevent proper use of the already sparse resources. They reported that many women die without the healthcare system being made aware of it. This is due to the fact that they are suffering from a female illness and because the healthcare personnel are mainly male (see also section 9.3.1, access to healthcare).

6.3 Homosexuals

According to the UNHCR homosexuality is forbidden pursuant to Islamic law in Afghanistan. The source found that it is difficult to say anything definite about conditions for homosexuals. This is first and foremost because no one is prepared to declare that he is a homosexual or practices his sexuality in such a manner that it becomes publicly known. The source had no knowledge of cases under the new government in which homosexuals had been punished.

The source pointed to the fact that behaviour between men, which would arouse curiosity in many western countries such as holding hands, kissing or embracing is not considered as explicit sexual behaviour in Afghanistan. The source was of the opinion, that homosexuality was common in Afghanistan in connection with the sexual debut due to the strong degree of separation which is practiced between the sexes. The source knew of

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commanders who were known of having relationships with young boys. However this does not lead to a general accept of homosexuality in Afghanistan. The source mentioned that rumours had been circulated, that people from the Panshjiri-dominated security forces had raped young Pashtun men with the aim of demonstrating their power.

The source was of the opinion that homosexuals do not encounter problems provided they keep their sexual orientation secret and also do not overstep other social norms within their family. The source said that among other things men of homosexual orientation can be forced into marriage by their family. Hence, a possible conflict will only become apparent if the man refuses to marry.

The CCA explained that homosexuality is forbidden in Afghanistan. Open homosexual behaviour will be severely punished. The organization knows of the existence of homosexuals, but has never heard about homosexuals being punished. They were of the opinion that if anybody was to be punished for being homosexual, the behaviour has to be proven. The organization had no knowledge of the existence of homosexual relationships among women in Afghanistan.

6.4 Secular behavior

The UNHCR explained that there are no major problems regarding secular behaviour in Kabul such as drinking or watching western-orientated TV or video. Possible sanctions against such behaviour depend on what kind of family one belongs to. The transgression of different social norms can be sanctioned severely if one belongs to a family that does not accept it. The UNHCR mentioned, however, that they had heard that two video shops had been bombed in the town of Gardez.

The EU Special Representative did not know of any cases where people had been seriously harassed because of non-Islamic behaviour. The source was aware that Ismail Khan, Governor of Herat in western Afghanistan closed video shops after the approval of the constitution on the grounds that an Islamic constitution had been applied. The source had knowledge of an episode in Herat where a marriage celebration was closed down because of the music being played too loud. Moreover, the President of the Supreme Court has stated that cable TV is non-Islamic. The President of the Supreme Court is a strong opponent of Afghan Television showing female singers, and had therefore originally banned female singers from the TV. A ban that was later reversed by the Afghan Minister of Culture.

The CCA found that everybody is free to watch TV and video films in the main cities. They explained that in many hotels in the main cities alcohol is being served. They were of the opinion that one could serve alcohol in one's own home in Kabul without being punished, but there was a risk of sanctions if one consumed alcohol in public. The organization found that Afghan citizens can consume alcohol together with foreign guests in public restaurants in the bigger towns, a behaviour that is not permitted in several areas in the province.

6.5 Former members of the PDPA including KHAD and persons related to the former Soviet Union

6.5.1 Former members of the KHAD and the PDPA

The UNHCR explained that many former and highly placed members of the PDPA work for the present government without experiencing serious problems. The UNHCR was of the opinion that being an ex-PDPA member is not in itself regarded as a problem in Afghanistan today. Regarding the question as to whether a person from the former PDPA or KHAD runs the risk of any form of persecution depends on whether he, in the course of his activities for the PDPA or KHAD, has had concrete conflicts with or has come in opposition to people who are in power at the present time.

The UNHCR explained that from March to December in 2003, the organization had not received reports on harassment or persecution of former members of the PDPA who had repatriated after the fall of the Taliban. However, the UNHCR pointed out that members, known by the organization, who had returned were not highly placed members of the PDPA. The UNHCR did not know of any former members of the KHAD who have returned.

The UNAMA was of the opinion that former members of the PDPA who did not have a high profile could settle in Afghanistan. However, the source found that ex-members of the PDPA would find it difficult to reorganize politically in an organization with a communist ideology without experiencing some form of harassment. The degree of harassment according to the source depends on the history of the person. The source had the impression that the political environment in Afghanistan currently is not open to all political viewpoints. The source stated that in this connection personal conflicts are more important than political conflicts.

The source mentioned a case in which a former employee of the KHAD had returned to Afghanistan and was now working for the security forces. The person has complained that powerful individuals have threatened him, persons he in his previous position had been investigating. He had allegedly been stopped in the street and threatened into silence.

The ICG was of the opinion that whether an ex-member of the PDPA was able to return to Afghanistan depends on whether the person tries to exercise any political influence as a communist. If this is not the case, such an individual will be able to live in the country.

The source mentioned the leader of the United National Party as an example of a former highly positioned PDPA member who lives in Afghanistan. The person is a former member of the central committee of the PDPA, and President Karzai is considering employing him in a high-ranking position. The United National Party is a new party with a non-communist ideology. The United National Party is registered as a party for the September elections. The source explained, however, that the above-mentioned former member of the central committee of the PDPA is forced to live under a considerable degree of protection.

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The source was of the opinion that there exist former members of the PDPA who cannot return to Afghanistan. The source mentioned that a number of the former members have been selected by President Karzai to work for the government, and that many ministries could not exist if they had not been employed. The source pointed out that many of the former members of the PDPA are not war criminals, but have relevant training, which can be used to contribute to the reconstruction of the country. Many of these people are only trying to find a meaningful way of using their resources for the rest of their lives, and have no strong political interests.

An international NGO had no knowledge of serious problems concerning the former members of the PDPA. However the organization thought that former communists are not being popular. The source knew of former communists not being able to propagate openly for a communist political programme.

The CCA was of the opinion that former communists do not experience serious problems in Afghanistan today. A number of former members of the PDPA have organized themselves again, and there are many examples of former highly placed supporters of the PDPA working in the current government. The CCA was of the opinion that former high-ranking members of the PDPA can remain in Afghanistan if they do not get involved in conflicts with powerful individuals. The CCA also gave the example of the leader of the United National Party who, according to the organization, was a highly placed military officer in the PDPA and, among other things, organized the military forces that fought the Mujaheddin.

Furthermore, the CCA mentioned that about half of the officers working in the present Afghanistan Intelligence Services are former officers of the KHAD. It has been necessary to introduce them into intelligence work, as there is a lack of qualified personnel in this field. The organization gave as an example that the director in the 7th department of the present intelligence services earlier served a similar position in the KHAD.

The AAWU explained that there are still prejudices in Afghan society against former members of the PDPA. The source explained that former members have problems when registering their political parties and they have difficulties in finding jobs in the administration within the government.

According to the Lawyers Union of Afghanistan there is no greater risk in Afghanistan today for former members of the PDPA than for Afghans in general. In this context it has no importance what position one occupies in the PDPA. The source stated however that very highly profiled former members of the PDPA have not returned to Afghanistan yet.

6.5.2 The situation of individuals connected with the former Soviet Union

The UNHCR and the UNAMA both said that they did not have information supporting the fact, that people returning from longer-term stays in the former Soviet Union have problems in Afghanistan today, solely for the reason that they have been staying in the Soviet Union for a longer period.

The CCA explained that people who return after a long stay in the former Soviet Union do not experience major problems in Afghanistan, except if they have had specific conflicts with people who want to make revenge.

6.6 Persons in conflict with the present rulers/ the Northern Alliance

The UNHCR found that Kabul is not a safe place if a person has been involved in a serious conflict with General Dostum or with any other powerful warlord. The source was of the opinion that individuals can do very little to hide from the warlords or from the local commanders. The source pointed out that President Karzai is close to General Dostum. The government is not in a position to offer any form of protection against warlords or local commanders. The source stated, that a conflict in which a person was guilty of attacking the honour or reputation of a warlord should be regarded as serious. The UNHCR explained that the situation for people involved in past conflicts with persons from the Northern Alliance will depend upon the specific area the person concerned will return to, and what kind of conflict.

6.6.1 Persons in conflict with Jamiat-e-Islami and Shura-e-Nazar²⁹

The CCA found that people who have been involved in conflicts with Jamiat-e-Islami would get problems in Afghanistan today. The problems depend on the profile of the person and the character of the conflict.

The organization further explained that the question as to whether a person who has previously been involved in conflicts with people from Shura-e-Nazar will continue to have problems if he returns to Afghanistan, will depend on the type of the conflict, the importance of the person concerned and the other person involved in the conflict. At the same time it depends upon where too one returns. As an example the source mentioned that if one is involved in a ten-year-old conflict with a single man from the countryside, and returns to Kabul, it is not likely that one will get any problems. If one has any problems with powerful individuals within Shura-e-Nazar one runs, according to the organization, the risk of being persecuted in Afghanistan as the situation is today.

6.6.2 Persons in conflict with Hezb-e-Wahdat

The UNHCR mentioned that the two factions of Hezb-e-Wahdat continue to function as political parties. Each faction controls a part of central Afghanistan. The UNHCR underlined that it is important to continue monitoring security in the area - and found that the power structure in this area is complicated. In this mountainous region it is possible for a single commander to control and terrorize a whole valley according to the UNHCR (see section 3.3.2).

²⁹ Shura-e-Nazar is a political committee connected to Jamiat-e-Islami with strong support from the Pansjhir valley, the place where the late Ahmad Shah Massoud, the former leader of Shura-e-Nazar source of origin.

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The UNHCR was of the opinion that it can be difficult returning to Afghanistan for persons in conflicts with Hezb-e-Wahdat commanders. People can be persecuted if they return to areas where they are in conflict with the local commander.

The UNAMA found that it is not possible finding an internal flight alternative, if a person has serious conflicts with one of the two Hezb-e-Wahdat factions.

The CCA mentioned that there are several powerful people in the government belonging to Hezb-e-Wahdat. The CCA was of the opinion that there has been a softening in the fights between the two Hezb-e-Wahdat factions, and that old conflicts no longer are of the same importance. The source found that the question as to whether a person still has something to fear in Afghanistan if he has been in conflict with one of the two Hezb-e-Wahdat factions depends on the person's position, the character of the problem and where to he wants to return. Such a person would have a better chance avoiding problems in Kabul than in the provinces.

6.6.3 Persons in conflict with Junbish-i-Melli

The UNHCR and the CCA explained that the situation for individuals who are in conflict with the Uzbek-dominated party, Junbesh-i-Melli and the party's leader, General Abdul Rashid Dostum depends on where the person concerned is from, and where he/she wants to return to, as well as how serious the conflict is for the parties involved. It would be difficult to return to an area, which General Dostum controls if one is part of a serious conflict with him. Returning to Kabul can also be difficult, since even here there are people who have connections with Junbesh-i-Melli. In this context the CCA mentioned that even if it was possible to turn to the police for help in some areas of Kabul, one cannot really say that the government in Kabul can offer protection in such conflicts.

The CCA found that it is not certain that people in Kabul will have problems with General Dostum if it concerns minor conflicts. As an example, they mentioned that the Kabul magazine "Rozana" had written about the situation of women in General Dostum's territory without getting problems. The source was of the opinion that a similar publication in the areas controlled by General Dostum himself could not have taken place.

6.7 Persons connected with Taliban

The UNHCR found that former members of the Taliban who are guilty of human rights abuses are likely to get into troubles with the local community. The source mentioned that low profiled, or ordinary Taliban members generally do not face problems when integrating in the local community.

The UNHCR explained that it is most likely, that some of the people who earlier supported the Taliban are now living in Kabul and other areas without having difficulties with the existing people in power. However the UNHCR pointed out that people who are known for having supported the Taliban run the risk of receiving serious threats if they return to the areas of Faryab, Badghis, Bamian and Ghazni in northern, north western and

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central Afghanistan. The source explained that a number of the acts of revenge related to the conflicts that aroused during the Taliban period is being carried out. The source new of episodes where the local population had imposed certain conditions towards a refugee wishing to return, whom they believed had committed human rights violations. The source said in this context, that the battle of the coalition forces in southern and southeastern Afghanistan is directed against high profile Taliban members and Al-Qaeda members. In relation to this, the source did not know of highly profiled Taliban members who had returned to Afghanistan.

The UNAMA found that the situation for former members of the Taliban is complex. The questions, as to whether a former member will have problems in Afghanistan today depends on whether the person concerned has a solid network, and is in a position to persuade that he has changed side to the people in power.

An international NGO mentioned that people who formerly worked for the Taliban can have problems in Afghanistan today, but that the extent of the problems depends on how highly placed the person was.

The Norwegian Chargé d'Affaires pointed out that not all Taliban supporters committed crimes. The source was of the opinion that many ordinary people choose to join the Taliban just in order to get a job and are therefore not necessarily guilty of human rights abuses. The source found that at the present time there is very little persecution going on of the Taliban supporters. They have adapted to the society and have no problems solely because they are former members of the Taliban.

6.8 Persons connected with Hezb-e-Islami

The UNHCR explained that there are two factions of Hezb-e-Islami: The Hekmatyar and the Khalis.

The source explained that there are small groups of the Hekmatyar/Hezb-e-Islami in the Kunar province. Nobody knows where Hekmatyar himself is living. Some of his men work with the Taliban. In the opinion of the source, Hekmatyar's position is weak. Khalis has joined Shura-e-Nazar and various Khalis supporters work for the government.

The source was of the opinion that ex-Hezb-e-Islami including former Hezb-e-Islami commanders do not have any problems with the government in Afghanistan today, if they make it clear that they no longer are working with Hekmatyar. A number of ex-Hezb-e-Islami members occupy high positions within the government. As an example the source mentioned that Hekmatyar's former right-hand currently holds a high position in the government. The present situation taken into consideration, the source found that it depends on the history of a former member of the Hezb-e-Islami whether or not he/she risks being persecuted in Afghanistan.

Hezb-e-Islami earlier had a lot of civil servants attached to his group, and the source found it likely that President Karzai has decided to include such former Hezb-e-Islami officials in the government. President Karzai has among other things appointed various

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former supporters of the Hekmatyar as governors. The question as to whether a former member of the Hezb-e-Islami risks being persecuted today, depends on the person's connection with Hekmatyar, and to what extent the person still is in conflict with powerful people in Afghanistan.

The UNAMA mentioned a case in which a person had been arrested by the ANA and was accused of being connected with Hezb-e-Islami. The person was released because his brother was able to prove to the ANA that the person in question no longer supported the Hezb-e-Islami. The source stated that if the security forces believe that one is connected to the Hezb-e-Islami's Hekmatyar faction, one risks being arrested. There is also a risk that people will accuse others of having connections to Hekmatyar for personal motives.

The ICG was of the opinion that Hezb-e-Islami does not exist today as a political party, but could be characterized better as a loose structure of individual warlords. The source found that the Hekmatyar's faction of the Hezb-e-Islami is not regarded as an important factor in the resistance against the government, but rather as a factor of annoyance.

An international NGO was of the opinion that people who formerly worked for the Hezb-e-Islami can have problems in Afghanistan today but that the scope of the problems depend on their connections to Hekmatyar and whether or not they are currently in conflict with the people in power.

The CCA confirmed that there are people connected with the government who earlier belonged to Hezb-e-Islami. The source mentioned that one of President Karzai's advisors was formerly the deputy head of Hezb-e-Islami's security forces in Peshawar. The source was of the opinion that a former member of the Hezb-e-Islami who has changed side, and who is clearly expressing his support for the government can remain in Afghanistan without being involved in problems. However, it is a pre-condition that one is no longer connected with the party. People who are currently active for the Hezb-e-Islami are considered to be at war with the current government like the Taliban supporters. They will not be able to remain in the country without encountering problems.

6.9 The situation for persons in mixed marriages

The UNHCR stated that the organization does not have any information concerning governmental persecution of people in mixed marriages. The source informed that the government has announced that all Afghan citizens can return to Afghanistan with a partner of non-Afghan origin, and that citizenship will automatically be given to the non-Afghan partner. However, the source was of the opinion that foreign women generally have more problems, than foreign men, of being made an integral part of the community.

The source stated that, the question as to whether the couple will be subject to persecution from their families depends on the attitude of the families. The source knew about cases where mixed couples had returned from their exile to Afghanistan without encountering problems. However the source was of the opinion that partners in mixed marriages should return to larger cities to avoid problems. The source explained that the UNHCR had been involved in a case in which a mixed couple, an Afghan Hazara man

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and a Pakistani woman were subject to persecution and threats from their families due to their marriage. The couple had tried to settle in various towns in Afghanistan but in the end they had been forced to leave the country.

The CCA mentioned that it was almost impossible for a Muslim Afghan woman to marry a non-Muslim man. The source found that in the majority of cases the families would not accept the marriage. The marriage will not be recognized and the relationship will be regarded as co-habitation outside marriage, which is severely punished. A woman who violates these norms runs a severe risk of being rejected by her family or, in the worst case, being murdered. A Muslim man can marry a woman with a Jewish or Christian background, but not a woman who is a Sikh or a Hindu.

The CCA knew of a number of cases in which women from the former Soviet Union had moved to Afghanistan because of their marriage to Afghan men. Such couples do not encounter any problems in Afghanistan, but in several cases the source found that the women could have difficulties in settling down in Afghanistan due to the traditional view on women.

6.10 Refugees and internally displaced persons

6.10.1 Repatriation of refugees

The UNHCR explained that the majority of refugees who have repatriated from Pakistan have returned to Kandahar or Kabul. A large group of Afghans who remain in Pakistan come from the provinces of Khost, Logar and Paktia. These groups do not wish to return. The source was of the opinion that it is due to the poor security situation, the continued coalition offensive and the Taliban infiltration in the respective provinces.

The UNHCR found that the lack of disarmament of militia groups is hindering repatriation. It is still difficult for refugees to go back to the southern regions. Nevertheless, the source expected that repatriation to Kabul would remain at the same level this year as in 2003. The source found that the conditions for repatriation to Bamian are better this year than in 2002 or 2003, which among other things is due to the work of the PRT unit in Bamian.

The source was of the opinion that refugees who are considering repatriation are more concerned with the difficulties in finding employment than with the uncertain security situation. The source mentioned that access to land has become more and more difficult for repatriated refugees. Some of the refugees can rent land by paying a large part of their income to the landowners, but at the same time this implies that they remain in great poverty and are heavily indebted.

The IOM explained that the lack of accommodation and work is one of the main reasons why Afghan citizens do not wish to return to Afghanistan. The organization pointed out that the lack of accommodation is one of the main problems in Kabul and other large towns in the country. The organization explained that Kabul was originally constructed for 500,000 (five hundred thousand) people but today 3 million (three) people live there.

The AIHRC had become aware of a case in which a Dutch citizen of Afghan origin was seriously mistreated because he did not want to pay a bribe, which was large enough. The source mentioned that it can be difficult for Afghans to return to Afghanistan. They are often regarded as western orientated, and it has caused hostile feelings within the community that Afghans from abroad have occupied several important positions in the government and administration. In the point of view of the source it can be difficult for the Afghans who have lived abroad to return to the provinces unless they are protected by the local warlord in the region. Afghans who return to their country are not even welcome in Kabul.

6.10.2 Internally displaced persons

The IOM informed that 70,000 (seventy thousand) internally displaced persons have returned to their homes during 2003. A large part of this group consisted of Pashtuns. According to the IOM there are still approximately 200,000 (two hundred thousand) internally displaced persons in southern Afghanistan – and around 100,000 (one hundred thousand) are nomads. Another large group consists of Pashtuns from northern Afghanistan - and it is the opinion of the source that these 200,000 (two hundred thousand) internally displaced people are the weakest and most difficult group to integrate.

The IOM found that there is a strong international interest in encouraging the Pashtuns to return to northern Afghanistan. According to the IOM, the UNHCR is in constant negotiations with the local warlords to ensure that the Pashtuns can return to northern Afghanistan. The IOM stated that there is an attempt to repatriate ethnic Pashtuns from central Afghanistan to the northern part of the country. The source explained that few of the internally displaced persons who have returned have had to leave again.

The Afghans who return as part of the "Return of Qualified Afghans Programme" usually return to Kabul. In the opinion of the IOM, only a minority of this group of people will remain permanently in Afghanistan³⁰.

³⁰ Return of Qualified Afghans (RQA) is a programme established by the IOM with the support of the EU Commission. The aim of the programme is to support highly qualified Afghans who wish to return to their homeland to work in the public or private sectors.

7. Special topics

7.1 Compulsory recruitment and compulsory labour

The UNHCR explained that an increasing number of young boys are being compulsory recruited to the armies of local commanders in northwestern part of Afghanistan. Young men are chosen at random by the commanders. Their families have to pay money if they do not want to let go of their sons. The people concerned are mainly young boys from the age of fourteen and up. The UNHCR did not know about the magnitude of compulsory recruitment. The source mentioned further that there is an increase in compulsory labour involving young boys. Compulsory recruitment and labour are according to the source most frequent in the months between January and May and from July to August when opium poppies are being cultivated. The UNHCR had knowledge of young men fleeing to Iran in order to avoid compulsory recruitment.

7.2 Risk of double jeopardy

The UNHCR had no general information about the occurrence of double jeopardy. They found that the risk of double jeopardy depends on whether a sentence, passed and served abroad, comes to the attention of the authorities in Afghanistan. It is difficult in practical terms to follow up on what happens in Afghanistan and therefore it is even more difficult to keep track on what sentences have been passed abroad.

The President of the Supreme Court said, in relation to whether it is a risk that a person who has been sentenced and punished in Denmark will also be judged and punished for the same offence in Afghanistan, that generally a person will serve his sentence where he committed the crime. However, the President of the Supreme Court pointed out that it depends on whether someone has committed a crime against society or against an individual. If one has committed a crime against society, one would not be prosecuted upon returning to Afghanistan. However, if someone has committed a crime against a person, for example committed a murder, there is a risk that the family of the offended could demand the perpetrator to be punished according to Afghan Law. In such cases there could be a risk of double jeopardy.

The Minister for Justice argued that if a sentence has been served abroad it is final. According to the Minister of Justice it does not make any difference whether one is sentenced and punished for murder and there are relatives who wish to present themselves as injured parties. There is no risk of double jeopardy if the offender has served his sentence abroad. The Justice Minister stated in this context that he disagreed with the President of the Supreme Court on this matter.

7.3 Security services

The Norwegian Chargé d'Affaires was not aware of any details regarding the present intelligence services in Afghanistan, but said that a large security service exists.

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The CCA informed that they did not have any knowledge as to whether the NSD is guilty of infringements to the same extent as the former intelligence services in Afghanistan. However, they could not exclude that offences are committed by the present security services. The source explained that the security forces have changed. They no longer act as an independent unit that is both executive and judiciary like earlier. The Ministry of the Interior and the Ministry of Defence will, according to the organization, now get involved in the decisions of the NSD.

8. Questions of family law - including documents

8.1 Afghan national passport

According to the Ministry of the Interior, any Afghan citizen has the right to a national passport. The applicant has to submit his request for a passport in person. The applicant should at the same time prove his identity, for example by showing an identity card. If the applicant is not in possession of such documentation, his identity can be established by other means among other things by conducting a personal interview. In order to have an Afghan national passport extended it is necessary to appear in person.

According to the source a male Afghan citizen can have his wife and children up to age of 14 registered in his passport without his wife having to meet at the passport office in order to sign the passport. However, pictures of wife and children have to be submitted.

According to the Ministry of the Interior, the provincial authorities have the authority to issue national passports. Police headquarters have passport departments. The validity for such passports is one or two years depending on the period requested. Trade passports and passports for foreigners with a residence permit in Afghanistan can only be issued by the Ministry of the Interior in Kabul. Such passports are valid for three years. A proposal has emerged to extend the period of validity for Afghan passports from five to ten years. However, this has not been approved. When issuing a passport the applicant has to pay a fee of 1,160 (one thousand one hundred and sixty) Afghanis (approximately US \$ 20-22 (twenty to twenty-two) per year the passport is valid.

According to the Ministry of the Interior all Afghan embassies and consulates have the authority to issue passports for Afghan citizens. One has to appear in person to be identified at the representative office abroad in order to have a passport issued. However the source informed that the Afghan authorities consider the identity determined if a government, e.g. the Danish government, forwards passports to the Afghan representative office abroad.

The Afghan authorities have begun to register all passports that are being issued. The serial number, photograph and fingerprint are noted in a book. In this way, it is possible to verify whether a passport has actually been issued to the person holding it.

The Ministry of Interior was of the opinion that many citizens from Afghanistan's neighbouring countries have illegally been issued an Afghan national passport. This applies to people from Pakistan, Iran, Uzbekistan and Tadjikistan. This has happened because it has not been possible to check the identity of the applicants.

8.1.1 Afghan nationality cards

The Ministry of the Interior explained that Afghan nationality cards (tazkara) represent a difficult area. Such cards have not been issued for the last 25 years. It is difficult to verify a person's true identity if they request a nationality card, including whether a person comes from Afghanistan or from one of the neighbouring counties due to problems with false passports.

According to the Ministry of the Interior, national identity cards can currently only be issued by the authorities in Kabul. Previously, such identity cards were issued in the format of a small book. Today, such cards are issued on a piece of paper size A4 (29,6 x 21 cm.). The source mentioned, that the Afghan authorities are planning to issue real national identity cards again. It has also been planned that it should be possible to have identity cards issued in the provinces. However, those plans are still not being implemented due to lack of resources.

8.2 Marriage formalities and marriage certificates

The Vice Minister for Women's Affairs explained that when a marriage is due to take place, contact is made with a mullah who performs the ceremony. The respective families of the couple and witnesses for both partners are present. The mullah asks the man and the woman each three times whether they will take one another as their spouse. The woman is often under pressure to agree upon the marriage, because if her answer is no she runs the risk of being rejected by her family, and thus not having any possibility for survival. If a woman does not answer yes to the question from the mullah, the witnesses step forward and answer yes on her behalf.

An international NGO mentioned that a marriage can be performed by a substitute. The NGO explained that there have to be three witnesses present during a marriage ceremony.

The Ministry for the Interior informed that there are very few Afghans who have a marriage certificate and that in general such certificates are not issued at all outside large towns. The source pointed to the fact that there does not exist systematic registration of marriages making it impossible to check whether or not two Afghan citizens are in fact married to one another. The Vice Minister for Women's Affairs mentioned in this connection that in Afghanistan there is a lack of offices where marriages can be registered.

An international NGO explained in line with the above, that very few couples have a marriage certificate. The source estimated that only 25-30% (twenty-five to thirty) of all couples in Kabul have a marriage certificate, while outside Kabul only 10% (ten) of married couples have such a document.

Both the Ministry of the Interior and the international NGO said that a marriage certificate can be issued after the marriage. In such cases one should approach the court where a form has to be filled in. It is necessary to go to the court accompanied by persons who can testify being witnesses to the marriage, e.g. the witnesses who took part in the marriage ceremony, or the families of the partners.

The Ministry of the Interior explained furthermore that the Afghan representations abroad are not in principle authorized to issue proofs of marriage, because they cannot check whether or not the couple is married. If embassies issue such proofs, this is more an expression of goodwill than a proper confirmation in the legal sense. The source said that

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one could solemnise a marriage at an Afghan representation abroad providing that both partners are present.

The Vice Minister for Women's Affairs explained that the Ministry for Women has suggested that all marriages in Afghanistan should be registered. It has also been suggested that the minimum age for entering into marriage should be 18 (eighteen) years both for women and for men. Currently, the minimum age for entering into a marriage is 16 (sixteen) years for women and 18 (eighteen) years for men, but the law can be ignored if the families agree upon doing so. The source mentioned that the other Ministries support its suggestion.

The source stated that usually only the male part of a marriage can initiate a divorce. A divorce happens if the husband says three times aloud that he is divorcing his wife. It is unlikely that witnesses are present. Upon a divorce, the woman is given the custody of the children up to the age of seven years for boys and nine years for girls. Thereafter, the custody is transferred to the children's father. It is very difficult for women to file for a divorce. Related to the obtainment of a divorce document, the source mentioned that both partners could approach the court and apply for a divorce document. The document can be issued if the couple approach the court together or if the man's family accompany the woman. In case of a divorce, the man should repay a certain amount to the woman. The amount has been agreed upon in connection with the marriage ceremony. If the man or his family disagree with the woman's wish for a divorce the document is not issued, according to the deputy minister.

9. The humanitarian situation

9.1 Drought

A number of sources reported that the harvest in 2003 was good and that the country is no longer affected by widespread drought, even though precipitation this year was less than the average for the season.

The UNAMA mentioned that Afghanistan is currently not facing any serious humanitarian problems such as famine or the like. This is due to the fact that the last two years harvests have been good and thus has improved the food supply situation.

The DACAAR informed that the organization currently have no projects for providing aid for acute drought problems in any region of Afghanistan – and informed that last years agricultural production had been good. This year there has been less rainfall than usual during the last one to two months. The source feared that supplying food could be a problem in some areas next year, if rainfall does not increase. However, the source did not believe it would generate a catastrophe as such.

An international NGO stated that the situation in regions seriously affected by drought last year has improved considerably this year.

With regard to the question of drought, the ACBAR was of the opinion that it was still a problem, especially in the southern regions where there was not sufficient rainfall last year.

9.2 Access to education

The UNAMA mentioned that the numbers of children attending school are increasing. However, there are still problems with access to further education after primary school, since not enough money is being invested in the secondary schools.

The SCA explained that after the fall of the Taliban money has been put into a comprehensive project to get children into school. Since then the number of children attending school has increased. The remaining problems are to procure enough teachers and classrooms in the schools. The policy of the government is that no child should be denied access to school, which means that the number of children in each class is very high in some areas. According to the organization, it is not unusual to find up to one hundred pupils from the age of four to twenty-eight in one class, which was intended for 30-35 (thirty to thirty-five) students. Therefore the SCA was concerned about the quality of the teaching. The source further explained that no national school policy has yet been worked out. The sources stated that everybody has access to primary schools, but access to secondary schools remains a problem. The sources mentioned that the local communities are financing several secondary schools. The source stated that there is access both to primary and secondary schools in Kabul. However, the population had grown extensively during the last three years in Kabul and many schools are overfull.

9.3 Healthcare

9.3.1 Access to healthcare and medicine

All the sources questioned found that access to basic health facilities in Afghanistan is very limited.

The World Health Organization (WHO) stated that access to a functioning healthcare system is very limited, especially in the rural districts, and that the majority of Afghans do not have access to the most basic health facilities. The source said that it is still possible to find clinics in various districts, but they often are short of qualified personnel and medicine. A possible transfer from a clinic in one district to a provincial hospital, or from a provincial hospital, to Kabul can be very difficult due to the poor infrastructure. The patients themselves are responsible for organizing such transfers, which further restricts the access to the treating of a disease.

The WHO explained that the possibilities of treatment at district hospitals are often very limited, among other things because hospitals are short of refrigeration equipment to store the medicines. The source did not know anything about the level of treatment in the provincial hospitals.

In Kabul and in the provincial capitals there is according to the WHO access to primary healthcare facilities, such as the treatment of diarrhoea, malnutrition, malaria, infections, injuries, measles, mother and child care and screening of pregnant women. To a certain extent there is access to secondary health facilities including basic surgical interventions, but there is only limited access to tertiary health facilities such as specialist treatment, scanning and X-rays. The WHO had no knowledge about doctors accepting bribes for treatment.

An international NGO explained that there is no public health assurance in Afghanistan. 90% (ninety) of the population are dependent on private healthcare providers, NGOs or aid organizations when they fall ill. Such providers are unevenly distributed throughout the country. There is a concentration of clinics and hospitals in Kabul and other large cities. There is very limited access to free healthcare facilities and only about 10% (ten) of the population has access to basic health facilities such as malaria treatment, mother and health care and treatment for diarrhoea. It is the people who are lucky enough to live near an NGO who are treated. For people living in remote areas, according to the organization, it can take a day to get to a clinic with basic health facilities. And there is still no guarantee that these clinics have doctors. The best health care facilities are in Kabul. The source was of the opinion that if one has money in Kabul one can always obtain medical assistance.

Furthermore the source said that there are hospitals in Kabul and other large towns. These hospitals operate as private hospitals, among other things because the doctors are forced to request payments from the patients to supplement their income. According to the source such hospitals can perform simple operations like removing an appendix and small obstetric interventions in connection with births. Doctors are available in most hospitals.

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Some of them are well trained from the former Soviet Union, but the remainders have limited training.

The SCA found that access to healthcare is very poor. As an example they said that Afghanistan is high on the list of countries with a high rate of women dying when giving birth, and that parts of the population go around for years with illnesses, which could easily be cured, for example amoeba. Nevertheless, the SCA was optimistic about the activities within the field of healthcare, and was of the opinion that when the new healthcare programme will be up and running, it will solve appreciable defects in the existing healthcare system (see section 9.3.2, the new healthcare programme). However the source pointed out that the lack of personnel is still a major problem that will take many years to deal with (see section 6.2.6, women's access to healthcare).

With regard to the question of access to medicines, both the WHO and an international NGO stated that there is access to medicines in the private market especially in cities, but even in country districts. Medicines are imported from Pakistan or China, and the source did not know anything about their quality. The sources also mentioned that the medicines frequently are not properly stored. Often they are not kept cold, and at the same time there is a lack of control with medicines. Amongst other things the sources mentioned that it is not always possible to see when the medicines have expired. It is also a problem that medicines are sold by untrained personnel who are not always in a position to advise on the correct dosage of the medicines. Both sources were of the opinion that medicines are often so expensive for the average Afghan that in reality they are not accessible. They can though be obtained free of charge from NGOs.

9.3.2 The development within the health sector.

An international NGO explained that the Afghan Ministry of Health has received economic support that will make it possible for the Afghan government to implement a programme for the establishment of a primary healthcare system for all Afghans. This programme is called "Basic Packages of Health Service" and is economically supported by the World Bank, the Asiatic Development Bank, the EU and the USAID. Primarily, the programme is directed towards the rural districts with the exception of the remote areas in the provinces of Nuristan, Ghor, Kunar, Badakshan, Baghlan, Paktika and Khost. According to the source these regions cannot be reached due to geographical and security reasons. The population in these districts is not included in the programme. The different treatments that will be included in the programme are mother and childcare, tuberculosis, leishmaniasis, a widespread skin disease, and malaria.

The source found that this is a very ambitious programme. The Ministry of Health is not itself in a position to implement the programme and will subcontract it to national and international NGOs. The program has funding for thirty to thirty-six months. In the first stage the Ministry of Health has received money that will meet the requirements of 60% (sixty) of the population. The source pointed out that the programme is still in its preliminary stage and at the moment mainly exists on paper. Therefore, it has not yet had any impact on the population. The source recognized several problems for the implementation of the programme:

Many of the implementing NGOs in the programme do not have the required capacity. They lack the experience within the areas of logistics and medicines which is required if they are to work within the health sector in Afghanistan.

There are not enough doctors, care workers and other health personnel available in the country.

Some local NGOs are committing themselves to major parts of the programme and as a consequence, they abandon their previous programmes. As a result, the districts where the NGOs previously worked are now without access to medical help. The source found that in the short term this could negatively influence access to and the quality of healthcare.

9.3.3 Treatment options for diseases

Cancer: An international NGO mentioned that in general there is no treatment available for cancer in Afghanistan. The WHO was of the opinion that the capacity for treating cancer today is limited due to lack of medical expertise, the required physical equipment and medicines. However, the WHO said it is possible to treat some types of childhood leukaemia.

Tuberculosis: The WHO said that the treatment of malaria and tuberculosis are available for more than 70% (seventy) of the population. By the end of 2004 such treatment will be accessible for all Afghans. However an international NGO was of the opinion that only two to four % of the population has access to the treatment for tuberculosis and that the actual coverage in various parts of the country is random. There are some NGOs who are offering treatment for tuberculosis. The international humanitarian aid organization MedAid is especially active in this area. The NGO mentioned that in Kabul one can visit private doctors who offer treatment for tuberculosis. The source underlined that the treatment of tuberculosis takes considerable time. The result of the treatment depends on whether the patient participates carefully in the treatment, because otherwise there is a risk of developing resistance to the medicines.

Diabetes: The WHO was of the opinion that the initial treatment for diabetes can be carried out in Afghanistan but that there are problems with long term treatments. Insulin is very expensive medicine and paid by the patient himself. Another problem in this context is the general lack of the required facilities to store medicines in a safe manner. An international NGO was of the opinion that no regular and continuous possibilities for treating diabetes exist in Afghanistan.

Serious heart and lung diseases: The WHO explained that simple heart and lung diseases cannot be treated in district or provincial hospitals, but require referral to larger hospitals where such problems can be dealt with to a certain extent. There is however no possibility for carrying out e.g. a bypass operation in the large hospitals. An international NGO found that treatment for serious heart and lung diseases is not available at all in Afghanistan. The source said in this connection that it is not possible to perform a bypass

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operation in Afghanistan. Patients in need of such an operation must travel either to Iran or Pakistan.

Mental illnesses: The WHO was of the opinion that there are very limited access to the treatment of mental illnesses, because of shortages of mental institutions and medicines. There is no treatment available, e.g. for schizophrenics or manic-depressive people. In Kabul there is a mental hospital, but the WHO was not acquainted with the standard of treatment. In the district hospitals, treatment for the mentally ill is not available although it may be possible to treat less serious depressive conditions. The WHO explained that the organizations in the rural districts are trying to instruct health and social workers and the families of psychiatric patients in order to provide some degree of treatment.

An international NGO explained that after death, in connection with giving birth, mental deceases are the most serious health problem in Afghanistan, which is the result of many years of war. The problem with treatment for mental deceases is that treatment is highly work intensive. The source knew of an NGO-operated programme in Kabul where treatment is being offered to psychiatric patients. However, the programme offers treatment only to a few patients. At the present time they are providing treatment for approximately 50 (fifty) patients. Apart from this programme there are almost no possibilities for treatment. It may be possible to purchase anti-depressive medications in Afghanistan.

HIV/AIDS: An international NGO was of the opinion that currently HIV/AIDS is not a serious problem in Afghanistan. The source only knew of few Afghans that have been diagnosed HIV positive, and there exists no facilities for treating HIV/AIDS.

10. Consulted persons, organizations and authorities

Agency Coordinating Body for Afghan Relief (ACBAR)

Anja de Beer, Executive Coordinator

The ACBAR was founded in 1988 and is the co-ordinating link between the NGOs who are working in Afghanistan. Both Afghan and international organizations are members of the ACBAR

Afghan Independent Human Rights Commission (AIHRC)

Ahmad Nader Nadery, Commissioner

The AIHRC explained that they work with five main areas: training in human rights, promotion of women's rights, protection of children's the rights, monitoring and investigation of human rights, and transitional justice. *Human rights training* includes among other things information, activities and training of the government, civil servants, the police and the army. *Promotion of women's rights works on* providing information on women's rights and support women's participation in the political processes, as well as developing recommendations on working conditions for women. *Protection of children's rights* includes the fight against trafficking of children, the fight against child labour, and likewise to enhance the position of children before the law and their access to legal processes. In this respect, the AIHRC works closely with UNICEF. An important department is the *monitoring and investigation department* concerned with human rights. The AIHRC employs investigators who follow up actual complaints, and the AIHRC can offer mediation once the investigations have been completed. If necessary, the AIHRC can raise cases with the government. In this respect, the AIHRC deals with complaints concerning the police. The last department is dealing with human rights abuses in years past. This department investigates past abuses of human rights, exposing crimes and reports to President Karzai with recommendations. The AIHRC is at present involved in discussions on a national level as to how human rights abuses in years past should be dealt with.

Cooperation Centre for Afghanistan (CCA)

Abdullah Ahmadi, Assistant Program Manager for Human Rights

Sayed Arif, Lecturer at Kabul University

Manija Hotak, Education Officer, Lecturer in journalism

Kashefi, Engineer

Khaleda Forogh, Poet and Chief Editor for the women's magazine Sadaf

The CCA is an Afghan NGO, which is supported by a number of international aid organizations including Netherlands Organisation for International Development

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Cooperation, Norwegian Church Aid, Church World Service, the USAID and various UN organizations. The organization was founded in 1990. Since 1994 the CCA has managed a human rights program. The organization is involved in activities concerning women, education and human rights. The organization has offices in Afghanistan in Kabul, Mazar-e-Sharif and Bamian respectively.

Danish Committee for Aid to Afghan Refugees, (DACAAR)

Gorm Petersen, Director
Alexandra Strand Holm, Public Information officer

DACAAR is a humanitarian NGO, which was founded in 1984 to provide support to Afghan refugees. The members of the organization are “the Workers Samaritan Association”, “Danish Refugee Council “ and the Danish Association for International Co-operation “Mellemløst Samvirke”. The two main programmes of DACAAR in Afghanistan are at present an integrated agricultural development programme and a programme for access to safe drinking water. The programmes are financed mainly by DANIDA and the EU, but also by funds from various UN organizations and private Christian organizations. DACAAR works in large parts of the eastern, southern and western Afghanistan.

The Italian Embassy in Kabul

Guiseppe Fedele, First Secretary

EU-Delegation in Afghanistan

Francesca Vendrell, Special Representative
Pia Pannula, Human Rights and Gender Advisor

Global Rights

Abhijit Dasgupta, Country Director
Ghizaal Haress, Senior Program Officer

The organization recently changed its name from International Human Rights Law Group. The organization found that the new name give a better picture of the activities of the organization. Global Rights is a human rights pressure group that works with local activist to promote human rights. The organization works in ten countries. In Afghanistan, the organization work with the training of lawyers from different ethnic groups in the rural districts and in towns. Global Rights pays special attention to the situation for women and minorities. Private persons, funds, law firms, companies and governments support the organization. The organizations Kabul office was established in February 2002 and is an extension from a similar project in Peshawar in Pakistan.

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International Committee of the Red Cross (ICRC)

Pierre Wettach, Head of Delegation, Afghanistan

Supreme Court in Kabul

Mawlawi Fazl Hadi Shinwari, Chief Justice

International Crisis Group (ICG)

Vikram Parekh, Senior Analyst
Niamatullah Ibrahim, Research Assistant

The International Crisis Group is a private multinational organization whose aim is to strengthen capabilities within the international community to predict, understand, and react in order to avoid conflicts. The ICG supports its activities from field research and has political analysts stationed in a number of conflict-ridden countries, or countries with a risk of conflict for the purpose of collecting information. The ICG publishes reports with recommendations to international decision makers. The ICG has its headquarters in Brussels. The Afghan office consists of two people. The ICG receives financial support from a number of governments, including Denmark, charitable funds, companies and private donors.

International Organization for Migration (IOM)

Matt Huber, Chief of Mission
Richard Danziger, Senior Technical Advisor

Lawyers Union of Afghanistan

Dr. J. C. Phil. Kabir Ranjbar, President

According to its president Dr. J. C. Phil. Kabir Ranjbar, the Lawyers Union of Afghanistan was established 18 years ago as an organization for lawyers not supported by the government. After the fall of Najibullah in 1991, the organization went through a quiet period. The organization resumed its work after the fall of the Taliban regime. The Danish Institute recommended the organization as a discussion partner for Human Rights.

Médecins sans Frontières, France

Huub Verhagen, Head of Mission

Médecins Sans Frontières is a private international humanitarian aid organization that provides medical assistance to populations in need in over 80 countries. The organization was established by a group of French doctors and most of MSF's members are doctors

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and other healthcare personnel. In countries where the medical infrastructure is inadequate or non-existent, the MSF works with the health ministries of the countries concerned in order to provide assistance. MSF works in rehabilitation of hospitals and health centres, on vaccination programmes, water projects and projects for the improvement of other health-related conditions. The MSF works also with healthcare centres in desert regions, slum districts, and in providing training to local healthcare personnel. MSF is striving to maintain a neutral and independent position, politically, economically and religiously. The MSF-France has had a programme in Afghanistan since 1979.

Ministry of Justice

Abdul Rahim Karimi, Minister of Justice

Ministry of Interior

Helalluddin Helal, Deputy Minister
Gol Mir Samady, Head of Passport Department Kabul

Ministry of Womens Affairs

Dr. Soraya Rahim, Deputy Minister
Momena Mansoor, Head of Planning Department

National Union of Journalists

Dr. Mahmoud Habibi, Head

Dr. Habibi explained that the National Union of Journalists originated under the Rabbani government as an association for journalists in Afghanistan. By and large the Union's activities ceased during the Taliban era. After the fall of the Taliban regime, Dr. Habibi reconstituted the Union. The Union's aim is to serve democracy and civilian society. Habibi explained that the Union is still in the process of establishing itself. Habibi has occupied leading positions in radio and TV medias in Afghanistan since the 1960's. Among other things, he was formerly the Minister of Information and Culture and Governor of Kabul. He has also been a Member of Parliament. The Delegation was recommended to talk Dr. Habibi by The Danish Institute for Human Rights.

Office of the Representative of Denmark to Afghanistan

Dr. Michael Vinding, Chargé d'Affaires
Mads Bjorn Rasmussen, First Secretary

Royal Norwegian Embassy

Bjorn Johannessen, Chargé d'Affaires

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All Afghan Women Union (AAWU)

Soraya Parluka, Director

Soraya Parluka established the Democratic Organization of Afghan Women in 1965. She took part in the Loya Jirgas in 1985 and 1987. She was the chairman of the board of the Afghan Red Crescent Society from 1986 to 1992 when she founded the All Afghan Women Union. The organization fought for women's rights under the Taliban regime and worked under cover to provide among other things, courses in English and computer training for women and young girls. The AAWU continues working on the improvement of women's rights. Their work includes the improvement of employment possibilities for educated women. The organization achieves support from the German government, the Finish Embassy in Kabul and an American NGO as well as other organizations.

Swedish Committee for Afghanistan (SCA)

Jurgen Holmstrom, Regional Director

The SCA is one of the largest NGO's operating in Afghanistan. Since 1982 the organization has worked on various types of projects in Afghanistan. The SCA is represented in 21 of the country's 34 provinces and has about 10,000 (ten thousand) employees. Currently the organization implements projects in health, primary education and agricultural development. The main donors of the organization are the Swedish government, the EU and the UN.

United Nations Assistance Mission in Afghanistan (UNAMA)

Margareta Wahlstrom, Chief of Staff

Paola Emerson, Head Field Support and Co-ordination Unit

Annabel Taylor, Civil Military Officer

Marco Toscano Rivalta, Rule of Law Officer

Dr. K. Sritharan, Human Rights Officer

World Health Organization

Dr. Ahmed Shadoul, Child Health Promotion

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Appendix 1: Terms of reference for mission

1. The political situation

- 1.1 Central government's possibilities for exercising authority
- 1.2 Implementation of the new Constitution
- 1.3 Law regarding political parties
- 1.4 New political groups
- 1.5 Amnesty

2. Security situation

- 2.1 The ISAF's mandate and expansion (Provincial Reconstruction Teams)
- 2.2 Security and division of power in various regions
 - 2.2.1 Kabul
 - 2.2.2 Central regions
 - 2.2.3 Southern, south eastern and eastern Afghanistan
 - 2.2.4 Northern and northwestern Afghanistan
 - 2.2.5 Western Afghanistan
- 2.3 Taliban's and al-Qaeda's organised presence and expansion

3. Follow-up of important parts of the Bonn Agreement

- 3.1 Preparations for free elections
- 3.2 Establishment of a police and military force
- 3.3 Establishment of infrastructure for government
- 3.4 Efforts towards disarmament
- 3.5 Human Rights Commission
- 3.6 Establishment of the legal system

4. Human Rights situation

- 4.1 Legal system/law and order
 - 4.1.1 Local courts / tribal councils
- 4.2 Imprisonment including torture
- 4.3 Freedom of speech
- 4.4 Religious freedom
- 4.5 Freedom of movement (Internal Flight Alternative)
- 4.6 Significance of networks and family alliances

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5. The humanitarian situation

6. Special groups

6.1 Ethnic minorities

6.2 Women

6.3 Former members of the PDPA/KHAD

6.3.1 Situation for persons with connections to the former Soviet Union

6.4 Persons in conflict with the Northern Alliance

6.5 Persons in conflict with the present power brokers

6.5.1 Persons in conflict with Jamiat/Shura-e-Nazar

6.5.2 Persons in conflict with Hezb-e-Wahdat

6.5.3 Persons in conflict with Junbish/ Dostum

6.6 Persons with connections to Taliban

6.7 Persons with connections to Hezb-e Islami

6.8 Refugees

6.8.1 Reintegration

6.8.2 Internally displaced persons

7. Special topics

7.1 Recruitment to the national armed forces

7.1.1 Possible forced recruitment/desertion

7.2 Possibilities for double punishment

7.3 Intelligence Services

8. Questions of Family Law, including the issue of documents

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Appendix 2A: Map of Afghanistan



Appendix 2B: Map of Afghan provinces



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Appendix 3: List of approved parties

Hezbe Jamhuri Khwahan-e-Afghanistan (Republican Seekers Party of Afghanistan)

Chairman: Sebghatullah Sanjar

Address: Kabul, Sarake Shashome Qalae Fatehullah, Kocheye Zainabia

Registered 16.12.1382 (06.03.2004)

Hezbe Tahrike Wahdate Meli Afghanistan (National Unity Movement Party of Afghanistan)

Chairman: Soltan Mohammad Ghazi

Address: Char Rahi, Moqabele Wozarate Dakhele

Registered 19.12.1382 (09.03.2004)

Hezbe Hambastagi Meli Jawanane Afghanistan (Afghan Youths National Correlation Party)

Chairman: Mohammad Jamil Karzai

Address: Kabul Char Rahi Yaqub, Ba Tarafe Jadae Shahid, Daste Rast, Khanae Dowom
Daste Rast, Khanae 2, Daste Chap

Registered 16.12.1382 (06.03.2004)

Hezbe Esteqlale Islami Afghanistan (Islamic Independence Party of Afghanistan)

Chairman: Dr. Farooq Nejrabi

Address: Kabul, 500 Family, Khair Khana Mina, Jaware Shafakhae D'Farooq de
Maejawwi Clinic

Registered 19.12.1382 (09.03.2004)

Hezbe Wahdate Meli Afghanistan (Afghan National Unity Party)

Chairman: Abdul Rashid Jalili

Address: Kabul, Micro Rayon 3, Block 1, Apt. 24

Registered 18.12.1382 (08.03.2004)

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Appendix 3 continued: List of approved parties (original language Dari)

Political parties registered in Afghanistan per 28 March 2004.

Bilag 3

Registredede politiske partier i Afghanistan pr. 28. marts 2004

شماره	نام حزب سياسي	رئيس حزب	مقر	تاريخ جواز	جواز
۱-	حزب جمهوري خواهان افغانستان	صديقت الله مندر	کابل، سړک ششم، قلمه فتح الله کوچه زنبيره	۱۳۸۷/۷/۱۶	جواز گډه است
۲-	حزب تحريک وحدت ملي افغانستان	بيلال محمود غاړي	کابل، چهارراهي مدارت، مقابل وزارت داخله	۱۳۸۷/۷/۱۹	جواز گډه است
۳-	حزب همبستگي ملي جوانان افغانستان	محمد جهيل	کابل، چهارراهي حاجي يعقوب به طرف چاده شويو دست راست خانه نوم دست چپ	۱۳۸۷/۷/۱۶	جواز گډه است
۴-	حزب استقلال اسلامي افغانستان	موتوگور فاروق نجومي	کابل، پنجمه قليمي خير خانه مينه جو رشتا خانه مزاروق ممالجوي کلينيک	۱۳۸۷/۷/۱۹	جواز گډه است
۵-	حزب وحدت ملي افغانستان	عبدالرشيد جليلي	کابل، مگرويان سوم بلاک، اول پلارتمان ۲۴	۱۳۸۷/۷/۱۸	جواز گډه است

زېږون نېټه: ۰۷.۰۷.۱۹۵۱
 ۰۷۹۳۳۲۱۴۴

Kilde: Det afghanske Justitsministerium

Source: The Afghan Ministry of Justice