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**Update of the Situation in Afghanistan
and International Protection Considerations**

July 2003



**United Nations High Commissioner for Refugees
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I. THE SITUATION IN AFGHANISTAN

This update includes facts and events through the end of April 2003.

A. General Background

1. Afghanistan is a land-locked country covering 647,500 square kilometres. It shares borders of 5,529 kilometres with six neighbouring states: Iran (936 km), Turkmenistan (744 km), Uzbekistan (137 km), Tajikistan (1,206 km), China (76 km) and Pakistan (2,430 km). The country is mountainous with only 12 % arable land, 3 % of the land under forest cover and about 46% under permanent pastures.
2. The majority of the estimated 22.2 million Afghans who live in Afghanistan reside in rural areas. Between 80 to 85% of the Afghan population depends directly or indirectly on agriculture. Almost 5 million Afghans live abroad, the majority in neighbouring Iran and Pakistan.
3. The country's administration is divided into 32 provinces and 329 districts¹. Based on the existing legal system, the administration is theoretically organised as follows:
 - A **province** is the largest administrative unit led by a Governor² (*Waali*), who is generally appointed or confirmed by the central authority. At present, not all governorships are filled -- or appointments accepted -- by the local elders.
 - **Districts** (*woluswali*) and municipal wards are the decentralised administrative units within a province, normally headed by district officers. Districts and municipal wards (as well as district centres without a ward) are, according to the "Procedures for the elections of the members of the emergency *Loya Jirga*," the currently relevant electoral constituencies.
 - **Villages** form the basic communities within every district. The social institutions at community level in Afghanistan vary from region to region in function and structure and are commonly referred to as *jirga* or *shura*. These are *ad hoc* groups of respected persons within a community, convened for functions such as the resolution of disputes and the organization of collective action. Such *shuras* or *jirgas* can also represent two or more communities or interact at district level with government authorities.

¹ This figure is from the Central Statistics Department of Afghanistan. There are unsettled decisions on additional districts created by the Mujahideen and Taliban regimes (around 10) as well as repartition of districts between provinces. Within the *Emergency Loya Jirga*, 380 district assemblies including city districts were used to represent the people of Afghanistan.

² The appointment of some of the governors, for instance, in Helmand, Uruzgan, Herat, Farah, Nimroz, and Kabul have been accepted by the central authorities partly as a compromise due to their *de facto* military power and influence in these provinces. There are ongoing discussions in the cabinet on the appointment or reassignment of governors.

4. Official languages are Dari (a Persian dialect), spoken by more than 50% of the population and Pashtu (spoken by an estimated 35% of the population). Hazargi, Uzbek, Turkmen and other Turkic languages and dialects are spoken by about 11 % of the population.
5. The ethnic composition³ of the people living in Afghanistan is as follows:
 - The Pashtuns are the largest group (about 38%), and are divided into two main subgroups: Durrani and Ghilzai (as well as other sub-groups and tribes). While most of the Pashtuns are settlers, some of them, the Koochis, lead a semi-nomadic or nomadic life based on animal husbandry;
 - The Tajiks (about 25%) are Persian-speakers Afghans;
 - Afghans of Hazara (about 19%), Turkmen, Aimaks and Baloch ethnicity and many other smaller ethnic groups (12%), and Uzbeks (about 6%)
6. The official religion in Afghanistan is Islam. The great majority of the population, about 80 per cent, is Sunni Muslims.⁴ They are followed by the Shi'a⁵ (including a smaller group of the Ismailiyya Shi'a), comprising an estimated 20% of the population, and by an insignificant number of Hindus and Sikhs.
7. Despite the existence of sectarian differences and variations in interpretations of the Koran and law, Islam is one of the few commonly shared aspects of Afghan society. As noted above, scattered minorities of Hindus and Sikhs, originally arriving as

³ All percentages provided in the following paragraphs are rough estimates and approximations, currently used by agencies operating in Afghanistan. While most analysts would probably agree that Pashtuns constitute the largest group, there is no reliable data on the relative numerical strengths of these groups. C. Johnson, W. Maley, A. Thier and A. Wardak, *Afghanistan's political and constitutional development*, Overseas Development Institute, London, January 2003, p. 6, citing Glatzer, B. "Is Afghanistan on the Brink of Ethnic and Tribal Disintegration?" in William Maley (ed.), *Fundamentalism Reborn? Afghanistan and the Taliban* (London: Hurst & Co., 1998), p. 169.

⁴ The Hanafi school of Islamic jurisprudence, dominant in the Arab Middle East, India, Pakistan and Afghanistan, was founded by Abu Hanifa, one of the earliest Muslim scholar-interpreters to seek new ways of applying Islamic tenets to everyday life. He died in Iraq in AD 767. Abu Hanifa's interpretation of Muslim law was extremely tolerant of differences within the Muslim communities. He also separated belief from practice, elevating belief over practice. Sunni are found throughout Afghanistan.

⁵ Religious succession is basic to Shi'a/Sunni differences, dividing the Shi'a as well. The two major Shi'a communities in Afghanistan are the Twelvers, also called Imami, and the Ismaili, sometimes called the Seveners. The Imami Shi'a recognise twelve successive Imams, beginning with Ali and ending in AD 874 with the disappearance of the twelfth who will return as a messianic figure at the end of the world. The most numerous Imami Shi'a groups in Afghanistan are the Imami Hazara living in the Hazarajat of central Afghanistan, and the Imami Persian speakers of Herat Province. Mixtures occur in certain areas such as Bamiyan Province where Sunni, Imami and Ismaili may be found. Imami Shi'a are also found in urban centers such as Kabul, Kandahar, Ghazni, and Mazar-i-Sharif where numbers of Qizilbash and Hazara reside. Urban Shi'a are successful small business entrepreneurs; many gained from the development of education that began in the 1950s.

traders from India, inhabit Afghanistan. A small Jewish community could once be found in urban centres, but by 1985 virtually all of them had emigrated.

B. Political Situation

1. Main Features Prior to the Bonn Agreement of 5 December 2001

8. Before the Bonn Agreement, the overall political situation in Afghanistan was characterised by an ongoing military conflict in its 23rd year. On one side were the Taliban,⁶ an extreme Islamic movement predominantly comprised of Afghans belonging to the Pashtun ethnic majority (Sunni Muslims – Deobandi⁷ and Haqania⁸ schools), which had emerged in 1994. The other side was a loose coalition of forces of the so-called United Front for the Salvation of Afghanistan, the UF, (previously the “Northern Alliance”). This group of opposition forces was headed by Burhanuddin Rabbani, leader of the *Jamiat-e-Islami*, who was elected interim President in 1992, and subsequently retained power in Kabul until it was captured by the Taliban in 1996. The main military player of the United Front was Ahmed Shah Massoud, a military commander from the Panjshir valley and previously Minister of Defence under the (interim) government of President Burhanuddin Rabbani. Ahmed Shah Massoud, who was killed in early September 2001 and whose picture can be seen posted in Kabul, is considered the “legendary leader of the Afghan resistance against terrorist groups,” and is one of the heroes of the jihad.
9. Commanders and forces of the following political and military parties belonging to or affiliated with the opposition under the umbrella of the United Front were the following: a) *Jamiat-e-Islami* (Islamic Society),⁹ b) *Hezb-e-Wahdat-e-Islami* (Islamic-Unity party),¹⁰ c) *Jonbesh-e-Melli-Islami* (National Islamic Movement of

⁶ **Taliban:** for details see reference to Taliban in Part 2, Section 2.1 (v) of this document.

⁷ The school takes its name from the Indian town of Deoband, where the first Deobandi learning centre, Darul Uloom (House of Knowledge) was established in 1866 and founded by Maulana Qasim Nanotyi. Deoband’s teaching emphasises gender segregation and strict social mores.

⁸ Several Taliban leaders have been recruited from among Haqania’s students. Although they are not trained to handle weapons, its chief, Mullah Samiul Haq, says he considers as his objective the transformation of each of his students into a *jihad* fighter. During the war in Afghanistan, many of his students were sent to fight alongside the Taliban.

⁹ **Jamiat-e-Islami:** Led by Burhanuddin Rabbani, predominantly Tajik and dominated by Dari (Persian) speakers; founded in 1973. One significant player was Ahmed Shah Massoud, who headed a prominent group and party, the “Shura-e-Nazar.” Another key player is Ismail Khan, the pre-Taliban and current governor of Herat. This faction is represented in the Islamic Transitional Authority of Afghanistan (ITAA) by Marshal M. Q. Fahim, Vice President and Minister of Defence, Dr. Abdullah Abdullah, Minister of Foreign Affairs, Younus Qanooni, Advisor to the President on Internal Security and Minister of Education, Enayatullah Nazari, Minister of Repatriation. Mirwais Saddiq, the Minister of Civil Aviation and Tourism represents not only the Jamiat-e-Islami but is the representative of his father, Ismail Khan.

¹⁰ **Hezb-e-Wahdat-e-Islami:** The principal Shi’a party in Afghanistan consists mainly of Afghans of the Hazara ethnic group. This party was founded under Iranian sponsorship in 1988 as a union

Afghanistan),¹¹ d) *Ittehad-e-Islami* (Islamic Unity),¹² e) *Harakat-e-Islami* (Islamic Movement of Afghanistan),¹³ and f) *Shura-e-Mashriqi* (Council of the East).¹⁴ As observed during the Emergency *Loya Jirga* process, many of the leaders of these factions and others in influential positions in these factions continue to play a significant role, *de-facto* or in official functions, in the current political setting in Afghanistan.

of 9 Shi'a parties, led by Abdul Ali Mazari until his death in Taliban custody in February 1995. The party split in 1993. Mohammad Karim Khalili leads the Hezb-e-Wahdat based in Bamyan/Yakawlong, while Mohammad Akbari, closely affiliated with the government of Burhanuddin Rabbani, remained in Kabul until the arrival of the Taliban in 1996. In November 1998 Mohammad Akbari surrendered to the Taliban, while the other faction of the Hezb-e-Wahdat, led by Khalili and Haji Muhammed Mohaqeeq (representing the party in Mazar-i-Sharif) actively fought the Taliban in Hazarajat. Mr. Mohaqeeq was Minister of Planning and one of the five Vice-Chairmen in the Interim Administration of Afghanistan and continues to hold the position of Minister of Planning of the ITAA. Besides Mohaqeeq, this faction is represented in the ITAA by Abdul Karim Khalili, one of the five Vice-Presidents, and Said Mustafa Kazemi, Minister of Trade.

¹¹ **Jonbesh-e-Melli-Islami (National Islamic Movement of Afghanistan):** Party of Northern Afghanistan's leader, General Abdul Rashid Dostum – former leader of a militia allied with Najibullah; dominated by Uzbeks; in May 1997, Dostum's Deputy General Malik defected and helped the Taliban enter the north, resulting in General Dostum's escape from Afghanistan; General Dostum returned in September 1997 after the second Taliban assault on Mazar-i-Sharif, but remained unable to fully re-establish his power in the North; in August 1998 he was defeated and left again, later returned, fighting the Taliban in Northern Afghanistan. With the support of Coalition forces he re-captured and re-established himself in Shibergan, and was appointed deputy head of the department of defence of the Interim Administration. Following the Emergency *Loya Jirga*, he holds no official position in the cabinet, and his faction is represented by Mr. Mohammad Alem Razm, Minister of Light Industry, Noor Mohammad QarQin, Minister of Social Affairs and Mr. Ahmad Saker Kargar, Minister of Water and Power and General Helal, Deputy Minister of Interior. All of them are former PDPA members.

¹² **Ittehad-e-Islami (Islamic Unity):** Led by Abdul Rab al-Rasoul Sayyaf; previously reported to be supported by Saudi Arabia; Anti Shi'a; allied with Jamiat-e-Islami; played a major role in the early fighting in Kabul in 1992-95, but has since faded as a military force; is reported to play an important role in financing the opposition. His faction is represented in the ITAA by Mr. Abdullah Wardak, Minister of Martyrs and Disabled.

¹³ **Harakat-e-Islami (Islamic Movement of Afghanistan):** Led by Ayatollah Muhammed Asif Muhsini; a Shi'a party with a mainly non-Hazara leadership; allied with Jamiat-i-Islami. This faction is represented in the ITAA by Mr. Said Hussain Anwari, Minister of Agriculture and Mr. Said Ali Jawid, Minister of Transportation.

¹⁴ **Shura-e-Mashriqi (Council of the East):** Regrouping of former pre-Taliban members of the *shura* of Jalalabad under the leadership of the previous governor Haji Abdul Qadir, reported to be operating in Laghman and Kunar provinces with changing alliances of local commanders. Haji Abdul Qadeer was the governor of Nangarhar province during the Interim Administration and he had been appointed as the Vice-President and Minister of Public Works in the ITAA. He was assassinated in Kabul on 6 July 2002 and now Haji Deen Mohammad, Qadir's brother is the governor of Nangarhar province.

2. Key Developments Since September 2001

2.1 The Bonn Agreement

10. The collapse of the Taliban regime was brought about by a combination factors: coalition bombing and ground military action, commencing 7 October 2002; military support to Afghan factions and other commanders belonging to the Northern Alliance; and the retreat or hand-over of power by the Taliban to local groups. By the end of November 2001, this development had created a power vacuum in many parts of Afghanistan. The entry into Kabul of the Northern Alliance forces constituted the *de-facto* occupation of the capital by a single group, the Jamiat-e-Islami, including the Shura-I-Nazar. However, under pressure from the international community, the Northern Alliance agreed to take part in the planned talks, under UN-auspices, in Bonn (Germany), along with other delegations considered to represent segments of the Afghan population, in particular those involved in Afghan peace-initiatives and discussions.¹⁵
11. The UN Talks in Bonn (Petersberg), which started on 27 November 2001 under the Chairmanship of the UN Secretary General’s Special Representative for Afghanistan, Lakhdar Brahimi, brought together 23 Afghans, including two women, and resulted in the signing of the “Agreement on Provisional Arrangements in Afghanistan pending the re-establishment of permanent Government Institutions.”¹⁶ The Agreement provided for the establishment of an Interim Authority with effect from 22 December 2001, upon the official transfer of power from the previous Afghan leader, Burhanuddin Rabbani, in Kabul. It provides the legal framework for an interim and transitional period and outlines the process towards a new constitution and permanent governmental structures in Afghanistan.
12. During this interim and transitional period, the applicable legal framework in Afghanistan is the 1964 Constitution, in so far as it is consistent with the Agreement, except the provisions relating to the monarchy. Similarly, existing laws and regulations consistent with international agreements continue to be applicable. A number of codes are currently applicable, such as the civil, penal, commercial, criminal and criminal procedure codes. It is significant to note that article 102 of the Constitution also makes basic references to the *hanafi* jurisprudence of the Shari’a of Islam.¹⁷

¹⁵ For further details on peace-initiatives and negotiations, please see the quarterly reports by the UN Secretary General to the General Assembly, “The situation in Afghanistan and its implications for international peace and security.” These peace initiatives included the Rome-process initiated by the former king Zahir Shah to convene an “Emergency Loya Jirga” and the Cyprus negotiations.

¹⁶ A copy of the agreement was submitted by the UN Secretary General to the Security Council, UN doc. S/2001/1154, 5 December 2001.

¹⁷ The *Hanafi School* of Islamic jurisprudence was founded by Abu Hanifa, one of the earliest Muslim scholar interpreters to seek new ways of applying Islamic tenets to everyday life. The interpretation of Hanifa, who died in Iraq in AD 767, of Muslim law was extremely tolerant of differences within Muslim communities and separated belief from practice, elevating belief over

13. The Security Council in its Resolution 1383 (2001) of 6 December 2001 endorsed the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent governmental institutions.

2.2 *The Interim Administration and Authority*

14. In the Interim Administration, the executive branch of Interim Authority was chaired by Hamid Karzai and functioned from 21 December 2001 to 21 June 2002, and comprised of 28 other members (including two women), each of whom headed a ministry.¹⁸ As foreseen in the agreement, within one month of the establishment of the Interim Authority, a Special Independent Commission for the Convening of the Emergency *Loya Jirga* was established and the traditional assembly was convened. The Emergency *Loya Jirga* was brought about to establish and elect a new Transitional Authority to take over from the Afghan Interim Administration on 22 June 2002. A Constitutional *Loya Jirga* will be convened within 18 months of the establishment of the Transitional Authority to draw up a new constitution and organize free and fair elections.
15. The AIA has passed several major decrees. The first decree, “Decree No. 66, dated 16.11 1380” (06 January 02) by AIA Chairman Hamid Karzai, cancelled all decrees and legal documents passed by previous authorities which, under the terms of the Bonn Agreement, are to be considered inconsistent with the 1964 Constitution or with international obligations to which Afghanistan is a party. The second decree banned the cultivation, production, processing, use and trafficking of illicit drugs. The third decree established a framework for the media within the respect of freedom of the press. A fourth decree relates to the signature and ratification of international agreements.
16. The Chairman then issued “Decree No. 297, dated 13.03 1380 (03 June 02)” on the dignified return of refugees, providing that “Afghans will be given the opportunity to decide freely to return to their country (preamble).” The Decree stipulates exemption from prosecution for criminal offences committed up to 01.10 1380 (22 December 01), except crimes against peace or humanity, or war crimes (Articles 3 and 4). It also

practice. “However, it must be noted that even during periods when these laws were presumably more easily available, they were in fact rarely applied and did not offer an accurate representation of Afghanistan’s *de facto* legal system. ... even during the 1960s and 1970s judges either had only limited knowledge of the laws or were reluctant to apply them. The current situation is even more problematic since these laws had not only not been applied but had actually physically ceased to exist in many parts of Afghanistan for long periods of time.” Lau, Dr. M., International Commission of Jurists, Afghanistan’s Legal System and its Compatibility with International Human Rights Standards, Final Report, November 2002, p. 8.

¹⁸ The heads of departments and Ministries were appointed by the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, (“Bonn Agreement”), Annex IV: Composition of the Interim Administration, published 05.12.2001.

guarantees the enjoyment by returnees of “the same human rights and fundamental freedom enjoyed by other citizens (Article 6).”

17. The AIA also issued a decree concerning the establishment of a national military force, calling for male Afghan nationals between 22 and 30 years of age to join the military service voluntarily and on a four-year contractual basis.
18. Four commissions were progressively established as provided for by the Bonn Agreement: the Independent Human Rights Commission, the Judicial Commission, the Constitutional Commission and the Civil Service Commission.¹⁹

2.3 *The Emergency Loya Jirga and the Transitional Administration*

19. The Emergency *Loya Jirga*, held between 11 and 19 June 2002, was comprised of some 1,700 persons of whom just over 1,000 were selected or elected in the 380 district and city assemblies across Afghanistan, with the remainder chosen from representatives of civil society institutions, individuals of stature, religious scholars, intellectuals, women’s representatives (14% as opposed to the planned 11%) and religious minorities in Afghanistan and abroad. The meeting lasted longer than planned and ended with the *en bloc* approval of most of the cabinet of the Islamic Transitional Authority of Afghanistan (“ITAA”), nominated by Chairman Hamid Karzai. The latter was appointed as President of the ITAA, supported by Mohammed Fahim (Tajik), Karim Khalili (Hazara), Abdul Qadir (Pashtun), Ustad Niamatullah Shahrani (Uzbek), Hedayat Amin Arsala (Pashtun) as Vice Presidents.²⁰ Women assumed greater responsibilities in the government re-formulation, with the

¹⁹ The aim of the Civil Service Commission (CSC) is to help the ATA regulate and reform the civil service administration in Afghanistan. This includes the recruitment, transfer and remuneration of staff, the establishment of standards for working conditions, the training of staff and the arbitration of salary and employment disputes, among other things.

²⁰ Yunis Qanooni (Tajik) became Special Advisor on Internal Security, Maulwi Mohammad Hanif Balkhi (Tajik) was appointed as Religious Affairs Advisor, and Sheikh Fazl Hadi Shinwari (Pashtun) as Supreme Court Chief Justice. The Ministers included the following: Defense (Mohammed Fahim – Tajik), Interior (Tadj Mohamad Khan Wardak- Pashtun was replaced by Mr. Ali Ahmad Jalali), Foreign Affairs (Dr. Abdullah Abdullah – Tajik), Finance (Dr. Ashraf Ghani Ahmadzai – Pashtun), and Planning (Mohamad Mohaqiq – Hazara), Telecommunications (Masoum Stanekzai – Pashtun), Border & Tribal Affairs (Aref Nourzai – Pashtun), Refugees (Enayatollah Nazari – Tajik), Mines & Heavy Industry (Mohamad Mohamadi – Pashtun, died in an aircrash, post still vacant), Light Industry (Mohamad Alem Razm – Uzbek), Health (Dr. Soheila Seddiq – Pashtun), Commerce – Seyed Mostafa Kazemi – Shiite), Agriculture (Seyed Mohamad Hossain Anwari – Hazara), Education (Mohammad Yunus Qanooni – Tajik), Reconstruction (Mohammad Amin Farhang – Tajik), Hajj and Mosques (Mohammad Amin Naseryar – Pashtun), Urban Affairs (Mohammad Yusuf Pashtun – Pashtun), Public Works (Abdul Qadir), Social Affairs (Noor Mohammad Qarqin – Turkman), Water & Power (Ahmed Shajar Karkar – Uzbek), Irrigation & Environment (Ahmed Yusuf Nuristani – Nuristani), Martyrs & Disabled (Abdullah Wardak – Pashtun), Higher Education (sharif Faez – Tajik), Civil Aviation & Tourism (Mirwais Saddiq –Tajik), Transportation (Sayeed Mohammad Ali Jawad – Shiite), Rural Development (Hanif Atmar – Pashtun), Justice (Abbas Karimi – Uzbek), Information & Culture (Saeed Makhdoom Rahim – Tajik).

replacement of Dr Sima Samar as Minister of Women's Affairs by Mrs Habiba Surabi, and appointment of an additional (third) woman, Mrs Mahbooba Haqoqmal, as Minister of State.

20. The UN Security Council welcomed the successful Emergency *Loya Jirga* and noted with particular satisfaction the large participation of women, as well as the representation of all ethnic and religious communities.²¹ It should be noted, however, that several observers have questioned the independence and outcome of the Loya Jirga process and the selection of Ministers, suggesting that the nature of the Jirga was compromised by the influence of commanders and the dominant "Panshiri" group.²²
21. In July 2002, Haji Abdul Qadir (Vice President and Minister of Public Works) was assassinated in Kabul. This was followed by an unsuccessful attempt to assassinate President Karzai during a visit to Kandahar in September 2002.

2.4 National and International Security Structures

22. In order to implement the provisions of the Bonn Agreement and establish a national army, three decrees were issued.²³ The main purpose of the decrees is to replace the factional armies and militia groups with a national police force and national army dedicated to the service and protection of the population.
23. Several commissions on Disarmament, Demobilisation and Reconstruction of the national army have also been established, in particular the National Defence Commission. The commissions have appealed to factional leaders across the country to cooperate with the central government in the establishment of a national army and the rule of law.

²¹ UN Security Council Resolution No. 1419 (2002).

²² Overseas Development Institute Paper, *Afghanistan's political and constitutional development*: January 2003, p.5 "There is anger at what is seen as Panjshiri control of the ATA, accompanied by a belief that the Pashtuns in the government are powerless. The need for US troops to guard President Karzai underscores the point." *Ibid.*, p.13. "Despite concerns that the AIA was less than representative, many Afghans believed that the [Loya Jirga] would bring about a move towards a more broad based successor administration. This did not happen." *Ibid.*, p.8 "[The intelligence service's] power to intimidate is enormous- as evidenced during the ELJ, when its presence both during the election process, and at the jirga itself caused a significant number of candidates to drop out or delegates to be silenced," Human Rights Watch: Commentary: "The Warlords are Plotting a Comeback" 10 June 2002, Human Rights Watch: "Loya Jirga off to a Shaky Start" 17 June 2002. See also Section C below.

²³ No. 176 dated 1381/9/24 (15/12/2002) on the division of the responsibilities and distinguishing the competencies of the civil and military institutions; No. 175 dated 1381/9/24 (15/12/2002) on the practical commencement of the rehabilitation and reconstruction process of the national army; collection of arms demilitarization process and No. 172 dated 1381/9/23 (14/12/2002) on the foundations and rehabilitation of the National Army have been issued by President of the Transitional State of Afghanistan.

24. As explained in following sections of this document,²⁴ progress with national capacity-building towards fair policing and security is an essential factor on which other key governmental and judicial structures depend for the success of their own development. Current planning calls for the national army to be in place by the end of 2004, although this planning faces a series of obstacles explained below.²⁵ Three thousand Afghan soldiers, of the agreed 70,000 total, have been trained and dispatched to different areas of Afghanistan.²⁶
25. Annex I of the Bonn agreement foresees that a UN-mandated international force would be deployed. It stipulates that

this force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas.

As a result, the Security Council adopted resolution 1386 (2001), authorizing the establishment for six months of such a force, to help provide stability in Afghanistan, but not a formal United Nations peacekeeping force as such. UN Security Council Resolutions 1413 and 1444 extended the mission, and ISAF is mandated to remain until 20 December 2003.

26. A “Military Technical Agreement” between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan was concluded on 19 December 2001, following long negotiations, in particular with the Afghan Interim Defence Minister. In this agreement, the tasks of ISAF are defined as assisting in the development of future security structures, in reconstruction and in the provision of training for future Afghan security forces. ISAF became fully operational on 18 February with over 4,800 troops.
27. Many Afghans (including the chairperson of the Interim Administration, Hamid Karzai) wish that ISAF be deployed beyond Kabul, where there is a serious ongoing lack of security, in particular on certain roads and provinces. The Secretary General stated that the force remains limited to Kabul “while the main threat to the Interim

²⁴ Part I Section C.

²⁵ UN Security Council, The situation in Afghanistan and its implications for international peace and security,” UN doc. A/57/762-S/2003/333, 18 March 2003. “The creation of an effective national army and police depends on the successful disarmament, demobilization and reintegration into civilian life of members of non-official military formations.” *Ibid.* See also Section C.4 on Rule of Law: “Disarmament process breaks down in north Afghanistan.” Afghan newspaper Erada, 25 January 2003.

²⁶ UN Security Council, The situation in Afghanistan and its implications for international peace and security,” UN doc. A/57/762-S/2003/333, 18 March 2003. “The creation of a national army is an urgent priority. This is acknowledged by all parties; ... Yet progress has been slow, and there have been numerous disagreements, for instance over the size of the force, its ethnic composition and how much military personnel should be paid and who should foot this bill. Given these difficulties, all the parties involved now recognise that this process will take more than originally envisaged-likely as long as five years.”

Administration emanates from the provinces,” and therefore expressed his “hope that the Security Council will consider these factors and support the wish of the Afghan people for the expansion of the force.” There are, however, reportedly no plans to expand ISAF beyond Kabul.

2.5 Consolidation of the constitutional and political framework

28. The Bonn Agreement provides for measures necessary to build a legitimate State based on a new constitution, as well as on the holding of free and fair elections. The Constitutional Commission is charged with assisting the Constitutional *Loya Jirga* by clarifying the status of the Afghan Constitution and all existing laws and regulations and preparing the proposed constitution. On 5 October 2002, the Transitional Administration of Afghanistan announced the members of the Drafting Committee of the Constitutional Commission. According to the Bonn Agreement, the drafting and adoption of a new Constitution is one of the major tasks to be undertaken by the Afghan Transitional Administration during its two-year tenure. The new Constitution aims to provide a strong legal foundation for the ongoing effort to reconstruct the country, re-build government institutions, prevent the recurrence of social conflict and achieve national reconciliation. The Committee comprises nine members and is charged with the task of preparing a preliminary draft of the Constitution that is to be finalized by the full Constitutional Commission. Two members of the Drafting Committee are women. As stipulated at the Emergency *Loya Jirga* in June 2002, the former King Zahir Shah is to oversee the work on the new Constitution. The final draft of the Constitution will be submitted for adoption to a Constitutional *Loya Jirga* to be held late 2003.²⁷

29. The Bonn agreement provides that the ATA should

lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the emergency Loya Jirga.

A United Nations Electoral Assistance Team has recently been established based on a demand presented to the United Nations by President Karzai on 15 February 2003. The task is difficult, as the elections should be held in June 2004 in a country where elections have never been held and where for the time being there exists no electoral law, no law on political parties and no register of the voting population.

2.6 The Establishment of Rule of Law and Promotion and Respect of Human Rights

30. The years of conflict have almost destroyed the formal justice system and have also strongly affected the efficiency of the traditional systems of dispute settlements in

²⁷ A preliminary text of the draft constitution has almost been completed. Once finalised, the text will be circulated to legal scholars in the provinces and public discussions will be held with religious scholars, tribal leaders, and jurists. Whether the government is to be a presidential or parliamentary republic is still to be decided.

villages and tribes. The Judicial Commission's goal is "to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions," as outlined in the Bonn Agreement.²⁸ This includes a law reform program of compiling, digesting, publishing and distributing all laws in force, and recommending draft legislation to the Transitional Administration for the proper administration of justice in Afghanistan. The selection and training of judges, prosecutors, lawyers and law enforcement officials in Afghanistan is also an essential component.

31. The main focus of the Commission's work includes reforming the rule of law, promoting human and civic rights, ensuring close cooperation with other components of Afghanistan's justice sector and increasing the participation of women in the entire process. Convened initially in May 2002, the Commission was abruptly dissolved four months later.²⁹ In November 2002, a new 11-member commission³⁰ was subsequently mandated by Presidential decree.³¹
32. The UN Security Council welcomed the establishment of an Afghan Independent Human Rights Commission (AIHRC) as called for by the Bonn Agreement.³² The establishment of the AIHRC was preceded by a national workshop on human rights that took place in Kabul on 9 March 2002. The Interim Authority designated eleven members, who later elected Dr. Sima Samar as chairperson of the institution formally created on 6 June 2002.³³ It is charged with developing a national plan of action for 1) monitoring human rights throughout the country; 2) investigating allegations of human rights abuses, including hearing complaints and petitions from both individuals and organisations; 3) building national human rights capacities and institutions; 4) designing and implementing human rights education activities; and 5)

²⁸ Based on the decree No. 153 dated 11. 08.1381 (4 November 2002) issued by President Karzai, on 5 December 2002, the Judicial Reform Commission was inaugurated with a mandate to rebuild the Justice Administration System of Afghanistan in conformity with Islamic principles, international standards, the rule of law and Afghan legal traditions. As highlighted by legal analysts, "Legal reform is a critical foundation of reconstruction in post conflict situations. In Afghanistan, where decades of international and civil war have devastated formal legal mechanisms, and depleted much of the country's class of legal professionals, legal reform is vital to the success of other areas of reconstruction and development."

²⁹ C. Johnson, W. Maley, A. Thier and A. Wardak, Afghanistan's political and constitutional development, Overseas Development Institute, London, January 2003, p 27. "Political tension among members, the lack of a clear agenda and the impression of undue conservatism among some in the ATA seem to be the main reasons for the dissolution of this body."

³⁰ International Crisis Group, Afghanistan Judicial Reform and Transitional Justice, ICG Asia Report No. 45, 28 January 2003. The members now strike a rough balance between degree holders in Islamic and secular law, and include Najiba Hussain, a Shi'a Hazara woman, who is the director of the legal affairs department in the Ministry of Women's Affairs.

³¹ *Ibid.*

³² UNSC Resolution 1419 (2002).

³³ The Human Rights Commission has established its offices in Herat, Mazar-i-Sharif, Jalalabad and Bamyan and during the coming months will establish field offices in Gardez, Paktia and Faizabad (Badakhshan) and Kandahar City.

creating a national strategy for “transitional justice” to address the human rights abuses of the past throughout Afghanistan. The commission receives technical, advisory and financial support from UNAMA, the Office of the High Commissioner for Human Rights and UNDP. The Commission has so far received more than 600 complaints and petitions from individuals and groups.³⁴

C. Obstacles to Security, Respect for Human Rights and the Rule of Law

33. *The general human rights situation in Afghanistan remains a source of great concern. The lack of adequate national security and law enforcement capacity and the weakness of the justice system exacerbate human rights violations. Abuses are committed in all parts of the country, most often by forces under the control of regional factions or local commanders.*³⁵
34. Despite the political developments noted above and the positive signals generated by the return of 1.8 million refugees in 2002, sporadic fighting, security problems, and an absence of rule of law remain major concerns.³⁶ Under these conditions, the situation for many civilians, including in some of the cities, remains volatile and precarious. Security has repeatedly been mentioned as a pre-requisite for the above-mentioned political structures to develop and for a peaceful passage to free and fair elections.³⁷ The main relevant features of the prevailing situation are the following:

1. On-Going Military Activities

35. There are, reportedly, still pockets of resistance of al-Qa’ida and Taliban forces and indications that some Taliban forces might be regrouping. Since August 2002, the extremist and Anti-Western mujahideen commander, Gulbuddin Hekmatyar, and his followers have become notably more active, being linked to sporadic bombings in

³⁴ UNSRSG Lakhdar Brahimi briefing to Security Council on 31 January 2003. “Priority areas continue to be cases of intimidation and violence against political party, and civil society activists by regional local commanders. There are also worrying cases of police and intelligence officers being used by political leaders and regional factions to target those opposed to them. The use of the state apparatus for factional ends is of course a cause for great concern. To address this, the reform of the national intelligence services will be a high priority for the coming year.”

³⁵ UN Security Council, “The situation in Afghanistan and its implications for international peace and security” UN doc. A/57/762-S/2003/333, 18 March 2003.

³⁶ *Ibid.*, p.1: “Security remains the most serious challenge facing the peace process in Afghanistan. Re-establishment of the rule of law, elimination of human rights abuses, reconstruction and political transformation are all impeded by the uncertain security situation.”

³⁷ “The single greatest concern is the issue of security, which continues to loom large in Afghanistan. It is a prerequisite to the implementation of the peace process. Yet, security remains precarious in much of the country. Many Afghans still feel that they are at the mercy of local commanders or armed groups.” UN ninth report of Special Rapporteur of the Commission on Human Rights on the situation of Human Rights in Afghanistan. UN doc. E/CN.4/2003/39, 13 January 2003.

Kabul city and insecurity in parts of the Eastern, Central and Northern regions.³⁸ Coalition forces, occupied primarily by the “war on terrorism,” are active in the Southeast (Khost, Paktia, Paktika), the East (especially Kunar and Nangahar), the Southern and Central Region (notably Helmand, Kandahar, Farah, Bamyan and Uruzgan) and maintain a large military presence in Kandahar province. The latter have engaged in combat with the above-mentioned “extremist groups” in all of the above-mentioned areas.

36. Coalition activities in Kunar and Paktia have provoked significant resentment from elements of the local population, while the coalition bases in these provinces have been the target of repeated rocket attacks by “unknown” elements. Indeed, fighting between coalition and armed elements has often hampered humanitarian access to these areas. In parts of Bamyan and Northern Uruzgan, Coalition forces have also been involved in disarmament initiatives, either in an *ad hoc* manner, or more recently co-ordinated with the Ministry of Defence. The United States has deployed Provincial Reconstruction Teams (PRTs) to Kunduz, Gardez and Bamyan to support reconstruction activities and help extend central government authority in these provinces.³⁹

2. Military Factions and Commander Presence

37. Factional clashes have repeatedly erupted between rival Afghan political and military actors seeking regional influence. Inter-party violence and competition has characterised the security situation in the North-West (Faryab, Saripul, Balkh, Jawzjan, Samangan) and Southern Hazarajat (Western Ghazni, Southern Bamyan, Northern Uruzgan).⁴⁰ Smaller clashes and ongoing tensions are notable on the provincial level between rival commanders for political power or resources, and between tribes involved in blood-feuds that often date back decades. These smaller conflicts can be found in almost every province of Afghanistan as of March 2003, but specific examples include those in the East (Nuristan, Laghman), the Central Region (Kapisa), the West (Baghdis and Farah) and the South-east (Paktika, Khost).⁴¹
38. In the North, the main rival parties include the *Hezb-I-Wahdat*, the *Jamiat-e-Islami* and the *Junbesh-e-Milli-Islami*, which are largely divided, although not exclusively, along ethnic lines (Hazara, Tajik, and Uzbek respectively). In Southern Hazarajat, competition is between two main branches of *Hezb-e-Wahdat*, being supporters of either Vice-President Khalili or Akbari, although both branches are Hazara

³⁸ *Ibid.*, para. 24.

³⁹ *Ibid.*, para. 11.

⁴⁰ *Ibid.*, para. 20: “Afghans in many parts of the country remain unprotected by legitimate State security structures. Criminal activities by armed groups has of late been particularly evident in the north, east and south, and in many areas confrontation between local commanders continues to contribute to instability.”

⁴¹ *Ibid.*, para. 21 to 24.

dominated. The ongoing clashes between rival commanders affiliated with the major parties have led in some cases to severe consequences for the civilian population.⁴²

- Factional and tribal clashes have led to the **internal displacement** of civilians.⁴³ In the Laghman province, a conflict between the Lamano and the Sardakheil tribes has resulted in the killing of eight civilians and the displacement of 200 families;⁴⁴ The Dai Kundi district of Uruzgan, and the displacement in September 2002 to Bamyan and Kabul; Sharistan district of Uruzgan, where conflict between Hezb-e-Wahdat Akbari and Hezb-e-Wahdat Khalili forces led to displacement of faction members and civilians to Kabul (August 2002); Takhar, Baghlan, with the displacement of ethnic Gujurs towards Kabul and Jalalabad (Nov 2001 to April 2002); Samangan, displacement in October 2002 after Jamiat/Jumbesh clashes; Ghor – Chaghcharan, fighting between rival factions/tribes in June 2002 lead to displacement towards Hirat; Nuristan (Kamdesh) – ongoing conflict between two rival tribes; fighting in Faizabad (Jawzjan), Qal-I-Shahr (Saripul), Shindand (Herat), Gardez and other areas mentioned above led to the killings of civilians in 2002⁴⁵. For displacement of Pashtun minorities from the North, see below.
- In Faryab, Saripul, Balkh, Jawzjan, Samangan, Baghlan and Northern Uruzgan, civilians have reported, throughout 2002 and ongoing in 2003, that local commanders are **forcibly recruiting** young men from villages in direct contravention of decrees issued by the Central Government.⁴⁶

39. Militarisation and the proliferation of weapons are features of areas marred by factional competition and conflict over the last 25 years. The consequence is often that military commanders and militias maintain *de facto* control over both military and civilian government in the provinces and districts they occupy, without the normal civilian checks and balances, and can act with impunity. There is a strong correlation between military or militia control of an area, and the following abuses against civilians:⁴⁷

⁴² *Ibid.*, para. 20 to 24.

⁴³ *Ibid.*, para. 51.

⁴⁴ Other tribal conflicts: see UN Commission on Human Rights, Report on the Situation of Human Rights in Afghanistan, UN doc. E/CN.4/2003/39, Jan 2003: “South: Some of the abusive actions by local authorities were carried out against people belonging to a different tribe of the same ethnic group as the perpetrators. Thus, the city authorities of Kandahar, dominated by the Barakzai tribe, demolished approximately 100 houses in the neighbourhood of Loy Wala. The inhabitants claimed the demolitions were an act of discrimination against the Alkozai tribe.”

⁴⁵ UN Commission on Human Rights, Report on the Situation of Human Rights in Afghanistan, UN doc. E/CN.4/2003/39, Jan 2003.

⁴⁶ Decree on Formation of National Army, November 2002: Articles emphasis the voluntary character of recruitment. It should be noted that those currently being recruited by local commanders are mainly for unofficial militias, not for officially sanctioned national army units.

⁴⁷ UN Security Council The situation in Afghanistan and its implications for international peace and security” UN doc. A/57/762-S/2003/333, 18th March 2003: “Abuses are committed in all parts of the country, most often by forces under the control of regional factions or local commanders.”

- **Extortion of money, looting:** is widespread in Afghanistan, from illegal taxation by *de facto* district authorities, and orders from local commanders that villages should pay to ‘support’ their militias, to direct looting of civilians’ property by militias. The major period of looting of the Pashtun minority took place in the North after the fall of the Taliban between November 2001 and April 2002, but illegal ‘taxation’⁴⁸ continues in almost all districts of all provinces in the North-West. In Faryab and Baghdis (North West), for instance, such requests for money target specifically ‘unprotected’ groups such as Pashtun, although other communities are also affected. Throughout 2002 and 2003, in Malistan and Jaghori (Ghazni), Faryab province, Dai Kundi and Sharistan (Uruzgan), Kapisa province (Kohistan I, II, and Alasai), and in pockets of Shomali (Charikar and Guldara) to name but a few areas, civilians have reported that their houses continue to be visited by militias demanding food, money, and sometimes confiscating harvests. In Northern Uruzgan and Western Ghazni, the targets of looting and extortion are often civilians known to have financial resources, including returning Internally Displaced Persons (“IDPs”) and refugees who have received return cash grants.
- **Abduction of women, kidnapping and ransoms:** Abduction and kidnappings are known to occur across the country. The status of women in Afghan society and practical reality are such that these incidents are extremely difficult to investigate.⁴⁹
- **Occupation of land and unlawful control of water:** Irrigated land and water sources remain the most important resources in Afghanistan, not least because of the effects of the ongoing drought. For returnees, who have often been absent from their property for many years, their ability to reclaim property and the ensuing possible disputes remains a major concern for UNHCR. Although a relatively clear system of land registration exists, and a specific court for the resolution of land and property disputes has been created recently in Kabul, the influence of commanders and powerful factions on judicial and civilian administration systems is prevalent across Afghanistan. Land occupation and control of water sources by commanders or civilian groups supported by a commander is particularly prevalent in the North-West. Abuse of power by

⁴⁸ *Ibid.*, para. 51. Such practises, often presented as a legal taxation of ‘zakat, or feder’, are reported in Bamian (Panjab, Warras, Kamard, Saighan:Bamian); Balkh (Alborz; Chahar Bolak;l Chimtal, Dawlatabad); Jawzjan; Saripul; Samangan,; Kundoz; Takhar; Nangahar, Kapisa, Ghazni, Kabul, Logar, Parwan, Wardak.

⁴⁹ UN Commission on Human Rights, Report on the situation of human rights in Afghanistan, UN doc. E/CN.4/2003/39, 13 January 2003. Incidents of ... rape, kidnapping and murder remain the major concerns for all Afghans, but particularly for women.” UN Commission on the Status of Women, The situation of women and girls in Afghanistan, Report of the Secretary-General, UN doc. E/CN.6/2003/4, 23 January 2003. “Frequent abuses against young women and their families by local commanders were reported in the province of Badakshan and in other districts in the northern areas.” *Ibid.*

faction members to occupy land and houses is also reported in Kabul City itself.⁵⁰

3. Respect for Human Rights

40. In the absence of mechanisms efficiently protecting citizens or groups of citizens, particularly women, arbitrary acts have been committed by specialised state organs or quasi state organs, such as intelligence services and police officers remaining loyal to regional commanders, without being properly addressed. The following groups can be identified as being the most frequently targeted:

3.1 Ethnic, religious and social groups

41. Ethnic discrimination has occurred in some parts of the country, often affecting different groups perceived within the community as linked to a particular political/military faction. A particularly serious feature of the security situation are confirmed reports about serious human rights abuses against members of the Pashtun ethnic minority communities in the northern and western regions of Afghanistan by local commanders.⁵¹ Members of Pashtun communities have been subject to systematic and wide-spread harassment, intimidation and discriminatory treatment as well as acts of violence, banditry and persecution at the hands of local commanders. This led to general insecurity and large-scale displacement of Pashtuns, particularly in the period immediately succeeding the fall of the Taliban.
42. Since April 2002, the situation for Pashtun minorities in the North and West has progressively improved. UNHCR has been actively supporting initiatives to prepare for the voluntary, safe and dignified return of displaced Pashtuns to the North, and the major party leaders in the North have given assurances that their rights will be respected. Although the situation has calmed in certain regions, in particular in Badghis as well as in the North-East where there have been larger Pashtun refugee and IDP returns, the situation of Pashtun communities remains precarious in the North West, where harassment and opportunism by local commanders have not ceased.
43. Members of the Gujur ethnicity continue to face abuse such as beatings, house burnings, intimidation and threats in Takhar (North-East). Following the installation of the Taliban government, Gujur communities were resettled by the Taliban into Pashtun- and Ismailia-owned property. Having left their ancestral homes many years earlier, the Gujurs face a situation whereby they are and/or will be homeless upon return to their places of origin. Backlash against alleged acts perpetrated by Gujurs in

⁵⁰ "Protesters in Afghan capital call for end to police harassment," Hindokosh news agency, Kabul, 23 January. "They said Interior Ministry military personnel should be stopped from harassing them. They said armed police personnel wanted to occupy their houses and that they had been asked to evacuate their homes." *Ibid.*

⁵¹ Human Rights Watch, *Paying for the Sins of the Taliban*, March 2002, Human Rights Watch, "Briefing Paper: On the Precipice -- Insecurity in Northern Afghanistan," June 2002.

collaboration with the Taliban have continued into 2003. Despite attempts by the local authorities to improve the security situation of the Gujurs in Fakhar district in Takhar province, success has been limited so far.

44. The Ismailiyya Shi'a is a Muslim minority group that split from the main Shi'a in the year 765. They are estimated to make up 2% of the total Muslim population in Afghanistan and live mainly in Baghlan, Bamyan, Maidan/Wardak, and in some of the North-eastern provinces. Ismaili Muslims have been regarded as "non-Muslims" by radical elements of the Muslim population, mainly the Shi'a (they believe that their spiritual leader, Karim Aga Khan, is a direct descendant of the Prophet Mohammad). Ismaili Muslims have also fought for the Northern Alliance and suffered reprisals when the Taliban captured territories previously held by Ismaili Muslims. In addition to mistreatment at the hands of the Taliban, Ismaili Muslims now face security problems and denied access to their houses and land. In the Behsud I and II districts of the Maidan-Wardak province, their houses were burned during the conflict. In Doshi district of the Baghlan province, Ismaili Muslims were denied access to their land by local commanders, and in some areas of Bamyan, they faced security problems.
45. In Kamard district in Bamyan province, ethnic Syeed and Hazara constitute a very small and marginalised group. This minority group has complained of persecution by Tajik or Tatar commanders, including extortion, beating and intimidation, causing population movements throughout 2002 and into 2003.
46. Civilians in the districts of Guldara, Charikar, Kohistan (I and II) of Kapisa province, as well as in the districts of Jalrez, Maidan, Shah and Nirkh of Wardak province, have reported patterns of discrimination along the lines of former and current political affiliation and ethnicity. In Behsud (I and II) in Wardak province, Kuchis, accused of previous affiliation with the Taliban, are hindered from entering the grazing land of Hazarajat. Clashes between Hazaras and Kuchis in 2002 have led to loss of life in both groups.

3.2 *Political opposition groups*

47. In a country suffering from war and severe internal conflict for more than two decades and recently dominated by an arbitrary Islamic regime, any actions contrary to the interests of regional commanders and powerful factions are suppressed. Acts of repression by some militia members or agents of the intelligence were observed during the Emergency *Loya Jirga* and may appear again during the constitutional public meetings to be held in 2003, as well as during the conduct of the elections.
48. The absence of rule of law and militarisation of politics in Afghanistan opens the possibility for political repression and abuses of power by local authorities against dissenting or opposition groups. Civil society groups, in particular women's associations or journalists or media-related persons are particularly exposed to acts of political intimidation. Although examples can be provided countrywide, human rights

NGOs⁵² have criticised in particular the regime of Ismail Khan, Governor of Herat and self-proclaimed leader of Western Afghanistan. It has been reported that since November 2001, Ismail Khan's troops have regularly committed acts of violence and intimidation against persons and groups perceived to oppose his rule. His armed forces and agents have made explicit threats to, arrested, harassed, and beaten members of nascent political, civic, media, professional, and cultural groups.⁵³

49. The lead up to the June 2002 *Loya Jirga* provided visible indications of violence and intimidation, when forces under Ismail Khan's command arrested candidates in almost every district of Herat and in several neighbouring provinces. This pattern was repeated across Afghanistan, as commanders and military strongmen attempted to subvert the process in their favour.⁵⁴ Even during the *Loya Jirga* itself in Kabul, major commanders not appointed to the assembly were allowed inside the compound where the *Loya Jirga* was in session. They allegedly threatened those delegates who called for their exclusion or opposed their agenda. Similarly, persons expressing ideas questioning of the role of Islam in the State, the promotion of women's rights as well as criticism of the Mujahideen time were intimidated in particular by members of the intelligence service.⁵⁵ The UNAMA⁵⁶ and the AIHRC⁵⁷ have observed an increase in

⁵² Human Rights Watch, "All Our Hopes Are Crushed: Violence and Repression in Western Afghanistan," Chapter V, "A Climate of Fear and Pessimism," October 2002. An educated Herati who had recently left Herat told Human Rights Watch: "Herat professionals know even before they say anything what the consequences will be. Even peaceful protest will be seriously punished. I'm talking about the majority of silent classes in Herat—they know the situation so they haven't done anything. Torture, beatings, intimidation happen after people do something, but people aren't doing anything now. There was only the Shahir case ... it was symbolic. Ismail Khan wanted to tell intellectuals that if they cross the line, this will be the outcome. So they beat and repressed Shahir." Human Rights Watch interview with N.N., Kabul, September 22, 2002.

⁵³ Human Rights Watch, Chapter 2, "Political Intimidation and Violence," All Our Hopes Are Crushed: Violence and Repression in Western Afghanistan., October 2002. One student of journalism told Human Rights Watch that she had "given up ... I have to leave this country, forever. I want to leave Afghanistan. There is nothing here—no freedom to do anything. I want to live free. But we cannot even watch television. I cannot learn about anything. The leadership here is very bad for us. It is not much different than the Taliban, *Ibid.*, Chapter 5.

⁵⁴ Human Rights Watch, Commentary: The Warlords are Plotting a Comeback, June 10 2002. "A Human Rights Watch mission to southern Afghanistan late last month uncovered numerous instances of warlords subverting the election process through threats, beatings, imprisonment and intimidation. In the provinces of Kandahar, Zabul, Oruzgan, Helmand and Nimroz we heard of warlords selecting their own delegates and forcing them on the population." *Ibid.*

⁵⁵ Human Rights Watch, "Loya Jirga Off to a Shaky Start," June 17th 2002. A woman delegate, who asked to remain anonymous, told Human Rights Watch: "We are hostages of the people who destroyed Afghanistan. They [the warlords] are trying to hold us hostage to their power." Consistent with reports from many others, the delegate went on to describe efforts to coerce delegates. "There are petitions being circulated and we are pressed to just sign them without reading them, to agree with what is being said about who should be a candidate or chairman or have positions in the government. But we aren't given a chance to read these decisions, they just say 'sign it.'"

⁵⁶ United Nations Assistance Mission in Afghanistan, Security Resolution 1401 (2002), Adopted Unanimously, UN doc. SC/7345, 4501st meeting, 28 March 2002.

⁵⁷ The Afghan Independent Human Rights Commission. The Afghan Independent Human Rights Commission (AIHRC) on 19 March 2003 opened an office in Herat, the first of seven planned regional offices, the UN

threats, intimidation, physical aggression and arbitrary detention after the Loya Jirga. These have been carried out against citizens who have publicly expressed their political opinions and/or have criticised the stance or behaviour of representatives of the Government, official institutions or individuals known to be affiliated with powerful political groups.⁵⁸

50. The student protests in November 2002 over living conditions in Kabul University provide an example of how open opposition has provoked a backlash from security forces. On November 11th 2002, police opened fire after the demonstrators refused to disperse, killing at least 3 students and wounding 20. Protests mounted the following day witnessed similar acts of violence by the Kabul police.⁵⁹ Steps have been taken to address the latter incidents. President Karzai established an independent commission to investigate the violent police response to student demonstrations at Kabul University in November 2002. It concluded that the police were responsible for the use of excessive force, and that the miserable living conditions at the students' dormitory, which had apparently triggered the demonstrations, were partly the result of corruption. Several government officials, including some at senior levels, were subsequently arrested.⁶⁰

3.3 Gender

51. Mainly in the cities and particularly in Kabul, the arrival of the Taliban dramatically disrupted the lives of many women who had been working or studying, as well as the lives of many single female-headed households.⁶¹
52. With the demise of the Taliban, the decreed bans on employment and education and the imposition of strict behavioural norms by law on women were lifted. In some urban areas, women are becoming increasingly involved in public life and are returning to work and school. They have been appointed to the government and to the Human Rights, Judicial and Constitutional Commissions. In a welcome move, Afghanistan ratified the Convention on the Elimination of All Forms of

Assistance Mission in Afghanistan reported. The AIHRC was established under the provisions of the 2001 Bonn Agreement and plans to open offices in Mazar-e Sharif, Kandahar, Bamyan, Jalalabad, Gardayz, and Fayzabad to address its nationwide mandate. Afghanistan Daily Digest, 30 June 2003.

⁵⁸ Joint Statement of AIHRC and UNAMA on the Upcoming Constitutional Consultations, 1 June 2003. Though the statement was issued recently, the facts were known to them before.

⁵⁹ UN Commission on Human Rights, UN doc. E/CN.4/2003/39, 13 January 2003. Human Rights Watch interviewed eyewitnesses who said that "police beat students in the university dormitory and threatened injured students at the hospital. In one case police beat and slapped a student in his hospital bed after he had spoken with other students and an investigator from the Afghan Human Rights Commission, a body set up under last year's peace agreement signed in Bonn, Germany. The police warned him not to complain about police behaviour or the government to anyone else" Human Rights Watch, "Police Beat Students in Hospital," November 14 2002.

⁶⁰ UN Security Council, "The situation in Afghanistan and its implications for international peace and security," UN doc. A/57/762-S/2003/333, 18 March 2003.

⁶¹ Human Rights Watch, "Afghanistan, Humanity Denied, Systematic Violations of Women's Rights in Afghanistan," October 2001.

Discrimination Against Women (CEDAW) on 5 March 2003. The UN Commission on the Status of Women recently reported that the status of women in Afghanistan has advanced steadily and continues to give every sign of being irreversible.⁶²

53. Discriminatory and conservative traditions do, however, remain in a number of provinces and, according to the UN Commission on the Status of Women, this continues to limit the full, equal and effective participation of women in Afghan society. As noted above, the presence of armed factions continue to pose risks and, at times, give rise to persecution, of some women.⁶³ There have also been reports on discrimination against women throughout Afghanistan. The Herat government, for example, discriminates against women and their right to work. Few jobs are open to women, and those that are come with significant restrictions from the government. Ismail Khan has pressured women not to work for international NGOs or the UN. The improvements for women noticeable in Kabul and Mazar-e-Sharif are not taking place to the same extent in other urban areas.
54. Reports of early and forced marriages, domestic violence, harassment and intimidation of women continue. In some instances, women have been imprisoned as the only means of protecting them from domestic violence inflicted for perceived transgressions of social mores.⁶⁴ In addition to a lack of state protection, there are almost no services for the care of victims of sexual or domestic violence in Afghanistan.
55. In some areas, women's freedom of movement, access to health care and education remains limited.⁶⁵ High illiteracy levels among women have meant that they are further precluded from fully participating in public life. There are also reports about local leaders pressuring women not to work,⁶⁶ and about the Department of Islamic Teaching (Ministry of Religious Affairs) that trains women to curb 'un-Islamic' behaviour among Afghan women and to monitor their appearance in public.⁶⁷

⁶² UN Commission on the Status of Women, The situation of women and girls in Afghanistan: Report of the Secretary General, UN doc. E/CN.6/2003/4, 23 January 2003.

⁶³ Human Rights Watch, "We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan," Vol.14, no. 11, December 2002; UN Commission on Human Rights, "Report on the situation of human rights in Afghanistan," UN Doc. E/CN.4/2003/39, 13 January 2003; UN Commission on the Status of Women, The situation of women and girls in Afghanistan: Report of the Secretary General, UN doc. E/CN.6/2003/4, 23 January 2003.

⁶⁴ UN Commission on the Status of Women, The situation of women and girls in Afghanistan: Report of the Secretary General, UN doc. E/CN.6/2003/4, 23 January 2003.

⁶⁵ See below at Section D for details on health and education. "The data available reflect Afghan women's lack of access to skilled health-care services and inadequate access to food, water and shelter." Human Rights Watch, "We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan," Vol 14 No 11, December 2002. "Restrictions on women's dress and freedom of movement... still continue to limit women's access to employment;" UN Commission on the Status of Women, "The situation of women and girls in Afghanistan: Report of the Secretary General" UN doc. E/CN.6/2003/4, 23 January 2003.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

56. After a series of encouraging developments, particularly in urban areas, Afghan women have been subject to an intimidation campaign orchestrated by the *Jamiat-i-Islami* party and other Islamic conservatives. One conservative, Abdul Rasaf Sayyaf, criticised the former Minister for Women Affairs, Ms Sima Samar, for allegedly saying that she did not believe in the *Sharia*, or Islamic law. In his briefing to the Security Council in May 2003, Special Representative of the Secretary-General in Afghanistan Lakhdar Brahimi stressed the serious human rights situation faced by women in Afghanistan:

In Herat, UNAMA is investigating alleged cases of ...rape and other forms of sexual violence.... In Laghman, several women participants in International Women's Day celebrations were beaten by armed groups allegedly linked to the authorities, and the Head of the Women Affairs Department in Laghman has received several threats against her life, possibly from Taliban remnants, warning her to stop all activities in the province. Additionally, in Logar Province, reports of intimidation against women delegates to the Emergency Loya Jirga have been confirmed.

3.4 Education

57. Since the fall of the Taliban, a huge resurgence in education has taken place, with many girls enrolling in the formal education system for the first time.⁶⁸ Some 5.8 million students (including primary, secondary and teacher training) were expected to enrol for the new academic year that just began in March 2003. However, school facilities are rudimentary,⁶⁹ and there is estimated to be a shortage of over 133,000 teachers.⁷⁰ Class sizes at the lowest primary levels have been reported as up to 150 pupils/class and some schools run on three shifts per day. Teachers in government schools are not regularly paid – there are reports from remote provinces that teachers have salaries 11 months in arrears – and consequently have little motivation to work. In many rural areas, community or home based schools provide the only opportunity for children to learn. Secondary schools are limited to provincial and the more populated-district capitals. Access for girls is severely limited due to a lack of female teachers and a lack of services substantially attributable to cultural constraints, such as gender segregation and limits to their freedom of movement.⁷¹ Reports of rocket or

⁶⁸ The UNICEF/MoE Rapid Assessment of Learning Spaces (RALS), conducted in July 2002, counted 6,853 schools throughout Afghanistan, with more than 76,000 teachers.

⁶⁹ UNICEF Press Release, “Afghanistan one year later: Overshadowed and challenged,” 19 March 2003. UNICEF estimates that two-thirds of Afghanistan’s schools are in need of repair. Less than 40 percent of Afghanistan’s 7,000 schools have adequate sanitation facilities.

⁷⁰ Education Development Budget, Ministry of Education, Kabul, Afghanistan, March 2003 available at: www.afghanisatgov.org/mof/adf_meeting.html

⁷¹ *Ibid.* Of a total of 3,344,666 students last year, 30% were girls.

arson attacks on girls' schools in some Provinces calls into question the respect for the right to education for girls in Afghanistan.⁷²

4. The Rule of Law

58. As indicated above, the reality in Afghanistan is that the rule of law is a long way from enjoying full respect and implementation. The country's legal institutions suffer from lack of resources while the record of laws and regulations has been destroyed and much has disappeared during the years of conflict, leaving practitioners unclear as to the substance of the country's law. Although court systems exist from district to national levels, the influence of commanders and powerful figures often renders it impossible for fair and just decisions to be reached over land disputes.⁷³
59. The absence of systematic or multilateral de-commissioning and disarmament, the lack of law enforcement, coupled with the war economy, have given rise to banditry and criminality. Insecurity is high on several roads, including on some of the main road-links. Road travel has become more dangerous in certain areas,⁷⁴ with money being demanded by bandits and by individual commanders through the establishment of checkpoints or ambushes.
60. According to a report on the police service in Afghanistan, police officers suffer from lack of training, inadequate resources and poor or non-existent salaries. In addition to this, many remain loyal to regional commanders, weakening the control and authority of local police commanders. There are almost no internal or independent accountability mechanisms. Corruption and human rights abuses committed by the police have been documented. As a result, victims of crime and abuse have virtually no one to turn to for justice or protection.⁷⁵

⁷² Human Rights Watch, "We Want to Live as Humans: Repression of Women and Girls in Western Afghanistan," Vol. 14, No. 11 (c), December 2002; *see also* UN Commission on the Status of Women "The Situation of Women and Girls in Afghanistan: Report of the Secretary-General" UN doc. E/CN.6/2003/4, 23 January 2003. UNICEF has said that the enrolment of girls in school remains unacceptably low. *See* UNICEF Press Release, "Afghanistan one year later: Overshadowed and challenged" 19 March 2003.

⁷³ C. Johnson, W. Maley, A. Thier and A. Wardak, Afghanistan's political and constitutional development, Overseas Development Institute, London, January 2003, p 26. "At present, the judiciary is fragmented. Local and regional judges are largely a product of the power dynamics at play where they serve. With the enforcement of judicial decisions remaining largely unrealised, judges are severely limited in their ability to deliver justice." *Ibid*.

⁷⁴ Hirat to Helmand and Kandahar, Kandahar to Ghazni, Ghazni to Kabul, Khost to Gardez, from Hirat to Badghis.

⁷⁵ Amnesty International, "Afghanistan: Police reconstruction essential for the protection of human rights," ASA 11/003/2003, 12 March 2003. *See also* Human Rights Watch Press Release "Afghanistan: Police Beat Students in Hospital. Abuses highlight security concerns," New York, 14 November 2003; and Human Rights Watch "Afghanistan's Bonn Agreement One Year Later: A Catalog of Missed Opportunities" December 2002. C. Johnson, W. Maley, A. Thier and A. Wardak, Afghanistan's political and constitutional development, Overseas Development Institute, London, January 2003, p.7 "There are...reports of members of the police, army and

61. On 1 December 2002, President Karzai signed a decree that provides the basis for the new Afghan National Army (ANA), the disarmament, demobilization and reintegration of all factional forces and the reform of the Ministry of Defence,⁷⁶ setting out a process for the demilitarisation of the many militia and private armies that exist. In the northern region, the disarmament process began as early as July 2002. Nevertheless, in many areas of the country, disarmament has not been implemented effectively, with villagers remaining heavily armed and many local commanders retaining an army, sometimes forcibly recruited. The presence of hostile militia groups contributes to the general sense of insecurity in the country and is linked to the commission of human rights abuses against the local population.⁷⁷
62. Shuras (traditional community councils at village, district and province levels) people's representatives and elders in the rural areas play an important role in addressing various protection problems and disputes. Shuras have acted as an active organ in finding solutions for problems arising between members of the community or between communities, including in matters of property and property rights. According to findings during UNHCR returnee monitoring activities, the majority of such disputes were thus far solved by Shuras at the village and sub-tribe levels.
63. These traditional mechanisms can be effective in today's Afghanistan. However, their effectiveness can be limited in urban areas and in rural areas subject to the influence of military commanders. In many cases, Shura has acknowledged their inability to solve politicised disputes involving commanders, and have referred these cases to the courts. However, the courts, unable to deal with them either, have often referred them back to the Shura. Where the problem is caused by a commander, the Shura has little recourse to dispute resolution mechanisms.⁷⁸

5. Some Initiatives to Address Obstacles

64. The central Government continues its attempts to deal with commanders monopolising power in both the civil and military domains. The 1 December 2002

security forces showing no respect for the law, and of officials trying to restore law and order being assaulted by commanders directly linked with figures at the heart of the ATA. For as long as this protection continues, the restoration of security will be impossible.”

⁷⁶ UN Security Council, The situation in Afghanistan and its implications for international peace and security, Report of the Secretary General, General Assembly, 57th Session, Agenda item 37, UN doc. A/57/762-S/2003/333, 18 Mar 2003, para. 27.

⁷⁷ Human Rights Watch, “Afghanistan’s Bonn Agreement One Year Later: A Catalogue of Missed Opportunities” December 2002.

⁷⁸ International Crisis Group, “Afghanistan: Judicial Reform and Transitional Justice,” Asia Report No.45 January 2003; International Commission of Jurists, “Afghanistan’s Legal System and its Compatibility with International Human Rights Standards,” November 2002: “Against the backdrop of a weak law enforcement system and almost non-existent rule of law, military commanders continue to act with impunity thus compromising the protection of human rights”

Decree on the “division of responsibilities and distinguishing the competencies of the civil and military institutions” is an important and positive step in this regard.⁷⁹ In November 2002, delegations from Kabul were sent throughout Afghanistan and identified a list of military commanders and civil servants who were considered ‘unfit’ or to be abusing their power. To this date, only a limited number of those persons listed have been effectively removed from their positions.

65. Specifically concerning the North, a series of attempts have been made by the UN and the ITAA to address the ongoing abuses against civilians noted above. A meeting was organised on 6 June 2002 at the UNAMA compound in Kabul by the Afghan Assistance Coordination Authority (“ACA”) and the Afghanistan Interim Authority (“AIA”) between General Dostum and six leaders of Pashtun (“IDPs”) from Spin Boldak, Kandahar, accompanied by the Mayor of Kandahar. General Dostum gave assurances that security will be guaranteed for Pashtuns willing to go back to the North.⁸⁰ In a letter addressed to Chairman Karzai on 15 June 2002, Special Representative of the Secretary-General for Afghanistan, Brahimi, raised the situation in the North and noted the continuing climate of insecurity there.
66. One of the most positive developments has been the formal establishment of the Northern Return Commission in February 2003. The Return Commission, under the chairmanship of Mr. Enayatullah Nazari, Minister of Refugees and Repatriation, and comprised of General Abdurrashid Dostum, General Atta Muhammad, Sardar Saeedi, UNAMA, UNHCR and a member of the Afghan Human Rights Commission, convened its first high level meeting on 28 February 2003. Mr. Ruud Lubbers, UNHCR High Commissioner, Dostum, Atta and Saidi, the leaders of the three factions in the north, UNAMA and Afghan Independent Human Rights Commission representatives attended the meeting.
67. The northern leaders of the Jamiat, Jumbesh and Hezb-e-Wahdat parties committed themselves to taking action to create conditions conducive for return, even if against their own respective factions. The commitments made at the plenary stemmed from a political interest in implementing the provisions of the decree on dignified return of refugees. The next steps include a mission of the Return Commission Working Group to the south to meet with IDPs. The unconditional promises made by these leaders to call to task commanders who are known perpetrators of human rights abuses is an important step towards encouraging *de jure* and *de facto* authorities in these areas to take responsibility for the actions of their sub-ordinates.
68. Despite these interventions, as of yet, there have been very few tangible results. The competition for power between the major parties in the North is an ongoing phenomenon, and military interests may outweigh promises to address human rights abuses and mitigate interference in civil affairs the commanders. In some areas, (Dai

⁷⁹ Decree on the Afghan National Army issued by the Islamic Transitional State of Afghanistan, 1 December 2002.

⁸⁰ Human Rights Watch, Briefing Paper, On the Precipice: Insecurity in Northern Afghanistan, June 2002.

Kundi and Sharistan of Uruzgan, Lal of Ghor), some local commanders are not even under the umbrella of the party system, and thereby answerable to few but themselves. Given the information noted in this section, and the ongoing competition for power, some areas of Afghanistan (the Northwest, Southeast and Southern Hazarajat), may not have the required “post-conflict”⁸¹ conditions to effectively resolve abuses and address the commanders’ arbitrary exercise of power.

69. At the same time, this should be balanced against the fact that 1.8 million refugees returned to Afghanistan in 2002. Not all Afghans are affected by the above-mentioned physical abuses (extortion, land occupation, forcible recruitment, etc.). Rather these latter abuses are known to be widespread in two major regions (Northwest and Central Highlands), and sporadic in other areas mentioned. The problem faced by the entire Afghan population is the country-wide absence of rule of law, which, when combined with the presence of unaccountable commanders and militias, creates the “potential” for these abuses to occur anywhere, and removes the possibility of recourse to justice when they do occur.⁸²

D. Humanitarian Situation

1. Food Security and Drought

70. According to assessments by the United Nations World Food Programme (“WFP”) and others, approximately 4.3 million Afghans have exhausted their coping mechanisms and are threatened by hunger, remaining dependent on food and other humanitarian assistance for their basic survival in 2003.⁸³ An assessment on food-security in Afghanistan⁸⁴ concluded that although drought had eased in the north and west, it persists in the central and southern regions. Severely affected provinces include Nimroz, Hilmand, Kandahar, Zabul and Uruzgan, which have experienced drought for four years. With the snow pack that feeds rivers is at an all time low,

⁸¹ C. Johnson, W. Maley, A. Thier and A. Wardak, Afghanistan’s political and constitutional development, Overseas Development Institute, London, January 2003, p.3: “The deal reached at Bonn has often been spoken of as a peace agreement, and Afghanistan as a country in a post conflict situation. But the defeat of the Taliban was not the defeat of one unified force by another. The allies that the US chose were not united, and the Taliban’s defeat has only laid bare the earlier conflict between them.”

⁸² *Ibid.*, p. 7: “Establishing security will involve more than simply taking away the guns; it is about a total environment. The years of war have meant that in many places the old power structures have been replaced by new ones based on the commanders. Command of resources has enabled warlords to acquire armed men, who in turn are used to acquire more resources. ... With no protection from the law, ordinary citizens have drawn on family and other networks to ensure protection.”

⁸³ World Food Program, Afghanistan VAM/Partners Countrywide Rural Settled Populations Assessment, Quarterly Report, July – September 2002.

⁸⁴ Lautze, S., Stites, E., Nojumi, N., and Najimi, F., “Qaht-e-Pool ‘A cash famine’-Food Insecurity in Afghanistan 1999-2002,” Feinstein International Famine Center, Tufts University, for USAID, May 2002.

irrigation and drinking water problems have continued to affect provinces in the north and west of the country (e.g., Farah and Ghor provinces), although the harvest in the Northeast was generally good in 2002. There is also a dire need for wage-labour and cash as an increasing number of Afghans are indebted and unable to buy food even when it is available. Drought and poverty have contributed to further population movements during 2002.⁸⁵

71. Food insecurity and lack of income have exacerbated existing land problems that have arisen due to destruction or illegal occupation of property. The presence of landmines in land surrounding villages has, in some areas, rendered farmland unusable. In Kabul, increased urbanisation has placed a burden on water and electricity resources. Many returnees and IDPs are squatting in tents and partially destroyed public buildings, while others are sharing apartments.⁸⁶

2. Nutritional Status and Health

72. The nutritional status of the population remains extremely poor with a high prevalence of chronic malnutrition (45-59%), acute malnutrition between 6-12%, and infant and under-five mortality rates among the highest in the world.⁸⁷ Life expectancy at birth is as low as 45 for females and 44 for males. Access to safe drinking water is as low as 35% of the population in urban and 9% in rural areas. Only 30 to 40% of the population have access to existing health services. About 75% of the population have no access to emergency obstetrics care – only 11 of the 33 provinces have the capacity to deliver emergency obstetrics care and as a result, the risk of death from complications of pregnancy or childbirth is very high.⁸⁸ In 174 of the hospitals claiming to offer Caesarean sections surveyed for a recent assessment, only 17 were found to have the complete set of equipment necessary to perform the operation under reasonable conditions.⁸⁹ A large proportion of illnesses and deaths are due to preventable communicable diseases, e.g. measles, cholera, tuberculosis, malaria, meningitis, hepatitis, typhoid, childhood respiratory infections and diarrhoea.
73. Health infrastructure and human resources, public and private, are now grossly inadequate for a population of 24 million. Institutions have collapsed, physical

⁸⁵ UNCHR, “Report on the situation of human rights in Afghanistan” UN doc. E/CN.4/2003/39, 13 January 2003. *See also* United Nations Environment Programme (UNEP), “Afghanistan Post-Conflict Environmental Assessment,” February 2003.

⁸⁶ The population of Kabul doubled in size to 2.7 million in 2002. UN Commission on Human Rights, “Report on the situation of human rights in Afghanistan,” UN doc. E/CN.4/2003/39, 13 January 2003.

⁸⁷ For an insight into one particular Province, *see* UNICEF/US Centers for Disease Control and Prevention, “Nutrition and Health Survey: Badghis Province, Afghanistan” February – March 2002. *See also* Pavignani/Colombo “Afghanistan Health Sector Profile 2002,” August 2002.

⁸⁸ Afghan Ministry for Public Health/U.S. Centers for Disease Control and Prevention/UNICEF, “Maternal Mortality in Afghanistan: Magnitude, Causes, Risk Factors and Preventability,” Summary Findings, November 2002.

⁸⁹ Ministry of Public Health (HANDS/MSH/Europe), “Afghanistan National Health Resources Assessment -- Preliminary Results,” November 2002.

facilities have been destroyed and the human resource base has been eroded, particularly of female professionals critical to women's access to health care in light of the predominant cultural observance of gender segregation.⁹⁰ A recent assessment counted 18,306 health-care providers and support staff in Afghanistan, of which 2,842 are doctors or specialist doctors. Of these, 692 are women doctors. The assessment concluded that nearly 40% of Basic Care Services have no female health-care workers.⁹¹ There is a strong urban bias to the limited hospitals and clinics, with many of the facilities located in Kabul, while rural services are unevenly distributed. A survey of health facilities conducted by WHO reveals that in the government and NGO sectors, only a small number of district, provincial or regional hospitals have any, let alone all, of the following basic services: autoclave, laboratory equipment, EKG machine, blood-bank, ambulance, endoscopy or ultrasound. Psychiatric health care facilities are almost non-existent and lack essential medical supplies. Private pharmacies are the main dispensers of medical treatment in many places. Persons with serious illness or chronic medical conditions cannot expect to find treatment available in Afghanistan.

3. Internally Displaced Persons (IDPs)

74. Many IDPs were able to return to their places of origin. Efforts to facilitate the return of others, often drought-fleeing IDPs, are currently ongoing in an inter-agency effort. Of the more than 1,200,000 IDPs at the beginning of the year, approximately 600,000 returned home either spontaneously or through organised return operations. The minimal reverse flow from the areas of return to the camps during the winter months is testimony to the successes of these return operations. Although initial integration has been often very difficult for returning IDPs, the first step in reducing the cycle of internal displacement has begun. For this to be sustainable, however, much more has to be done towards investing humanitarian and development assistance in the areas of return. UNHCR will continue in 2003 to facilitate voluntary return for the remaining IDP caseloads where this would be an appropriate solution.
75. However, at the beginning of 2003, there are still some 600,000 persons classified as IDPs, largely in the drought-affected south, where return is not yet appropriate and is likely not to be possible unless the drought recedes. Over half of these IDPs live in difficult conditions in drought-affected southern Afghanistan, where long-term solutions will require major financial and political commitment from the Afghan government and the international community. Ongoing security problems, particularly in the North and Central regions also make return to these areas problematic for some profiles of IDPs. Others may not wish to return to their places of origin, seeing more sustainable opportunities in being locally integrated in their places of displacement.

⁹⁰ Waldman, R., Hanif, H., "The Public Health System in Afghanistan," Afghanistan Research and Evaluation Unit, May-June 2002; *See also* WHO, "District Population per Medical Doctor" November 2002.

⁹¹ Ministry of Public Health (HANDS/MSH/Europe) "Afghanistan National Health Resources Assessment," Preliminary Results, November 2002.

4. Mines

76. Afghanistan is the most mine- and unexploded ordnance (UXO)- affected country in the world with 732 square kilometres of known mined area. Of this, an estimated 100 square kilometres of former frontline areas are mined, and there is approximately 500 square kilometres of UXOs in contaminated battle areas.⁹² The problem has been exacerbated by recent events with new areas contaminated by coalition UXOs. UN reports indicate that over 100 square kilometres were cleared during 2002 and that almost 40,000 mines and over 890,000 UXOs were destroyed, allowing Afghans to return home in relative safety. Mine awareness instruction has been provided to several thousand Afghan civilians.⁹³ Nevertheless, an estimated 3,000 cases of injuries from landmines and UXOs are reported every year, and roughly 4-5% of the Afghan population are disabled, many by mines and UXOs.⁹⁴

E. Return of Afghans from Neighbouring and Non-Neighbouring Countries

77. After a suspension of operations in September 2001, UNHCR has resumed the facilitation of voluntary repatriation of Afghan refugees from Pakistan (on 1 March 2002) and Iran (on 9 April 2002). Since the resumption of the UNHCR-assisted voluntary repatriation, over 1.8 million Afghans have returned to Afghanistan with UNHCR's assistance. Of these, over 1,500,000 persons returned from Pakistan and close to 260,000 persons from Iran. Smaller groups have been assisted to return from Tajikistan (9,064 persons) and some from Turkmenistan, Uzbekistan and Kyrgyzstan (444). The largest groups of returnees go back to the Central region (Kabul province) and to the province of Nangarhar in the East. Some 40% of returnees are, regardless of their origins, moving into urban areas. Even though most returns have been based on purely voluntary decisions, more recent interviews of returnees from Pakistan and Iran have shown that many of them decided to leave because of the harsh and hostile behaviour of local authorities in urban areas. UNHCR and the Afghan Government have repeatedly stated that involuntary return could hamper the sustainability of return for such groups.
78. After lengthy negotiations, a tri-partite agreement between the Afghan Transitional Government, the government of Pakistan and UNHCR was signed on 17 March 2003, based on a 3-year framework for voluntary return. This follows the "Joint programme between the Government of the Islamic Republic of Iran, the Interim Authority of Afghanistan and UNHCR for the Voluntary Repatriation of Afghan Refugees and Displaced Persons," signed in Geneva on 3 April 2002.

⁹² See UNDP, "Afghanistan – Preliminary Needs Assessment for Recovery and Reconstruction," ADB, WB, 15 January 2002.

⁹³ UNMACA Report on Mine Action Programme for Afghanistan, 31 December 2002.

⁹⁴ ICRC has recorded over 26,000 amputees since 1988, of which more than 20,000 are mine victims. See Pavignani/Colombo, "Afghanistan Health Sector Profile 2002," August 2002.

79. A small number of Afghan refugees were assisted by UNHCR to return from non-neighbouring countries during the year. 2002 also saw the signature of a tri-partite agreement between UNHCR, the Transitional Islamic Administration of Afghanistan and France, closely followed by one with the United Kingdom for the voluntary return of Afghans to Afghanistan. In March 2003, a tripartite agreement for the voluntary repatriation of Afghans was signed among the Netherlands, UNHCR and the Afghan government. Also in the case of asylum-seekers whose claims were rejected in the past, commitments were made by the European States not to return Afghans with protection or compelling humanitarian needs, and to ensure that all humanitarian aspects of their situation be given fair consideration. Since their signature, some 57 individuals have been assisted by UNHCR to return voluntarily from the UK and France. The use of alternatives to voluntary repatriation is also regulated by the agreements. They envisage that the asylum countries may, as a last resort, examine alternatives for Afghans who have received a final negative decision on their asylum application and who choose not to avail themselves of the voluntary repatriation programme. However, in view of the serious reintegration difficulties these persons would face upon return and the situation described in this update, UNHCR recommends that the primacy of voluntary repatriation be respected.

II. INTERNATIONAL PROTECTION NEEDS OF AFGHANS

A. General Considerations

80. The year 2002 saw voluntary repatriation to Afghanistan in unprecedented high numbers. While voluntary repatriation is expected to continue, certain groups of Afghans continue to have a well-founded fear of persecution for reasons outlined in Article 1 A (2) of the 1951 Geneva Convention Relating to the Status of Refugees. Others – originating from particularly affected parts of the country – might be in need of international protection because of the indiscriminate effects of widespread violence and disorder.
81. In determining refugee status and protection needs of Afghans at present, the provisional and fragile nature of the current situation is an important consideration. The Government was established on 22 June 2002 and the agreement on the current provisional arrangements only covers a period of 18 months until elections are held in 2004. It is not known how the State (the central authorities) will act with regard to specific categories of individuals or groups, and at which stage law and order can be ensured throughout the country so as to provide protection against the actions of local authorities and other agents.
82. Given the fragmented nature of the current situation and the re-emergence of previous and new commanders in many parts of the country, it is all the more important, in determining the protection needs of Afghans, to obtain a full picture of the asylum-seeker's background and personal circumstances, as well as an analysis of the

prevailing situation in his or her area of origin or previous habitual residence in Afghanistan. Taking into account the specifics of the Afghan society, this assessment should include family and extended family links and community networks with a view to identify the possible traditional protection and coping mechanism vis-à-vis the current local authorities. It is also important to establish, for each case, the profile of family-members of the core and extended family, their location, their previous and current social status, and their political affiliations in Afghanistan or abroad.

83. Asylum-seekers waiting for a decision on their refugee status should be protected against forcible return during the period pending status determination. Despite the fluidity of the situation, UNHCR recommends that the processing of asylum claims should continue: Afghan asylum-seekers should be interviewed and their cases assessed as outlined above, carefully taking into account the changing situation in Afghanistan, as well as the needs and vulnerabilities, including those emerging subsequent to fleeing Afghanistan, of persons in particular groups or categories (see below). In some cases, it may not be possible to clearly determine protection needs. Exercising the necessary caution in this regard, final decision-taking should be delayed, pending clarification of the situation in Afghanistan and advice, as necessary, from UNHCR.

B. Considerations Concerning Refugee Status on the Basis of the 1951 Convention Relating to the Status of Refugees

1. Convention Refugee Status According to Article 1 A (2)

84. With regard to agents of persecution,⁹⁵ in the present situation of partial fragmentation into zones of influence, power vacuums and tension due to the competition for influence between different actors and the control of the appointed transitional administration not extending to the whole of the Afghan territory, possible risks of persecution by non-state agents continue to require consideration. The record of human rights abuses perpetrated by members of factions who are back in power (including by members of the *Jamiat-i-Islami*, the *Hezb-e-Wahdat* (Akbari – Pazdar; Khalili – Nasr) and *Junbesh-e-Milli-Islami*, *Ittehad-e-Islami*, *Harakat-e-Islami Mohseni*, *Hezb-e-Islami Khalis*, *Sepah-e-Mohammed*) confirm that such risks continue to exist.

⁹⁵ According to para. 65 of the Handbook on Criteria and Procedures for Determining Refugee Status: “persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. ... Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.”

85. Based on the currently available information on Afghanistan, there are indications that, among others, persons of the following profiles might be at particular risk of violence, harassment or discrimination.

1.1 Persons associated or perceived to have been associated with the Communist regime, as well as others who have campaigned for a secular state

86. Even though the Interim Administration issued a “Decree on the dignified return of Afghan refugees,” valid as of 22 December 2001, the situation is yet unclear with regard to persons affiliated or associated with the former communist regime in Afghanistan, through membership of the People’s Democratic Party of Afghanistan (PDPA) or as a result of their previous professional or other functions. Although not targeted by the central authorities, they may continue to face risks of human rights abuses if they do not benefit from the protection of influential factions or tribal protection. The degree of risk depends on a variety of factors, including the following: a) the degree of identification with the communist ideology, b) the rank or position previously held, c) family and extended family links.

87. In this context, it is noteworthy that the Transitional Authority, as well as regional and local authorities, is dominated by former Mujahideen factions, some royalists from the pre-communist period, and reportedly only five former members of PDPA.

88. Members of the following groups, if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment:

- High ranking members of the People’s Democratic Party of Afghanistan (PDPA),⁹⁶ irrespective of whether they belonged to the Parcham or Khalq faction of the party. Most PDPA members lived in Kabul or other cities during the communist regimes. They will be at risk only if they are known by armed factions as such and this includes: (i) Members of Central, Provincial Cities and Districts Committees of the PDPA and their family members; (ii) Some of the Heads and high ranking members of social organisations such as the Democratic Youth Organisation, and the Democratic Women Organisation at the level of country, province, city and districts.

⁹⁶ The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising of members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988 the name of the party was changed to Watan (Homeland) Party. The PDPA based government collapsed in 1992 when, following the Peshawar Accords, Mujaheddin troops entered Kabul and the last President of a ‘communist’ government in Afghanistan, Mohammed Najibullah (previously head of the secret service Khad) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by Taliban troops entering Kabul in September 1996.

- Some of the former military officials, members of the police force and Khad (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more so from the population (families of victims), given their identification with human rights abuses during the communist regime. When reviewing the cases of military, police and security service officials as well as high-ranking government officials of particular ministries, it is imperative to carefully assess the applicability of exclusion clauses of Article 1 F of the 1951 Geneva Convention. To some extent, many of these previous Afghan officials were involved, directly or indirectly, in serious and widespread human rights violations.

1.2 *Certain profiles of women*⁹⁷

89. Despite the encouraging developments documented in Part I, the persistence of discrimination and conservative cultural practices, at times leading to acts of violence including death (honour killing), mean that the following categories of women should be considered to be at risk and exposed to possible persecution, if they return to Afghanistan: a) Women without effective male and/or community support; and b) Women perceived as or actually transgressing prevailing social mores. This latter category may include 1) Afghan women who have married foreign nationals in countries of asylum; this would particularly concern women who have married non-Muslims and are perceived as having thus violated tenets of Islam; and 2) Afghan women who have adopted a Westernised behaviour or way of life which (i) would be perceived as transgressing social mores in Afghanistan and (ii) has become so fundamental a part of their identity that it would be persecutory for them to have to suppress it.

1.3 *Persons at risk of persecution on political grounds*

90. As described above,⁹⁸ Afghanistan is progressing from a transitional administration towards a permanent government, but in a situation marked by the persistent presence of warlords, reportedly re-arming and increasing their *de-facto* power in their respective areas.⁹⁹ In this tense situation, reports about incidents of politically motivated arrests and detention and covert or open threats and intimidation are increasing, targeting persons with a different political affiliation or expressing different ideas than those in control.¹⁰⁰ Political opposition is a defining feature of persecution in some individual cases. The Under-Secretary-General, in his briefing on the *Emergency Loya Jirga* to the

⁹⁷ See Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁹⁸ See Part 1 Section B above.

⁹⁹ Kieran Prendergast, UN Under-Secretary General for Political Affairs in an open briefing of the Security Council on 13 March 2002.

¹⁰⁰ See, for example, "Blood-drenched warlord's return," *The Observer*, 14 April 2002, *see also* footnote 13.

Security Council on 21 June 2002, stated that the United Nations Assistance Mission in Afghanistan (UNAMA) had documented several cases of intimidation prior to and during the assembly that had been brought to the attention of the Government, and stressed that it was vital that the authorities highlight and addresses instances where democratic rights had been abused by those who still equated power with force and violence. The intimidation faced by those members of the Emergency *Loya Jirga* who criticised the warlords or local commanders, as well as those who criticised the former Mujahideen regime or those who opposed the Islamic denomination of the Transitional Authority of Afghanistan including journalists and women associations, indicates how political opposition could face persecution as the country moves towards the elections and the public Constitutional debates. Although not systematic, political repression may particularly affect certain categories of people perceived by commanders/factions to represent a threat to their power. These vulnerable categories include media and journalists, civil society organisations such as women's associations and professional *shuras*, as well as witnesses of gross human rights violations. The culture of impunity resulting from the still deficient State or traditional justice and security mechanisms fosters the continuation of these acts of intimidation.

1.4 Persons originating and returning to areas where they constitute an ethnic minority

91. As noted in Part 1, Section C above, in certain areas of Afghanistan, persecution of ethnic minorities by local commanders in the form of extortion, ill-treatment, detention and even murder and rape has been reported.
92. Pashtuns are Afghanistan's largest ethnic group, but are a minority in the north where Afghans of Tajik, Uzbek and partly Hazara ethnic origin comprise the majority and are control. The Pashtun presence in the North is mainly the result of a deliberate policy of settlement carried out last century as part of an attempt to increase the writ of the Pashtun dominated government of the day. The Pashtuns became successful landowners and established trade and business in cities of Northern Afghanistan such as Kunduz and Baghlan. They also became prominent in money lending and, through borrower indebtedness, accumulated and appropriated more land. Since the demise of the Taliban, reports have emerged of Pashtun villagers and civilians facing harassment, intimidation and discriminatory treatment, as well as acts of violence, banditry and persecution at the hands of local warlords and other members of the factions controlling the North (*Jombesh-I-Milli-Islami, Hezb-e-Wahdat and Jamiat-I-Islami*).¹⁰¹ Many Pashtuns have subsequently fled and sought refuge.

¹⁰¹ Among the reprisals and abuses faced are the looting of villages and livestock, theft and confiscation of humanitarian assistance, ill-treatment and beating, extortion of money, arrest and detention and release following the payment of ransom, harassment (including rape) of women. Details can be found in the recently published report "Afghanistan: Paying for the Taliban's Crimes – Abuses against ethnic Pashtuns in Northern Afghanistan," Human Rights Watch, April 2002.

93. As noted in Part 1, Section C above, Gujur from Takhar and Baghlan, Ismaili from Baghlan, Sayeedi and Hazara from Kamard district of Bamian may also face ethnically and politically motivated persecution. This list is not exhaustive, but provides examples of particular groups at risk.

1.5 Persons who are perceived to have been associated with or supported the Taliban regime

94. The Taliban movement first appeared in Afghanistan in late 1994. The core of the Taliban were educated in Pakistan in madrassas (religious schools) in Pakistan that adhere to the Deobandi orthodox legal and state doctrine and promote *taqlid*, the obedience to the Koran in its original letter. The political aims of the Taliban were to re-establish security in Afghanistan, to create a truly Islamic State, to disarm the population and to implement a strict interpretation of Shari'a law throughout the country. The movement has been led by Mullah Mohammad Omar, the commander of the faithful (*Amir al Momineen*) and the country was ruled by a Supreme Council (*Shura*) in Kandahar under Mullah Omar's leadership. The Taliban were far from being a monolithic movement and included a wide spectrum of Afghans, ranging from relative moderates to extreme hard-liners. Decisions on the overall policy and military matters were taken within an exclusive circle at the top of the movement, which remained in close contact with Mullah Mohamed Omar in Kandahar, but implementation was different from one locality to another and from one period to another.
95. It is generally presumed that most of the "rank and file" Taliban have already returned to their communities of origin, either in Afghanistan¹⁰² or in Pakistan. Some hundreds of Taliban fighters have been released from detention by the Interim Administration on grounds that they were conscripts and therefore "innocent."¹⁰⁴ Nevertheless, there are reports of accusations, discrimination and threats against civilians who have worked in the administration during the Taliban regime. The likelihood that they could rise to the level of persecution is greater where rank and influence within the movement was more significant. At the same time, the possibility that exclusion clauses will apply is also greater (see below).

1.6 Non-Muslim religious minorities

96. There are some 3,500 Sikh and Hindu families in Afghanistan, mainly living in the Kabul, Ghazni, Kandahar, Helmand and Nangahar provinces. Until 1992, they had not suffered from discrimination and could exercise their religion freely in the urban centres where they predominantly lived. During the civil war and the Taliban rule, many of their temples were destroyed or used as military bases. The community still suffers from the consequences of a more rigorous and less tolerant application of Islamic values by the State and the various factions in power during the last 14 years.

¹⁰² "Karzai frees 300 Taliban soldiers," BBC News, 9 February 2002.

¹⁰⁴ *Ibid.*

As a result, the community still faces various forms of intimidation in public places and children cannot attend earlier existing Sikh/Hindu schools. Some of the Sikh and Hindu returning families from India have claimed that they have not been able to recover their property.

1.7 Converts

97. The risk of persecution continues to exist for Afghans suspected, or accused, of having converted from Islam to Christianity, or Judaism. Conversion is punishable by death throughout Afghanistan.¹⁰³
98. The Chief Justice Fazul Hadi Shinwari, in an interview with Reuters on 24 January 2002,¹⁰⁴ confirmed that criminals in Afghanistan will continue to face Sharia punishment, including amputations for theft, stoning for adultery and public execution for murder, as part of the interim government's drive to keep down crime. Proselytising Christians may face the death penalty and Muslims who drink alcohol could be given 80 lashes.

The main issue here is that infidels or Westerners protest against a hand being chopped for theft. But since the robber has committed a crime then he has to be punished for obvious and justified reasons – ridding society of crime.

He also warned foreigners against trying to convert Afghans from Islam:

The Islamic government, according to Sharia, is bound to punish those who get involved in anti-Islamic activities. ...We can punish them for propagating other religions – such as threaten them, expel them and, as a last resort, execute them, but only with evidence.

Nevertheless, at the time of writing of the report, no such harsh punishment was reported.

2. Exclusion on the Basis of Article 1 F of the 1951 Convention Relating to the Status of Refugees

99. Exclusion should receive heightened attention in an environment of internal conflict marked by massive violations of human rights and humanitarian law and forced movements of both persecutors and their victims, such as in Afghanistan, particularly in the aftermath of the attacks of 11 September 2001. Guidance on the application of exclusion-clauses of Article 1 F of the 1951 Convention are elaborated in UNHCR's

¹⁰³ UNHCR is not, however, aware of any death sentence since the establishment of the Interim and Transitional Administration.

¹⁰⁴ Spillius, A., "Afghans to carry on stoning criminals," The Daily Telegraph, heart, 25 January 2002.

Guidelines on Exclusion of December 1996,¹⁰⁵ and further developed in the IOM/101/2001 – FOM/098/2001 on asylum policy considerations after 11 September 2001.

100. It is important to underline that the application of any of the exclusion clauses to a head of family does not, *per se*, affect the possibility that her/his dependants may fulfil the refugee criteria. Family members should be given the opportunity to establish independent refugee claims even when their fear of persecution is the result of their relationship to the perpetrator of the excludable acts, and even if the facts presented to substantiate their refugee claims are linked to those presented by the excluded head of the family.
101. There is a requirement, in cases of Afghans of a specific profile, to carefully assess the applicability of exclusion clauses contained in Article 1 F of the 1951 Convention relating to the Status of Refugees. Among these cases are:
 - 2.1 *Members of military, security and police forces during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes*
102. When reviewing the cases of military, police and security service officials, as well as those of high-ranking government officials of particular ministries during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes, it is imperative to carefully assess the applicability of the exclusion clauses in Article 1 F of the 1951 Geneva Convention. Many of these previous Afghan officials were involved in serious and widespread human rights violations. Violations of human rights took place during Najibullah's regime (1986-1992) as well, but in a less intense way during the tentative national reconciliation policy period of the regime.
 - 2.2 *Specific high ranking members or commanders of Afghan military and political factions and movements*
103. During the more than 20-year history of warfare in Afghanistan, members of factions including the *Junbesh-I-Melli*, *Jamiat-I-Islami*, *Hezb-I-Islami*, (*Hekmatyar and Khalis*) *Hezb-I-Wahdat* (both branches), *Harakat-e Islami (Mohseni)*, *Harakat-e Inqilab-e-Islami* and *Ittehad-e-Islami*, have, at times and in the context of particular military activities and battles, been accused of acts which would justify exclusion. Information is amply documented, including names of perpetrators, in available reports such as those of human rights organizations and numerous scholarly publications on the Afghan civil war. There have also been reports that some of the members or commanders of such factions have been involved in acts that would justify exclusion even after the end of the nation-wide civil war, or after the fall of Taliban.

¹⁰⁵ Soon to be released in updated form.

2.3 *Specific members and commanders of the Taliban movement*

104. Similarly, the applicability of the exclusion clauses will come into play in relation to individual members and military commanders of the Taliban, where their participation in serious violations of human rights and humanitarian law or their involvement in terrorist activities can be sufficiently established. The pattern of deliberate attacks on civilians by Taliban forces, summary executions and massacres and the deliberate and systematic destruction of livelihoods through a “scorched earth” policy and forcible relocation are amply documented.
105. Regarding the possibility of co-operation with national authorities on exclusion, UNHCR could, in principle, share with national authorities the names and other basic biographical data of asylum seekers and refugees known to the Office, if the authorities are in a position to advise whether he or she has committed acts which may fall under one of the exclusion clauses. The Confidentiality Guidelines, contained in IOM/FOM 71/68 of 24 August 2001, provide guidance and need to be observed.

C. Considerations Relating to Complementary Forms of Protection

106. Even where Convention refugee status under the refugee-definition of the 1951 Geneva Convention is denied, persons might, nevertheless, remain in need of international protection. Many States provide other forms of stay, in recognition of the protection needs of persons outside their countries because of a serious threat to life, liberty or security in the country of origin, but for whom there may be no link to a specific Convention ground.
107. This may include persons originating from areas affected by factional fighting and local commanderism (i.e., Southern Hazaradjat, North-West, some parts of South-East). Given ongoing military activities and armed clashes and hostilities between Afghan commanders in certain parts of the country (see above under “Part 1, Section 3”), UNHCR considers that some Afghans who are forced to flee and are unable to return without serious threat to life or security as a result of armed conflict, forced recruitment, and serious abuses by commanders should at least receive complementary forms of international protection, if not refugee status based on the 1951 Convention.

D. Humanitarian Considerations

108. UNHCR considers that persons finding themselves in particularly vulnerable circumstances should not be required to return. Instead, they should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their safe and

orderly return and appropriately receive them in Afghanistan. This includes individuals in the following categories:

- handicapped and ill individuals, or families with handicapped or ill members;
- unaccompanied elderly;
- unaccompanied minors; and
- landless destitute Afghans, particularly those originating from food-insecure areas and drought-affected areas;

E. Internal Relocation Alternative

109. UNHCR continues to advise against resort to the notion of an internal flight or relocation alternative in the Afghan context. This advice takes into account that the traditional family and community structures of the Afghan tribal system constitute the main protection and survival (coping) mechanism. The protection provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence. The presence of assisted IDP camps should by no means be used to assume a internal relocation alternative. Although the security situation in Kabul is better than elsewhere because of the presence of ISAF, certain persons could still be targeted in Kabul, if the persecutors intend to target them.

**UNHCR Geneva
July 2003**

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IV. ANNEXES

A. Afghan Displacement: Global Levels and Trends

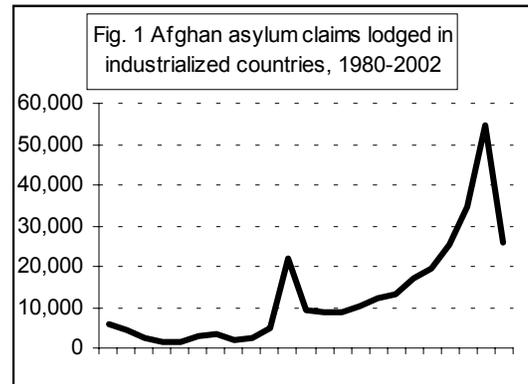
1. Populations, New Arrivals and Durable Solutions

110. By the end of 2002, Government and UNHCR sources reported the presence of Afghan refugees in some 50 non-industrialized countries. Afghan refugees are mostly residing in the Islamic Republic of Iran (2.0 million) and Pakistan (1.8 million). Smaller groups of Afghan refugees are located in India (11,400), Uzbekistan (5,700), Tajikistan (3,400), Ukraine (1,600), Russian Federation (1,500)¹⁰⁶ and Turkmenistan (1,300). In Iran and Pakistan, all Afghan refugees have been admitted on a prima facie basis. In Kazakhstan, Turkmenistan and Uzbekistan, the majority of Afghan refugees have been granted prima facie refugee status. In other countries, Afghan refugees have generally been granted refugee status on an individual basis.
111. At the end of 2002, UNHCR estimated the number of internally displaced Afghans at some 665,000 down from 1.3 million a year earlier.
112. During 2002, UNHCR Afghanistan reported the return of 1.5 million refugees from Pakistan, 250,000 from Iran and some 9,000 returning from Tajikistan. In total, an estimated 1.8 million Afghan refugees returned home during 2002. In addition, some 750,000 internally displaced Afghans are estimated to have returned to their place of origin during the year. During the year, no new prima facie outflows of Afghan refugees were reported, although 84,000 Afghans became internally displaced during the year.
113. UNHCR facilitated the resettlement of some 4,200 Afghan refugees from first asylum countries in 2002, primarily from Pakistan (1,900), Iran (840), India (670), Uzbekistan (180), Russian Federation (130) and Turkmenistan (100).

¹⁰⁶ Excluding an estimated 100,000 Afghan asylum-seekers awaiting temporary asylum (source: UNHCR).

2. Asylum and Refugee Status Determination

114. During the period 2000-2002, Afghans constituted the second largest nationality seeking asylum in industrialized countries lodging some 110,400 claims, seven per cent of the total number of claims.¹⁰⁷ However, the number of claims submitted in 2002 (25,700) was 51 per cent lower than the 2001 level when 52,800 asylum applications had been filed. In 2002, the main countries receiving Afghan asylum-seekers were the United Kingdom (7,400), Austria (4,300) and Germany (2,800).



115. Since 1980, almost 300,000 Afghan nationals have applied for asylum in industrialized countries (Figure 1).

116. During 2002, Afghans have sought asylum in more than 60 countries. Recognition rates of Afghan asylum-seekers vary greatly between countries and levels in the asylum procedure (first instance, review, etc.) (Table I).

3. Demographic Profile

117. The demographic profile of the Afghan refugee and asylum-seeker population varies greatly, depending on proximity to the country of origin, status (asylum-seekers or refugees) and type of location (urban, camps). On average, some 52 per cent of the Afghan population of concern to UNHCR are female. Sixteen per cent of the Afghan refugees and asylum-seekers is below the age of five, an estimated 43 per cent are aged between 5 and 17, 37 per cent is aged between 18 and 59 years, whereas some 3 per cent of the population is 60 years or over.

118. The gender ratio tends to be more balanced in the region of origin than in asylum countries further away. Moreover, the proportion of females among Afghan asylum-seekers is significantly lower (23%) than among refugees (53%) (Table II).

¹⁰⁷ *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2002.* UNHCR Geneva, March 2003 (<http://www.unhcr.ch/statistics>).

Table I

Asylum applications and refugee status determination, 2002										query date: 16-Apr				
Totals by country of asylum and level in the procedure														
Data are provisional, subject to change.														
Data between 1 and 4 indicated with an asterisk.														
cnt. of asy.	Procedure		Pending cases begin of year	Applied since 1 Jan.	Decisions since 1 January					Pending cases end of year	Protection indicators (%)			
					Positive		Reject-ed	Otherw. closed	Total		Recognition rates*		O/w. closed rate	change in pending cases
	Recog-nized	Other (hum.)			Ref. status	Total								
T	L													
ARE	U		21	14	*	-	34	-	35	-	2.9	2.9	-	-100.0
ARG	G	N/FI	*	-	-	-	-	-	-	*	..	..	..	0.0
AUL	G		-	80	-	-	-	-	-	-	..	..	..	..
AZE	U		931	76	69	-	19	-	88	919	100.0	100.0	21.6	-1.3
BEL	G	ADM/AR	-	*	-	-	5	*	7	-	-	-	28.6	..
BEL	G	ADM/FI	-	326	24	-	271	-	295	-	8.1	8.1	-	..
BEL	G	SUB/AR	-	246	30	-	58	109	197	-	34.1	34.1	55.3	..
BEL	G	SUB/FI	-	-	5	-	-	85	92	-	100.0	100.0	92.4	..
BLR	G	N/FI	213	73	40	-	41	29	110	176	49.4	49.4	26.4	-17.4
BRA	G	N/FI	*	23	23	-	*	-	26	-	88.5	88.5	-	-100.0
BUL	G	N	623	864	18	195	46	871	1,130	357	6.9	82.2	77.1	-42.7
CAM	U		*	11	*	-	*	10	12	-	50.0	50.0	83.3	-100.0
CAN	G		406	204	217	-	45	36	298	305	82.8	82.8	12.1	-24.9
CHI	U		-	7	7	-	-	-	7	-	100.0	100.0	-	..
CHL	G	N/FI	-	*	-	-	-	-	-	*	..	..	..	..
CYP	G	N/AR	-	10	-	-	*	-	*	7	-	-	-	..
CYP	U	R/AR	11	*	-	-	-	-	-	12	..	..	..	9.1
CZE	G	N/AR	30	14	*	-	16	5	23	21	11.1	11.1	21.7	-30.0
CZE	G	N/FI	103	27	15	-	8	81	104	26	65.2	65.2	77.9	-74.8
DEN	G		-	1,132	-	-	-	-	-	-	..	..	..	..
EST	G	N/JR	*	-	-	-	-	-	-	*	..	..	..	0.0
FIN	G	N/FI	20	27	-	20	6	11	37	-	-	76.9	29.7	-100.0
GBR	G	FI	-	7,380	110	4,710	2,380	905	8,105	-	1.5	66.9	11.2	..
GFR	G	FI	5,020	2,772	21	43	6	341	411	7,476	30.0	91.4	83.0	48.9
GFR	G	R	5,037	231	*	223	*	526	753	4,598	1.3	99.6	69.9	-8.7
GRE	G	N/AR	1,597	1,238	*	6	2,285	168	2,460	375	0.0	0.3	6.8	-76.5
HKG	U		*	*	-	-	-	-	-	*	..	..	..	33.3
HRV	G	N/FI	*	6	-	-	*	-	7	-	-	-	57.1	-100.0
HRV	U	N	-	7	-	-	-	*	*	*	..	..	100.0	..
HUN	G	N/FI	1,105	2,348	10	731	266	2,194	3,201	252	1.0	73.6	68.5	-77.2
ICE	G	N/FI	*	-	-	-	*	-	*	-	-	-	-	-100.0
ICO	V	R/AR	6	-	-	-	-	-	-	6	..	..	..	0.0
IND	U	AR	-	72	63	-	9	-	72	-	87.5	87.5	-	..
IND	U	FI	128	348	280	-	66	-	346	130	80.9	80.9	-	1.6
INS	U		447	281	133	8	139	401	681	47	47.5	50.4	58.9	-89.5
IRE	G	N/FI	-	7	*	-	5	18	24	-	16.7	16.7	75.0	..
IRE	G	R/AR	-	5	5	-	*	-	8	-	62.5	62.5	-	..
ITA			-	28	-	-	-	-	-	-	..	..	..	..
JOR	U		*	6	-	-	*	*	*	6	-	-	50.0	200.0
JPN	G	N/JR	-	-	-	-	-	-	-	20	..	..	..	..
JPN	G	R/AR	20	45	-	-	35	6	41	24	-	-	14.6	20.0
JPN	G	R/FI	51	6	6	*	39	6	52	5	13.0	15.2	11.5	-90.2
KAZ	G	N/FI	6	50	38	-	10	6	54	*	79.2	79.2	11.1	-66.7
KAZ	U	N/FI	-	*	-	-	*	-	*	-	-	-	-	..
KEN	U	N/AR	*	-	-	-	-	*	*	-	..	..	100.0	-100.0
KGZ	G	N/FI	98	87	-	-	-	-	94	91	..	..	-	-7.1

Table I, continued.

cnt. of asy.	Procedure T L		Pending cases begin of year	Applied since 1 Jan.	Decisions since 1 January					Pending cases end of year	Protection indicators (%)				
					Positive		Reject- ed	Otherw. closed	Total		Recognition rates*		O/w. closed rate	change in pending cases	
					Recog- nized	Other (hum.)					Ref. status	Total			
KOR	G	N/AR	*	*	-	-	*	-	*	*	-	-	-	-	-50.0
LEB	U		*	9	-	-	*	7	11	-	-	-	63.6	-100.0	
LKA	U		13	*	-	-	-	*	*	13	..	..	100.0	0.0
LTU	G	N/FI	40	17	-	5	10	15	30	27	-	33.3	50.0	-32.5	
MDA	U		7	6	-	-	*	*	6	7	-	-	50.0	0.0	
MEX	G	N/FI	-	*	-	-	-	*	*	-	..	..	100.0	..
MLS	U		45	18	*	-	35	13	50	13	5.4	5.4	26.0	-71.1	
MOZ	V		*	-	-	-	-	-	-	*	..	..	..	0.0
NEP	G	N/FI	*	-	-	-	-	*	*	-	..	..	100.0	-100.0
NET	G	AR	1,693	-	17	110	454	697	1,278	763	2.9	21.9	54.5	-54.9	
NET	G	FI	3,047	1,067	11	139	884	560	1,594	2,784	1.1	14.5	35.1	-8.6	
NET	G	JR	3,154	-	-	-	-	-	-	2,159	..	..	..	-31.5
NOR	G	N/FI	-	786	16	285	320	217	838	-	2.6	48.5	25.9	..	
NZL	G		-	*	-	-	-	-	-	-	..	..	..	..
OMN	U		16	-	-	-	-	-	-	16	..	..	..	0.0
POL	G	N/AR	-	-	-	-	8	-	8	-	-	-	-	..	
POL	G	N/FI	-	595	*	-	714	6	721	-	0.1	0.1	0.8	..	
POR	G		-	7	-	-	-	-	-	-	..	..	..	..
ROM	G	N/FI	*	35	-	-	39	*	41	-	-	-	4.9	-100.0	
RSA	G	N/FI	*	11	5	-	-	-	5	7	100.0	100.0	-	600.0	
RUS	G	N	669	618	44	-	702	-	746	541	5.9	5.9	-	-19.1	
SAU	U		43	6	-	-	19	*	23	26	-	-	17.4	-39.5	
SLE			-	*	-	-	-	*	*	-	..	..	100.0	..
SPA	G		-	18	-	-	36	-	36	-	-	-	-	..	
SVN	G	R/FI	8	7	-	-	*	12	15	-	-	-	80.0	-100.0	
SWE	G	N/AR	-	-	-	*	312	6	322	-	-	1.3	1.9	..	
SWE	G	N/FI	-	527	5	338	109	24	476	-	1.1	75.9	5.0	..	
SWI	G	N/FI	729	237	41	-	155	79	275	699	20.9	20.9	28.7	-4.1	
SYR	U		11	*	6	-	6	*	14	-	50.0	50.0	14.3	-100.0	
THA	U	R/AR	5	15	*	-	12	*	16	*	7.7	7.7	18.8	-20.0	
TJK	G	N/FI	376	153	-	-	-	174	174	355	..	..	100.0	-5.6
TKM	U		89	6	*	-	17	73	93	*	15.0	15.0	78.5	-97.8	
TUR	U		307	47	54	-	86	134	274	80	38.6	38.6	48.9	-73.9	
UAE	U		16	8	-	-	8	-	8	16	-	-	-	0.0	
USA	G	EOIR	161	228	74	-	57	84	215	174	56.5	56.5	39.1	8.1	
USA	G	INS	167	141	123	-	72	23	218	100	63.1	63.1	10.6	-40.1	
UZB	U	R	1,316	516	544	-	22	206	772	1,060	96.1	96.1	26.7	-19.5	
YUG	V	N/FI	26	34	6	-	30	11	47	13	16.7	16.7	23.4	-50.0	

Table II

Locations and population profile of Afghan persons of concern to UNHCR, end-2002 (locations with 50 or more persons only)										
Country of asylum/ residence	Type of location	Name of location	Type of pop.	Population at location	Population profile (%)					
					0-4	5-17	<18	18-59	60 >	Fem.
PAK	CAM	NWFP	REF	1,098,360	16%	43%	59%	38%	3%	53%
PAK	CAM	Balochistan	REF	306,220	17%	44%	61%	36%	3%	53%
PAK	URB	Sind (Karachi)	REF	195,039	18%	44%	61%	36%	3%	51%
PAK	URB	Punjab	REF	123,012	18%	44%	61%	36%	3%	51%
PAK	CAM	Punjab	REF	33,196	18%	44%	61%	36%	3%	51%
PAK	URB	NWFP	REF	23,754	18%	44%	61%	36%	3%	51%
IRN	CAM	Kerman	REF	12,086	..	..	..	..	..	..
IND	URB	New Delhi	REF	11,371	4%	36%	40%	54%	6%	52%
IRN	CAM	Khorasan	REF	7,035	..	..	..	..	..	..
IRN	CAM	Sistan-Baluchistan	REF	4,865	..	..	..	..	..	..
PAK	URB	Other	REF	3,883	18%	43%	61%	36%	3%	51%
IRN	CAM	Markazi	REF	3,586	..	..	..	..	..	..
TJK	URB	Dushanbe	REF	3,141	..	..	..	..	..	54%
IRN	CAM	Semnan	REF	2,923	..	..	..	..	..	..
UZB	URB	Tashkent	REF	2,325	5%	41%	46%	52%	2%	47%
KAZ	RUR	Various	REF	2,250	..	..	..	..	..	30%
IRN	CAM	Bushehr	REF	2,083	..	..	..	..	..	..
SWI	RUR	Various	ASY	1,238	6%	25%	31%	66%	3%	33%
GRE	URB	Athens	ASY	1,099	1%	18%	19%	80%	1%	5%
SWI	RUR	Various	REF	941	..	..	..	..	..	46%
AZE	URB	Baku	ASY	919	4%	18%	23%	74%	3%	26%
BUL	URB	Various	ASY	864	0%	7%	7%	93%	0%	7%
UZB	URB	Tashkent	ASY	826	9%	36%	45%	48%	7%	45%
UKR	URB	Various	REF	583	5%	27%	31%	67%	2%	27%
UKR	URB	Kiev	REF	529	5%	34%	39%	57%	4%	33%
TKM	RUR	Seidy city	REF	460	10%	32%	42%	52%	6%	45%
UKR	URB	Odessa	REF	460	5%	17%	22%	76%	2%	22%
SYR	URB	Damascus	REF	428	10%	46%	55%	40%	5%	47%
TKM	RUR	Oguzkhan region	REF	399	10%	32%	42%	52%	6%	46%
BLR	URB	Minsk City	REF	303	6%	34%	40%	56%	4%	40%
TJK	URB	Khujand	REF	286	9%	40%	49%	49%	2%	52%
AZE	URB	Baku	REF	257	5%	35%	40%	60%	0%	29%
UZB	URB	Termez	ASY	234	6%	44%	50%	47%	3%	50%
TKM	URB	Ashgabat	REF	203	10%	33%	43%	52%	5%	44%
UZB	URB	Termez	REF	201	6%	44%	50%	48%	2%	44%
TKM	URB	Turkmenabad	REF	199	13%	47%	60%	40%	0%	37%
TJK	URB	Dushanbe	ASY	178	..	..	..	..	..	..
TJK	URB	Khujand	ASY	177	..	..	..	..	..	10%
GRE	CAM	Lavrion	ASY	162	3%	8%	11%	88%	1%	9%
BLR	URB	Minsk City	ASY	159	6%	24%	30%	69%	2%	30%
INS	URB	Jakarta	REF	148	5%	43%	48%	50%	2%	41%
HUN	CAM	Various	VAR	118	11%	20%	31%	69%	0%	15%
SAU	CAM	Rafha	REF	109	6%	32%	38%	54%	8%	52%
BLR	URB	Minsk Region	REF	102	4%	39%	43%	53%	4%	55%
UZB	URB	Other	REF	85	2%	36%	39%	54%	7%	44%
ZIM	URB	Various	REF	67	6%	18%	24%	76%	0%	27%
TUR	URB	Various	REF	65	5%	32%	37%	63%	0%	46%
UKR	URB	Various	VAR	65	9%	32%	42%	55%	3%	51%
JPN	URB	Various	REF	62	..	..	..	..	..	10%

B. Ministers of the Afghan Government, March 2002

President Karzai, Hamid

Vice-President Fahim, Mohammad Qasim

Vice-President Khalili, Abdul Karim

Vice-President Arsala, Hedayat Amin

Vice-President Shahrani, Niamatullah

Minister of Agriculture and Livestock Anwari, Sayed Hussain

Minister of Border and Tribal Affairs Noorzai, Mohammad Aref

Minister of Civil Aviation and Tourism Sadeq, Mohammad Mirwais

Minister of Commerce Kazemi, Sayed Mustafa

Minister of Communications Stanakzai, Mohammad Masoom

Minister of Defence Fahim, Mohammad Qasim

Minister of Education Qanuni, Mohammad Yunis

Minister of Finance Ghani, Ashraf

Minister of Foreign Affairs Dr. Abdullah

Minister of Hajj and Mosques Naseryar, Mohammad Amin

Minister of Higher Education Faez, Mohammad Sharif

Minister of Information and Culture Raheen, Sayed Makhdoom

Minister of Interior Jalili, Ali Ahmed

Minister of Irrigation and Environment Nuristani, Ahmad Yusuf

Minister of Justice Karimi, Abdul Rahim

Minister of Labour and Social Affairs Qarqin, Noor Mohammad

Minister of Light Industry and Foodstuffs Razam, Mohammad Alam

Minister of Martyrs & Disabled Wardak, Abdullah

Minister of Mines and Industries (Vacant)

Minister of Planning Mohaqqeq, Ustad Haji Mohammad

Minister of Public Health Sediq, Sohaila

Minister of Public Works Ali, Abdul

Minister of Reconstruction Farhang, Mohammad Amin

Minister of Refugee Affairs Nazeri, Enayatullah

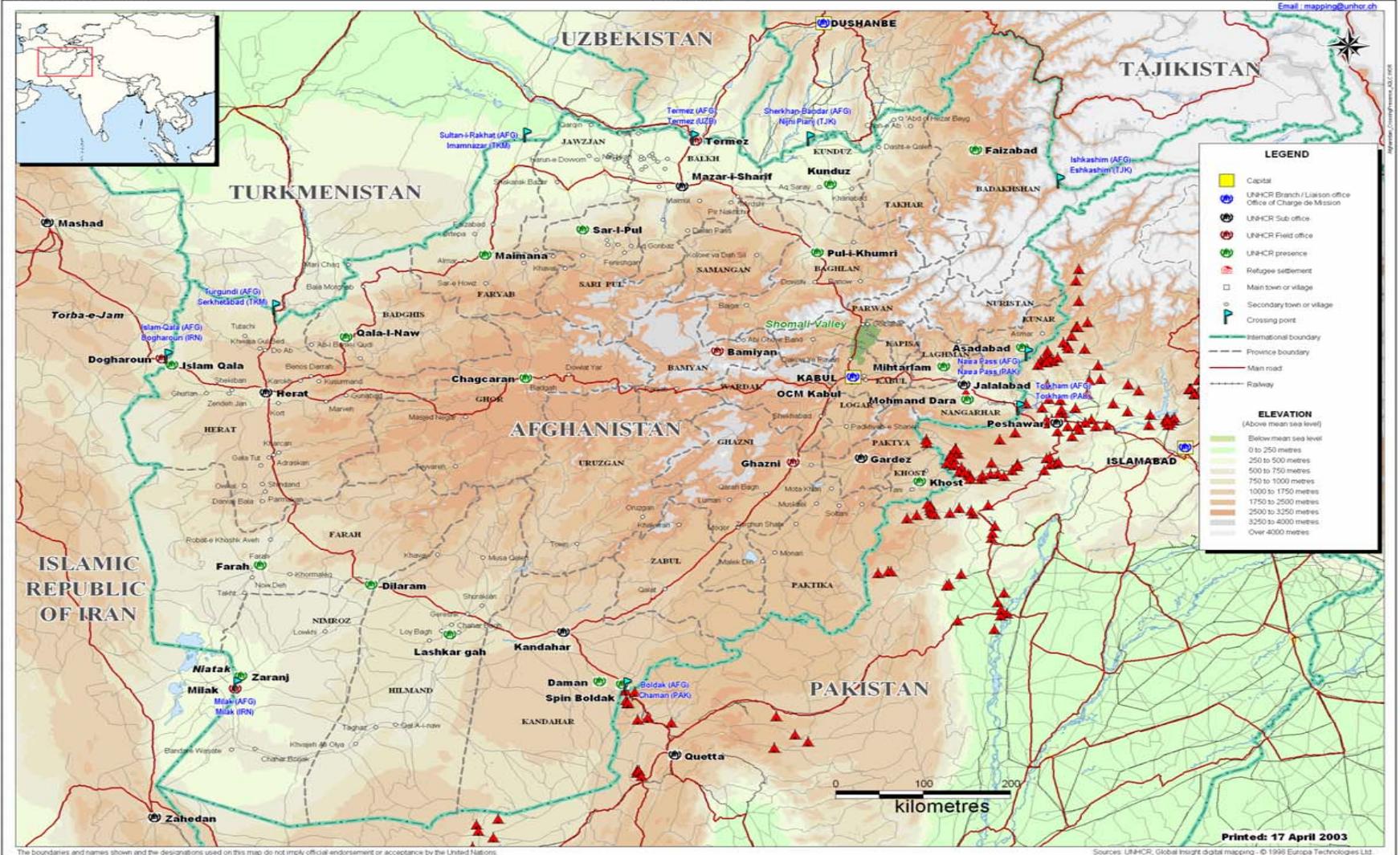
Minister of Rural Development Atmar, Mohammad Hanif
Minister of Transportation Jawed, Sayed Mohammad Ali
Minister of Urban Development Pashtun, Mohammad Yusuf
Minister of Water and Power Kargar, Mohammad Shaker
Minister of Women's Affairs Sorabi, Habiba
Chair of the Human Rights Commission Samar, Sima
Chief Justice of the Supreme Court Shinwari, Faizel Hadi

C. List of Afghan Ministers Without Portfolio

Presidential Adviser on International Relation Affairs Maroofi, Mohammad Yahya
Presidential Adviser on Afghans in Diaspora Affairs, Haji Mangal Hussain
Presidential Adviser on Legal Affairs, Mohammad Qasim Fazili
Presidential Adviser on Cultural and Information Affairs, Sar Muhaqiq Zalmai Heewadmal
Presidential Adviser on Kochis Affairs, Shahbaz Ahmadzai
Presidential Adviser on Tribal Affairs, Hajji Asadullah Wafa
Presidential Adviser on Tribal and Social Affairs, Mohammad Alam Rasikh
Presidential Adviser on Tribal and Social Affairs, Mohammad Kabir Marzban
Presidential Adviser on Border and border tribes Affairs, Shahzada Masood
Presidential Special Adviser on Sects of Islam Mawlavi Hanif Balkhi, Mohammad Hanif
Presidential Adviser on Religious and Tribal Affairs, Mawlavi Muhaiuoddin Balooch
Presidential Adviser on Sects of Islam, Shiakh Nad Ali Mahdawe
Presidential Adviser on Art Affairs, Amanullah Haidarzada
Presidential Adviser on Religious Affairs, Mawlavi Sidiqullah Akhonzada
Presidential Adviser on Affairs Management, Eng. Mohammad Ibrahim Speenzada
Presidential Adviser on Security Affairs Qanuni, Yunis
Presidential Adviser on National Security, Zalmai Rasool
Presidential Adviser on International Affairs, Tayeb Jawad
Ambassador to the US Shahryar, Ishaq

Afghanistan, crossing points and UNHCR offices

As of April 2003



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