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# FILLING THE VACUUM: PREREQUISITES TO SECURITY IN AFGHANISTAN

*Report of the Consortium for Response to the Afghanistan Transition*

International Resources Group

American Bar Association Asia Law Initiative

International Foundation for Election Systems

International Human Rights Law Group



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## FOREWORD



National Geographic Society, 2001

As a result of 23 years of war and civil conflict, and despite the recent removal of the Taliban and establishment of an Interim Authority, Afghanistan remains a country in chaos. Unless and until Afghanistan is at least modestly stable and secure, it will continue to represent a risk to the region and the world. The global order is still grappling with the question of failed states, but one lesson is certain: when governments fail, warlords, drug barons, or terrorists fill the vacuum. The only sure way to eliminate terrorism and extremism in Afghanistan is to support its leaders and people in their quest for internal stability and security, according to their own rich traditions and history.

True, long-term security consists of more than law and order enforced at gunpoint. It is the sum total of a patchwork of disparate elements. Among other things, it cannot be achieved without systems that guarantee justice, human rights, and good governance. The Consortium for Response to the Afghanistan Transition (CRAFT) was formed in an effort to respond to the situation in Afghanistan by:

- Providing a rapid assessment and analysis of the state in Afghanistan of these three critical prerequisites to security.
- Giving voice to Afghan leaders and officials regarding their plans and aspirations in these areas.
- Identifying ways for the donor community to help and support the Afghan transition.

CRAFT hopes that, by gathering information and perspectives on these critical issues in one place, it can contribute to the ongoing debate in Afghanistan and within the international community on how the Afghan people can achieve the real, lasting security that they seek, and allow Afghanistan to rejoin the family of nations.

CRAFT is comprised of the following organizations:

- The Asia Law Initiative of the American Bar Association (ABA-Asia), a public service project that advances the rule of law by supporting legal reforms in countries in that region. With the assistance of lawyers, judges, and law professors, ABA-Asia helps build the legal infrastructure that is indispensable to strong, self-supporting, democratic, free market systems. ABA-Asia assessed the state of rule of law in Afghanistan. *The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.*
- The International Human Rights Law Group (IHRLG), a non-profit organization of human rights

and legal professionals from over 20 countries engaged in advocacy, strategic human rights lawyering, and training around the world. IHRLG works toward the goal of empowering local advocates to expand the scope of human rights protections and promote broad participation in building human rights procedures at national, regional, and international levels. IHRLG was responsible for human rights aspects of the assessment.

- The International Foundation for Election System (IFES) provides professional advice and technical assistance in promoting democracy, and serves as an information clearinghouse on democratic development. IFES concentrated on three areas of the post-conflict process: governance, elections and political process, and civil society issues as they relate to public processes.
- International Resources Group (IRG) is an international professional services firm with project experience in more than 120 countries. IRG focuses on providing practical solutions to complex, mission-critical problems for public and private sector clients worldwide. IRG was responsible for the overall direction of the project and for all management and logistical issues.

To develop this report, CRAFT representatives met with officials in Washington, New York, London, and Brussels, and visited Kabul from February 16 to March 7, 2002. CRAFT wishes to thank the many contributors to, and supporters of, this project, particularly the officials of the Interim Administration and other experts and leaders in Afghanistan. CRAFT has endeavored to report the facts, views, and ideas of these interviewees; any inaccuracies or incompleteness in this report are its sole responsibility.

CRAFT also wishes to thank all the other individuals who gave of their time, including representatives of the office of SRSG Lakhdar Brahimi and members of the United Nations family and the U.S. government.

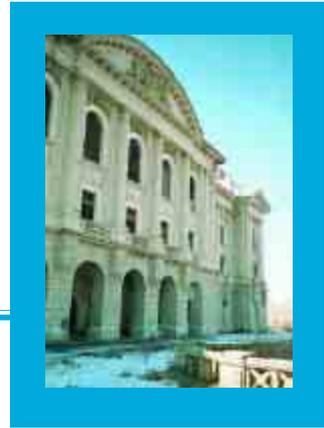


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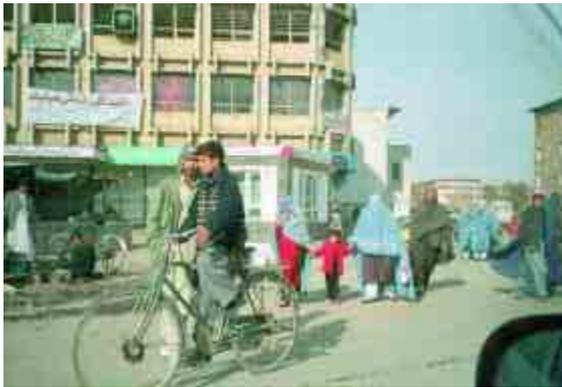
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# I. EXECUTIVE SUMMARY



Palace ruins



Downtown Kabul

- The road to a stable and secure Afghanistan is through the Bonn Agreement, which outlines a two to three-year period of gradual democratization and establishment of new governmental institutions.
- Afghanistan cannot be built from the outside. Afghans and Afghan organizations must play the central role in setting priorities and implementing programs in all sectors, including rule of law, human rights, and governance.
- However, Afghanistan cannot complete its transition without the support of the international community. If the international community does not provide the needed technical and resource support, others will fill the security vacuum.

## RULE OF LAW

Immediate assistance is needed to ensure that the interim legal system mandated under the Bonn Agreement can function—that justice can be done, if only in a minimal fashion—while the new constitution

Afghanistan urgently needs assistance in rule of law, human rights, and governance. The international community must show tangible support for the Afghan people as they seek to rebuild their nation. Waiting for milestones to pass before decisions are made on assistance solidifies the Afghan status quo and does not comprehensively address near- and long-term security issues.

## GOALS

The goals of this report are threefold:

- To summarize the current status of three prerequisites to long-term security in Afghanistan: rule of law, human rights, and governance.
- To give voice to Afghan views and plans on these issues.
- To identify ways for the donor community to help and support the Afghan transition.

## FINDINGS

- Afghanistan is a country recovering from more than 23 years of war and civil unrest. Drought and resulting famine have exacerbated the situation.
- Afghanistan's people are exhausted, but hopeful that change for the better has occurred with the ouster of the Taliban.



Overlooking Kabul

is being developed (Afghanistan's drug trade, which with the departure of the Taliban poses a renewed threat, is a negative but nonetheless critical incentive to re-establishing the rule of law).

To have a real impact, assistance programs must be integrated—that is, they must address all elements of the system. In the criminal justice system, justice issues begin with the initial arrest, continue to trial, and end with incarceration. Providing a preponderance of resources to one element of the system will not necessarily result in tangible improvements in justice. Additionally, to reduce program overlap and duplication, The Special Representative to the Secretary-General should assign a single United Nations agency to take the lead in helping establish the rule of law in Afghanistan. CRAFT recommends the following initial steps:

- **Determine, publish, and distribute applicable law.** No one knows what law currently governs in Afghanistan. Without a legal framework, obviously, there can be no rule of law. The international community should assist and support the Ministry of Justice as it undertakes the critical and complex task of determining which laws govern, and it should also help publish and distribute those laws. In the meantime, on a parallel track, the international community can help compile and distribute basic existing laws.
- **Establish the Judicial Commission as soon as possible.** Assistance and support should be provided to establish, as quickly and as transparently as possible, the Judicial Commission mandated under Bonn. Establishing this body is a critical first step toward re-establishing the rule of law in Afghanistan. Symbolically, it will illustrate the attention to and concern about pressing justice system issues. Practically, the commission is the one institution that can address virtually all aspects of Afghanistan's justice system.



A cell at Kabul jail

- **Provide governmental salary support.** The justice system cannot be expected to function unless its employees are paid. The United Nations has recognized and responded to the need for immediate assistance to pay salaries to governmental employees. This support should be continued.
- **Build institutional capacity by training ministry staff, judges, bar members, and legal educators.** There is strong demand for training on Afghan law and human rights law. Given the key role in the judicial sector played by the Ministry of Justice, building capacity there will be particularly critical—and can be accomplished with a modest amount of technical assistance.
- **Provide basic equipment and law texts.** Supplying modest equipment (including e-mail to facilitate communication) and law texts, not only to governmental justice offices and courts, but also to the Kabul Law Faculty and fledgling bar associations, would be a tangible sign of the international community's support and commitment to the justice sector, and would enable officials, judges, and lawyers to do their jobs more effectively.

## DEMOCRACY AND GOVERNANCE

The selection of the Emergency Loya Jirga is the seminal political process initiated by the Bonn Agreement. Meanwhile, the institutions of the Interim Administration are weak and could undergo leadership and policy changes when the handover occurs between the Interim and Transitional Administrations in June. CRAFT recommends this initial step:

- **Build local institutions.** Technical assistance that will strengthen the performance and accountability of public institutions (including Bonn commissions) should be a priority consideration for international support.

A number of political groups have been established but have not declared themselves to be political parties. These groups include diaspora representatives from Pakistan and elsewhere, as well as geographically focused or personality-based groups within Afghanistan. Within the framework of the Bonn Agreement, new Afghan politics will begin with the April and May Loya Jirga elections. These elections, and the Emergency Loya Jirga itself, will be followed by a registration and census of the population to provide the infrastructure to conduct elections within the two-year timeframe of the agreement. CRAFT recommends this initial step:

- **Monitor and assist voter registration and the census.** It is important to provide monitoring and technical assistance for these activities, to promote political process above violence as a means of achieving governance.

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## HUMAN RIGHTS

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The dramatic shift in the human rights situation in Kabul over the past four months has been vividly described in the media. Day-to-day changes in the lives of Kabul's residents have been emphasized, including the ability of many women to return to school, work, and political life. However, beyond Kabul and under the veneer of improvement within Kabul, Afghanistan remains a country in which there are ongoing, severe violations of human rights, in the absence of any central governmental authority able to curb or even document these abuses. CRAFT recommends the following initial steps:

- **Establish an effective and independent Human Rights Commission.** Substantial resources, support, and political commitment will be essential to ensure that the Human Rights Commission is able to fulfill the role envisioned in Bonn.
- **Build capacity of Afghan civil society to promote and protect human rights.** Despite decades of conflict, many Afghans are dedicated to ensuring that the reconstruction process is led by Afghans, and that it reflects the needs and priorities of Afghans.
- **Provide human rights education.** Developing institutional mechanisms to protect human rights is crucial, but such efforts alone will fail unless Afghans support and participate actively in the struggle to build human rights protections within the country.
- **Address women's human rights.** A comprehensive plan of action is essential to ensure the full involvement of Afghan women in shaping their country's future, to redress the legacy of systemic violations of their rights, and to ensure the promotion and protection of women's human rights in Afghanistan today.
- **Establish structures to monitor human rights.** It is essential that effective structures be put in place to permit comprehensive monitoring and reporting of the human rights situation. The United Nations must be provided adequate support and staff, and domestic and international NGOs must be able to conduct broad human rights monitoring.

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*Afghanistan remains a country in which there are ongoing, severe violations of human rights.*

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## METHODOLOGY

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This report is based on interviews conducted in Kabul, the United States, and Europe from January to March 2002. While there is substantial literature on Afghanistan's past systems of law, human rights, and governance, it is difficult to obtain definitive data on what is actually happening in these sectors now. Accordingly, while CRAFT sought to obtain written data and materials, the bulk of this report is based on interviews.

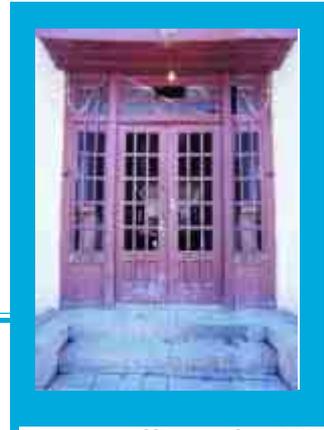
This report is not intended to be last word on these issues—on the contrary, it is a starting point, designed to serve as a resource and tool for individuals and entities working on these topics. It does not present an in-depth analysis of the country's past justice, human rights, or governance systems; rather, it is an attempt to gather, in one place, information, resources, and views that will obviously require additional analysis in the future.

A major lesson that this project teaches is that obtaining a clear understanding of the current situation in Afghanistan is going to require substantial patience and effort. In the meantime, this report makes no attempt to evaluate information. It simply reports the facts as they were provided.

CRAFT team members did not travel outside Kabul Province. Security, of course, continues to hinder travel to some parts of the country. But even setting aside security concerns, the fact is that the authority of Afghanistan's Interim Administration does not extend beyond Kabul. Accordingly, not only are the systems of law, human rights, and governance mandated by the Bonn Agreement embryonic in Kabul, they simply do not exist beyond it. While there obviously are tremendous needs outside the capital, CRAFT's goal was to develop a snapshot of what systems exist at this point and what Afghan leaders have planned for the future. While clearly existing systems and leadership in the provinces will have to be taken into account in developing Afghanistan's new systems, right now the starting point for the new systems is, for better or worse, Kabul.



## II. THE CURRENT SETTING



Former offices of public prosecutor, used as a jail by Taliban

### COUNTRY INFORMATION AND HISTORICAL BACKGROUND

Afghanistan is a landlocked country of approximately 250,000 square miles—an area about the size of Texas. It has a population of approximately 20 million, consisting of 20 primary ethnic groups, including Pashtuns (approximately 38 percent), Tajiks (25 percent), Hazara (19 percent), Uzbeks (six percent), and other minor ethnic groups (including

Aimaks, Turkmen, Baloch, and others). The word “Afghan” has a long history, but until recently it was regarded as synonymous with Pashtun, the name of the country’s largest ethnic group. The national languages are Dari (a form of Persian) and Pashtu. Islam is the national religion and the basis of Afghanistan’s overriding culture and values. “Insofar as there has been a sense of unity in the country, it is Islam, with its concept of community and universality (umma), which has superimposed itself on the eth-



National Geographic Society, 2001

nic diversity and provided the main focus of loyalty.” (Martin Ewans, *Afghanistan: A Short History of its People and Politics*, Harper Collins, 2002 at 6).

However, “despite the bonds of Islam, a sense of national unity has . . . always been weak, except when an unusually strong leader has appeared or the nation has come together when threatened by an external enemy” (Ewans at 9). Tribal and ethnic enmities persist, and “the state has never been strong enough to establish effective control throughout the countryside and has traditionally done little for it, whether in terms of educational or medical facilities, or of development more generally” (Ewans at 8). Even today, the literacy rate is only 31.5 percent; life expectancy is approximately 46 years. The bulk of the population derives its livelihood from agriculture and pastoralism, or from crafts. Food grains and opium are important cash crops.

The first Afghan empire was created in the eighteenth century. As a result of its location, during the nineteenth century the country was the subject of power struggles between the British Empire and Russia. While it was never colonized, the country did not gain full independence from the British until 1919. From that time until 1973, Afghanistan was ruled by a monarchy.

### **THE DECADE OF DEMOCRACY**

The 1964 Constitution, adopted under Zaher Shah, was at the time of its adoption regarded as one of the most progressive in the Islamic world. The ten years that followed have been called the “Decade of Democracy,” “New Era,” or “Constitutional Period” in Afghan history. That era ended in 1973, when Zaher Shah was displaced in a bloodless coup by his cousin, Mohammed Daoud. Daoud himself was murdered in 1978, when Afghan communists staged another coup. Shortly thereafter the Soviet Union invaded the country, and a bloody ten-year war ensued. Civil unrest and power struggles continued following the Soviet withdrawal in 1989, and in 1996 the fundamentalist Taliban (“students of Islam”) movement took power. (The Taliban never controlled the entire country; a small northern enclave was in the possession of opposition Northern Alliance forces). The Taliban declared invalid all non-Islamic laws enacted during the Communist regime, and reintroduced Shari’a in their place. Mullahs replaced professional judges, laws were strict, and punishments were swift and exceedingly harsh.

Al-Qaeda-orchestrated attacks on the World Trade Center in New York and the Pentagon in Virginia forced the world to focus on the actions of the Taliban, which provided support, refuge, and facilities for the al-Qaeda network. On October 6, 2001, coalition forces led by the United States initiated Operation Enduring Freedom

against the Taliban and al-Qaeda. Meanwhile, Northern Alliance forces continued their battle against the Taliban with the coordinated support of the U.S. and coalition members. As a result, the Taliban were forced to withdraw from Kabul and other cities. A patchwork of warlords across the country filled the resulting vacuum of authority.

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The fall of the Taliban presents Afghanistan with tremendous opportunities—but also tremendous challenges—in all spheres of national life. Human rights protections, the formal legal system, and entire systems of governance have been gutted, and the Afghans face the challenge of re-building these structures essentially from the ground up, both for the near and longer terms. Unexploded ordnance and landmines dot the countryside, and a free and thriving market for all manner of weaponry poses grave security issues. The drug trade destroys lives and breeds insecurity, but it also is a major source of income in this destitute nation.

### **THE BONN AGREEMENT**

The starting point for the re-building of Afghanistan is the Agreement on Provisional Arrangements in Afghanistan Pending Re-Establishment of Permanent Government Institutions—the Bonn Agreement—signed on December 5, 2001, on behalf of participants in the U.N. talks on Afghanistan, in the presence of Lakhdar Brahimi, the Special Representative of the Secretary-General for Afghanistan. The agreement provides for the establishment of the current Interim Authority, describing it as the “repository of Afghan sovereignty” until such time as a Transitional Authority has been established by an Emergency Loya Jirga. (A loya jirga is a forum unique to Afghanistan in which all segments of society come together and settle affairs of the country or rally behind a cause). Under Bonn, work on a new constitution to establish the framework for the country’s permanent governmental and legal system, will not begin until after the Emergency Loya Jirga, scheduled to be convened in June 2002. Given this timeframe, Bonn provides the basis for an interim system of law and governance.

## THE INTERIM ADMINISTRATION

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The Interim Authority, established under the Bonn Agreement on December 22, 2001, consists of an Interim Administration (IA) under the chairmanship of Hamid Karzai. The IA is composed of 30 departments, including five vice chairs. In addition to these 30, the cabinet also includes the Director General of Intelligence, which is not a separate department, overseen by Chairman Karzai. Bonn states, “The Chairman, the Vice Chairmen and other members of the IA have been selected by the participants in the UN Talks on Afghanistan . . . on the basis of professional competence and personal integrity from lists submitted by the participants in the UN Talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.” Accordingly, the leadership of the IA is an extraordinarily complex patchwork. Chairman Karzai is an ethnic Pashtun. The key portfolios of defense, foreign affairs, and interior are held by members of the Northern Alliance. The minister of justice is ethnic Uzbek.

## SECURITY

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The most pressing issue confronting Afghanistan today is security. As UN Secretary-General Kofi Annan noted in his March 18 report to the Security Council, “In general, insecurity remains the prime cause of concern for Afghans across the country for three reasons in particular. First, although al-Qaeda and Taliban forces have been routed, pockets of resistance remain. Second, factional clashes are taking place between rival Afghan political and military actors seeking regional influence, which has led to both inter- and intra-ethnic violence. Third, banditry continues as a lingering manifestation of the war economy that has developed over the past two decades in the absence of proper security and a system of enforceable law.”

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confronting Afghanistan today  
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The International Security Assistance Force (ISAF) has been, and will continue to be, confined to Kabul Province. Without ISAF support, and given that the Kabul-based police and military are in no position to secure territory outside the city, the effective authority of the IA extends only to the borders of Kabul. Local warlords are in control of the rest of the country. Zalamai Khalizad, the U.S. Special Envoy to Kabul, has pegged warlordism as the greatest threat to peace in Afghanistan.



**ISAF equipment**

**International Security Assistance Force.** The ISAF mandate is defined in a military technical agreement between the United Kingdom and the IA of January 4, 2002. ISAF declared that it had reached full operational capacity on February 18 and is comprised of 5,000 troops in Kabul. Some observers claim that ISAF troops number around 10,000, but this has not been announced publicly. It is not a peacekeeping force, but, more accurately, an alliance of the willing. ISAF is currently under British command with 17 countries participating. The French, British, and Germans field the largest contingents. ISAF commanders in turn report to the U.S. Central Command. (Including the U.S. liaison officers, the number of countries is 18.) In the next rotation, the Turks are likely to be in command. The operations of ISAF are totally separate from those of Operation Enduring Freedom, the U.S.-led coalition combating terrorism.

ISAF is providing material support to establish local security forces (see below), such as communications, vehicles, and office equipment, and has installed a radio communications network to allow Kabul police district headquarters to communicate with each other. Although program of joint ISAF-police patrols was recently inaugurated (half of ISAF patrols are with local police, and patrolling is to be increased), ISAF troops will only intervene on patrol if they come across a serious crime in progress. Offenders are handed over to local police. No ISAF detention facilities are planned, but ISAF officers concede that this could be a possibility as spring comes to Kabul and crime increases.

**The Afghan army and police: demobilization and reintegration.** Afghanistan has a two-year service requirement for all male citizens, who have a choice of joining the army or police. While this requirement is technically still in force, there has been no formal conscription by the IA. ISAF estimates that there are more than 10,000 Afghan army troops in Kabul Province. Soldiers are still in the process of returning to barracks, and, according to the



**Police marching at Ministry of Interior Headquarters**

UN, there are only small groups remaining outside designated army quarters. Both army and police are armed, but neither has been paid since August 2001, except for a one-month payment in January. In the meantime, “on the spot” assessment of fines is an alternate source of revenue for police. Conscripts are fed at the barracks.

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*A plan to demobilize and reintegrate the army troops is urgently needed.*

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A plan to demobilize and reintegrate army troops is urgently needed. If the police system is professionalized and the number of conscripts reduced, the Ministry of Interior also will need to address this issue. To date, the United Nations Development Programme (UNDP), the European Commission (EC), and the World Bank have expressed interest in demobilization programs. The International Organization for Migration (IOM) planned to deploy an expert in late March to develop decommissioning, demobilization, and reintegration (DDR) strategies. IOM seeks to develop a DDR framework first, with a region-by-region, commander-by-commander approach, and prefers to focus on reintegration issues. Some observers in Kabul have proposed a work program for unpaid soldiers, while other international community representatives believe that cash-for-work or weapon-buyback programs will only finance more guns on the free gun market in Afghanistan.

**Anticorruption.** Interviewees vehemently stressed that there is no corruption in the IA or amongst police or judges. However, because the police and military are neither paid nor demobilized, and given that judges have been paid only once, corruption is another likely product of the Afghanistan’s looming security vacuum. Building audit and procurement standards and infrastructure to account for donor and IA funds—the agenda of the Afghan Assistance Coordination Authority—is a first step. Paying salaries to soldiers, law enforcement, and justice sector staff is another critical move.

## **THE UNITED NATIONS**

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While the UN intervention model for Afghanistan is completely different from the protectorate-type mandates of East Timor or Kosovo, the UN has taken—and will continue to take—a lead role in Afghan reconstruction activities, including rule of law, human rights, and governance activities. At the same time, the UN has consistently articulated a policy of a “light international footprint” in Afghanistan.

Since 1993 the United Nations has operated a Special Mission to Afghanistan (UNAMA) in Kabul, to seek the views of a broad spectrum of Afghanistan’s political leaders on how the UN could assist the country to bring about national rapprochement and reconstruction. Algerian diplomat Lakhdar Brahimi was appointed Special Representative of the Secretary-General (SRSG) for Afghanistan in October 2001. On March 28, 2002, UNSMA structures were subsumed into the United Nations Assistance Mission to Afghanistan (UNAMA).

On November 14, 2001, the UN Security Council adopted Resolution 1378, affirming that “the UN should play a central role in supporting the efforts of the Afghan people to establish urgently . . . a new and transitional administration leading to the formation of a new government and expresse[d] its full support for the . . . Special Representative in the accomplishment of his mandate.”

On November 27, 2001, the UNDP, Asian Development Bank (ADB), and World Bank co-hosted a conference in Islamabad, “Preparing for Afghanistan’s Reconstruction,” at which a steering committee of donor governments requested the conference’s organizers to “urgently conduct a preliminary needs assessment for the reconstruction of Afghanistan.”

**The World Bank.** In an Approach Paper issued in November 2001, the World Bank explained that, in close partnership with the rest of the assistance community, it aims to:

- Formulate a reconstruction strategy and plan for Afghanistan.

- Design and help establish appropriate mechanisms to fund and manage reconstruction (including, for example, a trust fund).
- Initiate need assessments that will lead to the development of detailed reconstruction plans.
- Develop specific plans for areas of Bank financial and technical assistance.

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*... the UN has consistently articulated a policy of a “light international footprint” in Afghanistan.*

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**The UN Security Council.** Immediately following conclusion of the UN talks on Afghanistan and execution of Bonn, on December 6, 2001, the Security Council adopted Resolution 1383, endorsing the agreement and the missions entrusted to the Special Representative in Annex II of the agreement, including monitoring and assisting in the implementation of all aspects of the agreement. Resolution 1383 also called on the Secretary-General to issue a report recommending how these UN responsibilities should be carried out.

Also immediately following signature of Bonn, the UNDP established, at the request of the SRSG, the Afghanistan Interim Administration Fund, in recognition that the IA would need immediate cash in hand on its establishment. By early March 2002, \$32.3 million had been pledged to the fund, and \$26.8 million had been received. (In addition, the European Commission recently pledged to contribute another EUR 20 million to replenish the fund and provide the full amount requested for January-June 2002, if salaries are paid in U.S. dollars, rather than afghanis). Using fund monies, the UNDP has provided “office kits”—furniture, phones and fax machines, computers, and vehicles—to the chairman and each of the IA’s 29 ministers. The fund has also been used to pay two months’ worth of salaries for 77,000, primarily Kabul-based, civil servants.

In early January, the ADB, UNDP, and World Bank published the Preliminary Needs Assessment to inform a donor conference scheduled for later in the month. The paper identified short- and long-term priorities in justice, human rights, and governance, and a series of immediate actions, including “launching a review of the compatibility of existing laws with Afghanistan’s international legal obligations,” “providing financial support for employee salaries and supplies for the

justice system,” and establishing the Human Rights Commission mandated by Bonn.

On March 18, 2002, Secretary-General Annan, pursuant to Security Council Resolution 1383, released his report, “The Situation in Afghanistan and its Implications for International Peace and Security.” It summarizes key developments since the execution of Bonn, and proposes a structure for the UN presence in Afghanistan in accordance with its obligations under Bonn, taking into account current political, security, and humanitarian conditions in the country.

The report seeks Security Council authorization for the establishment of a new UN presence to Afghanistan, UNAMA, which would integrate all the existing UN elements in Afghanistan into a single mission. UNAMA would be comprised of two main arms or “pillars”: a political affairs pillar and a humanitarian and development pillar. Human rights and gender issues would be central to the UNAMA mission, and it would include advisory expertise in cross-cutting areas of human rights, rule of law (judicial, police, and penal systems) and gender equality. “Senior human rights, judicial and gender advisors in the Office of the Special Representative would provide the necessary guidance and direction to staff in both pillars of the mission to ensure that a rights-based and gender-sensitive approach [is] applied in all aspects of the mission’s work.”

In his report, the Secretary-General also urged “donors, United Nations agencies and non-governmental organizations to significantly expedite funding and programme delivery so that the benefits of peace may be visible to all concerned immediately, and that the domestic credibility of the IA can be extended throughout the country—especially outside Kabul.”

On March 28 the Security Council voted unanimously to establish UNAMA, endorsing the mandate and structure laid out by the Secretary-General in his report.

January’s Preliminary Needs Assessment will be followed by a more detailed assessment. (In discussions with UNDP representatives during February and March, they indicated that they are putting together a team to conduct the assessment.) Additionally, UNDP has taken a lead role on the establishment of the Judicial Commission mandated by Bonn, and in March it placed a Judicial Advisor in Kabul. (Assuming that the Security Council authorizes UNAMA, these activities presumably will be incorporated into that mission.)

## **OTHER INTERNATIONAL DONOR ACTIVITIES**

**T**he UN is not, of course, the only international donor assisting Afghanistan. The International Conference on Reconstruction Assistance was held in Tokyo on January 21–22, 2002. Hosted by the European Union (EU) and the

governments of Japan, Saudi Arabia, and the United States, participants identified a program of activities for meeting recovery and reconstruction needs during the next three to five years. Donors made pledges in support of Afghanistan reconstruction; the United States pledged \$296.75 million in Fiscal Year 2002 to reconstruction efforts.

Accordingly, and despite the UN model of a “light international footprint,” a multitude of donor organizations are streaming into Afghanistan to work on issues ranging from humanitarian needs to rule-of-law reforms. Brief descriptions of planned and ongoing activities in the democracy and governance sector are set out below.

**United States.** Until very recently, the U.S. government’s assistance to Afghanistan focused on humanitarian issues. In January, the United States Agency for International Development (USAID) announced more than \$15 million in rapid-start programs in education, women’s development, health, and agriculture. This package was part of USAID’s total \$167-million Afghanistan reconstruction effort.

By late March, USAID had funded a number of projects designed to strengthen the governance capacities of the IA ministries. Specifically USAID:

- Provides direct support for operating costs, especially salaries, through contributions to the UNDP trust fund.
- Funded a number of smaller direct assistance projects such as infrastructure repairs at the Ministry of Women’s Affairs, well-drilling supplies for the Ministry of Public Works, satellite phones for the chairman’s office, and a proposed VSAT telephone system for the Ministry of Foreign Affairs.
- Offered teams of technical consultants to the Ministry of Agriculture and Livestock and the Ministry of Public Health to support policy and staff development.
- Budgeted to support broadcast capacity at Kabul Radio.

- Offered to conduct a systems engineering survey of ministries, as neither the IA nor UN has yet undertaken an in-depth analysis of what the ministries actually need to get up and running.
- Sought to respond to requests to locate and recruit experts needed by the IA.
- Through its Office of Transition Initiatives, funds Internews to build media capacity, and through the International Organization for Migration, works on a media grants program.

USAID also is considering other ideas aimed at increasing the ministries’ capacities. In democracy and governance programming, USAID has indicated that it will be modest and carefully targeted, and will be developed programs following a USAID Democracy and Governance Center assessment in Kabul. (To CRAFT’s knowledge, this assessment mission has not yet been scheduled).

Additionally, the U.S. State Department is reportedly considering support for rebuilding and professionalizing Afghanistan’s police force, and the U.S. Department of Defense has committed to training a light infantry brigade for the Afghan national army by the end of June. Secretary of Defense Donald Rumsfeld noted in a press conference in late March that there were no concrete plans for the national army’s overall size or composition, no U.S. funding for the program had been identified, and many decisions may be delayed until a new Afghan government is chosen in June.

**United Kingdom.** Programs of the UK’s Department for International Development (DFID) will be directed from London, though DFID has offices in Kabul and Islamabad. DFID’s work has included an emergency phase and a post-emergency phase; officials in London indicate they are most concerned with the post-emergency period. DFID officials in Kabul were the first to approach justice sector institutions to evaluate needs.

Meanwhile, DFID is pursuing governance programming to support the institutional strength of the public finance sector. Activities include training on public expenditure management, accountability at the province level, revenue transfers to the central government, and other requirements by the International Monetary Fund and World Bank. DFID officials do not anticipate further democracy and governance programming for another six months.

The UK also has provided radio equipment, uniforms, and other materials to Kabul’s police. London has provided approximately £500,000 to support the Emergency Loya Jirga and other Bonn commissions.

**European Commission and European Union.** The EC takes the position that its assistance is dependent on Bonn implementation, and it hoped to open a Kabul office by



Palace ruins

the end of March. While the EC Humanitarian Organisation supports the EU's agenda, the EC formed the Crisis Response Office last year, loosely modeled on USAID's Office of Transition Initiatives. The Crisis Response Office has a fixed timetable for its operations and the institutional ability to cut through red tape to accelerate response. In August 2002 programs in Afghanistan will shift to other EC institutions. Crisis response funding from the EC is as follows:

- EUR 5 million is allocated and to be disbursed shortly. This includes EUR 2.5 million for the UNDP fund to pay salaries and funding for demining and Radio Afghanistan's "Good Morning Afghanistan," operated by the Baltic Media Group. Of this amount, EUR 500,000 is allocated for the Loya Jirga and other Bonn commissions.
- EUR 5 million will be allocated and disbursed in the next tranche. Half will support the Afghan Assistance Coordinating Authority's operations (the EC will provide personnel and logistical support for this agency). Remaining funds will be dedicated to satellite mapping of Afghanistan to better plot reconstruction projects and for programs such as demobilization and the diaspora professional repatriation project.
- EUR 60 million will be released in late summer for more traditional reconstruction efforts. EUR 20 million will go to salaries, while the rest of the funds will go to urban recovery and rural development.
- EUR 70 million will be disbursed at the end of the year.

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*Before January 2002 most international NGOs in Afghanistan were from the emergency or humanitarian sector.*

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**Non-governmental organizations.** Before January 2002 most international NGOs in Afghanistan were from the emergency or humanitarian sector—that is, food relief, displaced person services, healthcare, or shelter rehabilitation. Since that time, a number of democracy and governance NGOs have initiated Afghanistan activities. They include the National Democratic Institute, The Asia Foundation, the International Republican Institute, Human Rights Watch, Internews, the Baltic Media Centre, and the International Development Law Institute (a treaty-based organization headquartered in Rome). The International Human Rights Law Group (a member of the CRAFT consortium) has continued to implement the Women's Rights

Advocacy Project that it runs from Pakistan, and has recently opened a Kabul office.

## **THE AFGHAN ASSISTANCE COORDINATION AUTHORITY**

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Given the vast array of foreign assistance streaming in, on February 11, 2002, the IA adopted a decree establishing the Afghan Assistance Coordination Authority, and appointed Ashraf Ghani, a senior World Bank official, to head the institution. As outlined in the decree, the authority's responsibilities include:

- Developing and implementing a national development framework on the basis of a needs assessment.
- Coordinating sources, allocation, and uses of funds from bilateral and multilateral donors.
- Building management and coordination mechanisms to promote coherent development work.
- Identifying technical assistance needs for the IA.
- Developing and maintaining monitoring, evaluation, and control systems for programs and ensuring the information is made public.
- Establishing financial control, procurement, contracting, and audit systems.
- Managing a discrete series of national programs directly.

The authority is explicitly intended as a transitional entity, and its functions will be reviewed when the country's new constitutional government is established. It is subject to the oversight of a board of governors headed by the chairman of the IA and including key ministries and "eminent individuals from the private and non-governmental sectors."

The authority plans to have a series of functional units on matters such as the creation of a national development framework, technical assistance coordination, national program implementation, donor and agency coordination, procurement, administration and finance, information management strategy, and press. Mr. Ghani is working virtually around the clock in Kabul to get the authority up and running. He told CRAFT representatives that his priorities are developing appropriate financial infrastructure, procurement systems, and oversight mechanisms for foreign assistance to Afghanistan.

## **THE DIASPORA**

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Both international and Afghan observers have placed great hope in the material and professional support that members of the Afghan diaspora can provide to the nation, and a significant number of Afghan men and women have returned to Afghanistan. Chairman Karzai and other IA leaders have appealed to the Afghan diaspora to assist the new nation however possible, and much has



**Kabul City**

already been done. The large population of refugees living in Peshawar has provided extensive support for the IA. Members of the Women’s Association of Lawyers and the Association of Afghan Lawyers in Peshawar have played individual roles in providing professional staff for the justice sector.

The IOM has developed a program called the Return of Qualified Afghans program (RQA), which currently is in a pilot phase. Through the Center for Diaspora in Vienna, the IOM maintains a database of 3,200 names. During the pilot phase, 50 Afghan professionals will be identified and placed in Afghanistan from February to August, with 1,500 additional professionals to be placed during the following phase of the project. IOM pays for moving expenses and provides \$450 per month until a contract is signed with the hiring ministry. After a contract is concluded, IOM bows out of process. IOM officials acknowledge the complex political, ethnic, and factional challenges to placing members of the diaspora in country. Out of the 50 people identified under the pilot project, 20 have been placed.

## **CHALLENGES TO PROVIDING RULE OF LAW, DEMOCRACY, AND HUMAN RIGHTS ASSISTANCE**

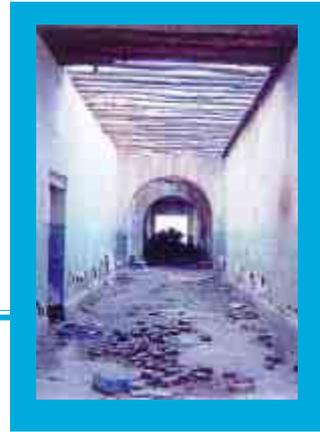
Afghanistan’s needs in political process, rule of law, and human rights development are substantial and obvious. The issue is not whether there is a need for international assistance in this sector, but, rather, how that assistance will be implemented given a difficult, nuanced, and unique Afghanistan context.

**Supporting Afghan institutions.** As a result of the international and local sensitivities surrounding the issue of foreign intervention, democracy and governance NGOs will be expected to have a less intrusive presence than in other cases, need to draw substantially on their Afghan institutional and individual colleagues and partners, and encounter conceptual gaps on peace, governance, and justice that will have to be bridged.

**Obstacles.** Potential programs addressing human rights, rule of law, and governance needs in Afghanistan face at least five environmental obstacles.

- **Democracy and governance NGOs typically begin providing assistance after a conflict. At the time of this writing, Afghanistan is not in a post-conflict phase.** The Bonn Agreement initiated a set of political and governance processes to be accomplished over a defined calendar. It did not end the fighting, but its processes must nonetheless move forward according to the established timeline if the agreement is to remain credible.
- **The IA does not appear to have an overarching strategy for governance and civil society assistance.** The requests to NGOs are coming from the ministry level. Quite appropriately, the IA has been seized with its own establishment, the security crisis, and achieving a few quick victories as confidence-building measures—the opening of schools in March, the organization of the emergency Loya Jirga in June. As a result, consolidated host country guidance and emphasis for NGO programming have not come into focus.
- **The dynamics of the handover from the IA to the Transitional Authority is full of unknowns.** Policy and personnel continuity are not assured. NGO programming remains susceptible to the potential changes and reversals that could occur after June, and these must be monitored.
- **Donor assistance policies have not yet been brought into focus.** Local sensitivities, the “light international footprint,” and the continuing conflict have combined to slow the policy emphasis and objectives of programming in an Afghan context.
- **The ultimate role and reach of the United Nations is unknown.** NGOs will be operating under the rubric of the UN. Programs must complement, lead, follow, or fill gaps in the those organized by less dexterous and mandated international organizations. The transformation of the UN Special Mission to Afghanistan into the UN Assistance Mission to Afghanistan and the relationship of the UNAMA leadership with other UN agencies—UNDP, UNFPA, UNESCO, UNICEF, UNHCR, UNOHCA, and WFP, among others—will influence the role of the NGOs in the assistance community. Similarly, the ultimate role of the Afghan Assistance Coordination Authority and its impact on NGO activity have yet to be fully determined.

### III. BUILDING THE RULE OF LAW



**Police Academy classrooms**



**A checkpoint at Kabul jail**

The Taliban declared invalid all non-Islamic laws enacted during the Communist regime, and reintroduced Shari’a in their place. Mullahs replaced professional judges, laws were strict, and punishments were swift and exceedingly harsh.

In the aftermath of the Taliban era, Bonn returns to the past as a starting point for Afghanistan’s interim legal system, calling for the application of the 1964 Constitution and laws enacted thereunder.

#### **THE BONN AGREEMENT**

The starting point for an analysis of rule of law in Afghanistan is the Bonn Agreement. The agreement provides the framework for the currently governing IA—the executive/legislative branch of government—and sets out the parameters for the current judicial system and interim legal framework.

**Judicial system.** The Bonn Agreement states that the IA shall include “a Supreme Court of Afghanistan, as well as such other courts as may be established by the Interim Administration.” The agreement specifies (under “Legal Framework and Judicial System”), “The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration.”

Additionally, it provides that “the Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule



**Court records “over the last 100 years” at the Supreme Court**

#### **INTRODUCTION**

Afghanistan has historically operated under two parallel legal systems—a Kabul-based, formal system, and a tribal, customary law-based system administered by tribal or village elders. Both were based on Islamic law, or Shari’a. Owing to Afghanistan’s political situation, customary law has been predominant in some rural areas of the country. Nonetheless, before the Soviet invasion of 1979, a civil code-based legal system borrowed largely from the Egyptian model (which in turn was borrowed from the French) was extensively developed. While over the course of the twentieth century the country had a number of constitutions, the constitution adopted in 1964 under monarch Zaher Shah was regarded at the time of its adoption as one of the most progressive in the Islamic world.

The “decade of democracy” following the adoption of the 1964 Constitution ended in 1973, when Zaher Shah was displaced, in a bloodless coup, by his cousin Mohammed Daoud. Daoud was murdered in 1978 when Afghan Communists staged another coup. Shortly thereafter the Soviet Union invaded the country, and a bloody ten-year war ensued. Civil unrest and power struggles continued following the Soviet withdrawal in 1989, and in 1996 the Taliban movement took power.



**Chambers of the Supreme Court**

of law and Afghan legal traditions.”

**Governing law.** The Bonn Agreement provides:

“1. The following legal framework shall be applicable on an interim basis until the adoption of [a] new

Constitution . . . : (i) The Constitution of 1964, (a) to the extent that its provisions are not inconsistent with those contained in this agreement, and (b) with the exception of those provisions relating to the monarchy and to the executive and legislative bodies provided in the Constitution; and (ii) existing laws and regulations, to the extent that they are not inconsistent with this agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations.”

**Executive/legislative branch.** Bonn also contains the framework for the current IA: “The Interim Administration shall be composed of a Chairman, five Vice Chairmen and 24 other members. Each member, except the Chairman, may head a department of the Interim Administration.” Included in the departments specified in Bonn are departments of justice and interior. The IA is essentially a combined executive and legislative branch, as it has “the right to issue decrees for the peace, order and good government of Afghanistan,” and as noted above, the power to repeal or amend existing laws and regulations.

## JUDICIAL COMMISSION

The Judicial Commission mandated under Bonn has yet to be established, but the UNDP is actively working on this matter. The Bonn language on the commission (“rebuild the domestic justice system”) is very broad and vague, and thus numerous issues will have to be resolved in constituting it, including

- Substantive jurisdiction
- Length of existence
- Number of and selection procedures for members
- Structure
- Decision-making processes
- Day-to-day operational structure and procedures
- Manner in which it should be established

- Interaction and coordination with other Bonn commissions, including the Emergency Loya Jirga Commission, the Human Rights Commission, the Civil Service Commission, and the anticipated Constitutional Commission

Establishing the commission will be a delicate and complex matter. As Secretary-General Annan noted in his March 18 report, “The work of the Judicial Commission will touch on issues central to the values and traditions of different segments of Afghan society. It is imperative, therefore, that the Afghan men and women chosen to serve on the Commission be highly respected, apolitical and suitably qualified to discharge their duties. The IA will cooperate closely with lawyers and judges, other interested parties and individuals and the United Nations to identify potential candidates for the Commission, with a view to establishing it as soon as possible.”

## LEGISLATIVE FRAMEWORK

**Note:** *The following discussion does not address Afghanistan’s tribal and customary tradition and legal systems. Apparently those systems have continued to function reasonably well even during the past quarter century of war, and they will, of course, have to be taken into consideration in the development of the country’s future legal structure. Assessing the informal systems in any meaningful fashion, was, however, beyond the scope of this report. Nor does this report address the functioning of any formal legal system or governing bodies beyond Kabul, as the Bonn-mandated system extends only as far as the authority of the IA—at this point, the borders of Kabul.*

Under Bonn, and insofar as its provisions are not inconsistent with Bonn, the 1964 Constitution (with the exception of provisions related to the monarchy and executive and legislative bodies) governs Afghanistan pending the adoption of a new constitution. In the words of one scholar, “The 1964 Constitution stands out among the constitutions of Afghanistan in its endeavor to redress the [conflict between modernist and conservative schools of thought] by giving recognition to both traditionalist and modernist opinions. This Constitution attempted to preserve the basic tenets of Islam while also responding to the need for social change and democratic reform. Although this Constitution required adherence to the basic principles of Islam in the process of statutory legislation, it gave nevertheless the latter priority over the Shari’a law” (Mohammad Hashim Kamali, *Law in Afghanistan: A Study of the Constitutions, Matrimonial Law and the Judiciary*, Leiden 1985 at 21).

As reflected in the 1964 Constitution, “The coexistence between Islamic jurisprudence and an expanding body of modern laws [is] an established feature of the legal order of Afghanistan” (Kamali at 43). Achieving harmony as between Islam and state laws has not always been easy, however, and in fact the “far-reaching duality” in the law—reflected in Afghanistan’s legal education system (which includes both law and Shari’a faculties, see further discussion below)—

“has been a source of tension and an obstacle to uniformity in legal and judicial practice” (Kamali at 44).

“Judges, prosecutors, educators and private attorneys are ‘products of this duality: one group trained in the Shari’a tradition, and the other graduated from a modernist higher education and neither fully appreciative nor comprehending of the other.’” (Kamali at 44. In addition to the duality of Afghanistan’s formal legal system resulting from the coexistence of statutory law and Shari’a, one must also bear in mind the critical role played by tribal and customary systems.)

In a reform-oriented vein, the 1964 Constitution provided for a constitutional monarchy, and three co-equal branches of government: an executive branch, a legislative branch, and an independent judicial branch.

Also under Bonn, “existing laws and regulations,” subject to specified provisos, are to be applicable on an interim basis until the adoption of a new constitution. Additionally, Afghanistan’s IA has the power to repeal or amend existing laws and regulations.

On January 5, 2002, the IA exercised this power, issuing a decree in which it repealed, effective December 22, 2001, “all decrees, laws, edicts, regulations and mandates, which are inconsistent with the 1964 Constitution and the Bonn Agreement.”

The decree assigned the task of determining inconsistency to the Ministry of Justice: “The Ministry of Justice shall be responsible for assessing all legislative instruments dating from the first of Jadi (December 22) 1964, with the cooperation of experts and specialists from each ministry and related administrative departments, with a view to clarifying their status vis-à-vis the 1964 Constitution, as well as reviewing the various decrees to be amended, repealed, or supplemented, and these shall be presented for ratification to the Council of Ministers.”

Furthermore, “all ministries and offices shall be responsible, in accordance with a program of work to be determined by the Ministry of Justice, for completion of the legislative assessments described above, and for full cooperation in these efforts.”

Pursuant to Bonn and to the decree described above, it is the job of the Ministry of Justice to compile and analyze all laws and other instruments having the force of law enacted since December 1964.

**Compiling the law.** No one has yet compiled the universe of laws and regulations enacted since July 1964. Copies of Afghan codes are few and far between in Kabul. While codes have, since 1963, been published in the Official Gazette (Rasmi Jareda), no complete set of gazettes appears to exist in Kabul. The Ministry of Justice formerly maintained a set of gazettes, but that set

has been largely (if not totally) destroyed. The Supreme Court has a modest library, but it appears to consist primarily of foreign law texts. Nor is there much at the Kabul Law Faculty, as the Taliban burned the contents of its library for heat. In short—and setting aside for the moment the fact that no one yet knows what laws actually govern—the vast majority of governmental agencies, police, judges, and attorneys in Kabul lack copies of most laws or codes.

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*The Ministry of Justice formerly maintained a set of gazettes, but ... [it] has been largely destroyed.*

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Fortunately, there are a variety of foreign sources for Afghan laws. One source, the U.S. Library of Congress, has a substantial Afghan legal collection. CRAFT has obtained copies of the library’s materials, and it also obtained copies of several codes while in Kabul. CRAFT is eager to obtain additional codes, and happy to share with others, the materials it has obtained. At this point, it appears that major pieces of legislation enacted during the relevant timeframe include the four-volume Civil Code of 1976, the Commercial Code of 1965, the Penal Code of 1976, and the Criminal Procedure Code of 1965.

**Analyzing the law.** After compiling the universe of relevant laws, the Ministry of Justice—with support and assistance from other ministries—will, pursuant to the IA decree, have to analyze those laws to determine whether they are consistent with the 1964 Constitution and with Bonn. Additionally, although not mentioned in the IA decree, the following are required under Bonn: (1) analysis of relevant laws to determine whether they comport with international legal obligations to which Afghanistan is a party; and (2) analysis of the 1964 Constitution to ensure that its provisions are not inconsistent with Bonn.

In any case, given the situation, it is not yet possible to identify the legislative framework governing the work of (and applied by) the various justice sector institutions discussed below. Post-July 1964 laws identified to date that appear to be relevant are cited. However, in the absence of the governing legislative framework, the bulk of the following discussion relates to how the various institutions, in the absence of a legislative framework, are operating at this time.

## KEY INSTITUTIONS

### A. MINISTRY OF JUSTICE

#### 1. Legislative Framework

**Bonn establishes the Ministry of Justice.** Under Bonn, the provisions of the 1964 Constitution on the executive branch of government do not apply, and thus there currently is no constitutional underpinning for the Ministry of Justice's work. Moreover, as noted above, the legislative framework governing the ministry's work has not yet been determined. One critical existing law appears to be the Law on the Judiciary and Administration of Justice.

#### 2. Current Situation

**Scope of work.** The Ministry of Justice is comprised of the following divisions:

- Directorate of Rule of Law/Institute of Legislative Affairs
- Directorate of Courts for the Government (Like the U.S. Solicitor General, this department defends government property. It also has primary responsibility for directing and dispatching civil complaints to court. Citizens do not have direct access to the courts, and, accordingly, this department is key to the prompt administration of civil justice)
- Directorate of Administration (This department does not handle administration of the courts or the public prosecutor.)
- Publications Department
- Department of Documents and Information

The Ministry of Justice is also responsible for juvenile detention. Ministry representatives said that an organizational chart for the ministry exists, but the chart is so large it cannot be duplicated.

Under the Minister of Justice are two deputy ministers. The Deputy Minister of Justice for Legislation and Legal Affairs supervises the Directorate of Rule of Law/Institute of Legislative Affairs and the Directorate of Courts for the Government. A second deputy is responsible for juvenile detention, the Directorate of Administration, the Publications Department, and the Department of Documents and Information.

As is discussed below, the Office of the Public Prosecutor currently is independent of the Ministry of Justice; the minister strongly objects to this structure, which he

feels contravenes the language of the 1964 Constitution and governing law.

**Staff.** The ministry currently employs 600 people in Kabul, at its headquarters, the juvenile detention center in Kabul, and two provincial centers in Kabul Province. Ministry representatives did not have any information about staff in the provinces.

**Directorate of Rule of Law/Institute of Legislative Affairs.** This division employs 76 staff, mostly professionals, with some support staff. The division advises other ministries on contemplated legislation and reviews all draft legislation before it is enacted by the legislative branch and signed by the executive branch. Laws take effect upon publication in the Official Gazette. It was reported that the Supreme Court does not have the power to strike down laws. Interestingly, officials that met with CRAFT—including the head of the Institute of Legislative Affairs—did not mention that, under the IA's January 5 decree, the Ministry of Justice is responsible for the critical and complex task of determining the interim legislative framework for Afghanistan.

**Publications Department.** The Ministry of Justice publishes all enacted laws in the Official Gazette. It provides copies to other ministries and the provinces for distribution to law enforcement officials and the judiciary. The number of copies distributed varies, depending on need, but the figure of 1,000-10,000 copies was cited as typical.

**Department of Documents and Information.** The ministry formerly maintained a library of gazettes, open to anyone needing to use them. Apparently this library no longer exists, as most if not all of the ministry's materials have been destroyed.

**Juvenile detention.** The Ministry of Justice is responsible for the detention of juveniles, ages 8-18 years. Previously, 35 children had been held in a facility in Kabul. However,



Adolescent males incarcerated at Kabul Jail

many escaped after the fall of the Taliban, and there are currently no children at the Kabul facility. Some juveniles, however, have been arrested since the installation of the IA, and are being detained at the Kabul Province jail. The ministry wants to build a new juvenile facility and has sought funding for the project from several international organizations. In the near future, UNICEF will do an assessment of children at risk, including child soldiers and street children. UNICEF does not have a figure on the number of children currently in detention, but it does not believe that the figure is large. Besides the juveniles in detention for their own misconduct, some children are held with their detained mothers.

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*Besides the juveniles in detention for their own misconduct, some children are held with their detained mothers.*

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**Existing laws.** The Ministry of Justice has stated that Afghanistan's laws include codes consisting of 22,626 articles, as well as 52,486 presidential orders and decrees. Of these materials, there are 500 paragraphs on criminal law, and 2,000 paragraphs on civil law.

**Needs and current international assistance.** Ministry officials indicated that they had met with a number of international organizations and provided them with much information, but, they said, the Ministry of Justice is not receiving any assistance. Officials also noted, however, that materials and furnishings in the minister's office and conference room had been provided by the UN. Ministry officials identified the following specific needs: (1) a library, including English language and Arabic materials; (2) training; (3) staff; (4) computers; and (5) transportation.

## **B. THE JUDICIARY**

### **1. Legislative Framework**

**The 1964 Constitution.** Title Seven of the 1964 Constitution, "The Judiciary," provides that "the judiciary is all [sic] independent organ of the state and discharges its duties side by side with the legislative and executive organs." It states that the judiciary consists of a Supreme Court (nine members appointed by the king), and other courts established by law, and that "it is within the jurisdiction of the judiciary to adjudicate in all litigation brought before it according to the rules of law, in which real or legal persons, including the state, are involved either as plaintiff or defendant. Under no circumstances shall a law exclude from the

jurisdiction of the judiciary, as defined in this title, a case or sphere, and assign it to other authorities."

Under the constitution, the king appoints judges on the recommendation of the Chief Justice of the Supreme Court. Trials are "held openly and everyone may attend in accordance with the provisions of the law." The courts are obligated to apply "the provisions of this Constitution and the law of the state. Whenever no provision exists in the Constitution or the laws for a case under consideration, the court shall, by following the basic principles of the Hanafi jurisprudence of the Shariat of Islam and within the provisions set forth in this Constitution, render a decision that in their opinion secures justice in the best possible way."

Article 104 of the constitution also states, "Rules relating to the organization and the function of the courts, and matters concerning judges shall be regulated by law. The principal aim of these laws shall be the establishment of uniformity in judicial practice, organization, jurisdiction, and procedures of the courts." This provision was aimed at addressing the confusion and chaos resulting from the development, beginning in the early twentieth century, of two categories of laws and two systems of courts, one based in Shari'a and the other in statutory law.

The constitution further provides that "the Supreme Court regulates the organization and functions of the courts and the judicial affairs of the state in accordance with the provisions of this Constitution and the law. The Supreme Court adopts necessary measures to organize the administrative affairs of the courts. The budget of the judiciary is prepared by the Chief Justice . . . and the Supreme Court administers the budget of the judiciary."

Consistent with the 1964 Constitution, the Bonn Agreement provides that the "judicial power of Afghanistan shall be independent." It specifies that the judicial power shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the IA.

**Existing law governing courts.** The legislative framework governing the judiciary's work has not yet been determined. One key existing law is the Law on the Judiciary and Administration of Justice. Other observers have also cited the Law on the Organization and Authority of the Supreme Court, the latest version of which was promulgated in 1990.

### **2. Current Situation**

**Judicial system structure.** It is CRAFT's understanding that the IA has not established any new courts; the court system today is the same as that which existed both before and during the Taliban period. The IA has appointed new judges (the background and qualifications of these judges is not known), though at this point only

to the courts in Kabul Province, including the Supreme Court. By December 2001 the IA had appointed 24 judges to Kabul Province courts. It has not yet appointed judges outside the province. One former legal official has estimated that approximately 200 judges, prosecutors, and defense counsel will be needed to establish a fully functioning judicial system in Kabul, with significantly fewer needed in the other cities. The courts in Kabul Province are reportedly operating and adjudicating a wide range of criminal cases. However, exact numbers on caseload were unobtainable.

Information obtained to date indicates that Afghanistan's judicial system includes both "ordinary" and "special" courts. The "ordinary" courts include:

- **District courts:** trial level courts (courts of first impression) with general jurisdiction, except for certain categories of cases, including commercial and public security cases (see below). Each district court is comprised of three judges—one of which serves as chief judge—and has approximately seven support staff. All district court judges must have graduated from either the Law or Shari'a Faculty. Each of the 32 provinces in Afghanistan has a different number of districts; the maximum number of districts is 15, but most provinces have eight. (In four densely populated provinces, by contrast, there are 20 district courts.)
- **Provincial courts:** intermediate appellate-level courts. While the district court has the authority to make a decision, if the parties are not satisfied they can take the case to the provincial court (where one "repeats his case before a high court judge"). Each provincial court has four departments: (1) civil; (2) criminal; (3) public security (handling fraud, forgery, and anti-corruption); and (4) commercial. In certain cases, the provincial court serves as a specialized court of first

instance, such as in commercial cases and cases involving public security.

- **The Central Court of Appeals:** located in Kabul, hears appeals from provincial courts from throughout the country. Each of the Central Court of Appeal's branches has three judges.
- **The Supreme Court:** the court of last resort, decides issues of law, not issues of fact. Not all cases can be brought to the Supreme Court; minor offenses, for example, are resolved at lower levels. The Supreme Court is made up of various departments, such as: (1) criminal; (2) public security law; (3) commercial; (4) police; and (5) public law. The Supreme Court is responsible for supervising all courts in the country, and is made up of nine justices. There are twelve justices who sit on the High Judicial Council of the Supreme Court, and 132 judges who work in the various departments of the Supreme Court. Cases are heard in special panels.

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*The IA has appointed new judges to the courts in Kabul Province, including the Supreme Court.*

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"Special" courts hear a variety of cases, including criminal cases against civil servants and juveniles, traffic cases, and cases against the chief of state and members of the Supreme Court. Afghanistan also has a military court system.

**Court administration.** Court administration is the responsibility of the judicial branch, through the Administrative Department of the Supreme Court. This department includes 150 staff members and handles matters such as paper supplies and building maintenance. The Supreme Court also has the power to adopt regulations, rules, and procedures on the functioning of the court system and plays a role in the appointment of judges.

**Judicial qualifications and training.** To become a judge one must have a degree from a Law Faculty or Shari'a Faculty, and have completed an internship or clerkship in a court. There apparently was a judicial training center in Afghanistan—the Supreme Court opened one such center in Kabul in 1968.

**Judicial appointments process.** Chairman Karzai currently is the final arbiter on judicial appointments. This apparently is consistent with the system employed in the past. Under that system, members of the Supreme Court made recommendations for judicial appointments, and forwarded them to the Chief Justice for signature. The Chief



**The Supreme Court**

Justice then sent the recommendations to the head of state for final approval.

**Judicial ethics and discipline.** The Supreme Court also includes the Judicial Inspection Department, which not only handles ethics issues, but also reviews lower court decisions to ensure that they comply with the law. The department investigates and recommends disciplinary action to members of the Supreme Court.

**Payment of salaries.** Supreme Court representatives stated that judges and court staff have received two months' salary since the establishment of the IA. The Ministry of Finance has provided these salaries; apparently the judiciary has not received any financial support from the international community. Professional and administrative judicial staff are civil servants.

**Physical infrastructure.** CRAFT visited the Supreme Court and Kabul provincial courts. The Supreme Court building is in relatively good condition. The chambers of the Chief Justice were well furnished, and there were several well-furnished meeting rooms. Cases are heard in the justices' offices. The basement of the Supreme Court building houses a modest library—which includes many dated U.S. law texts—and an archive, containing court papers that staff described as dating from over a century ago. Kabul provincial court buildings were in adequate condition; one was recently remodeled.

**Needs and current international assistance.** In response to a question about requests to the international community, the Chief Justice of the Supreme Court stated, “We have two requests: one is for materials, the second is for help guiding us according to our law and order” (as opposed to foreign legal systems). In conclusion, the Chief Justice noted, “We are in a bad condition. We don't have anything in terms of materials. We have our Constitution and act according to the holy Koran.”



**The Supreme Court Law Library**



**Offices of Kabul Provincial Prosecutor**

## C. THE PUBLIC PROSECUTOR (“SARANWALI”)

### 1. Legislative Framework

The 1964 Constitution is ambiguous on whether the public prosecutor falls under the aegis of the Ministry of Justice or is an independent body. It states, “The investigation of crimes shall be conducted, in accordance with the provisions of the law, by the attorney general, who is a part of the executive organ of the state.” For a number of years following the adoption of the 1964 Constitution, this provision was interpreted to mean that the public prosecutor was part, and under the supervision, of the Ministry of Justice. Under this interpretation, the ministry is similar to the U.S. Department of Justice, in that it was responsible for prosecutorial activities.

In 1986, under President Mohammad Najibullah's rule, a law was enacted that followed the Soviet model, taking the public prosecutor out of the Ministry of Justice and placing it within the intelligence service, reporting directly to the chief of state. Later, during Taliban rule, the public prosecutor's office was abolished as an independent body.

The provisions of the 1964 Constitution on the executive branch do not currently apply, and thus there is at this point no constitutional underpinning (however ambiguous) for the public prosecutor's work. Nor has it yet been determined which existing laws govern the prosecutor's work. (Certain relevant laws and regulations have been located, however.) In any case, for the moment, the IA has chosen to follow the Soviet model, under which the public prosecutor is independent of the ministry. As is noted above, the minister strongly objects to this structure, viewing it as a violation of governing law, including the 1964 Constitution.

By contrast, the public prosecutor takes the view that the 1964 Constitution accords his office two tasks: to investigate and prosecute cases. He noted that following the

adoption of the constitution, the work of the office was extended, step by step; ultimately, it became independent from the ministry. During the Communist regime, he said, the office shared the duty to investigate cases with the police—the police investigated some cases, the public prosecutor investigated some cases, and the police and public prosecutor jointly investigated others, with the public prosecutor serving as “chair.” The Taliban abolished the Office of the Public Prosecutor, turning its headquarters into a jail. They also abolished the police and installed mullahs to investigate and try cases.

## 2. Current Situation

**Scope of public prosecutor’s work and structure of national office.** Under the IA, the public prosecutor has three tasks: (1) investigation of cases (under the current system, there is no investigative judge); (2) prosecution of cases; and (3) oversight of all governmental agencies to ensure their compliance with the law. The public prosecutor also has jurisdiction over military cases (as noted above, there is a military court system). To fulfill these duties, the public prosecutor has established a new framework for his office, and has re-established at least some provincial prosecutorial offices. He also plans to re-establish district offices, and to “connect” all of the levels, so that cases

throughout the country can be investigated.

**Staff of national office.** The public prosecutor’s office employs approximately 100 professional staff, who were described as having studied law and theology. The public prosecutor has plans for training programs for staff in Kabul and the provinces. (He also plans to use the “train the trainers” concept, training selected prosecutors from the provinces and then having them train their colleagues.)

**Substantive law being applied.** The public prose-



**Holding area for prisoners at Kabul police substation**

curator appears to be applying the 1976 Penal Code, the Criminal Code of 1965, the Smuggling Law of 1971, and the Narcotics Law of 1991.

**Arrest and detention procedures.** The procedures for arrest and detention are as follows: after arrest, the police may detain the suspect for 72 hours; the police then inform the prosecutor; the prosecutor can hold the suspect for an additional seven days, after which the case must go to court. In court, the prosecutor makes a recommendation to the court on how to proceed with the case.

**Defense counsel.** Article 26 of the 1964 Constitution states, “Every person has the right to appoint defense counsel for the removal of a charge legally attributed to him.” Various laws implementing this provision apparently have been enacted over the years. The public prosecutor indicated that suspects or defendants can apply to the ministry for defense counsel. He also said that members of his office can volunteer to serve as defense counsel.

**Kabul Province public prosecutor.** The Kabul Province office has 184 staff members (100 people work in the 16 districts in Kabul city; 84 in the 14 districts surrounding the city), including 70 female professional and administrative staff. (Professional female staff, like their male counterparts, have graduated from either the Law or Shari’a Faculty; women’s salaries are the same as men’s.) The office is responsible for all cases in Kabul Province. By early March 2002 it had 310 cases pending, with 290 people being held in Kabul Province Jail. The other 20 people had provided a “guaranty” in an amount determined by a court to remain free pending trial. During October 2001 there were 75 cases, involving crimes such as murder, manslaughter, theft, burglary, hijacking, smuggling, illegal divorce (women leaving their husbands), fraud, and drugs. In early March 2002, 42 of those cases had been submitted to the court, and some had been resolved.

**Ethics.** The Kabul Province prosecutor stated that cases can be re-assigned in the event of a conflict of interest. He also stated that there have been no reports of bribery: “If this occurred there would be an arrest.”

## MATERIAL NEEDS OF THE PUBLIC PROSECUTOR

March 6, 2002

### For Headquarters:

- 27 vehicles in Kabul, one for each department
- 674 desks and chairs
- 100 cupboards
- 1,000 meters of floor mat
- 27 sets of sofa
- 27 computers
- 27 televisions
- 27 refrigerators
- 10 buses for staff transportation
- Communications equipment (radio, Internet, telephones, satellite phone)

### For Provinces:

- 34 vehicles (one per provincial prosecutor and three for Kabul province)
- 5,100 desks and chairs
- 31 computers
- 31 sofas
- Equipment to communicate with Kabul (radio, Internet, telephones, satellite phones)

**Juvenile cases.** The Kabul Province prosecutor explained that no action is taken in cases involving children of seven years or younger. There are laws that govern cases of older children (one law for children of 8–12 years; another for children of 13–18 years). Those over 18 years are treated as adults. A special prosecutorial department handles cases involving children of 13–15 years of age; cases involving those 16–18 years of age are handled by regular prosecutors.

**Payment of salaries.** Staff at the offices of the public prosecutor have been paid one month’s salary since the establishment of the IA. The Public Prosecutor’s Office falls within the civil service.

**Needs and current international assistance.** The public prosecutor provided a listing of high-priority needs, including material assistance, such as computers, furniture, and vehicles. He noted that the provincial prosecutors have no way to travel to the districts, and that his offices lack even tables and chairs. He also noted the lack of any facility with which to print laws and that, apart from a representative of the British Embassy, he had received no visitors.

## D. THE BAR

### 1. Legislative Framework

CRAFT has not yet identified any existing laws related to the work of the bar.

### 2. Current Situation

**Make-up and size of bar.** Afghanistan’s legal profession includes judges, prosecutors, private practitioners, and notaries public. CRAFT was unable to obtain figures on the current size of the Afghan private bar, but one commentator noted, “There were never many practicing lawyers in Afghanistan. This quantitative shortcoming exists because of the Islamic tradition which generally requires an accused to present himself in criminal cases and permits a litigant to appoint an agent of his own choice (without imposing any qualification) in civil cases” (S.H. Amin, *Law, Reform and Revolution in Afghanistan*, Third Revised Edition, Glasgow 1993, at 141-42).

**Bar association.** A bar association existed in Kabul in the past, but the Taliban abolished it, and thus it does not currently function. There is strong interest among judges and prosecutors in re-establishing a bar association.

**Entry requirements.** There is no bar examination in Afghanistan. The only requirement to practice law is graduation from the Law or Shari’a Faculty. Reportedly, no entry exam is needed, as new recruits are “weeded out” during their first years on the job.



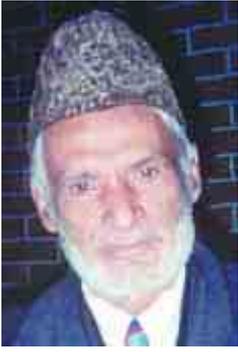
**Entrance to Kabul Law Faculty**

*While women now are beginning to resume their place in the legal profession, they continue to face many challenges.*

**Women’s bar.** A women’s bar group with approximately 40 members was formed in Peshawar several years ago, and there are plans to form such a group in Kabul. Women judges who met with CRAFT explained that one of the first things that the Taliban did on taking power was to terminate all employment of women, including judges and prosecutors. While women now are beginning to resume their place in the legal profession, they continue to face many challenges. Never in the history of the country has a woman been appointed to the Supreme Court. “There is a preference for male judges—even if they lack a law degree.” In fact, despite historically high numbers of women Law and Shari’a Faculty graduates, most women law graduates have ended up in administrative positions.

One of the primary goals of the women’s bar association would be to ensure that Afghanistan’s law comports with the Constitution of 1964 and is implemented. “Laws that are currently being applied do not always comply with the constitution, and in any event laws are not being followed.” The group also would provide support and assistance to women seeking to re-enter the legal profession.

**Private practice and defense bar.** As noted above, the 1964 Constitution states, “Every person has the right to appoint defense counsel for the removal of a charge legally attributed to him.” There are private defense attorneys in Kabul. One estimate is that there are 45–50 such “barristers” in the city, though there does not appear to be any law governing barristers.



**Dr. G. M. Dareez,  
Dean, Kabul Law  
Faculty**

## **E. LEGAL EDUCATION**

### **1. Legislative Framework**

CRAFT has not yet identified any existing laws related to legal education.

### **2. Current Situation**

**Kabul University.** Kabul University, founded in 1932, is located ten minutes outside central Kabul. It has a spacious campus, but the buildings are in poor condition, and many are not usable. Nonetheless, the university is open (with a reported student population of 3,500), and remained open through the Taliban period

(although according to the chancellor, unable to operate effectively). The minister of higher education recently traveled to the United States, and linkages between Kabul University and American universities are being established. The university has a number of faculties, two of which offer law degrees: the Faculty of Islamic Law and Theology (or Shari'a) and the Faculty of Law and Political Science. The Law Faculty is considered one of Kabul University's best. Both University and Law Faculties are eager for outside material and technical assistance.

**Legal education system.** "The dichotomy between Islamic and secular features which has characterized the legal system in Afghanistan is also reflected in legal education" (Amin at 149). To become a lawyer in Afghanistan, one must graduate from either a law or Shari'a faculty. Completion of either type takes four years. Students at the law faculties typically come from non-religious schools; students at the Shari'a faculty come from religious secondary schools, madrassas. As noted, there is no bar exam; once a student has graduated from either type of faculty he or she is officially a lawyer. However, internships or on-the-job training are required for many positions, including judicial and prosecutorial positions.

The process for obtaining a government position following graduation from the Law or Shari'a Faculty has been described as follows: In all cases, the Ministry of Social Work assigns Law and Shari'a Faculty graduates to a governmental ministry. Graduates assigned to the Ministry of Justice may become judges following a period of on-the-job training. Members of the Supreme Court then make recommendations for judicial appointments to the head of state. All judicial appointees must read court books and take a specialized one-year course.

**Kabul Law and Shari'a Faculty.** The Law Faculty currently operates on a "part-time" basis, from 8am to 1pm. Dean G. M. Dareez, who has been in place for five months, has a rich background in the law. He was trained in Egypt and at George Washington University, and previously served as minister of justice and vice-minister of

education. He also participated in a judicial delegation to the United States 25 years ago.

Kabul Law Faculty instructs primarily on secular legal topics. The Shari'a Faculty, in contrast, offers Islamic law courses, though its students also take some courses at the Law Faculty. The Law Faculty currently teaches criminal, civil, and international law courses, and plans to add a two-hour per week course on human rights. It employs 16 professors (including one woman), and has 853 students (male and female)—some full-time, some part-time. It has virtually no written materials, as its library was burned down

**Other legal education.** It is important to note that there is a private madrassa system of education where many members of the Taliban were educated. The current minister of justice and chief justice of the Supreme Court were educated in the private madrassa system.

## **MATERIAL SUPPORT NEEDED FOR THE KABUL UNIVERSITY LAW FACULTY**

March 6, 2002

- At least 50 volumes are needed in the areas of law, political science, economics, history, and other subjects
- Four sets of computers for different offices of the Law Faculty
- Rehabilitation of Law Faculty Forensics Laboratory, with necessary equipment
- Fixtures and furniture for all departments and offices of the Law Faculty
- Provisions of scholarships and fellowships for lecturers and students
- Advanced language training courses to allow lecturers to study foreign texts
- Repair the publications section of Law Faculty and provide necessary equipment, such as printers, copiers, computers, typewriters
- 700 chairs for students; blackboards, desks and lecterns for all classrooms
- Rehabilitation of telephone, heating, and electrical systems for classrooms and offices
- Four televisions, four refrigerators, tea sets, dishes, and other household equipment
- Six safes for document safekeeping
- Two cars and two buses for faculty and lecturers

**Kabul Law Faculty needs and current international assistance.** The Law Faculty currently has no linkages with law schools abroad. In the past, the faculty had linkages with the Sorbonne, universities in West Germany, and George Washington University (which also had a link with the Shari'a Faculty). The Law Faculty is eager to re-establish contacts abroad.

**Other law faculties in Afghanistan.** There reportedly are other law faculties in Afghanistan in addition to those in Kabul. Interviewees mentioned faculties in Mazar-I-Sharif, Herat Province, and Jalalabad Province, as well as a women's law faculty.

## F. THE POLICE

### 1. Legislative Framework

As noted above, the Bonn Agreement creates a Ministry of the Interior. Under Bonn, the provisions of the 1964 Constitution on the executive branch do not apply, and thus there currently is no constitutional underpinning for the Ministry of the Interior's work. Nor has it yet been determined which existing laws govern the ministry's work. However, certain relevant laws and regulations have been located, including the Law on Investigation of Criminal Acts and the Saranwali Law of 1979, and the amended 1976 Penal Code.

In the meantime, the ministry currently is responsible for the work of the police and for detentions (the Directorate of Detentions is responsible for prisons, and the police are responsible for jails).

### 2. Current Situation

**Substantive law being applied.** In CRAFT's meeting with the deputy minister of the interior, he initially described his work with the German government (see below), and expressed surprise at the international community's apparent perception that "there is no law in Afghanistan." Afghanistan has 500 years of history, he said, but the international community does not seem to understand that. The deputy minister acknowledged, however, that the ministry has had trouble distributing applicable codes, regulations, and procedures.

**Structure and staff.** CRAFT was unable to obtain clear information on the number of law enforcement personnel employed by the ministry. International community observers estimate that there are approximately 6,000-7,000 officers and regular policemen under the ministry's command. The ministry itself claims that it employs a total of 73,112 law enforcement personnel, operating in all 32 provinces of Afghanistan. All personnel fall within one of a number of categories, including officers, junior officers, patrolmen, civilian employees, and contractors. Officers appear to comprise approximately half the total personnel employed.



**Ministry of Interior Headquarters**



**Police drills at Ministry of Interior Headquarters**

*Afghanistan requires two years of service, either in the army or police.*

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Afghanistan requires two years of service from its male citizens, either in the army or police. Accordingly, regular policemen are conscripts with a two-year commitment. The officer corps, in contrast, is composed of career policemen.

Three deputy ministers report to the minister of the interior: the chief of the Afghan police, the chief of administration, and the chief of provincial operations. Reporting to the chief of police is the general commander of police and gendarmes. Reporting primarily to the chief of administration (and to a lesser extent the commander of police) are directorates for political affairs, inspection, criminal investigation, local government, security, education, logistics, communications, personnel, intelligence, reconstruction, procurement, finance, technical assistance, traffic, health, passports, and prisons. Authority for border police was transferred temporarily to the Ministry of Defense in January 2002.

Kabul Province is comprised of 30 districts—16 in the city, and 14 in the surrounding areas. Kabul's local police substations, which report to a district headquarters, typically employ 80–115 persons. ISAF has recently begun joint



**Police with donated riot-control helmets**

patrols with police. The daily caseload for a substation varies; some days there are as many as ten arrests. Equipment on hand is generally limited to AK-47

rifles, rocket launchers, and heavy machine guns. Substations are authorized to hold detainees for 12 hours at the station, after which time they must send them to the district office. After that, police send the case to the Kabul Province Prosecutor.

**Payment of salaries.** Ministry officials stated that police have received one month's salary since September 2001. One merit payment of 1.5 million afghanis (approximately \$38) was made to officers (but not regular policemen) immediately before the Eid holiday, as a reward for good performance.

Some observers report that the dire salary situation for regular police has been a cause of crime in Kabul. CRAFT received reports that in many cases, the preferred way to adjudicate an arrest is quick assessment of fines for the perpetrators. These fines provide income in lieu of a salary.

Some observers note that a critical obstacle to paying police salaries is the inability or unwillingness of ministry officials to provide meaningful, useful data to the United Nations and others on current police staffing levels, recruitment plans, or other data with which to develop an accurate payroll regime.

**Police reform.** The ministry announced that it has completed a detailed plan for reforming and training the police, but UNAMA and other international agencies have yet to be provided with copies of this plan. The ministry also announced in March it established a 15-member security committee. It has told the UN that it will soon announce a National Commission on Police Reform.

**Arrest and detention procedures.** When a crime occurs, and the police make an arrest, they have authority to hold suspects for up to 72 hours. The police prepare the necessary paperwork and deliver it to the public prosecutor. The public prosecutor then makes a recommendation regarding how to proceed—whether to drop the case, hold the suspect for trial, or release the suspect on a guaranty pending trial—to the district court. The police and prosecutor must complete the case within two months.

**Police academy.** Afghanistan's police academy is located on the outskirts of Kabul. The wooded and spacious campus consists of the ruins of several buildings, physical training facilities, and what was once a large swimming pool. Ninety-two cadets transferred from Interior Minister Qanooni's Northern Alliance police school are currently living and studying in the one habitable building in the complex. The ministry seeks to train 3,200 officers (100 per province), including 100 women.

**Needs and current international assistance.** In an ambitious initiative, the German government has taken the lead in providing material and technical assistance to the Afghan police. The German strategy is to serve as coordinator and focal point for information on police and then match resources and expertise between governments and implementers. Germany is initially providing around 40 police vehicles and buses and has contracted for the renovation of the police academy. Germany has committed approximately \$70 million in assistance to the police and is actively seeking other donations of material and technical assistance. Other contributions have been promised by Belgium, China, India, Norway, Pakistan, and Russia. As noted, the United Kingdom has provided communications and radio equipment, uniforms, and other resources to Kabul's police. Total material needs are estimated to be in the range of \$50 million, and include uniforms, beds, food, vehicles, ambulances, motorcycles, and nationwide communications support.

A German team composed of Federal Police, Border Police, and Interior Ministry staff arrived in Kabul on March 16, and a Coordination Office opened for business on March 18. The team plans to stay for at least one year. German representatives noted the need for curriculum development, especially in human rights. They were quick to stress that salary payment was not an objective and that this task should be addressed by development agencies. They underscored the need to professionalize Afghanistan's police and work with the Interior Ministry and the IA to "make policemen out of soldiers."

## **G. DETENTIONS**

### **1. Legislative Framework**

It has not yet been determined which existing laws govern detention.

### **2. Current Situation**

**The Directorate of Detentions.** The Directorate of Detentions within the Ministry of the Interior is responsible for prisons (the police are responsible for jails). Afghanistan's primary prison is Pulecharkhi Prison, approximately 30 kilometers outside Kabul. Today the prison is in need of repairs, inoperable, and empty, as its prisoners escaped following the fall of the Taliban. The other significant detention center under IA management is

the Kabul Province Jail, which currently holds approximately 290 male inmates. A visit to the facility revealed poor conditions and approximately 12 adolescent males held separately from adults. Meals are supplemented by food and money brought by family members. A separate women's prison reportedly holds approximately 20 women, some of whom are incarcerated with their children.

Directorate of Detentions officials were careful to acknowledge that while there were other detention facilities in the country, these were "illegal prisons," and the IA had requested that provincial governors transfer inmates from their systems to the detention facilities in Kabul.

CRAFT visited the vacant Pulecharkhi Prison. The facility was built with assistance from the Indian government in 1973 to house 5,500-6,000 inmates in seven cellblocks, four floors to each cellblock. Between 700 and 1,000 guards worked at the facility, and individual cellblocks were administered by the prisoners themselves. Perimeter walls of the facility are six meters thick at the base; the prison had its own electrical and heating systems. Pulecharkhi was a comparatively modern facility that put inmates to work on industries such as carpet weaving, metalwork, and furniture. Reportedly there was dramatic overcrowding of the facility during the Communist years, and on the fall of the Taliban all prisoners escaped.

**Detentions outside the IA's area of control.** From November 2001 to January 2002, the International Committee of the Red Cross (ICRC) visited 45 places of detention across Afghanistan and registered 5,500 prisoners from the military conflict. There are approximately 130 delegates in the ICRC mission to Afghanistan. Some areas of Afghanistan remain inaccessible for security reasons, but generally there was broad local cooperation with ICRC visits. The ICRC noted that there is very little meaningful distinction between "prisoners relating to the conflict" and common criminals, and speculated that detainees are held by a commander for any number of reasons.

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*The Directorate of Detentions has had no contact to date with other NGOs, governments, or international organizations.*

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Of the 5,500 prisoners, approximately 3,500 are being held in Shebargan Prison, west of Mazar-I-Sharif. The NGO Physicians for Human Rights visited the facility in January 2002 and found severe overcrowding, non-existent sanita-

tion, exposure to winter cold, inadequate food, and no medical supplies, resulting in epidemic illness and deaths. Physicians for Human Rights has concluded that conditions at the prison are in grave violation of international standards for the treatment of prisoners. In an Afghan New Year's proclamation, Chairman Karzai announced the release of approximately 300 Shebargan prisoners.

**Needs and current international assistance.** Prison officials reportedly have a team of Afghan engineers evaluating Pulecharkhi Prison and officials requested assistance in bringing the facility back on line. They also requested prison administration assistance and training for guards. The Directorate of Detentions has had no contact to date with other NGOs, governments, or international organizations.

As noted, UNICEF plans to undertake a comprehensive, nationwide survey of juvenile justice and detention issues.

## **FINDINGS: IMMEDIATE NEEDS IN THE RULE OF LAW SECTOR**

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Afghanistan's formal legal system has over the past 23 years fallen victim to war, civil conflict, and Taliban rule. As virtually every Afghan with whom CRAFT met stated, the system needs to be re-built from the ground up.

**The starting point for designing assistance in support of the rule of law in Afghanistan is the framework laid out in the Bonn Agreement.** Under Bonn, work on a new constitution—which will establish the framework for the country's permanent governmental and legal system—will not begin until after the convening of an Emergency Loya Jirga in June 2002. Given this timeframe, Bonn provides for an interim legal system, to govern pending the adoption of a new constitution.



**Solitary confinement cells at Pulecharkhi prison**

Immediate assistance is needed to ensure that the interim legal system mandated under Bonn can function—that justice can be done, if only in a minimal fashion—while the new constitution is being developed.

The United Nations has recognized and responded to the need for immediate assistance in a number of ways, such as providing salary support for the IA ministries, and basic office furnishings and equipment to the ministers. **Salary support should be continued and expanded if possible**, and it should include the judiciary and be expanded to the provinces, if possible, as a means of consolidating the IA's authority. Additionally, **providing basic office equipment (particularly e-mail to enable communication) and law texts to selected ministry staff, the judiciary, the bar and the Kabul Law Faculty** would be a tangible sign of the international community's support and commitment, and would help recipients do their jobs more effectively. In the meantime, of course, as USAID has noted, a "systems engineering" of all ministries is needed to identify actual needs. (This analysis would also address the judiciary and should be part of the larger justice sector needs assessment that the UNDP, ADB, and World Bank are developing.)

The international community also should assist and support the Ministry of Justice as it undertakes the critical and complex task of determining the applicable legislative framework and should help with the publication and distribution of governing laws. On a parallel track, **the international community can help compile and distribute basic existing laws. In this regard, CRAFT understands that UNDP will provide ISAF with funds to print and distribute key criminal codes. This is an important first step.**

**The international community can begin to build institutional capacity by providing modest technical assistance—primarily in the form of training—to ministry staff, judges, bar members, and legal educators.** There is strong demand for training on Afghan law and human rights law. Members of the Supreme Court asked for assistance in international instruments and in-court administration. Refresher seminars for professional staff, such as the public prosecutor on investigation, could be accomplished easily. Given the key role played by the Ministry of Justice, building capacity there is particularly critical.

Last but certainly not least, assistance and support should be provided toward establishing, as quickly and as transparently as possible, the Judicial Commission mandated under Bonn. Establishing this body is a critical first step toward re-establishing the rule of law in Afghanistan, both symbolically and practically. Symbolically, it will illustrate attention to and concern about pressing justice system issues. And on the practical side, the commission can at least begin to address all aspects of Afghanistan's justice system. It can and should serve the preeminent role in re-establishing the rule of law in Afghanistan by helping establish a working justice system in the near term, under Bonn and, working closely with the anticipated Constitutional Commission, helping develop the framework for the future justice system. While the commission's composition will be critical to its success, so too is the process by which it will be established. The process must be transparent and reflect the will of Afghanistan's citizenry and legal community to the largest extent possible.

**In all cases, to have a real impact, assistance programs must be integrated—that is, they must address all elements of the system.** In the criminal justice sys-



**Outside Pulecharkhi Prison**



**Assembly yard at Pulecharkhi Prison**

## IV. BUILDING A DEMOCRATIC FRAMEWORK FOR PEACE AND STABILITY



### INTRODUCTION

The Bonn Agreement has an implementation period of approximately two and a half years. By the end of the Bonn process, there will be a fully constituted government in Afghanistan chosen by its citizens. The Bonn Agreement established an Interim Authority consisting of an Interim Administration (presided by Chairman Hamid Karzai), a Special Independent Commission for the Convening of the Emergency Loya Jirga, and a Supreme Court of Afghanistan, as well as other courts established by the Interim Administration. The Emergency Loya Jirga (Grand Council), scheduled to take place this June, will decide on a Transitional Administration to lead Afghanistan until a fully representative government can be elected. Elections are to be held no later than two years after the Emergency Loya Jirga. A Constitutional Loya Jirga will be convened to ratify a constitution within 18 months of the establishment of the Transitional Administration.

The citizens of Afghanistan are both tired and optimistic. They are tired of decades of war, yet most feel that something fundamental has changed in the country. What exactly has changed is still a question for many, but the long timeframe and phased democracy of the Bonn Agreement, combined with Bonn's progressive decision to use the Constitution of 1964, send a message that a process is underway that can benefit all citizens.

### THE EMERGENCY LOYA JIRGA

The seminal political process in Afghanistan is the Emergency Loya Jirga. This process has been benchmarked with a timeline:

March 21	Completion of the election criteria for the 1,051 members
April–May	Loya Jirga selection process
June 1	Selection process completed

June 10–16 Loya Jirga discussions and selection of Transitional Administration

June 22 Interim Administration handover to Transitional Administration

At the time this report was written, there were two international staff members from the UN working with the Emergency Loya Jirga Commission. They indicated that most of the Loya Jirga delegates will be elected from geographical districts, though civil society, mullahs, and professions will also be factors in selection. The elections will be conducted in the presence of UN monitors. The UN has funding for some public information programs and is employing networks of local and international NGOs to explain the process.

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*The seminal political process in Afghanistan is the Emergency Loya Jirga.*

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The election criteria for the 1,051 members participating in the Loya Jirga were announced on March 31, 2002. More than two-thirds of the members will be elected to the body. The head of the commission, Ismail Qasimyr, has said that Afghanistan's ex-king, Mohammad Zaher Shah, would return from exile on 16 April to call the assembly into session. Within the 1,051 elected members, 160 seats will be guaranteed for women, 53 for the current government, 100 for Afghan refugees, six for internally displaced people, and 25 for Nomads. Islamic clerics, Hindus, Sikhs, and academics will also have some seats guaranteed.

Among the requirements for membership, candidates:

- Must be at least 22 years old
- Must have no link with terrorist organizations

- Must not have been involved in spreading or smuggling narcotics, abuse of human rights, war crimes, or looting of public property
- Must not have been involved in the killing of innocent people

Procedures and information would be published and distributed to the provinces. The Emergency Loya Jirga Commission has initiated a strategy for reaching out into the provinces to encourage participation. As noted by the UN, “There is always one elder in every village that can read the documents to the rest of the village.” All media outlets, particularly the BBC and Voice of America, have been requested to broadcast information on the Loya Jirga.

Many observers noted that the UN did not have sufficient international staff to cover the election process in April and May. UNSMA indicated that transport was a problem and specifically requested assistance with helicopter support. However, UNSMA officials felt confident that, by and large, the process of convening the Loya Jirga was proceeding smoothly, at least from a technical perspective. UNSMA has remodeled offices and provided furniture for the Commission.

Members of the Emergency Loya Jirga Commission expressed confidence in the work of the commission and its ability to meet the Bonn timeline. One officer interviewed had been in two provinces for pre-selection work and was receiving positive responses to the effort by the local communities. Some observers suggested that Iranian and Pakistani interests were destabilizing the effort, but they did not provide details. Commission officers noted that the commission would be open to outside monitoring by NGOs but were unaware of any local NGOs that would participate.

The commissioners, accompanied by United Nations staff, have been visiting Afghanistan’s provinces with a view to increasing awareness of the commission’s role and to solicit advice from the people about how to make the Loya Jirga as representative and fair as possible. Very successful public meetings have been held in the Ghor, Bamyan, Paktia, Nangarhar, and Laghman provinces, where Afghans have demonstrated overwhelming support for the Emergency Loya Jirga, including the participation of women.

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*... successful public meetings have  
been held ...*

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Special Representative of the UN Secretary-General (SRSG) to Afghanistan Lakhdar Brahimi stressed that the Loya Jirga process was proceeding well but that the timeline was too fast. He did not report any problems with the

Loya Jirga process now, but felt that when the decisions start being made, there is potential for unrest.

### **ROLE OF THE UNITED NATIONS IN THE EMERGENCY LOYA JIRGA**

In UN Secretary-General Annan’s March 18 report to the Security Council, the role of the UN in the Emergency Loya Jirga process was defined as follows:

- To assist in the establishment and functioning of the Special Independent Commission for the Convening of the Emergency Loya Jirga.
- To advise the Interim Administration on establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions.
- To attend, if invited, the meetings of the Special Independent Commission.
- To facilitate the resolution of any impasses arising from matters related to the convening of the Emergency Loya Jirga.

The report further asserted that the members of the commission were selected following an extensive process of consultation with a wide range of intellectuals, civil society groups, religious and political leaders, and members of the Interim Administration. The 21 commissioners were chosen from a 300 proposed names from a cross-section of ethnic and religious groups, based on technical qualifications, reputation, and standing in the community. Three of the 21 commissioners, including a vice chairperson, are women.

### **INTERIM ADMINISTRATION AND THE LOYA JIRGA COMMISSION**

The Special Independent Commission for the Emergency Loya Jirga was officially inaugurated on February 7, 2002, in the presence of Chairman Karzai, members of the Interim Administration, Afghan dignitaries, the diplomatic corps, and the national and international media. Chairman Karzai made it clear in his speech on that occasion that the Interim Administration respected fully and would safeguard the independent status of the commission. He encouraged the commission to work in all regions of the country. Their work over the coming months, supported by the United Nations, will be critical to the creation of a Loya Jirga that represents the popular wishes of all Afghans.

In a measure to further ensure the independence of the commission, the UN decided that the commission would be funded through the Afghanistan Interim Authority Fund. Discussions are now ongoing with potential donors to fund additional logistical requirements of the commission, as well as for the organization of the Emergency Loya Jirga itself.

One Afghan activist observed that the Independent Loya Jirga Commission and the other independent commissions called for by the Bonn process provide, in a sense, the checks and balances for the government that would have existed in a democratic society.

### CONCERNS

There is widespread fear that armed groups could influence the selection of delegates to the Loya Jirga. The commission has so far been able to operate without interference from outside parties, but it is feared that the political pressure on the commissioners will increase substantially as the date for the formation of the emergency Loya Jirga draws closer. There have already been reports from the ground of widespread lobbying by political groups and powerful figures trying to get large numbers of their supporters into the Emergency Loya Jirga.

### CHALLENGES IN THE TRANSITION BETWEEN IA AND TA

No matter how broad the participation in the Loya Jirga, no matter how transparent and reconciliatory the process, certain groups and individuals will always remain at odds with the decisions. Alternate ways to express opposition need to be in place. One report warns that there are far too many potential spoilers in and around Afghanistan at the moment not to plan for means to express opposition outside of the Interim and Transitional Authorities. Some interim administration officials have been making public statements about the Transitional Administration being drawn largely from the Interim Administration. A secure environment needs to be created within which a new culture of political activity and governance can be fostered. One scholar writes that the traditional models of pursuit of power and privilege need to be transformed into a service culture within the new institutions and administrative authorities.

### THE AUTHORITY OF THE INTERIM ADMINISTRATION

One of the critical challenges faced by the Interim Authority is to expand its authority throughout the country. Most observers agree that, to date, its influence outside Kabul has been limited. Recently three major conferences were held in Kabul that brought important Afghan figures from the provinces to the capital, which, according to UN Under-Secretary-General for Political Affairs Kieran Prendergast, constitute a promising sign that a process of greater engagement between the capital and Afghanistan's 32 provinces had begun.

The first meeting was convened to discuss the major security questions facing the country. The second conference, a



**Emergency Loya Jirga Commission Headquarters**

meeting of governors, was held March 10-13, and the third conference, funded by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and organized by the Afghan Education Ministry, brought 91 Afghan educational experts together from 26 provinces for a two-day seminar on the future direction of education in Afghanistan.

International Women's Day was celebrated in Kabul for the first time in 11 years. At that ceremony, women's contributions to the war against terrorism were specifically recognized by Chairman Karzai. The day after Women's Day, the first Afghan national workshop on human rights was convened. The workshop was opened by Mary Robinson, United Nations High Commissioner for Human Rights, who pledged technical and financial support for the establishment of the human rights commission.

Afghan people outside of Kabul are hearing through the international media that billions of dollars have been promised to the Interim Administration. But most of them do not see this trickling down to affect their daily lives in a concrete way. Also, civil servants' salaries have not been consistently paid since the Interim Authority took over. This is an obstacle that the Interim Administration faces in gaining the full support and loyalty of the Afghan people. Powers that seek to destabilize the Interim Administration are spreading rumors of mismanagement of funds.

### POTENTIAL FOR LOCAL GOVERNANCE

The heart of the Afghan society has always been at the local level. Since the collapse of the national government following the Soviet invasion and the ensuing 23 years of conflict, basic governance has fallen back to the local level. Before the war, the National Assembly of Afghanistan was known as the Shura-i-Milli (national shura) and each province had a Shura-i-Wolayati (provincial shura). The local shura (council, or jirga in Pusthu), while not fully democratic in nature, is nevertheless representa-

tive and promises to be a valuable resource to ensure grass roots participation in the political and physical reconstruction of Afghanistan.

## **VOTER REGISTRATION AND CENSUS**

In Annex III of the Bonn Agreement, participants requested that the United Nations conduct “as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan.”

**Developing a civil registry.** The Bonn Agreement specifically mentions UN assistance with voter registration.

However, a civil registry is a precursor process to voter registry. The Interior Ministry is the lead agency for the planning and implementation of citizen and voter registration efforts. Although some nominal registration activities are occurring in some areas, the process has largely halted, and many records have been lost or destroyed. In addition, the massive displacement of people that has occurred has rendered much of the personal data obsolete. The last population registration was conducted in 1974 and included 15 million individuals. Women were not included in the count.

The Interior Ministry is also charged with administering the complementary national identity card program. The current identity card is actually in booklet form. During the Taliban regime, ID cards were distributed to non-Afghans. In the post-Taliban era, many question the integrity of the existing ID card regime.

Each identity document possesses a unique 7- to 8-digit number. It is a photographic ID, and woman are permitted (and were permitted under the Taliban) to be photographed for ID purposes. Anecdotally, it is reported that ID document possession is high in cities and low in rural areas, where the education, health, job, or public service uses are not prevalent. The last reported ID issuance campaign was in 1974. A leading expert on women’s rights in



**Ballot boxes at Loya Jirga Commission Headquarters**

Afghanistan estimated that less than 20 percent of women in Afghanistan had ID cards.

**The census.** The Central Statistics Office is the lead agency for planning and implementing the census described in the Bonn Agreement. The only nationwide census was attempted in 1979, but only 56 percent was completed by the time Soviet forces invaded. There was also a census of the city of Kabul conducted in 1986. These programs were conducted on a door-to-door basis with enumerators recording information on age, gender, education, economics, and disabilities. Census data is kept confidential for ten years, but since 1986 the census infrastructure and records have been lost or destroyed. The Central Statistics Office lacks both trained staff and facilities.

## **REFUGEES AND DISPLACED PERSONS**

In January 2002 humanitarian agencies estimated that there were more than 4 million Afghan refugees (including approximately 2 million in Pakistan, 1.5 million in Iran and 26,000 in the three neighboring Central Asian Republics). Reintegrating returning refugees and the internally displaced (estimated to make up 20 percent of the population) into their home communities and into the political process poses a major challenge.

In an effort to share information about the current situation, United Nations High Commissioner for Refugees (UNHCR) and the Afghanistan Radio and Television have signed an agreement for a humanitarian program to be broadcast on the state-owned network.

Since the establishment of the Interim Administration in December, more than 200,000 Afghan refugees have returned spontaneously to Afghanistan. On March 1, the Interim Administration, the government of Pakistan, and UNHCR launched a program to assist returning refugees. More than 83,000 refugees have received assistance under this program, including transportation allowance and relief aid. A similar program is under way to help internally displaced people to return to their villages. According to a UNDP report, a significant number of internally displaced do not reside in camps. They are supported by already fragile and vulnerable communities.

Including these groups of people will also pose a major challenge in the census and voter registration process. There has been no comprehensive census based upon systematically sound methods in Afghanistan, and the sole official census, attempted in 1979, surveyed only 56 percent of the population.

Various agencies within the UN and others, as recently as October 2001, estimate figures for their individual targets. The IOM had started re-registering displaced people near Herat to better determine humanitarian needs. The population estimates IOM currently uses range from 160,000 to

350,000—the lower figure based on the enumeration of tents distributed to groups of six.

It is important to know a country's demographics with accuracy—size, structure, distribution, and composition—to understand and accurately assess its internal structures and its needs. A national census is a compilation of demographic, social, and economic information about a country's people at a specific time. Properly conducted, a census should result in an enumeration of the entire population. Census data identifies quantitative indicators that can be used to measure a country's institutional and social structures and allow for a more efficient provision of technical assistance and fair distribution of aid.

## POLITICAL PARTIES

While there are many informal political groups established among the Afghan diaspora and within Afghanistan, these groups have not declared themselves to be formal political parties. For example, 18 groups representing the diaspora in Pakistan and elsewhere have agreed on a political platform, and have identified themselves to the Loya Jirga Commission. As analysts point out, many in Afghanistan claiming to be part of some political party or movement often belong to small factions led by warlords. Most of these groups have been ineffective in recent years. Though a vibrant democratic process was in motion in Kabul and other urban centers in the 1960s, historically most transfers of power in Afghanistan have come to be by the power of the bullet, not the ballot.

## PEOPLE WITH DISABILITIES

The NGO Swedish Committee for Afghanistan reports that 4 percent of the population is disabled, but qualified that assertion with the statement that reliable statistics are unavailable. The 4 percent figure would translate into a disabled population of 800,000-1,000,000 persons. Many believe that the prevalence of unexploded ordnance and mines scattered across the country will mean these numbers will only grow.

**Ministry for Martyrs and Disabled.** Discussions with ministry representative Abdul Hadi indicated that his ministry's objective is for people with disabilities to obtain self-sufficiency through technology and professional training. Although his ministry was not yet conducting programs, he expressed the objective to employ people with disabilities in profitable businesses in Afghanistan's textile and weaving industry. Mr. Hadi admitted that his ministry was operating without knowledge of the extent, types, and levels of disabilities afflicting the Afghan population. Mr. Hadi had not yet made contact with any UN agency on disabilities.

**UNESCO support for disabled.** UNESCO representatives indicated that the philosophical bases for



**Kabul provincial courts**

UNESCO's program were jobs, income, and mainstreaming for the disabled. UNESCO is also organizing a program of textile-related employment and provides some health education programs for the disabled community. The representatives said they had a lack of reliable statistics on the disabled population. UNESCO is engaging CHA as a local NGO partner.

## Comprehensive Disability Afghanistan Program

**(CDAP).** Operated by the Swedish Committee for Afghanistan, CDAP operates in the north and southeast of the country with community-based programs offering prosthetic workshops, local resource centers, and a revolving loan program for small enterprise. CDAP has established an infrastructure that also provides community advocacy to support children attending schools and for community participation. Through this network people with disabilities are identified, often in situations where the disabled are hidden from public view.

## CHILDREN

Registration for school started on March 6 and schools reopened on March 23. The Education Ministry is the implementing partner. UNICEF anticipates that at least 1.5 million children will be registered for school, and UNICEF educational officers are present at the regional, provincial, and district levels to oversee registration, which is an automated process. Some demographic data is collected during registration. (Juvenile justice issues are discussed in the rule of law section of this report).

## MEDIA

There are several different laws that cover media and press issues; interviewees were unable to identify which laws were applicable or provide any copies of the laws. These include laws on radio (promulgated in 1948), press (a 1950 law was replaced by a new law in 1964), telegraphs (1938), and telephones (1966). One of the four major decrees issued by the IA includes a framework for the press and radio and television broadcasting, including principles for freedom of the press and proce-

dures for licensing of the press by the Minister of Information and Culture.

**Current Situation.** Internews reports that the Taliban was successful in destroying both access to information and the means to produce it as part of their mechanism of authoritarian rule. Media was attacked in much the same manner as the system of education. The Taliban reduced newspapers to a bare minimum of staff and length, outlawed television, and drastically reduced radio broadcasting. Many broadcasters and journalists fled to neighboring countries, or further abroad. Many will not return.

Regardless of a lack of access to knowledge and resources, however, Afghans are incredibly motivated to receive information and get involved in media concerns. This is clearly evident in the dozens of one-room shops constructing homemade satellite dishes, the homemade TV antennas that adorn many rooftops, the dozens of volunteers working in existing media, and the hundreds of people fighting for cinema tickets. There is a hunger for information in Afghanistan. This is evident as well in the support for a new openness by the Karzai administration, its willingness to support private newspapers and journals, and its stated willingness to allow private printing presses and eventually private and community broadcast outlets. Numerous radio and television stations have reopened since the fall of the Taliban. International broadcasting outlets such as the BBC and Voice of America enjoy wide popularity.

**Radio/TV Kabul.** Radio Kabul is now broadcasting from morning to evening, while TV Kabul has a limited schedule of programs in the evening. Programming includes daily news, talk shows, children's shows, and cultural programming. Hundreds of former employees have returned to work after years of inactivity and are volunteering their time to produce programming.

**Other radio and TV.** Internews reports that radio and TV stations controlled by regional authorities are also again broadcasting, in Herat, Kandahar, Jalalabad, Faizabad, Kunduz, Taloqan, and Mazar-I-Sharif. A small FM station in Jabal Saraj has been set up by the French organization Droit de Parole, which originally was closely linked to the late Ahmed Shah Massoud. Newspapers in Kabul and other major cities are also printing again, seeking to expand their staff and circulation. A number of private newspapers have also appeared in Kabul. Many new mass media outlets receive support from foreign donors.

**Challenges.** There remain serious limits to the reach and the effect of Afghanistan's new media, both in Kabul and throughout the country. Lack of access to technology, knowledge, and power sources all limit access to media. At present, existing radio and TV stations have no practical mechanism to share information—even to talk to one another. They cover local issues for a local audience.

**IOM media activities.** The IOM operates the Humanitarian Emergency Afghan Radio (HEAR) program, an information service for Afghan refugees and displaced. Their plans are to establish a wider Afghanistan emergency information network. HEAR currently publishes a bulletin with news and features, radio programming, and local information sessions. HEAR operates a small grant program for journalists. The HEAR program is broadcast on BBC and Voice of America.

They are also motivating local broadcasters to rebroadcast. This strategy hopes to demonstrate that the concerns of one community are similarly to those of another—and contribute to a sense of overall nationhood.

## **FINDINGS: IMMEDIATE NEEDS OF THE DEMOCRACY AND GOVERNANCE SECTOR**

Although the Interim Authority is moving swiftly to consolidate its position, governance in Afghanistan remains fragmented and fragile. Its institutions are weak and could undergo leadership and policy changes when the handover occurs between the Interim and Transitional Authorities in June.

- Technical assistance that will strengthen the performance and accountability of public institutions should be a priority consideration for international support. This international support must reach both the independent commissions established by Bonn, and the functioning ministries themselves.
- Support for the independent commissions should take the form of policy development guidance—that is, assist the commissions in establishing the legal and institutional framework for the government ministries to operate. The ministries themselves should be operationally supported to establish the capacity to provide their mandated public services.

The selection of the Emergency Loyal Jirga is the seminal political process initiated by the Bonn Agreement. As such, the precedents established in the organization of it may have implications for further political activity. Political parties have not been established and political groupings tend to be geographically focused or personality-based. Within the framework of the Bonn Agreement, new Afghan politics begins with the April and May Loya Jirga selections. These selections are to be followed by a registration and census of the populations, which will provide the identity infrastructure to conduct elections within the two-year timeframe of the agreement.

- It is important to provide monitoring and technical assistance for these activities to promote political process above violence as a means of achieving governance.

## V. PROTECTING HUMAN RIGHTS AND BUILDING CIVIL SOCIETY



Information booklet from the ICRC on the laws of war

### INTRODUCTION

The dramatic shift in the human rights situation in Kabul during the past four months have been vividly described in recent media reports. The day-to-day changes in the lives of Kabul's residents have been emphasized, including the ability of many women to return to school, work, and political life.

Yet, beyond Kabul and under the veneer of improvement within Kabul itself, Afghanistan remains a country where there are ongoing severe violations of human rights, and no central governmental authority to curb or even document the continuing abuses. Human Rights Watch reported early this month, "Armed political factions in northern Afghanistan are subjecting ethnic Pashtuns to murder, beatings, sexual violence, abductions, looting, and extortion" in a campaign that has forced thousands of Pashtuns to leave their villages. Women who are seen as associated with the Taliban, even those who were forced to marry Taliban members, face physical and sexual abuse. In some parts of the country, women are still unable to go to school or work. Amnesty International reported on February 1 that the lives of thousands of prisoners were at risk because of the conditions of their detention, and Physicians for Human Rights has documented deplorable conditions at a prison west of Mazar-I-Sharif housing more than 3,000 ex-combatants.

### INTERIM ADMINISTRATION ACTIONS

The IA has acted to strengthen the legal framework for protection of human rights, most significantly by issuing Decree No. 66 on January 5, 2002, which repeals all pre-existing "decrees, laws, edicts, regulations or mandates" (including those issued by the Taliban) that are inconsistent with the 1964 Constitution or the Bonn Agreement. Under the decree, the Ministry of Justice is responsible for reviewing all laws issued from the beginning of 1964 to determine their status and present all laws to be

repealed, amended, or supplemented under the decree to the Council of Ministers for ratification. All relevant ministries and offices are responsible to assist in the review process, and the decree expressly requires their "full cooperation in these efforts." In addition, Chairman Karzai and members of the Interim Administration have expressly called for women to return to work and to school and expressed support for protection of women's human rights.

Despite these steps, however, Afghan law as written and as applied remains many steps removed from compliance with international human rights standards. Although all pre-existing laws that violate human rights standards have technically been cancelled under the IA's decree, the process to determine which laws fall under the decree is only beginning. Even with regard to pre-existing laws that clearly fall within the decree, such as those restricting the rights of women, there is no structure in place to ensure that such laws are no longer enforced throughout the country.

### HUMAN RIGHTS FRAMEWORK

**The Bonn Agreement.** Under the Bonn Agreement, the "Interim Authority and the Emergency Loya Jirga shall act in accordance with the basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party." The Bonn Agreement also provides that the IA shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include



Female professional and administrative staff at the Kabul Provincial Prosecutor offices

human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions.

In addition, the United Nations is expressly authorized “to investigate human rights violations and, where necessary, recommend corrective action.” The UN is also “responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.” The Bonn Agreement also provides for the establishment of a Judicial Commission charged with rebuilding the domestic justice system, and for the creation of a Ministry of Women’s Affairs.

**Applicable Legal Standards.** Afghanistan is a party to the central international human rights treaties, including the:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- Convention against Torture
- Convention on the Rights of the Child
- Genocide Convention

Notably, however, Afghanistan has signed but not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), although Afghanistan is a party to the Convention on the Political Rights of Women. Afghanistan is also bound by the four Geneva Conventions of 1949, the Slavery Convention, the UN Charter, the Statute of the International Court of Justice, and the Convention on the Non-Applicability of Statutes of Limitations to War Crimes.

The Bonn Agreement provides that the 1964 Constitution of Afghanistan shall be applicable until the adoption of a new constitution. The 1964 Constitution guarantees an extensive set of fundamental human rights to all the people of Afghanistan, without discrimination. (Articles 25-34). The key human rights provisions of the constitution address:

- Rights to a fair trial
- Torture
- Search and seizure
- Right to property
- Right to privacy
- Freedom of thought and expression
- Freedom of assembly and association; and
- Right to education.

## INSTITUTIONS

**The Human Rights Commission.** On March 9, the Interim Administration and the United Nations held the National Workshop on Human Rights, focusing on implementation of the human rights provisions of the Bonn Agreement. The workshop opened with statements from Chair of the AIA, Chairman Karzai, UN SRSG, Lakhdar Brahimi, UNHCHR Mary Robinson, and Vice-Chair of the AIA and Minister of Women’s Affairs, Sima Samar. The workshop led to the formation of four standing working groups on:

- Establishment of the Human Rights Commission.
- Development of a national program of human rights education.
- Approaches to human rights monitoring, investigation, and remedial action.
- Advancement of the rights of women.

The total membership of each working group was not specified. All members of the working groups are intended to be Afghans, and the only criterion suggested for membership was that those who participate should have a background in human rights. At the workshop, only two names were put forward for participation in the women’s rights working group (both from an NGO), and it was suggested that this working group should be incorporated into the Ministry of Women’s Affairs. The offices of the UNHCHR and SRSG offered their support for the working groups, including funding of \$5,000 for each group to begin its work. Professor Mahbooba Hoquqmal was selected as Chair of the Working Group on Establishment of the Human Rights Commission. (Professor Hoquqmal also serves as Vice-Chair of the Emergency Loya Jirga Commission.) In addition to formation of the working groups, the workshop led to the adoption of a list of guiding principles for the establishment of the Human Rights Commission.

**The Ministry of Women’s Affairs.** Along with the Human Rights Commission, the Ministry of Women’s Affairs is a key element of the Bonn Agreement’s framework for protection and promotion of human rights. The ministry and UNIFEM organized an Afghan Women’s National Consultation on March 5-7, 2002. The participants in that forum agreed on seven priority objectives that should guide efforts for women’s human rights. One particular priority of the ministry has been to work with the AIA to see that women are issued national identification cards all over the country to ensure their right to engage in the political process as voters and representatives. Dr. Sima Samar, Minister of Women’s Affairs and Vice-Chair of the AIA, has also called for women to make up one quarter of the participants in the upcoming Loya Jirga. The ministry is working on an initiative to reach women in remote areas of

the country, as well as those in urban areas. The National Consultation was an important first step, and women from some 10 provinces were invited to attend.

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*The Minister of Women's Affairs called for women to make up one quarter of the participants in the upcoming Loya Jirga.*

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Currently, the capacity of the Ministry of Women's Affairs is extremely limited. In January, the minister was working from an office within the Sadarat, or Prime Minister's building. Recently, the ministry has been established in a building that was the site of the Women's Institute before the Taliban period, an appropriate location, given its history. The Women's Institute was originally established as the Women's Welfare Association in 1964 within the Ministry of Finance, and later the Ministry of Education. It gained independent status and was renamed the Women's Institute in 1975.

Through support from the United Nations, the ministry has basic office equipment, including a computer, fax machine, printer, copy machine, satellite phone, and a vehicle. However, the ministry has virtually no professional staff, and the minister's work is supported only by volunteers and a few security personnel. The minister is in the process of reviewing applications for staff positions.

**The United Nations.** Despite the broad language of the Bonn Agreement on the human rights role of the United Nations, only limited human rights activities are underway so far. A human rights adviser from the Office of the UNHCHR has been seconded to UNSMA to provide advice in the initial stages of development of the human rights program. The UN will not be in a position to undertake substantial human rights monitoring and protection until UNAMA is established. In describing UNAMA's proposed mandate, the Secretary-General has stressed that "human rights and gender issues will be central to the purposes and functions of the mission," and notes that "advisory expertise in those areas that cut across all aspects of the mission's work, in the areas of human rights, the rule of law (judicial, police and penal system) and gender equality."

UNAMA will adopt a cross-cutting approach to human rights, led by a Human Rights Coordinator in the SRSG's office. The coordinator and a staff of two will be responsible for advising the SRSG, serving as the principal contact point for the Human Rights Commission, and coordinating all human rights activities within both pillars of the mission, including human rights monitoring and investigation,

community liaison, human rights education, institution building, and humanitarian protection activities.

The Secretary-General's report makes clear that the "political affairs pillar" of UNAMA will be responsible for monitoring, analyzing, and reporting on the human rights situation, and for "investigating human rights violations and, where necessary, recommending corrective action." These tasks would presumably be performed by the 30-40 international political and civil affairs officers based in Kabul and deployed in small regional teams, along with teams of national staff. For the relief, recovery, and reconstruction pillar, staff from the agencies involved will be trained in and responsible for integrating rights-based and gender-sensitive approaches in the pillar's activities.

Other international organizations with more specialized mandates are also playing crucial human rights roles in Afghanistan. The International Committee of the Red Cross presence in Afghanistan is composed of 130 delegates who by the end of January had visited 45 places of detention and registered approximately 5,500 prisoners from the conflict. UNHCR, IOM, and UNOCHA are providing support for a million internally displaced persons in Afghanistan.

## **CIVIL SOCIETY'S CAPACITY FOR PROMOTION AND PROTECTION OF HUMAN RIGHTS**

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**International NGO Involvement.** A broad range of international humanitarian organizations are currently active in Afghanistan, and the number continues to grow as many organizations shift their base of operations from Pakistan to Afghanistan. While the activities of these organizations address many of the most urgent ongoing human rights violations in Afghanistan (including lack of food, shelter, and healthcare), they do not generally address the full scope of human rights issues that are the subject of this report.

The list of human rights NGOs that have an on-the-ground presence in Afghanistan remains fairly short, though many organizations are moving toward more substantial programming within the country. Prominent international human rights organizations, including Amnesty International, Human Rights Watch, and Physicians for Human Rights, have fielded investigation teams in Afghanistan, but have not yet established a permanent presence. The International Human Rights Law Group has an Afghan Liaison Officer in Kabul, in addition to its field office in Peshawar, Pakistan, which implements an Afghan women's rights program.

**Human rights work of Afghan organizations.** There are very few Afghan NGOs focusing on human rights promotion and protection at this time. Several Peshawar-based human rights NGOs now have field presences in

Afghanistan. One organization works in Kabul, Bamyan, and Mazar-I-Sharif, and focuses on investigation, documentation and reporting of human rights violations. A second organization, which has primarily a humanitarian mandate, also conducts human rights training, with field offices in Mazar-I-Sharif, Herat, Farah, and Jalalabad. A third Afghan NGO focuses on peace building and conflict resolution, but has recently included human rights training in its mandate. A number of Afghan organizations focusing on women's human rights have been active within Afghanistan, though most continue to be based outside the country.

As with international NGOs, there are numerous Afghan humanitarian NGOs involved at some level in human rights work. These organizations do not, however, identify themselves as human rights groups, and few have experience or training in the human rights field. Overall domestic capacity to address the overwhelming human rights challenges that face Afghanistan is extremely limited. Of course, domestic human rights organizations were officially non-existent during the Taliban period, and human rights activists were forced to work underground, with severe constraints on their activities. Given the nature of their work, many of the most experienced Afghan human rights activists were forced to flee the country during the conflict. Civil society in Afghanistan is just beginning to re-emerge, and domestic organizations face enormous challenges in simply starting to operate. Few are able to take on the particularly sensitive and difficult tasks associated with human rights work.

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*Numerous Afghan humanitarian NGOs are involved at some level in human rights work.*

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There is currently little indigenous human rights reporting. The few Afghan organizations involved in human rights monitoring face enormous difficulties, and their capacity to undertake large-scale investigations or interviews is severely limited. The most significant sources of information concerning the human rights situation in Afghanistan remain international organizations and the media. Similarly, while a number of international and local NGOs are engaged in human rights education and capacity-building, those activities remain very limited and ad hoc in the face of the overwhelming need for support.

## **WOMEN'S HUMAN RIGHTS**

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Women in Afghanistan have been deprived of many of their fundamental human rights over the past twenty years. The possibilities and challenges facing Afghan women in their country, region, and world have been dramatically transformed during the past four months. From imposed silence and isolation, Afghan women have taken up a key role in the rebuilding of their country, as most aptly illustrated by the leadership position of Vice Chair of the Interim Administration Sima Samar in the transition government. Yet, Afghan women face enormous challenges in assuming the new roles available to them—challenges that will not be overcome in a short time, but that require sustained attention and commitment. The cumulative effects of decades of war and years of egregious violations of women's rights have left a battered and dispersed community of women activists and leaders. As a result, many Afghan women have been severely traumatized, and even a dramatic improvement in conditions would not alleviate their ingrained fear and insecurity.

**Health.** Along with these rapid changes has come a societal acceptance of violence toward women. Women say that being beaten by men has become “routine,” and Law Group meetings with health professionals revealed reports of dramatic increases in cases of sexual abuse and domestic violence—as well as an increase in suicide and suicide attempts—among Afghan women. Meetings with the minister of health and other members of the medical community confirmed that the Afghan healthcare system consistently fails to address women's emotional and physical needs. There is only one psychiatric hospital in Afghanistan, very few counseling centers, and a dearth of adequate health facilities for women, especially in rural areas.

**Employment.** Women are ill-equipped to meet the changing situation in Afghanistan. They continue to suffer the consequences of being excluded from education and employment under the Taliban. The Ministry of Women's Affairs intends to further encourage the employment of women, however, by mid-March, even within the ministry there were no female staff. Within the IA, criteria for employment has been established that excludes women, who under the Taliban had no opportunity to practice or improve their knowledge or skills.

For the successful reintegration of Afghan women into society, increased employment opportunities for women must become a priority. These concerns are the most immediate, yet for women to truly prosper and become effective participants in society, a long-term approach to strengthening women's position in society is urgently needed. Such an approach requires a careful contextual analysis of Afghan history, and a sophisticated understanding and appreciation of women's place in Muslim societies. Additionally, program work directed at women's human

rights must incorporate, where appropriate, progressive Afghan men. Men also suffered a transformation under the Taliban, and for Afghan society to fundamentally change its constructed gender roles, men must become advocates for women's rights.

**Security issues.** While security threats affect all Afghans, their impact on women is particularly severe. During the day, women in Kabul generally feel comfortable moving about the city alone or unaccompanied by males, but they do not feel comfortable removing their burqas while in public. When women were asked why they continued to wear their burqas, the answer was always the same: fear. In addition, Kabul's residents have not forgotten the violent crimes and human rights violations which occurred under the Mujahadeen, and are justifiably concerned that some of those responsible for those abuses have now regained power.

**Education.** The enormous burdens facing the Afghan education system are also disproportionately severe for women and girls. One of the greatest challenges facing the Afghan government is how to deal with the disparity of education that exists between Afghan boys and girls, between urban and rural areas, and between Afghans inside the country and refugees returning from Pakistan. Nevertheless, the re-opening of schools and the inclusion of girl students constituted one of the most encouraging steps so far in the Afghan peace process.

**Economic Security.** Years of war have led to a loss of economic security and to unprecedented poverty in Afghanistan. The ability of women to earn an income has been severely limited. Lending institutions in many parts of Afghanistan will only deal with male members of a household, restricting women's access to credit. Afghan women, banned from working outside the home and forced out of their professions, have turned to income generation projects, such as carpet weaving, embroidery, and tailoring, as a way of improving their economic situation. Afghan women repeatedly told the Law Group of their frustration at not having the skills they need to build better lives for their families and to become active participants in rebuilding Afghanistan. Afghan women also fear they will lose out on jobs and opportunities because of an inability to speak English.

**Women's political participation.** Before the 1978 Soviet invasion, Afghan women played prominent political and professional roles. The 1964 Constitution, which women helped draft, gave women the right to vote and guaranteed them "dignity, compulsory education and freedom to work." It states that all Afghans "without discrimination or preference" have equal rights under the law. At the Bonn talks in December, only three of the 60 representatives were women. The establishment of the Ministry of Women's Affairs, and the selection of its minister as a vice-

chair within the Interim Administration were, however, both significant steps toward realizing women's human rights in Afghanistan. In addition, Professor Mahbooba Hoquqmal has been selected Vice-Chair of the Emergency Loya Jirga Commission, though only three women were appointed to the 20-member commission. The chair of the Emergency Loya Jirga Commission has said that a "significant number of the Loya Jirga will be women." For the first time in 11 years, more than 800 women from various regions of Afghanistan gathered in Kabul to celebrate International Women's Day and discuss their needs. More than 700 Afghan women refugees also participated in the first-ever "Women's Loya Jirga" in Peshawar, Pakistan, a forum organized by the Law Group in December 2001 to provide an opportunity for Afghan women to voice their opinions about the process of rebuilding their country.

## **TRANSITIONAL JUSTICE**

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There is an understandable and substantial reluctance on the part of the UN and many international and domestic organizations to emphasize or even discuss accountability issues at this stage in the peace process. At the same time, there are some NGOs that are seeking immediate action to address impunity, including through pushing for an international tribunal to be established. The International Center for Transitional Justice and Human Rights Watch have recently conducted preliminary consultations in Afghanistan to assess current attitudes and the level of discourse on transitional justice issues. Those discussions revealed the strong need for serious consultations and dialogue before steps are taken toward any particular transitional justice approach.

## **FINDINGS: IMMEDIATE NEEDS OF THE HUMAN RIGHTS SECTOR**

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There are five priority areas of need in the human rights sector: (1) establishing the Human Rights Commission; (2) civil society capacity building; (3) develop human rights education; (4) strengthening women's human rights; and (5) human rights monitoring and reporting. In all areas, it will be important to pay particular attention to special needs of Afghan children.

**Establish the Human Rights Commission.** While initial steps were taken at the National Workshop on Human Rights, the process of establishing the Human Rights Commission has just begun. Additional resources and support will be essential to ensure that the Human Rights Commission is able to fulfill the role envisioned in the Bonn Agreement. At the same time, it is essential to recognize that the commission will require considerable "start-up" time, and crucial human rights activities should not be put on hold while the commission is created and its capacity built. There is also a substantial risk to placing unrealistic expectations on what will be a fledgling institution. In the

short term, the following steps should be taken to support the Human Rights Commission:

- Provide financial support both for the process of establishing the Human Rights Commission (including continuing consultations with civil society) and for the commission itself, once established.
- Ensure that UNAMA's commitment to the Human Rights Commission is matched by human rights staff dedicated to meeting its objective.
- Support efforts by the OHCHR to assist in the establishment and operation of the Human Rights Commission, including through contributing expertise on national human rights institutions best practices and models.
- Provide training for commission members and staff on all aspects of the commission's mandate to assist with building the institutional capacity of the commission.
- Support civil society efforts to contribute to the work of the Human Rights Commission and to monitor the commission's implementation of its mandate.
- Provide for the full participation of women in the Human Rights Commission, and ensure that women's human rights issues, including violence against women and children's rights, are fully addressed within the Commission.

**Build capacity of civil society to promote and protect human rights.** Decades of conflict destroyed many elements of the vibrant Afghan civil society, and drove other elements of civil society far underground. One of the most encouraging elements in the current reconstruction process, however, is the extent to which Afghans remain committed to rebuilding their own society, and the indomitable spirit they bring to that endeavor. Despite years, sometimes decades, as refugees, most of the Afghans interviewed by the Law Group in Peshawar are committed to returning home when the situation is sufficiently secure. In Afghanistan, those who bore the brunt of the conflict and Taliban repression are dedicated to ensuring that the reconstruction process is led by Afghans and that it reflects the needs and priorities of Afghans. At the same time, Afghans have suffered greatly during the conflict, and support will be essential for the Afghan people to assume their proper place in rebuilding their country. Many Afghans spoke of needing professional training and assistance to make up for the years "lost" to conflict.

- Support the development and swift implementation of a law on NGOs that meets international standards and provides protection for the important work of NGOs consistent with the UN Declaration on Human Rights Defenders.

- Implement a program of institutional and technical capacity building for emerging Afghan NGOs to support their efforts to engage effectively within the peace process and assist in the rebuilding of the country.
- Provide human rights training for Afghan NGOs and activists, targeted at their particular needs and priorities and incorporating an approach which reflects Afghan culture.
- Support programs to redress gaps in professional training, particularly those faced by women and in sectors that are key during this period (law, medicine, education).

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*A comprehensive plan of action is essential to ensure the full involvement of Afghan women in shaping their country's future.*

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- Expand public access to information on the government, the reconstruction process, and the role of the international community, and require transparency and full reporting by both the Afghan government and donors on their activities.
- Support efforts to build the capacity of the Afghan legal sector, including lawyers, law associations, and legal education, which will play a crucial role in building rule of law and respect for human rights.
- Provide support and training for women's associations and organizations of all types, including those focusing on women's human rights.

**Develop human rights education.** Developing institutional mechanisms for the protection of human rights is crucial, but such efforts alone will fail unless Afghans support and participate actively in the struggle to build human rights protections within the country.

- Rebuild an Afghan culture that promotes and protects human rights and women's human rights through a broad and continuous public education program, including through the use of radio, television, print media, and educational posters.
- Incorporate human rights and women's human rights in particular into the regular curriculum of all Afghan schools and colleges.
- Train police on human rights standards, particularly the Convention Against Torture and Other Cruel, Inhuman, or

Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights.

**Support women's human rights.** A comprehensive plan of action is essential to ensure the full involvement of Afghan women in shaping their country's future, to redress the legacy of systemic violations of women's human rights and ensure the promotion and protection of women's human rights in Afghanistan today. The plan of action should address at least four core elements: (1) women's political participation, (2) priority needs, (3) education, and (4) capacity-building and institutional development.

#### **WOMEN'S POLITICAL PARTICIPATION**

- Establish an interagency council on women with a high-level representation from all government agencies, to be chaired by the Vice-Chair of the IA/Minister of Women's Affairs.
- Encourage women's political participation through training programs for prospective women politicians, including community leaders and women's NGOs and by civic education programs for women.
- Provide training and support particularly aimed at ensuring that young women are also given an opportunity to participate in the political process, and to obtain posts within the administration.
- Support effective participation by women in the upcoming Loya Jirga, including through training programs focusing on advocacy and the political process.

#### **ADDRESSING PRIORITY NEEDS**

- Raise awareness about counseling, encourage women to seek counseling, establish counseling centers, and provide adequate medical facilities for women in urban and rural areas.
- Provide legal and social support for women who have been forced under the Taliban to marry, and enable these women to gain access to divorce.
- Improve access to information about violence against women, including efforts to educate families through community seminars and workshops.
- Assess the needs of women living in remote, rural areas of Afghanistan, and design an outreach program with their needs in mind.
- Guarantee women's right to work and to own and control their own income and property.
- Build financial support systems for women in urban and rural areas through credit programs, income generation projects, and short-term financial loans.

#### **EDUCATION AND PUBLIC AWARENESS**

- Provide education for women about their legal rights using approaches that take into account Afghan culture, and support programs to help ensure women's access to justice.
- Develop a radio channel for women and by women that would educate listeners about women's rights, gender awareness, and other issues.
- Establish training programs for women aimed at addressing education gaps, including refresher courses for professionals in all fields, particularly lawyers, judges, medical personnel, and teachers; information technology programs; training in languages; particularly English; and programs in basic business skills.
- Provide additional educational programs for girls to address existing disparities in the education they have received compared to boys.

#### **CAPACITY-BUILDING AND INSTITUTIONAL DEVELOPMENT**

- Provide support and training for women's associations and organizations of all types, including those focusing on women's human rights.
- Provide ongoing and substantial support to the Ministry of Women's Affairs, including strengthening its institutional capacity.
- Compile a comprehensive database of professional Afghan women inside Afghanistan and in refugee camps.

**Human rights monitoring and response.** Given the scope of ongoing human rights violations in Afghanistan, it is essential that effective structures be put in place to permit comprehensive monitoring and reporting of the human rights situation. While human rights monitoring alone will certainly not create a secure environment, allowing violations to occur in an environment in which there is little reporting and even less of a response is antithetical to building rule of law. While there are many views on how to address past abuses, there can be no doubt that impunity for continuing violations is a grave threat to efforts to build a stable peace.

- Provide sufficient trained staff and support for effective human rights reporting within UNAMA, while simultaneously working to ensure that both national and international NGOs are able to conduct broad human rights monitoring.
- Build the capacity of Afghan organizations for human rights monitoring and reporting, and provide necessary protection for human rights defenders.

- Support efforts by Afghans to explore methods for redressing violations and rebuilding society following years of conflict.
- Ensure the full participation of women in discussions about transitional justice approaches, and demand that such approaches effectively address the full scope of abuses suffered by women, particularly gender-based violence.



**Entrance to Police Academy**

## VI. APPENDICES



West Kabul

### THE BONN AGREEMENT

#### AGREEMENT ON PROVISIONAL ARRANGEMENTS IN AFGHANISTAN PENDING THE RE-ESTABLISHMENT OF PERMANENT GOVERNMENT INSTITUTIONS

The participants in the UN Talks on Afghanistan,

In the presence of the Special Representative of the Secretary-General for Afghanistan,

Determined to end the tragic conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights in the country,

Reaffirming the independence, national sovereignty and territorial integrity of Afghanistan,

Acknowledging the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice,

Expressing their appreciation to the Afghan mujahidin who, over the years, have defended the independence, territorial integrity and national unity of the country and have played a major role in the struggle against terrorism and oppression, and whose sacrifice has now made them both heroes of jihad and champions of peace, stability and reconstruction of their beloved homeland, Afghanistan,

Aware that the unstable situation in Afghanistan requires the implementation of emergency interim arrangements and expressing their deep appreciation to His

Excellency Professor Burhanuddin Rabbani for his readiness to transfer power to an interim authority which is to be established pursuant to this agreement,

Recognizing the need to ensure broad representation in these interim arrangements of all segments of the Afghan population, including groups that have not been adequately represented at the UN Talks on Afghanistan,

Noting that these interim arrangements are intended as a first step toward the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government, and are not intended to remain in place beyond the specified period of time,

Recognizing that some time may be required for a new Afghan security force to be fully constituted and functional and that therefore other security provisions detailed in Annex I to this agreement must meanwhile be put in place,

Considering that the United Nations, as the internationally recognized impartial institution, has a particularly important role to play, detailed in Annex II to this agreement, in the period prior to the establishment of permanent institutions in Afghanistan,

Have agreed as follows:

#### I. THE INTERIM AUTHORITY

##### I. General provisions

- 1) An Interim Authority shall be established upon the official transfer of power on 22 December 2001.
- 2) The Interim Authority shall consist of an Interim Administration presided over by a Chairman, a Special Independent Commission for the Convening of the

Emergency Loya Jirga, and a Supreme Court of Afghanistan, as well as such other courts as may be established by the Interim Administration. The composition, functions and governing procedures for the Interim Administration and the Special Independent Commission are set forth in this agreement.

- 3) Upon the official transfer of power, the Interim Authority shall be the repository of Afghan sovereignty, with immediate effect. As such, it shall, throughout the interim period, represent Afghanistan in its external relations and shall occupy the seat of Afghanistan at the United Nations and in its specialized agencies, as well as in other international institutions and conferences.
- 4) An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority. The Emergency Loya Jirga will be opened by His Majesty Mohammed Zaher, the former King of Afghanistan. The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to 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.
- 5) The Interim Authority shall cease to exist once the Transitional Authority has been established by the Emergency Loya Jirga.
- 6) A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist

the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

## II. LEGAL FRAMEWORK AND JUDICIAL SYSTEM

- 1) The following legal framework shall be applicable on an interim basis until the adoption of the new Constitution referred to above:
  - i) The Constitution of 1964, a) to the extent that its provisions are not inconsistent with those contained in this agreement, and b) with the exception of those provisions relating to the monarchy and to the executive and legislative bodies provided in the Constitution; and
  - ii) existing laws and regulations, to the extent that they are not inconsistent with this agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations.
- 2) The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration. The Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.

## III. INTERIM ADMINISTRATION

### A. Composition

- 1) The Interim Administration shall be composed of a Chairman, five Vice Chairmen and 24 other members. Each member, except the Chairman, may head a department of the Interim Administration.
- 2) The participants in the UN Talks on Afghanistan have invited His Majesty Mohammed Zaher, the former King of Afghanistan, to chair the Interim Administration. His Majesty has indicated that he would prefer that a suitable candidate acceptable to the participants be

selected as the Chair of the Interim Administration.

- 3) The Chairman, the Vice Chairmen and other members of the Interim Administration have been selected by the participants in the UN Talks on Afghanistan, as listed in Annex IV to this agreement. The selection has been made on the basis of professional competence and personal integrity from lists submitted by the participants in the UN Talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.
- 4) No person serving as a member of the Interim Administration may simultaneously hold membership of the Special Independent Commission for the Convening of the Emergency Loya Jirga.

### B. Procedures

- 1) The Chairman of the Interim Administration, or in his/her absence one of the Vice Chairmen, shall call and chair meetings and propose the agenda for these meetings.
- 2) The Interim Administration shall endeavor to reach its decisions by consensus. In order for any decision to be taken, at least 22 members must be in attendance. If a vote becomes necessary, decisions shall be taken by a majority of the members present and voting, unless otherwise stipulated in this agreement. The Chairman shall cast the deciding vote in the event that the members are divided equally.

### C. Functions

- 1) The Interim Administration shall be entrusted with the day-to-day conduct of the affairs of state, and shall have the right to issue decrees for the peace, order and good government of Afghanistan.
- 2) The Chairman of the Interim Administration or, in his/her absence, one of the Vice Chairmen, shall represent the Interim Administration as appropriate.
- 3) Those members responsible for the administration of individual departments shall also be responsible for implementing the policies of the Interim Administration within their areas of responsibility.
- 4) Upon the official transfer of power, the Interim Administration shall have full jurisdiction over the printing and delivery of the national currency and special draw-

ing rights from international financial institutions. The Interim Administration shall establish, with the assistance of the United Nations, a Central Bank of Afghanistan that will regulate the money supply of the country through transparent and accountable procedures.

- 5) The Interim Administration shall establish, with the assistance of the United Nations, an independent Civil Service Commission to provide the Interim Authority and the future Transitional Authority with shortlists of candidates for key posts in the administrative departments, as well as those of governors and uluswals, in order to ensure their competence and integrity.
- 6) The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions. The Interim Administration may, with the assistance of the United Nations, also establish any other commissions to review matters not covered in this agreement.
- 7) The members of the Interim Administration shall abide by a Code of Conduct elaborated in accordance with international standards.
- 8) Failure by a member of the Interim Administration to abide by the provisions of the Code of Conduct shall lead to his/her suspension from that body. The decision to suspend a member shall be taken by a two-thirds majority of the membership of the Interim Administration on the proposal of its Chairman or any of its Vice Chairmen.
- 9) The functions and powers of members of the Interim Administration will be further elaborated, as appropriate, with the assistance of the United Nations.

## IV. THE SPECIAL INDEPENDENT COMMISSION FOR THE CONVENING OF THE EMERGENCY LOYA JIRGA

- 1) The Special Independent Commission for the Convening of the Emergency Loya Jirga shall be established within one month of the establishment of the Interim Authority. The Special Independent Commission will consist of twenty-one members, a number of whom

should have expertise in constitutional or customary law. The members will be selected from lists of candidates submitted by participants in the UN Talks on Afghanistan as well as Afghan professional and civil society groups. The United Nations will assist with the establishment and functioning of the commission and of a substantial secretariat.

- 2) The Special Independent Commission will have the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga. The Special Independent Commission will draft rules and procedures specifying (i) criteria for allocation of seats to the settled and nomadic population residing in the country; (ii) criteria for allocation of seats to the Afghan refugees living in Iran, Pakistan, and elsewhere, and Afghans from the diaspora; (iii) criteria for inclusion of civil society organizations and prominent individuals, including Islamic scholars, intellectuals, and traders, both within the country and in the diaspora. The Special Independent Commission will ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women as well as all other segments of the Afghan population.
- 3) The Special Independent Commission will publish and disseminate the rules and procedures for the convening of the Emergency Loya Jirga at least ten weeks before the Emergency Loya Jirga convenes, together with the date for its commencement and its suggested location and duration.
- 4) The Special Independent Commission will adopt and implement procedures for monitoring the process of nomination of individuals to the Emergency Loya Jirga to ensure that the process of indirect election or selection is transparent and fair. To pre-empt conflict over nominations, the Special Independent Commission will specify mechanisms for filing of grievances and rules for arbitration of disputes.
- 5) The Emergency Loya Jirga will elect a Head of the State for the Transitional Administration and will approve proposals for the structure and key personnel of the Transitional Administration.

## V. FINAL PROVISIONS

- 1) Upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.
- 2) The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.
- 3) The Interim Authority shall cooperate with the international community in the fight against terrorism, drugs and organized crime. It shall commit itself to respect international law and maintain peaceful and friendly relations with neighboring countries and the rest of the international community.
- 4) The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.
- 5) All actions taken by the Interim Authority shall be consistent with Security Council resolution 1378 (14 November 2001) and other relevant Security Council resolutions relating to Afghanistan.
- 6) Rules of procedure for the organs established under the Interim Authority will be elaborated as appropriate with the assistance of the United Nations.

This agreement, of which the annexes constitute an integral part, done in Bonn on this 5th day of December 2001 in the English language, shall be the authentic text, in a single copy which shall remain deposited in the archives of the United Nations. Official texts shall be provided in Dari and Pashtu, and such other languages as the Special Representative of the Secretary-General may designate. The Special Representative of the Secretary-General shall send certified copies in English, Dari and Pashto to each of the participants.

## FOR THE PARTICIPANTS IN THE UN TALKS ON AFGHANISTAN:

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Ms. Amena Afzali  
Mr. S. Hussain Anwari  
Mr. Hedayat Amin Arsala  
Mr. Sayed Hamed Gailani  
Mr. Rahmatullah Mousa Ghazi  
Eng. Abdul Hakim  
Mr. Houmayoun Jareer  
Mr. Abbas Karimi  
Mr. Mustafa Kazimi  
Dr. Azizullah Ludin  
Mr. Ahmad Wali Massoud  
Mr. Hafizullah Asif Mohseni  
Prof. Mohammad Ishaq Nadiri  
Mr. Mohammad Natiqi  
Mr. Aref Noorzay  
Mr. Yunus Qanooni  
Dr. Zalmai Rassoul  
Mr. H. Mirwais Sadeq  
Dr. Mohammad Jalil Shams  
Prof. Abdul Sattar Sirat  
Mr. Humayun Tandari  
Mrs. Sima Wali  
General Abdul Rahim Wardak  
Mr. Azizullah Wasefi  
Mr. Pacha Khan Zadran  
Witnessed for the United Nations by:  
Mr. Lakhdar Brahimi  
Special Representative of the Secretary-General for Afghanistan

## ANNEX I INTERNATIONAL SECURITY FORCE

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1. The participants in the UN Talks on Afghanistan recognize that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves. To this end, they pledge their commitment to do all within their means and influence to ensure such security, including for all United Nations and other personnel of international governmental and non-governmental organizations deployed in Afghanistan.
2. With this objective in mind, the participants request the assistance of the international community in helping the new Afghan authorities in the establishment

and training of new Afghan security and armed forces.

3. Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force. 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.
4. The participants in the UN Talks on Afghanistan pledge to withdraw all military units from Kabul and other urban centers or other areas in which the UN mandated force is deployed. It would also be desirable if such a force were to assist in the rehabilitation of Afghanistan's infrastructure.

## **ANNEX II ROLE OF THE UNITED NATIONS DURING THE INTERIM PERIOD**

1. The Special Representative of the Secretary-General will be responsible for all aspects of the United Nations' work in Afghanistan.
2. The Special Representative shall monitor and assist in the implementation of all aspects of this agreement.
3. The United Nations shall advise the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions. The United Nations shall pay special attention to the conduct of those bodies and administrative departments which could directly influence the convening and outcome of the Emergency Loya Jirga.
4. The Special Representative of the Secretary-General or his/her delegate may be invited to attend the meetings of the Interim Administration and the Special Independent Commission on the Convening of the Emergency Loya Jirga.
5. If for whatever reason the Interim Administration or the Special Independent Commission were actively prevented from meeting or unable to reach a decision on a matter related to the convening of the

Emergency Loya Jirga, the Special Representative of the Secretary-General shall, taking into account the views expressed in the Interim Administration or in the Special Independent Commission, use his/her good offices with a view to facilitating a resolution to the impasse or a decision.

6. The United Nations shall have the right to investigate human rights violations and, where necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.

## **ANNEX III REQUEST TO THE UNITED NATIONS BY THE PARTICIPANTS AT THE UN TALKS ON AFGHANISTAN**

The participants in the UN Talks on Afghanistan hereby

1. Request that the United Nations and the international community take the necessary measures to guarantee the national sovereignty, territorial integrity and unity of Afghanistan as well as the non-interference by foreign countries in Afghanistan's internal affairs;
2. Urge the United Nations, the international community, particularly donor countries and multilateral institutions, to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority;
3. Request the United Nations to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan.
4. Urge the United Nations and the international community, in recognition of the heroic role played by the mujahidin in protecting the independence of Afghanistan and the dignity of its people, to take the necessary measures, in coordination with the Interim Authority, to assist in the reintegration of the mujahidin into the new Afghan security and armed forces;

5. Invite the United Nations and the international community to create a fund to assist the families and other dependents of martyrs and victims of the war, as well as the war disabled;
6. Strongly urge that the United Nations, the international community and regional organizations cooperate with the Interim Authority to combat international terrorism, cultivation and trafficking of illicit drugs and provide Afghan farmers with financial, material and technical resources for alternative crop production.

## **ANNEX IV COMPOSITION OF THE INTERIM ADMINISTRATION**

Chairman:

Mr. Hamid Karzai

Membership (of whom 5 will be Vice-Chairs)

Department of Defense:

Department of Finance:

Department of Foreign Affairs:

Department of the Interior:

Department of Planning:

Department of Commerce:

Department of Mines & Industries:

Department of Small Industries:

Department of Information & Culture:

Department of Communication:

Department of Labour & Social Affairs:

Department of Hajj & Auqaf:

Department of Martyrs & Disabled:

Department of Education:

Department of Higher Education:

Department of Public Health:

Department of Public Works:

Department of Rural Development:

Department of Urban Development:

Department of Reconstruction:

Department of Transport:

Department of Water and Electricity:

Department for the Return of Refugees:

Department of Agriculture:

Department of Irrigation:

Department of Justice:

Department of Air Transport & Tourism:

Department of Border Affairs:

Department of Women's Affairs



United Nations  
**Security Council**

**S/RES/1378 (2001)**

Distr.: General

14 November 2001

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**Resolution 1378 (2001)**

**Adopted by the Security Council at its 4415th meeting, on  
14 November 2001**

*The Security Council,*

*Reaffirming* its previous resolutions on Afghanistan, in particular resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

*Supporting* international efforts to root out terrorism, in keeping with the Charter of the United Nations, and *reaffirming* also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001,

*Recognizing* the urgency of the security and political situation in Afghanistan in light of the most recent developments, particularly in Kabul,

*Condemning* the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaida network and other terrorist groups and for providing safe haven to Usama Bin Laden, Al-Qaida and others associated with them, and in this context supporting the efforts of the Afghan people to replace the Taliban regime,

*Welcoming* the intention of the Special Representative to convene an urgent meeting of the various Afghan processes at an appropriate venue and *calling on* the United Front and all Afghans represented in those processes to accept his invitation to that meeting without delay, in good faith and without preconditions,

*Welcoming* the Declaration on the Situation in Afghanistan by the Foreign Ministers and other Senior Representatives of the Six plus Two of 12 November 2001, as well as the support being offered by other international groups,

*Taking note* of the views expressed at the meeting of the Security Council on the situation in Afghanistan on 13 November 2001,

*Endorsing* the approach outlined by the Special Representative of the Secretary-General at the meeting of the Security Council on 13 November 2001,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan,

*Deeply concerned* by the grave humanitarian situation and the continuing serious violations by the Taliban of human rights and international humanitarian law,

1. *Expresses* its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government, both of which:

- should be broad-based, multi-ethnic and fully representative of all the Afghan people and committed to peace with Afghanistan's neighbours,
- should respect the human rights of all Afghan people, regardless of gender, ethnicity or religion,  
should respect Afghanistan's international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan, and
- should facilitate the urgent delivery of humanitarian assistance and the orderly return of refugees and internally displaced persons, when the situation permits;

2. *Calls* on all Afghan forces to refrain from acts of reprisal, to adhere strictly to their obligations under human rights and international humanitarian law, and to ensure the safety and security and freedom of movement of United Nations and associated personnel, as well as personnel of humanitarian organizations;

3. *Affirms* that the United Nations should play a central role in supporting the efforts of the Afghan people to establish urgently such a new and transitional administration leading to the formation of a new government and *expresses* its full support for the Secretary-General's Special Representative in the accomplishment of his mandate, and calls on Afghans, both within Afghanistan and among the Afghan diaspora, and Member States to cooperate with him;

4. *Calls* on Member States to provide:

- support for such an administration and government, including through the implementation of quick-impact projects,  
urgent humanitarian assistance to alleviate the suffering of Afghan people both inside Afghanistan and Afghan refugees, including in demining, and
- long-term assistance for the social and economic reconstruction and rehabilitation of Afghanistan and welcomes initiatives towards this end;

5. *Encourages* Member States to support efforts to ensure the safety and security of areas of Afghanistan no longer under Taliban control, and in particular to ensure respect for Kabul as the capital for all the Afghan people, and especially to protect civilians, transitional authorities, United Nations and associated personnel, as well as personnel of humanitarian organizations;

6. *Decides* to remain actively seized of the matter.

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## **Resolution 1383 (2001)**

**Adopted by the Security Council at its 4434th meeting on  
6 December 2001**

*The Security Council,*

*Reaffirming its previous resolutions on Afghanistan, in particular its resolution 1378 (2001) of 14 November 2001,*

*Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan,*

*Stressing the inalienable right of the Afghan people themselves freely to determine their own political future,*

*Determined to help the people of Afghanistan to bring to an end the tragic conflicts in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights, as well as to cooperate with the international community to put an end to the use of Afghanistan as a base for terrorism,*

*Welcoming the letter of 5 December 2001 from the Secretary-General informing the Council of the signature in Bonn on 5 December 2001 of the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions (S/2001/1154),*

*Noting that the provisional arrangements are intended as a first step towards the establishment of a broad-based, gender sensitive, multi-ethnic and fully representative government,*

1. *Endorses the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions as reported in the Secretary-General's letter of 5 December 2001;*

2. *Calls on all Afghan groups to implement this Agreement in full, in particular through full cooperation with the Interim Authority which is due to take office on 22 December 2001;*

3. *Reaffirms its full support to the Special Representative of the Secretary-General and endorses the missions entrusted to him in annex 2 of the above-mentioned Agreement;*

4. *Declares* its willingness to take further action, on the basis of a report by the Secretary-General, to support the Interim institutions established by the above-mentioned Agreement and, in due course, to support the implementation of the Agreement and its annexes;

5. *Calls on* all Afghan groups to support full and unimpeded access by humanitarian organizations to people in need and to ensure the safety and security of humanitarian workers;

6. *Calls on* all bilateral and multilateral donors, in coordination with the Special Representative of the Secretary-General, United Nations Agencies and all Afghan groups, to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority and as long as the Afghan groups fulfil their commitments;

7. *Decides* to remain actively seized of the matter.



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## **Resolution 1386 (2001)**

**Adopted by the Security Council at its 4443rd meeting, on  
20 December 2001**

*The Security Council,*

*Reaffirming* its previous resolutions on Afghanistan, in particular its resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

*Supporting* international efforts to root out terrorism, in keeping with the Charter of the United Nations, and reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001,

*Welcoming* developments in Afghanistan that will allow for all Afghans to enjoy inalienable rights and freedom unfettered by oppression and terror,

*Recognizing* that the responsibility for providing security and law and order throughout the country resides with the Afghan themselves,

*Reiterating* its endorsement of the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions, signed in Bonn on 5 December 2001 (S/2001/1154) (the Bonn Agreement),

*Taking note* of the request to the Security Council in Annex I, paragraph 3, to the Bonn Agreement to consider authorizing the early deployment to Afghanistan of an international security force, as well as the briefing on 14 December 2001 by the Special Representative of the Secretary-General on his contacts with the Afghan authorities in which they welcome the deployment to Afghanistan of a United Nations-authorized international security force,

*Taking note* of the letter dated 19 December 2001 from Dr. Abdullah Abdullah to the President of the Security Council (S/2001/1223),

*Welcoming* the letter from the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of 19 December 2001 (S/2001/1217), and *taking note* of the United Kingdom offer contained therein to take the lead in organizing and commanding an International Security Assistance Force.

*Stressing that all Afghan forces must adhere strictly to their obligations under human rights law, including respect for the rights of women, and under international humanitarian law.*

*Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan,*

*Determining that the situation in Afghanistan still constitutes a threat to international peace and security,*

*Determined to ensure the full implementation of the mandate of the International Security Assistance Force, in consultation with the Afghan Interim Authority established by the Bonn Agreement,*

*Acting for these reasons under Chapter VII of the Charter of the United Nations,*

1. *Authorizes, as envisaged in Annex 1 to the Bonn Agreement, the establishment for 6 months of an International Security Assistance Force to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment;*

2. *Calls upon Member States to contribute personnel, equipment and other resources to the International Security Assistance Force, and invites those Member States to inform the leadership of the Force and the Secretary-General;*

3. *Authorizes the Member States participating in the International Security Assistance Force to take all necessary measures to fulfil its mandate;*

4. *Calls upon the International Security Assistance Force to work in close consultation with the Afghan Interim Authority in the implementation of the force mandate, as well as with the Special Representative of the Secretary-General;*

5. *Calls upon all Afghans to cooperate with the International Security Assistance Force and relevant international governmental and non-governmental organizations, and welcomes the commitment of the parties to the Bonn Agreement to do all within their means and influence to ensure security, including to ensure the safety, security and freedom of movement of all United Nations personnel and all other personnel of international governmental and non-governmental organizations deployed in Afghanistan;*

6. *Takes note of the pledge made by the Afghan parties to the Bonn Agreement in Annex 1 to that Agreement to withdraw all military units from Kabul, and calls upon them to implement this pledge in cooperation with the International Security Assistance Force;*

7. *Encourages neighbouring States and other Member States to provide to the International Security Assistance Force such necessary assistance as may be requested, including the provision of overflight clearances and transit;*

8. *Stresses that the expenses of the International Security Assistance Force will be borne by the participating Member States concerned, requests the Secretary-General to establish a trust fund through which contributions could be channelled to the Member States or operations concerned, and encourages Member States to contribute to such a fund;*

9. *Requests* the leadership of the International Security Assistance Force to provide periodic reports on progress towards the implementation of its mandate through the Secretary-General;

10. *Calls on* Member States participating in the International Security Assistance Force to provide assistance to help the Afghan Interim Authority in the establishment and training of new Afghan security and armed forces;

11. *Decides* to remain actively seized of the matter.

## AFGHAN CODES COLLECTED BY CRAFT (AS OF MARCH 27, 2002)

NOTE: CRAFT obtained the following materials from sources in Kabul, as well as from the United States Institute of Peace and the Library of Congress.

### In English:

Summary of Contents, Chronological Listing of Laws, and Foreword from Robert Hager, Compiled Translation of Laws of Afghanistan (1975)

Law of Prisons and Jails in Afghanistan (15 Saur 1313) (27 Articles)

Law of Administration of the Courts of Justice (13 Hoot 1335) (201 Articles)

Law of Prohibition of Cultivation, Commerce, Buying, Selling, Importation, Exportation, and Use of Opium in Afghanistan (2 Qaus 1336) (4 Articles)

Law of Reward and Punishment of Prisoners in Afghanistan (17 Aqrab 1338) (85 Articles)

Penal Law for Crimes of Civil Servants and Crimes against Public Welfare and Security (26 Qaus 1341) (191 Articles)

Law of Saranwali (15 Hoot 1345) (23 Articles)

Law for Prevention of Hoarding (15 Sambula 1346) (17 Articles)

Law of the Jurisdiction and Organization of the Courts of Afghanistan (15 Mizan 1346) (123 Articles)

Law on Prohibition of Smuggling (30 Dalwa 1348) (20 Articles)

Law of Pasture Lands (19 Hoot 1349) (28 Articles)

Law for Prosecution and Punishment of Bribery (15 Hoot 1351) (15 Articles)

Law of Police and Gendarmes (29 Jadi 1352) (34 Articles)

Highway Traffic Law (25 Jadi 1352) (58 Articles)

Law of Employment, Promotion and Retirement of Police and Gendarmes (28 Mizan 1352) (103 Articles plus Appendix)

Criminal Procedure Law (Book Two - The Courts; Book Three - Right to Appeal)

(5 Jawza 1344) (amended 15 Hamal 1353) (500 Articles)

Civil Law of Republic of Afghanistan (mid-1970's exact date unclear)

Penal Code (Books One and Two) (31 Sunbala 1355) (523 Articles)

### In Dari:

Investigation of Criminal Acts and Law of Saranwali (1358) (published in Official Gazette Issue No. 424, April 4, 1979)

Amendment to Criminal Law (1353)

Law on Prosecution (1355)

Rules on Structure and Authority of Saranwali (1370)

Law on Narcotics (1370) (published in Official Gazette Issue No. 741, April 20, 1991)

Law on Smuggling (1351)

Law on Implementation of Criminal Law (1344)

## CONSULTATIONS

Below is a partial list of persons that were consulted in the drafting of this report from January to March 2002. CRAFT apologizes for any omissions or errors.

### Kabul, Afghanistan

#### Ministry of Women's Affairs

Sima Samar, Deputy Prime Minister/Minister of Women's Affairs

#### Ministry of Labor and Social Affairs

Mirwais Sadeq, Minister of Labor and Social Affairs

#### Ministry of Martyrs and Disabled

Abdu Hadi, Minister of Martyrs and Disabled

#### Ministry of Planning

Haji Mohammad Mhaqqeq, Minister of Planning

Dr. Ali Asghar Paiman, Deputy Minister for Planning

#### Ministry of Public Health

Dr. Sohaila Seddiq, Minister of Public Health

#### Ministry of Justice

Abdul Rahim Karimi, Minister of Justice

Said Yousef, Director, Ministry of Justice Institute of Legislative Affairs

#### Office of the Public Prosecutor

Abdul Mohammed Daqiq, General Director of Public Prosecutor

Abdul Halim Samadi, Kabul Province Public Prosecutor

Fazel Ahmad Faqiryar, Director of Monitoring, Office of Public Prosecutor

#### Ministry of Interior

Ghulam Ghous Nasri, Deputy Minister of Interior

Abdul Halim Halim, Directorate of Detentions, Ministry of Interior  
Ministry of Foreign Affairs

Mohammed Rahim Sharzoi, Deputy Minister of Foreign Affairs

Supreme Court and Judiciary

Molavi Fazel Hamad Shinwerii, Chief Justice, Supreme Court

Ms. Marzia Basel, Judge, Kabul Public Security Court

Ms. Nafissa Kabuli, Judge, Kabul Children's Court

#### Kabul University

Mohammed Akbar Popal, Chancellor, Kabul University

Dr. G. M. Dareez, Dean, Kabul Law Faculty

Mohammed Akram Mukhtar, General Director of Cultural Relations, Kabul University

Dr. Mohammed Afzal Banuwal, Deputy  
Chancellor

Mohammed Sadeq, University Librarian

#### **Central Statistics Office**

Esmatullah Razai, Deputy Director

#### **Emergency Loya Jirga**

Mohammed Ismail Qasimyar, Chair,  
Emergency Loya Jirga Commission

Ms. Mahbooba Hoquqmal, law professor  
and First Vice Chair of the Emergency  
Loya Jirga Commission

Abdul Hadi, Commission Officer

#### **Interim Administration Officials**

Ashraf Ghani, Director, Afghan Assistance  
Coordination Authority, IA

Ishaq Shahryar, Ambassador-Designate of  
Afghanistan to the United States

Daoud Yaqoub, Personal Assistant to  
Chairman Karzai

#### **International Organizations**

Lakhdar Brahimi, Special Representative of  
the Secretary General, United Nations

Kenzo Oshima, Under-Secretary-General  
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Relief Coordinator, United Nations

Anders Fange, Coordinator, Civil Affairs  
Unit, UNSMA

Michael Pabst, Vice Consul, Police Liaison  
Officer, Federal Criminal Police Office,  
Federal Republic of Germany

Lt. Col. David G. Reddin, ISAF Legal  
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Advisor

Ingrid Dagestad, Planning Officer, Civilian  
Police Division, Department of  
Peacekeeping Operations, United  
Nations

Craig Mokhiber, Human Rights Advisor to  
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Elke Wisch, Emergency Programme  
Officer, UNICEF

Dr. A.S. Ghaffori, Assistant Projects  
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Cultural Organization

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Foundation

Carol Yost, Director, Women's Political  
Participation Programs, The Asia  
Foundation

Honorable James Dobbins, Special Envoy  
for Afghanistan, Bureau of South Asia  
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State

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Governance Center, Bureau for  
Democracy, Conflict, and Humanitarian  
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International Development

Honorable Clifford Wallace, U.S. Court of  
Appeals for the Ninth Circuit

Mary Catherine Andrews, Director for  
Democracy, Democracy, Human Rights  
and International Operations, National  
Security Council

Quadir Amiryar, Assistant Professor,  
Department of Political Science,  
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Harun Amin, Charge d'Affaires, Embassy  
of Afghanistan

Homeyra Mokhtarzada, Chief of Staff,  
Embassy of Afghanistan

William Loris, International Development  
Law Institute

Paula Newberg, Special Advisor, United  
Nations Foundation

Ross Reid, Senior Advisor, National  
Democratic Institute For International  
Affairs

#### **New York**

Malcolm Smart, Director of Programs,  
Human Rights Watch

Alison Parker, Sandler Fellow, Human  
Rights Watch

John Sifton, Consultant, Human Rights  
Watch

Scott Smith, Political Affairs Officer, Asia  
and Pacific Division, Department of  
Political Affairs, United Nations

Fatemeh Ziai, Office of the Special  
Representative to Secretary General,  
UN

Barnett Rubin, New York University

## SELECTED SOURCES

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- KOFF Peacebuilding Reports, Afghanistan: Reconstruction and Peace-Building in a Regional Framework (January 2001)
- World Bank Approach Paper on Afghanistan (November 2001)
- International Crisis Group, Afghanistan and Central Asia: Priorities for Reconstruction and Development (November 27, 2001)
- Public Int'l Law and Policy Group, Report of Committee of Experts on Nation-Building in Afghanistan (Dec. 10, 2001)
- United States Institute for Peace, Rebuilding Afghanistan: A Framework for Establishing Security and the Rule of Law (December 11, 2001)
- Jeff Fischer, Post-Conflict Peace Operations and Governance in Afghanistan, A Strategy for Peace and Political Intervention (IFES White Paper Dec. 20, 2002)
- Marina Ottoway and Anatol Lieven, "Rebuilding Afghanistan: Fantasy versus Reality" (Carnegie Endowment for Int'l Peace January 12, 2002)
- Program on Humanitarian Policy and Conflict Research Central Asia Policy Brief, "Key Challenges for Recovery in Afghanistan" (Updated January 14, 2002)
- Asian Development Bank, United Nations Development Programme, World Bank, "Afghanistan Preliminary Needs Assessment for Recovery and Reconstruction" (January 2002)
- United Nations Country Team for Afghanistan, Immediate and Transitional Assistance Programme for the Afghan People 2002 (January 2002)
- Alexander Their and Jarat Chopra, "Considerations for Political and Institutional Reconstruction in Afghanistan" (January 2002)
- Sayed Hassan Amin, Law, Reform and Revolution in Afghanistan: Implications for Central Asia and the Islamic World (Glasgow, 1992)
- Mohammed Hashim Kamali, Law in Afghanistan: A Study of Constitutions, Matrimonial Law and the Judiciary (Leiden: Brill, 1985)