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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Technical assistance and capacity-building

## Situation of human rights in Afghanistan, and technical assistance achievements in the field of human rights

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

Submitted pursuant to decision 2/113 and resolution 14/15 of the Human Rights Council, the present report contains a description of the situation of human rights in Afghanistan from 1 January to 30 November 2020, and provides an overview of the work, including technical assistance, conducted by the Human Rights Service of the United Nations Assistance Mission in Afghanistan (UNAMA) in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The report is focused on the five principal areas of work of the Human Rights Service: the protection of civilians in armed conflict; children and armed conflict; the elimination of violence against women and the promotion of women's rights; the prevention of torture and respect for procedural safeguards; and civic space and the integration of human rights into peace and reconciliation processes. The High Commissioner highlights the technical assistance provided by the Human Rights Service and the achievements under these areas.

The report concludes with recommendations addressed to the Government, anti-government elements and the international community.



## I. Introduction

1. Submitted pursuant to decision 2/113 and resolution 14/15 of the Human Rights Council, the present report covers the period between 1 January and 30 November 2020. It was prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA).

2. The report focuses on the five priority areas of work of the Human Rights Service of UNAMA: the protection of civilians in armed conflict; children and armed conflict; the elimination of violence against women and the promotion of women's rights; the prevention of torture and respect for procedural safeguards; and civic space and the integration of human rights into peace and reconciliation processes.

3. During the period under review, the Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide technical and financial support to the UNAMA Human Rights Service.

## II. Context

4. On 29 February, the United States of America and the Taliban signed an agreement for bringing peace to Afghanistan. The initial release of prisoners foreseen in the agreement was completed in September. On the same date, Afghanistan and the United States signed a joint declaration for bringing peace to Afghanistan, and on 12 September, the Afghanistan Peace Negotiations were inaugurated.

5. Civilians continued to bear the brunt of the armed conflict. While UNAMA and OHCHR documented a decrease in conflict-related civilian casualties in comparison with the same period in 2019, the level of civilian harm remained high. There were, however, short respites from violence the week before the signing of the agreement between the United States and the Taliban and during the two 3-day ceasefires during the religious celebrations of Eid al-Fitr and Eid al-Adha. The overall decrease was mainly caused by a drop in civilian casualties from the airstrikes of international military forces and suicide attacks carried out by anti-government elements. This was partly offset by an increase of civilian casualties from Taliban pressure-plate improvised explosive devices and Afghan Air Force airstrikes. The start of the Afghanistan Peace Negotiations has not yet led to a decrease in civilian casualties.

## III. Protection of civilians

6. UNAMA/OHCHR continued to document shocking levels of harm to civilians, with the conflict in Afghanistan remaining among the deadliest in the world. Of major concern is the observation that since the start of the Afghanistan Peace Negotiations until 30 November, harm to civilians continued at a similar level as that documented in the same time period in 2019. Women and children comprised almost half of all civilian casualties in the first 11 months of 2020, with women accounting for 13 per cent of the total and children for 30 per cent. Ground engagements were the leading cause of civilian casualties, followed by suicide and non-suicide improvised explosive devices, targeted killings and airstrikes.

7. From 1 January to 30 November, UNAMA/OHCHR documented 7,850 civilian casualties (2,711 deaths and 5,139 injured). This represented a decrease of 21 per cent compared with the same period in 2019, owing to fewer civilian casualties from international military airstrikes and suicide attacks attributed to the Taliban and the Islamic State in Iraq and the Levant-Khorasan (ISIL-K). UNAMA/OHCHR attributed 61 per cent of these casualties to anti-government elements and 26 per cent to pro-government forces. The remaining 13 per cent of civilian casualties resulted from incidents that could not be attributed to either party, including crossfire between parties to the conflict and explosive remnants of war.

8. UNAMA/OHCHR documented large numbers of civilian casualties during ground engagements between parties to the conflict, especially through the use of indirect fire, such as howitzers, mortars and rockets, in civilian-populated areas. It documented an increase of

civilian casualties from the Taliban's use of pressure-plate improvised explosive devices and targeted killings, and from airstrikes carried out by the Afghan Air Force.

9. UNAMA/OHCHR documented three brief respites from violence leading to significantly fewer civilian casualties, namely the week prior to the signing of the United States-Taliban agreement on 29 February, and the ceasefires during the religious celebrations of Eid al-Fitr and Eid al-Adha. However, in the period from 12 September – the start of the Afghanistan Peace Negotiations – to 30 November, UNAMA/OHCHR documented high levels of civilian casualties that were similar to those seen in the same period in 2019.

10. UNAMA released five public reports on the protection of civilians in 2020. They comprised four periodic reports and a special report issued on 21 June on attacks against the health-care system that were carried out during the global coronavirus disease (COVID-19) pandemic.<sup>1</sup>

11. UNAMA/OHCHR strengthened its systematic monitoring of the impact of the armed conflict on victims by conducting more than 100 interviews. Information taken from those interviews highlights the multilayered effects that the population has to endure because of the armed conflict, including long-term disabilities, psychological and financial harm, and the loss of relatives. The monitoring indicates the gap between the harm caused and the necessary care and attention required to address it, including the lack of acknowledgment of the harm caused, the limited number of investigations, the absence of reparations and the limited availability of affordable medical care.

12. UNAMA continued to provide advice to parties of the conflict to better protect civilians from harm through public and private advocacy. It also continued sharing information on incidents causing civilian harm, with a view to helping parties to better understand the impact of their operations on civilians and to take relevant action. In addition, UNAMA provided recommendations and training on prevention and mitigation measures.

13. The Government continued the implementation of the national policy on civilian casualty prevention and mitigation, with the support of advisors from the North Atlantic Treaty Organization Resolute Support mission, including through the resumption of the activities of the Civilian Casualty Avoidance and Mitigation Board in the fourth quarter of 2020.

14. UNAMA maintained its engagement with the Taliban Commission for the Prevention of Civilian Casualties and Complaints, which continued to look into allegations of civilian casualties caused by the Taliban.

## **A. Anti-government elements**

15. Between 1 January and 30 November, UNAMA/OHCHR attributed 4,800 civilian casualties (1,680 deaths and 3,120 injured) to anti-government elements, representing 61 per cent of the total of civilian casualties, a decrease of 22 per cent compared with 2019.

16. Civilian casualties caused by anti-government elements were attributed to the Taliban (46 per cent), undetermined anti-government elements (9 per cent) and ISIL-K (6 per cent). While UNAMA/OHCHR saw a decrease in the number of civilian casualties attributed to the Taliban and ISIL-K in the first 11 months of 2020, the number of civilian casualties attributed to undetermined anti-government elements increased in the same period.

17. The leading cause of civilian casualties attributed to anti-government elements was the use of improvised explosive devices in suicide and non-suicide attacks, which accounted for 2,611 civilian casualties (765 killed and 1,846 injured), or 33 per cent of all such casualties. Non-suicide improvised explosive devices caused 26 per cent of all civilian casualties, while suicide attacks accounted for 7 per cent of all civilian casualties. UNAMA/OHCHR attributed 955 civilian casualties (238 deaths and 717 injured) resulting from ground

<sup>1</sup> All reports on protection of civilians in Afghanistan are available at: <http://unama.unmissions.org/protection-of-civilians-reports>.

engagements to anti-government elements, accounting for 12 per cent of the total number of civilian casualties.

18. UNAMA/OHCHR documented 1,552 civilian casualties (653 deaths and 899 injured) resulting from the deliberate targeting of civilians by anti-government elements, a decrease of 44 per cent compared with the same period in 2019. UNAMA/OHCHR also continued to document attacks by ISIL-K that targeted the Shia Muslim community, the majority of them being Hazaras, and the Sikh community. In the first 11 months of 2020, UNAMA documented seven cases of sectarian-motivated attacks claimed by ISIL-K that caused at least 247 civilian casualties (87 deaths and 160 injured).

19. UNAMA/OHCHR continued to document indiscriminate and disproportionate attacks by anti-government elements using suicide and non-suicide improvised explosive devices and mass shootings. Such attacks included the 13 July complex attack on the headquarters of the National Directorate of Security, located in the city of Aybak, Samangan Province. The Taliban claimed responsibility for the attack, which resulted in 91 civilian casualties (1 killed and 90 injured). Another attack involved the unclaimed explosion of a vehicle near the Afghan National Police provincial headquarters in the city of Chagcharan, Ghor Province, on 18 October, which caused 188 civilian casualties (15 killed and 173 injured). In addition, ISIL-K claimed responsibility for two attacks at education facilities in Kabul. One of those attacks occurred on 24 October at a pre-university education centre, resulting in at least 77 civilian casualties (25 killed and 52 injured). The second attack occurred at Kabul University on 2 November, and resulted in at least 47 civilian casualties (20 killed and 27 injured). UNAMA/OHCHR also documented an increase of 43 per cent in civilian casualties resulting from victim-activated pressure-plate improvised explosive devices, which are inherently indiscriminate and function as anti-personnel landmines, with the Taliban being responsible for almost all of these civilian casualties.

## **B. Pro-government forces**

20. Between 1 January and 30 November, UNAMA/OHCHR attributed 2,033 civilian casualties (753 deaths and 1,280 injured) to pro-government forces, a decrease of 28 per cent compared with the same period in 2019. Pro-government forces were responsible for 26 per cent of the overall number of civilian casualties, which were attributed to the Afghan national security forces (22 per cent), international military forces (2 per cent), pro-government armed groups (1 per cent) and undetermined or multiple pro-government forces (1 per cent). UNAMA/OHCHR documented fewer civilian casualties resulting from airstrikes by international military forces, and search operations by the National Directorate of Security special forces and the Khost Protection Force. It attributed more civilian casualties to the Afghan National Army, mainly because of an increase of civilian casualties from ground engagements and airstrikes.

21. While the total number of civilian casualties from airstrikes decreased in the first 11 months of 2020 in comparison with the same period in 2019, UNAMA/OHCHR documented an increase in civilian casualties from Afghan Air Force airstrikes, leading to the highest number of civilian casualties from such airstrikes since UNAMA started documenting civilian casualties in 2009. Civilian casualties attributed to airstrikes carried out by international military forces all but ceased after the signing of the agreement between the United States and the Taliban. During the period under review, 617 civilian casualties (301 killed and 316 injured) were caused by airstrikes, amounting to 8 per cent of all civilian casualties. UNAMA/OHCHR attributed 75 per cent of civilian casualties from airstrikes to the Afghan Air Force. For example, on 19 September, an Afghan Air Force airstrike in Khanabad District, Kunduz Province, resulted in 20 civilian casualties (15 killed and 5 injured).

22. UNAMA/OHCHR remains concerned about the use of indirect fire, especially howitzers and mortars, in civilian-populated areas. The use of these kinds of weapons by pro-government forces caused 1,234 civilian casualties (355 killed and 879 injured) in the first 11 months of 2020, amounting to 16 per cent of such casualties. This is a slight increase compared with the same period in 2019. Women and children represented more than 7 out of

every 10 civilian casualties from the use of indirect fire by pro-government forces. UNAMA/OHCHR attributed the vast majority of these casualties to the Afghan National Army. For example, on 29 June, indirect fire used by the Afghan National Army caused 50 civilian casualties (19 killed and 31 injured) at a local bazaar in Sangin District, Helmand Province.

#### IV. Children and armed conflict

23. The United Nations country task force on monitoring and reporting on children and armed conflict, co-chaired by UNAMA/OHCHR and the United Nations Children's Fund, verified 1,021 incidents of killing and maiming of children from 1 January to 30 November 2020, a decrease of 6 per cent compared with the same period in 2019.

24. Anti-government elements were responsible for 42 per cent of child casualties, while 37 per cent were attributed to pro-government forces. Some 15 per cent of child casualties were jointly attributed to anti-government elements and pro-government forces, in situations in which the exact perpetrator could not be determined, and 2 per cent to crossborder shelling by Pakistani military forces. The remaining 4 per cent could not be attributed to any particular party to the conflict.

25. The task force verified 59 incidents affecting education and education-related personnel, including attacks on schools<sup>2</sup> and education-related personnel, incidents of threats, intimidation and harassment, and abduction of education-related personnel. This represents a decrease of 12 per cent compared with 2019, when 67 incidents were verified.<sup>3</sup>

26. The task force attributed 36 incidents affecting education and education-related personnel to anti-government elements and 19 to pro-government forces. In addition, two were jointly attributed to both anti-government elements and pro-government forces, and two to undetermined perpetrators. For example, on 1 May, in the western region, the Taliban planted remote-controlled improvised explosive devices around a girls' primary school, which detonated and destroyed 4 of 14 classrooms. No one was harmed, as the school was not in session, owing to restrictions related to the COVID-19 pandemic.

27. The task force verified 73 incidents affecting health-care facilities and health-related personnel, compared with 72 incidents in the previous reporting period.

28. A total of 56 of those incidents were attributed to anti-government elements, nine to pro-government forces, seven jointly to pro-government forces and anti-government elements, and one to an undetermined perpetrator. For example, on 12 May, three attackers wearing uniforms of Afghan national security forces and armed with AK-47s, hand grenades and tactical vests stormed the Dasht-e-Barchi 100-bed hospital maternity ward in Kabul. They systematically moved from room to room, firing on patients and health-care workers, including new mothers and infants. A total of 23 civilians were killed in the attack, including 3 children and 1 health worker, and 23 were injured, including 3 children. No party claimed responsibility for the attack.

29. The task force verified 31 incidents of recruitment and use of children involving 166 boys, including 120 boys recruited by the Taliban, 7 by pro-government militia, 5 by the Afghan National Police, and 4 by Afghan National Army-Territorial Forces. It received allegations of recruitment and use of an additional 255 boys by parties to the conflict, which are still being verified. Due to sensitivity around the issue and protection concerns, the recruitment and use of children remain extremely underreported.

30. The task force verified 10 incidents of rape and sexual violence against children,<sup>4</sup> involving five girls and nine boys. Of the 10 incidents, 2 were attributed to the Taliban, 3 to

<sup>2</sup> This includes both attacks that directly targeted schools and indiscriminate attacks that incidentally affected schools.

<sup>3</sup> Such incidents had increased in 2019 because many education facilities were designated as polling centres for the presidential elections.

<sup>4</sup> Two of these incidents also involved recruitment and use of children, and thus the number of children and incidents are included in the totals in the previous paragraph.

the Afghan National Police, 1 to a civilian perpetrator,<sup>5</sup> 1 to pro-government militia, 1 to the Afghan National Army-Territorial Forces, 1 to the Afghan National Army, and 1 to the Afghan Local Police. These include one incident of *bacha bazi*, a harmful practice whereby children are exploited by wealthy or powerful men for entertainment, particularly dancing and sexual activities. The task force received allegations of seven incidents of sexual violence against children that are either still being verified or that the task force was unable to verify without putting the children's lives at risk.

31. Progress was made by the Ministry of Interior to halt and prevent underage recruitment and use through the child protection units in recruitment centres of the Afghan National Police. For example, 121 underage applicants (all boys) were prevented from enlisting in the Afghan National Police, compared with 401 boys in 2019.

32. UNAMA/OHCHR continued to raise awareness and train stakeholders on monitoring and reporting methodologies and on child protection in armed conflict, training 30 human rights officers of the National Directorate of Security on the protection of children from recruitment and use and from sexual violence.

33. In November, in compliance with the Government's action plan for the prevention of underage recruitment and use of children and the annexes thereto, on the killing and maiming of and the perpetration of sexual violence against children, the Ministry of Interior endorsed its policy on safeguarding the rights and protection of children. The policy, which includes provisions on the protection of children from recruitment and use and from sexual violence, including the practice of *bacha bazi*, was officially launched on 24 November.

34. UNAMA/OHCHR continued to advocate for a prompt, independent and impartial investigation into the allegations of sexual abuse of boys in schools in the Logar Province. This led to the establishment by the Office of the Attorney General of a committee tasked with investigating the allegations. UNAMA/OHCHR supported the committee with technical advice and guidance on child-friendly approaches within an investigation, and advocated for the mandate of the committee to be expanded to cover other provinces. The committee identified 21 suspects, and nine have been arrested so far. Several of them have been convicted of crimes including harassment, rape and gang rape, and have been sentenced to between 5 and 22 years of imprisonment.<sup>6</sup>

35. The National Security Council, supported by the North Atlantic Treaty Organization Resolute Support mission, drafted a common security sector national policy on the protection of children, which will apply to the Ministry of Interior, the Ministry of Defence and the National Directorate of Security. UNAMA/OHCHR, the Resolute Support mission and non-governmental organizations provided technical advice as the drafting and revision process continued during the reporting period.

## V. Prevention of torture and respect for procedural safeguards

36. On 15 January, the President of Afghanistan issued a decree introducing prison reform. The reform adopts a rehabilitative approach to incarceration and is aimed at transferring the responsibility of prison management to a civilian authority – the Office of Prison Administration – under which all lock-ups, detention facilities and prisons are to be placed. On 25 February, through another presidential decree, the amended law on the management of centres for the deprivation of liberty was adopted. While the outbreak of the COVID-19 pandemic delayed the transfer of responsibilities, the management of provincial prisons and juvenile rehabilitation centres has been gradually shifted from the Ministry of Interior and Ministry of Justice, respectively, to the Office of Prison Administration.

37. In order to prevent the spread of COVID-19, the President of Afghanistan issued three presidential decrees between March and May to release prisoners through pardons and sentence commutations. UNAMA/OHCHR recorded the release of approximately 11,000

<sup>5</sup> This is a case of *bacha bazi*, and such instances are monitored and reported by the country task force on monitoring and reporting, even when the perpetrator is a civilian.

<sup>6</sup> As of November 2020, the task force was trying to verify the arrests.

individuals (excluding children) between April and October, over one quarter of the estimated number of prisoners at the time of the issuance of the first decree. Since June, however, the prison population has increased. UNAMA/OHCHR remains concerned that, as of the end of November, over two thirds of the prisons were operating over their maximum capacity, with several reaching three or four times their normal capacity.

38. In March, following the outbreak of the COVID-19 pandemic, UNAMA/OHCHR shared with relevant authorities a summary of basic human rights principles to enhance protection from COVID-19 for those deprived of their liberty. Having temporarily suspended its regular detention monitoring visits and interviewing of detainees, UNAMA/OHCHR initiated remote monitoring adapted to all provincial prisons, lock-ups and juvenile rehabilitation centres. On a twice-monthly basis, UNAMA/OHCHR communicated through different platforms with almost 150 detention facilities, and advocated with partners for increased attention to detainees, and adequate resources in that regard.

39. In April, UNAMA/OHCHR recorded the release of more than half of the boys and girls estimated to have been held at juvenile rehabilitation centres across the country, which considerably decreased the occupancy rates of the centres. UNAMA/OHCHR remains concerned that children accused or convicted of crimes related to security or terrorism – primarily those associated with anti-government elements – were routinely being excluded from the presidential decrees granting pardons or commutation of sentences. In May, a boy held in the Kabul juvenile rehabilitation centre reportedly killed himself when placed in isolation because he was suspected of having contracted COVID-19.

40. UNAMA/OHCHR observed several challenges faced by defence lawyers in the context of the COVID-19 pandemic. Movement restrictions and limitations placed on visitors to detention facilities made communication with clients difficult, especially detainees. The lack of phones available to detainees hindered communication with lawyers. Confined space in detention facilities prevented adequate social distancing and limited private meetings. Lawyers faced difficulties in obtaining copies of relevant documents, such as presidential decrees and case files, rendering their work more challenging.

41. As part of its work on torture prevention, UNAMA/OHCHR began advocating for the adoption of non-coercive interviewing technique guidelines to be used by law enforcement. UNAMA/OHCHR found that there was no consistent interviewing technique employed by law enforcement agencies. Only the National Directorate of Security teaches and aims to apply a non-coercive interviewing model, known as the PEACE model.<sup>7</sup>

42. UNAMA/OHCHR transmitted to the Working Group on Enforced or Involuntary Disappearances 11 cases that occurred in 2014, 2015, 2016, 2017 and 2019. Of those cases, eight were attributed to the Afghan National Police, one to the National Directorate of Security and two to unidentified actors, and all but one of them occurred in the Kandahar area. Efforts by families to seek information regarding the fate and whereabouts of their loved ones have so far proven unsuccessful. UNAMA/OHCHR advocated with local and central authorities for those authorities to conduct investigations to determine the fate and whereabouts of those who have been disappeared, to inform their families of the results of the investigations and to ensure that those responsible are held accountable.

## VI. Death penalty

43. Available information indicates that no executions were carried out in the reporting period. The number of individuals sentenced to death, including those with sentences confirmed by the Supreme Court, was not available at the time of reporting. UNAMA/OHCHR continued to advocate for the Government to implement a formal moratorium on the death penalty and for it to comply with fair trial guarantees, in accordance with international and national law.

<sup>7</sup> PEACE stands for: planning/preparation, engagement/explanation, account, closure and evaluation.

## **VII. Elimination of violence against women and promotion of women's rights**

### **A. Women's rights**

44. Several legislative developments relevant to the protection and promotion of women's rights occurred in 2020. On 28 June, the Ministry of Justice presented to the Cabinet Legislative Committee a draft family law, which had been under development for a decade. Stakeholders, including civil society and the Afghanistan Independent Human Rights Commission, were given one month to review and provide comments on the draft. The current draft raises serious human rights concerns, including discriminatory treatment in violation of the Convention on the Elimination of All Forms of Discrimination against Women, to which Afghanistan is a party, and of the Constitution. In particular, the draft permits polygamy and provides that children under the age of 18 can be married with the permission of their father or grandfather and a court. In addition, the draft impinges upon the rights of women, including enjoyment of the rights to personal security, freedom of movement, freedom of expression, equal protection under the law, and privacy. As of December, following comments from civil society organizations and Government bodies, the draft law was again under review by the Ministry of Justice.

45. On 14 August, the President of Afghanistan issued a decree establishing a High Council for Women, to be chaired by the Office of the President and the Ministry of Women's Affairs. The purpose of the Council is to promote women's empowerment, in coordination with national and international partners, through policymaking and implementation of the Government's commitments regarding women's rights. The membership, authority and tasks of the Council are yet to be clarified. Civil society actors have raised concerns about the need for another distinct institution to address women's rights, rather than focusing efforts on mainstreaming gender equality in established entities.

46. On 17 September, a presidential decree stipulated that national identification cards should also include the name of the individual's mother, a change long sought by civil society groups, but one that remains optional.

47. On 29 June, the Cabinet obliged all ministries and governmental institutions to share information with the Ministry of Women's Affairs on the number of women in each entity, their positions, and plans for special initiatives for women's empowerment and participation. In July, the President decreed the establishment, in all 34 provinces, of an additional deputy provincial governor post to be reserved for women. The posts are expected to focus on social and economic affairs and the advancement of women's rights.

48. In March, UNAMA/OHCHR convened six events across Afghanistan to mark International Women's Day, including sports activities, and round tables and panel discussions that were focused on (a) raising awareness of the fundamental rights of women and girls, such as non-discrimination and the right to education, and on (b) the legal and institutional infrastructure to eliminate violence against women and girls. At the national level, several Government entities organized celebrations, including the Ministry of Women's Affairs and the Ministry of Interior.

### **B. Elimination of violence against women**

49. From 1 January to 30 November, UNAMA/OHCHR documented 250 cases of alleged criminal offences of violence against women and girls, including beatings (83); murder (60), including 18 cases of so-called honour killings; rape (31), including two cases of attempted rape; harassment and annoyance (25); causing injury or disability (17); forcing into self-immolation or suicide (13); forced marriage (11); forced prostitution (5); and child marriage (5). In at least 41 of the cases, the victims were girls under the age of 18. In 37 cases, the perpetrators were convicted by the courts; in 10 others, the courts acquitted the persons charged. A total of 42 of the cases were withdrawn by the complainant. Many of the cases remained under judicial process as of December. UNAMA/OHCHR also documented 13

cases of conflict-related sexual violence, 7 of which were allegedly perpetrated by pro-government forces while 6 were allegedly perpetrated by the Taliban.

50. The Ministry of Women’s Affairs Legislative Committee continued its review, begun in April 2019, of the 2009 Elimination of Violence against Women Law, which started in April 2019. The Ministry plans to establish protection centres for female survivors of violence. On 7 December, UNAMA/OHCHR released a public report on the judicial response to violence against women and girls, which had been criminalized under the 2009 Elimination of Violence Against Women Law.<sup>8</sup>

51. The Government continued its efforts to combat impunity for sexual harassment and abuse. In July 2019, the Office of the Attorney General established a dedicated Anti-Harassment Directorate, with its first General Director appointed in May 2020. Mandated to prevent and prosecute sexual harassment in public and private organizations, it is staffed largely by men and has processed very few cases so far. The High Commission for the Elimination of Harassment against Women and Children, constituted pursuant to the Anti-Harassment Law, met only once in 2020.

52. Survivors’ access to justice increased with the prosecution offices now operational in all 34 provinces established under the Elimination of Violence against Women Law, at both primary and appellate levels. At the primary level, 32 of these offices are headed by women. Afghan National Police Family Response Units are also operational in all 34 provinces. Of the 442 members of staff in those units, 178 are women. Moreover, Elimination of Violence against Women Law Courts were established in all provinces, at the primary and appellate levels.

53. On 3 September, the Cabinet Legislative Committee proposed an amendment to the Penal Code provision concerning so-called virginity testing, which would require a court order and a woman’s consent for such a “test” to be carried out. The amendment came into force through a presidential decree gazetted on 29 September. The amendment falls far short of the need to prohibit the practice, which has long been called for by the Afghanistan Independent Human Rights Commission, women’s rights organizations and the Committee on the Elimination of Discrimination against Women. On 11 October, the Afghanistan Independent Human Rights Commission released a report on forced gynaecological examinations of women in contact with the law. The report was prepared on the basis of a survey of women in places of detention or women’s protection centres who had been subjected to a gynaecological examination in the previous three years. According to the report, 92.3 per cent of the women had undergone such examinations, without having provided their consent or pursuant to a court order, thereby rendering the examinations to be in violation of the Penal Code. At least 24 per cent of the tests were conducted to “determine” virginity.

54. From January to November, UNAMA/OHCHR conducted 250 advocacy and outreach activities on the elimination of violence against women, and held 35 awareness-raising activities that reached 168 individuals, including 80 women. Due to the outbreak of the COVID-19 pandemic, some awareness-raising activities were put on hold, while others were carried out via radio broadcasts.

## **VIII. Peace and reconciliation, including accountability and transitional justice**

55. UNAMA/OHCHR supported the Government, the Afghanistan Independent Human Rights Commission and civil society in the promotion of inclusive and human rights-compliant peace and reconciliation processes, and of victim-centred justice.

56. In January, in cooperation with a senior mediation adviser from the Department of Political and Peacebuilding Affairs, UNAMA/OHCHR facilitated a three-day workshop for the leadership team of the Afghanistan Independent Human Rights Commission on the role of national human rights institutions in promoting victim-centred justice and inclusive peace

<sup>8</sup> UNAMA and OHCHR, “In search of justice for crimes of violence against women and girls”, December 2020.

processes. Throughout 2020, UNAMA/OHCHR continued to advise the Commission on various aspects related to peace, human rights and victim-centred justice, including the development of sustainable policy options in relevant areas. On 2 June, the Commission published a position paper on the inclusion of victims in the peace process, with proposals and options for the negotiating parties. On 25 June, the Chair of the Commission addressed the Security Council, highlighting the impact of the COVID-19 pandemic on human rights and civilian casualty trends, and stressing the importance of human rights in the peace process and of meaningful victim-centred justice measures. On 12 September, the Commission welcomed the opening of the Afghanistan Peace Negotiations, encouraging the parties to agree on a set of principles, such as inclusivity and victims' rights, to guide the talks.

57. UNAMA/OHCHR raised the awareness of the parties to the conflict on the continuity of international human rights obligations and on victim-centred justice, including victims' rights and inclusion. In January and October, UNAMA/OHCHR and the Embassy of the Netherlands in Afghanistan hosted two meetings of the informal "group of friends" on victim-centred justice, with a view to further coordinating engagement in that area with national actors, including the Afghanistan Independent Human Rights Commission and civil society, and members of the diplomatic community.

58. On 5 March, amending the decision of the Pre-Trial Chamber of 12 April 2019, the International Criminal Court authorized an investigation into alleged war crimes and crimes against humanity committed by the Taliban, and forces of Afghanistan and the United States on Afghan soil since May 2003, and of crimes linked to the conflict that were committed outside Afghanistan since July 2002. On 26 March, the Government requested a deferral of the investigation on the grounds that domestic investigations were taking place into alleged war crimes and crimes against humanity that had occurred in Afghanistan.

59. On 12 November, the Prime Minister of Australia established the Office of the Special Investigator to assess and examine the findings of the Inspector General of the Australian Defence Force Afghanistan Inquiry. The report of the inquiry, published on 19 November, found credible information of 23 incidents that occurred in Afghanistan between 2009 and 2013 in which 39 persons were unlawfully killed by, or at the direction of, members of the Australian Special Operations Task Group, potentially amounting to war crimes.

## **IX. Civic space, including the safety of journalists, media workers and civil society actors**

60. Civil society organizations and the media community expressed concern about draft legislation in areas related to freedoms of expression and association. In particular, a draft law on non-governmental organizations, under consideration by the Government, foresees unnecessary restrictions on associations and disproportionate controls by the Government, including over legal, administrative, financial and operational matters.

61. During the reporting period, UNAMA/OHCHR documented incidents affecting 58 civil society activists, including 10 women, as a result of their work. Eleven were killed, three of them by the Taliban. The other eight cases – including the killing of two staff of the Afghanistan Independent Human Rights Commission in June – could not be attributed. In addition, three were injured: one by the National Directorate of Security, while the other two cases could not be attributed. The remaining 44 cases involved threats or intimidation and ill-treatment, and were attributed to government or anti-government elements.

62. On 19 January, a coalition of 32 civil society organizations launched and handed over to the Government a strategy for the protection of human rights defenders. On 14 August, expressing concern about increased attacks against human rights defenders in 2020, four special procedure mandate holders called upon the Government of Afghanistan to fight impunity for such attacks.<sup>9</sup> On 23 November, while opening the 2020 Afghanistan

<sup>9</sup> OHCHR, "UN experts call on Afghanistan to prevent further killings of human rights defenders", 14 August 2020.

Conference, the United Nations High Commissioner for Human Rights reiterated her call for adequate protection mechanisms for human rights defenders.

63. UNAMA/OHCHR documented incidents affecting 34 journalists and media workers, including two women, and four radio and television stations, as a result of their work. Five of the victims were killed: two by ISIL-K, while the other three cases could not be attributed to a particular party. In addition, nine individuals were injured: seven by ISIL-K, while the other two cases could not be attributed to a particular party. The remaining 20 cases involved threats or intimidation, temporary arrest or deprivation of liberty, and ill-treatment attributed to government, pro-government or anti-government elements. Casualty figures slightly increased compared with 2019, when four journalists and media workers were killed and six were injured.

64. UNAMA/OHCHR supported the Government, the Afghanistan Independent Human Rights Commission and civil society in the promotion of increased democratic space, the protection of human rights defenders, accountability for human rights violations, and the fight against discrimination.

65. In addition to its work and close cooperation on victim-centred justice, UNAMA/OHCHR strengthened its long-standing engagement with the Afghanistan Independent Human Rights Commission on protection of civilians, children and armed conflict, women's rights and detention monitoring. UNAMA/OHCHR and the Commission held 103 coordination meetings in Kabul and the provinces. With the outbreak of the COVID-19 pandemic, the Commission monitored and reported on the Government's response to the pandemic and advocated for better preparedness and response measures, and participated in the Government's national and subnational coordination mechanisms. It published 14 thematic reports on various human rights issues, including protection of civilians, sexual abuse in schools and workplaces, access to education and health (including in the context of COVID-19), the human rights situation of detainees and persons with disabilities, and forced gynaecological examinations.

66. UNAMA/OHCHR also organized 18 capacity-building and outreach events countrywide, involving 507 attendees, of whom 137 were women. They included human rights defenders, journalists, Government officials, representatives from the Afghanistan Independent Human Rights Commission and local community leaders. On 26 October, on the occasion of the seventy-fifth anniversary of the United Nations, UNAMA/OHCHR launched a two-month online training course on key human rights issues for 34 young human rights defenders, including 10 women, who were selected from across the country. It also supported the broadcasting of seven thematic radio programmes across Afghanistan on access to information and the role of civil society in the promotion and protection of human rights. In addition, UNAMA/OHCHR reached out to civil society, including human rights defenders and university students, distributing OHCHR guidelines on human rights in the context of COVID-19 in national languages, 550 copies of books on human rights and relevant Afghan law, and 1,200 human rights calendars.

## **X. Cooperation with United Nations human rights mechanisms**

67. On 10 March, the Committee on the Elimination of Discrimination against Women issued concluding observations on the third periodic report submitted by Afghanistan, and made a number of recommendations across a range of issues. On 5 June, the Committee against Torture adopted the list of issues prior to submission of the third periodic report of Afghanistan. On 14 August, Afghanistan submitted its reply to the Committee on the Rights of the Child's list of issues in relation to its combined second to fifth periodic reports.

68. The Government has yet to make progress on the establishment of a national mechanism for reporting and follow-up to facilitate the implementation of recommendations made by the treaty bodies, the special procedures of the Human Rights Council and in the context of the universal periodic review.

## **XI. Conclusions**

69. Despite a reduction of 21 per cent in civilian casualties, Afghanistan remained one of the deadliest places to live in 2020. While hopes for a ceasefire were raised in the context of the Afghanistan Peace Negotiations and by the Secretary General's call for a global humanitarian ceasefire to focus on the fight against the COVID-19 pandemic, the number of civilian casualties remained at similar levels from the beginning of the peace talks, on 12 September, to 30 November. The "reduction in violence" week (22–28 February) and the two 3-day ceasefires related to the religious celebrations of Eid al-Fitr and Eid al-Adha demonstrated that the parties to the conflict have the ability to reduce fighting when there is political will to do so. In the absence of an end to the fighting, parties to the conflict can and must do more to protect civilians from harm by urgently reviewing practices and strengthening mitigation measures.

70. New thinking and concrete actions aimed at safeguarding civilian life will not only save thousands of families from suffering and grief, but it can also lessen recriminations and bolster confidence and trust among peace negotiators. Parties to the conflict need to acknowledge the harm caused to victims, and they also need to address the rights of victims to truth, justice, compensation and reparation for the harm caused.

71. Women and girls continue to face challenges in accessing justice for crimes of violence and, more broadly, in enjoying their fundamental rights. Efforts must continue to ensure that the legislative framework protects and promotes women's rights, rather than entrenching discriminatory treatment, and that relevant legislation is fully implemented.

72. The prison reform launched at the beginning of 2020, which is focused on a rehabilitative approach, is a positive step. UNAMA/OHCHR also noted the efforts to release a large number of individuals and children from prisons to prevent the spread of COVID-19. Overcrowding in the prison system remains of concern, however, and restrictions related to the prevention of the spread of COVID-19 have exacerbated problems, such as those affecting the interaction between lawyers and their clients.

73. UNAMA/OHCHR notes that interrogation skills used by law enforcement agencies might not be the most suitable in ensuring the prevention of torture and ill-treatment. It considers that the adoption of a non-coercive interviewing model across different law enforcement agencies would be extremely important in this respect.

74. Civil society actors – including human rights defenders, journalists and media workers, and staff of the Afghanistan Independent Human Rights Commission – continue to be increasingly targeted and face threats, intimidation and harassment. The Commission plays a crucial role in the promotion and protection of human rights during and after the negotiation of a peace agreement, and in developing victim-centred justice options that can sustain peace.

75. Victims, women and minorities actively advocate for their voice to be heard during the Afghanistan Peace Negotiations. The continuation of international human rights treaty body obligations is the responsibility of the Government. Such an acknowledgement will be important for the continued efforts to ensure fully the promotion and protection of human rights for all who live in Afghanistan.

## **XII. Recommendations**

76. The United Nations High Commissioner for Human Rights recommends that the parties to the conflict urgently agree to a comprehensive cessation of hostilities and achieve sustainable and inclusive peace, through a process that ensures the full involvement of women, young people, victims and minority groups. The High Commissioner recommends that other States and international and regional organizations promote and support such efforts.

77. The United Nations High Commissioner for Human Rights recommends that the Government of Afghanistan:

### Protection of civilians

(a) Implement the national policy on civilian casualty prevention and mitigation, strengthen measures to investigate all incidents of conflict-related harm to civilians in order to ensure accountability, and further strengthen the efforts of the National Security Council and the Afghan national security forces, especially the Afghan National Army, to systematically document harm to civilians from conflict-related incidents;

(b) Cease the use of indirect fire, such as howitzers and mortars, and other explosives with wide area effects from and into civilian-populated areas;

(c) Continue to develop and improve tactical directives, rules of engagement and other procedures to prevent and mitigate civilian harm in relation to the use of armed aircraft;

(d) Adopt a plan of action to meet the State's obligations under the Protocol on Explosive Remnants of War (Protocol V) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

### Women's rights and elimination of violence against women

(e) Increase efforts to prevent, punish and eradicate all forms of violence against women through the adoption and implementation of legal and policy frameworks compliant with international human rights standards, strengthen the capacity of the criminal justice system to ensure accountability, and conduct countrywide campaigns to raise women's awareness of the remedies available in the event of violence;

(f) Guarantee that women and girls who are victims of violence are provided with immediate access to effective remedies, shelter, legal assistance and reparation, including compensation;

(g) Provide adequate funding from the regular State budget for accessible shelters and women's protection centres across the country;

(h) Implement without delay the recommendations of the Committee on the Elimination of Discrimination against Women from its recent review of Afghanistan;

(i) Ensure that current legislation, notably the Penal Code, and new legislation, such as the draft family law, are not discriminatory towards women and meet international human rights standards;

### Children and armed conflict

(j) Adopt a standardized referral system for the reintegration of children who have been separated from parties to the conflict, released from detention and/or rejected from recruitment centres through the child protection units of the Afghan National Police;

(k) Adopt in the parliament the Law on the Protection of Child Rights of 2019, which criminalizes child recruitment, the use of children and the practice of *bacha bazi*, and establish effective investigation and disciplinary mechanisms for commanding and recruitment officers found responsible for child recruitment and use;

(l) Consider children recruited by armed groups foremost as victims, prioritize their rehabilitation and consider decentralizing jurisdictions in cases of children charged with security- or terrorism-related offences so that they may remain closer to their families and be tried near to their areas of origin, and ensure full protection of the rights of children detained on allegations of national security-related charges, in line with national and international juvenile justice standards;

(m) Ensure the implementation of relevant provisions of the revised Penal Code criminalizing recruitment and use of children by parties to the conflict and the practice of *bacha bazi*, with a focus on accountability for perpetrators through the

**prompt, effective and thorough investigation of all allegations and the prosecution of suspects, including members of the Afghan national security forces;**

**Prevention of torture and respect for procedural safeguards**

**(n) Enforce laws prohibiting torture and other forms of ill-treatment, ensure that the procedural and other legal safeguards required by national and international law to prevent torture and ill-treatment are upheld by all national authorities, including access to lawyers at the time of arrest, and also ensure that the judiciary systematically investigates allegations of torture, even in the absence of medical records, and that coerced confessions are not admitted as evidence in court proceedings;**

**(o) End the practice of incommunicado detention, and enforce national laws requiring arresting authorities to inform the families of persons deprived of liberty about their whereabouts;**

**(p) Ensure that places of detention enable persons deprived of liberty to have timely access to counsel, including by installing phones to contact lawyers and providing space where private and safe communication with lawyers can take place;**

**(q) Issue policy guidelines for the adoption of a non-coercive interviewing model to be applicable to all law enforcement agencies;**

**(r) Amend annex I of the Criminal Procedure Code to decentralize jurisdiction over security- and terrorism-related crimes, especially with regard to cases involving children;**

**(s) Conduct impartial, thorough and transparent investigations on cases of enforced disappearances to determine the fate and whereabouts of those disappeared, promptly inform their families of the results of the investigations and ensure that those who are responsible are held accountable;**

**(t) Accede to the International Convention for the Protection of All Persons from Enforced Disappearance;**

**(u) Establish, in consultation with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a national preventive mechanism for the prevention of torture;**

**(v) Establish a de jure moratorium on the death penalty, and respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular article 6 of the International Covenant on Civil and Political Rights and the minimum standards set out in the safeguards guaranteeing protection of the rights of those facing the death penalty;<sup>10</sup>**

**(w) Identify creative, effective and meaningful ways to include the voice of victims, women, media and civil society from across the country in the ongoing peace process, in order to ensure a just and sustainable peace;**

**(x) Ensure that victims of the conflict, their families and representatives can safely advocate for accountability for perpetrators of war crimes and crimes against humanity and can have access to effective remedies, including gender-sensitive and inclusive reparations;**

**(y) Implement a robust vetting process to prevent members of armed groups involved in serious crimes, such as violations of international humanitarian law and international human rights law, from being recruited by security or Government institutions as part of any peace settlement, while ensuring that no blanket amnesty or immunity is granted, and that victims' rights are respected;**

**(z) Ensure that impunity for violations committed against journalists and civil society actors ends, that all such violations are investigated promptly and thoroughly and that perpetrators are brought to justice; ensure that journalists and civil society actors enjoy their legitimate rights to freedom of expression and have access**

<sup>10</sup> Economic and Social Council resolution 1984/50, annex.

to information, without fear of reprisal or attack; protect civic space, including by refraining from adopting restrictive laws on freedom of association and freedom of expression; and facilitate increased engagement of civil society actors in peace and reconciliation processes;

(aa) Ensure the ability of the Afghanistan Independent Human Rights Commission to make unannounced visits to all places of detention, provide a sustainable budget for the Commission and amend the enabling law to ensure that its commissioners can only be reappointed once.

78. The High Commissioner recommends that international military forces support the Government of Afghanistan in implementing the national policy on civilian casualty prevention and mitigation through the continued provision of training, resources and related support to the Afghan national security forces at the policy, operational and tactical levels, in particular to put in place mitigation measures to prevent harm to civilians from indirect fire, explosive weapons with wide area effects and armed aircraft.

79. The High Commissioner recommends that anti-government elements:

(a) Cease the deliberate targeting of civilians, civilian locations and places of worship, education and culture, in recognition of their protected status guaranteed under international humanitarian law, and apply a definition of “civilian” consistent with international humanitarian law;

(b) Cease indiscriminate attacks against members of religious minorities and the justification of such attacks using a language of hatred;

(c) Strengthen the work of the Taliban Commission for the Prevention of Civilian Casualties and Complaints, and increase the Commission’s focus on preventing civilian casualties, in addition to investigating incidents, including by providing training for fighters on international humanitarian law;

(d) Take measures to implement directives prohibiting the recruitment and use of children, and ensure accountability for commanders who recruit and use children for military purposes;

(e) Issue statements recognizing the important role of civil society actors, including human rights defenders and journalists, and their right to freedom of expression and critical opinion, and systematically denounce attacks against the media and civil society, acknowledging and respecting their civilian status;

(f) Cease the use of improvised explosive devices in all areas frequented by civilians, and the use of illegal pressure-plate improvised explosive devices and of indirect fire, such as mortars and rockets, from and into civilian-populated areas, and respect at all times the civilian status of humanitarian deminers;

(g) Uphold statements by national leaders regarding the human rights of women and girls in areas under Taliban influence, in particular by ceasing attacks and threats against girls’ education, teachers and the education sector;

(h) Immediately cease torture and ill-treatment, and ensure humane conditions of detention, including adequate access to food, water and sanitation.

80. The High Commissioner recommends that all parties to the conflict:

(a) Take measures to prevent and mitigate civilian casualties, including child casualties, in compliance with their obligations under international human rights and humanitarian law, ensure accountability for perpetrators, protect health-care facilities and personnel from attack, and facilitate humanitarian access, not least in the context of the COVID-19 pandemic;

(b) Guarantee the protection of civic space and civil society actors, including journalists, media workers and human rights defenders, as civilians under international humanitarian law, and respect their right to monitor and report safely and freely on the armed conflict, without fear of attack or reprisal for their work.

81. The High Commissioner recommends that the international community:

- (a) **Encourage the Government to maintain the closest possible cooperation with the International Criminal Court;**
  - (b) **Support the Afghan national security forces in their efforts to prevent civilian casualties and to protect civilians from conflict-related violence;**
  - (c) **Support the Government in the protection of women and girls from violence, including by providing the resources necessary for psychosocial and legal aid services for survivors of violence;**
  - (d) **Advocate with parties to the conflict for women's effective and meaningful participation in informal and formal peace negotiations and the protection of their rights through future peace agreements, promote just and inclusive peace processes and encourage active participation by civil society in peace and reconciliation processes;**
  - (e) **Ensure that the rights of victims and their families, and of witnesses, are respected and protected in peace and reconciliation processes and settlements;**
  - (f) **Assist the Government, including through resource mobilization, to fully implement its commitments under the plan of action for the prevention of underage recruitment, and ensure active cooperation with, and support for, the country task force on monitoring and reporting.**
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