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Rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, Christof Heyns

Additif

Suite donnée aux recommandations faites à l'Afghanistan* **

Résumé

Le présent rapport analyse les progrès accomplis par l'Afghanistan dans la mise en œuvre des recommandations formulées par le précédent Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, à la suite de sa visite dans le pays du 4 au 15 mai 2008 (A/HRC/11/2/Add.4). Dans ce rapport, le Rapporteur spécial avait fait référence aux nombreux meurtres perpétrés dans le cadre du conflit armé. Il estimait que beaucoup de ces meurtres auraient pu être évités, et avait fait des recommandations en vue de limiter les pertes en vies humaines parmi les civils, quelles qu'en aient été les circonstances et quels qu'en aient été les responsables. Il avait également formulé des recommandations concernant l'attitude des forces militaires internationales face aux pertes civiles, l'indemnisation des victimes, la Police nationale afghane, le système de justice pénale, la justice de transition et la conservation des preuves de crimes passés. Dans son rapport, le Rapporteur spécial avait certes centré son attention sur les exécutions extrajudiciaires commises dans le contexte du conflit armé, mais il s'était également penché sur la question des causes indépendantes des exécutions illégales ancrées dans les pratiques de la police et de la justice pénale.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé et il est distribué dans la langue originale seulement. L'appendice joint à l'annexe est distribué tel qu'il a été reçu.

** Soumission tardive.

Le Rapporteur spécial invite le Gouvernement afghan à s'engager plus activement dans le suivi des recommandations formulées par le précédent titulaire du mandat pour améliorer la situation des droits de l'homme et réduire le nombre inacceptable de pertes civiles imputables au conflit armé, et regrette profondément qu'aucune mesure concrète n'ait été prise pour donner suite à de nombreuses recommandations. Les exécutions extrajudiciaires restent trop fréquentes, et le nombre élevé des meurtres provoque une hécatombe inacceptable. Le conflit armé continue à faire des ravages dans le pays et sa population, entraînant toujours plus de violence et de morts.

Annexe

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Follow-up to country recommendations: Afghanistan

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I. Methodology

1. In its resolution 8/3, the Human Rights Council urged States to, inter alia, cooperate with and assist the Special Rapporteur on extrajudicial, summary or arbitrary executions in the performance of his task, supply all necessary information requested by him and ensure appropriate follow-up to the recommendations and conclusions of the Special Rapporteur, including by providing information to the Special Rapporteur on the actions taken on those recommendations.
2. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, concurs with the previous mandate holder on the importance of follow-up reports as a critical component of country visits to investigate allegations of violations of the right to life, which is one of his principal working methods. Country visits are an essential means to obtain direct and first-hand information on human rights violations. They allow for direct observation of the human rights situation and facilitate an intensive dialogue with all relevant interlocutors in the country concerned. The main purpose of country visits is to assess the actual situation in the country concerned, including the examination of relevant institutional, legal, judicial and administrative aspects, and to make recommendations thereon. Country visits by mandate holders provide an opportunity to raise awareness at the national, regional and international levels of the specific problems under consideration. This is done through, inter alia, meetings, briefings, press coverage of the visit and dissemination of the report.
3. In accordance with established practice,¹ the present follow-up report concerns the recommendations made by the previous mandate holder on his visit to Afghanistan (A/HRC/11/2/Add.4) and was prepared on the basis of all available information.
4. The Special Rapporteur requested information from the Government and from other actors on the steps that had been taken to implement the recommendations formulated following the country visit. Information on the non-implementation of recommendations was also sought. In addition, information was sought on the current situation concerning extrajudicial executions in the country, and particularly on whether and how the situation had improved, deteriorated or remained static.
5. The Special Rapporteur regrets the fact that the Government of Afghanistan did not provide information on progress made. The Special Rapporteur is especially grateful to the United Nations Assistance Mission in Afghanistan (UNAMA) as well as to all stakeholders that provided information for the preparation of the present report.

II. Introduction

6. The previous mandate holder visited Afghanistan from 4 to 15 May 2008. In his report, the Special Rapporteur described the conflict in Afghanistan, referred to in legal terms as a non-international armed conflict that involved the Government, supported by

¹ In order to assess the extent to which States had implemented recommendations, in 2006, the previous mandate holder initiated follow-up reports on country visits. The first follow-up report (E/CN.4/2006/53/Add.2) concerned recommendations made by the previous mandate holder, Asma Jahangir, on her visits to Brazil, Honduras, Jamaica and the Sudan. Subsequent follow-up reports were issued by the previous mandate holder, Philip Alston, in 2008, on missions conducted to Sri Lanka and Nigeria (A/HRC/8/3/Add.3); in 2009, on visits to Guatemala (A/HRC/11/2/Add.7) and the Philippines (A/HRC/11/2/Add.8); and in 2010, on visits to the Central African Republic (A/HRC/14/24/Add.5) and Brazil (A/HRC/14/24/Add.4).

international military forces,² and various armed groups, widely referred to as “the Taliban”³ and sometimes as “anti-Government elements”.

7. In his mission report, the previous mandate holder highlighted widespread killings within the context of the armed conflict, and made recommendations aimed at reducing the number of civilians killed. He held the view that many of these killings were avoidable, and made recommendations directed at reducing civilian casualties, however or by whomever they were caused. He also made recommendations regarding responses by the international military forces to civilian casualties, the compensation of victims, the Afghan National Police, the criminal justice system, transitional justice and the preservation of evidence of past crimes. While extrajudicial executions committed in the context of the armed conflict were the primary focus of the report, independent causes of unlawful killings rooted in the systems of policing and criminal justice were also addressed.

8. Afghanistan continues to experience a non-international armed conflict with the same major actors across the majority of its territory. Extrajudicial, summary or arbitrary executions appear to remain widespread, and in unacceptably high numbers. While some progress has been made, such as the adoption of non-binding guidelines on civilian compensation for all troop-contributing nations in Afghanistan by the North Atlantic Council in June 2010, the Special Rapporteur deeply regrets the fact that no concrete action has been taken on many recommendations regarding threats to the right to life, killings of civilians as “collateral damage” and other extrajudicial, summary or arbitrary executions. The Special Rapporteur also regrets the fact that the Government of Afghanistan did not provide a response to his request of information on the implementation of recommendations made by the previous mandate holder in his mission report. He invites the Government, together with international military forces and troop-contributing countries, to engage more actively in following up on the recommendations made to improve the human rights situation and take all necessary steps to prevent extrajudicial, summary and arbitrary executions, within and outside the context of the armed conflict.

III. Conflict-related killings

9. In his mission report, the Special Rapporteur held the view that efforts to protect the civilian population should be strengthened. He reported that, in conflict areas, Afghan civilians experienced violence and pressure from the insurgents, the Government forces and international military forces, while expatriates were targeted largely by insurgents regardless of their individual conduct, but were generally protected or at least left alone by the Government and international forces. He also reported that indiscriminate killings of the civilian population were usually regarded as “collateral damage” or resulting from attacks carried out on the basis of false information (for example, identifying the civilian population as combatants or insurgents).

10. Developments in 2010 and in the first trimester of 2011 suggest that the situation has not substantially improved since August 2009, which saw the release of information indicating that the impact of the armed conflict, which continually intensified and affected

² The Government’s forces include the Afghan National Army, the Afghan National Police and the National Directorate of Security. The international military forces are divided into the International Security Assistance Force and Operation Enduring Freedom. See A/HRC/11/2/Add.4, para. 1.

³ While acknowledging that the relationships and affiliations between the wide range of armed opposition groups are not always clear, the Special Rapporteur will refer to them collectively as “the Taliban”, as this is the expression commonly used by locals and foreigners alike as well as by the previous mandate holder in his mission report.

more areas of the country,⁴ remained a major concern. A survey carried out by the International Committee of the Red Cross published in June 2009 indicated that 96 per cent of all Afghans had been directly or indirectly affected by the armed conflict (including both immediate and wider consequences);⁵ 45 per cent had seen a family member killed;⁶ and 35 per cent have been wounded as a result of the armed conflict.⁷

11. In the report, the Special Rapporteur will analyse issues related to adopting a civilian-centric perspective, military operations, transparency and accountability in international force operations, compensation for victims and influencing the Taliban, all of which were also addressed by the previous mandate holder in his mission report.

A. Adopting a civilian-centric perspective

12. In his mission report, the Special Rapporteur insisted on the importance of adopting a civilian-centric perspective, which implied a change in the conduct of all parties to the conflict in order to reduce the insecurity posed by the armed conflict to the civilian population.⁸

13. In May 2010, the Taliban issued an updated *Laiha*, a code of conduct and regulations for its members, containing a provision calling on fighters to “deal gently with civilians”. The provision is reportedly similar to previous provisions contained in former versions of the *Laiha*. However, no information was available to the Special Rapporteur on concerted efforts by the Taliban to follow their recently adopted code of conduct and to adhere to international humanitarian law standards. In their 2010 report, the Afghanistan Independent Human Rights Commission and the UNAMA Human Rights Unit highlighted that they had not observed any concerted effort by the Taliban to implement these orders or to take action against those commanders or members who disobeyed them.⁹

14. In August 2010, the NATO International Security Assistance Force (ISAF) Commander adopted an updated tactical directive,¹⁰ which clarified and reaffirmed “population-centric counterinsurgency principles”.¹¹ However, no information was made available to the Special Rapporteur on substantial changes made in the procedures applied on the ground for ensuring that strikes targeting Taliban fighters were based on reliable information and did not cause unnecessary suffering and damage to the civilian population. The Special Rapporteur reiterates his recommendation that the international military forces

⁴ Ipsos and the International Committee of the Red Cross (ICRC), *Our World. Views from the Field. Afghanistan: opinion survey 2009*, part 2, August 2009, p. 7. Available from www.icrc.org/eng/assets/files/other/our_world_-_views_from_afghanistan_-_part_2_bkmrk.pdf.

⁵ Ipsos and ICRC, *Our World. Views from the Field. Summary report: Afghanistan, Colombia, Democratic Republic of the Congo, Georgia, Haiti, Lebanon, Liberia and the Philippines. Opinion survey 2009*, part 1, August 2009, p. 31. Available from www.icrc.org/eng/assets/files/other/our_world_-_views_from_countries_-_summary_report_part1-bkmrk.pdf.

⁶ Ibid., p. 3.

⁷ Ibid., p. 53.

⁸ A/HRC/11/2/Add.4, paras. 2-4.

⁹ See United Nations Assistance Mission in Afghanistan (UNAMA) and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010. Protection of Civilians in Armed Conflict*, Kabul, Afghanistan, March 2011, p. iv. Available from <http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf>.

¹⁰ “ISAF commander issues updated tactical directive”, news release, ISAF Public Affairs Office, 2010.

¹¹ The term “population-centric counterinsurgency” (“COIN”) is frequently used in the defence establishment and the Army of the United States of America to refer to a set of principles contained in the Field Manual on Counterinsurgency (Field Manual (FM) 3-24). See, inter alia, Gian P. Gentile, “Time for the deconstruction of Field Manual 3-24”, *Joint Force Quarterly*, No. 58 (third quarter 2010). Available from www.ndu.edu/press/lib/images/jfq-58/JFQ58_116-117_Deconstruction.pdf.

redouble their efforts to adopt a civilian-centric perspective in the conduct of operations with a view to comply with human rights law and, when applicable, with international humanitarian law standards.

15. In the light of the foregoing, the Special Rapporteur remains very concerned about indiscriminate killings and the need to take further steps to ensure the protection of the civilian population. He calls upon all parties to take further steps to verify the reliability of the information used to launch attacks. He deeply regrets that the use of unreliable information by the international military forces render civilians vulnerable to attack and push individuals pursuing personal grudges into opportunistic participation in the armed conflict. In the Special Rapporteur's view, adopting a civilian-centred perspective on the ground continues to be of paramount importance in Afghanistan.

B. Military operations

16. In his mission report, the previous mandate holder referred to military tactics employed by each side that could lead directly to civilian deaths; the behaviours or methods of warfare adopted by one side that could affect the behaviour of the other side, and exacerbate civilian killings; and the competition for civilian support.¹² Information released in 2009 following the publication of the mission report indicated that military operations by international forces involved aerial bombardments and night raid operations in the south, west and east; fighting between armed groups and national and international forces took place regularly in more than half of Afghani territory, and even provinces not directly affected by the fighting endured roadside bombings, targeted killings, suicide bombings and deliberate intimidation of civilians.¹³

1. Civilian casualties

17. Information received suggested that both Afghan and international (including the United Nations) civilian casualties and violent attacks against the civilian population increased significantly in 2010.¹⁴ The number of civilians assassinated and executed surged by more than 95 per cent compared with 2009, with more than half occurring in the south, where more than 100 Afghan civilians were killed, including teachers, nurses, doctors, tribal elders, community leaders, Government officials, other civilians (including children) and civilians working for international military forces and international organizations.¹⁵ The spread of the conflict to more stable provinces in the north-west and the west has resulted in a further reduction of humanitarian space as well as resultant loss of livelihood, destruction of property and personal assets of civilians.¹⁶

18. The safety and security of both civilians and humanitarian aid workers remains a high concern in Afghanistan. Public information and data trends based on information gathered by UNAMA and the Afghanistan Independent Human Rights Commission indicate that, between January and June 2010 civilian casualties (deaths and injuries) increased by 31 per cent compared to the same period in 2009. The number of civilians

¹² See A/HRC/11/2/Add.4, paras. 4-43.

¹³ See Ipsos and ICRC, *Our World. Views from the Field* (see footnote 5), p. 13.

¹⁴ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan: annual report 2010* (see footnote 9).

¹⁵ United Nations Office for the Coordination of Humanitarian Affairs, *Afghanistan. 2011 Consolidated Appeal*, p. 36. Available from http://reliefweb.int/sites/reliefweb.int/files/resources/C50A72831232EC19852577EE007A56CF-Full_Report.pdf.

¹⁶ Ibid.

assassinated and executed surged by more than 95 per cent as compared to 2009 with more than half occurring in the south, killing more than 100 Afghan civilians.¹⁷

19. From 1 January 2009 to 31 December 2009, the UNAMA Human Rights Unit recorded a total of 2,412 civilian casualties, which represented an increase of 14 per cent over the same period in 2008. Furthermore, in the first six months of 2010, the number of civilian casualties (both deaths and injuries) increased by 31 per cent over the same period in 2009.¹⁸ According to the United Nations Department of Safety and Security, security incidents that affected the United Nations directly were 133 per cent higher in September 2010 than for the same period in 2009. Attacks predominantly occurred in or near anti-Government strongholds in the southern, northern and eastern regions of the country. However, several attacks showed that no area in Afghanistan was immune to violence: examples include the 28 October 2009 attack on the Baktar guesthouse in Kabul on 28 October 2009, the assault on the UNAMA compound in Herat Province on 26 October 2010 and the attack on United Nations personnel and others in Mazar-i-Sharif city in north-west Afghanistan on 1 April 2011. Other examples in the past two years include the targeted killing of 10 local and international workers of an organization in Badakhshan province, formerly considered a more peaceful part of Afghanistan¹⁹ and the recent attack on one of the main supermarkets in Kabul frequented largely by the expatriate community, but also by the upwardly mobile Afghan civilian population, including the former Commissioner for Children of the Afghanistan Independent Human Rights Commission, who was killed alongside her husband (a medical doctor) and all four of their children in the attack.²⁰

20. The conflict appears to be intensifying and spreading, as is evident from the trend analysis indicating that, in 2010, violent attacks affecting civilians and the aid community spread to areas that were traditionally relatively calm, resulting in the loss of livelihood, destruction of property and personal assets of civilians. In their report for 2010, the UNAMA Human Rights Unit and the Afghanistan Independent Human Rights Commission documented a total of 2,777 civilians killed in the conflict in 2010, reflecting an increase of 15 per cent over the number of civilian casualties in 2009.²¹

21. According to UNAMA and the Afghanistan Independent Human Rights Commission, the most alarming trend in 2010 was the huge number of civilians assassinated by anti-Government elements.²² Of the total number of 2,777 civilians killed in 2010, 2,080 deaths, some 75 per cent of total civilian deaths, were attributed to anti-Government elements, up 28 per cent from 2009. A total of 462 civilians were killed, an increase of more than 105 per cent over the figures for 2009. Half of all civilian killings were reported in southern Afghanistan. National security and international military forces (pro-Government forces) were linked to 440 deaths or 16 per cent of all civilian deaths, a reduction of 26 per cent compared with 2009. Aerial attacks claimed the largest percentage of civilian deaths caused by pro-Government forces in 2010, causing 171 deaths (39 per

¹⁷ Ibid., p. 8.

¹⁸ Ibid., p. 7.

¹⁹ AsiaNews.it, "Badakhshan, Taliban kill eight people for being 'Christian missionaries'", 8 July 2010. Available from www.asianews.it/news-en/Badakhshan,-Taliban-kill-eight-people-for-being-%E2%80%9CChristian-missionaries%E2%80%9D-19149.html.

²⁰ BBC News, South Asia, "Kabul Finest supermarket hit by deadly bomb attack", 28 January 2011. Available from www.bbc.co.uk/news/world-south-asia-12307463.

²¹ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. iv.

²² Anti-Government elements include armed opposition groups and individuals of diverse backgrounds, motivations and command structures, characterized as the Taliban, the Haqqani network, Hezb-e-Islami and al-Qaida affiliates, such as the Islamic Movement of Uzbekistan, the Islamic Jihad Union, Lashkari Tayyiba and Jaysh Muhammad engaged in hostilities with the Government of Afghanistan and its international military partners. See *ibid.*, footnote 7.

cent of the total number of civilian deaths attributed to pro-Government forces in 2010). Notably, there was a 52 per cent decline in civilian deaths from air attacks compared with 2009. Some 9 per cent of civilian deaths in 2010 could not be attributed to any party to the conflict.²³

22. Although overall civilian deaths from air attacks by pro-Government forces decreased in 2010 from 2009, the number of Afghan civilians killed in air strikes increased in 2010: in the first half of the year, 69 civilians were killed in air attacks; in the second half, 102 civilians died from air strikes – a 48 per cent increase. This is linked to significant increases in the use of air assets in combat in the latter half of 2010.²⁴

23. The number of civilian casualties attributed to pro-Government forces reportedly dropped in 2010, but continue to be unacceptably high. The decrease in casualties was reportedly primarily as the result of new tactical directives, standard operating procedures and reinforced counter-insurgency guidelines by ISAF. Nonetheless, it appears that the tactical directives are not being fully and consistently implemented at all levels, and that procedures on the ground have not changed.

24. In the light of the above, continued efforts should be made to avoid civilian casualties, the number of which continue to be unacceptably high. The Special Rapporteur wishes to recall that, under international humanitarian law, all parties to a conflict are obliged to comply with article 3 common to the four Geneva Conventions. He also recalls that the indiscriminate killing of civilians amounts to a grave breach of international humanitarian law and should therefore be investigated, prosecuted and sanctioned under national and international criminal law.

2. Raids

25. In his mission report, the previous mandate holder highlighted the fact that night-time raids on housing compounds were routinely used by the international military forces as a strategy to capture individuals suspected of links to the Taliban. He described the two common methods used for such raids,²⁵ and expressed concern at the potentially devastating consequences of their use, particularly because Afghans commonly sleep with guns owing to their fear of intruders and local attackers. He also expressed deep concern over the fact that no Government or military command appeared ready to acknowledge responsibility for night raids. He regretted that, in the name of restoring rule of law, heavily-armed internationals and their Afghan counterparts were wandering around conducting raids that too often resulted in killings for which no one was held accountable.²⁶

26. In February 2011, it was reported that, in a period of three months, night raids had resulted in approximately 600 people being killed; it was also alleged that shots were fired in 80 per cent of recent raids.²⁷ The high number of deaths in this regard is disconcerting. The Special Rapporteur thus reiterates the words of his predecessor, that “raids must be conducted in accordance with the stringent safeguards required by international human rights and humanitarian law”.²⁸

²³ Ibid, p. i.

²⁴ Ibid., footnote 8.

²⁵ A/HRC/11/2/Add.4, para. 10.

²⁶ Ibid., para. 13.

²⁷ See Emma Graham-Harrison (Reuters), “NATO’s Afghan night raids come with high civilian cost”, 24 February 2011, available from www.reuters.com/article/2011/02/24/us-afghanistan-raids-idUSTRE71N15U20110224; and “Factbox: Night-time raids in Afghanistan”, 24 February 2011, available from www.reuters.com/article/2011/02/24/us-afghanistan-raids-factbox-idUSTRE71N17320110224.

²⁸ A/HRC/11/2/Add.4, para. 11.

27. On 7 December 2010, the ISAF Commander issued a night raids tactical directive, superseding a previous tactical directive adopted on 23 January 2010. Few changes were introduced. While the previous directive mentioned that collected data supported the view that night raids reduced the potential for civilian casualties, the revised one underlined the fact that night operations could actually reduce the number of civilian casualties. Information received suggested, however, that the two documents were virtually identical and that the fundamental rules for the conduct of night raids remain very similar.²⁹

28. The Special Rapporteur is concerned about the classified nature of the night raid tactical directive as a “high security” document. It was indeed difficult for UNAMA and the Afghanistan Independent Human Rights Commission to provide timely advice in order to improve night raid procedures with the aim of protecting civilians and further minimizing civilian casualties. In this regard, the Special Rapporteur strongly advocates for a change in the classification of the directive so that it may be accessible to UNAMA, which would thus be able to comment on or even to contribute to its provisions. In the Special Rapporteur’s view, such reclassification would facilitate efforts to minimize the negative effects of night raid operations and would be beneficial for upholding the rule of law in Afghanistan and adherence to international humanitarian law and human rights law. It would also be beneficial to the protection of the Afghan people and help ensure appropriate conduct of operations by the Government and the international military forces, in full compliance with international human rights and humanitarian law.

3. Intelligence gathering and false tips

29. In his mission report, the previous mandate holder documented unacceptable killings of civilians by the Government or by international military forces on the basis of hasty conclusions (for example, based on suspicious activity and civilians mistaken for combatants). No information was received on whether attacks continued to be undertaken on the basis of fabricated information.

30. In 2009, the previous mandate holder also described testimonies of witnesses and victims’ next of kin alleging that civilians were sometimes targeted on the basis of superficially suspicious conduct as a result of the ignorance of the international forces of local practices.³⁰ No information was received by the Special Rapporteur on any efforts made by international military forces to develop knowledge of local practices and take measures to ensure that civilians were not being targeted by ground forces and air strikes. Adopting a civilian-centred perspective on the ground therefore continues to be of paramount importance.

4. Suicide attacks

31. In his mission report, the previous mandate holder expressed concern at the use of suicide attacks in a disproportionate or indiscriminate manner, having as a consequence the killing or injuring of large numbers of civilians.³¹ According to public information obtained

²⁹ Similarities include measures to actively involve the battle space owner, Government officials, tribal elders or religious leaders in the pre-phase to resolve issues peacefully; promoting an Afghan-led (wherever possible) ISAF to support coordination among the Government of Afghanistan, Afghan national security forces and local elders; ensuring post-operation engagement with local leaders to counter misinformation and propaganda; the use of soft knocking prior to entering a residence; restrictions on the use of military dogs during raids; regulations for the treatment of detainees, property seizure, property damage, documentation, post-operation mitigation, storyboards and reporting; and compliance with international humanitarian law.

³⁰ A/HRC/11/2/Add.4, para. 15.

³¹ A/HRC/11/2/Add.4, para. 20.

by the Special Rapporteur,³² the use of improvised explosive devices, suicide attacks, rocket and mortar fire increased in 2010. Even where targets were legitimate military objects, such as military installations and combatants (pro-Government forces), these attacks and tactics often disproportionately harmed civilians. The Afghanistan Independent Human Rights Commission and the UNAMA Human Rights Unit found that many attacks were carried out in civilian areas where the military target was not clear or was unknown. An increase in the use of improvised explosive devices and of suicide attacks, including some defined as “complex”,³³ was reported in places such as bazaars, ministries or commercial areas, or alongside roads busy with civilian traffic.³⁴

32. In 2010, anti-Government elements used unlawful means of warfare, including asymmetric tactics,³⁵ in particular improvised explosive devices and suicide attacks, which appeared to target military objects but in fact caused increased numbers of civilian deaths and injuries, systematically terrorized the civilian population and restricted access to essential services in many areas affected by the conflict.³⁶ There was a substantial increase in the use of larger and more sophisticated improvised explosive devices. Information provided by UNAMA and the Afghanistan Independent Human Rights Commission indicated that 21 per cent of improvised explosive device detonations and 46 per cent of suicide attacks resulted in civilian deaths and injuries. Furthermore, suicide attacks accounted for 11 per cent of all deaths attributed to anti-Government elements and 8 per cent of all civilian deaths in 2010. This represented a decrease of 15 per cent over 2009. Although the number of suicide attacks remained at the same level in 2009 and 2010 (approximately 140 attacks per year), it appears that suicide attacks caused fewer civilian deaths in 2010 than in 2009.³⁷

33. Suicide attacks and improvised explosive devices caused the most civilian deaths, totalling 1,141 deaths, and 55 per cent of civilian deaths attributed to anti-Government elements.³⁸

C. Transparency and accountability in international force operations

34. In his mission report, the previous mandate holder called upon the international forces in Afghanistan to take the principles of accountability and transparency seriously and to cooperate more fully with outside efforts to investigate alleged abuses. He concluded that proper tracking of civilian casualties was critical to improving the current system of

³² UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. 3.

³³ Stakeholders described complex suicide attacks as those perpetrated by well-funded, better trained insurgents. These usually involve multiple perpetrators using more than one form of weapon, such as firing weapons before entering a building, shooting people and then detonating a suicide vest.

³⁴ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. 7.

³⁵ On the use of asymmetrical methods of war, see, inter alia, Tony Pfanner, “Asymmetrical warfare from the perspective of humanitarian law and humanitarian action”, *International Review of the Red Cross*, vol. 87, No. 858, March 2005, pp. 149-174.

³⁶ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p.iii. See also “Afghanistan: ambulance used in attack on police training compound”, International Committee of the Red Cross, new release, 7 April 2011, available from www.icrc.org/eng/resources/documents/news-release/2011/afghanistan-news-2011-04-07.htm.

³⁷ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9).

³⁸ *Ibid.*, p. i.

accountability for civilian protection and compensation to the civilian population for the harm caused.³⁹

35. ISAF established a civilian casualty tracking cell in 2008; reportedly, however, it has not accurately recorded civilian casualties or ensured that ISAF troops adequately take responsibility for harm caused. In December 2010, NATO members agreed to review the tracking cell with the aim of highlighting shortfalls in effectiveness and inadequacies in resourcing. Despite these efforts, the current tracking cell appears not to have investigatory capacity and lacks empowerment from the military leadership.⁴⁰ The tracking cell is based at ISAF headquarters in Kabul and relies on forces on the ground to report incidents on their own initiative rather than through a strong directive.⁴¹ Incidents, investigations, compensation and apologies are reportedly not closely tracked, therefore there is no mechanism in place to ensure that all allegations are adequately addressed, nor is there a mechanism to record lessons learned so that they can be used to address remaining challenges, including the reduction of military activity on the basis of false information.

36. Despite the progress made, several concerns remain regarding the lack of sufficient investigative resources by the tracking cell and the reduced scope of its mandate, given that it appears not to cover "other Government agencies" such as the numerous intelligence agencies, special forces units and private contractors operating in Afghanistan. The Special Rapporteur is of the view that the ISAF directive should ensure the adoption and application of tactical directives emphasizing the importance of properly addressing civilian harm when it occurs and offering practical, detailed procedures for, inter alia, recording casualties, receiving claims, conducting investigations and providing reparations in conformity with international standards.

37. In the Special Rapporteur's view, efforts should be strengthened to ensure a system for the assistance of civilians injured in the context of the armed conflict. The need for such a unified system is highlighted by the alleged refusal of several NATO countries to offer any assistance to civilians injured by their actions.

D. Compensation for victims

38. The Special Rapporteur welcomes the adoption of non-binding guidelines on civilian compensation for all troop-contributing nations in Afghanistan by the North Atlantic Council in June 2010 and the creation of the NATO civilian casualties tracking cell to investigate claims of civilian casualties. The guidelines focus on prompt acknowledgement by ISAF of combat-related civilian harm, proper investigations and the proactive offering of assistance to survivors.

39. Despite the progress made, compensation for victims remains a concern in Afghanistan. According to information received, the ISAF Commander forwarded these guidelines to commanders without any detailed implementation instructions, leaving a gap between political will and practice on the ground.

40. ISAF member countries thus continue to offer compensation in their own specific way, with variations from one State to the other or even within a single command. The various international forces have implemented different programmes for compensating civilian victims of military operations, and some information has been diffused through the

³⁹ Ibid, para. 35.

⁴⁰ Submission by Campaign for Innocent Victims in Conflict.

⁴¹ Submissions by Amnesty International and Campaign for Innocent Victims in Conflict.

media on such payments.⁴² However, it appears that publicly available records are insufficient for an estimate of the number of victims who receive payments and the proportion of compensations to be made.

41. According to information received, compensation is mainly financial, leaving aside a holistic approach to compensation, which would include, for example, dignifying civilian losses by upholding the right to the truth. Moreover, the procedures to determine when compensation should be paid remain unclear and lack transparency. For example, information received suggested that, in some regions of Afghanistan, some monetary compensation was distributed to victims of night raids and air strikes. In the first quarter of 2010, this included 60 families in Kapisa province, who were mostly victims of night raids and air strikes. In a separate incident, on 21 March 2010, international military forces reportedly left 50,000 Afs (approximately \$1,000) in a house following a night raid, during which a 92 year-old man was reportedly killed. However, the victim's son returned the money to ISAF on the grounds that it could not put a price on his father's life.

42. The Afghan National Army and related security forces have neither a systematic compensation mechanism nor are they trained to address civilian harm. President Discretionary Fund 99, a small ad hoc fund, is administered by the President's executive office. The Government programme that provides a form of monetary compensation to civilians killed by anti-Government elements appears to be inadequate. Furthermore, the President Discretionary Fund appears to be disconnected from the activities of the Afghan National Security Forces, which have no civilian casualty tracking capabilities and thus are unable to assess best practices, pitfalls and lessons learned. With more combat responsibility being transferred to the Afghan National Army by ISAF, the need for a nationally owned, coordinated and unified compensation system (including recordkeeping, evidence protection, investigations and holistic compensations) is evident.

43. In this regard, the Special Rapporteur concurs with the stakeholders' opinion on the need to create an effective system for recording civilian casualty incidents, analyse lessons learned to minimize harm, properly recognize civilian losses and provide immediate and appropriate redress and compensation.

44. The Special Rapporteur welcomes the support provided by the international community to help Afghanistan to move towards the creation of such a system. In his view, international and Afghan security forces should redouble efforts to ensure accountability for violations to international humanitarian law and human rights abuses.

E. Influencing the Taliban

45. In his mission report, the previous mandate holder concluded that there was a need to find ways to influence the conduct of the Taliban so that they adopt a population-centred approach and put a halt to indiscriminate attacks, which severely affect the civilian population.⁴³

46. In 2010, the Taliban and other armed groups (some anti-Government, and others ostensibly supporting the Government) targeted, abducted, indiscriminately attacked and unlawfully killed civilians, committing human rights abuses and gross violations of international humanitarian law.⁴⁴ In this regard, the UNAMA Human Rights Unit and the

⁴² See "Afghanistan civilian compensation: the sums received from UK forces", Datablog, *guardian.co.uk*, March 2011. Available from www.guardian.co.uk/world/datablog/2011/mar/28/afghanistan-civilian-compensation.

⁴³ See A/HRC/11/2/Add.4, paras. 38-43.

⁴⁴ See Amnesty International, "Afghanistan: Taleban must immediately stop targeting civilians in Afghanistan", public statement, 28 October 2009; "Afghanistan: No impunity for war criminals",

Afghanistan Independent Human Rights Commission documented numerous indiscriminate or disproportionate attacks that resulted in civilian casualties for which the Taliban claimed responsibility.⁴⁵

47. In his mission report, the previous mandate holder also proposed several possible approaches that could be explored on the basis of testimonies and information gathered in situ.⁴⁶ No information was available to the Special Rapporteur on the consideration given, if any, to the possible approaches he proposed. However, information available suggested that, following the issue of the UNAMA mid-2010 report on civilian casualties, the Taliban had proposed the formation of a joint commission to investigate civilian deaths.⁴⁷

IV. Police reform and militias

48. In his mission report, the previous mandate holder highlighted the fact that Afghanistan needed a police force that could play both a law enforcement and paramilitary role.⁴⁸ He strongly advocated for reform to the national police, while recognizing that training and raising awareness on human rights standards were also important tools.⁴⁹

49. Information provided by stakeholders during the universal periodic review of Afghanistan indicated that the police were frequently cited by Afghans as the most corrupt institution in the country,⁵⁰ which highlighted the importance of tackling police reform in earnest.

50. The Special Rapporteur did not receive information on whether the Government had stopped establishing and legitimizing more militias and whether lessons learned had been gathered by the programme on the “auxiliary police”. He did not receive information on the implementation of the Afghanistan Social Outreach Programme, which was a major concern of the previous mandate holder during his visit in 2008. The Programme sought to mobilize the local population for its own protection, but it was feared that it would also increase their risks and lead to the empowerment of favoured groups within a community to extort, intimidate and kill their opponents.

51. Assessments provided by stakeholders in 2011⁵¹ indicate that the Afghan National Police continue to be poorly trained and managed, and remain notorious for corrupt and abusive practices. In certain parts of the country, the police are said to be perceived as a greater source of insecurity than the Taliban, thereby undermining the authority and legitimacy of the central Government. Information received also suggested that there were links between some police officials and criminal gangs involved in violent crime (such as kidnappings and armed robbery).

52. In August 2010, the Government of Afghanistan launched the Afghan Local Police programme as a Ministry of Interior-led rural security programme aimed to protect communities from anti-Government elements through the recruitment of local individuals into an armed force with limited security functions. The programme currently allows for

press release, 8 February 2010; and “Taleban should be prosecuted for war crimes in Afghanistan”, press release, 10 August 2010.

⁴⁵ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. iv.

⁴⁶ A/HRC/11/2/Add.4, paras. 39-40.

⁴⁷ Norah Niland, “Civilian casualties in Afghanistan: evidence-based advocacy and enhanced protection”, Humanitarian Practice Network, *Humanitarian Exchange Magazine*, No. 49, February 2011. Available from www.odihpn.org/report.asp?id=3174.

⁴⁸ A/HRC/11/2/Add.4, para. 49.

⁴⁹ *Ibid.*, para. 44.

⁵⁰ A/HRC/WG.6/5/AFG/3, para. 24.

⁵¹ Submissions by Amnesty International and Campaign for Innocent Victims in Conflict.

15,700 recruits in 61 districts, and has a ceiling of 30,000 recruits in 100 districts. At the district level, the Afghan Local Police report to the district chief of police. Special forces from the United States of America play a mentoring role, without any official supervisory role, by providing training and working with the Afghan Local Police units for a limited duration before handing over responsibilities to conventional forces for further mentoring.⁵²

53. While the programme will require a thorough impact assessment, concerns have already been raised at weak oversight, recruitment, vetting and command and control mechanisms, limited training for recruits and effectiveness of reporting through district police chiefs. These issues were observed by UNAMA and the Afghanistan Independent Human Rights Commission in Kunduz and Baghlan provinces, in Khas Uruzgan district in Uruzgan province and in Kirjan district in Dai Kundi province.

54. The Special Rapporteur shares the concern expressed by UNAMA and the Afghanistan Independent Human Rights Commission regarding law enforcement and the mandate of the Afghan Local Police with regard to its obligations and role in detention are not clearly defined or instructive on issues of arbitrary detention, the handover process of detained persons, conditions of detention and the prevention of abuse. He also shares the call made by UNAMA and the Commission to the Government of Afghanistan on the need to establish rigorous oversight and monitoring of all elements of the Police programme, together with accountability for abusive or criminal acts of Police members to ensure that the programme does not result in less protection for the civilian population.

55. Despite the many challenges ahead, the Special Rapporteur commends the support provided by the international community for the Government of Afghanistan in the training of the Afghan National Police. The Special Rapporteur encourages continuous training efforts to cover all regions of Afghanistan.

56. The Special Rapporteur also welcomes the preparation of tools and materials by UNAMA for training by ISAF of newly recruited members of the Afghan National Police in other regions. In this regard, the Special Rapporteur strongly recommends that ISAF ensure a rights-based approach and mainstream civilian-protection and gender-sensitive approaches in their training activities.

V. Criminal justice system

A. Overview

57. In his mission report, the previous mandate holder referred to impunity, weaknesses in the judicial system and corruption as major obstacles for the investigation or prosecution of many criminal cases of murder, including extrajudicial, summary or arbitrary executions. He stressed the need to establish efficient mechanisms of cooperation at the early stages of crime detection and investigation; the system established at the time in the Constitution, where the police were in charge of crime detection and the prosecutors of crime investigation, appeared not to work adequately in practice.⁵³

58. Despite some progress made, the formal justice system continues to suffer from severe and systemic problems. These include the lack of detailed strategies regarding continuing legal education; the lack of adequate judicial training facilities; limited numbers of competent judicial personnel in service; lack of communications and coordination among institutions; rampant corruption; and the influence that money derived from narcotics and

⁵² UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. v.

⁵³ *Ibid.*, paras. 56-57.

warlords exert on the country's structures. In its 2010 assessment, the United Nations Office on Drugs and Crime highlighted the fact that the conflict had a negative effect not only on the judicial system, but on the culture of the rule of law as well.⁵⁴

B. Corruption and impunity

59. In his mission report, the previous mandate holder reported on high levels of corruption based on information received in situ and testimonies from Afghan officials, civilians and other stakeholders.⁵⁵ The Special Rapporteur regrets that the situation appears not to have improved substantially since the time that the mission took place.

60. In 2009, information provided by stakeholders in the context of the universal periodic review mechanism indicated that the Action Plan on Peace, Justice and Reconciliation adopted in December 2005, which sought to address past abuses and promote national reconciliation, was not fully supported by the Government, which failed to set up an advisory panel to help the President to vet senior political appointments. The stakeholders also noted that efforts to counter impunity and seek redress for victims were consistently marginalized throughout the State-building process, and regretted the fact that important criminal justice issues were systematically excluded from the policymaking agenda.⁵⁶

61. During the universal periodic review of Afghanistan in 2009, stakeholders also underscored the fact that the judiciary's lack of power and difficulty in interpreting laws had resulted in a "climate of impunity". They expressed concern that judicial shortcomings had resulted in citizens' lack of confidence in the formal justice institutions, which they regarded as slow, ineffective and often corrupt. They reported that most Afghans, and particularly women, had difficulty in gaining access to courts and legal assistance; most could not afford court fees or the transportation costs for attending often distant courts. Traditional male-dominated community-based assemblies handled an estimated 80 per cent of all disputes in Afghanistan, but they operated in isolation from State courts and without the benefit of minimal standards of due process or evidence. Moreover, the challenging security situation was compounded by a lack of substantive progress in security sector and rule of law reform.⁵⁷ In this regard, the need to strengthen the judicial system, in particular the enforcement of judicial decisions, is to be emphasized.⁵⁸

62. Stakeholders also highlighted that the Afghan National Police and justice sector institutions were considered corrupt and enjoyed limited public confidence. Although reform initiatives had been directed towards both the security forces and the justice sector, the focus has been centred on capacity-building and infrastructure rather than on coming to terms with the culture of corruption and impunity that undermines security and justice institutions.⁵⁹

⁵⁴ United Nations Office on Drugs and Crime, "Criminal Justice Sector in Afghanistan", concept note, June 2010 – July 2012. Available from www.unodc.org/documents/afghanistan//conceptnotes/Microsoft_Word_-_2010_11_April_01_Concept_Note_Strengthening_the_criminal_justice_sector.pdf.

⁵⁵ Ibid., para. 58.

⁵⁶ A/HRC/WG.6/5/AFG/3, paras. 17-19.

⁵⁷ Ibid., paras. 20-22.

⁵⁸ See Ebrahim Afsah, "Is Constitutionalism possible without governance? International standards and the Afghan legal system" in *International Law in Domestic Courts*, ed. André Nollkaemper (Oxford, Oxford University Press, 2011).

⁵⁹ Ibid.

63. In this regard, the 2010 corruption perception index ranked Afghanistan, after Somalia and Myanmar, as the third country where corruption was most perceived as a factor severely affecting institutions in charge of the administration of justice.⁶⁰

64. Assessments provided by stakeholders in 2011⁶¹ also suggest that Afghan judicial and security sectors lack the necessary personnel, infrastructure, training and political will to respect, protect and promote human rights. The justice sector comprises three institutions – the Ministry of Justice, the Supreme Court and the Attorney General's Office – all of which have been affected by the phenomenon of corruption and by a lack of qualified personnel. The constitutionally mandated independence of the courts and the prosecutorial service are reportedly used to prevent administrative oversight, while being quite permissive of interference by the executive. Judicial and prosecutorial personnel are said to be susceptible to pressure by public office holders and armed groups. Trials are marked by procedures that fail to meet international standards of fairness, including violations of the right to call and examine witnesses and the denial of defendants' rights to legal counsel and equal access to information. Verdicts, even if they can be obtained, are difficult or impossible to enforce owing to the absence of effective State coercive institutions.

65. The Afghan Independent Human Rights Commission has a constitutional mandate for the implementation and mainstreaming of human rights, but suffers from insufficient political support and collaboration by the other branches of the administration.

66. In 2011, the Special Rapporteur was informed about a number of cases of alleged corruption, some of which are still under investigation. Although he welcomes measures taken to combat impunity, serious concerns have been raised to the Special Rapporteur regarding corruption in the judiciary, particularly in the central highlands region, including undue pressure and inducement to dismiss cases in the formal criminal justice system so that they can be settled in a *jirga* (tribal council) when they involve influential individuals or persons with a link to the authorities (for example, working for the National Directorate of Security, the State intelligence service). In the southern region, concern was raised over interference by local tribal leaders and independent bodies in proceedings regarding five conflict-related trials in Uruzgan province, the hearings of which were held from 21 to 26 February 2011. While all five defendants were convicted of offences relating to the conflict and two received custodial sentences, inconsistencies in judicial procedural standards and basic fair trial standards, such as the presumption of innocence and the right to defence and to have legal representation, were highlighted.

67. The Special Rapporteur encourages the Government of Afghanistan to continue to work towards the elimination of corruption and impunity and welcomes efforts by, inter alia, UNAMA and the United Nations Office on Drugs and Crime⁶² to help Afghanistan in these areas critical to strengthening the rule of law. He also wishes to recall, as did his predecessor, the importance of the role played by an independent Attorney General's office, and stresses the need to establish an effective mechanism with the power to subpoena witnesses and evidence and to launch prosecutions.

68. The High Office of Oversight, established in July 2008 in response to very considerable persuasive efforts by the international donor community to ensure oversight and coordination of national activities to combat corruption, has remained ineffective, understaffed and endowed with insufficient forensic capacity, legal authority and political

⁶⁰ See Transparency International, 2010 Corruption Perception Index, 2010. Available from www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

⁶¹ Submissions by Amnesty International and Campaign for Innocent Victims in Conflict.

⁶² United Nations Office on Drugs and Crime, concept note (see footnote 54). See also United Nations Office on Drugs and Crime, Afghanistan, strategy paper 2009-2011, April 2009. Available from www.unodc.org/documents/afghanistan/Programme_Docs/COAFG_National_Strategy_2009-2011.pdf.

will. The intimate personal and institutional relationship maintained by the Office with the presidency and the willingness of its leadership to blame corruption primarily on foreigners rather than address its indigenous causes, coupled with high-profile cases of political interference in its investigations, raise considerable concern that the Government of Afghanistan may not be sufficiently earnest in its endeavours to address corruption.⁶³

C. Women and the criminal justice system

69. The armed conflict continues to have a detrimental impact on women;⁶⁴ the criminal justice system is yet to develop a gender-sensitive approach.⁶⁵ Information received suggested that both informal and formal justice systems handle cases relating to gender-based violence, such as multiple revenge killings and intra-family murder. Nevertheless, women often lack access to justice in Afghanistan.

70. Traditional *jirgas* and *shura* (informal communal councils), which operate outside the formal justice system, reportedly disregard fair trial rights and often discriminate against women, and continue to handle an estimated 80 per cent (some stakeholders estimate up to 95 per cent) of all disputes in Afghanistan, particularly in rural areas.⁶⁶ A study released in 2009 documented deficiencies of the criminal justice system in connection with women. This has had an adverse impact on the right to life, as official figures indicate that, every year, approximately 2,400 women self-immolate owing to the hardships caused by gender-based violence. It is reported that self-immolation is often a cry for help to escape an abusive, violent family life and that, although not all women and girls who take such action intend to kill themselves, most die from their injuries. Common causes of self-immolation include child and forced marriages, the handing over of girls to settle *baad* (disputes) and sexual and domestic violence.⁶⁷

71. Cases of self-immolation are usually not investigated. Information received suggested that the authorities investigate very few cases where family members of women who self-immolate are alleged to have caused the act. This is reportedly due to the lack of evidence, but also to reluctance on the part of State authorities to investigate or prosecute such cases. This practice is contrary to the Law on the Elimination of Violence against Women, which outlaws the act of forcing another person to commit self-immolation. Similarly, under sharia law, a person who forces another person to commit suicide or harm themselves may be criminally responsible for the act.⁶⁸

⁶³ Office of the Special Inspector General for Afghanistan Reconstruction, "Afghanistan's High Office of Oversight Needs Significantly Strengthened Authority, Independence, and Donor Support to Become an Effective Anti-Corruption Institution", Washington, D.C., 16 December 2009. Available from www.sigar.mil/pdf/audits/SIGAR20Audit-10-2.pdf.

⁶⁴ In 2010, women casualties increased by 6 per cent in comparison with 2009. Some 40 per cent of female deaths were caused by improvised explosive device explosions and suicide attacks. These figures represent a 31 per cent increase in female deaths and a 66 per cent increase in child deaths over 2009. Eight children were executed by anti-Government elements. Out of the total civilian deaths linked to pro-Government forces, 37 per cent were female. These figures represent a 62 per cent decrease respectively over 2009. Eight females and nine children were killed as a result of search and seizure/night raids across the country. More women were killed in the south-east than any other region as a result of such operations. See United Nations in Afghanistan, *Afghan women and the United Nations*, 2011, p. 2.

⁶⁵ UNAMA and Afghanistan Independent Human Rights Commission, *Afghanistan, annual report 2010* (see footnote 9), p. ii.

⁶⁶ Submission by Campaign for Innocent Victims in Conflict.

⁶⁷ UNAMA and OHCHR, "Harmful traditional practices and implementation of the law on elimination of violence against women in Afghanistan", Kabul, 9 December 2010, pp. 35-36.

⁶⁸ *Ibid.*

D. Honour killings

72. Honour killings are crimes committed frequently in the name of “honour”, on suspicion of engagement in actions deemed dishonourable for the family as a whole. The motives of these crimes range from mere association with the opposite sex to sexual relations or running away from home, as highlighted by the previous mandate holder in his mission report.

73. Honour killings imply the killing of a family member, usually women, and need to be adequately addressed in the criminal justice system in Afghanistan. The Special Rapporteur recalls that, under international law and human rights standards, States are obliged to protect women from violence, such violence being a violation of human rights.⁶⁹ They also should ensure that mechanisms for prosecuting and punishing its perpetrators are available, effective and gender-sensitive.⁷⁰ Such practices originate in entrenched discriminatory views and beliefs about the role and position of women and girls in society. In Afghanistan, harmful traditional practices have been further reinforced by the widespread poverty and insecurity that Afghans have experienced over the past 30 years.⁷¹

74. Afghan men and women interviewed by the UNAMA Human Rights Unit reported that many believed that practices subordinating women to the will of men and sharply limiting their realms of activity originated in the Holy Koran. Most harmful traditional practices are, however, without basis in religious principles or, in some cases, actually contradict religious teachings. Culture and tradition, sometimes viewed and used as a refuge during violent conflict, can be persuasive arguments for perpetuating practices that harm women, but should be distinguished from religious precepts.⁷²

75. In response to the above and related concerns, the Government enacted the Law on the Elimination of Violence against Women in August 2009. The Law refers to “fighting against customs, traditions and practices that cause violence against women contrary to the religion of Islam” and preventing and prosecuting violence against women. Article 5 of the Law lists 22 acts, the commission of which constitutes violence against women. The Law itself, however, has been criticized because it requires a victim or her relative to file a complaint before State institutions for it to take action. This implies that, when a victim withdraws a complaint or fails to file one owing to family pressure or fear of reprisal, the State is not required to investigate or prosecute a crime of violence against women. Furthermore, women’s rights activists have criticized the law for failing to criminalize honour crimes and for not defining crimes clearly. In this regard, the Special Rapporteur recalls the recommendations made by UNAMA in 2010 and urges the Government of Afghanistan to take all necessary steps to repeal article 398 of the Penal Code reducing punishment for killings perpetrated in the name of “honour” and to ensure that no law within Afghanistan is contrary to international law and human rights standards, by virtue of which the State is obliged to protect women from violence, which is a violation of human rights.⁷³

76. The Law on the Elimination of Violence against Women obliges the Government to take protective and supportive measures in favour of victims and to educate and raise awareness about harmful traditional practices and other forms of violence against women.

⁶⁹ See A/HRC/7/4, paras. 55-58.

⁷⁰ A/HRC/17/30.

⁷¹ Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, UNAMA, OHCHR, Kabul, December 2010, p. 1.

⁷² Ibid.

⁷³ See for example A/HRC/7/4, paras. 55-58; A/HRC/17/30, para. 34; and the Committee on the Elimination of Discrimination against Women, general recommendation No.19, on violence against women, 1992.

Prosecution offices must treat cases of violence against women as a priority and act expeditiously. In this regard, the Special Rapporteur shares the opinion expressed by stakeholders to UNAMA about the importance of raising awareness about the law's existence and the acts it criminalizes, and of ensuring its immediate implementation, in particular of provisions aimed at eradicating harmful traditional practices and bringing perpetrators to justice.

E. The death penalty

77. From February 2009 to April 2010, approximately 200 people were sentenced to death. No execution orders were, however, approved by the President of the Republic, whose signature is required to enforce them, according to the Supreme Court.⁷⁴ During the first trimester of 2011, few cases were reported by the media concerning the carrying out of death penalties in Afghanistan.⁷⁵ Additional information received by the Special Rapporteur in 2011 indicates that a number of death penalty convictions have been passed in Afghanistan, some of which would be subjected to *Qesas* (sharia punishment).

78. While welcoming the unofficial moratorium on capital punishment, the Special Rapporteur urges the Government to impose a formal moratorium on executions and to consider abolishing the death penalty in Afghanistan. This call takes on importance in the light of the reported weaknesses of the justice system, including corruption, lack of due process guarantees and legal errors.

VI. Transitional justice and the preservation of evidence from past crimes

79. In 2008, the previous mandate holder visited the site of the Dasht-e Leili mass graves in the north of the country,⁷⁶ one of reportedly more than 118 mass graves that have been found in different parts of Afghanistan since 2002.

80. The Government is said to have attempted to take steps to investigate some of the mass graves sites, including the site in the Chimtala plains at the north of Kabul city. However, no reports or public information are available on such or similar endeavours.

81. The Special Rapporteur was informed that, in November 2009, UNAMA visited the Dasht-e Leili mass grave in Jawzjan province, one of four sites of mass graves in the northern region of Afghanistan, and was able to confirm information received, highlighting irregularities. These included wheel tracks and evidence of excavation work in the mass grave, which could indicate that the bodies may have been moved or that the grave site may have been tampered with by governmental authorities and ISAF, which were supposed to guard and protect the site. Information received suggested, however, that the Government had not taken any measures to protect mass graves sites. In this regard, the Special Rapporteur recalls the importance of evidence in the prosecutions of crimes and appeals to

⁷⁴ Integrated Regional Information Networks, *Afghanistan: Unofficial moratorium on capital punishment*, 5 April 2010, available from www.unhcr.org/refworld/docid/4bc2ccfb1e.html.

⁷⁵ See, inter alia, "Detained Afghanistan Christians facing death penalty", Religion News Blog, 24 February 2011, available from www.religionnewsblog.com/25752/detained-afghanistan-christians-facing-death-penalty; "Physio in Afghanistan escapes death penalty", Chartered Society of Physiotherapy, 9 March 2011, available from www.csp.org.uk/news/2011/03/09/physio-afghanistan-escapes-death-penalty; and "Second Afghan convert faces death penalty under apostasy law", *The Christian Post*, 29 March 2011, available from www.christianpost.com/news/second-afghan-convert-faces-death-penalty-under-apostasy-law-49632/.

⁷⁶ A/HRC/11/2/Add.4, para. 66.

the Government, with the support of the international community, to take all necessary steps to address impunity by, inter alia, facilitating the investigation of human rights violations, including mass killings, which may be documented through the protection of criminal evidence available in mass grave sites.

82. In the light of the above, stakeholders have further highlighted the continued virtual absence of any judicial or truth commission-type accounting mechanisms for past atrocities, and alleged the presence of severely compromised individuals in Government institutions, creating a clear impression that no credible intent exists within the Government to ensure transitional justice.

VII. Conclusion

83. **Afghanistan continues to experience a non-international armed conflict across the majority of its territory, with detrimental consequences for the civilian population. All perpetrators of extrajudicial, summary or arbitrary executions should be held accountable and all the parties in the conflict, be they Taliban, Afghan forces or international military forces, bear responsibility for unlawful killings and for reducing the number of civilians killed in the conflict.**

84. **The Special Rapporteur welcomes the progress made by Afghanistan, with the help of the international community, to address major issues of concern, such as impunity, corruption and a deficient criminal justice system. He also welcomes the moderate progress made in the area of legal reform. However, many challenges remain before the recommendations made by the previous mandate holder in his mission report can be implemented.**

85. **Extrajudicial killings remain widespread, and the numbers of killings continue at an unacceptably high level. The armed conflict continues to affect severely the country and its population, leading to continued violence and deaths.**

86. **The Special Rapporteur deeply regrets the fact that no concrete action has been taken on many recommendations regarding threats to the right to life and on extrajudicial killings, and that the Government of Afghanistan did not respond to his request for information on the implementation of recommendations made in the mission report. He therefore encourages the Government to engage more actively in the follow-up to the recommendations made to improve the human rights situation and to reduce the unacceptably high number of civilian casualties caused by the armed conflict.**

Appendix

Summary of follow-up action to recommendations made by the previous mandate holder

A. Killing by the international and Afghan military forces

1. The international forces should review procedures to ensure that air strikes and close air support are delivered only when sufficient measures have been taken to verify the identity of the target and that the incidental loss of civilian life would not be excessive in relation to the anticipated concrete and direct military advantage.

This recommendation has been partially implemented.

2. The international and Afghan forces should review the circumstances in which they conduct unannounced night-time raids, to identify situations in which alternative measures, less dangerous to other residents, might be employed.

This recommendation has been partially implemented.

3. Air strikes, raids and other attacks should never be based solely on conduct considered “suspicious” or on unverified “tips”. Rather, the Government and International Military Forces should review intelligence sharing arrangements, develop procedures for more reliably vetting targets, and ensure that attacks are only conducted based on adequately verified information.

This recommendation has not been implemented.

B. Killings by the Taliban

4. The Taliban should cease employing means and methods of warfare that violate international humanitarian law, and result in the unlawful killing of civilians. The Taliban leadership should issue clear orders to those carrying out attacks to abide by international law. This particularly includes the following:

(a) To stop threatening and assassinating civilians in all circumstances, including for their alleged failure to cooperate with the Taliban or for their decision to cooperate with the Government;

This recommendation has not been implemented.

(b) To cease using civilians as “human shields” to deter attacks by international and Afghan military forces;

This recommendation has not been implemented.

(c) To stop targeting civilians in suicide attacks, and cease engaging in perfidy (unlawful deception) during such attacks, including by disguising themselves as civilians, soldiers or police.

This recommendation has not been implemented.

5. A serious effort should be made - including by human rights groups and inter-governmental institutions - to pressure and persuade the Taliban and other armed groups to respect human rights and humanitarian law. This effort should include developing contacts with them for the sole, dedicated purpose of promoting respect for human rights. Such efforts should be undertaken subject to security feasibility and in conformity with the provisions of Security Council resolution 1267.

No information is available to assess any consideration given to this recommendation.

C. International Military Forces' responses to civilian casualties

6. The international forces should ensure that allegations that soldiers have committed unlawful killings are fully investigated, and ensure that soldiers who have committed unlawful killings are prosecuted.

This recommendation has been partially implemented.

7. The international military forces should cooperate more fully with outside efforts - especially those of UNAMA and of the Afghanistan Independent Human Rights Commission - to investigate killings. This should include the expedited declassification and more comprehensive sharing of relevant information, including video footage and mission story-boards

This recommendation has been partially implemented and further steps are required to expedite declassification and more comprehensive sharing of relevant information by the international forces.

8. At the conclusion of military investigations into killings of civilians, information on the findings and reasoning should be made public. Such information should be provided to the families of the victims. In particular, the reasoning of the US Court of Inquiry decision on the 4 March 2007 Nangarhar incident should be made public.

This recommendation has not been implemented

9. The international forces should ensure that, despite the complexity of multiple mandates and disparate national criminal justice systems, any directly affected person can go to a military base and promptly receive information on who was responsible for a particular operation, or what the status is of any investigation or prosecution. To this end:

(a) Where the actions of soldiers are investigated or prosecuted within the troop-sending country, the progress of national processes of investigation, discipline and prosecution should be reported back to ISAF headquarters in Afghanistan;

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

(b) The progress and outcomes of national processes of investigation or prosecution should be centrally tracked by ISAF;

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation

(c) This information should be made available to the various regional commands, to the Provincial Reconstruction Teams under their command, and provided to directly affected persons when requested.

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation

10. When a raid is conducted by foreign intelligence personnel and Afghan forces outside the ANA's chain-of-command, the responsible Government should publicly clarify its involvement when allegations of abuse are made.

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

11. The international military forces should provide public information on the estimated numbers of civilians killed and wounded in air strikes, raids, and other military operations.

This recommendation has been partially implemented.

D. Compensation for victims

12. The various domestic and international compensation programs should be better coordinated. This might usefully involve a high-level policy body that would help the various programs to operate in a complementary fashion and an operational, information-sharing body that would allow for greater consistency and that would help prevent individual cases from falling through the cracks.

This recommendation has been partially implemented.

13. Even where compensation programs involve *ex gratia* payments that carry no admission of legal liability, the discretion of commanders in deciding whether to grant compensation should be more limited, and general guidelines for making payments should be clearly set out.

This recommendation has been partially implemented.

14. Commanders should seek out victims and their families rather than waiting to receive a complaint or request. In particular, the obstacles women face in accessing compensation and other payments should be taken into account in implementing such programs.

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

E. Afghan National Police

15. Ending unlawful killings by the police should be a priority. To that end, there should be a concerted effort to reform the police:

(a) Human rights training, while important, will not be sufficient to prevent abuses that are driven by the links between police officers and particular tribes, commanders, and politicians. These links must be broken in order to establish a national police force that serves and protects the entire community;

This recommendation has been partially implemented.

(b) Continued efforts to reconstruct the police force as a truly national and professional force are vital. The "focused district development" training should be strongly supported;

This recommendation has been partially implemented.

(c) All efforts to supplement the police by establishing or legitimizing local militias should be abandoned.

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

- 16. Hospitals should be required to report, to police precincts and police internal affairs, all cases where the police bring a deceased criminal suspect to hospital.**

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

- 17. State Institutes of Forensic Medicine should be made fully independent from public security secretariats, and expert staff should receive employment guarantees that ensure the impartiality of their investigations. Additional resources and technical training should also be provided.**

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

- 18. The debate over whether the police force should play a primarily “law enforcement” or “paramilitary” role is unhelpful. At this stage the police are clearly obliged to play both roles and should be structured and trained accordingly so that they can provide security to the populations they serve.**

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

F. Criminal Justice System

- 19. The proper investigation of crimes is hampered by poor coordination between police and prosecutors. The relationship between police and prosecutors needs to be improved: The Minister of Interior and the Attorney General should agree on how to cooperate on the combined process of detection and investigation of crimes, and simultaneously issue the appropriate orders to police and prosecutors.**

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

- 20. Impunity for killings by police must be urgently addressed:**

(a) The interminable dragging out of government investigations and inquiries into alleged police killings until such episodes are effectively forgotten reinforces impunity. Instead of setting up *ad hoc* inquiries that go nowhere, a national police investigative task force is needed;

This recommendation has been partially implemented

(b) In addition, the Afghanistan Independent Human Rights Commission’s investigative powers should be strengthened and the Government should have a time limit within which to respond to its findings.

This recommendation has been partially implemented.

- 21. The situation of women in relation to killings is largely ignored. The criminal justice system must be made accessible to them:**

(a) Initiatives such as women’s referral centres should be supported and encouraged;

This recommendation has been partially implemented.

(b) A special office for female victims should be created by the Attorney-General.

No information was made available to the Special Rapporteur to assess progress, if at all, on the implementation of this recommendation.

22. So-called “honour killings”, which occur in very large numbers, must be treated as the murders that they so clearly are. Police should investigate such cases whether or not the family has made a specific complaint to the police.

This recommendation has been partially implemented.

23. Measures should be taken to address the corruption that obstructs justice at all levels of the criminal justice system:

(a) An independent anti-corruption agency should be established by the Government, with international support, and endowed with the necessary powers and resources to prosecute important cases at all levels of government and the judiciary;

This recommendation has not been implemented.

(b) Insofar as international aid money provides the resources on which much corruption thrives, the international community has a responsibility to assist the Government with anti-corruption efforts through a range of mechanisms, including the use of high-level appointment review boards.

This recommendation has been partially implemented.

G. Transitional Justice and Preservation of evidence of past crimes

24. Mass grave sites, including the site at Dasht-e-Laili, must be secured and preserved by the Government of Afghanistan with international assistance. Investigations into the cause of death of persons whose bodies are buried there, as well as investigations into any allegations of attempts to remove such evidence, are necessary. Failures to do so will result in continued impunity for those responsible for past abuses, and will undermine the ability of Afghans to obtain an accurate historical record of past crimes that is so necessary to facilitate reconciliation in Afghanistan.

This recommendation has not been implemented.
