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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Situation of human rights in Afghanistan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Afghanistan prepared by Mr. Felix Ermacors, Special Rapporteur of the Commission on Human Rights, in accordance with Commission on Human Rights resolution 1989/67 of 8 March 1989 and Economic and Social Council decision 1989/149 of 24 May 1989.

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I. INTRODUCTION

1. The Special Rapporteur ~~was~~ first appointed in 1984 by the Commission on Human Rights to examine *the* human rights situation in Afghanistan. Since then, his mandate has been renewed regularly by various subsequent resolutions of the Commission on Human Rights and the Economic and Social Council, and he has been requested to report to ~~the~~ Commission on Human Rights and to the General Assembly. So far, the Special Rapporteur has submitted five reports to the Commission on Human Rights (E/CN.4/1985/21, E/CN.4/1986/2, E/CN.4/1987/22, E/CN.4/1988/25 and E/CN.4/1989/24) and four reports to the General Assembly (A/40/843, A/41/770, A/42/667 and Corr.1, and A/43/742),

2. At its forty-third session, after considering the report submitted to it by the Special Rapporteur, the General Assembly adopted resolution 43/139 of 8 December 1988, in which it decided to keep under consideration, during its forty-fourth session, the question of human rights and fundamental freedoms in Afghanistan in order to re-examine this question in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

3. During its forty-fourth session, the Commission on Human Rights decided in resolution 1989/167 to extend the mandate of the Special Rapporteur *for* a year, an extension that was confirmed by the Economic and Social Council in its decision 1989/149.

4. Accordingly, the Special Rapporteur has the honour to submit his report to the General Assembly in accordance with General Assembly resolution 43/139 and Commission on Human Rights resolution 1989/67.

5. In accordance with the practice he has always followed in the matter, after submitting his report to the forty-fifth session of the Commission on Human Rights, the Special Rapporteur carried out three visits to the area in order to obtain the most broadly based information possible. The first visit, to Pakistan, took place from 9 to 16 September 1989, the second, to Afghanistan, from 17 to 20 September 1989 and the third, to the Islamic Republic of Iran, from 30 September to 5 October 1989. It should be noted that this is the first time the Special Rapporteur has been officially invited by the Government of the Islamic Republic of Iran to visit the country in accordance with his mandate.

6. During his visit to Pakistan, following the established schedule, the Special Rapporteur met with representatives of the Ministry of Foreign Affairs and the Office of the High Commissioner for Afghan Refugees, as well as with Mr. S. Mojaddidi and Mr. Abdul Rasul Sayyaf, representing the so-called Interim Government of the Islamic Republic of Afghanistan (Alliance of Mujahidin). During these consultations, he exchanged views on the overall situation in Afghanistan.

7. In the North-West Frontier Province, the Special Rapporteur visited the Nasir Bagh, Kheahki and Shindand Refugee Villages in the district of Kohat, where he had talked mainly with newly arrived refugees from the Jalalabad (Nangarhar Province) area of Afghanistan.

8. He also visited the Afghan Surgical Hospital, the Kuwait Al-Fawaan Surgical Hospital, the Kuwait Red Crescent Society Hospital and the International Committee of the Red Cross (ICRC) Surgical Hospital for War-Wounded. The Special Rapporteur also travelled to the Khyber Pass outpost near the frontier of Torkham, where he took the opportunity to visit the ICRC First Aid Post at Landi-Kotal.

9. While in Peshawar, the Special Rapporteur viewed films provided by various sources.

10. During his visit to Afghanistan, the Special Rapporteur was received, in accordance with the programme established in consultation with the Afghan authorities, by the Minister of Justice, the Minister for National Security, the Minister of the Interior, the Minister for Defence, the Minister for Repatriation, the Minister for Religious Affairs and the Deputy Minister of Foreign Affairs.

11. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi prison, the detention centre at Shashdarat and the Juvenile Rehabilitation Centre (Dar-El-Taadib). He also interviewed several wounded civilians at the Jamhuriat Hospital, the Indira Gandhi Hospital and the ICRC Surgical Hospital for War-Wounded.

12. During his visit to the Islamic Republic of Iran, the Special Rapporteur met with Mr. Hashemi Rafsanjani, President of the Republic, and with Mr. Akbar Velayati, Minister of Foreign Affairs,

13. In the province of Kerman (south-east), the Special Rapporteur visited refugee camps at Rafsanjan and Bardsir, where he inquired into the situation of those Afghans who have sought refuge in the Islamic Republic of Iran. During this visit, he met with the local authorities and was able to freely interview the refugees inside the camps.

14. During his visits, the Special Rapporteur received full co-operation from the governmental authorities of Afghanistan, Pakistan and the Islamic Republic of Iran, who did everything possible to ensure that his programme conformed in every detail with the wishes he had expressed. The Special Rapporteur wishes to point out, however, that, owing to the limited time available to him, he was not able to visit provinces in Afghanistan.

15. The Special Rapporteur wishes also to thank the Government of the Islamic Republic of Iran for having invited him, in his capacity as Special Rapporteur of the Commission on Human Rights, to attend and address the Second International Seminar on Afghanistan held at Tehran on 3 October 1989.

16. For the purpose of drafting the present report, in addition to gathering information during the visits to Pakistan, Afghanistan and the Islamic Republic of Iran, the Special Rapporteur followed the course of events throughout the period covered by the report and systematically evaluated written and oral information relevant to his mandate received from various individuals and organisations.

II. EVALUATION OF THE PRESENT SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

A. General

17. In a recent **Afghanistan** after the withdrawal of the Soviet troops, ^{1/} it is stated that:

"Last Christmas was a time of hopes and expectations. The [Soviet Union was] just about to complete [its] withdrawal from Afghanistan, and most of us believed that the war would soon be over . . . The international aid apparatus was gearing its heavy machinery, though the United Nations 'Operation Salaam', which had been established seven months earlier with the purpose to co-ordinate aid to Afghanistan, had difficulties in getting its feet planted in the field. The Agency Co-ordinating Body for Afghan Relief (ACBAR) and South-Western Afghanistan and Baluchistan Agency for Co-ordination (SWABAC) had been created with the purpose of co-ordinating the work of the non-governmental organizations and they also had troubles in getting their practical act together. Nevertheless, the air was filled with enthusiasm and a kind of pioneering spirit, meeting succeeded meeting and everybody in the aid community was discussing problems related to the anticipated repatriation of the refugees and the rehabilitation of the country. We were all in for a very big job and the eyes of the world were upon us."

18. However, the withdrawal took place but the war has not ceased.

19. Three elements must be taken into account; firstly, a human rights situation cannot be considered only on the basis of the written legal instruments and the adherence of a given State to those instruments. It is also necessary to take into account the respect and implementation in practice of these human rights provisions. Secondly, the reality of a human rights situation has to be understood in the framework of political, sociological, cultural and economic circumstances. Thirdly, human rights are indivisible. At this juncture it is important to recall that article 29 of the Universal Declaration on Human Rights provides that each individual has duties towards the community in which he or she lives,

20. The prevailing human rights situation in Afghanistan is characterized by the following six factors, bearing in mind that its causes go back to the 1970s:

(a) The withdrawal of Soviet forces from the country in conformity with the Geneva Agreements of 14 April 1988 (A/43/742, para. 32 ~~et seq~~);

(b) The continuation of the armed conflict in Afghanistan, which causes serious problems of humanitarian law for both combatants and civilians;

(c) The existence of over 5 million refugees who have not returned to Afghanistan under the conditions foreseen by the Geneva Agreements and the massive new arrival of refugees as a result of the hostilities in Afghanistan; this is at the origin of a most serious human rights problem, which the world community simply cannot ignore.

(d) The terrorist dimension of the warfare in **Afghanistan**, which has created a new situation, driving many people outside their **land**;

(e) The declaration of the state of emergency on 19 February 1989, followed by a law on the state of emergency **issued** on 22 February 1989, which have also had effects on the **human rights** situation in government-controlled **areas**;

(f) The setting up of a so-called Interim Afghan Government by the parties of the Alliance in Pakistan, which, in the context of the existing situation of armed struggle, raises particular problems of the right to self-determination,

21. One positive factor in this otherwise deplorable **human rights** situation is the strength of international aid, primarily from the United Nations and non-governmental organizations, and the readiness of the Afghan Government to collaborate with them,

22. At this juncture, the Special Rapporteur must **give** credit to the Afghan Government *for* its **readiness** to show him places of concern to him, to answer all his requests for information and to give him the possibility to speak freely with individuals whenever he expressed the wish to do so.

23. The Special Rapporteur thinks it useful to consider first of all the situation of the refugees, as a permanent and paramount problem of human rights.

B. The situation of refugees

24. On the one hand, the situation of refugees was closely linked to the presence of Soviet troops until February 1969, the acceleration of warfare over the years and the various political pressures. On the other, article I of Instrument 11 of the Geneva Agreements on the settlement of the situation relating to Afghanistan provides that "all Afghan refugees temporarily present in the territory of the Islamic Republic of Pakistan shall be given the opportunity to return voluntarily to their homeland in accordance with the arrangements and conditions set out in the **present Agreement**" (S/19835, annex 1). It should be noted that this Agreement contains nothing concerning refugees from Afghanistan who **reside** in the Islamic Republic of Iran.

25. Indeed, the Government of the Republic of Afghanistan on the one side and the United Nations on the other have prepared all necessary material and legal conditions for the return of refugees. The Special Rapporteur has on several occasions been informed by the Afghan Government of the **preparations** made to receive returning refugees back into their communities, **welcome** outposts and guest-houses have been set up and funding provided from the budget of the Afghan Ministry of Repatriation. Owing to the development of the armed conflict in the countryside, **some** outposts, such as Torkham on the Pakistan border, have had to be closed and transferred to safer locations.

26. However, the fact is that the refugees have not returned in the massive numbers expected after the **withdrawal** of Soviet troops from Afghanistan, and the

number of **those** who have returned is outweighed by the number of *new* arrivals seeking refuge in Pakistan.

27. According to official estimates of the Government of Afghanistan, there are still 3 million **refugees** outside Afghanistan. More accurate **statistics** available to the Special Rapporteur indicate that the number of **refugees** at **present** exceeds 5 million.

28. During **his** visit to Pakistan, the Special Rapporteur was informed that the number of refugees **returning** from Pakistan to Afghanistan was very limited, representing a total of 3,838 from May 1968 to July 1989, the trend *being* that only **unregistered** refugees returned. According to official **estimates** given to the Special Rapporteur by the **Afghan** Ministry of Repatriation, the total number of **refugees** having returned to the country rose from 185,945 at the end of January 1989 (see E/CN.4/1989/24, para. 22.. to 203,943 at the time of his visit. According to the same **source**, 10,000 repatriates due for military service have been exempted from tariffs and customs taxes) 4,000 have been admitted to their previous or new educational institutional over 150 have had confiscated property **returned**; 1,880 officers of the armed forces have been re-inducted into the **army**) 2,000 have been helped to find now jobsr and 9,714 have been issued with *new* identity cards.

29. Following *the* battle around Jalalabad in March and April 1989, Nangarhar Province has been largely depopulated by the flow of new refugees. An estimated 22,156 arrived at **Kheshki** refugee camp and 9,718 at **Shindand** camp (district of Kohat). Similarly, after the battle of Khost, more refugees were reported to have left for Baluchistan.

30. For **more** than 10 years, the refugee population in Pakiatan has been requesting humanitarian assistance in order to avoid a catastrophic situation. For countries like the Islamic Republic of **Iran** and Pakistan, which are facing aerious internal economic problems, the humanitarian responsibilities they bear can only be alleviated through close co-operation with the international community. This help comes from the United Nations and various non-governmental organisations. It has been amply demonstrated that shortages in the supply of goods, resulting as they did from a reduced preparedness to donate, create difficult situationa for the refugees. Only if the refugee population were to be able to find adequate work could a catastrophic situation be averted. However, job opportunities are few and of the lowest paid type, leading to the creation of a cheap labour force among the refugees.

31. Through visits to the schools and dispensaries of different camps and discussions with both male and female residents, the Special Rapporteur was able to take a closer look than before into the hardship of the refugee community as a whole. Some observations may be quoted: "Love is scarce among brothers, sisters, relatives and f **riends**; they do not feel secure." "**The** lives of the women is confined to the four walls of their house or tent." "The women are the main victims of the new social relations developed in emigration." "Fi nding a job in camps is hard." "Problems widely prevalent in the camps these days are malaria, diarrhoea, dysentory and other diseases. " "Lack of firewood and energy is a problem in the camp6 ." Several reports assessing the situation in refugee camps give a sad account of the situation currently prevailing *in* these camps.

32. It is widely recognised that, because of the warfare in Afghanistan, many people have become displaced within the country. Unfortunately, the Afghan Government is not in possession of statistics concerning this category of internal refugees. Some displaced persons living in the larger cities are said to have returned to their provinces of origin following the withdrawal of Soviet troops.

33. Following his first visit to two refugee settlements in the Islamic Republic of Iran, those of Rafsanjan and **Bardsir** (accommodating 4,000 refugees each) in the province of **Kerman**, and on the basis of consultations with officials and other sources, the Special Rapporteur was able to make the following assessment.

34. According to official estimates submitted to the Special Rapporteur, the number of Afghan refugees in the Islamic Republic of Iran is around 2.3 million, of which 45,800 are accommodated in transit camps, 535,000 live in spontaneous settlements and rural areas in the vicinity of towns, and the vast majority of the rest live in urban centres all over the country, where they are said to be generally integrated into the local population and benefiting from the same housing, employment and services as Iranian citizens. The Afghan refugees living in the Rafsanjan and **Bardsir** camps are provided with basic, efficient facilities, like clinics or dispensaries carrying essential medicines, schools, bath houses (the size of which varies from camp to camp), latrines, bakeries, warehouses for stocking supplies, cooking facilities and a mosque, although it was stated that all camps do not have such facilities.

35. As regards job opportunities, it was stated that Afghan refugees need work permits valid for two months, which can be extended upon request if there is no indication that the worker has committed a crime. The main objective of the Government is to give Afghan refugees the possibility to be self-reliant. In this connection, the Special Rapporteur had occasion to discuss freely with a large number of refugees, who stated that they were provided with sufficient food, shelter and medical care to enjoy a decent standard of living; most of the men were working outside the camps and had jobs either at Kerman or Rafsanjan. Mention should be made of the insignificant number of refugees returning from the Islamic Republic of Iran; it was explained also that the growth of the refugee population is such that there are more births than people leaving the country.

36. In reply to questions concerning the prospects for a return to Afghanistan, most of the refugees expressed the desire to have a united, peaceful and Islamic country to live in.

37. The reason given for the fact that the Iranian Government had not attributed a high priority to the Afghan refugee problem was that the Islamic Republic of Iran was involved in a state of war, creating a situation that did not permit full assistance to be extended to the refugee population nor the development of adequate co-operation with the United Nations. However, it was stated to the Special Rapporteur that, while the assistance programme of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the Islamic Republic of Iran had been modest so far, it was the intention of the Government to develop co-operation with the United Nations. During the various consultations the Special Rapporteur had with high-ranking officials of the Islamic Republic of Iran, the latter stressed

of
Commission on Human Rights should be considered the starting point for the further development of co-operation, with the aim of reflecting the reality of the conditions of life of the Afghan refugees in the Islamic Republic of Iran.

38. The main reasons given by the refugees for not returning to Afghanistan are!

(a) The continued fighting in some provinces;

(b) The use of very destructive arms on both sides, such as the SCUD II, SACCER 20 or cluster bombs;

(c) The minefields that have been laid in many places in Afghanistan.

39. The Special Rapporteur has been informed that, on several occasions during the period under consideration, bombs or missiles have struck Afghan refugee villages in various districts of Pakistan, such as Bannu, Kurram and Mardan, resulting in many deaths and serious injuries. Although these bomb blasts were attributed to Afghan Government forces, it is not easy to clearly determine responsibility. The Special Rapporteur also received reports of violence against Afghan refugees in the North-West Frontier Province on account of their activities or opinions, which are considered by members of the opposition forces to be anti-Islamic or dangerous. It is alleged that several refugees have been assassinated in recent years. Since the beginning of June 1989, there has been an increase in these killings. On 7 June 1989, Dr. Nasim Ludin, Director of the Afghan Health and Social Assistance Organisation, headquartered at Peshawar, was shot down in front of his home. On 28 August 1989, Mohammed Zaher, a liaison officer of ICRC, was killed at Peshawar in broad daylight. Allegations of threats and intimidation were drawn to the attention of the Special Rapporteur in a stronger manner than ever before. Another matter of serious concern is the abduction and mistreatment of Afghan women.

c. Situation of human rights in government-controlled areas

40. Since the Special Rapporteur's first visit to Afghanistan in the summer of 1987, he has adopted the practice of dividing the territory of Afghanistan into two for the purpose of his report; the areas under government control and those not under government control. The latter areas must be further subdivided into areas over which local forces have control, or where they have set up a kind of local government. As previously mentioned, there are also areas that have been depopulated because of warfare and are now used by the opposition forces. Since the proclamation of the so-called policy of reconciliation, the Afghan Government has sought such reconciliation with local commander: of opposition forces, sometimes by means of a formal protocol declaring an area to be a "peace zone" or "peace region". One of the first conditions for the creation of such areas is the acceptance of a cease-fire. The Government withdraws its armed forces and police and leaves the administration of the region to local and/or tribal authorities. In the opinion of the Special Rapporteur, this kind of local government none the less depends to a certain extent on the central Government. Non-governmental organizations also try to supply assistance to such zones and officially inform the

central Government of their movements. The Special Rapporteur was not able to see an example of any protocols transferring power to local and/or tribal authorities, but has been informed that such protocols vary according to the situation.

41. The Afghan Government uses a broad concept in defining a region considered under its control. The Special Rapporteur was unable to verify the extent of such government control, but information received from various sources before and after the withdrawal of Soviet troops suggests that all the main villages and towns are administered by the Government, which applies its laws and regulations. The Government thus exercises effective governing power in these parts of the country and is consequently directly responsible for the human rights situation prevailing therein.

1. Civil and political rights

42. On 16 February 1989, in accordance with article 143 of the Constitution (see report to the Commission on Human Rights, E/CN.4/1989/24, paras. 45 and 46), the President of the Republic of Afghanistan declared a state of emergency, which was duly notified to the Secretary-General of the United Nations in conformity with article 4 of the International Covenant on Civil and Political Rights. This declaration was followed by a law on the state of emergency, issued on 22 February 1989. The declaration of the state of emergency was drawn up in accordance with article 143 of the Constitution, which provides that:

"Whenever the preservation of the independence, national sovereignty, territorial integrity and internal security becomes impossible through the channels provided for in this Constitution due to war, danger of war, disturbance or similar conditions, a state of emergency may be proclaimed by the President,

"A state of emergency can be extended beyond three months only with the consent of the Loya Jirgah."

43. As far as the factual human rights situation is concerned, the state of emergency has not brought about significant changes. However, Parliament has been suspended and State power concentrated and rendered more effective in the hands of the President of the Republic. The role of the People's Democratic Party of Afghanistan (PDPA) has been strengthened, but some ministerial posts, such as that of Minister of Higher Education, have been attributed to persons outside the party hierarchy.

44. The provisions concerning human rights in articles 30, 44 to 46, 49 and 50, the last item of article 51, articles 53 and 60 of the Constitution may now be suspended or limited by presidential decree, in compliance with article 144 of the Constitution (see appendix). This means that the President, and not the Parliament, is competent to govern human rights. Up until now, it seems that the President has not used the powers conferred upon him as regards the suspension of human rights.

45. One case is significant: Mr. Mawlawi Abdul Rauf, a well-known religious leader, was arrested after preaching in a mosque in terms reportedly considered of **offensive** by the authorities. After seven months' imprisonment he was released by presidential decree, the arrest having been considered a "mistake". The Special Rapporteur, who had been informed previously about this arrest, was able to meet the mullah and discuss freely with him. In another case, the Special Rapporteur was informed that a reputed member of the Afghan Academy of Science, Mr. Mohamad Mohren Formoly, had been arrested for political activities and had disappeared. The Special Rapporteur raised the matter at Kabul and was able to see this person, who is currently in detention at the Shasdarat interrogation centre.

46. The Special Rapporteur has always attached great importance to the right to life, freedom and security of the individual. He was informed that during the period under consideration one death sentence was pronounced.

47. The key element in the right to freedom and security of the individual is the administration of justice. It should be noted that, in the present situation, State security considerations continue to be a matter of priority for the Government. The security law determines crimes, which are spelled out in very broad terms, thus being conducive to possible violations of those rights. In addition, the attorney of State security is being given very far-reaching powers.

48. The Special Rapporteur has studied the relevant laws and regulations concerning the legal status of detainees. He is of the opinion that the fact that a convicted person cannot lodge an appeal if he is convicted to less than 10 years' imprisonment contradicts article 14 (5) of the International Covenant on Civil and Political Rights, to which Afghanistan is a party. The fact that it is impossible for an accused person to avail himself of the legal assistance of his own choosing raises problems under article 14.3 (d), even though it has been argued officially that this was due to the lack of qualified lawyers for the defence.

49. In order to inquire once again into allegation 8 concerning the prison population in Afghanistan, the Special Rapporteur visited Pol-i-Charkhi prison on 18 September 1989. At the time of his visit, the prison authorities told him that there were 2,936 prisoners in Pol-i-Charkhi (including 41 foreigners and 6 women), of whom 2,174 are political. In addition, the Special Rapporteur was informed that there are two categories of prisoners: "ordinary" prisoners, or those sentenced for less than 10 years, and "special" prisoners, or those sentenced to more than 10 years. "Ordinary" prisoners have the right to receive two visits per month, whereas "special" prisoners may only receive one visit per month. There are said to be 2,219 in the latter category. Such treatment is in contravention to the Standard Minimum Rules for the Treatment of Prisoners.

50. The Special Rapporteur was also allowed to visit Blocks I and II at Pol-i-Charkhi, which normally house detained prisoners still under interrogation or awaiting trial. At the time of his visit, it was stated that the number of prisoners in the two blocks totalled 364, of whom 200 were in the process of investigation while awaiting trial and 107 had been tried but not yet convicted. Exceptionally, 57 already convicted prisoners were said to be detained in these blocks at their own request.

51. During his visit to Afghanistan, the Special Rapporteur raised with the prison authorities as well as with the Government information he had received concerning the detention of a number of Pakistani and Iranian citizens.

52. In the course of his visit, the Special Rapporteur received from the authorities the following breakdown of the prison population in Afghanistan:

| <u>Place</u> | <u>Total</u> | <u>Political</u> | <u>Criminal</u> |
|--------------|--------------|------------------|-----------------|
| Kabul | 2 936 | 2 174 | 762 |
| Helmand | 41 | 15 | 26 |
| Nimruz | 5 | 4 | 1 |
| Balkh | 342 | 107 | 235 |
| Nangarhar | 145 | 49 | 96 |
| Baaghiz | 8 | 5 | 3 |
| Djondjan | 98 | 37 | 61 |
| Farah | 45 | 36 | 9 |
| Samangan | 6 | 2 | 4 |
| Baghl an | 10 | 1 | 9 |
| Kundus | 46 | 38 | 8 |
| Badakhshan | 29 | 21 | 8 |
| Paktia | 13 | | 13 |
| Khost | 38 | 11 | 27 |
| Parvan | 24 | 15 | 9 |
| Herat | 102 | 65 | 37 |
| Faryab | 19 | 4 | 15 |

53. Prison conditions at Kabul and other places outside the capital, at least inasmuch as convicted persons are concerned, are at present under the inspection of ICRC. Regrettably, no agreement has yet been reached between ICRC and the Government concerning visits to persons awaiting trial.

54. The Special Rapporteur is of the opinion that the conditions of persons awaiting trial are still deplorable: they are kept like animals in small cells or rooms where they have to stand or squat for an unspecified period of time (often as long as seven months) behind iron bars, often with insufficient light.

55. The Special Rapporteur referred to his impressions about these conditions in paragraph 43 of his last report to the Commission (E/CN.4/1989/24). These impressions have not changed, although he noticed some surface improvements in the general prison conditions as compared to the period preceding the systematic visit of ICRC.

56. The **Special** Rapporteur has not received reports recently *concerning ill-treatment in prisons*, but allegations *are* still being made that acts of brutality are committed during questioning in interrogation centres. He was unable to verify these allegations.

57. For the first time, the Special Rapporteur was able to visit the Dar-El-Taadib rehabilitation centre for adolescents between 13 and 18 *years of age*, referred to in his report to the Commission on Human Rights (E/CN.4/1989/24, para. 38). The **authorities** stated that the centre currently has 118 **inmates**, including 3 girls. This figure breaks down into 94 detained for criminal offences and 24 for political reasons. Inmates may **serve terms** of 10 years or more which, once they attain the age of 18, must be completed in Pol-i-Charkhi prison. Remission for good conduct may only be taken into **account** after they have served at least one third of their sentence. The female adolescents appear to be kept in a satisfactory manner, but the **males** are overcrowded in rooms with 18 or 28 beds and share inadequate and sub-standard toilet facilities. The internal regulations of the centre were posted on a wall, but none of the minimum requirements concerning the standard rules of prisoners are fulfilled. In particular, owing to lack of space, criminal and political **inmates** are not separated,

2. Right to education

58. During this visit, the Special Rapporteur received ample information concerning the degree of enjoyment of rights pertaining to education, culture and religion. It appears that the educational **situation** in particular has improved in comparison with the findings of the Special Rapporteur's previous visits,

59. The Special Rapporteur was informed that, in spite of the war situation, the Government has pursued its educational policy by combating illiteracy.

60. According to official estimates submitted to the Special Rapporteur, it has been possible to set up 1,400 schools, with 8,500 students from grades 1 to 121 however, at present only those schools located in cities *are* really functioning. In some cities, like Kabul, elementary classes *were* suspended since several **weeks ago**, owing to the number of rocket attacks,

61. In areas not under its control and in rural areas, the Government has difficulties in carrying out a regular educational programme. In these areas, the full burden of education lies with **religious** institutions and non-governmental organisations located in Pakistan.

62. Teachers number 3,400 but, because of the circumstances of **war**, many experienced **teachers** are no longer available, which has caused a big generation gap in the profession.

63. For the first time, the Special Rapporteur received information concerning the situation of universities and **institutions** of higher education. In this respect **also**, despite the circumstances of war, progress has been made. The following statistics would seem significant! at Kabul there are **some** 7 higher education

institutions with a total of 15,319 students of both sexes. In addition, the Medical Institute, under the Ministry of Public Health, has 3,000 students, making a total of over 18,000, while the total enrolment in the period 1977/78 was only 7,000. There are three other universities. The university at Balch comprises four faculties: engineering, economics, medical and education, but with very limited facilities and possibilities, while Nangarhar and Herat have faculties of agriculture, literature and education. Of a total of 1,100 professors, 800 are in higher education and 300 teach at the Medical Institute.

64. **Technicums**, or colleges, form another branch of the educational institutions and have 6,000 students and 450 instructors. Before 1978 there were only two in the whole country, but now there is a total of nine.

65. After the proclamation of the so-called policy of national reconciliation, a commission was established within the framework of the Kabul University and Medical Institute to establish contacts with a number of professors and students abroad, through their families and other channels, requesting them to come back and explaining the policy of reconciliation. Some success was encountered with the students and 86 returned from France, Saudi Arabia, India, Pakistan and the Federal Republic of Germany, but no success was registered with the professors or teachers,

66. The Government acknowledges that it lost many competent people and has been unable to fill their places.

67. No attempt was made to hide the fact that, owing to the political and material developments in the country, more than 400 experienced professors and teachers have been lost. Even recently, 35 professors left Kabul University as a result of political uncertainty and poor working conditions. The response to appeals to emigrant professors to return so far has been nil.

68. The Special Rapporteur was informed that in June 1989 Kabul University professors met directly with President Najibullah and presented their political, academic and technical problems. This was followed by another meeting, at the conclusion of which the Government was instructed by the President to assist the universities and Ministry of Higher Education to settle these problems. A commission was established to attract the assistance of foreign institutions. In addition, a work plan has been elaborated to improve the conditions in the universities and establish contacts with various educational institutions abroad. One important decision was that the post of dean should become elective. A law is to be promulgated to enable these elections to be conducted by a free and secret ballot and to ensure that the elective system will apply to all academic positions, heads of departments, deans and rectors.

3. Right to freedom of religion

69. The Special Rapporteur discussed the problem of the right to freedom of religion with the Minister for Islamic Affairs and Religious Trusts and representatives of the ulema (religious chiefs). Concerning the damage caused to mosques during the last 10 years, it was stated that 700 have been destroyed, of which 400 have been rebuilt.

4. Economic rights

70. The enjoyment of economic rights is **poor**, as a result of the war situation in the country. In this context, different areas must be considered separately. In areas under government control, supplies of basic needs seem to be **sufficient**; however, prices have undergone a rapid inflation and salaries have not kept up. Civil servants are privileged inasmuch as they receive foodstuffs at relatively normal prices. This is a form of discrimination.

71. In this regard, the situation outside the towns has been described as arduous. The population can only survive with the help of the Office of the Co-ordinator for United Nations Humanitarian and Economic Assistance Programmes Relating to Afghanistan and the non-governmental organisations that operate inside Afghanistan.

72. In this connection, the Special Rapporteur wishes to refer to an agricultural survey on Afghanistan carried out by the *Swedish* Committee for Afghanistan during the summer of 1989, to investigate reported outbreaks of locusts and sunn pest in the north of the country. The survey shows that such outbreaks had resulted in high wheat production losses in 10 of the provinces, and that in 5 of them, the average farmer was in subsistence deficit. Based only on the infested areas visited, it was calculated that over 350,000 persons among the farming population are below subsistence level and that to bring them back to subsistence level would require 225,000 tonnes of wheat. In Badakhshan, for example, it is calculated that the average farm family can feed itself for 7 months of the year) in Baghdis and Faryab, for about 9.5 months and in Herat and Samangan, for 8.5 to 9 months.

73. The survey, which attempts an assessment of the agricultural situation in the various regions, concludes that, because of the emergence of new infestations, wheat purchases in the towns by rural people were strictly controlled by the Government of Afghanistan. According to the survey, there is no alternative for most farmers other than becoming internal refugees and migrating to the towns or, if they have resources, fleeing to the Islamic Republic of Iran or to Pakistan. The survey indicates that chronic malnutrition amongst a large proportion of the population of northern Afghanistan has existed since the beginning of the war in 1979. However, several indicators now point to the imminence of a potentially severe food shortage, and there are reports of an exodus by an unspecified number of farm families to cities in Afghanistan and the Islamic Republic of Iran in search of work and food.

74. A programme designed to assist the regions concerned is being launched in co-operation with the United Nations and various non-governmental organisations and aid agencies. It is hoped that the continuing war situation in Afghanistan will not affect the successful implementation of the proposed programme. In the opinion of the Special Rapporteur, it is of paramount importance to ensure that such a programme be implemented, in order to alleviate this additional suffering of the Afghan people,

D. Situation of human rights in areas not under government control

75. There are many areas not controlled by the Government, but since the Special Rapporteur was unable to visit such areas, he is not in a position to give a reliable report of the prevailing situation there. However, it has been said that some areas are administered in an orderly fashion, while others are only inhabited by armed forces and still others are completely depopulated.

76. The Special Rapporteur received allegations that some foreigners have joined the ranks of the armed forces of the opposition movements, but was unable to verify such allegations,

E . Situation of human rights in combat areas

77. After the withdrawal of the Soviet troops from Afghanistan, the strategic picture in the country underwent certain changes. Areas along the Pakistani border are largely under the control of the opposition groups. For instance, Torkham at the Khyber Pass border is under the control of soldiers who claimed being under the authority of the so-called Interim Afghan Government. It has been asserted that these areas were generally depopulated. According to information given by the Government, protocols of reconciliation have been concluded with some local opposition commanders. Mention was also made of the increase in the number of areas in which the policy of so-called national reconciliation has led to the creation of "peace zones" and "peace provinces". One of the main conditions for creating such peace zones is the acceptance of a Cease-fire. The northern areas, where refugees have returned, are administered by traditional and local authorities.

78. After the withdrawal of the Soviet troops, many large cities, villages and surrounding rural areas have become battlefields. This is the case, for instance, in Nangarhar Province and its capital, Jalalabad, as well as in the region of Herat, and of Kandahar and Khost. In these areas, heavy fighting is going on and indeed the battle of Jalalabad has become notorious.

79. The civilian population in towns and villages and in areas of strategic importance suffer from the hostilities and the laying of minefields. In particular, it must be said that, owing to constant bombing and other acts of warfare, the cities and towns are gradually becoming combat areas.

80. During the battle for Jalalabad, which finally saw the defeat of the opposition forces, more than 20,000 belligerents were reported killed.

81. The Special Rapporteur has been an eyewitness to many casualties in Pakistan and Afghanistan. As previously mentioned, during his visit to several hospitals in Pakistan and in Afghanistan, he was able to see some of the patients, including women and children, who had been wounded as a result of acts of terrorism.

82. The statistics given below, collected in the various hospitals visited, are significant.

83. In the hospitals visited *in Pakistan since* March 1989, the majority of **war-wounded** cases admitted have been due to the fighting at Jalalabad and Khost, which inflicted severe injuries on the civilian population of those areas and resulted in many dead.

84. **As** an example, the following figure⁸ may be quoted for the months of March to August 1989: 1,382 war-wounded were registered at the Al-Fawsan Surgical Hospital, **Peshawar**; over 2,400 at the ICRC Surgical Hospital for Afghan War-Wounded, Peshawara over 900 at the *Afghan* Surgical Hospital, **Poahawar**; 1,069 at the ICRC Surgical Hospital for *Afghan* War-Wounded, Kabul; and 3,000 at Jumhuriyat Hospital, Kabul. Between April and **August** 1989, 525 war-wounded children were treated at the Indira Gandhi Institute of Child Health, Kabul.

85. The Special Rapporteur was also informed about increasing cases of malnutrition, in particular among the children, due to **food shortages**. **Consequently**, the mortality rate of infant⁸ and children in Afghanistan is very high. For instance, it was stated that 80 per cent of the women and children seeking treatment at the Kuwait: **Hospital** for Afghans, Peshawar, be they from the camps or from inside Afghanistan, are suffering from malnutrition,

86. According to the evaluation of the situation made by the official⁸ of the Afghan Trauma Centre, Peshawar, many casualties are expected, particularly as a result of mines during and even a long time after repatriation, and there is a need to establish hospital⁸ dealing uniquely with trauma **cases**.

87. The Special Rapporteur **also** heard allegation⁸ from a **variety of sources** concerning the ill-treatment of captured civilians, in particular women, during the battle for Jalalabad. It was **alleged** that captured persons have been slaughtered in the most cruel way and women taken abroad as **prisoners** and hostages. However, the Special Rapporteur was unable to verify **such allegations**.

88. **Acts** of terrorism as defined in the **First Protocol** Additional to the Geneva Conventions of 12 **August** 1949 (**see** A/43/742, **paras.** 118-121) have increased since the withdrawal of the Soviet troops. The city of Kabul is the subject of heavy, daily rocket attacks. According to official figures brought to the attention of the Special Rapporteur covering the period 15 February to 19 September 1989, a number of acts of terrorism and nocturnal attacks have caused the death of 2,249 civilian⁸ and wounded 5,269. **As** an example, according to reports, 25 people were killed and at least 50 wounded on 10 October 1989 when a rocket hit a **bus** station in central Kabul. This was the second time in eight weeks that rockets have fallen on the **bus** station, killing and maiming civilians.

89. It is reported that Afghan force⁸ are using Soviet made SCUD II missiles, which have a tremendous destructive capability. The Special Rapporteur was able to inspect the **results** of this type of bombing in the Torkham area. Fear of these **missiles** has been given as the main **reason** for refugees leaving Afghanistan today. On the other hand, the Special Rapporteur was able to inspect **some** American-made cluster **bombs**, allegedly captured from the arsenals of the opposition forces near Jalalabad, each of which contain⁸ 97 smaller time bombs. They constitute one of the **most** frightening types of weapon currently being used in the conflict.

90. As already stated in his previous reports, **the** Special Rapporteur continues to consider that a particular cause for anxiety and fear, especially in connection with the repatriation of refugees, is the existence of minefields. In this regard, the situation **has** not changed. On the contrary, the number of casualties is on the increase. According to information given to the Special Rapporteur during his visits to hospitals, the number of victims of explosions has increased during the period under consideration. Hundreds of thousands of mines have been laid, while only a small number have been detected and neutralised. The existence **of** mines is considered to be a major obstacle to the return of refugees and, although the **Office of** the United Nations Co-ordinator for Afghanistan has set up a **mine-**clearance training scheme, systematic clearance has not yet started. The Special Rapporteur would like, once **more**, to recall that the threat to the right to life constituted by the existence of mines requires immediate action on the part of the international community.

91. As a result of the conflict, the fate of the Soviet prisoners of war remains unclarified. As for the Afghan soldiers captured by the opposition forces, it **seems** that **some** have been incorporated into the fighting ranks while others remain prisoner. However, the Special Rapporteur was not able to verify these allegations. In any event, captured members of the opposition forces are not treated as prisoners of war, but as terrorists, and are submitted to the courts of State security.

F. Right to self-determination

92. It should be recalled that, since the beginning of the conflict, the principal organs of the United Nations have always stressed the necessity to respect the right of the Afghan people to self-determination, in conformity with article 1 of **both** the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Political Rights. The exercise of this right requires also that a people shall be able to choose freely the type of government it wishes to have. In the case of Afghanistan, the latter presupposes the free and voluntary return of all refugees to their homeland as foreseen in the Geneva Agreements **of** April 1988. **As** long as conditions favouring the return of the refugees have not been created, a genuine exercise of the right to **self-**determination cannot take place. The United Nations and all humanitarian **organizations** have incessantly called for the creation of conditions enabling the free and voluntary return to Afghanistan of the more than 5 million refugees. In this connection, the Special Rapporteur notes that one **major** condition for the return of the refugees, namely, the withdrawal **of** the Soviet troops, has now been fulfilled.

93. As to the **free** choice of government, the Special Rapporteur must stress that only a portion of the population has accepted the type of government provided for by the Constitution of the Republic of Afghanistan of December 1987. In particular, the millions of refugees have not had the opportunity to express themselves on this Constitution. On the other hand, the alliances are attempting to designate a traditional consultative body, called the **Shura**, composed of selected members from the parties of the alliances based in Pakistan and in the

Islamic Republic of Iran, military commanders, tribal chiefs, ulemas, Afghan intellectuals and "good Muslims" from within the present administration who are not involved in the PDPA.

94. Self-determination also means the exercise of the right to general elections held freely and without discrimination. All the parties concerned should make every effort towards attaining this objective.

95. The history of Afghanistan has been marked from time to time, and particularly in periods of internal tension, by conflicts among the various tribes, and between the tribes and the central Government, owing to the hetero-ethnic character of its people. Until such time as a truly representative organ in the State shall have been freely elected by all Afghans, including the refugees, who represent more than a third of the total population, the right to self-determination in Afghanistan will not be fully exercised,

III, CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

96. Pursuant to his examination and scrupulous analysis of the information contained in the preceding chapters, the Special Rapporteur is in a position to draw a number of conclusions reflecting his personal views on the overall situation of human rights in Afghanistan, which remains a matter of deep concern even after the withdrawal of the Soviet troops,

97. The withdrawal of the Soviet troops, which constitutes the first step towards the restoration of peace in the country, must be welcomed. However, peace has not been restored. An armed conflict between government forces and groups of the opposition movements continues unabated,

98. The SCUD II missiles and cluster bombs being used by both belligerents, which are inflicting a disproportionately heavy toll on the civilian population, are of foreign origin,

99. The main towns and villages in Afghanistan are under government control. In March 1989, the Government declared a state of emergency, which strengthens the power of the President, who may suspend human rights by simple presidential decree.

100. Opponents of the régime are still being tried by special security courts and the procedural guarantees of the accused are not in conformity with international human rights instruments. There are still more than 3,000 political prisoners in Afghanistan. The conditions of prisoners awaiting trial or verdict are deplorable and particular attention should be paid to the juvenile rehabilitation centre (Dar-El-Taadib) .

101. It is to be regretted that ICRC has not so far had the opportunity to visit persons awaiting trial, in accordance with its established criteria.

102. The tragic economic situation of the country does not guarantee the full enjoyment of economic and social rights.

103. The number of refugees totals more than 5 million. Because of the gravity of the hostilities, the number of refugees coming from combat areas is even **increasing**. The severity of the fighting, the existence of minefields and the composition of the present Government are still considered by the refugees as the main obstacles to their return. Despite the considerable efforts of the Afghan Government to receive returning **refugees**, their numbers remain insignificant.

104. The living conditions of the refugees are becoming increasingly difficult. International aid has diminished. The withdrawal of the Soviet troops has resulted in a reduction in the volume of international assistance to the refugees, particularly to recent arrivals. The situation of women and children in refugee camps in Pakistan appears to be more deplorable than that in the Islamic Republic of Iran. This is due to the fact that in the Islamic Republic of Iran a relatively high number of refugees live outside the camps and are integrated into the local population.

105. The Special Rapporteur is of the opinion that a halt to the delivery of weapons from abroad would be a welcome step per se, but would not alone end the conflict. Only a political solution can guarantee the enjoyment of all human rights, including the right to self-determination. Only a political solution can lead to the return of the refugees. A political solution requires a generally accepted initiative on the part of generally **recognized** personalities. It also requires other conditions, which reside in the particularities of the Afghan people and its political, tribal and religious forces. A political solution cannot be imposed. However, the international community is able to offer its good offices to create adequate conditions for a fair political solution. Should a political solution not be found rapidly, the enjoyment of human rights would be further endangered at all levels.

B. Recommendations

106. The Special Rapporteur would like to reiterate the following recommendations contained in his report to the Commission on Human Rights (**E/CN.4/1989/24, paras. 80-86**):

"80. The right to self-determination must be considered as an inalienable right of the Afghan people as a whole, inside and outside the country. The return of all refugees must, therefore, be facilitated in co-ordination with the Office of the United Nations High Commissioner for Refugees and with the full co-operation of all parties concerned in order to create the necessary conditions for the free exercise of the right to self-determination.

"81. All efforts must be made to start clearing the mines as quickly as possible in an organized manner in all areas in Afghanistan where mines have been laid. To this effect, all military commanders should provide mining plans or specific indications with a view to facilitating the process of mine clearance.

/...

"82. **Persona** belonging to the armed forces and the civil service should under no circumstances be subjected to arbitrary justice but should, if evidence of their guilt is produced, be put on fair trial on an individual basis.

"83. The names of all political prisoners and detained Afghan soldiers **should** be transmitted by all parties to humanitarian organisations and, in particular, to the International Committee of the Red **Cross**. Prisoners of war should be released without delay and without asking for reciprocity.

"84. The fate of disappeared persons should be thoroughly investigated.

"85. In this and other respects recourse might be had to the assistance of the advisory services of the Centre for Human Rights.

"86. No ban whatsoever on supplies of medicine and foodstuffs and other essential goods should be **declared** as a means of pressure against the civilian population. The **Special** Rapporteur recommends that the Commission on Human Rights should urgently appeal to all Member States and humanitarian organisations to promote the humanitarian consensus required for the implementation of the projects envisaged by the Co-ordinator for United Nations Humanitarian and Economic Assistance Programmes Relating to Afghanistan."

107. In addition, since the Special Rapporteur has a specific mandate to make recommendations concerning human rights after the withdrawal of foreign troops from Afghanistan, he considers it appropriate to add or emphasise the following recommendations:

- (a) Humanitarian law should be respected by all parties to the **conflict**;
- (b) Fighters should be **recognized** as combatants within the meaning of the Geneva Conventions of 1949;
- (c) The use of weapons against the **civilian** population must be halted. **Any** such use must be qualified as **terrorism**;
- (d) All political prisoners and detained soldiers should be released by both sides to the conflict and should not be held as **hostages**;
- (e) Humanitarian assistance to the refugees should not be decreased or **halted**. On the contrary, it should be reinforced. In particular, the activities of the United Nations High Commissioner for Refugees and those of the Office of the United Nations Co-ordinator for Afghanistan should not be subject to any financial cuts;
- (f) Amnesty decrees should apply equally to foreign detainees. The lot of prisoners awaiting trial should **be** improved; the period during which these prisoners await trial should be shortened to a reasonable length of time;
- (g) The right to self-determination should also be respected by the opposition forces, who are **as** bound by human rights obligations as any other **party**;

(h) The International Committee of the Red Cross should also be allowed access to all prisoners awaiting trial.

Notes

1/ Swedish Committee for Afghanistan, unpublished article entitled "Aid in Afghanistan; Limitations and Possibilities".

APPENDIX

Articles of the Constitution that may be suspended or limited in a state of emergency

Article 30

Expropriation is allowed only in the public interest and **against** just and prior **compensation** in accordance with the law. **Confiscation** of property **is** not allowed without the sanction of the law and the decision of a court.

Article 44

In the Republic of Afghanistan, the inviolability of residence **is** guaranteed. No person, including a State representative, can enter or search a **residence** without the permission of the **resident** and except in **circumstances** and under procedures **prescribed** by the law.

Article 45

In the Republic of Afghanistan, confidentiality of correspondence, telephone conversations, telegrams and other communications is guaranteed. No one, including a State representative, shall intercept telephone *conversations*, telegraphic communications and other communications except under the provisions of the law.

Article 46

Citizens of the Republic of Afghanistan who suffer in the performance of their duties unlawful *damage* by State organs, social **organizations** and **responsible** officials are entitled to compensation, the conditions and procedures of which shall be regulated by law.

Article 49

Citizens of the Republic of Afghanistan enjoy the right of freedom of thought and expression. Citizens can exercise this right openly, in speech and in writing, in accordance with the provisions of the law. Pre-censorship of the press is not **allowed**.

Article 50

Citizens of the Republic of Afghanistan have the right to assembly, peaceful demonstration and strike, in accordance with the provisions of the law.

Article 51

Citizens of the Republic of Afghanistan enjoy the right to petition.. criticize and make suggestions, either individually or collectively. State organs, social organizations and responsible officials are bound to consider the petitions, criticisms and proposals and take necessary actions in regard to them within the time prescribed by law. Surveillance for criticism is forbidden.

Article 53

Imposition of forced labour is forbidden. Performance of compulsory labour in war time, natural calamity and other states of emergency which threaten public life and order shall be excluded from this.

Article 60

Citizens of the Republic of Afghanistan enjoy according to law the right to travel abroad and return home.
