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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Afghanistan prepared
by the Special Rapporteur, Mr. Felix Ermacora, in accordance
with Commission on Human Rights resolution 1985/38

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I. MANDATE OF THE SPECIAL RAPPORTEUR

1. In resolution 1984/37 of 24 May 1984, adopted at its first regular session in 1984, the Economic and Social Council approved the recommendation made by the Commission on Human Rights in its resolution 1984/55 of 15 March 1984 that a special rapporteur should be appointed to examine the human rights situation in Afghanistan with a view to formulating proposals which could contribute to ensuring full protection of the human rights of all residents of the country before, during and after the withdrawal of all foreign forces.
2. On the basis of information received in 1985 following initial consultations with organizations and with a number of persons from different provinces of Afghanistan, the Special Rapporteur submitted his first report to the Commission on Human Rights at its forty-first session (E/CN.4/1985/21). He had formulated the conclusions and recommendations contained in paragraphs 170 to 195 of that document.
3. At its forty-first session, having considered the report submitted by the Special Rapporteur, the Commission on Human Rights adopted resolution 1985/38 of 13 March 1985, in which it expressed its profound concern at the grave and massive human rights violations in Afghanistan and its distress at the widespread violations of the right to life, liberty and security of person, including the commonplace practice of torture against the régime's opponents, indiscriminate bombardments of the civilian population and the deliberate destruction of crops. The Commission called upon the parties to the conflict to apply fully the principles and rules of international humanitarian law, to admit international humanitarian organizations, in particular the International Committee of the Red Cross, and to facilitate their operations for the alleviation of the suffering of the people of Afghanistan and urged the authorities in Afghanistan to put a stop to the grave and massive violations of human rights and in particular the military repression being conducted against the civilian population. Finally, the Commission decided to extend the mandate of the Special Rapporteur for one year and requested him to report to the General Assembly at its fortieth session and to the Commission at its forty-second session on the situation in Afghanistan, including the human and material losses resulting from bombardments of the civilian population.
4. In decision 1985/147 of 30 May 1985, adopted at its first regular session in 1985, the Economic and Social Council endorsed the decision taken by the Commission on Human Rights.
5. In pursuance of Commission on Human Rights resolution 1985/38, and having received no reply from the Afghan Government to his letter of 4 June 1985 requesting the Government's co-operation and authorization to visit the country, the Special Rapporteur decided to hear the testimony of witnesses in refugee camps situated in Baluchistan and in the North-West Frontier Province of Pakistan with a view to gathering information and evidence.
6. During his visit to Pakistan from 25 July to 10 August 1985, the Special Rapporteur interviewed persons from 16 provinces of Afghanistan and visited seven refugee camps and five hospitals. In this way he was able to gather first-hand information from a number of Afghan men, women and children who had been hurt either during the bombardment of their villages or while travelling to Pakistan to seek refuge. The Special Rapporteur also examined information from non-governmental organizations in consultative status with the Economic and Social Council and from organizations and associations directly concerned with the situation in Afghanistan.

7. A detailed description of the activities undertaken by the Special Rapporteur with a view to preparing his report to the General Assembly at its fortieth session is contained in document A/40/843.

8. After this visit to Pakistan, the Special Rapporteur sent to the Minister for Foreign Affairs of Afghanistan a letter dated 2 September 1985, in which he again stressed the importance of establishing direct contacts with the authorities concerned and transmitted the information that had been communicated to him personally by a number of Afghan citizens and other persons. The full text of this letter can be found in document A/40/843 (para. 17).

9. With a view to carrying out his mandate in the most impartial and objective manner, on 17 December 1985 the Special Rapporteur once again, sent a letter to the Minister for Foreign Affairs of Afghanistan assuring him that, in the implementation of his mandate he did not wish in any way to interfere with matters properly pertaining to the sovereign jurisdiction of the Afghan Government and reiterating his intention to carry out his mandate in the most impartial and objective manner. The Special Rapporteur appealed once again to the Afghan Government to co-operate, primarily by facilitating a visit to Afghanistan, so that his report would reflect a comprehensive picture of the human rights situation there.

10. Having received no reply from the Afghan Government, the Special Rapporteur made his own inquiries concerning the human rights situation in Afghanistan, making the best possible use of reliable sources. He then decided to hear the testimony of witnesses in refugee camps in Pakistan and interviewed Afghan men, women and children in several hospitals during a visit he made from 31 December 1985 to 6 January 1986.

11. The Special Rapporteur was once again able to benefit from the particularly valuable co-operation of the Pakistan authorities in this matter.

12. After this mission to Pakistan, the Special Rapporteur sent the following letter dated 13 January 1986 to the Minister for Foreign Affairs of Afghanistan:

"I have the honour to refer to my letters of 13 August 1984, 4 January 1985, 4 June 1985 and 17 December 1985 which I addressed to Your Excellency in the implementation of the mandate entrusted to me by the Commission on Human Rights concerning the situation of human rights in Afghanistan. In these letters, I assured Your Excellency that I would carry out my mandate in the most impartial and objective manner. I also stressed the importance of establishing direct contacts with the authorities concerned. I further expressed the hope of obtaining the co-operation of Your Excellency's Government in order to have my reports reflect a comprehensive picture of the human rights situation in Afghanistan. In this connection, I should like to refer in particular to my letter of 17 December 1985. While appealing to Your Excellency's Government to extend its co-operation to me, I suggested in that letter that a visit to Afghanistan take place in good time to allow me to finalize my report to the Commission on Human Rights, by the end of January 1986.

Subsequent to my letter and in implementation of my mandate, I have received further information relating to the situation of human rights in Afghanistan. Among these, is information communicated to me in person by

a number of Afghan citizens and other individuals. Once more, I feel it is my duty to let Your Excellency know that the information I have received continues to include allegations of violations of human rights.

As I stated in my previous letters, I am aware of the position of Your Excellency's Government as repeatedly stated in various forums. However, I feel compelled to reiterate my invitation that Your Excellency's Government extend its co-operation to me so that the Commission on Human Rights can be seized with the most complete and accurate information available."

13. Finally, the Special Rapporteur took note of the opinions expressed by representatives of the Afghan Government in various United Nations forums.

14. At its last session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1985/35 of 30 August 1985, in which it requested the Commission on Human Rights to ask the Special Rapporteur to look in particular into the fate of women and children as a consequence of the conflict in Afghanistan and to ask all specialized agencies of the United Nations and all those concerned in the conflict to give the necessary information about the situation to the Special Rapporteur and to collaborate with him fully.

15. At its fortieth session, the General Assembly adopted resolution 40/137 of 13 December 1985, in which it called upon the parties to the conflict to apply fully the principles and rules of international humanitarian law, to admit international humanitarian organizations, in particular the International Committee of the Red Cross, and to facilitate their operations for the alleviation of the suffering of the people in Afghanistan, urged the authorities in Afghanistan to co-operate with the Commission on Human Rights and its Special Rapporteur, in particular by allowing him to visit Afghanistan, and decided to keep under consideration, during its forty-first session, the question of human rights and fundamental freedoms in Afghanistan in order to examine this question anew in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

16. At the outset the Special Rapporteur wishes to reiterate the view expressed in previous reports (E/CN.4/1985/21, paras. 33-35 and A/40/843, paras. 19-21) that the study of the human rights situation in a given country is within the mandate of United Nations organs and in no way constitutes interference in the internal affairs of that country.

17. In fulfilment of the particular part of his mandate regarding human and material losses resulting from bombardments, the Special Rapporteur must state that no official figures were available to him; he therefore decided, with the help of the Bibliotheca Afghanica Foundation, to consult all available sources. He was able to achieve reliable results after having studied more than 80 newspapers, journals and reports, and reported to the General Assembly on the extensive loss of human and animal life resulting from the conflict during the period from January to September 1985. The report to the General Assembly also contains a chronological list of incidents which occurred between January and September 1985 (A/40/843, appendix I). In nine instances the Special Rapporteur referred to losses caused by opposition movements. In preparing this report, he has drawn upon all available sources, such as governmental newspapers, reports and statements made by representatives of the Government of Afghanistan before United Nations bodies,

and statements to which other Governments have referred. Thus, both the interim report and the present report take into account the views of the Government and other available sources.

18. The present report was prepared in conformity with Commission on Human Rights resolution 1985/38 and Economic and Social Council decision 1985/147. It contains the additional information received by the Special Rapporteur during his mission to Pakistan from 31 December 1985 to 6 January 1986, together with communications from various organizations and persons with personal knowledge of the situation in Afghanistan. Chapter I gives the Special Rapporteur's mandate, chapter II contains a brief history of the political situation, chapter III deals with the situation of refugees, chapter IV analyses the information concerning respect for human rights, chapter V contains conclusions, and chapter VI sets forth the Special Rapporteur's recommendations.

II. POLITICAL BACKGROUND AND DEVELOPMENT OF THE HUMAN RIGHTS SITUATION IN AFGHANISTAN

19. The present situation of human rights in Afghanistan can only be understood in the context of that country's history. To that end, the Special Rapporteur has drawn upon the works of Mr. H. Kakar, whose book covers an important part of Afghan history, Mr. L. Dupree, who has made a careful study of the modern constitutional history of Afghanistan, and Mr. A. H. Tabibi who is the author of a short but informative history of Afghanistan.^{1/}

20. The current human rights situation in Afghanistan is the result of the political and the military conflict. The political conflict is caused by the clash between a materialistic world and tradition, the military conflict is exacerbated by the presence of a "small contingent of Soviet forces" (to use the official Afghan government term), ^{2/} which is actively involved on the government side. According to reliable sources, this contingent numbers 120,000. The army is attacked by opposition movements whose only goal seems to be to force the foreign troops to withdraw from the country. The political and military elements of the conflict are closely linked and have heavy consequences for the civil, political, economic, social and cultural rights of the civilian population. The Special Rapporteur is not mandated to study the armed conflict as such, however, since that conflict has had such a serious effect on humanitarian law, he cannot ignore it altogether; he must at least take into account the type of warfare involved, the weapons used, the treatment of prisoners and of civilians during the conflict, etc.

21. The armed conflict in Afghanistan has now entered its seventh year. Since the first report of the Special Rapporteur to the Commission on Human Rights in March 1985, new elements in the human rights situation which occurred during the sixth year of the conflict have come to light and must be taken into account in this report. In fulfilling his mandate, the Special Rapporteur has identified the following new elements in the situation in Afghanistan:

Continuation of the flow of refugees from Afghanistan to neighbouring countries where they now number more than 4.5 million, which is, in itself, a human rights problem;

Changes in the demographic composition of the country as a result of the mass movement of refugees inside and outside the country;

Impact on the right to self-determination of the attempts of the Afghan Government to legitimize its own power and the presence of the foreign troops by the holding of Jirgahs, in particular the Loya-Jirgah of April 1985;

Impact on humanitarian law of the brutality of the warfare;

Impact on the human rights situation in general of the transition from classic guerrilla warfare to warfare focusing on "strategic points";

New estimates of the number of missing persons between 1979 and 1980, i.e. before the 1980 amnesty.

22. In addition to these new elements, reference should be made to the efforts underway to bring about a political solution to the conflict, such as discussions under the auspices of the United Nations or in national

parliaments. It may also be recalled that throughout the year several reports have been produced and hearings organized by private national and international non-governmental organizations.

23. In addition, in an effort to broaden the bases for the reconstruction of a new social order, the Revolutionary Council of the Democratic Republic of Afghanistan announced on 19 November 1985 that it was necessary for "all elements of society to participate in the running of all State and administrative bodies". The Cabinet was enlarged by four ministers and 14 vice-ministers who are not members of the Popular Democratic Party of Afghanistan.

24. In this context, it is also worth noting that Pravda, on 21 December 1985, recognized that "the mistakes of the first stage of the revolution - passion for revolutionary phrases, speeding up of social reforms without taking due account of the real situation and the social and national characteristics of the country - had negative consequences. ... An atmosphere must be created for a positive dialogue between social and political forces, including those who still hold positions hostile to the revolution, in the name of the national rebirth of Afghanistan."

25. As a result of the Loya-Jirgah which was convened in 1985, a law on the organization of the central power and the administration was discussed and adopted. Elections have taken place since 11 August 1985. It has also been stated that some 3,700 representatives of Pashto tribes were present at the Loya-Jirgah of the frontier tribes which adopted similar decisions. It would appear that representatives appealed to other leaders of the border tribes to "close the borders and oust the counter-revolutionaries".

26. Following the Saur revolution, a forceful implementation of the reform decrees was the starting point of country wide opposition which erupted first in the rural areas, where the majority of the people found themselves unable to accept these reforms. Religious and nationalist sentiments were further provoked by the intervention of foreign troops, these sentiments are rooted in the tradition of a people who are proud of their independence and who, throughout the centuries, have frequently had to combat foreign interventions.

27. The Special Rapporteur wishes to emphasize once again that the rules and principles which should govern the human rights situation in Afghanistan are well-established legal rules, accepted by the States involved, which are parties to the major international human rights instruments in force: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide. Afghanistan is also a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

28. Afghanistan has incorporated in its current constitutional order, which is enshrined in the Fundamental Principles of the Democratic Republic of Afghanistan, adopted on 21 April 1980, important proclamations concerning the fundamental rights and duties of the people and the individual. The Special Rapporteur made a survey of the most important provisions regarding human rights, which are to be interpreted "to consolidate the gains of the Saur Revolution and realize its lofty objectives and aspirations, strengthening, developing and further evolving the progressive system in the Democratic Republic of Afghanistan" (see E/CN.4/1985/21, paras. 139-142).

29. It must be mentioned that Afghanistan has submitted reports to the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Economic and Social Council describing the measures adopted to give effect to the rights recognized in the international instruments to which it is a party. These reports were discussed and the representatives of Afghanistan answered questions thereon. The Special Rapporteur does not wish, at this stage, to enter into a discussion on the extent to which those reports may indicate the difficulties encountered in implementing the instruments to which they refer, in particular the International Covenant on Civil and Political Rights. However, he would like to emphasize the fact that the human rights situation in a State is not reflected merely in the legislation in force, which may well be in conformity with international instruments, but also by the practical implementation of that legislation and the international instruments to which a State is a party (see A/40/843, para. 118 (c)). The Special Rapporteur is still of the view that the reality of a human rights situation can only be established by an examination of the rights proclaimed as well as their application and respect.

30. For the sake of clarity, the Special Rapporteur has divided his consideration of the human rights situation in Afghanistan into two parts: one concerns the human rights situation as such - how it has come about and how it is developing in terms of the conflict of two cultures, the other concerns the human rights situation as a consequence of the armed conflict between governmental forces and foreign troops on the one hand, and opposition movements on the other. However, the Special Rapporteur wishes first to address the refugee problem, which is, by its very nature, a human rights problem whose consequences go far beyond the borders of Afghanistan. The existence of over 4.5 million Afghan refugees, equivalent to one third of the registered population of Afghanistan, is a fact which can be established without the need for a visit to Afghanistan.

III. THE SITUATION OF REFUGEES

31. It is an undeniable fact that the conflict in Afghanistan has led more than 4.5 million refugees to flee the country since 1979. The magnitude of this exodus and its importance from a demographic point of view cannot be overlooked.

32. As stated in the Special Rapporteur's previous reports, according to the most recent official census, carried out in 1979, the population of Afghanistan was 15.5 million, of whom about 913,000 lived in Kabul.

33. The hetero-ethnic character of the country and its geographical configuration have marked the history of Afghanistan with conflicts among the various tribes from time to time and between the tribes themselves and the central Government. Since the nineteenth century, in particular, Afghanistan has acquired a certain strategic importance which attracted the interest of external Powers.

34. According to information furnished by the Office of the United Nations High Commissioner for Refugees, the number of refugees in Pakistan was in the order of 2.7 million in January 1986. The Special Rapporteur was informed that in addition to the 2.7 million registered refugees there are some 400,000 persons awaiting registration as refugees in newly established refugee tent villages in the Province of Baluchistan and in the North-West Frontier Province. According to figures provided by the Government of Pakistan, the refugee influx continues at an average monthly rate of between 6,000 and 8,000, of whom about 25 per cent are men, 28 per cent women and 47 per cent children. By July 1985, the number of registered refugees had reached 2,635,483 and as of November 1985 the number was 2,699,679. The representative of Afghanistan, speaking before the Committee on the Elimination of Racial Discrimination, said that these figures were deliberately overestimated by the people in charge of the refugee camps and that a number of so-called refugees were only migrant workers or nomads pursuing their customary way of life. In the experience of the Special Rapporteur, who has visited so many refugee camps in Pakistan, that statement cannot be considered to conform to reality. In his interim report to the General Assembly, the Special Rapporteur included a map illustrating refugee movements in Afghanistan based on information he had received (see A/40/843, appendix II).

35. The Special Rapporteur noted that, since the first part of 1985 and in particular since September 1985, refugees have been coming from all provinces of Afghanistan. The flow of refugees reflects the extent of hostilities inside the country. One eyewitness reported having seen several hundred refugees on the move night after night. The Special Rapporteur was informed that the decision to leave a village and seek refuge elsewhere was taken by families who then left together. He has also been informed that heavy casualties have occurred on the way to Pakistan; one such incident took place at the end of December 1985 when a bus convoy of refugees was attacked by foreign troops and, as a result, some 25 women and children, who were subsequently hospitalized in Peshawar, were wounded.

36. During his visits to Pakistan from 25 July to 10 August 1985 and from 31 December 1985 to 6 January 1986, the Special Rapporteur was able to travel freely throughout the country and to visit refugee camps and hospitals where wounded Afghans were being taken care of. In the course of interviews with the persons he met, he tried to establish the immediate reasons for their departure from their homes and their country to obtain temporary asylum in

Pakistan. By and large the replies received by the Special Rapporteur attribute the reasons for their departure to a need for what was termed "respect for the faith and for liberty". In essence, the reason for their flight from Afghanistan was permanent danger and insecurity due to indiscriminate bombing of the villages, regular searches of their houses for either members of opposition movements or men of conscription age, and the destruction of crops in the rural zones.

37. There are also many refugees in the Islamic Republic of Iran whom the Special Rapporteur has not yet had an opportunity to visit. The United Nations High Commissioner for Refugees calculates that there are some 1.8 million refugees distributed in 12 different provinces. Similarly, a considerable number of Afghans, said to be from the urban areas of Afghanistan, have fled to India. ^{3/} In addition, the Special Rapporteur was informed that some 4,000 Afghans were reported to have found refuge in Turkey between 1982 and 1984, new admissions were limited to Afghan families of Turkish origin (see A/AC.96/657, para. 969).

38. The sheer volume of the refugees is per se a human rights problem because it concerns the right to freedom of movement, freedom of residence and security of person. Since the refugees come on a large scale from all the provinces of Afghanistan and belong to different tribes, the question must be asked how far this refugee movement affects the demographic structure of the country. This in turn raises the problem of self-determination, since in any event, one third of the population cannot be considered to be directly or indirectly represented by the Government or its institutions. The refugees interviewed all expressed the hope that they would be able to return to their country as soon as conditions permitted. One of the most urgent concerns is to find ways to allow the millions of refugees to return to their country with dignity and without fear. The General Assembly and the Commission on Human Rights as well as other intergovernmental organizations have urged that this problem be solved.

39. At the conclusion of the Loya-Jirgah held in April 1985 in Kabul an address to the people of Afghanistan and a message to the Secretary-General of the United Nations (A/40/273-S/17135, annex) were adopted on 25 April 1985. The following was stated in regard to the return of refugees: "The 'deceived' individuals living in foreign countries were invited to return with peace of mind to Afghanistan, the General Amnesty Decree of the Presidium of the Revolutionary Council of the Democratic Republic of Afghanistan having guaranteed the protection of their life, family, property, freedom and work". The representative of Afghanistan recalled before the Committee on the Elimination of Racial Discrimination that in January 1980 and again in June 1981, an amnesty had been proclaimed granting all Afghans living abroad the chance to return home.

40. Indeed, on 22 June 1981 the Government adopted a new amnesty decree which, in accordance with section 6 of article 43 of the Fundamental Principles of the Democratic Republic of Afghanistan, contains the following provisions:

(a) All individuals who laid down their arms and surrendered voluntarily to the State organs would be granted amnesty;

(b) All persons related to the armed forces who, under the impact of deception or unawareness or under the influence of the enemy's hostile propaganda, had gone over to the enemies' positions would be granted amnesty if they voluntarily returned to the homeland and surrendered to the State organs;

(c) All the citizens of the country who, owing to the deceit of the enemy, were separated from the bosom of the motherland, including those who had taken part in counter-revolutionary activities, would be granted amnesty if they returned to the homeland to atone for their past deeds.

41. In order to implement that decree, the Council of Ministers was instructed: (a) to provide necessary facilities for all those who were outside the country and returned to their homeland and (b) to ensure the necessary conditions for the members of their families in gainful social work. However, all the State organs in the capital and the provinces, military and civil, were duty bound to observe this decree and to maintain the security of those who laid down their arms and surrendered voluntarily to the State organs.

42. The sources of the information gathered by the Special Rapporteur include the report of the International Humanitarian Inquiry Commission on Displaced Persons in Afghanistan. Such people are still known as internal refugees, and the phenomenon is thought to concern some 1.5 to 2 million persons. In the opinion of the Special Rapporteur this has brought about an important change in the demographic structure of the country, the flow of inhabitants of the rural areas to the cities, has caused not only serious overpopulation in urban zones but equally serious depopulation of the rural areas.

43. The plight of these refugees obviously touches the humanitarian conscience of mankind, but it also creates a heavy economic burden for those countries, such as Pakistan, that find themselves having to undertake the international humanitarian obligations imposed upon them by the situation.

IV. INFORMATION CONCERNING RESPECT FOR HUMAN RIGHTS IN AFGHANISTAN

A. Situation before the intervention of foreign troops in December 1979

44 . In his previous reports, the Special Rapporteur endeavoured to show that in the course of the Saur Revolution (April/1978) there was opposition to the reform decrees and their implementation. It may be recalled that eight reform decrees were promulgated between April and November 1978. A further reform bill was adopted on 20 January 1982 for the purpose of "ensuring just distribution and effective use of water in order to meet the needs of the people and of the national economy and the protection and reasonable use of water resources. Meanwhile, the traditions or tenets of Islam concerning the distribution of land and water will all be taken into account".

45. As stated in previous reports, these reforms were strictly implemented and affected customary law, the customs and traditions of the majority of the population in the rural areas and the religious consciousness of much of the population. In particular, the manner in which these reforms were implemented created growing resistance. For example, witnesses stated that the literacy campaign was in fact hampered by the frequently arrogant behaviour of the instructors, the obligatory attendance at classes for elderly people and obligatory participation for women in mixed classes, all of which were felt to be humiliating. The manner in which the reforms, which had not been approved by Loya-Jirgah, were implemented provoked resistance, which developed into a virtual uprising and in turn gave rise to stronger governmental pressure. The Special Rapporteur has been informed by many eyewitnesses of the manner in which the authorities attempted to enforce implementation of the reform decrees. The governmental reprisals included the taking of hostages and in urban areas persons who belonged to certain classes or who would not agree, or were suspected of not agreeing, with the reforms were imprisoned, tortured and detained without trial.

46. During this period the Special Rapporteur noted reports on the conditions in the Pol-i-Charkhi prison in Kabul. He also received information concerning the disappearance of persons prior to 27 December 1979. It was alleged that some 9,000 persons had been killed, although Amnesty International refers to a list of 4,845 killed. As stated in his report to the General Assembly (A/40/843, para. 50), the Special Rapporteur was informed that the number of persons considered to have disappeared before the amnesty in 1980 is, in fact, much higher than that previously announced. Recently, the Special Rapporteur heard the testimony of a former member of the Ministry of Planning in Afghanistan, who was authorized in February 1980 to register all missing persons on the basis of information received from their relatives and friends. In three weeks over 25,000 persons between the ages of 18 and 60 had been registered. The missing persons were well educated and included medical doctors, government officials, military or religious people. An analysis was ordered by the minister in charge. In the view of the witness, well over 27,000 persons would have been registered missing if the registration procedure had not been stopped when it was discovered that the number of missing persons was much higher than foreseen.

47. A witness belonging to the government medical service in Herat informed the Special Rapporteur that, in the course of the construction of a military compound near the fish market, the bodies of 154 men had been discovered, chained in groups of seven. The witness stated that the stage of decomposition of the bodies indicated that the persons had been killed before the foreign intervention in December 1979. It may therefore be concluded that these persons were among those who disappeared between 1978 and 1979.

B. Situation since the intervention of
foreign troops on 27 December 1979

48. As stated earlier, the intervention of foreign troops in Afghanistan constitutes a landmark in the human rights situation in the country, which has been affected since then by both the internal political situation before the intervention and the armed conflict that developed throughout the country as a result of that intervention. These two aspects of the situation are governed by distinct international criteria in the field of human rights.

1. Situation of human rights in Afghanistan regardless of the
armed conflict

(a) Right to life

49. During the reporting period, the Special Rapporteur received information on the execution of detainees. There are no statistical data on the number of death sentences passed and carried out. As already stated, the procedures in revolutionary courts in which death sentences are pronounced are not public. According to Justice Azeem, a former judge in the Afghan judiciary, the arbitrariness exercised in the administration of justice against opponents or presumed opponents of the régime creates an atmosphere of insecurity and anguish.

50. Sometimes official announcements indicate that death sentences have been carried out. Bakhtar newsagency reported on 16 December 1985, for example, that Noorul Hudda Toofan, Amanullah Hakim and Abdul Hakim were sentenced to death by the Special Revolutionary Court in the Province of Parwan on charges of armed uprising. On 28 December 1985, Radio Kabul reported that Faiz Mohammed and Jan Aga had been sentenced to death by a Special Revolutionary Court in Pul-i-Khumri on charges of carrying out ambushes on the highway.

51. The Helsinki Watch Group, in its report "To die in Afghanistan" (December 1985) (p.68 ff.) refers to reports that death sentences were carried out on 30 or 40 people every one to three days in Polygon Field behind the military academy near Pol-i-Charkhi prison. Executions are also reported to have taken place in Jalalabad.

52. The Special Rapporteur took note of the reports from non-governmental organizations that a number of persons had been sentenced to death. The Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions reported 21 death sentences carried out in 1985 (E/CN.4/1986/21, para. 101). After having heard eyewitnesses, the Special Rapporteur is of the opinion that those sentences were indeed carried out.

53. It must be remembered that there is no judicial appeal against death sentences handed down by the Special Revolutionary Court in Afghanistan and that there is no record of amnesty, pardon or commutation of the death sentence. This is contrary to articles 6, paragraph 4, and 14, paragraph 5, of the International Covenant on Civil and Political Rights, to which Afghanistan is a party.

(b) Right to liberty and security of person, prison conditions

54. In his previous report to the Commission (E/CN.4/1985/21, para. 88) the Special Rapporteur referred to the fate of Mr. Hassan Kakar who, together with other academics, has been convicted for attempting to form a teachers'

association. The former head of the History Department of the University of Kabul, a famous historian, now lives in humiliating circumstances and his fate sheds light on the penitentiary system in the country and its lack of conformity with the Standard Minimum Rules for the Treatment of Prisoners.

55. The Special Rapporteur has been informed by reliable eyewitnesses that, since his conviction, Mr. Hassan Kakar has been held in a hall together with 179 other prisoners. The medical facilities are poor; he has not had a chance to check his eyesight although he needs new glasses, nor has he had medical care for his varicose veins. The food is insufficient (one piece of bread, tea and sugar in the morning, soup and a small piece of meat for lunch and rice and vegetables in the evening). Hygienic facilities are poor; there is little water or electric light and there are many insects. Relatives are allowed to visit him only once a month for half an hour in the presence of security guards. Like other inmates, he is only allowed to exercise for half an hour per day; he is given no reading material. His salary was cut off immediately after his arrest, leaving his family with no income, and his book has been confiscated and is no longer available in Afghan bookshops.

56. The Special Rapporteur has been informed about the continuation of torture and ill-treatment in Khad interrogation centres during interrogation; he has been informed that torture is also practiced during imprisonment after conviction. In one case he was informed that, during proceedings before the revolutionary tribunal, a person stated that his confession had been extracted under torture; the revolutionary tribunal ordered a retrial upon which the interrogation and torture began again.

57. For the first time during his mandate, the Special Rapporteur has been able to interview women who have been tortured by Khad officials during interrogation. Severe forms of torture have been reported; sticking needles in the fingers, deprivation of sleep, burning of the lips with cigarettes, hanging by the hair for prolonged periods, as well as psychological torture, such as reference to the execution of family members (which subsequently proved untrue) or to children being sent away. The Special Rapporteur would have thought these reports exaggerated had he not been in a position to attest to their truth.

58. The Special Rapporteur received information on new policies being applied in Pol-i-Charkhi prison. Among other aspects under this policy, political prisoners were offered the choice of either collaborating with the Party or facing incarceration with common criminals; in the past, political prisoners were kept in conditions different from those of other prisoners.

(c) Conscription of children

59. The Special Rapporteur was informed that, in 1982, the regulations concerning the age for drafting into the army had been lowered to 15 years. There was forced conscription and the term of military service went up from two to three years in 1982 and then to four years in 1984.

60. The Special Rapporteur has learned that such conscription continues, depriving universities and schools of male students. In addition, it would appear that the conscription system is governed by severe discriminatory methods; for example, students from families belonging to the Communist Party or sympathizing with it have the privilege of not joining the army at the age of 15, thus having a chance to continue their studies, at home or abroad.

(d) Situation of "internal refugees" or displaced persons in Afghanistan

61. In this respect the Special Rapporteur wishes to refer to paragraphs 63 to 66 of his interim report to the General Assembly.

(e) Right to self-determination

62. In his report to the General Assembly, the Special Rapporteur provided information on the Loya-Jirgah held in April 1985, and the decisions taken at that assembly, including a message addressed to the Secretary-General (A/40/273-5/17135, annex).

63. On several occasions in United Nations bodies, the Government of Afghanistan has referred to the widespread local Jirgahs which took place in the second half of 1985. The Special Rapporteur has endeavoured to establish the circumstances under which these Jirgahs took place. From the outset it must be said that the governmental Jirgahs can only take place in towns and villages under the control of the government. Large parts of the rural areas are not controlled by the government. A reliable and well informed witness declared that the Government was only in control of about 150 locations between which there was no real communication and which were mostly surrounded by opposition forces. It was said that in those places the Jirgah was no more than a kind of assembly for Party members or persons living in areas under Government control and belonging to certain tribes. In one instance a witness said that a group of Party members came to a village to set up a local Jirgah, announcing themselves in the traditional fashion with drums and trumpets, but were unable to organize the gathering, because of opposition by the villagers. In another instance, villagers were promised land in exchange for co-operation and threatened with death if they disobeyed. In the opinion of the Special Rapporteur, the Government appears to wish to democratize public life and hence attempts to hold local Jirgahs.

(f) Impact of conflicting ideologies on cultural life in Afghanistan

64. The Special Rapporteur has received several reports according to which Afghan children have been sent to socialist countries for education. The nature of this information did not permit the Special Rapporteur to pronounce himself on it earlier, but he has now conducted a careful examination of this aspect of human rights, and, in the light of the information he has accumulated, it would appear justified to state that, in those areas under the control of government forces, the educational system is largely controlled by non-traditional ideas. This problem concerns the right to freedom of thought, conscience and religion as well as the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction (see art. 18, paras. 1 and 4, of the International Covenant on Civil and Political Rights). In a wider sense, the decision to practice a religion and to ensure a moral education, falls within the ambit of individual self-determination which is the basis of all the rights envisaged in the human rights system.

65. The transfer of Afghan children abroad is effected through an institution known as "Perwarischgahi watan" (homeland nursery) which was established in the former premises of the Afghan Red Crescent in Kabul in 1982. It is headed by Mrs. Karmal and supervised by Dr. Naghib, the former head of Khad, which was recently transformed into a ministry of State security. Outposts of this institution are also situated in provincial capitals. According to the Kabul Times, such institutions exist in the cities of Kandahar, Jalalabad, Herat, Mazar-i-Sharif, Shiberghan, Lashkar Gah and Farah. The institution is

organized on two levels, darulaman, organized like a kindergarten and afshar which takes children from 8 to 12 years. The children in the institution are primarily orphans of soldiers of the Afghan army killed in the present conflict, children of Party members who are willing to send their children to the institution and children of members of the militia in the provinces. The Special Rapporteur was also informed of instances of children of parents who are not Party members being enrolled at the institution against their parents will, the families being informed only subsequently. Several witnesses informed the Special Rapporteur that, in addition, the children of detainees were taken to these institutions. Children between the ages of 8 and 10 are expected to spend 10 years in the institution, during which period they will also be trained abroad; the Special Rapporteur was told that the curriculum in the institution consisted of a general introduction to Marxism and Leninism, Russian language classes, musical education and, according to certain witnesses, training in propaganda techniques.

66. According to information received by the Special Rapporteur, some 1,000 children have been sent abroad annually for periods of varying duration. According to certain witnesses some 15,000 children have been sent abroad, some of them for short periods of training, usually 1 or 2 months, they are considered privileged compared to other children. This practice has been described as contrary to the traditional educational system.

2. Situation of human rights linked with the armed conflict in Afghanistan

(a) General survey

67. Pursuant to the request of the Commission on Human Rights in its resolution 1985/38, the Special Rapporteur proposes to provide information on the casualties sustained by the civilian population in Afghanistan as a result of the situation now prevailing in that country.

68. This request entails two basic requisites: first, access to areas where bombardments took place, and, secondly, technical knowledge and expertise that will enable an assessment to be made of the material damage resulting from these bombardments of civilians. As regards the first element, since the Special Rapporteur is denied access to the territory, he is obliged to take into consideration all other information available to him that he deems reliable, as corroborated by numerous sources. The second element is a matter outside his competence and he will limit himself to describing, as far as possible, the nature and extent of the bombardments in question.

69. The Special Rapporteur has followed the situation in the country as reflected in the information available to him, including reports on incidents published in the press during the period in question. The table reproduced in appendix I of the interim report to the General Assembly provides a representative selection of these reports; the list of incidents, which cannot be considered complete, is intended only to draw attention to the frequency, location and nature of these incidents. The map in appendix III of the interim report to the General Assembly indicates the location and magnitude of the incidents. Annex I to the present report contains a table setting out the incidence of civilian deaths resulting from the conflict during 1985 by province and number of press reports.

70. Two general observations are apposite here. One concerns the legal nature of the conflict. Without going into the details of the legal nature of the conflict, the Special Rapporteur would like to state that, in his view,

all parties to the conflict, including the foreign troops and the opposition movements are at least bound by article 3 common to the Geneva Conventions of 1949, a point which no one has disputed. The other observation concerns the way in which the war has been conducted during the period under review. While guerrilla warfare, waged since 1980, has reached the major cities, in other areas the war has become largely strategic, concentrating on villages of importance. There are some 150 locations within the country occupied by government forces or foreign troops, they are surrounded by the forces of the opposition movements and are therefore largely supplied by air.

(b) Casualties resulting from bombardments and other forms of warfare in particular concerning the civilian population

71. The gravity of the conflict is illustrated by the high civilian casualties resulting from bombardments and massacres which were reported to have occurred during searches for members of opposition movements carried out by the military.

72. According to statistics and as reported in A.40/843, paragraph 86, 32,755 civilians were reported to have been killed in nine months in 1985, 1,834 houses and 74 villages destroyed, and 3,308 animals killed. It has been reported that opposition movements have also destroyed buildings, shops and bus stations in Kabul. During the period under consideration, three mosques have been destroyed by government action and one by the action of opposition movements. The above data and much detail on the evolution of the conflict have been collected by the Bibliotheca Afghanica Foundation (Liestal, Switzerland).

73. The Special Rapporteur learned that another 350 civilians were killed in November and December 1985 as a result of bomb attacks and massacres. For example, in a bombardment near Barikan airport in the Province of Parwan (Uskaski) 40 civilians and 20 animals were killed at the end of December 1985.

74. The Special Rapporteur had occasion to comment on the humanitarian activities of ICRC in his interim report to the General Assembly (A/40/843), since then he has noted that the incidence of civilian casualties and the gravity of their wounds has increased markedly. According to information received by the Special Rapporteur, this was attributed to the intensity of the fighting in Paktia Province in August and September 1985. For example, in July 1985, 199 patients were admitted, in September 1985, 268 were admitted. These figures were reported to have diminished in November and December 1985 as a result of changes in the conditions prevailing inside Afghanistan.

75. In August 1985, the Special Rapporteur visited the Afghan Surgical Hospital and the Shaheed Mohammed Umar Hospital in Peshawar as well as the Afghan Surgical Hospital in Quetta. In January 1986 he visited the same hospitals in Peshawar and the Shakeer Ashur Hospital. The statistics shown to the Special Rapporteur indicate that the number of wounded Afghans admitted to the hospitals had increased by November 1985 to 4,104 and operations had increased to 3,967. In the Shakeer Ashur Hospital in 1985, 4,558 operations were performed: 820 for bullet wounds, 1,365 for wounds caused by bomb explosions, 376 for wounds due to accidents, 22 for wounds caused by gas poisoning and 1,975 others.

76. In January 1986, the Special Rapporteur was informed that an organization working inside Afghanistan had treated a total of 21,097 persons during 1985, half of whom had been wounded.

77. There are no casualty statistics available from the governmental side. A witness who was responsible for humanitarian assistance in Afghanistan on a high level within the Government informed the Special Rapporteur about the structure of medical services on the governmental side. The 400-bed military hospital in Kabul currently has 1,400 patients, among them 111 amputees, there are some provincial hospitals and one Red Crescent hospital in Kabul (formerly Kunduz) which also take wounded civilians. The hospitals have no wounded from the opposition movements.

78. The Special Rapporteur concludes, on the basis of this information, that the armed conflict, now in its seventh year, has given rise to so much human suffering that every effort must be made to end it.

79. As stated in earlier reports, the main types of action which have caused deaths and casualties, in particular among the civilian population of Afghanistan are bombardments, shelling and massacres in reprisal, acts of brutality committed by armed forces, and the use of anti-personnel mines and booby-trap toys.

(c) Bombardments, shelling and massacres following reprisals

80. In his report to the General Assembly, the Special Rapporteur provided a chronological list in appendix I of incidents which occurred between January and September 1985, which, as stated in paragraph 69 of the present report, is not exhaustive. As stated earlier, the Special Rapporteur has received no information about these incidents from official governmental sources.

81. The Special Rapporteur has listed 32 incidents of heavy bombardments, shelling and mass killings in Afghanistan. Nine of these incidents are to be imputed to action undertaken by opposition movements. In addition, the following incidents were reported as causing heavy civilian losses: on 21 August 1985 in Nangarhar Province (Anbakava), on 9 November 1985 in Jozjan Province (Turkman Qudooq, Jarmai, Kamiadar), on 18 November 1985 in Nangarhar Province (Muquemi District), on 28 November 1985 in Nangarhar Province (Orghoz), at the end of November in Herat Province (Horjan District) on 18 December 1985 in Konar Province (Naw of Sharhani), on 23/24 December 1985 in Nangarhar Province (Khot) and in December 1985 in Parwan Province (Kibarbi). Three attacks by opposition movements were reported in November and December 1985 as causing civilian and material losses.

82. On 3 September 1985, a civilian aircraft belonging to Bakhtar airlines was destroyed by a Stinger ground-to-air missile fired by opposition movements, killing 47 passengers and 5 crew members. This incident provoked a strong reaction on the part of the civilian population in Afghanistan against such acts by the opposition movements. The relatives of the victims and the Central Committee of the Party sent open letters of protest. Furthermore on 8 December 1985, nine civilians were killed and 54 wounded as a result of the explosion of a booby-trapped jeep near the meteorological station on the outskirts of Kabul.

83. On 9 December 1985, 21 persons were wounded following a number of explosions at the Polytechnic Institute. Finally on 12 December 1985 Radio Kabul announced that several large bombs had exploded killing many civilians.

84. In appendix III to his report to the General Assembly, the Special Rapporteur provided a map of the regions most affected by bombardments, shelling and massacres between 1980 and 1985.

85. These acts led to the depopulation of villages and districts. An investigation carried out in September, October and November 1985 by members of the International Humanitarian Inquiry Commission on Displaced Persons in Afghanistan shows that, in 23 villages in four provinces, 56.5 per cent of the area is depopulated.

86. During his visit to Pakistan in January 1986, the Special Rapporteur had further confirmation of the statement he made in paragraph 85 of his report to the General Assembly (A/40/843). Furthermore, high-altitude bombardments were reported. People spoke about bombs containing 40 individual rockets which explode 24 hours after deployment. Other weapons are reported to have been used during shelling. BM 54s with 87 barrels have been fired against villages. BM 41s and BM 31s are still in use.

87. In his previous reports, the Special Rapporteur referred to the use of bombs which were said to leave large craters and bombs with burning effects. The use of such weapons has been confirmed once more during the visits to hospitals in January 1986. Meanwhile, an exhaustive study by the Vienna Institute for Strategic Basic Research established by the Austrian Defence Academy entitled "Afghanistan. Ein Kriegsgeschehen unter besonderen Verhaeltnissen: Erfassungen Ableitungen, Lehren" (Afghanistan. A war situation under particular circumstances; establishment of facts, consequences, conclusions), prepared by R. Flor, Vienna 1985, sheds light on the following types of weapons: liquid fire, fuel-air explosive cratering (FAEC) and fire sticks. The liquid fire is described as a black, tar-like substance dropped from aircraft in canisters, which open in the air spraying the ground with the substance, which remains effective for months and ignites upon contact producing gas. The fuel-air explosive cratering bombs are dropped by fighter planes and explode near the ground making craters 10 metres across and 6 metres deep. In his previous reports, the Special Rapporteur stated that the population called these bombs "nopalm bombs". A fire stick is 30 centimetres long and 18 centimetres thick; a canister contains several thousand fire sticks and is detonated upon contact with the ground. According to the above-mentioned study, these fire sticks may in fact be "nopalm", referred to in paragraph 85 of the interim report.

(d) Use of anti-personnel mines and booby-trap toys

88. The Special Rapporteur reported to the General Assembly on the use of so-called anti-personnel mines and booby-trap bombs (A/40/843, paras. 90-93). He was able to see and speak to wounded children whose injuries were caused by the use of these horrible weapons.

89. During his interviews in January 1986, he established that the foreign troops continued to use this type of weapon. The shape of the booby-trap bombs, in particular the so-called butterfly bomb of which the Special Rapporteur saw many examples, has been changed, as they had become so widely known that they had lost their attraction. However, pens, cakes of soap and snuff-boxes are still used and the use of a bundle of bank notes has been reported. The Special Rapporteur saw photographs of this type of bomb. It was reported to the Special Rapporteur in the Afghan Surgical Hospital in Peshawar that salt cartons and matchboxes were used before attacks on opposition forces. The Special Rapporteur also received reports about bombs which are said to explode 24 hours after deployment. New types of mines have been described which are interconnected and in which the wires are mixed with explosives. After examining these weapons the Special Rapporteur concluded that a sophisticated training was required for their use.

90. On the other hand, the Special Rapporteur has noted that the German language daily, Die Sowjetunion Heute, published in the German Democratic Republic, on 12 December 1985 showed a picture of a boy with an amputation with the caption "This boy found one of the counter-revolutionary toy camouflage bombs" ("Dieser Junge fand eine von Konterrevolutionaeren als Spielzug getarnte Bombe") without further comment.

91. In this context, the Special Rapporteur refers to the interviews which he had with children injured by different types of bombs (see A/40/843, para. 96).

(e) Acts of brutality committed by armed forces

92. In the opinion of the Special Rapporteur, systematic brutality characterized the conflict in 1985, examples of which are included in his interim report to the General Assembly (A/40/843).

93. Since that report, the Special Rapporteur has received new information about the brutality of the troops, and witnesses stressed that foreign troops were responsible for this brutality, which is widespread in military activities in different provinces.

94. In the report on its mission to Afghanistan and Pakistan (September/November/October 1985) the International Humanitarian Inquiry Commission on Displaced Persons in Afghanistan gives an account of atrocities (p. 32 ff).

95. Trained dogs are frequently used against children and elderly persons. In January/February 1985 in Lachapur (Nangarhar Province) dogs were used to attack men during a massacre in which about 100 civilians were killed.

96. Some reports have been received about the use of helicopters against civilian prisoners. The Special Rapporteur was informed by a reliable eye-witness that on 27 December 1985 in Khot (Nangarhar Province) after a village search by tanks and soldiers assisted by helicopters, during which many people were killed, 16 old people were tied up and put in helicopters, they were then thrown out handcuffed from a height of about 10 metres near the village, as they were thrown out, ground forces shot at them, five survived, one of whom managed to escape and observe the atrocities committed during this raid.

(f) Other examples of warfare against humanitarian standards

97. Looting is reported to happen frequently during house and village searches. In particular money and jewellery are requested and people who are unable or unwilling to give them are shot.

98. In his previous reports, the Special Rapporteur has considered the treatment of prisoners from both sides. He refers therefore to paragraphs 98 and 99 of his report to the General Assembly. The kind of treatment described therein was confirmed during further interviews in January 1986. Armed members of opposition movements are killed on the spot, men who are suspected of belonging to opposition movements are detained and interrogated. It is said that, in order to identify active members of the opposition movements, foreign troops have a technical method for establishing whether unarmed men have marks on their shoulders from habitually carrying weapons.

99. One reliable witness told the Special Rapporteur that when opposition movements take prisoners they are treated in accordance with the shariah. A

Reuter press release of 12 November 1985 must be mentioned in this context; it refers to a Tass Agency report that a Soviet soldier serving in Afghanistan said that he had been tortured, beaten and starved by anti-government guerrillas based in Pakistan. "Yaskuliew, described by Tass as one of the 'limited contingent of Soviet troops in Afghanistan' said he managed to escape one day when guarding was lax".

100. It should be noted again that, concurrently with humanitarian action to provide protection and assistance for military and civilian victims in situations of conflict, ICRC has launched a campaign to inform the Afghan population, and in particular elements of the opposition movements, not only about the historical background and activities of ICRC but also of the obligation of members of armed forces and combatants to observe the humanitarian commitments flowing from humanitarian law, in particular the Geneva Conventions. These instructions which show how closely these obligations are linked with principles enshrined in the shariah were allegedly accepted with interest and understanding by representatives of the opposition movements. ICRC publishes a strip cartoon in languages spoken in Afghanistan and a commentary on the four Geneva Conventions of 12 August 1949.

101. For the first time, the Special Rapporteur has been informed that cultural property has been destroyed during bombardments and shelling. According to a reliable witness, in Herat and Herat Province, over a period of two years, the Minaret of Herat, a 700-year-old historical site, the Chesht mosque and the Herat Great Mosque Jami have been destroyed, all these are monuments to which the Hague Convention for the Protection of Cultural Property in the event of Armed Conflict of 14 May 1954 must apply. The Special Rapporteur was shown photographs of these monuments before and after they were damaged. A witness stated that the damage was done specifically to destroy the cultural heritage of the people and the country.

3. Consequences of the human rights situation in Afghanistan in general and of the conflict for economic, social and cultural rights

(a) Economic rights

102. The Special Rapporteur made a general survey of the enjoyment of economic social and cultural rights in the country and paragraphs 102 to 105 of his report to the General Assembly (A/40/843) are still valid. When considering the effectiveness of the above mentioned rights, which are enshrined in the International Covenant on Economic, Social and Cultural Rights - to which Afghanistan is a party, and on which it has reported to the Economic and Social Council - it must be taken into consideration that, due to the conflict, the Government appears to control only a relatively small part of the country, other parts being controlled by traditional forces or becoming a kind of no man's land where the civilian population has largely left, villages are partly or completely destroyed and the agricultural infrastructure has been systematically devastated. Reliable witnesses stress that the devastation of the agricultural infrastructure is deliberate and systematic. It includes the destruction of traditional irrigation systems, the felling of fruit trees, the prevention of recultivation of such areas and the mining of strips up to 5 kilometres wide on each side of the roads; this is done in order to obtain produce by force or to destroy crops deliberately, to make it impossible to plant seed and to make people unwilling to use the fields which are still intact. It was said that in Logar Province 50 per cent of the gardens had been destroyed, in Kandahar Province the traditional water systems have been deliberately destroyed, the springs are blocked up with stones and sand (there are photographs proving this devastation) and animals have been killed.

103. Therefore the optimistic appraisal in official statements on the enjoyment of social and economic rights cannot correspond to a large part of the country. It has been said that in the major cities trade is still normal and that foreign troops use the markets. Certainly the transport of goods across border lines on some of the highways is still continuing.

104. In this context the efforts of the Afghan Government to modernize social life have only a relative value.

105. In that connection, the Special Rapporteur noted official statements in United Nations forums which refer to the Fundamental Principles of the Democratic Republic of Afghanistan of 14 April 1980 and to the newly-drafted Labour Code, which enshrines the right to just and favourable conditions of work, hours of work and rest and the right to form trade unions. According to such statements, the Trade Union of the Democratic Republic of Afghanistan, a non-governmental organization, has an actual membership of 203,533; progress has been made in the areas of social security and health insurance. A statement of the Women's International Democratic Federation submitted to the Commission on Human Rights in 1985 (E/CN.4/1985/NGO/12) surveys the industrial development, rights of working women, activities in the sphere of education and development of social care and health services in Afghanistan.

(b) Medical services and the right to health

106. As a result of the conflict, the health situation in the country and therefore enjoyment of the right to health, enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights, to which Afghanistan is a party, appears poor. Medical health services, including doctors, hospitals, polyclinics, medical centres and auxiliary personnel, function quite normally (at least outside curfew hours) in government controlled areas (150 locations). In the areas not controlled by the Government, the traditional forces decide how far they are prepared to allow medical aid, organized by international non-governmental organizations, to work in these areas. However, for any major medical treatment, patients whether they are wounded combatants or not, must go abroad to hospitals in neighbouring countries. The Special Rapporteur saw those hospitals functioning in Pakistan.

107. He was also able to hear a witness who had been a high-level official in the field of humanitarian assistance in Afghanistan. The testimony of this witness appears to be authentic.

108. The medical doctors have been trained mainly in Kabul and Jalalabad. Unless they are engaged in governmental business, they can work freely. The medical faculties or schools - contrary to the statement in paragraph 111 of the report to the General Assembly (A/40/843) - do not appear to be formally closed, but their activities have practically come to a standstill. The former student population of about 1,500 students has been reduced to between 150 and 200. It is alleged that up to 80 per cent of newly qualified doctors try to leave the country due to the civic obligations outside Kabul; they are required to serve in the army, which means that they are only able to help injured government soldiers.

109. Before the conflict the 28 provinces (216 districts in all) had a well-organized public health service which consisted of provincial or district hospitals, clinics and polyclinics. The Special Rapporteur was informed that the health service was currently operating at one fifth of its former capacity. In Kabul the health service is intact only in the centre of the

city; health services have been closed down; a clinic was even bombarded by foreign troops and not, as has been claimed, by opposition movements. The bombardment of the Kunduz and Bayan clinics in 1981-1982 took place despite the fact that they had shown the Red Crescent. The Red Crescent hospital has now been transferred to Kabul and consists of 50 beds for civilians. Many supplies from abroad for the Red Crescent Hospital are in fact used by the Government for its hospitals. The Special Rapporteur was told that governmental medical services were not available in the areas not under government control or to wounded persons belonging to or suspected of belonging to opposition movements.

110. To date, ICRC has not received permission to fulfil its noble task in the areas that are not under Government control. As stated by the witness mentioned above (para. 107), one problem is that the Government requests ICRC to provide medical service only and not to carry out humanitarian work as such. The other problem is that the Government cannot guarantee the safety and security of Red Cross personnel.

111. In this context, it should be noted that the medical service in areas not controlled by the Government depends on the work of international relief agencies and committees, on which the Special Rapporteur has received very accurate statistics.

112. The conflict in the country has created internal refugees who have migrated mainly to the cities. Kabul now has nearly 2.5 million inhabitants (whereas before it had 800,000). People are either living in slums around the city or actually in the city in overcrowded conditions. Rubbish collection in Kabul has deteriorated; whereas before 1980 that service employed 2,500 people to cover an area with about 800,000 inhabitants, it now employs only 800 men to service a city with 2.5 million inhabitants, as the rest of the employees are engaged in serving foreign troops.

113. The conflict and the lack of sufficient health services create conditions favorable for malaria. A measles epidemic has been reported in the Province of Helmand.

(c) Right to education

114. A comprehensive survey of the present educational system in Afghanistan is given in Les Nouvelles Afghanistan, No 19-20, October/November 1984.

V. CONCLUSIONS

115. The Special Rapporteur wishes to refer to the conclusions contained in his previous reports. The situation of human rights in Afghanistan has not changed for the better. However, world public opinion has been mobilized on that score. The human rights situation in Afghanistan is mainly characterized by the armed conflict which has now entered its seventh year.

116. The Afghan Government is attempting to legitimize itself by trying to build up a democratic power base, but the number of refugees is still rising and has now reached nearly 5 million. This is a key issue as it affects the problem of self-determination and the question of a political solution. Without due representation of the refugees and respect for their wishes in the political discussions, no humanitarian solution to the problem can be found.

117. The kind of warfare has changed. Guerrilla warfare has reached the cities, whereas in outlying areas there is now direct confrontation. This influences the human rights situation in the country as a whole. Large parts of the country are out of the Government's control.

118. Where the Government has control, it uses all forms of anti-guerrilla activities to combat opponents or presumed opponents of the régime. The practice of torture continues and more death sentences have been carried out without observing the safeguards set out in article 7 of the International Covenant on Civil and Political Rights, to which Afghanistan is a party.

119. The methods of warfare are contrary to humanitarian standards and the relevant instruments to which the States concerned are parties. The massacres of the civilian population, the use of anti-personnel mines, the looting, the methods of retaliation used and the disproportionately heavy bombardment of villages are, in any case, contrary to humanitarian law. The way in which both parties to the conflict take and treat prisoners is also contrary to humanitarian law. Brutalization of warfare can be imputed to both sides.

120. The civilian casualties in 1985 are estimated to be about 35,000.

121. The prison conditions of political prisoners, as exemplified by the fate of Mr. Hassan Kakar and others, are contrary to the Standard Minimum Rules for the Treatment of Prisoners.

122. The Government controls the larger villages and cities in most cases mainly during the daytime. There is therefore a de facto partition of the country. In the government controlled areas, the educational system does not appear to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. The governmental educational system, based as it is on ideological considerations, allegedly fails to give due regard to the rights enshrined in the Covenant.

123. As a result of the conflict, the Government is unable to guarantee social and economic rights to the entire population. However, the specialized agencies and intergovernmental organizations, which could help improve the enjoyment of those rights for the whole population, are not permitted to work in the areas outside direct government control. Therefore only the efforts of non-governmental organizations can assist in meeting the economic, social and cultural needs of the population, which has no other assistance.

124. The Special Rapporteur has the impression that the only solution to the human rights situation in Afghanistan is the withdrawal of the foreign troops, because more than one third of the Afghan population is now outside the country and is unwilling to return while foreign troops control it, and because the will to resist foreign domination seems to be stronger than it was in the so-called Basmachi rebellions. Continuation of the military solution will, in the opinion of the Special Rapporteur, lead inevitably to a situation approaching genocide, which the traditions and culture of this noble people cannot permit.

125. The Government's tendency to seek broader support and democratic legitimization through a series of Jirgahs deserves recognition. It can, however, hardly be considered as a free exercise of the right of self-determination, which is enshrined in article 1 of the International Covenants on Human Rights. The circumstances under which Jirgahs have been assembled and the present war situation make it difficult to accept the claim that they complied with the recommendation of the Special Rapporteur to hold a Loya-Jirgah.

126. The Special Rapporteur has the impression that an international status of permanent neutrality for Afghanistan has been welcomed by some writers and politicians. Permanent neutrality has been shown to contribute to the peaceful development of a country in a situation of international tension, thus it can help bring about a human rights situation in conformity with the goals and aims of the United Nations.

VI. RECOMMENDATIONS

A. General Recommendations

127. The Special Rapporteur wishes to reiterate the recommendations contained in previous reports.

128. Only when the foreign troops have left the country can the fate of the refugees be decided. In this respect it must be noted that the Commission on Human Rights and the General Assembly have repeatedly called for the withdrawal of foreign troops. In that connection the representatives of those who are now refugees ought to be consulted by all the parties responsible for a political solution of the conflict.

129. Until the foreign troops leave the country, the world community, through the United Nations system, should be permitted to contribute to the restoration of economic, social and cultural rights; the specialized agencies should be permitted to provide humanitarian assistance throughout the country so as to prevent large parts of Afghanistan from becoming a humanitarian no man's land.

130. The Government of Afghanistan should be urged to comply strictly with the obligations which are imposed on it by international human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed by the Government of Afghanistan on 4 February 1985, and the Standard Minimum Rules for the Treatment of Prisoners. In regard to death sentences and political imprisonment, amnesty, clemency and pardon should be taken into account.

131. Furthermore, the fate of missing persons who disappeared before December 1979 should be investigated. As stated earlier in this report, the number of missing persons is far higher than reported. The exact number of missing persons and, if possible, their whereabouts should be established.

B. Specific Recommendations

132. Since the Special Rapporteur has a specific mandate to make recommendations concerning human rights before, during and after the withdrawal of foreign troops from the country, he considers it appropriate to make the following specific recommendations in addition to those made above.

133. In regard to the situation of human rights before the withdrawal of foreign troops, those areas which are not under government control should be declared neutral zones where specialized agencies of the United Nations and non-governmental organizations, including the International Committee of the Red Cross, can offer their humanitarian services for the benefit of the population.

134. In regard to the human rights situation during withdrawal of troops, adequate precautions should be taken to ensure the protection of all civilians, in particular women, children and elderly persons. The international community and humanitarian organizations, such as ICRC, should be invited to supervise this protection and to furnish humanitarian assistance, wherever needed.

135. In regard to the situation of human rights after the withdrawal of foreign troops, conditions should be created to enable refugees to return to their homes without fear; the regions affected by the warfare should be cleared of explosives so that the right to life is ensured, and a genuinely representative Loya Jirgah, including representatives of the refugees, should be called. The United Nations for its part might encourage the adoption of a status of permanent neutrality, so as to free the country from international tensions and guarantee a political climate in which universal respect for human rights can be ensured.

Notes

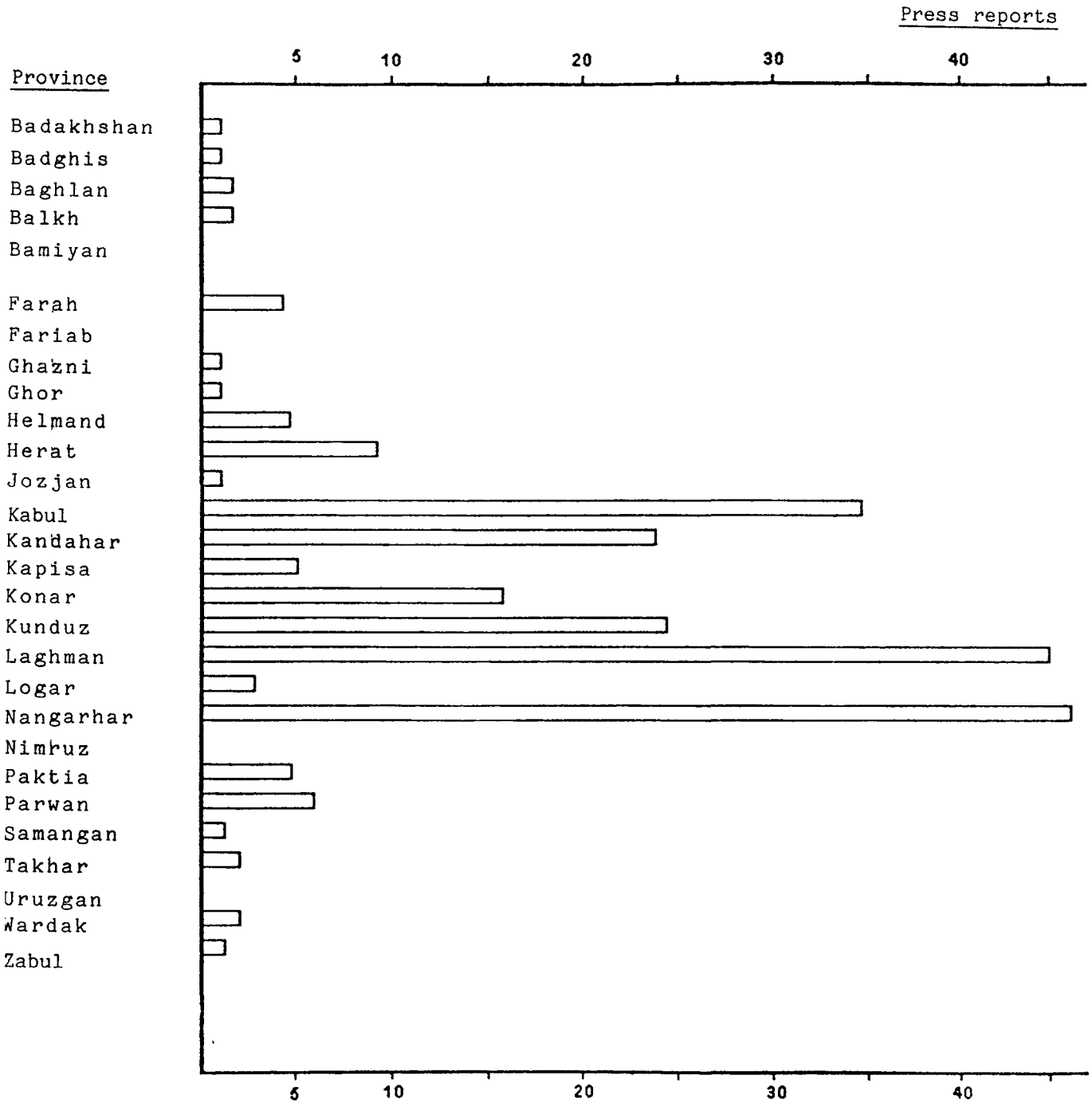
1/ H. Kakar, Afghanistan: a study on international political development 1880-1896 (Kabul, 1971); L. Dupree, Afghanistan (Princeton University Press, Princeton, New Jersey, 1980); A.H. Tabibi, Afghanistan, a nation in love with freedom (Igram Press, Cedar Rapids, 1985).

2/ The term "foreign troops" is used throughout the report to define the "small contingent of Soviet forces".

3/ According to figures from the Asian Lawyers Legal Inquiry Committee there are about 10,000 in all.

Annex

CIVILIAN DEATHS CAUSED BY THE CONFLICT IN 1985



Source: Bibliotheca Afghanica Foundation, Liestal, Switzerland.