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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 the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1987/58 of 11 March 1987 and Economic and Social Council decision 1987/151 of 29 May 1987.

ANNEX

Report on the situation of human rights in Afghanistan, prepared
by the Special Rapporteur of the Commission on Human Rights in
accordance with Commission resolution 1987/58 and Economic and
Social Council decision 1987/51

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I. MANDATE OF THE SPECIAL RAPPORTEUR

1. The Special Rapporteur, appointed in 1984 pursuant to Economic and Social Council resolution 1984/37, has since submitted three reports to the Commission on Human Rights (E/CN.4/1985/21, E/CN.4/1986/24 and E/CN.4/1987/22) and two reports to the General Assembly (A/40/843 and A/41/778). His mandate was renewed in 1985, 1986 and 1987 by the Commission on Human Rights, in resolutions 1985/38, 1986/40 and 1987/58 respectively. The General Assembly, after considering the report submitted at its forty-first session by the Special Rapporteur, adopted resolution 41/158 of 4 December 1986 in which it decided to keep under consideration, during its forty-second session, the question of human rights and fundamental freedoms in Afghanistan. This report has been prepared in accordance with the provisions of Commission resolution 1987/58.

2. During the forty-third session of the Commission on Human Rights, the Government of Afghanistan, in order to show its goodwill and increase its co-operation with the Commission, had decided to invite the Special Rapporteur to visit the country. Accordingly, as soon as his mandate had been renewed and in accordance with the practice he had always followed in the matter, the Special Rapporteur addressed a letter to the Government of Afghanistan on 24 March 1987 accepting the invitation and expressing the hope that in the near future he could consult with its Permanent Representative to the United Nations in order to set the date and make arrangements for the visit. It should be noted that no conditions were attached to the preparations, as regards either the programme proposed by the Special Rapporteur, the length of the visit, or the guarantees for the safety of persons interviewed by the Special Rapporteur.

3. As a result, during his visit to Afghanistan from 30 July to 9 August 1987, the Special Rapporteur met, following the established schedule, with government representatives of the Ministries of Foreign Affairs, Justice, Repatriated Refugees, Tribal Affairs, Economic Affairs, Public Health, Statistics, the Interior and State Security. He also met with officials of the People's Democratic Party of Afghanistan (PDPA) and of the National Front, as well as with the President of the Revolutionary Court and the Chief State Counsel. He made contact with labour union and religious leaders, members of the Commission of National Reconciliation, the National Women's Committee, the University of Kabul, the Democratic Youth Party and tribal chiefs of the border provinces. Furthermore, in Kabul he visited places of detention, such as the Pol-i-Charkhi Central Prison and the Sadarat, Shashdarat and Darlawan interrogation centres. During his visits, he conversed freely and without witnesses with a few prisoners. He also visited five hospitals: Avicenna Hospital, Jumhooriat Hospital, the Red Crescent Hospital, Wazir Akbar Khan Hospital and the Armed Forces Hospital. Lastly, he conversed with a good number of persons released in 1987 under amnesties proclaimed by the Afghan Government.

4. The Special Rapporteur also made trips to the Bagram district (province of Kabul), to the province of Herat, and to Mazar-e-Sharif in the province of Balkh, where he met with regional and local officials, officials of the Commission of National Reconciliation, religious leaders, repatriated refugees and members of self-defence groups.

5. During his visit, he received full co-operation from the Afghan officials who did everything possible to ensure that his schedule conformed in every detail with the wishes he had expressed beforehand and thus enable him to make the visits and individual contacts and hold the interviews he wished and to receive the requisite documents. The Special Rapporteur wishes to point out, however, that for reasons beyond his control, he was unable to visit Kandahar and Khost as originally included in his schedule.
6. Since he was unable to go into regions not controlled by the Government, the Special Rapporteur is obliged to analyse the situation in those regions on the basis of information submitted in the form of written communications from interested individuals or organizations.
7. In view of the foregoing, the Special Rapporteur is gratified to note that the evaluation of the situation of human rights in Afghanistan is no longer considered 'interference in the internal affairs of that country.'
8. In accordance with the practice he has always followed in the matter and in order to have access to the widest possible range of information, he went to Pakistan from 8 to 17 September 1987. During this trip he heard persons from the following 14 provinces: Baghlan, Balkh, Faryab, Ghazni, Helmand, Herat, Kabul, Kandahar, Lowgar, Nangarhar, Paktia, Parvan, Qonduz and Vardak. He also visited three refugee camps (Chaman, Miram Csah and Nasir Bach) and eight hospitals specially set up to treat Afghans wounded either during the bombardment of villages or while they were making their way to Pakistan to seek refuge there (Al-Jihad Training Surgical Hospital, Ansari Hospital, Al-Khidmat Hospital, Makkah al-Mukarramah Surgical Hospital, Ittehad Islamic Mujahidin Afghan Hospital in Jalazai near Peshawar, Afghan Surgical Hospital, Al-Salam Saudi Hospital in Saranan, and the two hospitals of the International Committee of the Red Cross (ICRC) in Quetta and Peshawar). Lastly, as part of his visits to the refugee camps, the Special Rapporteur went to the first-aid posts for Afghan victims operated by ICRC and the Saudi Red Crescent in Baluchistan and by ICRC and the Kuwait Red Crescent in the North-West Frontier Province. The Special Rapporteur learned about the situation by gathering information from individuals and organizations dealing with it.
9. Lastly, the Special Rapporteur once again had the benefit of the particularly valuable co-operation of the Pakistani authorities.
10. For the purpose of drafting this report, the Special Rapporteur, in addition to gathering information during the two visits to Afghanistan and Pakistan, followed the course of events throughout the period covered by the report and systematically sifted through the written information received from individuals and organizations relevant to his mandate, in particular the statistics of the Bibliotheca Afghanica Foundation (Liestal, Switzerland).
11. Aware that the situation in Afghanistan is evolving, the Special Rapporteur describes below in chapter II the political background and the development of the human rights situation in Afghanistan. In chapter III he analyses the situation of the refugees. In chapter IV he assesses the human rights situation independent of

the armed conflict in Afghanistan and the human rights situation resulting from the armed conflict. Lastly, in chapters V and VI he presents conclusions and recommendations based on his analysis of the available information and on a review of the steps that could be taken within the purview of his mandate.

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

12. In the belief that the nature of a political régime determines the way in which human rights are respected in a country, the Special Rapporteur analyses below Afghanistan's political, juridical and constitutional structure. It follows that the Special Rapporteur, under his mandate, is continuing to do everything possible to keep the General Assembly informed in the most impartial and objective manner possible, for the sole purpose of helping to improve the human rights situation in Afghanistan and foster the cause of human rights.

A. National reconciliation policy

13. In his report to the forty-third session of the Commission on Human Rights (E/CN.4/1987/22), the Special Rapporteur, in describing the development of the human rights situation in Afghanistan up to January 1987, had taken account of efforts to find a political solution to the conflict, because in his view only an agreed political solution could improve the human rights situation. In so doing, he had mentioned the partial withdrawal of Soviet troops between 15 October 1986 and the end of that year; he had reported the appeal for national reconciliation, the declaration of a six-month cease-fire beginning on 15 January 1987, and the amnesty decree of 1 January 1987.

14. The Government had pointed out at the time that the steps thus taken were all manifestations of its principles and its humanistic policy for the full and systematic realization of human rights through the broadest possible participation by the people in the political, economic, social and cultural spheres of national life.

15. In that connection, the Special Rapporteur received information from the Afghan authorities concerning measures taken to give effect to the declaration cited in his last report (E/CN.4/1987/22, paras. 23-38). The following is a brief description of the main decrees:

(a) Decree No. 56 of 15 Sour 1366 (5 May 1987) provides in article 1 that Afghan citizens who return to Afghanistan as part of the national reconciliation process and whose return is certified by the "Office for Persons Returning to the Country" will be exempt from paying the balance of the housing tax, the municipal tax and electricity, water, telephone etc. charges. This means that they will not be charged for the amount that accrued in the period from the date of emigration to the date of return. Article 2 provides for exemption from interest on bank loans during the period from the date of emigration to the date of return. Article 3

provides for exemption from payment of bank debts for a period of one year from the date of the repatriated person's return, with a possible six-month extension, if granted by the bank concerned. Articles 4 and 5 provide for the payment of taxes by institutions, organizations or individuals using the property of an emigré up to the date on which the property is restored to its owner;

(b) Decree No. 322, dated 15 Hout 1365 (6 March 1987), provides for exemption from the land tax and from taxes on shops, private businesses, firms and leases of government shops, and for the cancellation of fines levied for non-payment of such taxes in the case of people returning to Afghanistan under the national reconciliation procedure;

(c) Decree No. 80, dated 3 Sour 1366 (23 April 1987), provides for reinstatement in the workplace and the payment of retirement pensions for all persons sentenced for violations of internal and external security regulations and who have been released from prison under the amnesty decrees or who have served their sentence, and for all those who belonged to opposition groups and have laid down their weapons and returned to the country. The same applies to officials and workers who left their posts;

(d) Decree No. 307, dated 6 Sour 1366 (26 April 1987), concerns the release of persons who belonged to the armed forces and persons who were fit for military service, following annulment of their sentence. Article 1 of the Decree specifies the categories of persons whose sentences may be annulled and who may be reintegrated into the armed forces:

- (i) Any person sentenced to a prison term of up to 12 years under articles 105 and 115 of the Code of Military Procedure, article 8 of the Crime of Desertion in Wartime Act and article 17 of the Military Criminal Code, and who has served one third or more of such a sentence;
- (ii) Any person sentenced under articles 175 and 34 of the Criminal Code to a prison term of 15 or more years and who has served one quarter or more of such a sentence;
- (iii) Any person sentenced to up to a prison term of 12 years and who has served one quarter or more of such a sentence;
- (iv) Any person sentenced under articles 29, 30, 49 and 50 of the criminal law and any person sentenced to a prison term of up to seven years and who has served two years or more of such a sentence.

However, paragraphs 1 to 5 of article 2 contain a very important restriction because the provisions of the Decree do not apply to recidivists or to the following categories of offender: persons sentenced on grounds of terrorism, espionage or conspiring to take power (para. 1); persons sentenced under article 8, paragraphs 4 and 5, of the Act on desertion and similar offences dealt with in article 17 of Military Criminal Code (para. 2); persons sentenced under article 175 of the criminal law and not covered by article 1, paragraph 2, of that Decree (para. 3); persons sentenced under articles 176, 178 and 179 and article 192,

paragraph 1, and of articles 205, 206 and 217 of the criminal law (para. 4) and, lastly, persons sentenced under articles 395, 396, 449:55, paragraphs 2, 3 and 4, and articles 268, 270 and 360-366 of the criminal law;

(e) Decree No. 321 of 15 Sour 1365 (5 May 1986), on the restoration of property to returnees, contains a series of provisions whereby people returning to the country may recover their movable and immovable property, funds, foreign exchange and shares in banks or businesses which, owing to the absence of the owner, were nationalized, seized by the State or illegally appropriated. In addition, article 17 specifies that, if the property owner is deceased, his heirs, if they are within or return to the country and their title to the estate is established, will be recognized as the owners. Article 18 states that, if the property owner or any member of his family returns to the country within five years of the date on which the Decree enters into force, he will be paid his share of any property seized;

(f) Decree No. 88 of 4 Djowza 1366 (25 May 1987) contains new regulations on land distribution for the benefit of landless peasants, on the principles of land development, on the right of landless peasants and agricultural workers to ownership, and on the right to the use of and fair distribution of water in accordance with local custom and in proportion to the area under cultivation.

16. While the Special Rapporteur was in Afghanistan an amnesty was decreed, to mark the feast of the sacrifice (Eid al-Ghorban), for all persons convicted and/or sentenced who are aged 60 or more, who have no more than one year of their sentence yet to run, and who are suffering from an incurable disease as certified by a competent medical board.

17. The Government's appeal for national reconciliation was the major political event in external and internal policy in Afghanistan. The evaluation of the policy of national reconciliation differs widely among all the parties affected. The Special Rapporteur has already had occasion to mention that, in regard to human rights, such a policy must be analysed in the light of the real and effective enjoyment of human rights by all citizens of the country wherever they live, before and during the complete withdrawal of Soviet troops from the country.

18. In this context it may be recalled that Afghanistan and the Union of Soviet Socialist Republics concluded a Treaty of Friendship, Good Neighbourliness and Co-operation on 5 December 1978. Article 4 of this Treaty reads as follows:

"The high contracting parties, acting in the spirit of the traditions of friendship and good neighbourliness, as well as of the Charter of the United Nations, will consult each other and by agreement take appropriate measures to ensure the security, independence and territorial integrity of the two countries. In the interests of strengthening their defence capacity, the high contracting parties will continue to develop co-operation in the military field on the basis of appropriate agreements concluded between them."

19. It is clear to the Special Rapporteur, however, that the presence of a "small contingent of Soviet forces" on the one hand, and the existence of millions of

Afghan refugees outside their country, on the other hand, are interrelated and directly affect the problem of self-determination of the Afghan people. This is a basic human rights problem, since the right to self-determination is recognized as a fundamental human right. Article 1, paragraph 1, common to the International Covenants on Human Rights (see General Assembly resolution 2200 (XXI), annex), to which Afghanistan and the Soviet Union are parties, states as follows:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

20. In that connection, in reply to the question raised by the Special Rapporteur concerning respect for the principle of self-determination and the presence of a small contingent of forces in the country, a member of the Central Committee of the People's Democratic Party of Afghanistan stated that Afghanistan's policy of non-alignment was set forth in article 1, paragraph 2, of its draft constitution, even though that policy was already part of Afghanistan's tradition and was in no way inconsistent with the presence of a small contingent. He made it clear that the Soviet authorities had decided to send that contingent at the invitation of the Afghan Government, which was, moreover, in line with Article 51 of the United Nations Charter.

B. Analysis of the draft constitution

21. During his visit to Afghanistan, the Special Rapporteur was informed of the draft constitution of Afghanistan which he had several occasions to discuss in the course of his visit to Afghanistan and Pakistan. He was also informed about the procedure envisaged for the adoption of the draft constitution. The draft constitution is less well-known abroad, in particular among the refugees and the Afghan political organizations in Pakistan; those who are familiar with the text of the draft constitution reject it because they consider it as a way of legitimizing a régime that has never been installed in a traditional democratic manner. The question of the legitimacy of the "constituent power" in the present situation of Afghanistan is indeed an important legal and political problem which cannot be discussed in depth in this report.

22. Without going into this very real problem, the Special Rapporteur wishes to comment on the text of the new draft constitution in so far as it concerns human rights problems or problems which are linked with human rights. The Special Rapporteur has already reported on the Fundamental Principles of the Democratic Republic of Afghanistan which are still in force. The text of the draft constitution must be seen in the light of these Fundamental Principles and the reform decrees issued after April 1978. Article 136 of the draft states that, with the enforcement of the new constitution, the Fundamental Principles will be abrogated. Thus the new constitution would be the only valid constitutional text. Article 137 is however a very broad article because it leaves open to interpretation which laws and other legislative documents existing prior to the enforcement of the new constitution are to remain in force.

23. Article 1 expressly describes the Republic as "a non-aligned country which does not join any military bloc and does not allow the establishment of foreign military bases on its territory". The application of this article will create a contradictory situation if Soviet forces are still present in Afghanistan when the new constitution comes into force, even taking into account article 4 of the Treaty of Friendship with the Soviet Union.

24. Article 2 proclaims the sacred religion of Islam as the religion of Afghanistan. This is a clear departure from the Fundamental Principles.

25. Article 4 allows the formation of political parties and provides that "a party formed in accordance with the provisions of the laws cannot be dissolved without legal causes". It also stipulates that "the People's Democratic Party of Afghanistan is the organizer and guardian of the implementation of national reconciliation policy and functions in accordance with the Constitution and laws of the Democratic Republic of Afghanistan. The People's Democratic Party of Afghanistan (PDPA) shall struggle for justice and social progress". This provision gives the PDPA a constitutional guarantee and therefore creates an important difference between the political parties. On the other hand, article 5 creates the National Front which should co-ordinate and "unite political parties". Experience of national fronts in other States has shown that they can endanger the freedom to form political parties.

26. Chapter III of the draft constitution is entitled "Citizenship, rights, basic freedoms and duties of citizens" and contains articles 33 to 65 which set out civil and political rights as well as economic, social and cultural rights. This chapter is characterized by recurrent references to "the law", with regard to the most important rights, which could in fact restrict or otherwise circumscribe those rights. It is only when the draft constitution envisages the necessary infrastructure and mechanisms, for example for citizens to exercise their fundamental rights and liberties, that it may be said to guarantee the rights proclaimed. Article 64 makes only a very vague reference in this respect.

27. The draft constitution contains a provision prohibiting "torture and harassment" in article 42, which also sanctions "a public servant who tortures the accused ...". Furthermore, it stipulates that "superior orders shall not constitute grounds for acquittal ...".

28. Chapter IV of the draft constitution deals with the Loya Jirgah. Article 66 sets out the membership of the Loya Jirgah and, while omitting reference to members of political parties, it includes members of the executive board of the National Front. Article 66 must therefore be considered as indicative or temporary, since the Loya Jirgah, by its very nature, has to be universal in its representation of the people of Afghanistan. It must therefore be presumed that the representation of the 5 million refugees living outside the country will be taken into account, otherwise the Loya Jirgah established in chapter IV of the draft constitution will be limited to the present - and incomplete - power structure.

29. Chapter X of the draft constitution concerns the judiciary. The problem of personal liberty and especially that of so-called political prisoners is linked

with the institution of the revolutionary tribunals and the revolutionary prosecutor. Article 117 of the draft constitution perpetuates their existence by providing for the establishment of special courts as do article 126 which establishes a "special attorney's office" and article 130 which provides for the regulation of the "structure, composition, authority and method of activity of attorneys".

III. SITUATION OF THE REFUGEES

30. In his report to the Commission on Human Rights at its forty-third session (E/CN.4/1987/22), the Special Rapporteur estimated the number of Afghan refugees at approximately 5 million. According to information provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), the number of refugees in Pakistan was approximately 2,878,000 as at 1 January 1987. Moreover, according to official estimates, UNHCR put the number of refugees in the Islamic Republic of Iran, which the Special Rapporteur has not yet been able to visit (A/AC.96/693, part V) at 2.2 million. In August 1987, according to the official registration lists, there were 3,156,569 refugees spread over the North-West Frontier Province, Baluchistan, the Punjab and Sind. Some 300,000 persons were still waiting to be registered in the camps of Baluchistan and the North-West Frontier Province.

31. The Special Rapporteur estimated, on the basis of his visit to the refugee camps in Pakistan, that the number of refugees had not in any case decreased, although there had been a slow-down in the flow of refugees into the North-West Frontier Province, in particular at Bajaur, Kurram, Miram Shah and Wana, where the situation has reportedly been calm since March 1987, presumably because of the installation of military posts on that part of the Afghan frontier. That information was also confirmed by representatives of the International Committee of the Red Cross (ICRC) and Kuwaiti Red Crescent first-aid posts for Afghan victims, who reported that they had treated few wounded in the previous four months.

32. The Special Rapporteur noted that there had indeed been, as reported, a return of some refugees to Afghanistan; according to official estimates, they numbered 82,000. In that connection, the Special Rapporteur was notified by the First Secretary of the Afghan Repatriation Committee of the establishment in 1986 of a Repatriation Ministry for facilitating the return of refugees and providing them with living and working conditions conducive to their return. Welcome centres, called "peace centres", had been set up in all the frontier towns and villages (there were allegedly 18 such villages), and hostels were being provided as temporary accommodation for the returnees. Moreover, as indicated above, the Government has taken steps to restore to the returnees the property which they owned before their departure. In general, returnees would be settled in their regions of origin once they had been registered and provided with identity cards and after any other administrative problems had been settled. In addition, a six-month grace period would be granted to returnees of military age, and those who had formerly been in the army would be reincorporated at their former rank. Lastly, the amnesty decree of January 1987 contains provisions for protecting returnees from possible prosecution for leaving the country.

33. During his visit to Afghanistan, the Special Rapporteur had the occasion to visit the welcome centres for returnees and spoke with a good number of them at Kabul and Herat. They had come mainly from Pakistan, the Islamic Republic of Iran, India, the United States of America, the Federal Republic of Germany, France, Austria, Japan, the United Kingdom of Great Britain and Northern Ireland and Turkey. For the most part, however, they seemed to be non-registered refugees. There seems to be three reasons for their decision to return: first, the difficulties encountered by any refugee; secondly, the opposition of Iranian authorities, or of political or tribal leaders in Pakistan, to their departure had apparently stiffened their determination to return to their country; and, lastly, the appeal launched by the Afghan authorities at the time when the national reconciliation process was being set up.

34. Several leaders in Afghanistan drew attention to the opposition to the return of the refugees to their country. That opposition apparently came from the authorities themselves in the case of refugees in the Islamic Republic of Iran, and from the political resistance leaders or tribal chiefs in Pakistan. In that regard, the generally expressed view was that the refugees, both in the Islamic Republic of Iran and in Pakistan, were seen as a means of exerting pressure and would be used for strictly political ends.

35. With regard to these allegations in particular, the Special Rapporteur gathered a considerable amount of information during his visit to Pakistan, both from officials and from a number of refugees in Pakistan,* which may give rise to doubts concerning the allegations, for the following three reasons, at least:

(a) In the refugee camps, the refugees enjoy freedom of movement; if they decide to leave them, therefore, no specific security measure apparently exists to prevent them from doing so;

(b) The authorities of Pakistan, while recognizing that the living conditions of the refugees were steadily deteriorating, were unable to prevent them from departing or to allow them to go on living in increasingly precarious conditions. In that connection, it was made clear that the Government of Pakistan was not engaging in any propaganda to encourage the refugees to come to Pakistan or to keep them from leaving, since its firm policy has always been to allow all refugees freedom of movement;

(c) By visiting the regions very close to the Afghan border, the Special Rapporteur was able to see for himself that the ease of movement on the borders between Pakistan and Afghanistan was such that it is difficult even to imagine the possibility of holding refugees back if they really want to leave.

36. The Special Rapporteur, in his desire systematically to follow up any allegation from whatever source, came to the conclusion, at least in the case of

* Since the Special Rapporteur has been unable to visit the Islamic Republic of Iran, he cannot verify the allegations concerning refugees there.

one incident where there was some opposition to departures, that the allegations were not sufficiently founded. In that incident, some 2,080 families had reportedly been prevented from leaving refugee camps, including the camp at Nasir Bakh, and transferred to unknown camps.

37. According to information received by the Special Rapporteur, the Government of Pakistan had kept its pledge to offer asylum to Afghans while they were awaiting repatriation, but it had recently taken steps to move the Afghan refugees from the towns to the refugee camps in the Mianwali settlement zone in the Punjab. The authorities declared that the aim of the policy was to protect refugees from allegations that might implicate them in the disturbances and attacks committed in Pakistani territory. In that connection, mention was made of the bombing attacks, mainly at Lahore, Karachi, Islamabad, Rawalpindi and Peshawar, and often in the bazaars frequented by crowds of civilians. It was therefore becoming urgent and necessary to exercise more effective control over Afghan refugee movements, for some of the so-called refugees had admitted to being agents provocateurs.

IV. EVALUATION OF THE HUMAN RIGHTS SITUATION IN AFGHANISTAN

A. Human rights situation independent of the armed combat

38. In his previous reports, the Special Rapporteur considered the human rights situation having regard to the existence of the armed conflict on the one hand, and the situation of human rights in the country without reference to the armed conflict on the other. This approach is still valid. However, as the Special Rapporteur indicated in his latest report to the Commission on Human Rights (E/CN.4/1987/22), due consideration must be given to the reconciliation process announced by the Government in January 1987. In paragraph 55 of that report, the Special Rapporteur recommended the following:

"The Commission on Human Rights should keep under careful observation the effects on the human rights situation of the most recent political developments in Afghanistan, in particular, the announced cease-fire and the proclaimed amnesty. Such observation should focus particularly on whether:

- "(a) The bombardments have ceased;
- "(b) There has been a significant reduction in civilian casualties;
- "(c) There has been a halt to the brutalities emanating from warfare;
- "(d) A considerable number of refugees have begun to return to their country;
- "(e) The economic, social and cultural situation of the people in areas not controlled by the Government has changed for the better;
- "(f) The use of torture during interrogations has been stopped and prison conditions improved."

39. Since his visit to Afghanistan, the Special Rapporteur is aware that the human rights situation must be considered paying due attention to the fact that there are three different categories of areas in the country, namely, areas which are under the control of the Government, areas which are not under the control of the Government and which are totally or partially controlled by opposition movements, and areas where combat takes place and where the human rights situation depends on the gravity of the conflict. In this last category, the human rights situation is so complex that it is hardly possible to apply human rights standards and standards of humanitarian law have to be applied.

1. In the regions under government control

40. Among the areas under government control, the Special Rapporteur was able to visit the region of Kabul, parts of the region of Herat and of Balkh, including the provincial capital Mazar-i-Sharif. In these regions, he visited prisons and places of detention, hospitals, schools and educational institutions and met representatives of all groups of Afghan society in villages and provinces.

41. In the course of these visits and meetings, the Special Rapporteur focused in particular on the situation of the right to life, the right to liberty and security of person, prison conditions, the problem of torture, the impact of conflicting ideologies on cultural life, economic and social rights, other civil and political rights and the right to self-determination. In that regard, he was able to some extent to compare his findings in previous reports with the present realities. In particular, he was anxious to see whether the announced new policy had changed the human rights situation.

(a) Right to life

42. The Government did not communicate any statistics on the number of death sentences pronounced and those carried out in 1987. However, a representative of Pol-i-Charkhi prison informed the Special Rapporteur that Sahib Sahrayi, former Minister of Cultural Affairs, had been executed.

43. The representatives of the Government stated that a death sentence could be appealed before the Revolutionary Council, although, it seems, not many persons invoke this appeal. The Special Rapporteur could not find out if or when a pardon had been granted. Former prisoners who had been held in Pol-i-Charkhi stated that those who were in possession of a written sentence - and the Special Rapporteur saw several written judgements - were not sentenced to death; however, prisoners held in Pol-i-Charkhi without a written judgement were exposed to the risk of execution. Government authorities stated that when a person was sentenced to death, the sentence was carried out quickly.

44. The Special Rapporteur has also received information - which he is not in a position to verify - concerning alleged executions in Pol-i-Charkhi of detainees from prisons in outlying areas, such as Jalalabad, using particularly inhuman methods.

(b) Right to liberty and security of person

45. The Special Rapporteur has been able, for the first time, to have access to the full legislation governing these matters. The legal situation of so-called political prisoners is of interest in this regard. Political prisoners fall into two categories: those in pre-trial detention pending investigation and those who are detained as a result of a sentence.

46. Persons suspected of having committed crimes against the State may be held in custody for up to 72 hours and should then be brought before the competent judicial authority. However, under the law of 1978, the Revolutionary Prosecutor may order that a person be held for up to five months under special investigation. A remedy appears possible against such a decision, but only through the Revolutionary Council and no Court has competence to pronounce itself upon such a decision. In cases of appeal to the Revolutionary Council, the Revolutionary Prosecutor participates in the Council's deliberations on the request for review of his own order. Article 12 of the Law on Detection and Investigation of Crimes states as follows:

"1. The organs for detection and investigation of crimes are duty-bound to report to the Prosecutor within 72 hours of the time of arrest.

"2. The Prosecutor shall decide within 72 hours after receiving the report whether to release the accused or to keep him in custody".

Article 15, which deals with the period of detention, states as follows:

"1. The Prosecutor shall decide on the release or detention of the accused after completion of the investigation.

"2. The detention of the accused while the crime is being investigated is not allowed for more than two months.

"3. In complicated crimes, the prosecutors of the provinces, the Special Prosecutor of the Armed Forces, and the Special Prosecutor can extend the period of detention to six months.

"4. In extraordinary cases, extension of detention for more than six months falls within the competence of the Attorney-General of the Democratic Republic of Afghanistan, the Special Prosecutor of the Armed Forces and the Special Prosecutor."

47. During the period of investigation, the person is kept as a prisoner whose innocence is in question. Having seen the conditions of detention of persons under investigation in Sadarat prison, the Special Rapporteur is convinced that anything can happen to the prisoner without the knowledge of the outside world. Further details of conditions of detention are given below under subsection (c).

48. In the course of his visit, the Special Rapporteur was informed by the authorities that the prison population was as follows:

- (a) At Kabul
- (i) Pol-i-Charkhi: 5,335 prisoners, including 4,926 political prisoners, 384 common criminals and 25 women, of whom 5 were political prisoners and 20 common criminals;
- (ii) Shashdarat: No detainees;
- (iii) Sadarat: 86 detainees, including 36 on trial and 50 who were the subject of pre-trial proceedings;
- (b) At Herat:
- (i) Prison: 335 detainees, including 247 political prisoners and 88 common criminals;
- (ii) Place of detention: 35 detainees under interrogation;
- (c) At Mazar-i-Sharif:

No statistics available.

49. The revolutionary courts have been set up by the law on special revolutionary courts. Under article 7 of the law, the Special Revolutionary Court consists of a President, a Vice-President and members appointed by the Presidium of the Revolutionary Council of the Democratic Republic of Afghanistan. Their functions and competences, as described in articles 10 to 13, are very wide. Thus, the Special Revolutionary Court is authorized to consider cases arising from crimes against the external and internal security of the country, against territorial integrity, sovereignty and national independence, against the State and the achievements of the April Revolution and cases arising from crimes committed by Ministry of State Security personnel. The decision of the Special Revolutionary Court is final. The President and the members of the Special Revolutionary Court cannot be put on trial, arrested or discharged without the agreement of the Presidium of the Revolutionary Council of the Democratic Republic of Afghanistan.

50. As already indicated, with regard to the administration of justice in general, the Special Rapporteur received confirmation that offences against the internal or external security of Afghanistan were within the jurisdiction of the Revolutionary Court. Only the Attorney General was entitled to authorize remand in custody beyond the statutory surveillance period of 72 hours. The Assistant Attorney General informed the Special Rapporteur that, in the case of remand in custody for a period exceeding 72 hours, the prisoner had the right to appeal to the Revolutionary Council in accordance with article 43 of the Fundamental Principles. Under the provisions of the Code of Criminal Procedure the investigation may be extended by order of the Attorney General, but may not exceed six months. Under articles 106, 107, 116 and 117 of the Code of Criminal Procedure the prisoner has the right to file a complaint with the prison warden, the Attorney General and the court about any aspect of his detention that he considers illegal from the time of his arrest until he appears before the Court. Under article 243 of the Code of

Criminal Procedure the accused has the right to be assisted by one or several experts during his trial. During the trial, it is absolutely forbidden to force the accused to reply to any question or to bring pressure to bear on him in order to extract statements from him against his will.

51. According to the information obtained in Pakistan by the Special Rapporteur from recently released prisoners, no document concerning their release is provided to released prisoners, in contravention of article 67 of the 1983 Act on the implementation of prison sentences which stipulates that: "the prisoner, on the day of release, shall be provided with personal documents, personal belongings, ... and a document of release from prison". Moreover, no opportunity to file an appeal had been given to the persons questioned by the Special Rapporteur who said that they had been remanded in custody for over 6 months and in some cases up to 10 months. Furthermore, released prisoners of military age have apparently been immediately conscripted into the army, in some cases without even being allowed to visit their families.

52. Political prisoners are not held in all provinces; for instance, Mazar-i-Sharif prison receives prisoners from five provinces. The most notorious prison is Pol-i-Charkhi where the Special Rapporteur was able to visit some of the blocks and to speak to prisoners. In this connection, ICRC has made a thorough inspection of Pol-i-Charkhi and its findings can be considered entirely reliable.

53. According to the Prison Governor, 5,335 prisoners were held at Pol-i-Charkhi at the time of the Special Rapporteur's visit. However, the Special Rapporteur also heard it said that the actual number of prisoners was higher and, until a few years ago, the prison population of Pol-i-Charkhi was in the region of 50,000. The Special Rapporteur is of the opinion that such estimates cannot apply to the present situation.

54. After his visit to the prison, the Special Rapporteur was informed by various witnesses that ill-treatment was virtually a daily practice. Although he put specific questions to the prison authorities regarding disciplinary measures within the prison, any form of corporal punishment was denied. However, former prisoners who had been heard outside Afghanistan stated that, even since the announcement of the reconciliation process, prisoners had been hit with batons, kicked, and subjected to humiliating treatment. These allegations were formulated so credibly and the places where the ill-treatment was said to have taken place were so clearly identified that the Special Rapporteur can accept that such methods of treatment of prisoners exist. On the other hand, the Special Rapporteur was informed of certain improvements in prison conditions, for example, with regard to the frequency of family visits.

55. One of the effects of the new policy was the release of prisoners before completion of their sentence. The authorities informed the Special Rapporteur that, as a result of the amnesty decree of 25 January 1987, 7,000 prisoners had been released. At the time of the Special Rapporteur's visit to Pol-i-Charkhi, 51 prisoners were released and another 150 were said to be due to be released the same day.

56. The Special Rapporteur visited a number of former prisoners who had been released shortly before, in their own homes. He also spoke to former prisoners who had left the country. It would appear that there are different categories of released prisoners: those still of conscription age, who, as the Government informed the Special Rapporteur, are obliged to join the army six months after their release; those who are kept under supervision after their release; and those who are released unconditionally. The Special Rapporteur spoke to prisoners of all three groups; he was told by witnesses that former prisoners who are of conscription age are in fact transferred directly from Pol-i-Charkhi to Sadarat detention centre, from which they are taken to their respective military unit. There are many examples of such persons who, after serving a certain period in the army, desert and seek refuge elsewhere.

57. A feature common to all released prisoners is that they are not furnished with a document certifying their release due to amnesty, although they are still in possession of the verdict on the basis of which they were incarcerated.

(c) Prison conditions

58. According to statements made by spokesmen for the Afghan Government, an independent commission consisting of judges appointed by the Attorney General and responsible for monitoring prison conditions has been set up. After inspections have been carried out, a report is sent to the Ministry of the Interior which submits it to the prison administration for appropriate action. With regard to the allegations of ill-treatment of prisoners, it was stated that some cases of ill-treatment had in fact been brought to the attention of the Ministry of the Interior, even though such treatment was prohibited by law.

59. Although ICRC has conducted a thorough inspection of Pol-i-Charkhi, it has not yet had the opportunity to inspect other prisons or detention centres in Afghanistan. In all, the Special Rapporteur visited the following places of detention: Sadarat, Shashdarat, Pol-i-Charkhi, Herat and Mazar-i-Sharif. He did so in the context of the Standard Minimum Rules for the Treatment of Prisoners.

60. The Special Rapporteur cannot prejudge the findings of ICRC, which follows its own carefully prepared rules and criteria in visiting prisons. However, he noticed that prisoners under investigation were held in dark cells. In Sadarat, for instance, between one and four persons were held in each cell and, although those cells had windows, they were painted over so that the daylight was kept out. The interrogation cells were located at some distance from the other cells; underground cells were observed in Shashdarat but none in Sadarat, although their existence had been indicated to the Special Rapporteur by former inmates interviewed outside Afghanistan. Conditions of hygiene were poor in all prisons visited. In Pol-i-Charkhi prison for example, there were four washing places and four toilets for each cell which normally held from 80 to 140 prisoners, although the Special Rapporteur was told that there had been a time when one cell was said to have held up to 400 inmates. It was also stated that the average government allocation for meals differed for prisoners serving a sentence and those under investigation. The latter received sufficient food, whereas convicted prisoners did not have enough to eat. Several former prisoners said that without food brought by the family it was

nearly impossible to survive. The prison canteens did not sell nutritious food articles. Some former prisoners claimed that food packages brought by family members were sometimes "looted" by prison guards, but that was denied by the prison authorities. It was also stated that prisoners belonging to the PDPA were privileged. It would appear that minors and adults were normally detained together in the same cell and only separated on the occasion of visits by international organizations. The prison courtyards did not appear suitable for the required recreation of detainees, since in most places they had hardly any shade and were very dusty. Although the prison authorities said that prisoners had the right to receive and to study the prison rules, the Special Rapporteur did not meet any prisoner or former prisoner who had been able to do so. Whereas the prison authorities categorically denied corporal punishment as a disciplinary measure, former prisoners affirmed convincingly that corporal punishment within Pol-i-Charkhi was a common feature of daily life.

(d) Torture and ill-treatment

61. In his latest report to the Commission on Human Rights (E/CN.4/1987/22), the Special Rapporteur recommended in paragraph 55 that it should keep under careful observation the effects on the human rights situation of the most recent political developments in Afghanistan, in particular, whether, as a result of the new policy, the use of torture during interrogations had stopped.

62. The Special Rapporteur refers to article 1, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see General Assembly resolution 39/46, annex, of 10 December 1984), which reads as follows:

"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

63. In his previous reports, the Special Rapporteur has made reference to many cases of torture of prisoners during interrogation while in detention pending investigation. In its latest report, Amnesty International referred to many cases of torture during the last years of the conflict in Afghanistan, and private organizations have also referred to cases of torture. The Special Rapporteur became aware during his last visit to Pakistan that a Psychiatric Centre for Afghans had been established in Peshawar to treat victims of torture. He visited the Centre and examined statistics and methods of treatment. The Special Rapporteur met individuals outside Afghanistan who alleged that they had been ill-treated or subjected to torture.

64. After careful examination of the allegations of torture brought to his attention, the Special Rapporteur is of the view that many of them do not fall within the legal definition of the term as set out in article 1 of the Convention against Torture. However, prison conditions are such that they may be considered as constituting psychological torture, in which case, such treatment may be covered by the definition in the Convention. Moreover, the Special Rapporteur received information from very reliable witnesses residing in Afghanistan that no cases of torture of the kind described in his previous reports had been reported during the past six months.

65. On the other hand, representatives of the armed forces of the Government claimed that prisoners of war who had escaped from the custody of the opposition movements had reported that they had been subjected to torture and ill-treatment.

66. Further information brought to the Special Rapporteur's attention in Pakistan by former detainees recently released from Pol-i-Charkhi indicates that detainees were still receiving ill-treatment in that prison. Three ex-detainees stated that they had been clubbed by guards for complaining about poor prison conditions. They also said that they had all three been transferred to Sadarat before being informed of their release and had then been forced immediately to start their military service without being able to visit their families.

(e) Right to freedom of religion

67. The Special Rapporteur visited a number of mosques and religious institutions in Kabul, during the Eid-el-Ghorban feast and later in Mazar-i-Sharif where he had occasion to talk to several clergymen. In the course of these visits and indeed, generally, during his sojourn in the country, he saw no evidence of any restriction of religious manifestations.

68. Representatives of the High Council of Religious Scholars and Clergy of Afghanistan informed the Special Rapporteur that the authorities were providing financial assistance in order to facilitate pilgrimages to Mecca and to implement the programme of reconstruction of damaged or destroyed mosques. Allegations that opposition movements were responsible for the destruction of certain mosques could not be verified.

69. In the institutions visited by the Special Rapporteur, there was no particular emphasis on religion.

70. Article 2 of the draft constitution proclaims Islam as the religion of Afghanistan. Government representatives admitted that at the outset of the Saur Revolution, certain mistakes had been made which could have been interpreted as acts hostile to religious sensitivity; some mullahs confirmed it, but they added that the situation had since improved.

(f) Impact of conflicting ideologies on cultural life in Afghanistan, including the university system

71. In the course of his visit to Afghanistan, the Special Rapporteur was informed by the authorities that government policy was inspired by national, as distinct from unilateral and partisan ideological, considerations. However, the Special Rapporteur observed that, in certain areas, that did not appear to be the case. An example was furnished by the manner in which children of Party members found themselves obliged to adhere to organizations in which they were indoctrinated and trained against the "enemy" of the Afghan nation (i.e. opposition movements) and those who were alleged to be conducting an undeclared war against friendly big Powers, as the Special Rapporteur had occasion to observe in the course of his visit to the youth organization and to the "Perwarischgahi watan" (homeland nursery). The Special Rapporteur referred to the education policy of this institute in his 1986 report to the Commission (see E/CN.4/1986/24, para. 65). In the course of his visit, the Special Rapporteur was shown the useful work accomplished to improve the material welfare of the pupils in daily life, but it was apparent that the institute, in which many orphans and children of Party members lived and were educated, had a distinct ideological orientation.

72. The institute, established in 1981, is responsible for educating child martyrs and the children of members of the resistance. Teaching is given in Pashto and Dari and, from the fourth level onwards, in Russian and other foreign languages. In addition to the Kabul institute, there are similar institutes in the provinces of Kanuohar, Herat, Laghman, Nangarhar, Paktia, Baghlan, Parvan, Konduz, Samangan, Balkh, Jowzjan, Faryab, Farah and Helmand. Scholarships are awarded to some children for education in "friendly countries". It would appear that 100 to 120 scholarships have been awarded to pupils for study abroad, chiefly in socialist countries, for three or four years. For Afghanistan as a whole, it would appear that 2,500 children are thus receiving education in such institutes.

73. The Special Rapporteur held talks with members of the Academic Senate of the Kabul University, at which questions about the functioning and administration of the University were discussed. He was informed that there are now 7,600 students, whereas there were 6,000 in 1978. A scheme has been set up enabling people working in the daytime to attend evening classes for a two-year period, at the end of which they are admitted to the University without an entrance examination. For the past four years one week has been devoted to a seminar for teaching staff and students who discuss a number of technical subjects. The records of the debates are published in four languages (English, French, Russian and German). Knowledge of at least one of these languages is required at the University. Moreover, military service is deferred for students until they have completed their university studies. Appointment of professors to the University is the responsibility of the supervisory administrative bodies. With regard to the status of members of the teaching staff who have been imprisoned, the Dean of Kabul University said that they had been reinstated in their posts at their previous grades. He added that the national reconciliation process provided for reinstatement of teaching staff residing abroad, with all guarantees for their security. Only one professor said that he had received such an invitation. In that connection, the Special Rapporteur noted that Professor Kakar, who had been released from prison, spoke freely with him during his visit to Kabul.

(g) Economic and social rights

74. The Special Rapporteur refers to the general approach to this aspect reflected in his previous reports (in particular, A/41/778, para. 85). In this connection, he received in particular the following information concerning the Afghan authorities' efforts in the economic and social sectors.

(i) Economic sector

75. In April 1987, an Act governing investments in the private sector was passed to co-ordinate economic policy relating to national and foreign investments in the private sector. A Central Office for the Development and Promotion of Private Investment was established to co-ordinate the activities of the public, private and semi-public sectors.

76. The Office is under the authority of a Standing Committee, the only body entitled to decide whether or not a private enterprise should be established or liquidated. There is a Co-ordinating Committee responsible for evaluating projects before submitting them for final decision.

77. According to statements made by the General Manager of the Office, there were in June 1987, 421 private enterprises nation-wide, with 8,848 employees and a capital of 10.2 billion afghanis. The private sector is concerned primarily with chemicals, textiles, leather, carpets and jewellery. Chapter II of the Act provides for exemptions and assistance to private enterprises. Such enterprises are tax-exempt for the first two years and the exemptions can be extended until the sixth year of operation (art. 12); they are also exempt from customs duties (art. 14); they can remit profits (art. 35); and expatriate employees can remit 60 per cent of their wages (art. 36). By contrast, chapter III, which deals with the obligations of enterprises, states that they have an obligation to transfer 15 per cent of their annual profit, after taxes and prior to dividend distribution, to a reserve account for expansion, innovation, production, the replacement of materials and compensation for risks. In addition, 2 per cent of the profits must be deposited in a workers' social welfare reserve account (art. 14). Chapter IV contains provisions relating to the settlement of disputes.

78. Base wages in the private sector are reportedly equivalent to those in the public sector; however, they are higher in the private sector because a number of advantages are given. Finally, 75 per cent of the people working in the private sector are reportedly exempt from military service. There are 759 ongoing development projects in 1987. In the primary sector, output is said to have risen by 3 per cent and in the agricultural sector the targets set in the Plan are reported to have been exceeded to a large extent. Finally, in 1986, the defence budget is said to have accounted for 16 per cent of the annual State budget.

Social sector

79. As regards implementation of the Plan in the national economy, it was stated that efforts had been focused in particular on the social services sector (health, education and housing). Thus, in 1987, out of a total of 13 billion afghanis,

37 per cent was allocated for social services, as compared with 1 per cent in 1977, 16 per cent in 1978 and 33.3 per cent in 1986.

80. In the field of trade-union rights, the Association of Trade Unions of the Democratic Republic of Afghanistan, which has 300,000 members, is responsible for drafting and implementing labour laws. All branches of activity are represented in it, with the exception of the agricultural sector. Because there is a public, a private and a semi-private sector, a Labour-Management Conciliation Commission has been established. The Commission monitors implementation of collective bargaining agreements which reportedly provide for protection of workers' rights; these rights are upheld by the Association.

81. The "guaranteed minimum wage" reportedly amounts to 2,000 afghanis per month. In addition, medical treatment is free for workers and members of their families.

82. On the other hand, there is no social security system nor are there any provisions authorizing the right to strike.

(h) Other civil and political rights

83. The right to freedom of expression, freedom of assembly, freedom of movement and freedom of association are hampered not only by the restriction imposed on these rights as such, but also by the situation created by the conflict. Opposition movements and ideas contrary to those of the Government are suppressed. Freedom of movement is itself restricted by the many barriers on streets and roads. It is also common knowledge that opposition forces impose restrictions on movement, although this is not officially acknowledged.

(i) Right to self-determination

84. The Special Rapporteur has given particular importance in his previous reports to the right to self-determination. This right is embodied in the institution of the Loya Jirgah; since 1964, the only Loya Jirgah organizer took place in April 1985. A Loya Jirgah thus convened cannot be considered truly representative of the people so long as the refugee population outside the country cannot participate. The Government has attempted to convene local Jirgahs, but these could only meet in government controlled areas, which allegedly account for some 20 per cent of the country.

85. The Special Rapporteur observed attempts made among the refugee population in Pakistan to organize so-called "Shuras" and was informed of similar efforts inside Afghanistan in areas under government control. These "Shuras" are elected by the people without reference to parties or factions. Such a system might be used as a first step towards organizing the Afghan people who are outside the country and thus to ensure an element, albeit rudimentary, of respect for the full exercise of the right to self-determination.

86. A draft constitution is being considered in Afghanistan. This document is analysed in paragraphs 21-29 of the present report. Chapter IV of the draft constitution concerns the Loya Jirgah, which can only acquire a truly universal representative character when all the people of Afghanistan are represented on it.

87. The Special Rapporteur discussed the draft constitution with Party officials, former members of parliament and highly qualified lawyers inside and outside the country. The prevailing argument among Afghans outside the country was that a new constitution could not guarantee self-determination when Soviet troops were still in the country. Inside Afghanistan, the Special Rapporteur was told that the "small contingent of Soviet forces" was in the country legally and indeed was welcomed by the people, as could be seen from the declaration made by the Loya Jirgah on 25 April 1985.

2. In regions not under government control

88. The Special Rapporteur has not had an opportunity to visit areas outside government control. The only source of his information on the situation of human rights in such areas are reports prepared by opposition movements and by non-governmental organizations which serve as relief agencies inside Afghanistan. The information received by the Special Rapporteur in the period covered by this report reflects a situation which is substantially the same as that described in his previous reports (particularly A/41/778, paras. 85-93).

B. Human rights situation resulting from the armed conflict in Afghanistan

1. General

89. In Afghanistan the parties to the armed conflict are the Government troops and the Soviet forces, on the one hand, and the armed resistance organized by opposition movements, on the other. The Special Rapporteur is not mandated to study the armed conflict except in so far as it affects the human rights situation. The Special Rapporteur is aware of the various aspects and consequences of the conflict that he was able to observe during his visit to Kabul, Herat and Mazar-i-Sharif and during his visits to the victims of the conflict, namely, the refugees inside and outside Afghanistan and the innumerable patients in hospitals inside and outside Afghanistan.

90. In his previous report to the General Assembly, the Special Rapporteur observed that the situation created by the conflict had not changed significantly (A/41/778, para. 54). Government and Soviet forces try to cut off routes used by the opposition forces and by the refugees; they also try to destroy the opposition movements' sources of supply, to rid certain areas of opposition forces and to maintain control over the larger cities.

91. At the beginning of 1987, the Government announced a unilateral cease-fire to which the Soviet forces agreed. This cease-fire originally pronounced for six months was extended for another six months as at July 1987. The Special Rapporteur analysed the declaration of a cease-fire in his latest report to the Commission on Human Rights (E/CN.4/1987/22, para. 41) and stated that it "could be a prelude to a peaceful settlement". However, the opposition movements did not accept the cease-fire and the Special Rapporteur observed that the armed conflict

appeared to have intensified in recent months, as confirmed by the many reports of heavy fighting that had come to his knowledge.

2. Casualties resulting from bombings and other acts of war

92. According to a variety of sources, fighting between Afghan troops and members of opposition movements has intensified, particularly since May 1987, in the provinces of Kandahar, Daktia, Baghlan, Ghazni and Vardak and in the district of Maydan; this would explain the large number of war casualties admitted to the hospitals visited by the Special Rapporteur in Quetta (Baluchistan). By contrast, the number of wounded admitted during the same period to hospitals in Peshawar (North-West Frontier Province) is lower, apparently because fighting in the provinces bordering on that area has tapered off. The ICRC first-aid post for Afghan victims at Chaman (Baluchistan) alone treated 164 patients in May, 70 in June, 113 in July and 73 in August 1987. The situation was similar at the Saudi Red Crescent first-aid post. By contrast, the ICRC first-aid post at Miram Shah (North-West Frontier Province) treated 17 patients in May, 7 in June, 12 in July and 7 in August 1987. The same trend was observed at the Kuwaiti Red Crescent first-aid post.

93. The Special Rapporteur heard allegations concerning the killing of civilians and the destruction of houses, and considers it necessary to draw the attention of the General Assembly to the following alleged cases, by way of example, said to have occurred in June, July and August 1987:

(a) With the aim of destroying opposition strongholds in an area where certain vital supply routes connecting eastern, central and northern Afghanistan intersect, the Government initiated an operation which reportedly led to fighting in Sanglakh pass, Maydan, in the Province of Wardak between 21 June and 9 July 1987, in which both government and opposition forces suffered heavy casualties. In retaliation, government troops allegedly bombarded civilian residential areas of the Province, demolishing 100 houses, killing about 50 civilians and destroying crops;

(b) On 24 July 1987, in the course of a land and air operation, in the Hindu Kush, Jangal, Areegh, Almalik, Dali, Haiderabad, Alja and other villages in the Province of Fariab, hundreds of houses were destroyed and several civilians killed;

(c) Between 7 and 15 August 1987, in another land and air operation, in the Shakardara area and the surrounding villages in Kabul province, 85 people were killed, most of whom were women, children and elderly persons. According to eyewitnesses, some 20 to 40 per cent of the houses were destroyed and the cattle population decimated.

94. The Special Rapporteur was not able to examine the situations of heavy fighting, their causes and consequences, to determine who was responsible. The resistance movements are equipped with modern weapons such as anti-tank and surface-to-air missiles. There were many reports of casualties caused by resistance movements. Several planes have been shot down, resulting in the death

of innocent civilians. The Special Rapporteur was shown photographs of women and children who were mutilated as a result of rocket attacks in Kabul imputed to resistance forces.

95. The Special Rapporteur visited hospitals in Kabul, in Baluchistan and in the North-West Frontier Province. In Kabul, he visited a number of hospitals (see para. 3 above). In the Wazir Akbar Khan hospital, the Special Rapporteur observed over 100 civilians injured as a result of the hostilities. However, discussion with several of these persons did not clarify whether their wounds resulted from acts by opposition movements. Injuries caused by mines were the most frequent. The Special Rapporteur visited the Armed Forces Hospital in Kabul with a stated 450-bed capacity; the hospital is full to capacity with soldiers wounded in the hostilities. Among the patients, the Special Rapporteur observed eight persons said to be wounded opposition fighters who were recovering in a separate room guarded by a soldier. The Special Rapporteur was told that they would be handed over to the judiciary upon recovery.

96. As stated in paragraph 8 above, the Special Rapporteur visited a number of hospitals in Pakistan. He studied the medical histories of wounded children and elderly persons, he visited first-aid posts and received statistical information on the flow of injured persons through these hospitals and posts. He observed that, in comparison with recent reports, there was a notable increase in the number of wounded or, at least, no diminution in the number of newly wounded persons. It was explained that the increase in the number of wounded was due to the intensity of fighting in various provinces.

97. Following the statistical survey of civilian casualties during 1986 provided in his latest report to the General Assembly (A/41/778), the Special Rapporteur has received information from the Bibliotheca Afghanica Foundation (Liestal, Switzerland), according to which civilian casualties from the end of 1986 to September 1987 would amount to 14,172. The highest numbers of victims are reported in the provinces of Kandahar, Konar, Kunduz and Laghman.

98. The Special Rapporteur noted reports of destruction of houses, mosques, livestock and crops imputed to both the armed forces and the opposition movements. According to data collected by the Bibliotheca Afghanica Foundation, during the period covered by this report, action by the armed forces caused more loss of livestock than action by the opposition movements. In several cases, responsibility for damage could not be established.

3. Use of anti-personnel mines and booby-trap toys

99. The Special Rapporteur observed several wounds resulting from anti-personnel mines suffered by both soldiers and civilians. Reports on the use of booby-trap toys have diminished during the period covered by this report.

100. In a war museum at Kabul, the Special Rapporteur was shown different weapons that had allegedly been taken from resistance forces, including toy bombs and matériel resembling that used for chemical weapons. In the Wazir Akbar Khan

hospital at Kabul, the Special Rapporteur studied six medical reports describing the patients as having been wounded by chemical weapons in the prov. ce of Ghazni.

4. Acts of brutality and other acts of war in contravention of humanitarian norms; international war

101. During the period under consideration, the Special Rapporteur received little information relating to acts of brutality attributed to the armed forces. However, he was informed of the case of a young man captured by Soviet troops in Kandahar in September 1986 who had poured diesel fuel over him and ignited it. The young man had suffered severe head and chest burns and eye damage. The Government submitted a list of acts of brutality attributed to members of the opposition movements to the Special Rapporteur.

102. The situation of prisoners does not appear to have changed compared with that described in the previous report of the Special Rapporteur to the General Assembly (see A/41/778, paras. 76-77). It is difficult for ICRC to visit prisoners held by the Government and those held by the opposition movements; the Special Rapporteur has not had an opportunity to visit them either. He was given a list of Soviet prisoners whose whereabouts and fate were unknown.

103. In that context, the Special Rapporteur heard from Commanders of opposition forces who categorically rejected any obligation under the Geneva Convention. According to them a war of revenge, such as the present conflict, was of a "total" character.

104. The Special Rapporteur noted a significant increase in the number of acts of terrorism against Afghans inside and outside the country. More than 4,000 deaths have been reported among the civilian refugee population in the border areas and in cities in Pakistan. Civilian aircraft have been shot down over Afghan soil. Bombs planted in crowded public places, in particular in Kabul, have been reported. A commander of an opposition movement has received a letter bomb. These reports coincide with reports of increasing attacks in Pakistan territory; some 150 air and artillery attacks have been reported, causing damage and death among the refugee and the civilian population.

105. During his visit to Herat, the Special Rapporteur was able to see for himself the damage to the Great Mosque Jami to which he referred in his latest report to the General Assembly (A/41/778, para. 79), attributed by the Afghan authorities to the opposition movements. However, he has no concrete indications as to whom was responsible for the damage. He was not able to visit the old city in Herat, which, he was informed, had suffered extensive damage.

V CONCLUSIONS

106. The Special Rapporteur was invited to visit Afghanistan in March 1987; he accepted the invitation, which was the first since his appointment as Special Rapporteur in 1984, with appreciation. During his stay in Afghanistan, he visited

Kabul, Herat, Mazar-i-Sharif and Balkh. He had also asked to visit the regions of Kandahar and Khost but this did not prove possible. The Government of Afghanistan offered the Special Rapporteur the best possible co-operation in the circumstances.

107. As in previous years, he was able to visit refugee camps and hospitals in Pakistan. The Government of Pakistan, as in the past, afforded the fullest co-operation. The Special Rapporteur is thus in a better position than in previous years to evaluate the human rights situation in Afghanistan.

108. The present situation of human rights in Afghanistan is characterized by the Government's attempts to implement a policy which it calls "a policy of national reconciliation". In applying this policy, the Government has taken a number of measures, in particular, it has proclaimed a general amnesty, appealed for the return of refugees and declared a unilateral cease-fire.

109. The concept of "national reconciliation" is accepted by many organizations and individuals in government-controlled areas. However, it is questioned and rejected by political leaders and spokesmen for the refugee population in Pakistan. They maintain that this policy lacks credibility because it is advanced by a régime which has violated human rights on a large scale in the past and that, in any event, it cannot be accepted as a serious statement of policy so long as Soviet troops have not withdrawn from Afghanistan.

110. Leaving aside the speculation on the motive for such a policy, the Special Rapporteur recognizes that there are some improvements in the human rights situation in government-controlled areas, compared with the situation described in previous reports; however, in combat areas there are still serious contraventions of humanitarian law and human rights.

111. In areas under government control, the number of political prisoners has been reduced, prisoners have been released as a result of amnesties, religious manifestations are not restricted, no new reports of torture within the meaning of international instruments have been received in the last six months, ICRC has been permitted to inspect Pol-i-Charkhi prison and closer collaboration with ICRC is being studied. The Government is making efforts to persuade refugees to return and to facilitate their integration in Afghan society; when possible, released detainees are reinstated in their former occupations, and in certain areas the Government is trying to convince opponents of the régime's sincerity through discussions rather than military confrontation.

112. There are still many political detainees who are serving sentences handed down in procedures that cannot be considered to have been in conformity with international human rights instruments and the periods of pre-trial detention permitted go far beyond any international standards. Moreover, the conditions of imprisonment during such detention do not conform to the concept of detention on remand, and brutality in prisons still appears to be common. Furthermore, the conditions of detention of convicted prisoners are, in several respects, not in conformity with the Standard Minimum Rules for the Treatment of Prisoners and all other civil and political rights are not fully respected.

113. The armed conflict - the other facet of the human rights situation in Afghanistan - is still going on and causes death and material destruction. It leads to brutalities and to treatment of prisoners which is reportedly not in conformity with humanitarian law. The armed conflict has in fact intensified during the past months. Civilian targets are also hit by resistance forces who are better equipped than before. The figure given for civilian casualties from the end of 1986 to August 1987 is 14,272.

114. A new feature in the conflict is the increase in acts of terrorism against Afghans inside and outside Afghanistan. This represents a new danger for personal life, liberty and security. More than 4,000 deaths were reported during the period under consideration in the border areas and in cities in Pakistan. Several air and artillery attacks in Pakistan territory endangered human lives and goods.

115. The number of refugees - another result of the armed conflict - in Pakistan and in the Islamic Republic of Iran declined since the Special Rapporteur's latest report to the Commission on Human Rights (E/CN.4/1987/22) and remains at some 5.5 million. The Government's policy to persuade refugees to return has brought back some 82,000 persons from various countries, some of whom were interviewed by the Special Rapporteur. He was unable to examine the return process in detail, but noted that the efforts of the Government to bring about the return of the refugees were hampered by the prevailing situation.

116. The new draft constitution does not contain any real safeguards for the effective realization of the full range of human rights and the special courts and special prosecutor established under revolutionary decrees can still be "legally" maintained. There are no provisions for appeal to an independent authority against arbitrary detention, and the Loya Jirgah envisaged in the draft constitution appears to lack the universality that is part of its very essence.

117. Even if the draft constitution were to be adopted as it stands at present, its adoption could not be considered as a free act of self-determination unless it included genuine representation of the refugee population to create the "constituent power".

118. Regardless of the legality or otherwise of the presence of Soviet troops in Afghanistan, the fact remains that their presence is the main reason for the intensity of the armed conflict and the existence of 5.5 million refugees and is an obstacle to the free exercise of the right to self-determination. Improvements in the human rights situation compared with one year ago are to be welcomed, but a stable human rights situation in conformity with international human rights instruments depends on certain substantial measures being taken, such as reform of the judicial system, especially the abolition of the revolutionary prosecutor, the creation of a Loya Jirgah that is universally representative and the large-scale return of the refugees. Their return and the exercise of the right to self-determination are, in turn, contingent upon the end of military confrontation and the withdrawal of Soviet troops.

VI. RECOMMENDATIONS

119. The human rights situation in Afghanistan is the product of the overall political situation in the country itself, namely, the existence of a system of government which, in the view of a large part of the population, is not the legitimate government authority that can guarantee the enjoyment of human rights for all, and the continuing presence of Soviet troops involved in an armed conflict which affects a large part of the population. Furthermore, a part of the population does not accept the view that these troops are in the country legally. Full enjoyment of all human rights for all the people without any discrimination presupposes a political solution of the conflict, including the withdrawal of Soviet troops. Any recommendation that does not take into account this highly political aspect of the situation in the country will only be of partial value.

120. The mandate of the Special Rapporteur does not permit him to make recommendations of a political nature; however, his recommendations touch upon political elements because human rights and political structures are interrelated. A large part of the population holds the view that the withdrawal of Soviet troops is a pre-condition for the free and effective exercise of the right to self-determination, within the meaning of article 1 of the International Covenants on Human Rights.

121. Another essential condition is the voluntary return of the refugees. This should be facilitated by the Government of Afghanistan through a general amnesty to be applied in an uncomplicated and straightforward manner. Their return must not be hampered by any pressures or force applied outside Afghanistan.

122. Until these conditions for a full re-establishment of human rights throughout the country are fulfilled, any recommendation has only a partial value. Reconciliation in itself is a positive element in bringing about improvement in human rights. The process of reconciliation in part of the country is but a limited approach to the re-establishment of human rights in Afghanistan for all Afghans.

123. The Special Rapporteur wishes to emphasize that his recommendations are not to be interpreted as an alternative formula to that outlined above. The present human rights situation in certain parts of the country where, indeed, certain improvements may be acknowledged could constitute a first step in the process of restoring human rights in Afghanistan. Bearing this in mind, the Special Rapporteur makes the following recommendations:

(a) Political prisoners who have been released as a result of the amnesty should receive an authentic document attesting to their release;

(b) These former prisoners should be granted the right to reoccupy their posts and to resume their professions;

(c) Those former prisoners whose cases are to be reopened and who are no longer found guilty should be compensated;

(d) All parties to the conflict should apply humanitarian law fully; captured members of the resistance should be treated as prisoners of war under the Geneva Conventions;

(e) ICRC should be given full access to any prisoner, prison or place of detention under the control of resistance movements;

(f) The Government should conclude an agreement with ICRC as soon as possible allowing that organization to carry out regular inspection of prisons and places of detention and to meet prisoners on a regular basis, in accordance with its established criteria.

124. The mandate of the Special Rapporteur should authorize him to visit those parts of Afghanistan which are not under the direct control of the Government.

125. In regard to the draft constitution:

(a) A new constitution should be elaborated in co-operation with representatives of the refugee population;

(b) Those provisions of the constitution that refer to human rights must be amplified to include the guarantees set out in article 2 of the International Covenant on Civil and Political Rights (see General Assembly resolution 2200 (XXI) A, annex) which states that:

"...

"2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

"3. Each State Party to the present Covenant undertakes:

"(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

"(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

"(c) To ensure that the competent authorities shall enforce such remedies when granted."

(c) Those provisions of the constitution which permit the perpetuation of the system of "revolutionary justice" should be repealed or amended to ensure control by independent authorities.

126. Those provisions of the law governing detention pending investigation allow persons suspected of having committed crimes against the security of the State to be held for periods as long as six months and even longer and they have no recourse against or relief from such detention. Independent judges should be appointed to ascertain the legality of such detention and investigate conditions in places of detention, and the duration of such detention should be drastically reduced.

127. Finally, the Special Rapporteur calls upon the parties to the conflict to consider following the path of dialogue and unity through peaceful means.
