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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 paragraph 6 of Commission resolution 1985/38 of 13 March 1985.

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 1985/38

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I. INTRODUCTION

1. At its first regular session in 1984, the Economic and Social Council, by resolution 1984/37 of 24 May 1984, approved the recommendation made by the Commission on Human Rights in resolution 1984/55 of 15 March 1984 to appoint a special rapporteur "with the mandate to examine the human rights situation in Afghanistan, with a view to formulating proposals which could contribute to ensuring full protection of human rights of all residents of the country, before, during and after the withdrawal of all foreign forces".
2. In interpreting his mandate, the Special Rapporteur regarded it as essential to its fulfilment first of all to hold a series of consultations with a number of organizations concerned with the situation in Afghanistan, and also with individuals, and secondly to compile information in Afghanistan.
3. Being unable to achieve his aim of visiting Afghanistan for want of a reply by the Afghanistan Government, the Special Rapporteur decided to go to Pakistan with a view to compiling information which would enable him to draw up his report with the help of the many Afghan nationals in that country as refugees.
4. In the course of the visit he made to Pakistan from 14 to 22 December 1984, the Special Rapporteur was able to interview a number of persons originating from the following 15 provinces of Afghanistan: Kandahar, Paktia, Kabul, Nangaher, Wardak, Kunduz, Konar, Logar, Ghazni, Paktika, Nangarhar, Jauzjan, Takhar, Badakhshan and Baghlan. He also visited the four refugee camps of Surkhaz in the province of Baluchistan and Nasir Bagh, Barakai and Haripur in the North-West Frontier province. In addition, he was able to visit four hospitals specially set aside for Afghan wounded in the bombing or shelling of villages, or as they fled to Pakistan to seek refuge.
5. By the end of his mission, the Special Rapporteur had received a great deal of information on the situation of human rights in Afghanistan from a variety of sources. The information collected in the field had been supplemented by verbal statements from witnesses who frequently had first-hand information.
6. On the basis of the information he had received, the Special Rapporteur submitted a report (E/CN.4/1985/21) to the forty-first session of the Commission on Human Rights, in which he set out his conclusions and recommendations as required by the mandate given him by the Commission on Human Rights and the Economic and Social Council in the above-mentioned resolutions.
7. The Special Rapporteur had at that time come to the following conclusions, as set out in his report (E/CN.4/1985/21, paras. 170 to 185).

"170. As stated in his mandate from the Economic and Social Council, the Special Rapporteur is requested to examine the human rights situation in Afghanistan; he is also requested to formulate proposals to 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'.

"171. ... The Special Rapporteur has endeavoured to carry out the examination requested of him in the circumstances described in the introduction and in chapter I of the present report. Due to the lack of co-operation of the Government of the Democratic Republic of Afghanistan the Special Rapporteur was not able to have access to those areas where a considerable number of violations of human rights were said to have occurred. In particular this applies to the allegations concerning the treatment of civilians in detention and those who are not in detention, but in areas where hostilities are taking place or who are otherwise affected by these hostilities. In spite of this lack of co-operation and because of the massive refugee population - equivalent to one third of the total population of the country - the Special Rapporteur was able, in the limited time available to him, to formulate an over-all impression of the human rights reality prevailing in Afghanistan.

"172. As stated in the report, the Special Rapporteur refers to the situation as a whole and bases himself on a cross-section of the direct, personal experience of victims of alleged violations and on the considerable volume of documentation on the subject by individuals and humanitarian organizations with direct knowledge and experience of the situation.

"173. The current situation in Afghanistan has to be seen against the background of an independent people, rooted as it is in ancient traditions and Islamic tenets of society, endeavouring in the earlier parts of this century to modernize its society and to fashion institutions and laws commensurate with the needs of the twentieth century. The significant characteristic of this quest for modernization before the appearance of foreign troops in 1980, was that the Afghan people sought and pursued its own path, as it saw fit, whatever the difficulties and whatever the problems encountered. It is a fundamental tenet of modern international law, recognized by article 1 of the International Covenants on Human Rights, that every people has the right to fashion its own political, economic, social and cultural system without outside interference.

"174. With the advent of the current régime, in December 1979, three significant factors appeared which have had and continue to have serious consequences for the human rights situation in the country. In the first place, the régime which was installed in December 1979, like its immediate predecessors, was a régime which was not elected by the people and which had never submitted to a free expression of will by the population and was therefore unrepresentative. In the second place, the régime instituted a series of reforms of which the least that can be said is that they proceeded at a pace that was apparently unacceptable to the population at large and were stoutly resisted by large segments of the Afghan people. Thirdly, the régime not only applied its reforms with severity, but requested and accepted that foreign armed forces join in their imposition, thus creating a situation of conflict.

"175. At the present stage, it is difficult to ascertain whether, under the rules of international law, the armed conflict is an international or a

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non-international one. However, the Special Rapporteur would draw attention to the fact that both Afghanistan and the Union of Soviet Socialist Republics are parties to the Geneva Conventions of 12 August 1949 and are therefore at least bound by article 3 common to those Conventions. Notwithstanding this, the following practices have taken place:

"(a) The use of anti-personnel mines and of so-called toy bombs;

"(b) The victimization of the civilian population, particularly women and children;

"(c) The non-acceptance of members of the Afghan opposition forces as prisoners of war.

"176. The Special Rapporteur regrets that the parties to the conflict, which are bound by the Geneva Conventions of 1949, do not co-operate with the International Committee of the Red Cross or do so only selectively. By the same token, it is not satisfactory that, while the opposition movements recognize the applicability of international humanitarian norms to the conflict, they would seem, in fact, not to have been able to ensure its full application by their fighting forces in the field.

"177. Since the April Revolution, the internal human rights situation in Afghanistan has deteriorated as a result of the absence of popular participation in the choice and administration of Government.

"178. This internal situation of conflict, of which the mass exoduses of refugees is a principal factor, has also negatively affected the basic rights embodied in the International Covenant on Economic, Social and Cultural Rights, as set out in chapter III, section D, above.

"179. As a result of this situation which is to be considered as a situation of gross violations of human rights, some 4 million Afghans have fled the country and sought refuge abroad in several countries, particularly Pakistan, the Islamic Republic of Iran and India.

"180. The result of this situation is that many lives have been lost, many people have been incarcerated in conditions far removed from respect for human rights and fundamental freedoms, many have been tortured and have disappeared, humanitarian norms have been flouted in the conflict taking place, and the resulting situation is fraught with danger for the population as a whole.

"181. In such a situation the checks and balances of representative government under the rule of law might normally be expected to offer opportunities for gradually reversing the situation and moving towards the restoration of normalcy, taking into account the will of the people.

"182. In this connection the Special Rapporteur notes that Afghanistan, although a party to both International Covenants on Human Rights, has so far not submitted reports to the Human Rights Committee nor has it ever filed

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notice of derogation from any of the provisions of the Covenant, on the ground that there is a state of emergency, with the Secretary-General of the United Nations, as required by article 4 of the International Covenant on Civil and Political Rights.

"183. In the light of the situation described above, the Special Rapporteur is of the view that as a first step the Government ought to make every effort to re-establish a national consensus. As required by his mandate, the Special Rapporteur is requested to formulate proposals to 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. Therefore, an indispensable requirement for this national consensus is the withdrawal of all foreign forces and the elimination of foreign influence. In this connection, the international status of the country might usefully receive appropriate attention, for it might be advisable for Afghanistan to consider the possibility of formally committing itself to a policy of non-alignment or even to a status of permanent neutrality under international law, with a view to facilitating the maintenance of its territorial integrity and political independence, under the terms of the Charter of the United Nations, and thus creating conditions conducive to the respect and guarantee of human rights throughout the country.

"184. There must be an immediate commitment to, and application of, the norms of human rights and humanitarian law by all parties involved. A fundamental law or constitution should be promulgated in line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The rule of law must be re-established in the country in a manner which is consistent with these international standards.

"185. In the process of correction and healing which lies ahead, a dialogue with the international community will be vital as well as its subsequent support. The Special Rapporteur therefore appeals to the Government of Afghanistan to co-operate with the Commission on Human Rights in its efforts to improve the situation of human rights. Co-operation with the Commission offers the possibility of reconciliation and restitution of human rights."

8. The Special Rapporteur consequently made the following recommendations (E/CN.4/1985/21, paras. 186 to 195).

"186. In view of the foregoing, the following recommendations appear necessary. They may be subdivided into recommendations requiring immediate application in order to minimize the present suffering and longer-term measures to guarantee a stable human rights situation in the future.

"187. The Government of Afghanistan should respect and apply fully the international obligations deriving from international human rights instruments to which Afghanistan is a party. Torture against opponents of the régime, which is currently commonplace and which has almost assumed the character of an administrative practice should be halted by the Government.

"188. The parties to the conflict, namely the party in power, and the various opposition movements should be convened with a view to establishing an

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assembly representative of the various sectors of Afghan society aimed at the constitution of a Loya Jirgah or the equivalent thereof, so as to initiate the process of normalization including the withdrawal of the foreign forces from the country.

"189. An independent international humanitarian organization such as ICRC should be entrusted with ensuring respect for humanitarian principles in the conduct of the hostilities. If this is found impracticable, the parties should be invited to nominate organizations they consider to be worthy of their confidence so as to form mixed commissions for that purpose.

"190. The parties to the conflict, namely government and opposition forces, should be reminded that it is their duty to apply fully the rules of international humanitarian law without discrimination, particularly those concerning the protection of women and children.

"191. The parties to the conflict should be called upon to allow ICRC full access to prisons, places of detention, 'internal refugee camps' or such other places as are necessary to enable it to carry out its humanitarian tasks. For this humanitarian purpose ICRC access to airfields should also be assured.

"192. Members of all forces engaged in the conflict, those of Governments as well as of the opposition, should be recognized as combatants within the framework of international humanitarian law.

"193. The rights of the 4 million Afghan refugees to return to their homes safely should be recognized and respected and a general amnesty should be formally proclaimed for everyone, regardless of their political opinions.

"194. The Governments directly involved in the present situation of human rights in Afghanistan should co-operate fully with the United Nations, in particular in clarifying the fate of missing persons, and should do everything possible, as a matter of urgency, to contribute to the restoration and upholding of human rights in Afghanistan.

"195. Inasmuch as the presence of foreign troops in Afghanistan, one of the main causes of the present human rights situation in that country, has been the subject of detailed recommendations formulated in several resolutions of the General Assembly and of the Commission on Human Rights, the Special Rapporteur would in the present context limit himself to drawing attention to those resolutions."

II. CURRENT MANDATE OF THE SPECIAL RAPPORTEUR

9. At its forty-first session, having examined 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 as reflected in the Special Rapporteur's report; expressed its distress at the widespread violations of the right to life,

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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; called on the parties to the conflict to apply fully the principles and rules of international humanitarian law and 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 put a stop to the grave and massive violations of human rights and in particular the military repression being conducted against the civilian population of Afghanistan; and decided to extend the mandate of the Special Rapporteur for a year and to request him to report to the General Assembly at its fortieth session and to the Commission at its forty-second session on the situation of human rights in Afghanistan, including the human and material losses resulting from bombardments of the civilian population.

10. At its first regular session of 1985, the Economic and Social Council approved, by its decision 1985/147 of 30 May 1985, the decision taken by the Commission on Human Rights.

11. With a view to the implementation of Commission on Human Rights resolution 1985/38, the Special Rapporteur, in a letter dated 4 June 1985 addressed to the Minister for Foreign Affairs of Afghanistan, stated the following:

"I have the honour to refer to Commission on Human Rights resolution 1985/38 entitled: Question of human rights and fundamental freedoms in Afghanistan, a copy of which is attached. In this resolution which was endorsed by the Economic and Social Council in decision 1985/47 the Commission extended my mandate as Special Rapporteur for a year. In extending my mandate, the Commission requested me to report to the General Assembly at its fortieth session and to the Commission on Human Rights at its forty-second session on the situation of human rights in Afghanistan, including the human and material losses resulting from bombardments of the civilian population.

"While fully aware of the position of Your Excellency's Government in regard to my mandate, as stated at the forty-first session of the Commission on Human Rights and elsewhere, I would like to assure Your Excellency's Government that in the implementation of my mandate I do not wish in any way to interfere with matters properly pertaining to the sovereign jurisdiction of Your Excellency's Government. I wish to reiterate my intention, as stated in my letters of 13 August 1984 and 4 January 1985, to carry out my mandate in the most impartial and objective manner, and hence shall continue to endeavour to base my report on the most precise and accurate information available to me. It may be appreciated in this context that the co-operation of Your Excellency's Government continues to be very desirable in order to have the report reflect the most comprehensive picture of the human rights situation in Afghanistan.

"I wish therefore to make yet another appeal to Your Excellency's Government to extend its co-operation in the implementation of my mandate, primarily by facilitating a visit to Afghanistan, the modalities of which could be discussed in due course, taking into account the fact that my report to the General Assembly should be finalized by the end of August of this year.

"I would be most grateful if Your Excellency were to inform me of your Government's position at your earliest convenience to permit the appropriate arrangements to be made."

12. On receiving no reply from the Afghan Government, the Special Rapporteur made his own inquiries, using as best he could reliable sources, concerning the human rights situation in Afghanistan. The Special Rapporteur decided to hear witnesses in the refugee camps in Baluchistan and in the North-West Frontier Province of Pakistan so as to gather information and evidence. These are regions in which hundreds of thousands of Afghans are concentrated, a number of whom have recent knowledge of the situation in the country.

13. In this connection, the Special Rapporteur was once more able to benefit from the particularly valuable assistance of the Pakistani authorities.

14. In the course of his visit of 25 July to 10 August 1985, the Special Rapporteur interviewed a number of persons from 16 provinces of Afghanistan: Kunduz, Zabul, Kandahar, Helmand, Jauzjan, Balkh, Paktika, Paktia, Urozgan, Ghazni, Fariab, Laghman, Konar, Baghlan, Kabul and Nangarhar. For that purpose, he went to Baluchistan, remaining there from 30 July to 5 August 1985, and interviewed refugees in the following camps: Piralizai I, II and III; Saranan; Malgagai II and III; and Katwai. He also visited three hospitals at Quetta: Ansari Hospital, Alkhidmat Hospital and Ittehad Islami Mujahidin Hospital. There, he was able to interview a number of Afghan men, women and children who had been wounded either as in bombardments of villages or on their way to seek refuge in Pakistan. From 5 to 7 August he was in the North-West Frontier Province, where he visited the Mundan refugee camp and two hospitals in Peshawar: Afghan Surgical Hospital and Mujahidin Afghan Shaheed Mohamed Umar Hospital. Then, on 8 and 9 August 1985, the Special Rapporteur held a number of consultations with various organizations represented in Islamabad.

15. The Special Rapporteur further considered information from non-governmental organizations in consultative status with the Economic and Social Council, as well as organizations and associations directly concerned with the situation in Afghanistan. During the period under consideration, the Special Rapporteur met in Geneva, Paris and Liestal, Switzerland (Bibliotheca Afghanica Foundation), representatives of organizations or associations in the latter category. He also held consultations with a representative of the Asian Lawyers Legal Inquiry Committee (Association of Lawyers for Democracy) who delivered to him an affidavit containing a transcript of the deposition of a former judge of the Kabul Supreme Court currently living in India.

16. The Special Rapporteur also made a careful study of four documents that had been brought to the attention of the Commission on Human Rights at its forty-first session by the representative of Afghanistan: an official report entitled, "The subversive activity of Pakistan against the Afghan Revolution"; "Undeclared war: armed intervention and other forms of interference in the internal affairs of the Democratic Republic of Afghanistan"; 1/ "Achievements of the April Revolution in Afghanistan"; and "Written statement submitted by the Women's International Democratic Federation, a non-governmental organization in consultative status" (E/CN.4/1985/NGO/12).

17. Having completed this visit to Pakistan, on 2 September 1985 the Special Rapporteur addressed the following letter to the Minister for Foreign Affairs of Afghanistan:

"I have the honour to refer to my letter of 4 June 1985 by which I informed Your Excellency of the extension of my mandate for one year by the Commission on Human Rights as Special Rapporteur under the terms of Economic and Social Council decision 1985/147 concerning the human rights situation in Afghanistan.

"In that letter, I expressed my desire to carry out my mandate in the most impartial and objective manner. I also stressed the importance of establishing direct contact with the authorities concerned. I further expressed the hope that your Government would extend its co-operation and suggested that a visit to Afghanistan take place taking into account the fact that my report to the General Assembly should be finalized by the end of August of this year.

"Subsequent to my above-mentioned letter and in implementation of my mandate, I have received information relating to the situation of human rights in Afghanistan including information communicated to me personally by a number of Afghan citizens and other persons. I feel it is my duty to let Your Excellency know that the information I have received includes allegations of violations of human rights, some of which I am compelled to communicate to Your Excellency.

"These allegations are the following:

1. Indiscriminate mass killing of civilians, particularly women and children.
2. The use of anti-personnel mines and of so-called toy-bombs.
3. Systematic discrimination against persons not adhering to the People's Democratic Party of Afghanistan.
4. The non-representative nature of the Loia Djirgah called on April 1985.
5. The non-respect of the provisions of the Geneva Convention relative to the Treatment of Prisoners of War and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

"In view of the serious nature of these allegations, the co-operation of Your Government would seem to be of major importance. As I stated in my letter to Your Excellency of 4 June 1985, I am aware of the position of Your Excellency's Government as stated at the forty-first session of the Commission on Human Rights and elsewhere. However, I feel compelled to reiterate my invitation to Your Excellency's Government to extend its co-operation to ensure that the General Assembly and the Commission are presented with the most complete and accurate information available."

18. The Special Rapporteur also took note of the views expressed in the various United Nations forums by the representatives of the Afghan Government.

Article 2, paragraph 7, of the Charter of the United Nations and the mandate of the Special Rapporteur

19. The representative of Afghanistan, in addressing himself to resolution 1984/55 of the Commission on Human Rights, wherein the Commission defines the mandate of the Special Rapporteur, referred to Article 2, paragraph 7, of the Charter. The experience of the Special Rapporteur in mandates such as his present one, recalls references made in similar situations by representatives of Governments whose human rights situation was the subject of similar pronouncements. In particular, reference is made to the study on human rights and domestic jurisdiction, 2/ - which deals with the problem of the application of Article 2, paragraph 7, of the Charter of the United Nations.

20. On this question, in the report of the United Nations Commission on the Racial Situation in the Union of South Africa, 3/ it is stated that the

"... universal right of study and recommendation is absolutely incontestable with regard to general problems of human rights and particularly those protecting against discrimination ...

"The exercise of the functions and powers conferred on the Assembly and its subsidiary organs by the Charter does not constitute an intervention prohibited by Article 2, paragraph 7 of the Charter.

"The Commission is convinced that this interpretation, which it believes to be legally correct and which has been confirmed by the invariable practice of the General Assembly, also serves the cause of peace and the legitimate aspirations of mankind. The study which it has carried out has enabled it to appreciate the serious dangers of a problem such as this, not only to the social equilibrium of the countries concerned, but also friendship and peace among nations. The Commission therefore considers that in such cases the Assembly is not merely exercising a right, but actually fulfilling a duty in using its functions and powers under the Charter."

21. The Special Rapporteur, in the present case, can only agree with the opinions expressed in the said documents and further expresses the view that such a study of a human rights situation which has been the subject of "reports of extensive human rights violations" cannot be contrary to Article 2, paragraph 7, of the Charter.

III. BACKGROUND

A. Survey of recent historical events having a bearing on human rights issues

22. The Special Rapporteur believes that a full understanding of the human rights situation in Afghanistan and the resolutions adopted on that situation by the various organs of the United Nations is impossible unless account is taken of three elements: firstly, the events which have taken place in Afghanistan in recent years; secondly, the relationship between Afghanistan and the USSR; and, lastly, the reactions aroused by the agrarian reform and the literacy campaign.

23. With regard to the events which have taken place over recent years, two schools of thought have emerged concerning the situation in that country. It has been held that the political situation in Afghanistan is a cause of concern for human rights in the country. It has also been maintained that this same situation was precisely intended to safeguard human rights and improve the economic, social, cultural and political situations. It is therefore necessary to recall briefly the principal political developments in Afghanistan for a better understanding of the present situation.

24. According to the most recent official census, carried out in 1979, the population of Afghanistan is 15.5 million, of whom about 913,000 lived in Kabul. 4/ However, the influx of people from rural areas has led to a considerable increase in the population of Kabul since 1979. The majority of the total work-force is engaged in agriculture (61.3 per cent), the remainder being distributed over the services sector (19.4 per cent), food industries (11 per cent) and trade (3.6 per cent). The population is made up of a number of ethnic groups, the largest being the Pashto, the Hazaras and the Tadzhik. The principal religion in Afghanistan is Islam, which is followed by some 99 per cent of the population. 5/

25. 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 acquired a certain strategic importance which attracted interest on the part of external powers.

26. The system of political organization of the Pashto tribes is based on assemblies of elders known as jirgah, which range from the family gathering to the Loya Jirgah, a major assembly of all the Pashto tribes, which played a decisive role in appointing the monarch and in ratifying major State decisions or major constitutional amendments. Traditionally, internal conflicts have been dealt with since 1921 before the Loya Jirgah, which was convened in 1921, 1924, 1928, 1930, 1941, 1964 and most recently from 23 to 25 April 1985.

27. It should be noted that the relationship between Afghanistan and the Soviet Union is based on a long-standing tradition. Before the Treaty of Friendship, Good Neighbourliness and Co-operation signed on 5 December 1978, treaties were concluded between the two countries in 1920/1921 (Treaty of Friendship), 1926 (Treaty of Neutrality and Non-Aggression, superseding the 1921 Treaty), 1931 (Treaty of Neutrality and Mutual Non-Aggression) and 1936 (Treaty of Non-Interference in the Affairs of one another, which superseded the 1931 Treaty).

28. The third element makes it possible to grasp the human rights situation in Afghanistan; it is a question of the sometimes violent reactions that have been aroused by recent reforms, in particular at the level of their application in urban areas. Those reactions have, reportedly, very often been marked by the arbitrary arrest of individuals who did not agree with or who offered resistance to those reforms. In this connection, the Special Rapporteur wishes to recall that, at the time of the preparation of the report which he submitted to the Commission on Human Rights at its forty-first session (E/CN.4/1985/21), he concluded that the régime had instituted a series of reforms of which the least that could be said was that they proceeded at a pace that was apparently unacceptable to the population at large and were stoutly resisted by large segments of the Afghan people.

29. These three elements constituted the basis of the current human rights situation, which has led, in particular, to one of the biggest movements of refugees history has ever known.

30. Furthermore, it should be noted that the current constitutional order is enshrined in the Fundamental Principles of the Democratic Republic of Afghanistan, adopted on 21 April 1980.

B. Situation of refugees

31. As a result of the situation thus created, a large number of Afghans left their homes and their country. In most cases, they fled to neighbouring Pakistan. A considerable number of refugees also fled to the Islamic Republic of Iran and India.

32. According to information received by the Special Rapporteur, there are some 4 million Afghans who have fled the country as a result of the situation created in 1979.

33. 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 2.5 million in March 1985. The majority of these refugees are accommodated in some 306 villages. The Special Rapporteur was informed that, in addition to the 2.5 million registered refugees, there are some 400,000 persons awaiting registration as refugees (see A/AC.96/657).

34. The influx of refugees to Pakistan is reported to have started in 1973 with the change of Governments that took place at that time; subsequently in 1978-1979, when another change in Government occurred, the flow of refugees was reported to have increased. According to figures supplied by the Government of Pakistan, in April 1978, 109,000 were registered, in September 1979, 193,000 were registered and in December 1979, 400,000 refugees were registered in Pakistan. As of July 1980, over 1 million Afghan refugees were counted in Pakistan. By May 1981, the number of refugees had increased to 2 million and by July 1985, the number of registered refugees had reached 2,635,483. 6/

35. Originally, the majority of the refugees were said to be ethnic Pathans; a sizeable number were thought to be Baluchis. Other ethnic groups among the refugees include Nuristanis, Tadjiks, Hazaras, Uzbeks, Turkmen and Mongols, all in somewhat reduced percentages. The Special Rapporteur noted the recent arrival of an influx of refugees originating in the north of Afghanistan (Turkmen, Uzbeks and Tadjiks), which reflects the seriousness of the situation in that part of the country where intense military activity has been reported. In virtually all cases the refugees in Pakistan come from rural areas. Nearly three quarters of the refugee population is made up of women and children. The refugees now come from all the provinces of Afghanistan. As this report was being written, the flow of refugees continued; their number is thought to fluctuate between 6,000 and 8,000 per month.

36. During his visit to Pakistan from 25 July to 10 August 1985 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 either for members of opposition movements or for men of conscription age, and the destruction of the 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 the opportunity to visit. The United Nations High Commissioner for Refugees calculates that there are some 1,655,000 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. ^{7/} 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).

38. It is therefore an established fact that some 4 million Afghan citizens, or approximately one third of the total population, have sought refuge outside the country. It may be appreciated that the sheer volume of the refugees is per se a human rights problem, not to speak of the economic burden placed upon those countries that find themselves having to carry out the international humanitarian obligations imposed upon them by this exodus.

39. On 18 March 1985, during the consideration of the first report (CERD/C/101/Add.3) submitted by the Government of Afghanistan to the Committee on the Elimination of Racial Discrimination, the members of the Committee inquired whether provisions had been made to allow the millions of refugees to return to their country with dignity and without fear. The representative of Afghanistan stated that it was difficult to make a distinction between Afghan refugees and the Pathan tribes living in Pakistan, that the figures provided were knowingly overestimated by the people in charge of the refugee camps and that a good number of so-called refugees were only migrant workers or nomads pursuing their customary way of life. As far as the right of refugees to return to their own country was

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concerned, the representative of Afghanistan recalled that in January 1980 and again in June 1981, an amnesty had been proclaimed granting all Afghans living abroad the chance of returning home. Those who had not wished to return were to be the subject of bilateral arrangements (see paras. 51 and 52 below).

40. The sources of the information gathered by the Special Rapporteur included the International Humanitarian Inquiry Commission's report on the displaced persons inside Afghanistan" - still called "internal refugees". That phenomenon is thought to concern some 1.5 to 2 million persons. 8/

IV. INFORMATION ON THE SITUATION WITH REGARD TO RESPECT FOR HUMAN RIGHTS

A. Situation with regard to enjoyment of civil and political rights between the "Saur Revolution" of 1978 and the Amnesty of 1980

41. In addition to the information he gathered by questioning persons with direct knowledge and experience of the problem, the Special Rapporteur approached intergovernmental and non-governmental organizations for additional information which would allow him to check the authenticity of the information received from other sources.

42. As has already been mentioned, the massive exodus of Afghan citizens from various regions is a phenomenon which started as early as 1978. According to information received by the Special Rapporteur, this phenomenon which to begin with mainly concerned the Pashtun peoples in the eastern, south-eastern and southern border regions, was closely linked to the human rights situation created as a result of the April 1978 Revolution.

43. At the outset of the Revolution, between April and November 1978, eight decrees were promulgated to reorganize the Government and the infrastructure of the country. These decrees, which were examined in the Special Rapporteur's previous report, were concerned with:

(a) The organization of the Government and the establishment of the Revolutionary Council, Decree No. 1;

(b) The nomination of members of the Government, Decree No. 2;

(c) The establishment of the High Judiciary Council and the regulation of relations between the State and the individual, Decree No. 3;

(d) The evolution of the culture and language of the tribes and nationalities which make up Afghanistan, Decree No. 4;

(e) The recognition of the rights of citizens, Decree No. 5;

(f) The abolition of debts and mortgages, Decree No. 6;

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(g) Regulations on equal rights for men and women in the field of civil law, Decree No. 7;

(h) Land redistribution, Decree No. 8.

44. These reforms were the subject of a strict implementation deeply affecting the customary law, the customs and traditions of the majority of the population in the rural areas and the religious consciousness of the majority of the population. In particular, the manner in which these reforms were implemented created growing resistance against which governmental pressure was directed. This resistance developed into virtual uprising which in its time provoked even stronger Governmental pressure.

45. With regard to agrarian reforms, three factors lay behind the opposition to these reforms:

- The principle of the redistribution of land came into conflict with the notion of the protected nature of property as defined in the Shariah. The Afghan peasant perceived the domination to which he was subjected by wealth, power and corruption to be an abuse, but not the ownership of property.
- The basic criteria of the reform did not take into account the socio-economic realities of the life of the Afghan population. Thus the restrictive definition of the family and the redistribution of land in line with that new definition did not correspond to people's perceptions and lives in Afghanistan. In fact the notion of the family is of a very extended one, whereas the law defines it as being composed of an adult man, his wife and children.
- Lastly, the measurement of land is perceived more in terms of availability of seed, equipment and water rights than in terms of the actual area of land owned.

46. According to information available to the Special Rapporteur, a law on water usage 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 a reasonable use of water sources. Meanwhile, the traditions of tenets of Islam concerning the distribution of land and water will also be taken into account". To this effect, peasants' committees have been set up throughout Afghanistan in order to settle the peasants' problems and to distribute water justly among them.

47. There was strong opposition, particularly on the part of the rural population, to the way in which the literacy campaign was carried out. This campaign was intended to reach children, adult men and women and the elderly, but it did not have the desired effect, not because of the basic principle, but because of the action taken to implement it. As it happened, the often-arrogant behaviour of the instructors, obligatory attendance at classes for elderly people and obligatory participation for women in mixed classes were felt to be humiliating and were sufficient to set off a revolt.

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48. So the methods of implementing these Decrees rather than their content met with strong opposition on the part of the population concerned. Several eyewitnesses described to the Special Rapporteur the manner in which the military authorities and, in certain cases, civilian governors, had attempted to enforce the application of the reforms contained in the Decrees described above. In the main, this applied to the rural areas. According to information received by the Special Rapporteur, resistance to these reforms was met with harsh reprisals, which sometimes even went as far as the taking of hostages. These reprisals in turn led to action against the Government and to violent incidents between civilians and the military.

49. In the urban areas also, the implementation of the reforms is said to have been marked by the arbitrary arrest of persons who did not agree with them or who offered a certain amount of resistance. During this period, the Poli Charki prison in Kabul is said to have acquired the reputation of being the place of detention of several tens of thousands of persons.

B. Situation with regard to the enjoyment of civil and political rights after the Amnesty of 1980

50. The Special Rapporteur has been informed that the number of persons considered as having disappeared up to the amnesty in 1980 is, in fact, much higher than that previously announced. It would appear that, shortly after the new Government took over in December 1979, the authorities halted the registration of names of missing persons that had been previously undertaken. According to reliable information made available to the Special Rapporteur, that registration was stopped when it became clear that the number of requests for registration of missing persons communicated by family members or by friends was much higher than expected. No list of missing persons has been made public and no investigation whatsoever has been undertaken. The report of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights does not contain any relevant information on the problem of missing persons in Afghanistan.

51. As stated above, on 22 June 1981 the Government adopted a new amnesty decree which, in accordance with section 6 of article 43 of the basic principles of the Democratic Republic of Afghanistan, contains the following provisions:

(a) All individuals who laid down their arms and surrendered themselves 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 enemies positions would be granted amnesty if they voluntarily returned to the homeland and surrendered themselves 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.

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52. In order to implement that decree, the Council of Ministers was instructed (a) to provide necessary facilities for all those persons 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 themselves voluntarily to the state organs.

53. Moreover, the intervention of foreign troops in Afghanistan has had a double effect on the human rights situation in the country: not only has violence been escalated by the presence of military forces, but the intervention has led to the singling out and suppression of elements who had opposed the previously-declared reforms.

54. In his report submitted to the Commission on Human Rights at its forty-first session (E/CN.4/1985/21), the Special Rapporteur noted, in the light of the information then available to him, a number of practices which indicated that human rights and fundamental freedoms are not being respected. In particular, there have been allegations of violations of the right to life and security, accusations of ill-treatment and torture, imposition of the death penalty and failure to respect the right to freedom of movement.

55. Supplementary information submitted to the Special Rapporteur indicates that the situation has by no means improved and, in some cases, has deteriorated even further.

1. Right to life and security

56. According to several concurring testimonies submitted to the Special Rapporteur, in Kabul prisons and all the Khâd (secret police) detention centres, the special police and members of the armed forces are continuing to torture persons suspected of opposition to the régime. In that respect, the Special Rapporteur points out that he has received no information as to how many political prisoners are still in detention at present. The information received indicates, however, that persons have been detained without charge and without trial.

57. The Special Rapporteur has noted that this situation is not consistent with certain statements which the representative of the Government of Afghanistan made before the Human Rights Committee when the report had been presented. He had stated that, in accordance with article 275 of the Afghan criminal code, any person guilty of inflicting cruel, inhuman or degrading treatment, torture or corporal punishment was liable to 5-10 years in prison. 9/

58. In this respect the Special Rapporteur associates himself with the questions put by the members of the Committee on the procedure for investigating acts of torture and punishing those responsible, on the measures taken to provide compensation for persons subjected to torture and ill-treatment and on the instructions given to the police in their monitoring of the State's discharge of its responsibilities under article 7 of the International Covenant on Civil and Political Rights.

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59. The Special Rapporteur received information on new policies being applied in Pol-e-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.

60. According to Justice Azeem, who testified before the Legal Enquiries Committee, the competence and jurisdiction of the ordinary civil and criminal courts are overlapped by the revolutionary courts. Matters normally belonging to the civil and criminal jurisdiction are allocated arbitrarily to the "political jurisdiction", namely the revolutionary courts, which are composed of persons who are mostly members of the Khad and, in several cases, have no legal training or expertise. In addition, the party influence determines the undertaking of such measures as house searches and arrests as well as for other procedures, including trials. According to Justice Azeem, the arbitrariness exercised in the administration of justice against opponents or presumed opponents of the régime creates an atmosphere of insecurity and anguish. 10/

2. Conscription of children

61. 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 first from two to three years in 1982 and then to four years in 1984.

62. The Special Rapporteur had learned that that conscription goes on, depriving universities and schools from male students. In addition, it would appear that the conscription system is governed by severe discriminatory methods: for example, students belonging to families that adhere to the communist party or sympathize with it have the privilege of not becoming a member of the army at the age of 15, thus having the chance to continue their studies, at home or abroad.

3. Situation of "internal refugees" or displaced persons in Afghanistan

63. The instability created by events in Afghanistan since 1979 has led to a massive population exodus not only to other countries, particularly Pakistan and Iran, but also from rural areas to the towns.

64. According to supplementary information available to the Special Rapporteur, it seems that the problem of displaced persons in Afghanistan is closely linked to instability resulting from systematic bombing of several villages. For that reason, most displaced persons are originally from rural areas who have moved to the towns. According to one report transmitted to the Special Rapporteur, this group can be estimated at more than 1.5 million. The phenomenon occurs particularly in large towns such as Kabul and Kandahar in the south, Mazar-i-sharif in the north, Jalalabad in the east and Herat, Ghazni and Gardez in the south-east. 11/

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65. In that context, the flow of refugees makes it possible to identify the regions which appear to have been most affected (see appendix II).

66. Internal population movements can be attributed to seven causes, namely,

(a) The bombing of villages - reportedly the immediate and most obvious cause - which destroys houses, crops and livestock, and inflicts civilian casualties;

(b) Fighting or military operations in the region, which create prolonged insecurity and cause villages to be evacuated;

(c) Dissension among rival groups in the opposition movements;

(d) The fear of reprisals or punitive action on the part of groups belonging to opposition movements, directed against "pacified" villages or sometimes against villages which have been taken over by a rival group;

(e) Destitution and the threat of famine, which compel entire families to seek refuge in the large towns;

(f) The shortage of financial resources, difficulties in transport and the fact that the head of the household (often killed during an air raid or in action) is no longer there to look after the family during and after the exodus, all of which are also reasons that have sometimes compelled entire families to prefer exodus towards towns to seeking refuge abroad;

(g) A tactic used by the authorities to maintain control over the population and thereby eliminate all the support bases enjoyed by the resistance movements among the population.

4. The right to self-determination

67. In his report to the forty-first session of the Commission on Human Rights (E/CN.4/1985/21), the Special Rapporteur concluded that, in the light of the situation he had described, the Government, as a first step, ought to make every effort to re-establish a national consensus. In that connection, one of the recommendations made by the Special Rapporteur was that the parties to the conflict, i.e. the party in power and the various opposition movements, should jointly set up an assembly representing the various segments of Afghan society with a view to holding a Loya Jirgah or a similar council, and thereby begin the normalization process, including the withdrawal of foreign forces from the country.

68. A Loya Jirgah was in effect held from 23 to 25 April 1985. Addressing that subject in the course of the presentation of his annual report to the Committee on Human Rights at its twenty-fifth session on 10 July 1985 (CCPR/C/SR.603, para. 47), the representative of the Government of Afghanistan said that:

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"The Loya Jirgah, or Supreme Council, composed of the most respected representatives of the people had held an assembly of historic importance convened by a decree of the revolutionary council at Kabul from 23 to 25 April of the current year, to discuss the most important questions for the fundamental development of the country at a critical time at its history. One thousand seven hundred and ninety-six duly elected representatives from every region, nationality and social group in the country had taken part. They had included workers, peasants, intellectuals, members of the clergy, tradesmen and representatives of the middle class, tribes and ethnic groups, writers, artists, former high-ranking officers and former members of Parliament. The Loya Jirgah had discussed all aspects of social and economic development, and the preservation of the independence and territorial integrity of the country in the face of imperialist and reactionary interference in the internal affairs of the State in a free and democratic atmosphere based on Afghan and Islamic brotherhood. It had adopted a resolution in which it had expressed complete approval of the domestic and foreign policy of the party and of the Government and its support for the socio-economic changes undertaken by the revolutionary Government and had strongly condemned the interference of imperialist and reactionary forces in the affairs of the Afghan people. That meeting of the Supreme Council had reflected the complete unity of the Afghan people and shown their will to determine their own future."

69. At the conclusion of the Loya Jirgah the following decisions were taken in the form of a resolution adopted on 25 April 1985, an address to the people of Afghanistan, 12/ and a message to the Secretary-General of the United Nations (A/40/273-S/17135, annex). The pronouncements covered the following elements:

(a) The national policy of the State is based on the implementation of radical economic, social, political and cultural transformations ensuring prosperity and welfare, carrying out land and water reforms in the interest and with the participation of the peasants, and ensuring equality of rights among the various nationalities and tribes of the country;

(b) The foreign policy is based on the principles of peace, non-alignment, non-interference in the internal affairs of other countries, unshakeable friendship with the Soviet Union and undeviating observance of the United Nations Charter and the Universal Declaration of Human Rights;

(c) The traditional fraternal and friendly Afghan-Soviet relations were in full accord with national interest of the people of Afghanistan. The presence of the "limited contingents" of the Soviet Union in Afghanistan took place in accordance with the will of the people of Afghanistan and at the request of the State and was in full conformity with the Treaty of Friendship, Good Neighbourly Relations and Co-operation of 5 December 1978 between Afghanistan and the Soviet Union, and with Article 51 of the United Nations Charter, and in full accord with the national interest of the people of Afghanistan;

(d) 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;

(e) Support was expressed for the proposals of 14 May 1980 and 24 August 1981 - formulated in the context of the proximity talks - which constitute the basic principles of a political solution of the situation around Afghanistan.

70. The importance of the Loya Jirgah held in April 1985 may best be appreciated by making reference to the traditional forum in the political and constitutional history of Afghanistan. 13/ The last Loya Jirgah had been convened in 1964 for the adoption of the new Constitution. That Loya Jirgah was composed of 455 members, made up of 176 elected members, 176 members of the National Assembly, 34 appointed by the King, 19 appointed by the Senate (which was also an appointed body), 14 appointed by the Cabinet, 5 by the Supreme Court, 7 from the Constitutional Committee and 24 from the Constitutional Advisory Commission. This Loya Jirgah may be said to have functioned as a deliberating and deciding body, as distinct from the mere formal functions to endorse faits accomplis.

71. Witnesses have expressed serious doubts about the real representativeness of the Loya Jirgah convened from 23 to 25 April 1985. In that connection, a number of witnesses told the Special Rapporteur that the representatives had been selected by the party instead of being appointed by the communities concerned. Indeed, concurring information suggests that the Loya Jirgah was composed of 176 elected representatives, the distribution of the members represented being as follows: representatives of the party: 21 per cent; representatives of the workers' union: 26 per cent; members of the farmers' union: 11 per cent; representatives of student organizations: 23 per cent; and representatives of the handicraft industry: 2 per cent. There were also 11 members of the clergy, 247 members of various tribes and 38 members of the armed forces and the militia. According to the same witnesses, the fact that those members were Government sympathizers made it clear that the Afghan people could hardly have been represented at the Loya Jirgah. Moreover, in villages where meetings appear to have been difficult - if not impossible - to organize, elderly people were reportedly taken by force to serve as representatives at the Loya Jirgah.

72. According to information received, the Government announced on 10 August 1985 that nation-wide elections would be organized with a view to establishing new, local government councils which would be responsible for putting an end to the infiltration of "Islamic guerrillas" from Pakistan and Iran. Voting has reportedly already taken place in Kabul and in nine districts around the capital.

73. During his interviews with Afghan refugees in Pakistan, the Special Rapporteur asked their opinion on the convocation of the Loya Jirgah. Nearly all witnesses were aware of this convocation; all persons questioned expressed their opinion that this Loya Jirgah was not a real representation of the people but just a party assembly.

V. INFORMATION ON CASUALTIES RESULTING FROM BOMBARDMENTS OF
THE CIVILIAN POPULATION

74. 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.

75. 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, so far as possible, the nature and extent of the bombardments in question.

76. 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 below (see appendix I) 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, locale and nature of these incidents. The purpose of the column entitled "Type" is to provide necessary details relevant to these reports. The map (see appendix III) indicates the locale and magnitude of the incidents. As this information refers to the situation as a whole, the Special Rapporteur is basing his analysis on a sample of witnesses who declared that they personally had been direct victims of bombardments.

77. Concordant depositions indicate that four types of action have been directed against the civilian population:

- (a) Acts of brutality committed by armed forces;
- (b) Bombardment and massacre following reprisals;
- (c) Use of anti-personnel mines and booby-trap toys;
- (d) Other consequences resulting from bombardments.

A. Acts of brutality committed by armed forces

78. Several depositions relating to searches carried out by army elements seeking out members of opposition movements have been brought to the Special Rapporteur's attention.

79. In several cases, in the course of searches carried out in villages in several provinces, cases involving the murder of women, children and old people have been

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reported. The operations always follow the same pattern. The Special Rapporteur carefully examined a witness who had personally experienced a house and village searched in Laghman province early in 1985. The testimony, which in substance is corroborated by other sources, gives a clear picture of the methods used in the conduct of village and house searches by government troops and foreign forces: after bombardment, tanks surround the villages during the evening; in the morning, troops enter the villages - each village at the same time - houses are searched, money is demanded, women and children in particular are questioned, usually concerning the whereabouts of the menfolk, and during the interrogation people are sometimes killed. After the withdrawal of the troops, they return once again shortly thereafter and begin the same search procedure. In this context, the Special Rapporteur obtained information on an incident which took place on 2 February 1985 in the village of Sandaly in Nangarhar province, where soldiers, after overrunning the village, executed 20 people, including 8 women, on the village square.

80. In the course of these attacks, carried out in order to locate elements of the opposition, some cases of looting were reported to the Special Rapporteur. Other depositions, however, indicated that the purpose of these searches was more to destroy the means of survival of the population assisting the opposition movements, rather than pillage.

B. Bombardments of the civilian population

81. First-hand witnesses have informed the Special Rapporteur of the casualties sustained by the civilian population during the bombardments of villages. According to them, these activities, particularly during the last three years, constitute a deliberate policy designed to drive out the populations. As an example, the Special Rapporteur presents the following cases which he considers to be sufficiently representative:

(a) From 11 to 18 March 1985, approximately 1,000 civilians were allegedly killed by army elements assigned to carry out reprisal operations against 12 villages in Laghman province, Qarghaj district. In the course of these operations, livestock was decimated, houses plundered and set on fire, women raped and some of them summarily executed, and several children locked up in a house were burnt to death. Witnesses provided the Special Rapporteur with the names of the following villages: Charbâgh, Qarghay, Mindrawer, Kats Dehmezanj, Haider Khan, Chalabajh and Tchadihi. This incident was described by several witnesses who had recently come to seek refuge in Pakistan and had themselves lived in the above-mentioned villages.

(b) Several hundreds of civilians (between 700 and 1,200 according to the sources) were allegedly massacred in the course of a large-scale operation which lasted for several days in late March 1985 and was carried out against several villages in Kunduz province and, more specifically, Khnabad district. The villages most often mentioned were the following: Bagh, Amir, Gur Tepeh and Qarai Qasabchar. According to a statement made to the Special Rapporteur by an eye-witness, the Governor of the province decided to flee after this incident.

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82. This incident, which has been considered the most murderous since the outbreak of hostilities in Afghanistan, is one more in a series which, according to certain estimates, has resulted in the killing of approximately 500,000 Afghans since 1979, most of them civilians.

83. In addition to the incidents referred to above, the Special Rapporteur has received various reports on losses of human rights resulting from the present hostilities and, during his stay in several regions of Pakistan adjacent to Afghanistan, he was able to witness examples of serious wounds inflicted on civilians by bombardments. The sole purpose of the appendices which provide a chronological list of the incidents and a map of the regions most frequently bombarded is to draw attention to the frequency and nature of the incidents. The data given cannot be considered exhaustive.

84. Several depositions have confirmed disclosures previously made to the Special Rapporteur to the effect that these actions have constituted, especially during the last three years, a policy aimed at forcing the population to leave the country.

85. Three new elements were, however, brought to the Special Rapporteur's attention: some witnesses mentioned the existence over the past two to three months approximately of bombardments using FROG 7 ground-to-ground missiles which wreaked destruction on a larger scale than in the past. Furthermore, witnesses from Urozgan province, situated in the centre of the country, have declared that the systematic bombardment of villages was a relatively recent phenomenon, as compared with what has happened in other provinces. In addition, several witnesses mentioned what they described as highly powerful explosive devices that caused considerable destruction and which they referred to as "nopalm" (as distinct from napalm). The Special Rapporteur also had occasion to see and to interview a number of patients bearing wounds suffered as a consequence of this explosive; the patients had severe wounds which, it was stated, were the effects of certain chemical substances.

86. According to statistics made available to the Special Rapporteur, 32,755 civilians were reported to have been killed as a result of the events enumerated above during the period under consideration, namely nine months in 1985, 1,834 houses destroyed, 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 were destroyed by government actions 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 Afghanistanica Foundation (Liestal, Switzerland) from some 80 different sources covering the entire spectrum of opinion and the situation in Afghanistan during the period January-September 1985.

87. In addition to human casualties many witnesses, on reaching their place of refuge in Pakistan, have reported devastation and the destruction of fields and livestock. The Special Rapporteur's attention was also drawn to the destruction of irrigation systems in provinces as a result of aerial bombardments which have prevented any repairs from being made and have completely obliterated agriculture in several regions. Accordingly, the Special Rapporteur was informed that there

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was still a risk of the famine spreading and that cases of malnutrition, especially among children, continued to be reported. The food situation was deteriorating steadily, in spite of the efforts made to import foodstuffs from abroad.

88. According to recent information reaching the Special Rapporteur, the situation in August/September 1985 was particularly alarming because of the intensity of the fighting in Paktia province. According to concordant depositions, some 30 wounded per day were arriving at the ICRC hospital in Peshawar. In this hospital, which has a normal capacity of 100 beds and, in emergencies, can theoretically be "expanded" to accommodate 150, there were 140 casualties on 15 August and 230 wounded from 2 to 7 September 1985. As the number of wounded was rising steadily, ICRC decided to set up an emergency unit on a scale unequalled since the unit on the Khmer-Thailand frontier was set up in 1975. In addition, a complete field hospital, with 300 beds and surgery teams consisting of Finns, Swedes, Norwegians, New Zealanders and Danes, was established on 6 September not far from the ICRC hospital in Peshawar.

89. It should be noted 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 about the historical background and activities of ICRC by publishing a strip-cartoon brochure and a commentary on the four Geneva Conventions of 12 August 1949. 14/

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

90. Many witnesses testified that the use of anti-personnel mines and booby-trap toys was now part of a strategy clearly aimed specifically at the civilian population of villages where a large military operation appeared to be under way.

91. The most horrible type of incident was that caused by the explosion of anti-personnel mines and especially of children's "toys". Many witnesses testified that children had been very seriously wounded, having their hands or feet blown off, either by handling booby-trap toys they had picked up along the roadway, or by stepping on them.

92. The Special Rapporteur received additional information confirming once again the use of these booby-trap toys, which were generally dropped by helicopter in zones presumed to be occupied by the resistance. The types of booby-trap toys encountered include those resembling pens, harmonicas, radios or matchboxes, and little bombs shaped like a bird. This type of bomb, consisting of two wings, one flexible and the other rigid, in the shape and colours of a bird, explodes when the flexible wing is touched.

93. The Special Rapporteur was also able to obtain a number of photographs, especially those of children between 8 and 15 years of age, with hands or legs blown off, either by handling booby-trap toys or during the explosion of mines. Some of them had bullet wounds received during checks or searches carried out in the villages, or during bombing while on their way to seek refuge in Pakistan.

94. During visits he paid to several hospitals in Peshawar and Quetta set aside for the care of wounded Afghan civilians and members of the resistance, the Special Rapporteur was able to consult bulky files containing the case histories of several hundred patients treated since 1981, with particulars of the circumstances in which they had been wounded, the date of the incident, their region of origin, etc.

95. During his most recent visit, the Special Rapporteur was able to note that, according to statistical data available in the only Afghan surgical hospital in Peshawar, 453 wounded persons had been cared for between August 1980 and August 1981, 1,075 between 1981 and 1982, 1,595 between 1982 and 1983, 2,195 between 1983 and 1984, and, between January and July 1985, the number wounded admitted and cared for had reached 3,346. The greatest number of admissions had been between March and May 1985. Moreover, 45-50 per cent of the patients had been admitted following bomb explosions.

96. The Special Rapporteur cites, as an example, the cases of the following persons, whom he personally interviewed in turn in the five hospitals which he visited:

1. Mohamad Iqbal, 10 years of age, from the village of Chelgar in the province of Ghazni, very seriously wounded in the lower part of the left leg, during the bombing of his village. According to the hospital doctor, the wounded boy, admitted on 21 July 1985, was suffering from complications due to lack of immediate attention in Afghanistan;
2. Amanullah, 14 years of age, very seriously wounded in both legs after stepping on a bomb in early August 1985;
3. Abdul Rahman, 12 years of age, from the village of Arjhandab in the province of Zabul, with very serious bullet wounds in the right leg received about one year earlier. Because of complications due to lack of care, he was transported to Ansari hospital, where he was admitted on 19 July 1985;
4. Gamela, 11 years of age, from the province of Paktika, very seriously wounded in both legs in July 1985 by machine-gun burst fired by soldiers during a search of various houses in the village. Admitted for treatment on 18 July 1985;
5. Khatema, 11 years of age, from the town of Kandahar in the province of Gondahar, very seriously wounded during the demolition of her house by a bulldozer. She lost her parents in May 1985 during this incident. In the same town and during the same period, another child, Nyamatullah, 12 years of age, was seriously wounded in the head and arm by the explosion of a bomb thrown into his parents' house;
6. Mohamad Hashim, 6 years of age, suffered fractures in both legs during the bombing of the village of Kechti in the province of Helmand in May 1985. During the same period, and in the same province, in the village of Khalad, a 14-year-old child named Dur Mohamad, was admitted to hospital with a multiple fracture of the left thigh caused by fragments of a bomb which exploded during the bombing of his village;

7. Mohamad Nuur, 20 years of age, from the village of Gargar in the province of Helmand, was blown up by a bomb and lost his left leg below the knee. His village was reported to have been shelled by rockets in May 1985. Another wounded man from the same village, Sadu Khan, 40 years of age, had his right leg amputated following the explosion of a mine.

D. Treatment of prisoners

97. According to information gathered by the Special Rapporteur, prisoners captured by government troops are still subjected to torture and the population is continuing to suffer the consequences of bombing and shelling. However, the treatment given to prisoners and the civilian population by the opposition movements, appears to have remained unchanged.

98. Another consequence of the armed conflict concerns the treatment of prisoners. In view of the nature of the conflict, these incidents pertain to prisoners taken by government forces, on the one hand, and those taken by the opposition movements, on the other. The latter may consist of members of the Afghan troops or of foreign forces. The treatment meted out to prisoners reflects the merciless character of the warfare in the country. Prisoners belonging to the Afghan opposition movements taken by the army are executed on the spot; those who are suspected of belonging to opposition movements are tortured while being interrogated and are held without trial. On the other hand, members of the Afghan forces taken prisoners by the opposition movements are incorporated into the ranks of these Afghan opposition movements and in the case of those prisoners who are foreigners, these are brought to the opposition movements where they are investigated and judged according to the Sharia. The Special Rapporteur was told that as a result of such trials, known as "resistance trials" those persons who accept Islam are freed, while others are executed either by shooting or by hanging; according to one witness such trials normally lasted 13 days. In any event, as regards the treatment of prisoners the existence of the Geneva Conventions is simply unheard of.

99. According to government sources, members of the opposition movement Jamiat-I-Islami tortured and killed soldiers who had been captured during a clash which took place on 6 July 1985 in the Panshir region. However, the opposition movement stated that the soldiers in question were in fact 131 officers who were going to be exchanged against detained resistants; but they were killed during a counter-offensive launched by the government forces with the apparent aim of freeing them.

E. Consequences of the conflict for economic, social and cultural rights

100. The horror of the war and the disastrous consequences of bombing and shelling are making it increasingly difficult to believe that the majority of the Afghan population enjoys the fundamental rights embodied in the International Covenant on Economic, Social and Cultural Rights.

101. In that connection, the Special Rapporteur noted official statements in United Nations forums and in the publications mentioned above which refer to the Fundamental Principles of the Democratic Republic of Afghanistan of 14 April 1980 and to the newly drafted Labor Code, which contains the right to just and favourable conditions of work and the hours of work and of 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 persons; 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 (E/CN.4/1985/NGO/12) gives surveys about the industrial development, the rights of the working women, the activities in the sphere of education and the development of social care and health services.

102. However, no reference is made to the situation of the enjoyment of social, economic and cultural rights in the context of the armed conflict in the country. Therefore it is necessary to make a distinction between areas that are under government control to which the measures mentioned above refer, areas that are under control of traditional and opposition forces, and areas in which fighting is going on constantly and/or temporarily. These last areas are devastated villages, partly or completely destroyed, which foreign and governmental forces are trying to devastate systematically to cut off supplies for the members of the opposition movements. The agricultural infrastructure in these areas is demolished to such an extent that the reconstruction even in peacetime would need quite a long time.

103. In the areas temporarily controlled by traditional forces the civilian population is endangered by the constant fear of shellings and bombardments, searches and wilful killings. As a consequence, the civilian population either leaves the areas in question or cultivates only a small area that is minimally necessary for their own needs and that cannot, therefore, serve the country's economic welfare. Here again, areas suffer from the destruction resulting from the hostilities: there is a lack of shelter, clothing, food and nutrition.

104. In areas controlled by traditional forces the hygienic and medical situation appears to be disastrous. In the Panshir valley 80 per cent of the houses have been destroyed.

105. In spite of the optimistic appraisals of official statements as to the enjoyment of social, economic and cultural rights, 80 per cent of the country is said to have developed into a "social catastrophe zone".

106. According to information received by the Special Rapporteur, economic conditions in Afghanistan have further deteriorated during the past two years. The price of certain basic foodstuffs has, reportedly, increased dramatically, as illustrated by the following comparison of prices in Kabul: the price of a kilo of mutton increased from 40 to 220 Afghanis between 1978 and 1985, the price of 7 kilos of wheat from 70 to 200, and the price of 7 kilos of rice, from 90 to 350 Afghanis. This strictly economic problem is compounded with a social one, itself a consequence of wartime conditions, namely the flow of "domestic refugees", or displaced persons, heading for urban areas in search of food and relative safety.

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107. In certain provinces the situation is reportedly even more catastrophic than elsewhere such as in Kandahar where the agricultural infrastructure has been completely destroyed and crops are no longer grown because the population has fled before the bombings and shellings.

108. Generally speaking, the state of war endured by the Afghan population, by affecting all aspects of life, has only exacerbated the economic situation which had already begun to show signs of weakness in the 1970s.

109. The situation of children in Afghanistan has been particularly affected; whether they live in Kabul or in the main cities or whether they cross the border as refugees, the majority of the children who do not leave the country and who are not in the cities are helpless against the effects of high altitude bombing and shelling, starvation and disease, the disruption of families and the destruction of family life and the collapse of the traditional structure.

110. There is apparently no health care for the majority of the population. As a consequence, the infant mortality rate has reached 300 and 400 per 1,000.

111. The Special Rapporteur has likewise been informed about the lack of medical doctors in the country. In April 1980, 637 medical doctors were active and there were 2,500 trained doctors. Today the medical faculties of the country are closed. It would appear that for the government-controlled areas some 500 doctors are available and for the areas controlled by traditional forces some 2,000 doctors are available.

112. The Special Rapporteur also wishes to emphasize two new factors which illustrate the range of the actions taken in the country: on the one hand, a policy described as one of humiliation and religious intolerance, and, on the other hand, bombings of civilians during funerals.

113. Indeed, according to a number of witnesses, mosques have been desecrated, religious books destroyed and in some cases even used as toilet paper, while members of the Islamic faith have been obliged to eat pork and to drink alcohol. One witness from Qulq, a village in the province of Kandahar, has described his feelings, based on an experience in February 1985, as follows: "by destroying religious books and acting in that way, they hoped that Moslems would no longer fight in the name of Allah".

114. A number of witnesses stated that funeral processions accompanying the bodies of victims had also been bombed.

115. Another problem, caused directly by the vicissitudes of war, concerns the numerous orphans and abandoned children and the situation of women. In the traditional society, only children were always looked after by a family member and orphans did not exist as a known category. The fact that the traditional system has been destroyed, often as a result of the loss of the father of the family, has created, particularly among the refugees, a whole series of psychosomatic disturbances.

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116. According to information given to the Special Rapporteur, educational policy in Afghanistan since 1980 has been designed to achieve a double objective: linguistic fragmentation by encouraging the learning of minority languages to the detriment of Pushtu, and the growing importance given to the Russian language. According to the same sources, the traditional educational system has been deliberately destroyed and replaced by a system laying greater stress on ideological propaganda.

VI. Relevant constitutional and international legal framework in regard to human rights

117. In his report to the Commission on Human Rights at its forty-first session (E/CN.4/1985/21, paras. 135-164), the Special Rapporteur analysed the constitutional provisions in force in Afghanistan and the international legal framework in regard to human rights.

118. In regard to the human rights situation in Afghanistan and bearing in mind the legal obligation imposed on States parties by international human rights instruments and by humanitarian law, three facts have come to light:

(a) Although Afghanistan became a party to the International Covenants on Human Rights only in 1983 and is not a party to the Additional Protocols to the 1949 Geneva Conventions, 15/ the Special Rapporteur believes it appropriate to reiterate the opinion expressed by Mr. Héctor Gros Espiel to which the Special Rapporteur referred in his report to the Commission on Human Rights (E/CN.4/1985/21, para. 137), namely that:

"It is ... essential to bear in mind that ... obligations exist as a direct consequence of the Charter of the United Nations and the Universal Declaration of Human Rights";

(b) Furthermore, the situation which seems to exist in Afghanistan must be examined in relation to the provisions of the Universal Declaration of Human Rights, which is incorporated in the Fundamental Principles of the Democratic Republic of Afghanistan. Unless these human rights instruments, whether of a national or international nature, are implemented, they will become valueless, serving purely propaganda purposes, and will make no contribution to the promotion of human rights in a difficult situation;

(c) The human rights situation in a State is not only characterized by the constitutional framework which may well be in conformity with international instruments, but also by the practical implementation of its constitutional provisions and the international human rights instruments to which it is a party. The Special Rapporteur is of the opinion that only a comprehensive consideration of the situation regarding both the proclaimed rights and the respect, guaranteeing and observance of those rights can reflect the reality of a given human rights situation.

119. In his previous report to the Commission on Human Rights, the Special Rapporteur found that in any event, all parties to the conflict are at least bound by article 3 common to the Geneva Conventions, which reads as follows:

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"Article 3

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- "(b) taking of hostages;
- "(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- "(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for.

"An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

"The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

"The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

120. The Special Rapporteur must recall once more the legal conclusions that he has drawn as to the applicability of these norms of humanitarian law. There can be no doubt that the States are bound by international law and by those instruments to which they are parties. It is inconceivable, in the view of the Special Rapporteur, that in today's world a group of persons may be considered as outside the applications of human rights. The Special Rapporteur made reference to the erga omnes clause of the Barcelona Traction case. 16/ Also the members of the

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opposition are bound by the Third Geneva Convention Relative to the Treatment of Prisoners of War. However, the Special Rapporteur, after having examined some persons with first hand knowledge, notes that in practice the application of the Third Geneva Convention by Afghan opposition movements does not appear to be consistent with the principles mentioned in article 3 common to the Geneva Conventions, which specifies that prisoners shall in all circumstances be treated humanely without any adverse distinction founded on race, colour or faith, sex, birth or wealth.

VII. CONCLUSIONS

121. In accordance with his mandate from the Commission on Human Rights in its resolution 1985/38, which was approved by the Economic and Social Council in its decision 1985/147, the Special Rapporteur was requested to report to the General Assembly at its fortieth session and to the Commission on Human Rights at its forty-second session on the situation of human rights in Afghanistan, including the human and material losses resulting from the bombardments of the civilian population.

122. Following his examination and scrupulous analysis of the information contained in the preceding chapters, the Special Rapporteur is in a position to draw a number of conclusions which reflect his personal views on the overall human rights situation in Afghanistan during the period concerned. In addition, in regard to the analysis of the information on the human and material losses resulting from the bombardment of the civilian population, these views, because of the nature both of the Special Rapporteur's mandate and of his investigation, deal with a sample of the personal experiences of individuals who claimed to have been themselves the victims of such bombardments. Finally, in the absence of co-operation from the Government of Afghanistan, the Special Rapporteur was not able to have access to the regions where hostilities were taking place and where heavy human and material losses had been reported.

123. The armed conflict is continuing. Some regions are severely affected by the hostilities, they are devastated, the population has had to flee and cannot return, the agriculture is completely destroyed. Other regions however are less affected and even the infrastructure is intact.

124. The Government, with heavy support from foreign troops, acts with great severity against opponents or suspected opponents of the régime without any respect for human rights obligations. The Government, in co-operation with foreign troops, fights against the opposition movements with all the military means at its disposal. It appears that in the course of operations all kinds of sophisticated weapons, in particular those that have a heavy destructive and psychological effect, are being used. The target is primarily the civilian population, the villages and the agricultural structure.

125. The war, now in its fifth year, has reached a critical stage as regards the force and weapons used, the brutality exercised against the civilian population, and the strategic aims, namely, to clean up regions by all means.

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126. This situation affects human rights to a larger and wider extent than before. While the suppression of political opponents in the urban area has continued with the same intensity as before, although there have perhaps been fewer cases, the methods of warfare have worsened during the past months and disregard for human rights is more widespread. As a result, not only individuals, but whole groups of persons and tribes are endangered in their existence and in their lives because their living conditions are fundamentally affected by the kind of warfare being waged.

127. In its fifth year, the conflict is exacting an increasing toll in human lives and continues to engender human rights violations on a large scale.

128. Whatever the legal nature of the conflict it has lasted now nearly six years. The Special Rapporteur would draw attention to the fact that the States directly involved are parties to the Geneva Conventions of 12 August 1949, and regardless whether the conflict is considered as international or non-international they are at least bound by common article 3 of those Conventions (see para. 120 above). This notwithstanding, the following practices have taken place:

- (a) The use of anti-personnel mines and of so-called toy bombs;
- (b) The indiscriminate mass killings of civilians, particularly women and children;
- (c) The growing use of heavy weapons with most destructive effects;
- (d) The systematic discrimination against persons not adhering to the People's Democratic Party of Afghanistan;
- (e) The non-acceptance of members of the Afghan opposition movements as prisoners of war.

129. The situation in Afghanistan resulting from the armed conflict is aggravated by the hatred which seems to govern the hostilities, by the most cruel methods of warfare and by the destruction of large parts of the country which has affected the conditions of life of the population, destabilizing the ethnic and tribal structure and disrupting family units. The demographic structure of the country has changed, since over 4 million refugees from all provinces and all classes have settled outside the country and thousands of internal refugees have crowded into the cities like Kabul. The stream of refugees has not come to a standstill. The situation of the refugees and displaced persons is such that it affects their right to education, to work and to health.

130. The internal conflict has negatively affected the basic rights embodied in the International Covenant on Economic, Social and Cultural Rights, as discussed in section V, in particular outside Kabul and the cities. Food and medicine are withheld from these areas, resulting in starvation and disease. The situation has also resulted in the denial and destruction of cultural traditions, including use of language and religious practices currently manifested only in refugee camps outside Afghanistan or in areas that are controlled by traditional forces. However, even there the constant fear creates unrest that is counterproductive for cultural traditions, traditional music and religious practices.

131. Since 1979 the internal human rights situation has been at variance with international obligations regarding human rights. The convening in April 1985 of a Loya Jirgah did not result in the representativity of all political forces in the country. There can be no doubt whatsoever that more than 4 million refugees were not represented.

132. In view of the worsening situation in the country that every day claims victims among the civilian population, in particular among women and children, Governments and representatives of international organizations have an urgent responsibility to find ways and means to ensure respect for and guarantees of human rights throughout the country. The Special Rapporteur is convinced that every hour lost is detrimental to the population and to the human rights situation in the country. He is further of the conviction that the duration of the conflict also increases the seriousness of the gross and systematic violations of human rights already existing in the country.

VIII. RECOMMENDATIONS

133. The human rights situation in Afghanistan, far from improving, has deteriorated further and the Special Rapporteur therefore reiterates the recommendations already made in his report to the Commission on Human Rights (E/CN.4/1985/21, paras. 186-195) which, in his view, continue to apply (see para. 8 of this report).

134. Moreover, precisely because of the further deterioration of the situation, the Special Rapporteur believes that, if the international community intends to take urgent measures which, in the first place, would alleviate the suffering of the Afghan population and, in the second place, would attempt to stabilize the future human rights situation, the following complementary recommendations are necessary.

135. The right of the 4 million Afghan refugees to return to their homes freely and safely without fear from any persecution should be formally recognized and respected, their property should be restored and effective general amnesty should be proclaimed by law for everyone regardless of their political opinion.

136. The parties directly involved in the present situation of human rights in Afghanistan should co-operate fully with the United Nations and with all the humanitarian international organizations and specialized agencies, and take urgent measures to restore and ensure respect for civil, political, economic, social and cultural rights in Afghanistan.

137. As the presence of foreign troops in Afghanistan, which is one of the principal reasons for the current human rights situation in the country, has been the subject of detailed recommendations contained in a number of resolutions of the General Assembly and the Commission on Human Rights, the Special Rapporteur will confine himself to calling attention to these resolutions.

138. Because of the nature of the conflict and the need for humanitarian action and with a view to shielding the civilian population from the dangers of the fighting,

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the parties directly involved in the conflict should consider the possibility of establishing neutral zones under international supervision. For that purpose the parties concerned could be invited to make a unilateral declaration of intent on the principle of this suggestion.

139. Finally, the Special Rapporteur wishes to reiterate the following statement made in paragraphs 183 to 185 of his previous report (E/CN.4/1985/21):

"... In this connection, the international status of the country might usefully receive appropriate attention, for it might be advisable for Afghanistan to consider the possibility of formally committing itself to a policy of non-alignment or even to a status of permanent neutrality under international law, with a view to facilitating the maintenance of its territorial integrity and political independence, under the terms of the Charter of the United Nations, and thus creating conditions conducive to the respect and guarantee of human rights throughout the country.

"There must be an immediate commitment to, and application of, the norms of human rights and humanitarian law by all parties involved. A fundamental law or constitution should be promulgated in line with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The rule of law must be re-established in the country in a manner which is consistent with these international standards.

"In the process of correction and healing which lies ahead, a dialogue with the international community will be vital as well as its subsequent support. The Special Rapporteur therefore appeals to the Government of Afghanistan to co-operate with the Commission on Human Rights in its efforts to improve the situation of human rights. Co-operation with the Commission offers the possibility of reconciliation and restitution of human rights."

Notes

1/ Ministry of Foreign Affairs of the Democratic Republic of Afghanistan, Department of Press and Information, Kabul, 1984.

2/ Hague Academy of International Law, Recueil des Cours, 1968, II, vol. 124, Leyden, A.w. SIJTHOFF, 1969.

3/ Official Records of the General Assembly, Eighth Session, Supplement No. 16 (A/2505 and A/2050/Add.1, para. 893 and 894).

4/ Afghanistan, State Planning Committee, "Preliminary results of the first Afghan population census", Publication No. 1 (Central Statistics Office, 1980).

5/ In his book entitled La Cité des murmures: l'enjeu Afghan, Jean-Christophe Victor lists the main ethnic groups in Afghanistan as follows: Pashto (6 million living in Afghanistan - religion: Sunni Muslims of the Hanafi rite); Tadjik (approximately 4 million - religion: Hanafi Sunnites); Hazaras

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Notes (continued)

(approximately 1.5 million - religion: Shi'ite Muslim); Aimaq (approximately 800,000 - religion: Hanafi Sunnite); Uzbeks (approximately 1.5 million - religion: Hanafi Sunnite); Turkmen (approximately 450,000 - religion: Hanafi Sunnite); Nuristani (approximately 120,000 - religion: Hanafi Sunnite, since the end of the nineteenth century); Baluchis (100,000 in Afghanistan - religion: Hanafi Sunnite).

6/ Document issued by the Office of the Chief Commissioner for Afghan refugees, Government of Pakistan, Islamabad, July 1984.

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

8/ Commission internationale d'enquête humanitaire, rapport sur les personnes déplacées en Afghanistan, Bureau International, Afghanistan, Paris 1985.

9/ Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40).

10/ Hearings on Afghanistan, Asian Lawyers Legal Inquiry Committee and Association of Lawyers for Democracy. Hearings, 1-3 June 1985, at the Imperial Hotel, New Delhi.

11/ Commission internationale d'enquête humanitaire, op. cit.

12/ Kabul Times, 25-27 April 1985.

13/ See Louis Dupree, Afghanistan, Princeton University Press, Princeton, New Jersey, 1980, Jean-Christophe Victor, La Cité des murmures: l'enjeu Afghan, op. cit., and Olivier Roy, L'Afghanistan: Islam et modernité politique, Editions du Seuil, Paris, 1985.

14/ United Nations, Treaty Series, Vol. 75, Nos. 970, 971, 972 and 973.

15/ See document A/32/144, annexes I and II.

16/ Case concerning the Barcelona Traction, Light and Power Company, Judgement of 5 February 1970: I.C.J. Reports 1970, p. 4.

APPENDIX I

Chronological list of incidents a/

Date	Province	Village/Town	Type
15 Jan. 85	Kandahar	Kandahar	Mass killings of civilians
17 Jan. 85	Kabul	Kabul	Attack by opposition movement against military airport of Bagram, north Kabul
30 Jan. 85	Kabul	Kabul	Attacks by opposition movements on civilian targets
30 Jan. 85	Kunduz	Char Dara	Mass killings in retaliation on three villages
1 Feb. 85	Kandahar	Kandahar	Mass killings of civilians
15 Feb. 85	Kunduz	Kunduz Chahardara	Mass killings of civilians
22 Feb. 85	Laghman	Charbagh	Acts of retaliation
8 Mar. 85	Kunduz	Khanabad	Attacks on civilians to deter villagers from aiding the opposition movements
9 Mar. 85	Kabul	Kabul	Civilians killed consequent to bomb explosions by opposition movements
Between 9 and 30 Mar. 85	Samagan	Aibak	Attacks on civilians to deter villagers from aiding the opposition movements
Between 11 and 18 Mar. 85	Laghman Qarghai distr.	Kace Aziz Khân Chaharbagh, Bala bagh, Sabzabâd, Mandrawer, Haidar Khan and Prel-e-joghi	Mass killings of civilians allegedly supporting the opposition movements

a/ See paras. 76 and 83 above.

Date	Province	Village/Town	Type
20 Mar. 85	Kunar	Mangawal	Mass killings of civilians allegedly supporting the opposition movements
21 Mar. 85	Kabul	Dehsabz	Mass killings of civilians and looting
29 Mar. 85	Kabul	Outskirts	Killing of 17 civilians
1 Apr. 85	Parwan	Charikar	Bombardments of different villages
2 Apr. 85	Laghman		Attacks on civilians to deter villagers from aiding the opposition movements
10-11 Apr. 85	Kabul	Paghman	Undetermined civilian casualties as a result of air raids
15 Apr. 85	Laghman	Qalatak	Execution of 9 religious leaders
15 Apr. 85	Laghman	Shaltak	Undetermined number of civilians killed
15 Apr. 85	Laghman Qarghai distr.	Between Kabul and Jalalabad (Qaraghayee, Pacha Kelay, Bela, Kals, Mindrawar, Pul-e-Jogi, Kalakot, Safu Khel, Dehamazang, Tarakhel, Aghrahabad, Qala-e-Sarfiraz, Abdurrahimzay, Laramora and Nissir)	Mass killings of civilians in 15 villages
Apr. 85	Kabul	Paghman	Ambush attack by opposition movements

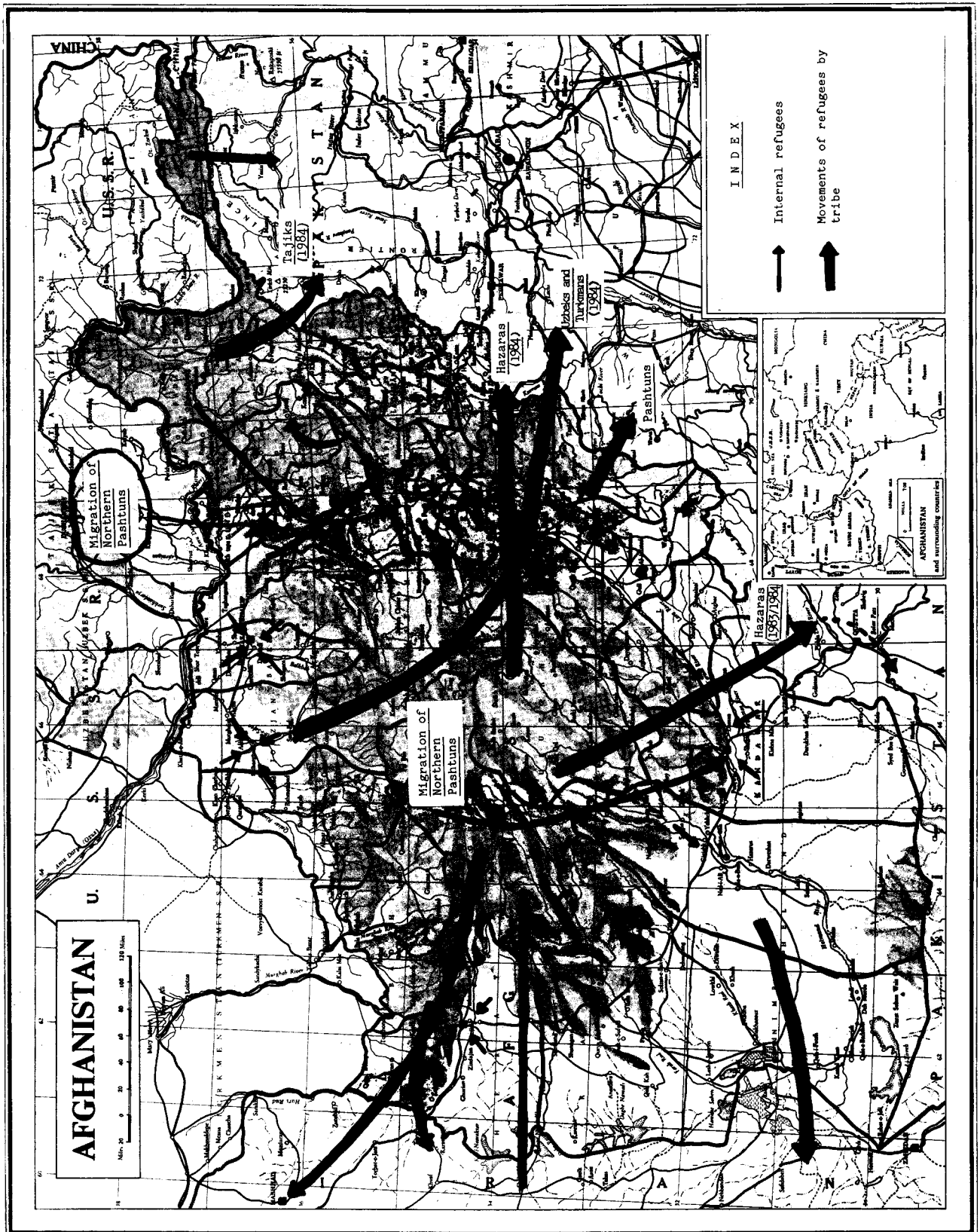
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Date	Province	Village/Town	Type
30 Apr. 85	Herat	Baghohe	Acts of retaliation
30 Apr. 85	Herat		Killings by opposition movements of <u>Loya Jirgah</u> representatives
May 85	N.W.F.P. (Pakistan)	Zangali (South of Peshawar)	Explosion of stockpiled arms attributed to opposition movements
31 May 85	N.W.F.P. Peshawar (Pakistan)	Swir Pakistani village	Air raids by government forces in the north of Peshawar
5 June 85	Balkh	Mazar-i-Sharif	Bomb attack not attributed to opposition movements
12 June 85	Kabul	Kabul, base militaire de Shindand	Sabotage operation by opposition movement. Destruction of aircraft at the airbase of Shindand (west Afghanistan)
June 85	Kunar	Barikot	Headquarters of a border garrison in east Afghanistan (Kunar valley)
5 July 85	Balkh	Mazar-i-Sharif	Bomb attack by opposition movements
6 July 85	Kabul	Vallée du Panshir	Assasination of 131 government soldiers attributed to opposition movements but denied by the latter
11 July 85	Kabul	Kabul	13 persons killed during bomb attacks attributed to opposition movements
Aug. 85	Kabul	Kabul	Various attacks by opposition elements

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APPENDIX II

Map illustrating refugee movements



Map of regions most affected by bombardments