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

Report on the situation of human rights in Afghanistan prepared
by the Special Rapporteur, Mr. Felix Ermacora, in accordance
with Commission on Human Rights resolution 1984/55

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Fundamental Principles of the Democratic Republic of Afghanistan

General Introduction

1. At its first regular session in 1984, the Economic and Social Council 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 the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces".
2. In interpreting his mandate, described in chapter I, 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. The Special Rapporteur was unable to achieve his aim of visiting Afghanistan for want of a reply by the Afghanistan Government to a letter in which he asked the Government for permission to visit the country and its co-operation once he was there. He therefore 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. In that undertaking, he was given extremely valuable assistance by the Pakistan authorities.
4. In the course of his visit, 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, Nangahar, Vardak, Kunduz, Kunar, Logar, Ghazni, Pakhtika, Nangarhar, Jorzan, Takhar, Badakhshan and Baghlan. He also visited the four refugee camps of Surkhas 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. The Special Rapporteur received a great deal of information on the situation of human rights in Afghanistan from a variety of sources, including persons with personal knowledge of violations of human rights, who stated either that they themselves had been subjected to ill-treatment or that they had been present when torturing, ill-treatment or cruelty of various kinds had been committed following reprisals in villages which had been bombarded.
6. With a view to obtaining clarification of the information he had received on serious allegations of violation of human rights in Afghanistan, the Special Rapporteur decided, without taking a stand in regard to their veracity or the merits of the cases, to draw the attention of the Afghan Government, in a letter dated 4 January 1985, to the importance of the co-operation which the Government could give him and which would be indispensable if he was to reply to the questions which the Commission on Human Rights had instructed him to examine.
7. Precisely because of the enormous bulk of the data and also because of the short time at his disposal, the Special Rapporteur was unable to analyse in greater detail the thousands of pages of information with which he was provided. Hence he felt it better to examine thoroughly, by way of example, selected representative cases illustrating the situation of human rights prevailing in Afghanistan.

I. THE MANDATE OF THE SPECIAL RAPPORTEUR

8. Following a recommendation made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1983/20 of 5 September 1983, the Commission on Human Rights adopted on 15 March 1984 by 27 votes to 8, with 6 abstentions, resolution 1984/55 regarding the situation in Afghanistan, by which, inter alia, it recommended to the Economic and Social Council to request the Chairman of the Commission on Human Rights "to appoint an individual of recognized international standing as 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 the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces, ... to seek relevant information from specialized agencies, intergovernmental organizations and non-governmental organizations, ... [and] to submit a comprehensive report to the Commission at its forty-first session".

9. At its first regular session of 1984, on 17 May, the Economic and Social Council by resolution 1984/37, endorsed, by 35 votes to 4, with 12 abstentions, the Commission's decision requesting the Chairman of the Commission on Human Rights to appoint a Special Rapporteur with the mandate to examine the human rights situation in Afghanistan.

10. On 13 August 1984, the Chairman of the Commission on Human Rights at its fortieth session accordingly appointed Mr. Felix Ermacora (Austria) Special Rapporteur on the human rights situation in Afghanistan in accordance with Commission on Human Rights resolution 1984/55.

11. This report has been prepared in accordance with Commission on Human Rights resolution 1984/55 and Economic and Social Council resolution 1984/37. It covers information available on the situation of human rights in Afghanistan as referred to in the aforementioned resolutions. Chapter I sets out the mandate of the Special Rapporteur; chapter II gives a brief historical background; chapter III describes the factual situation with regard to respect for human rights; chapter IV deals with the relevant constitutional and legal international framework in regard to human rights; chapter V contains the conclusions and chapter VI the recommendations of the Special Rapporteur.

A. Origin of the mandate in the light of discussions in different organs of the United Nations

12. The mandate which the Special Rapporteur of the Commission on Human Rights is required to discharge, pursuant to Commission resolution 1984/55 and Council resolution 1984/37 is the consequence of earlier and repeated consideration of the situation of human rights in Afghanistan within, inter alia, the Security Council, the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

13. It may be recalled that the situation in Afghanistan has been considered by the Security Council, the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities since 1980.

1. Consideration of the question by the Commission on Human Rights

14. The Commission on Human Rights considered and also took action from 1980 to 1983 under the item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation" and adopted several resolutions relating to the situation in Afghanistan. However, in 1984, the Commission on Human Rights also considered this question under the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories". In this connection it may be recalled that following a recommendation made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (resolution 1983/80 of 5 September 1983), the Commission on Human Rights adopted resolution 1984/55 entitled "Question of the violation of human rights and fundamental freedoms - Situation in Afghanistan".

15. In 1981, 1982 and 1983, the Commission on Human Rights continued to consider this question under the agenda item entitled "The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation". The Commission adopted resolutions 13 (XXXVII), 1982/14 and 1983/7 of 6 March 1981, 25 February 1982 and 16 February 1983 respectively, by which, inter alia, it reaffirmed its most profound concern that the people of Afghanistan continued to be denied their right to self-determination and to determine their own form of government and to choose their economic, political and social system free from outside intervention, subversion, coercion or constraint of any kind whatsoever; called for the immediate withdrawal of the foreign troops from Afghanistan; further called for a political settlement of the situation in Afghanistan on the basis of the withdrawal of foreign troops and full respect for the independence, sovereignty, territorial integrity and non-aligned status of Afghanistan and strict observance of the principle of non-intervention and non-interference; affirmed the right of the Afghan refugees to return to their homes in safety and honour and urged all concerned to co-operate with the Secretary-General in his efforts to promote a political solution in respect of the situation in Afghanistan.

16. In 1984 at its fortieth session, the Commission on Human Rights again considered the situation in Afghanistan and adopted two resolutions. On 29 February 1984, it adopted resolution 1984/10 by 31 votes to 8, with 4 abstentions, by which it reaffirmed its most profound concern that the people of Afghanistan continued to be denied their right to self-determination; called for the immediate withdrawal of the foreign troops from Afghanistan; further called for a political settlement of the situation in Afghanistan; affirmed the right of the Afghan refugees to return to their homes in safety and honour; urged all concerned to work towards a settlement; and appealed to all States and national and international organizations to extend humanitarian relief assistance.

17. At the same session, on 15 March 1984, following a recommendation by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights adopted resolution 1984/55, by 27 votes to 8, with 6 abstentions, entitled "Question of the violation of human rights and fundamental freedoms - situation in Afghanistan" by which it recommended to the Economic and Social Council the adoption of a draft resolution, calling for the appointment of a special rapporteur.

18. In the course of the fortieth session, at the 63rd meeting, on 16 March 1984, the Chairman of the Commission on Human Rights reminded the members that the Commission had decided not to take any action under the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII) with regard to Afghanistan in view of the adoption by the Commission of the aforementioned resolution at its 59th meeting.

2. Consideration of the question by the Economic and Social Council

19. At its first regular session in 1984, the Economic and Social Council, by its resolution 1984/37 entitled "Situation of human rights in Afghanistan", endorsed, by 35 votes to 4 with 12 abstentions, the Commission's decision to request the Chairman of the Commission on Human Rights 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 the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces. The resolution reads as follows:

"The Economic and Social Council,

Mindful of resolution 1983/20 of 5 September 1983 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Commission on Human Rights resolution 1984/55 of 15 March 1984,

1. Requests the Chairman of the Commission on Human Rights to appoint an individual of recognized international standing as 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 the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces;

2. Authorizes the Special Rapporteur to seek relevant information from specialized agencies, intergovernmental organizations and non-governmental organizations;

3. Requests the Special Rapporteur to submit a comprehensive report to the Commission at its forty-first session".

20. Following the appointment of the Special Rapporteur by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1984/6 on 28 August 1984 by 13 votes to 4, with 2 abstentions, by which it requested the Commission on Human Rights to ask its Special Rapporteur on Afghanistan also to investigate the human and material losses resulting from the recent bombardments of the civilian population and to include his findings in his report to the Commission.

B. The mandate of the Special Rapporteur in relation to the mandate of the Special Representative of the Secretary-General

21. In order to place the question within its proper context, reference should be made to the background of the two mandates.

1. The mandate of the Special Representative of the Secretary-General pursuant to General Assembly resolutions 35/37, 36/34 and 37/37.

22. As already noted, since 1980, the General Assembly has regularly pronounced itself on the principles involved and the action required with regard to the situation in Afghanistan and its implications for international peace and security. In pursuance of the various General Assembly resolutions the Secretary-General and/or his Special Representative continue to engage in intensive efforts aimed at facilitating negotiations among the parties concerned so as to achieve a political solution.

2. The mandate of the Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1984/55 and Council resolution 1984/37

23. Pursuant to Commission resolution 1984/55, as endorsed by the Economic and Social Council in resolution 1984/37, the Chairman of the fortieth session of the Commission appointed Mr. Felix Ermacora as Special Rapporteur, with the mandate to examine the human rights situation in Afghanistan, with a view to formulating proposals which could contribute to ensuring protection of the human rights of all residents of the country, before, during and after the withdrawal of all foreign forces. The Special Rapporteur was also authorized to seek relevant information from specialized agencies, intergovernmental organizations and non-governmental organizations and to submit a comprehensive report to the Commission on Human Rights. The Special Rapporteur will therefore examine the human rights situation in Afghanistan in the context of the existence of an armed conflict, on the one hand, and the human rights situation without reference to that conflict, on the other. For this purpose, the Special Rapporteur will include the Geneva Conventions and the Protocols thereto among the applicable international legislation against the background of which the human rights situation is to be examined.

C. Interpretation of the mandate of the Special Rapporteur

1. Discussion in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Economic and Social Council

24. In the three forums, two schools of thought emerged in the course of the debate relating to the situation in Afghanistan. Some delegations called for an immediate withdrawal of foreign troops, upheld the right of the Afghan people to choose their own form of Government and advocated the creation of conditions that would enable the refugees driven from their country to return voluntarily to their homes in safety and honour. It was also pointed out that a stable political situation in international affairs remained an essential prerequisite for full realization of the fundamental rights of peoples and that the fundamental principles governing international relations must be strictly observed.

25. Other delegations stated that consideration of the Afghan question constituted inadmissible interference in the internal affairs of Afghanistan and was contrary to the fundamental principles of contemporary international law.

2. The government position

26. In carrying out his mandate, the Special Rapporteur has taken note of the views expressed by the representative of Afghanistan regarding his mandate; these views are reproduced below.

27. Prior to the adoption by the Sub-Commission of the draft resolution calling for the appointment of a special rapporteur on the situation in Afghanistan, the Observer for Afghanistan made a statement which has been summarized as follows:

"The Observer for Afghanistan said that his delegation was strongly opposed to the draft resolution which was designed to inflame world public opinion and which called into question Afghanistan's loyalty to human rights and the fundamental freedoms. It was a regrettable fact that those behind the draft resolution had distorted events in Afghanistan with a view to camouflaging their plans for aggression, stepping up their military strength in the area, justifying the arms race, and attempting to increase tension in the region and throughout the world. They wanted to make use of the

Sub-Commission to interfere in Afghanistan's internal affairs, subject its heroic people to further tribulations and deflect them from the path they had freely chosen in accordance with their right to self-determination.

"A detailed account of the real situation pertaining to human rights in Afghanistan had already been given before the Human Rights Committee but he would reiterate once again that, since the events of 27 December 1979 when the new revolutionary government had assumed power, genuine liberty of the person, political liberty and equality of all citizens before the law, irrespective of origin, had been guaranteed. A series of measures of a humanitarian nature had been taken with a view to ensuring the fundamental rights and freedoms of the Afghan people. Those measures included the abolition of all anti-democratic and inhumane laws and of arbitrary arrests, persecutions and searches, as well as the guarantee of the right to life, of security for all, of respect for the principles of Islam and religious rights, of protection of the family, and of the principle of peace and revolutionary order in the country.

"In addition, the necessary conditions for the exercise of the fundamental rights and democratic freedoms had been introduced, including the right to express one's opinion freely and openly, the right of association, the right to hold peaceful demonstrations, the right to belong to social democratic organizations, the right to work, the right to health, and social welfare benefits for the elderly and disabled. Furthermore, scientific, technical, cultural and artistic freedom, in line with the objectives of the revolution, freedom of domicile, of correspondence, of telephone, telegraphic and other communications, and the right to submit complaints, individually and collectively, to the appropriate Government body, were all guaranteed and set forth under chapter 2 of the fundamental principles of the Democratic Republic of Afghanistan.

"Those humanitarian measures together with the economic and social changes currently taking place were in keeping with the aspirations of the Afghan people for a better life and explained why the Afghan Government was receiving ever growing support from all strata of the population. The Government's social and political measures continued to expand and the organs of the people's power continued to grow stronger. The new Afghanistan continued to move forward, confident in a just and effective system which would ensure a prosperous and happy life for its people.

"In the light of those considerations, his delegation condemned the draft resolution as anti-Afghan and devoid of any political realism. If it were adopted, his Government would treat it as null and void and would not regard itself as bound by its terms". (E/CN.4/Sub.2/1983/SR.30, paras. 93-97)

28. Following the adoption of Commission resolution 1984/55 calling for the appointment of a special rapporteur on the situation in Afghanistan, the Observer for Afghanistan stated that:

"His Government had demonstrated its full co-operation with the Commission and provided the necessary explanations and details concerning the promotion and protection of human rights in Afghanistan and the specific and effective humanitarian and economic and social measures it had consistently taken following the victory of the revolution. Fully respecting the rights, democratic freedoms, dignity and honour of Afghan citizens, it was guiding Afghan society towards peace, freedom, democracy, equality, progress and justice. In the light of those explanations and of the long-standing fact that no argument or evidence could be adduced against Afghanistan, the only reasonable decision the Commission could take would be to cease immediately

an unjustified consideration of the so-called 'situation of human rights in Afghanistan', where all rights and democratic freedoms were fully guaranteed, and to put an end to all injurious and tendentious manoeuvres to misuse the situation in Afghanistan for political ends. Any other decision would run counter to established procedure and the generally recognized norms of international law.

"His delegation was entitled to hope ... that the Commission would end all attempts to question his country's faithful protection and promotion of human rights and fundamental freedoms, and support his Government's humanitarian measures to build a flourishing and just society, free from exploitation. His delegation was firmly opposed to Commission resolution 1984/55, the relevant decision of the Commission and any misuse of the situation for political ends. Such a resolution and decision failed to take account of the true situation in Afghanistan and were prejudicial to established procedures; they were in no way binding on his Government, which considered them unlawful, null and void, politically injurious and morally hypocritical". (E/CN.4/1984/SR.63, paras.2-3)

29. Prior to the adoption by the Economic and Social Council of the draft resolution submitted by the Commission on Human Rights, the following statement was made:

"The Observer for Afghanistan said that his delegation had already had occasion to explain in detail, in the Commission on Human Rights and in the Second Committee, the reasons why the Democratic Republic of Afghanistan strongly objected to the adoption of draft resolution XIV. Firstly, consideration of the so-called situation of human rights in Afghanistan by the Economic and Social Council and the Commission on Human Rights was a clear violation of the Charter of the United Nations, and particularly of Article 2, paragraph 7, and therefore constituted open interference in the country's internal affairs. Secondly, the practice of considering that artificial issue in open meetings, while the matter was still under discussion in closed meetings of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, ran counter to the procedure adopted by the Council in its resolution 1503 (XIVIII). Thirdly, under rule 77 of the rules of procedure and other terms of reference of the functional commissions of the Council, only the Council itself could amend those rules; the commissions could temporarily suspend some of the provisions, but only for a specific purpose and in the absence of objections. Fourthly, the sponsors of draft resolution XIV - namely, the United Kingdom and its allies - were motivated by political considerations and not by concern for the human rights of the Afghan people, since they chose to ignore the sincere and determined efforts made by the Afghan Government to ensure full protection of those rights. Fifthly, irresponsible and increasing recourse to the procedure of appointing special rapporteurs should be a cause of concern to all States Members of the United Nations which might one day fall victim to similar defamatory tactics because of their independent and anti-imperialist policy. Sixthly, the submission of the draft resolution at a time when the indirect negotiations

between Afghanistan and Pakistan, through the representative of the Secretary-General, had entered a very sensitive and delicate stage might have been intended to harm the process of confidence-building and to torpedo the negotiations themselves. Seventhly, the appointment of a special rapporteur could in no way serve the interests being promoted by the sponsors of the draft resolution, since the Afghan Government would be unable to co-operate in any way in the implementation of a resolution that had been adopted over its strong objection.

"In conclusion, he said that his country would not consider itself bound by the provisions of draft resolution XIV, if it was adopted, and should not be expected to co-operate in its implementation".

(E/CN.4/1984/SR.20, pp. 5-6)

30. The Special Rapporteur has also noted a telegram dated 28 August 1981, addressed to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by the Ministry of Foreign Affairs of Afghanistan, setting out further views of the Government of Afghanistan on the question of human rights in Afghanistan, as follows:

"The Democratic Republic of Afghanistan deems it its prime duty to safeguard and respect human rights and its general principles. The fundamental principles of the Democratic Republic of Afghanistan, which are regarded as the working constitution of the nation at present, attach great significance to the respect and observance of human dignity as an obligation of the State. As you are well aware, in the wake of the new revolutionary phase of the April revolution, a series of infinitely humanistic measures have been adopted by the State. The proclamation of general amnesty, forgiveness and mercy shown by the popular Government of Afghanistan to those who are engaged in the activities against the gains of our revolution, as well as even the pardon of those terrorists and mercenaries who have intermittently resorted to armed feud and atrocities with a view to disturbing the peace and tranquility of the people and nation, will unequivocally bear witness to this claim. The decree of general amnesty issued by the State provides the possibility for the misled and deceived compatriots, who have embarked upon the anti-people and subversive brutalities, to trust and rely on the humanitarian demeanour of the Afghan Democratic State and refrain from their acts of arson and sabotage and to take advantage of the benefits of this particular decree. The humanistic behaviour of the State has had an appreciative and approbationary impact upon the dozens of foreign journalists and representatives of international organizations when they observed living conditions of detainees in Afghanistan. However, it is worth mentioning that a limited number of subservients and alien hirelings who are engaged in [encouraging] chaos and turmoil to endanger the innocent life of the people and the environment have been apprehended in batches and tried shortly afterwards in accordance with the legal and lawful norms and

criteria of the Afghan State, while the respective court also found them guilty on the basis of irrefutable evidence. Some of such culprits who expressed their compunction and pleaded guilty have been forgiven. A number of them, of course with lesser crimes, have been sentenced to short-term incarcerations, but a very few of the convicts who had perpetrated unpardonably bloody activities against the innocent people ... [words appear to be missing in the text of the telegram] ... the evaluation of their relative dossiers and the trial in accordance with the law of the land. It is to be stated that the death sentence still constitutes a statutory part of the Afghan judicial system. The execution of such criminals is undoubtedly not only indicative of the State's struggle against terrorism and plunder, but also is demonstrative of the strong position of the Government in defence and protection of the human rights of its citizens, particularly the right to live in peace and have their lives and property protected by law.

"Notwithstanding all this leniency of the State, some of the international organizations, like Amnesty International, etc., are desirous to misuse the situation and endeavour to confuse and poison the public minds and deviate them from the realization of human rights. They make every effort to mislead and estrange the public opinion through correspondence and publicity concerning the loyalty of the Democratic Republic of Afghanistan towards human rights. It is therefore requested that the Commission on Human Rights expeditiously hinder such measures and, in lieu, ... provide the ground for our humanistic steps towards the defence of human rights and our antagonism to terrorism, incendiaryism and anarchism.

"The Democratic Republic of Afghanistan is seriously against such untoward attempts at all kinds of international forums. But those quarters longing to misuse this attitude in view of any political tendencies will themselves be held responsible for any mishap".

31. The Special Rapporteur has also taken note of the following submission by the Government of Afghanistan, dated 29 May 1984:

"The national-democratic April Revolution of 1978 has put an end forever to the cruel and inhuman treatment of the people of Afghanistan by the authorities, which was commonly practised during the reign of previous despotic regimes. Due to the inhuman and despotic nature of the social system they represented the authorities concerned of the pre-revolution Governments were continuously violating the human rights of the masses. Only after the triumph of the April Revolution the democratic legality and the order of law were ensured in the country. The Government of the Democratic Republic of Afghanistan pays great respect for the human rights in the country and in the world as a whole.

"The Fundamental Principles of the Democratic Republic of Afghanistan which serves as an interim constitution of the country guarantees all fundamental rights and freedoms of all the citizens in Afghanistan. The Party and the government organs are sincerely striving for the implementation of law and regulations and spare no effort in promoting and protecting the interests of the people including their human rights. The Penal Code of the country embodied certain provisions which provided for the punishment of state officials guilty of abuse of power, specially for those who are guilty of torture and other forms of cruel and inhuman punishment.

"Grounds for arrests and detention are determined by law and regulations. No one is arrested or will be arrested unless permitted by law. No one is arbitrarily arrested in the State. Duration of detention is fixed by law, it cannot be extended without permission of the authorized courts. The trial procedure is also [supervised] by the Government of the Democratic Republic of Afghanistan. The law has provided for a fair trial for every accused person. Administrative detention to prevent the commission of crime, including during a state of emergency or exception is covered by law. No one has been kept under detention by the authorities without proper authorization, either by law or by the order of the authorized courts.

"Very strict legal measures are provided by law for abduction. The Government has resolutely condemned such practices, without any distinction.

"We are very pleased to state that arbitrary or summary executions do not exist in the Republic. The Government and the judicial authorities of the Democratic Republic of Afghanistan, on the basis of directives of Babrak Karmal, General Secretary of the PDPA CC and President of the RC, practise the utmost restraint to avoid sentencing anyone to death. On many occasions, the Presidium of the RC has pardoned criminals who were sentenced to death by courts. Only in some cases those criminals who have repeatedly and intentionally committed unforgiveable crimes which have resulted in the loss of life and great economic and social damage to our country and people might be executed. However in spite of the serious crimes committed by such criminals a limited number of executions have taken place.

"It should be added that the State organs are trying to reduce the number of executions and abolish capital punishment in Afghanistan. It is the imperialist and reactionary regimes of the region, which through seduction are provoking some of our people to commit crimes against their people, revolt and shed the blood of their brothers. We are sure that the fate of those who murder others in cold blood cannot be determined differently in any other society."

32. Essentially the Representatives of Afghanistan in the various forums maintained that the mandate of the Special Rapporteur was unwarranted by the facts of the situation in Afghanistan. Measures had been taken since December 1979 with a view to ensuring fundamental rights and freedoms including protection of individuals against abuse of the most fundamental rights of liberty and security of person, the family, religion and other rights, including economic, social and cultural rights. References to this aim were made in chapter 2 of Fundamental Principles of the Democratic Republic of Afghanistan. In addition, it was maintained that the mandate of the Special Rapporteur constituted a violation of Article 2, paragraph 7, of the Charter since it was tantamount to interference in the internal affairs of Afghanistan. Finally it was maintained that the resolution establishing the mandate of the Special Rapporteur was politically motivated and did not concern itself with human rights.

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

33. The representative of Afghanistan, in addressing himself to the resolution setting out 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 by

Mr. Felix Ermacora on human rights and domestic jurisdiction */ which deals with the problem of the application of Article 2, paragraph 7, of the Charter of the United Nations.

34. In the report of the United Nations Commission on the Racial Situation in the Union of South Africa (A/2505), 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.

"894 (ii) 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."

35. 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.

E. Interpretation and methodology followed by the Special Rapporteur

36. With a view to implementing resolution 1984/55, the Special Rapporteur addressed himself to the Minister for Foreign Affairs of Afghanistan as follows in a letter dated 13 August 1984:

"I have the honour to refer to Economic and Social Council resolution 1984/37 concerning the human rights situation in Afghanistan, of which the text is attached, and to inform Your Excellency that I have been designated by the Chairman of the Commission on Human Rights as Special Rapporteur under the terms of that resolution.

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

"In accepting to serve as Special Rapporteur of the Commission on Human Rights on the issue under consideration, I am fully aware of the important and demanding responsibilities with which the Commission has entrusted me. I would like to assure Your Excellency that I intend to carry out my mandate in the most impartial and objective manner. I shall endeavour to base my report on the most precise and accurate information. In this connection, a primary and most valuable source of information would undoubtedly be Your Excellency's Government.

"While I have taken note of the position of Your Excellency's Government as stated at the fortieth session of the Commission on Human Rights, Your Excellency should know that I would be most grateful if I were to receive the co-operation of Your Excellency's Government in order to ensure that the Commission is presented with a comprehensive picture of the human rights situation in Afghanistan.

"In order to discharge my responsibilities, it would of course be most important to establish direct contacts with the authorities concerned. In this connection, I would wish, with the co-operation of Your Excellency's Government, to visit Afghanistan as soon as possible and would like to suggest that such a visit take place between October and December 1984. I would, therefore, be most grateful if Your Excellency could utilize his good offices in facilitating arrangements for such a visit. I would hope to discuss the modalities of my visit and matters pertaining to its itinerary either with Your Excellency or with representatives of the Permanent Mission of Afghanistan in Geneva."

37. The Special Rapporteur informed himself on the situation of human rights in Afghanistan to the best of his ability from available sources. To this end, and since no reply was received from the Government that might have facilitated access to the country, he undertook a visit to the northern region of Pakistan, where hundreds of thousands of Afghans are concentrated, several of whom have recent experience of the situation in their country.

38. Upon the completion of his visit to Pakistan, the Special Rapporteur transmitted the following letter dated 4 January 1985 to the Minister for Foreign Affairs of Afghanistan:

"I have the honour to refer to my letter of 13 August 1984 by which I informed Your Excellency of my designation by the Chairman of the Commission on Human Rights as Special Rapporteur under the terms of Economic and Social Council resolution 1984/37 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 between October and December 1984.

"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:

The non-respect of the provisions of the International Covenant on Civil and Political Rights, in particular the systematic application of torture during interrogation of persons suspected of opposition to Government policy,

Large-scale disappearances of persons taken into custody,

Systematic discrimination against persons not adhering to the People's Democratic Party of Afghanistan,

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 13 August 1984, I am aware of the position of Your Excellency's Government as stated at the fortieth session of the Commission on Human Rights. However, I feel compelled to reiterate my invitation to Your Excellency's Government to extend its co-operation to ensure that the Commission is presented with the most complete and accurate information available."

39. Having received no response from the Government to his letters of 13 August 1984 and 4 January 1985, the Special Rapporteur was unable to benefit from the co-operation of the Government of Afghanistan, and has therefore been unable to visit the country to date. Despite this lack of co-operation, the Special Rapporteur was able, through the sources available to him, to carry out a thorough appraisal of the factual human rights situation prevailing in Afghanistan.

40. The purpose of the present examination is to throw light on the human rights situation in Afghanistan in its totality; thus individual cases and allegations referred to in this report are, regardless of their importance for individuals and victims, mere examples upon which a total appreciation is based.

II. BACKGROUND

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

41. As stated in the preceding chapter, the Special Rapporteur derives his mandate from resolution 1984/37 of the Council. Having noted the point of view expressed by representatives of Afghanistan in various forums, the Special Rapporteur considers that his report would not be comprehensive without a description of events in Afghanistan in recent years, which, it is alleged, gave rise to the reports of human rights violations which led to his mandate being established.

42. It has been held that the political situation in Afghanistan is a cause of concern for human rights in the country; it has been also maintained that this same situation was precisely intended to safeguard and improve the human rights situation there. It is therefore necessary to recall the principal political developments in Afghanistan for a better understanding of the present situation.

43. According to a census carried out in 1979, the population of Afghanistan is 15.5 million of whom about 913,000 lived in Kabul. ^{1/} 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 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. ^{2/}

44. The heteroethnic 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.

45. Without embarking on the hoary debate as to how the Afghan State came into existence (whether with the designation of Ahmad Shah Durrani in 1747 or that of Abdul Rahman in 1880), what we need to determine at this stage is the level of importance of Muslim law and tribal customs as the basis of the Afghan institutions in a multiracial State dominated by the Pashto. The system of political organization of the Pashto tribes is based on assemblies of elders known as jirgah, which range

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

^{2/} 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); Tadzhik (approximately 4 million - religion: Hanafi Sunnites); Hazaras (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).

from the family gathering to the Loya Jirgah, an assembly of all the Pashto tribes, which played a decisive role in appointing the monarch and in ratifying major State decisions or various constitutional amendments. Traditionally, internal conflicts have been dealt with since 1921 before the Loya Jirgah, which was convened in 1924, 1928, 1930, 1941 and 1964. 3/

46. Throughout Afghan history and up to the time of the adoption of the Constitution of 1964, Afghanistan's institutions, whether based on written instruments or not, derived from a type of government based mainly on the consensus of the community directed by a monarch whose main mission was to ensure the observance of the shari'a (Muslim canon law, the basis of Muslim law). From 1964 onwards, the institutions were adapted to the requirements of modernization of the country, and in actual fact, while leaving a preponderant place to Islam, a distinction was established between the executive power and the functions of the traditional monarch, thus reconciling tradition and modernism. As is indicated in the preamble to the Constitution on 1 October 1964, a number of basic principles were laid down (justice, equality, respect for human dignity, political, economic and social democracy) with a view to the organization of national life in Afghanistan in accordance with the requirements of the day and on the basis of the nation's historic and cultural background. 3/

47. In an analysis of the formation of the Afghan State, Mr. Gilles Rossignol describes the two major periods in the history of Afghan institutions: up to 1919, they were directly inspired by the Pashto customary law and muslim tradition, but not crystallized in any instrument. From 1919 on, various experiments were tried out to reconcile tradition and aspirations to modernism in legal instruments. The author concludes that it would not seem unfair to suggest that institutional trends up to 1978 had helped to widen the gap between present-day reality and the traditional Afghan society, which was stubbornly opposed to any State intervention, and legal thinking confined to the few circles in the capital. In April 1978, the Afghan communists took over power. It was to be revolt ... and the upheaval was so great, and the imposed ideology so alien to the society and its attachment to Islam, that the central powers found themselves isolated, cut off from their traditional roots ... It was then that the opposition movements made their presence felt and organized themselves. 4/

48. Afghanistan witnessed the development of political and administrative institutions under the various monarchs who followed one after another up to 1973. Although it seems difficult to describe the Afghan national entity in terms of existing particularisms, it can be roughly divided into five main periods:

(a) Up to 1880, the period was marked by a dynastic succession in which the institutions were in the hands of the royal power which governed in accordance with the principles of shari'a but in which authority depended on the autonomy of the various ethnic groups in relation to the Pashto tribes.

(b) From 1880 to 1919, with the conquest of power by King Abdul Rahman Khan, under whose reign certain reforms took place together with genuine political and administrative organization (both civil - Mulki - and military - Nezami). As a result of his great firmness and the support he succeeded in obtaining from the all-powerful religious authorities (the Mullahs), King Abdul Rahman began to transform the Afghan State and to achieve internal sovereignty. However in

3/ See Afghanistan, la colonisation impossible, Paris, Editions du CERF, 1984; Jean-Christophe Victor, La Cité des murmures: l'enjeu afghan, Paris, Editions Lattes, 1983; and Michelle and Robin Poulton, L'Afghanistan, Paris, Collection Que sais-je?, PUF, 1981.

4/ Afghanistan, la colonisation impossible, Paris, Editions du CERF, 1984.

foreign policy the King entirely abandoned his sovereignty to Great Britain, which took it over in implementation of the Treaty of Gandamak signed in 1878 with King Yaqub. On the death of Abdul Rahman in 1901, his son Habibullah who succeeded him continued until his death in 1919 to carry on the policy of reform with great caution, endeavouring, in order to maintain his authority, to leave sufficient autonomy to the clans for the settlement of their differences.

(c) The third period (1919-1973) opened up the way to the establishment of a constitutional monarchy with the installation, for the first time in the history of Afghan institutions, of basic reforms by King Amanullah and the signing of the Treaty of Rawalpindi in August 1919, by which Afghanistan recovered its external autonomy. In 1921, Amanullah promulgated an instrument regulating the Afghan institutions by separating the power of the monarch and those of the executive. A State Council, an audit office and local assemblies were set up. On the basis of the 1921 reforms, King Amanullah in April 1923 issued a constitutional text which was submitted to the Loya Jirgah but was not applied, since all these measures, including an attempt to bring about the emancipation of women, precipitated his downfall in 1929. In 1931 his successor promulgated the first Afghan Constitution which provided for the installation of a National Council - a sort of Chamber of Deputies - and an Upper Chamber. Islam was proclaimed as the State religion and the shari'a constitutes the basis of the country's legislation. The King as religious authority for practical purposes held all the executive authority, the legislative playing a more or less advisory role. A new Constitution was promulgated in 1964 under which the King appointed the Government and shared the executive functions with it. The initiative in legislative matters belonged to the Government, Parliament and the Supreme Court, the highest judicial body. The institutionalized Loya Jirgah was consulted on matters of a general nature in the event of Constitutional amendments and succession. It should be noted that the Constitution of 1964, by authorizing the formation of political movements made it possible to set up the Afghan People's Democratic Party (PDPA), which brought together the Khalq and the Parsham. The failure once again of this attempt to build up parliamentary institutions can be attributed to the impossibility of applying systems of values not in keeping with a traditional view that is resistant to any change. The 1931 Constitution, rounded off by the more important one of 1964, had the virtue of setting up institutions which took account of the need for reform and the traditional religious values, fundamentally transforming Afghan society and thus opening up a breach which led to the proclamation of a Republic in 1973 by Prince Daoud, following a coup d'état.

(d) A fourth period runs from after the proclamation of the Republic in 1973 until 1978, when Prince Daoud, while attempting to carry out agrarian reform, steered the political, economic and social system towards socialism. Three decrees were to organize the political life of Afghanistan until 1977, when a new constitution was promulgated. This period, marked by an upsurge of discontent and by squabbles between the two political parties contending for power (Khalq and Parsham), ended first in the unification of Khalq and Parsham in July 1977, and then in the coup d'état of 27 April 1978 (the so-called "Saur Revolution") with the fall of Daoud and the takeover by Nur Mohammad Taraki.

(e) During the fifth period, from 27 April 1978 to 29 December 1979, affairs were conducted first by Taraki and then by Hafizullah Amin. This period was also marked by the takeover of power by the two communist elements of the Afghan People's Democratic Party, Khalq and Parsham. In May 1978, a secret police was set up (AGSA), which was recast and replaced early in 1980 by the Khâd (Khedamat-el-Atlas-Dawlati).

A Government set up under the Presidency of Taraki decided to institute a series of reforms by promulgating eight decrees, the text of which is annexed to this report. Among the decrees to which the Special Rapporteur would like to draw particular attention is Decree No. 6 of 12 July 1978, abolishing mortgage indebtedness of the peasants towards the landowners. Decree No. 8 of December 1978 limits family ownership to six hectares of good land. According to information communicated to the Special Rapporteur these reforms, affecting the ancestral relationship between landowners and peasants, were very badly received by the population, on the grounds that "in attempting to break the links between landowners and poor peasants, the reforms deprived the latter of their traditional sources of supply of grain, materials and water which the regime is not in a position to replace". Indeed, the peasants were more interested in a fair sharing-out of water than in the distribution of land which was likely to remain without irrigation. 5/ Decree No. 7, which limited the amount of the dowry payable to the family of a fiancée as a safeguard against possible repudiation also seems to have met with some opposition on the part of the majority traditionalists. Since women are now not paid a dowry, they are without compensation or means of survival. 6/

49. This fifth period which thus originated with the Saur Revolution is decisive for an understanding of the situation as a whole. President Taraki, in his desire to continue the socialist work of Prince Daoud, called in the assistance of the Union of Soviet Socialist Republics to help him to carry through his revolution. To this end he concluded a treaty with the USSR on 5 December 1978, thus remaining in the tradition of his predecessors, who had concluded four treaties with the USSR. 7/

50. In the view of the Special Rapporteur, the present human rights situation in Afghanistan and the resolutions of United Nations bodies on the situation cannot be fully understood without reference to the relationship between Afghanistan and the USSR. This relationship is based today on the Treaty of Friendship, Good Neighbourliness and Co-operation signed on 5 December 1978. This treaty is composed of 13 articles, and article 4 reads as follows:

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

This treaty, as indicated above, followed a number of other treaties between the two countries.

5/ Afghanistan: la colonisation impossible, Paris, Editions du CERF, 1984; G-C Victor, op.cit.

6/ M. and R. Poulton, op.cit.; J-C. Victor, op.cit.

7/ Prior to the agreement of 1978, treaties between the two countries were concluded 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), 1936 (Treaty of Non-Interference in the Affairs of one another, which supplemented the 1931 Treaty).

51. All the reforms introduced during the various periods described above have met with considerable opposition from a number of tribes and ethnic or religious groups as running counter to traditional religious values. Already in August 1978, in several areas where opposition to these measures was the strongest, military operations were undertaken affecting the provinces of Nuristan, Kunar, Paktia, Parwan and Oruzgan. The first exodus, of about 50,000 persons, took place. At about that time, in March 1979, several thousand farmers protested in Herat against reform measures taken by the Government which again led to the use of force and to the creation of the security police. The resistance to the reforms attempted by the Central Government, which in the past had been resolved through the convocation of the Loya Jirgah and consultation of the various representatives in the country, for the first time led to an attempt by the Central Government to impose its reforms by force.

52. Furthermore, since the 1978 Treaty the Afghan institutions have found themselves under the domination and control of a foreign power, in other words a régime which attached no importance to Muslim religious values, thus giving rise to even greater opposition. Finally, the struggle by the two political trends, the sometimes violent reactions aroused by the latest reforms, the assassination of Taraki in September 1979, followed by that of Amin on 27 December 1979, and the popular insurrections, have meant that the resistance movements have expanded, organized and set up a united front against the reforms and against foreign domination.

53. All these elements worked in favour of the installation of Babrak Karmal in power, the foreign intervention of 29 December 1979 and the impact of this situation on human rights, including in particular one of the biggest movements of refugees history has ever known.

54. A general amnesty was proclaimed after December 1979 by the new Government, as a result of which several thousand political prisoners were released; it has been alleged to the Special Rapporteur that in fact this amnesty affected those supporters of the new Government who had been put in prison by earlier régimes. However, not all political prisoners detained under Taraki and Amin were released.

55. At present, the fundamental law of Afghanistan is enshrined in the Fundamental Principles of the Democratic Republic of Afghanistan which were adopted on 21 April 1980.

B. Question of refugees

56. As a result of the situation thus created, as described above, 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.

57. 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.

58. According to information furnished by the Office of the United Nations High Commissioner for Refugees, the number of refugees in Pakistan is in the order of 2.3 million. The majority of these refugees are accommodated in some 324 villages. In addition to the 2.3 million registered refugees, the Special Rapporteur was informed that there are some 400,000 persons awaiting registration as refugees. 8/

59. The influx of refugees to Pakistan is reported to have started in 1973 with the change of Government 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 refugees 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 grown to 2 million and by November 1984, the number of registered refugees had reached 2,488,625. 9/

60. The majority of the refugees were said to be ethnic Pathans; a sizeable number are Baluchis. Other ethnic groups among the refugees include Nuristanis, Tadjiko, Hazara, Uzbeks, Turkmen and Mongols, all in somewhat reduced percentages. In virtually all cases the refugees in Pakistan come from the rural areas. Nearly three quarters of the refugee population is made up of women and children. The refugees come from all 29 provinces of Afghanistan. As this report was being written, the flow of refugees continued. During the period August to December 1984, some 80,000 persons took refuge in Pakistan. In the province of Baluchistan, for example, the number of refugees fluctuates between 5,000 and 8,000 per month.

61. The Government of Pakistan informed the Special Rapporteur that the refugees are given shelter in 301 refugee tentage villages (RTVs).

62. In the course of his visit to Pakistan from 14 to 22 December 1984, 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 from home and country to a need for what was termed as "respect for the faith and for liberty". In essence, the reason for their flight from Afghanistan was the human rights situation that persisted there.

63. There are many refugees in the Islamic Republic of Iran which the Special Rapporteur has not yet had the opportunity to visit. The United Nations High Commissioner for Refugees records some 1,655,000 refugees distributed in 12 different provinces. Similarly a considerable number of Afghans, said to be from the urban areas in Afghanistan, have fled to India. 10/

8/ UNHCR, Report on UNHCR assistance activities in 1983-1984 and proposed voluntary funds programmes and budget for 1985 (A/AC.96/639), UNHCR Information, No. 4 of April 1984 and No. 10 of June 1984.

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

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

64. It is therefore an established fact that some 4 million Afghan citizens have sought refuge outside the country; this constitutes approximately one third of the total population of the country. This fact in itself makes it imperative to determine the reasons for what may be termed a large-scale exodus. It may be appreciated that the sheer volume of refugees is also per se a human rights problem, not to speak of the economic burden imposed upon those countries who find themselves having to carry out the international humanitarian obligations imposed upon them by this exodus.

65. In addition to the information gathered from interviews of persons having direct knowledge and experience, the Special Rapporteur, as specified in his mandate set out in Council resolution 1984/37, sought information from specialized agencies, intergovernmental organizations and non-governmental organizations. Ample information received from these sources clearly illustrates that the main reasons for flight from Afghanistan are:

(a) The situation of human rights in regard to the events starting with the "new revolutionary phase" since 17 April 1978, in particular, since 31 December 1979 and,

(b) The situation of human rights created by the emergency situation which was brought about by the growth in the resistance in several parts of the country and which in itself led to the armed conflict involving foreign troops on the basis of an international agreement.

III. 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 in 1980

66. In the preceding chapter, the Special Rapporteur has described the exodus of Afghan citizens from various regions of Afghanistan since 1978. In the interviews conducted by the Special Rapporteur as reflected in the preceding chapter, it became apparent that the reasons for their departure were rooted in the human rights situation created as a result of the April 1978 revolution.

67. At the very 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 are briefly described below:

(a) Decree No. 1, promulgated on 30 April 1978, concerning the organization of the Government and the establishment of the Revolutionary Council as the supreme power and of the Government of the Democratic Republic of Afghanistan. The Decree sets out that Government shall be conducted by decrees emanating from the Revolutionary Council;

(b) Decree No. 2 of 1 May 1978 nominates the members of the Government;

(c) Decree No. 3 of 14 May 1978 establishes the High Judiciary Council and regulates the relations between the State and the individual. Under this Decree the Judiciary Council is made responsible to the Revolutionary Council. In addition, a Revolutionary Military Court is established which is also made responsible to the Revolutionary Council;

(d) Decree No. 4 of 15 May 1978 concerns what is described as the development and evolution of the culture and language of the tribes and nationalities which make up Afghanistan;

(e) Decree No. 5 of 12 June 1978 recognizes the rights of citizens and, inter alia, withdraws the citizenship of some 23 persons belonging to the royal family;

(f) Decree No. 6 of 12 July 1978 introduces land reform;

(g) Decree No. 7 of 17 October 1978 sets out regulations on equal rights for women and men in the field of civil law, purporting to remove what is termed as the "unjust patriarchal feudalistic relations between husband and wife" with the avowed purpose of consolidating future family ties;

(h) Decree No. 8 of 28 November 1978 sets out further rules and regulations about land and defines the expression "family", peasant and other categories of agricultural workers.

68. According to the information received by the Special Rapporteur, both the content and the method of application of these decrees created opposition. 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, including the eventual disappearances of hostages taken, in the traditional custom, whenever measures of a certain drastic nature were to be applied. This, in turn, led to

action against the Government and to violence between civilians in the village areas and the military. During this period, it is reported, several party members and soldiers were killed and wounded.

69. Application of the reform in the urban areas was said to have been characterized by arbitrary arrest of those persons who offered disagreement or resistance. It is said that in this period the Poli Charki prison in Kabul, in which several tens of thousands of persons were held in detention, acquired a certain notoriety.

70. This period ended with the change of government in December 1979 and the proclamation of an amnesty in the context of which it was also announced that, during the preceding two years, thousands of persons had allegedly been executed without trial.

71. At this juncture, the Special Rapporteur would like in a general way to recall that under article 6 of the International Covenant of Civil and Political Rights: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". This obligation on States to respect the life, liberty and security of the individual is supplemented, in his view, by the prohibition laid down in article 7 of the same Covenant against subjecting the individual to cruel, inhuman or degrading punishment or treatment. Thus, the main complaints of violations of human rights examined by the Special Rapporteur from the point of civil and political rights during the period under consideration are analysed below on this basis. In addition, in view of the number of cases of disappearance brought to his attention during the period under consideration, he felt that he should take account of these also in the present report. This section covers the period since the arrival in power through a government coup d'état or the People's Democratic Party under the leadership of President Noor Mohammad Taraki, and the period during which Hafizullah Amin succeeded Taraki, up to 27 December 1979.

72. The gist of the information given the Special Rapporteur indicates that about 1,000 persons, if not more, were arrested during the period up to April 1979 following an uprising in the town of Herat. In some instances the arrests of political prisoners was followed by detention of their wives and children. The range of persons arrested extends from members of the fundamentalist religious groups to members of extreme left groups and embraces members of the Government, students, businessmen, diplomats, academics and party dignitaries. By way of example, the Special Rapporteur recorded the testimony of two persons who had been arrested during the period.

73. Throughout the hearings held by the Special Rapporteur, it became more and more difficult to estimate accurately the number of political prisoners detained during that period. However, it would seem fair to refer to the list of 12,000 persons reportedly executed since 1978, as published by the Ministry of the Interior in the Amin Government.

74. In this context, according to the information received, a number of political prisoners were also tortured. One of the complaints relates to Mr. Sayed Abdullah Kazim, a former Dean of the Faculty of Economics, imprisoned at Poli Charki at the same time as Mr. Ludin. In this connection, Mr. Ludin, himself arrested in June 1978 and detained until 11 January 1980 in the Poli Charki prison, reveals that he himself was present during the torturing of Mr. Kazim, who had the fingers of both hands crushed under the legs of a chair on which two of his torturers sat. Having himself been tortured, the witness drew the attention of the Special Rapporteur particularly to events which had taken place on the night

of 31 May to 1 June 1979 in the Poli Charki prison. Shots fired in the prison courtyard had been heard by the witness, who was told by the prison guards that about 118 prisoners were being executed. The shooting was followed by the departure of buses carrying the bodies, some of them still showing signs of life. The testimony of a former female detainee of Poli Charki likewise revealed that during her detention between May and November 1978 she had several times heard shooting in the prison courtyard along with the departure of the corpses of prisoners in buses. The same witness spoke of the existence of a section of the prison reserved exclusively for women, and the Special Rapporteur had the occasion to interview a woman who had been incarcerated in that prison.

75. According to information received, none of the political prisoners arrested between April 1978 and December 1979 had been brought to justice.

76. Several individuals gave the Special Rapporteur an account of ill-treatment suffered during their detention, including: deprivation of sleep, tearing out of finger nails, burns of various types, electric charges, in some cases involving the use of electric generators.

77. Similarly, the Special Rapporteur received information concerning the disappearance at Kabul of 9,000 persons alleged to have been killed prior to 27 December 1979. Information from Amnesty International refers to a list of 4,854 prisoners who had been killed, but the list has not been made public.

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

78. As stated above, foreign troops entered Afghanistan on the strength of a treaty referred to in paragraph 49. This intervention had a bearing on the human rights situation in Afghanistan in two respects: firstly it spread the extent of the violence by introducing military forces and secondly it brought about a selective suppression of those elements who opposed the reforms promulgated earlier, persons characterized as acting "against the interests of the people, the national interests, domestic security, foreign security, etc."

79. Following the general amnesty of January 1980, according to the information communicated to the Special Rapporteur, the application of the reforms envisaged in 1979 took a different form, in that the elimination of opposition to these reforms became more specialized compared to previous efforts which were indiscriminately aimed at a broader mainly rural sector of the population.

80. The Special Rapporteur took note of information to the effect that certain regions of Afghanistan were not the scene of armed conflict; those regions could be divided into two sectors, namely that in which the Government had effective control and that in which there was no central governmental control. It may be stated that the Government controls the larger villages and cities, including the main arteries connecting them; in these areas the judicial and administrative structures function in accordance with Decree No. 3 of 1978. On the other hand, in the sectors where there is no central governmental control, traditional laws are applied more or less on an ad hoc basis.

81. The Special Rapporteur was informed that although the judicial and administrative structures apply in the government-controlled areas, the political situation prevailing in such areas has brought about considerable neglect in the administration of justice; this upheaval in the judicial system and in the administration of justice in general is said to be due principally to priority being focused on cases of a political character, such as those considered as offences against the Saur Revolution and the political system of reform that the revolution attempted to introduce.

82. The judicial system, which traditionally followed that in other countries and was administered by persons trained in law and in the administration of justice, also changed so that, according to the information available to the Special Rapporteur, the administration of justice was entrusted to persons who did not have such training; it was said that certain tribunals were made up of members of the secret police.

83. The Special Rapporteur received considerable information on the structure of the secret police in Afghanistan which, it was alleged, played a major role in the negative human rights situation prevailing in the country. According to this information, secret police forces in various forms existed under the various regimes; in the present situation it is said that the present secret police, known as the Khad, organizes and is responsible for the systematic arrest and interrogation, including torture, of persons suspected of opposing the regime.

1. Violations of the right to life and security

84. A few days after taking over power, the new Government under the leadership of Babrak Karmal announced a general amnesty for all political prisoners in Afghanistan. Unfortunately, the Special Rapporteur was unable to check the number of individuals thus freed.

85. Contrary to certain promises made by the Government to respect individual freedom and property, to hold elections, and to set free political prisoners, several ministers of the previous Government are alleged to have been imprisoned and some of them executed in the summer of 1980. The situation was described as being particularly tense, and the reaction of the population to occupation appears to have resulted on 21 February 1980 in an uprising at Kandahar and Kabul, and subsequently in student demonstrations at the end of April and the beginning of May 1980, during which unarmed schoolgirls who thought that they had a certain measure of immunity were shot by the militia. 11/ Between March and December 1980, official statistics speak of 4,231 prisoners as being freed. Of these, 42 representing former members of the Government are apparently again in prison, and seven of them were executed in 1981 in the course of a trial held in camera. No charges were issued and no information appears to have been transmitted indicating whether they were tried or not. At present, according to one source, over 50,000 political prisoners are distributed as follows between Kabul and the provincial prisons: 70 per cent men, 15 per cent women and 15 per cent young people; the latter two categories being held for the most part in the provincial prisons.

86. A number of accusations of ill-treatment and torture were brought to the attention of the Special Rapporteur during the period covered by the present report. With regard to the nature of the torture, the Special Rapporteur was apprised of a whole series of torturing techniques applied. A former officer of the security police in his testimony listed the following eight types of torture: giving electric shocks, generally to the genitals in men and the breasts in women; tearing out nails and introducing electric shock; preventing the prisoners from doing their business, so that after a time they are obliged to do it in the presence of other co-detainees (a technique designed to humiliate the prisoners); sticking pieces of wood in the men's anus (particularly applied to old and highly-respected prisoners); plucking out the beard of some prisoners, especially elderly men or religious figures; pressing on the prisoners' throats to force them to open their mouths while the guards urinate into them; setting police dogs on detainees; hanging them by the feet for an indeterminate length of time; raping women; tying their hands and feet and introducing a variety of objects into the vagina. The witness gave the following names of torturers he had known himself: Mohammed Rahim, Samad Azhar, Abdul Ghani and Farouq Miakhail.

87. According to concordant testimony submitted to the Special Rapporteur, the Ministry of the Interior, the Kabul prisons and all the Khâd detention centres were places where the special police and the members of the armed forces regularly practised torture. 12/ Incidentally, several of the persons questioned, who had themselves undergone torture, confirmed these facts.

11/ Afghanistan: la colonisation impossible, Paris, Editions du CERF, 1984.

12/ List of detention centres actually functioning throughout the territory; Poli Charki, military bases (in the provinces in particular); police stations at Kabul and in each of the provinces, Ministry of the Interior; headquarters of Khâd, and eight detention centres at Kabul controlled by the Khâd; some 200 individual houses in the region of Kabul used as detention centres and controlled by the Khâd.

88. With regard to political prisoners at present in detention, according to some sources there are scores of thousands of persons in prison today. The Special Rapporteur was given concrete information concerning two cases in particular: Mr. Hassan Kakar, Chief of the History Department at the University of Kabul, was arrested by the Khâd on 21 March 1982 and according to information received is still in detention. Mr. Kakar, allegedly arrested following his criticisms concerning the growing number of foreign teachers at the university, was detained along with several other academics. The information available concerning him speaks of a trial held in camera, his family not being allowed to visit him. The second case is that of Mr. Nur Akbari, an Afghan nuclear physicist arrested at Kabul on 27 April 1984 by the Khâd and kept in solitary confinement. According to first-hand information, Mr. Akbari was tried by a revolutionary tribunal at Kabul and accused of being a member of an illegal organization and of receiving subsidies from China enabling him to purchase arms. Mr. Akbari, who had already been arrested twice in 1981 and 1982, was condemned to death on 23 May 1984 by a special revolutionary tribunal. In this connection it should be recalled that there is no appeal against these tribunals.

89. In addition, several witnesses emphasized the large number of detentions without trial and without charges. The Special Rapporteur took particular note of a personal declaration by a witness to the effect that following his arrest by the Khâd on 16 June 1980 he was detained for three months in the Khâd premises and then transferred to the Poli Charki prison, where he was imprisoned for five months without being tried or charged. At the end of this period he was tried in camera along with 12 other detainees by a revolutionary tribunal consisting of three civil judges. A lawyer designated by the Government defended him, according to his statement. Charged along with the other detainees of taking part in anti-revolutionary activities, the witness said he was sentenced, along with nine other detainees, to four years imprisonment, the other three being executed. ^{13/} The witness showed the Special Rapporteur a copy of the judgement handed to the accused when they were sentenced by a special revolutionary tribunal in application of articles 272, 239, 221 (4), 84 and 87 of the criminal legislation.

2. Capital punishment

90. With regard to the imposition of capital punishment in Afghanistan, the Special Rapporteur was told of a number of cases for which death sentences had been pronounced in 1984.

91. In this connection, the Special Rapporteur would like to recall that the right to life is not only a fundamental right but also that on which all others depend. According to article 3 of the Universal Declaration of Human Rights, "Everyone has the right to life, liberty and security of person"; while the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the African Charter of Human and Peoples' Rights specify all of them that no one may be "arbitrarily deprived of life". At present the death penalty would appear to be applied to the following categories of offences: murder, espionage, kidnapping, armed resistance to the Government. The Special Rapporteur noted that several requests for commutation of the death sentence had not been acted upon in spite of the provisions of article 6, paragraph 4 of the International Covenant on Civil and Political Rights, which states that "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

^{13/} The names of the three persons executed were given as: Mohammed Ishak Rizai, Ghulam Hussain Amini and Zomen Ali Wahidi.

3. Right to freedom of movement

92. With regard to the right to freedom of movement, the Special Rapporteur was apprised of two cases where this right was not respected, in violation of the provisions of article 12, paragraphs 2 and 4 of the International Covenant of Civil and Political Rights, which states that "everyone shall be free to leave any country, including his own". Some witnesses stated that their Afghan nationality had been withdrawn, after they had been informed of the fact by the authorities. Two witnesses in particular ascribed the withdrawal of their nationality to their disagreement with the political line followed by the Government.

4. Conscription of children from the age of 15

93. As already pointed out, 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.

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

94. While bearing in mind the difficulties inherent in determining the number of persons displaced as a result of the present situation in Afghanistan, the Special Rapporteur nevertheless regarded it as of the utmost importance to draw the attention of the Commission on Human Rights to information brought to his notice concerning displaced persons in Afghanistan.

95. According to the little fragmentary information at the Special Rapporteur's disposal, it would appear that the problem of displaced persons in Afghanistan is basically bound up with the situation of insecurity arising from the systematic bombardment of a number of villages. Hence most of the displaced persons come from rural regions and have settled in the urban zones. Generally speaking, there seem to be two types of displacement of the population within the country: in regions where emigration is not easy, there is a movement from the country to the city (Kabul, which at present has more than two million inhabitants, and Kandahar); secondly, the Pashto, who are semi-nomad shepherds, generally take refuge under canvas in the mountains. A large number of them appear to have been living for more than two years in extremely precarious conditions in the mountains.

96. It would appear that the reason for this displacement is that the people concerned are obliged to collect in the urban centres, first of all to avoid the repeated bombardment of the villages where they lived, and secondly because of the tactics used by the authorities to control these groups more easily and thus to overcome their resistance, depriving them of a base of support within the population.

C. The human rights situation in the armed conflict

97. The current hostilities in Afghanistan have lasted over five years; according to information communicated to the Special Rapporteur, hostilities did exist before 1979 but, with the intervention of foreign troops, these hostilities acquired unprecedented proportions. The Special Rapporteur received various reports about the loss of life incurred as a result of these hostilities and, during his short visit to the area in Pakistan bordering on Afghanistan, he had occasion to see a sample of the serious injuries inflicted on civilians. The Special Rapporteur does not have precise statistics about the losses incurred either by the Government forces or by the resistance.

98. One representative of the Afghan opposition movements told the Special Rapporteur that in all probability hardly a family or village in Afghanistan had not suffered a loss as a result of the hostilities.

99. Within the context of human rights, the hostilities should be seen in the light of the applicable international instruments. There is no doubt that past and present fighting in Afghanistan affects several regions and provinces and has given rise to a number of acts which are summarized below:

Willful killing, including murder;

Torture and inhuman treatment;

Denial of a fair trial;

Arbitrary arrest and execution of sentences;

Taking of hostages.

100. The means by which these acts have been carried out have been described to the Special Rapporteur as reprisals, indiscriminate bombardment, non-respect of hospital zones, maltreatment of prisoners taken during the fighting, non-respect of personal property and use of specialized weaponry.

101. According to testimony compiled by the Special Rapporteur, the situation prevailing at present in Afghanistan is particularly disturbing in regard to the fate of captured prisoners, women and children, and wounded and sick persons.

1. The fate of prisoners of war

102. In this matter, most of the witnesses interviewed stated that captured combatants were systematically assassinated. The Special Rapporteur also heard a large number of accusations that prisoners of war were tortured and in some cases killed. One example in particular drew his attention: a witness described how 20 combatants were bayoneted to death in December 1982 at Ghazni.

103. Prisoners captured by the resistance movements apparently suffered the same type of treatment. The Special Rapporteur received testimony to the effect that the treatment given varied according to the category of the prisoner captured by the resistance: (a) Muslim or non-Muslim Africans were integrated into the resistance or freed but kept under surveillance; (b) foreign non-Muslim prisoners were summarily executed.

104. Apparently in 1982 an agreement on conditions for the internment of foreign prisoners was signed between the Afghan resistance movement and the International

Committee of the Red Cross (ICRC) under which the resistance expressed its intention to respect the spirit of the provisions of the Geneva Convention relative to the Treatment of Prisoners of War. ^{14/} This involves the application of article 3 of the Geneva Conventions under which the parties to armed conflict can conclude agreements or make statements specifying that they will apply all or part of the other provisions of the Conventions. Analysing this agreement as calculated to set an example for better treatment of prisoners of war, witnesses stated that since then the resistance movements had endeavoured to ensure that foreign prisoners were not tortured or assassinated.

2. Treatment inflicted on women and children

105. Several reports referred not only to torture and ill-treatment inflicted on women but to degrading treatment undergone by many of them. The Special Rapporteur took particular note of cases of women who had been raped in the presence of members of their families. One witness mentioned the case of one Said Rafik, killed by soldiers because he had intervened to prevent his daughter from being raped by a soldier.

106. In his testimony, a former officer of the security police stated that he himself had witnessed a scene in March 1980 on the premises of the Ministry of the Interior at Kabul, where a husband had been obliged to watch the rape of his wife, who was eight months pregnant.

107. Numerous witnesses declared that children had been very seriously wounded, having their hands and their feet blown off either by handling "booby-trap toys" they had picked up along the roadway or by stepping on them.

108. According to one witness, this technique had begun to be used at the beginning of 1982, when these "toys" had been dropped by helicopter into zones presumed to be occupied by the resistance. The "booby-trap toys", which exploded on the slightest contact, were shaped like pens or small animals and looked completely inoffensive from the outside.

109. In the course of a visit to the Afghan surgical hospital at Peshawar, an establishment exclusively set aside for the care of wounded Afghan civilians and members of the resistance, the Special Rapporteur was able to consult bulky files containing several hundred cases of patients treated since 1981 together with an analysis of interviews giving particulars of the circumstances in which the patients had been wounded, the date of the incident, their region of origin, their location on the battlefield, etc. ^{15/} Photographs taken at the time of

^{14/} United Nations, Treaty Series, vol.75, No.972.

^{15/} According to statistical data communicated to the Special Rapporteur, the hospital housed 453 wounded persons between August 1980 and August 1981, 1,050 between 1981 and 1982, 1,595 between 1982 and 1983, and 2,195 between 1983 and 1984. In December 1984 it housed 2,425 wounded. Approximately 45 per cent of the people were hospitalized following the explosions of bombs. Publications on the activities of ICRC in favour of the victims of the armed conflict in Afghanistan spoke of the admission of 5,275 wounded persons between June 1981 and November 1984 to the Peshawar Hospital and of 1,037 wounded persons between July 1983 and November 1984 in the hospital at Quetta.

arrival of the patient enabled the Special Rapporteur to note among the selected cases children of nine to 15 years of age with hands or legs blown off, either by handling booby-trap toys or by stepping on mines. In addition, some had multiple fractures caused by rifle butt wounds received during the checks carried out in the villages; others were burnt by a flame-producing chemical liquid contained in bombs which as they exploded liberated a sort of plastic which adhered to the clothing and the skin.

110. One case which drew the attention of the Special Rapporteur was that of Attiqullah, a youngster of 15 years of age wounded by bullets in the legs and stomach on his way with his mother to seek refuge in Pakistan. The incident had taken place on 20 November 1984 in the village of Badga in the province of Kunar. When he arrived in a refugee camp he recovered and was put into hospital on 22 November 1984. The child had told the Special Rapporteur that he and his mother were escaping from the village, which had been destroyed following bombardments.

111. The Special Rapporteur also found children hospitalized on visits he made to two of the five hospitals in Baluchistan set aside for the treatment of Afghan wounded: the Al-Khidmat hospital and the Al-Jihad hospital at Quetta.

112. In addition, numerous cases of assassination of women and children were brought to the notice of the Special Rapporteur. They were described as having taken place frequently in villages, as reprisals following skirmishes between the troops and elements of the opposition movement.

113. The Special Rapporteur obtained information concerning the case of a girl of 12 whose parents were killed in 1981 following the bombing of their village (Khot), in the province of Nangahar. The girl, now a refugee in the camp at Nasir Bagh, looks after her two brothers and four sisters. During the visit by the Special Rapporteur to this camp, Mr. Malik Nasir, the co-ordinating head of the camp, said that there were several other persons who had similar responsibilities in the camp, which held about 300 orphans and 400 widows.

3. Bombardment and massacre of civilians

114. Eye witnesses told the Special Rapporteur of alleged massacres of civilians during the bombardment of villages. According to these witnesses, such acts were part of a deliberate policy, especially over the last two years, to force the people to take flight. In this connection, one witness declared that the country's economy had been completely destroyed by the systematic bombing of rural areas housing about 85 per cent of the population, and in fact occupied by the resistance and regarded as liberated zones.

115. Situations were brought to the notice of the Special Rapporteur concerning the bombing of refugees escaping from Afghanistan into Pakistan. For example, 300 families on their way to Pakistan had been bombed in the village of Ghagheharan in the province of Ghowr in October 1984.

116. The Special Rapporteur heard allegations concerning massacres, and he feels it necessary to draw the attention of the Commission, by way of examples, to the following alleged cases:

(a) On 13 September 1982, approximately 105 persons were killed in the village of Padkhwab-e-Shana in the province of Logar, including 61 victims from the village itself. In the course of an infantry operation in the village, the

population, consisting of children, old people and a few combatants, took fright and hid in an underground channel used for irrigation (Karez). To dislodge them, troops poured a whitish liquid mixed with white powder into three outlets of the channel and set fire to it. Charred and decomposed bodies were brought out by the villagers. The corpses were said to include 12 children;

(b) On 12 October 1983, in the villages of Kulchabat, Bala Karz and Mushkizi in the province of Kandahar, 360 persons were executed in the village square, including 20 girls and about 20 old people;

(c) In March 1984, several hundred civilians were massacred in the villages of Dash-e-Bolokhan and Dash-e-Asukhan in the Kohistan region;

(d) In November 1984, some 40 civilians were massacred in the village of Zirvq situated in the Urgun region after two weeks of steady bombardment. According to the witnesses, several houses were destroyed and the cattle decimated.

4. Use of poison gases

117. The Special Rapporteur found evidence of this in the camps and refugee hospitals at Quetta and Peshawar where he had direct talks with wounded persons who alleged that they had been the victims of poison gases.

118. Several concordant reports alleged the poisoning of the water, cereals and livestock, the use of chemical agents, and the explosion of bombs producing gases of various colours with an incendiary effect. In this connection the Special Rapporteur mentions the following cases:

(a) The most striking case is that described in paragraph 116 above, giving an account of how chemicals were poured into an underground channel at Padkhwab-e-Shana in 1982;

(b) Another report referred to the use of bombs which produced poisonous gases, some of which caused convulsions. Such gases were in particular alleged to have been used against cattle in the regions of Qargha and Uzbin, killing the cattle;

(c) During his visit to the hospitals and the dispensaries at Quetta and Peshawar, the Special Rapporteur talked to victims who complained of ailments due to exposure to poison gas or a chemical liquid. In one case a victim had shown and described to the Special Rapporteur signs of disorders attributed to the effects of the bombs containing flame-producing liquid chemicals. When the bomb exploded, the effect of these agents was to scatter a plastic material which tore the skin and adhered to clothing.

5. Reprisals and acts of terrorism

119. Among the reprisals taken on civilians in hospital, mention should be made of the case of bombings aimed at and destroying hospital installations, some of them marked with the red cross. Because of the failure to respect hospital buildings and the tendency to bomb them systematically, the hospital authorities told the Special Rapporteur that they refrained from putting up any sign which could identify them. In that connection, the Special Rapporteur took particular account of the

testimony of Dr. Chouaid, an eye-witness and a member of International Medical Help, who spoke of the systematic bombing of three hospitals: in 1981, the first hospital was bombed in the Panjshir Valley at Ostoma; in 1982 a second hospital was also bombed, in spite of the fact that it was marked with the red cross on the roof; and finally, in March 1983, a third hospital was built - it had not been bombed up to 1984 because an eight-months truce had been signed, according to the witness, between Commandant Massoud and the Afghan authorities. However, in March 1984 the hospital was bombed and the whole of the health infrastructure was destroyed. 16/

16/ See also the thesis for the Doctorate of Medicine published by Dr. Chouaid entitled "Story of a five-months medical mission in Afghanistan with International Medical Help", Faculty of Medicine, Paris, 1984.

D. Situation with regard to the enjoyment of economic,
social and cultural rights

120. Certain basic conditions have to be ensured in a society in order to permit the individual to enjoy his economic, social and cultural rights. These conditions presuppose the enjoyment of such rights as, for example, the right to work, freedom of association, social security, education, etc. Thus, the ideal of the free human being enjoying freedom from fear and want can be achieved.

121. The situation in Afghanistan does not permit the existence of such conditions; this is due mainly to the existence of the state of hostilities and the forcible application by the Government, by all means at its disposal, of its policy of education and culture of the people at large, in particular since the April revolution of 1978.

122. The state of hostilities in particular has brought virtual paralysis in the agricultural sector as a result of systematic and continuing bombardment in certain provinces.

123. The Special Rapporteur was informed by a number of refugees, who left their homes in different provinces during the last months of 1984, of the destruction and devastation of villages and fields, as well as livestock, that they had seen on their way to their place of refuge. The attention of the Special Rapporteur was drawn to the destruction of the irrigation system in Kandahar province as a result of aerial bombardments which also prevented any repairs from being carried out, thus destroying the agricultural exploitation of the area. As a consequence of this situation, and the flight of the farming community to other parts of the country, agriculture and therefore food production, have come to a virtual standstill. The Special Rapporteur was informed of the danger that exists at present of hunger and cases of malnutrition, particularly among children, were brought to his attention. The food situation is becoming increasingly serious in spite of efforts to import food supplies from outside the country.

124. Concerning cultural life in Afghanistan, the Special Rapporteur was told that, as a result of the political situation, some 80 per cent of the intelligentsia or leadership had either left the country or disappeared. For example, he was told that the teaching staff at the University of Kabul and at the University of Jalalabad had been completely renewed, the experienced "old professors" being replaced by teachers who were considered to be loyal to the régime. Similarly, the student population, the Special Rapporteur was told, has dramatically decreased. For example, at Kabul University which had had some 15,000 students prior to 1980 is now said to have only 4,000. The University at Jalalabad now has 2,000 students whereas before 1980, there were said to be some 6,000.

125. As far as elementary education is concerned, the traditional system is said to continue in those zones which are not under Government control. However, in areas subject to hostilities, where villagers are in a state of flux, systematic education has been disrupted. In those areas which are under Government control, the Special Rapporteur was informed that education was provided on the basis of Decree No.4 (see para. 67(d) above). Male students over 15 years of age attending government schools have been subject to military service since 1980, which is alleged seriously to disrupt their education.

126. Without pretending to analyse in detail the impact on the effective recognition of economic, social and cultural rights, the Special Rapporteur would like to consider the present situation relating to some of these rights on the basis of first-hand information placed at his disposal. In this connection, he wishes to point out that this analysis is made in the light of certain provisions of the International Covenant on Social and Cultural Rights, especially article 11 concerning the right to an adequate standard of living.

Right to an adequate standard of living

127. The main information examined by the Special Rapporteur from the economic, social and cultural points of view relates to the economic situation in Afghanistan, which has become more and more vulnerable to famine because of the dangerous downgrading of agriculture since the beginning of 1980. It is alleged that the situation has grown worse over the last two years. Some estimates maintain that production of the main crop, cotton, declined by 83 per cent between 1978 and 1982 and rice production by 75 per cent during the same period. The price of food has risen dramatically in some regions. For example, between the autumn of 1983 and the autumn of 1984, prices rose by 64 per cent for wheat, 73 per cent for rice, 66 per cent for tea and 46 per cent for sugar. This strictly economic situation is compounded by a social factor due specifically to the consequences of the war situation, namely the number of "internal refugees" - displaced persons making for the urban centres in the search for food and safety.

128. Three regions in Afghanistan are particularly threatened by famine - the Panjshir and adjoining valleys, Badakhshan, and western Hazardjat. In a study published recently by Mrs. Frances D'Souza on "The threat of famine in Afghanistan", the author says that more than 500,000 persons are in danger of dying in Afghanistan because of the famine situation unless immediate aid is forthcoming. This study also stresses the particular situation of children, which is nothing short of catastrophic because of malnutrition. In the same context, the Special Rapporteur has received information from Dr. Malhuret, of Médecins sans frontières, to the effect that malnutrition as existing at present in the Panjshir Valley is bringing infectious disease which it is becoming more and more difficult to stamp out because of the lack of adequate socio-economic structures. Dr. Malhuret is of the opinion that the medical problem has become basically a problem of nutrition. He speaks of a child mortality rate of nearly 85 per cent in the course of the winter of 1985. Concordant information refers to warning signs of famine, particularly in the Panjshir region, where deaths from hunger and the appearance of diseases associated with famine have already been reported.

129. During a visit to a dispensary at Quetta, a medical practitioner told the Special Rapporteur that the majority of the children at present undergoing treatment in his establishment were suffering from malnutrition for want of proteins and the condition of the mothers, who for lack of adequate nourishment are incapable of breast-feeding their babies. Most of the children at present in the dispensaries come from the province of Paktia.

130. Another witness, speaking of the situation in the province of Kandahar, said that agriculture in that region could be said to have been completely destroyed; cultivation was non-existent because of the migration of the population to escape bombing. The immediate consequence was a rise in prices of the few products still obtainable. In that connection, a number of witnesses blamed the increase in the price of foodstuffs in the areas controlled by the Government on the fact that most of them had for some time been imported from abroad.

131. Without reverting to the principles of the various agrarian reforms and the reactions they have aroused in the rural societies, it seems clear that the immediate consequence of this situation has been failure to respect the traditional factor characteristic of Afghan society. Moreover, the state of war in which the Afghan people live has merely worsened the economic situation, which had already begun to show signs of strain in the 1970s.

E. Aspects of self-determination

132. In the course of his interviews with Afghan refugees and, in particular, with the representatives of the Afghan opposition movements, as well as numerous families coming from various regions of Afghanistan, a common aspiration expressed was the right and the ability to return to their country. In particular, the question of the political status of their country and the pursuit of their economic, social and cultural development was addressed.

133. The feeling was unanimously expressed to the Special Rapporteur by those with whom he had an opportunity to speak that their principal aspiration was to return to their homes as soon as the conditions were created which would permit them to do so. Some of these persons, expressed the view that the political future of their country should be determined freely by the convocation of a Loya-Jirgah, which is the traditional forum in which Afghans solve their perennial domestic, internal differences and problems. The Special Rapporteur was told that this would only be possible if foreign troops were withdrawn from the country.

134. In addition, the Special Rapporteur was told that in the province of Sarhad-i-Wakhan, situated in the extreme east of Afghanistan, the Afghan Government had surrendered de facto sovereignty to the foreign forces. The population of this area, known as the Kirgise tribe, has sought refuge in the north of Pakistan. The Special Rapporteur was informed, in addition, that some 4,000 Afghan refugees of Turkish ethnic origin were, in fact, transferred to Turkey. 17/

17/ UNHCR, Report on UNHCR assistance activities in 1983-1984 and proposed voluntary funds programmes and budget for 1985 (A/AC.96/639), para. 790.

IV. RELEVANT CONSTITUTIONAL AND INTERNATIONAL LEGAL FRAMEWORK IN REGARD TO HUMAN RIGHTS

135. The most important action taken by the United Nations in the domaine of human rights is the drafting of declarations and international instruments. There are some 22 international human rights instruments signed, ratified and acceded to and numerous declarations and other resolutions of United Nations organs dealing with human rights. Amongst these declarations and resolutions the Universal Declaration of Human Rights of 10 December 1948 is of paramount importance. This declaration provides the General Assembly's interpretation of what is meant by "human rights and fundamental freedoms" in the texts quoted from the Charter of the United Nations. It has been maintained that the obligations imposed by those texts upon States Members of the United Nations have therefore been extended to the more precise provisions of the Universal Declaration. It has also been claimed that the provisions of the Universal Declaration have become recognized as general principles of international law by dint of their widespread acceptance by States and international organizations.

136. In regard to the development of humanitarian law there has also been progress. Besides the Geneva Conventions of 12 August 1949 18/ and the Additional Protocols thereto, 19/ the General Assembly in resolution 37/116 reiterated the call to all States to consider ratifying or acceding to the two Protocols without delay. The Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare is also relevant. The International Conference on Human Rights held in Teheran observed in resolution XXIII of 12 May 1968 that armed conflicts continued to plague humanity and considered that the widespread violence and brutality of the times, including massacres, summary executions, tortures, inhuman treatment of prisoners, killing of civilians in armed conflicts, and the use of chemical and biological means of warfare, including napalm bombing, resulted in the erosion of human rights and engendered counter-brutality. 20/ The General Assembly in resolution 2444 (XXIII) taking note of that resolution, invited the Secretary-General, in consultation with ICRC to study, inter alia, the need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare.

137. The facts mentioned in the foregoing paragraphs and chapters are of legal relevance to the human rights situation in Afghanistan. They must be viewed in the context of the legal obligations imposed on the States parties by human rights instruments and humanitarian law. Although Afghanistan did not become a party to the International Covenants on Human Rights until 1983, and is not a party to the protocols additional to the Geneva Conventions of 1949, the Special Rapporteur considers it appropriate to repeat the opinion expressed by Mr. Héctor Gros Espiell in his report on the human rights situation in Bolivia (E/CN.4/1500, para. 28), that "it is nevertheless 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".

18/ United Nations, Treaty Series, vol. 75, Nos. 970-973.

19/ International Committee of the Red Cross, Protocols additional to the Geneva Conventions of 12 August 1949 (Geneva, 1977).

20/ Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968 (United Nations publication, Sales No.: E.68.XIV.2), chap. III.

138. In addition, these facts must be examined in relation to the provisions of the Universal Declaration, 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.

A. Constitutional framework

139. Although constitutions were promulgated by the monarchy in 1923 and 1931, Afghanistan remained virtually an absolute monarchy until 1964. Under the 1931 Constitution, the Government was not responsible to Parliament nor did it have to receive a vote of confidence. Under the 1964 Constitution, freedom of the press, speech and association was guaranteed. The 1964 Constitution was based on the separation of the executive, the legislative and the judiciary. The legislative power was vested in the Strura (Parliament). The ministers were appointed by the Prime Minister who was nominated by the King. The judiciary was an independent organ of the State, composed of a Supreme Court and a number of subordinate courts.

140. The Constitution of 1964 was rendered de facto obsolete by the establishment of the Democratic Republic of Afghanistan in April 1978. On 14 April 1980, the revolutionary Government adopted the "Fundamental Principles of the Democratic Republic of Afghanistan", which came into effect on 21 April 1980 and served as an interim constitution, pending the adoption of a final constitution. Annex I contains various provisions of these "Fundamental Principles" which may be considered relevant to the report of the Special Rapporteur. In addition, Decree No. 3 dated 14 May 1978 contains important regulations on the structure of the judiciary in articles II to X.

141. The preamble to the Fundamental Principles of the Democratic Republic of Afghanistan in referring to the "real will of the people", mentions the inherent traditions of the people, the "observance of Islam as a sacred religion" and "respect for the Universal Declaration of Human Rights". The revolutionary aim of the Democratic Republic of Afghanistan is expressed as follows: "... The Democratic Republic of Afghanistan deems it its primary duty ... to consolidate the gains of the Saur Revolution and realize its lofty objectives and aspirations, strengthening, developing and further evolving the progressive system in the Democratic Republic of Afghanistan ...". There seems to be a certain contradiction, and perhaps incompatibility, between respect for the tradition of the "noble people of Afghanistan" and the observance of Islam on the one hand, and the development of the Saur Revolution towards a "new society" on the other. Obviously the authorities wished the Fundamental Principles to transform society, but it seems difficult to combine preservation and revolutionary transformation. Any sovereign State within the United Nations is certainly free to choose its political system and the United Nations should not intervene in that system. However, the human rights system of a given States, in particular in a situation where gross violations of human rights are alleged, may be considered and even evaluated within a universal organization whose aim is to promote human rights. A mere reference to the Universal Declaration is not enough. The rights and duties proclaimed therein should at least be reflected in the Fundamental Principles. This apparent incompatibility between the avowed aim of the Fundamental Principles to form a new society on the one hand, and the commitment to preserve the country's traditions on the other is further reflected in other provisions of the Fundamental Principles, such as articles 5, 8, 9, 27-30, 32, 33 and 54-59.

142. The rules contained in the Fundamental Principles of the Democratic Republic of Afghanistan must be read in context with the decrees of 1978 which have not been abrogated by the Fundamental Principles. These decrees form a part of the Saur Revolution reform programme. In particular Decrees Nos. 3 and 7 must be taken into account. Decree No. 3 contains rules governing the judicial structure in Afghanistan after the Saur Revolution. The authority of the Supreme Court is given to the High Judiciary Council which is made responsible to the Revolutionary Council, a body not composed of independent judges. Article VII of this decree establishes a "revolutionary military court" which is also declared responsible to the Revolutionary Council. Civil and military persons who have committed offences "against the Saur Revolution" are not only punished in accordance with law but also in accordance with "directives and decrees of the Revolutionary Council".

B. International provisions on human rights

143. The Government of Afghanistan submitted the following observations in writing on the measures it has taken concerning international human rights instruments:

"Further to the humanitarian steps which were taken by the Democratic Republic of Afghanistan after the April Revolution and especially after the new evolutionary phase of the April Revolution for the promotion and protection of human rights, as was explained in detail by the representative of the Democratic Republic of Afghanistan at the thirty-eighth session of the Commission on Human Rights held during the first quarter of this year (1982), the following measures are being adopted:

The establishment of Lawyers Unions is under consideration.

The Democratic Republic of Afghanistan will ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights during 1982.

Promulgation of the Law and Rights of Wounded, Disabled and Martyrs of the April Revolution.

Accession to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

Accession to the International Convention on the Elimination of All Forms of Racial Discrimination.

Accession to the Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity."

144. On 24 January 1983, Afghanistan ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. No report under article 40 of the Covenant on Civil and Political Rights has been submitted as yet. On 4 February 1985, the Democratic Republic of Afghanistan signed the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

145. The following are the provisions contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that may be considered relevant to this report:

Article 1 of the International Covenant on Civil and Political Rights which sets out the right to self-determination in combination with article 25 (b) of the Covenant concerning the right to vote;

Article 3 of the Universal Declaration of Human Rights (and articles 6 and 9 of the International Covenant on Civil and Political Rights) which guarantees the right to life, liberty and the security of person;

Article 5 of the Universal Declaration of Human Rights (and article 7 of the International Covenant on Civil and Political Rights) which guarantees the right to freedom from torture and other forms of cruel, inhuman or degrading treatment or punishment;

Article 9 of the Universal Declaration of Human Rights (and article 9 of the International Covenant on Civil and Political Rights) which guarantees the right to freedom from arbitrary arrest or detention;

Articles 10 and 11 of the Universal Declaration of Human Rights (and article 14 of the International Covenant on Civil and Political Rights) which guarantees the right to a fair and public trial with full guarantees for defence;

Article 18 of the Universal Declaration of Human Rights (which corresponds to article 18 of the International Covenant on Civil and Political Rights) which guarantees the right to freedom of thought, conscience and religion;

Article 19 of the International Covenant on Civil and Political Rights which guarantees the right to freedom of expression;

Article 27 of the International Covenant on Civil and Political Rights, which recognizes the right of persons belonging to ethnic, religious, or linguistic minorities, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

146. Reference must also be made to article 2 of the International Covenant on Civil and Political Rights which requires States parties to respect and to ensure to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant.

147. It must be stated that, in application of the Covenant, the Human Rights Committee has already developed a rich practice as to the content of some of these rights. Furthermore United Nations bodies such as the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention on Discrimination and Protection of Minorities have tried to substantiate several of the rights mentioned above. Therefore, there can be no doubt as to the content of the rights mentioned.

148. It may be recalled that article 4, paragraph 2, of the International Covenant on Civil and Political Rights stipulates that there shall be no derogation from the right to life and the prohibition on arbitrary deprivation of life, the right to freedom from torture, the right not to be held in slavery or servitude, the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation, the right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence when it was committed, the right to recognition everywhere as a person before the law as well as the right to freedom of thought, conscience and religion, are rights from which no State may derogate even "in time of public emergency which threatens the life of the nation".

149. Furthermore, reference is made to the following documents in this respect:

Study of equality in the administration of justice; 21/

Study on the rights of persons belonging to ethnic, religious and linguistic minorities; 22/

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; 23/

Standard Minimum Rules for the treatment of prisoners; 24/

General Comments of the Human Rights Committee on articles 2, 4, 6, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights;

United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 25/

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 26/

Code of Conduct for Law Enforcement Officials; 27/

Principles of Medical Ethics; 28/

Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/C.6/37/L.16).

21/ United Nations publication, Sales No. E.71.XIV.3.

22/ United Nations publication, Sales No. E.78.XIV.1.

23/ General Assembly resolution 36/55.

24/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August - 3 September 1955; Report by the Secretariat (United Nations publication, Sales No. 56.IV.4), annex I.A.

25/ General Assembly resolution 3452 (XXX).

26/ General Assembly resolution 39/46.

27/ General Assembly resolution 34/169.

28/ General Assembly resolution 37/194.

150. It may further be recalled that the measures to restrict the conventional rights enshrined in the Covenants must be commensurate to the exigencies of the situation ("to the extent strictly required"). Article 4, paragraph 3, states:

"Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

151. There is no doubt that Afghanistan is bound by the Covenant on Civil and Political Rights to which it has been a State party since 24 April 1983, when the alleged situation of gross and massive violations of human rights already existed. Afghanistan has to respect the rights referred to in the International Covenant on Civil and Political Rights in regard "to all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1).

152. The question of the legal context of the presence and activities of foreign troops in Afghanistan must also be examined, particularly because their presence has been consistently mentioned in relation to the human rights situation there. As stated above, the troops are in Afghanistan on the basis of the Treaty of Friendship (see para. 49). The Special Rapporteur is of the opinion that the foreign troops in Afghanistan, not being in their own territory, cannot exercise any kind of jurisdiction over individuals within the territory of Afghanistan, except of course over their own members.

153. This conclusion does not, however, provide an answer to the question of the legal regime applicable to the conduct of the foreign troops who, being involved in an "armed conflict of a non-international character" are bound by the Geneva Conventions or by other rules of international law on war. This question must be answered subsequently.

154. Since there is no doubt that Afghanistan is bound by the Covenant and the principles enshrined in the Universal Declaration, it is necessary to examine the extent to which the human rights system proclaimed by domestic law in Afghanistan, and in particular by the "Revolutionary Council's statement on Fundamental Principles", is in conformity with the provisions of the Covenant for the purpose of the present examination of the human rights situation in Afghanistan. This is a task which should be entrusted to the Human Rights Committee, the body responsible for reviewing the implementation of the International Covenant on Civil and Political Rights, in particular the procedure under article 40 of the Covenant.

155. A 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.

C. Legal regime governing the conduct
of the hostilities

156. As indicated in the preceding section, the human rights situation in Afghanistan necessitates an examination not only of the constitutional and international legal framework but, in view of the presence of foreign troops in the country, the evaluation of the conduct of hostilities of these troops in the conflict in Afghanistan. The principal issues to which this aspect gives rise, are those concerning the humanitarian law governing the civilian population and prisoners of war. Both Afghanistan and the USSR are parties to the Geneva Conventions of 12 August 1949, of which those most relevant to the situation in Afghanistan are The Convention relative to the Treatment of Prisoners of War (Third Convention) and the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention).

157. In examining the situation of human rights in Afghanistan in this context, the principal question that arises is the extent to which the facts described in the preceding chapters may be imputable to one State or the other. Similarly, a question arises as to the extent to which the opposition movements are bound by the Third Geneva Convention in particular. In addition, since allegations of the use of certain weapons have been made, the Geneva Protocol of 17 June 1925 may also be relevant.

158. A legal examination of the human rights situation as affected by the conflict in Afghanistan is undoubtedly essential in order to determine the applicability of humanitarian law and the international law of war and to determine in particular responsibility, for the inhuman acts alleged to have been committed during the hostilities. This is also necessary to determine the position of the International Committee of the Red Cross in the present conflict. The nature of the hostilities in Afghanistan is extraordinary in that another State party is involved on the side of the Government of Afghanistan, rather than against it, against opposition movements which, in turn, claim to represent the population, but which in fact do not constitute a government, a State or an authority. Several studies have attempted to clarify similar situations in the context of the applicability of the Geneva Conventions. 29/

159. It must also be borne in mind that, for the opposition movements in the Afghan hostilities, the conflict is considered as a "holy war" which, according to beliefs and traditions, is governed by its own particular traditional customs.

29/ Among these studies are the following:

D. Schindler, "Le droit international humanitaire et les conflits armés internes internationalisés", Revue internationale de la Croix-Rouge, 1982, pp. 263 ff.;

J.P. Gasser, "Internationalized non-international armed conflicts: case studies of Afghanistan, Kampuchea and Lebanon", The American University Law Review, vol. 33 (1983), pp. 145 ff.;

A.G. Noorani, "Afghanistan and the rule of law", The Review (International Commission of Jurists) No. 24, June, 1980, p. 50.

160. Since the parties in question have not yet acceded to the additional protocols to the Geneva Conventions which were concluded in 1974 and which are aimed at improving the status of members of liberation movements, the Special Rapporteur is not at present in a position to analyse the exact legal nature of the conflict. As far as the members of the opposition movements are concerned, however, it may be stated that, in the present situation, as affirmed by Michel Veuthey in the study entitled Guérilla et droit humanitaire, 30/ because of this failure to adapt, this stonewalling and inconsistency, guerilla activity remains almost totally outside the field of application of humanitarian law, and in practice evolves, and one might say cancels itself out, in an empirical way.

161. In the light of the facts available and in the face of the undeniable fact that there is a conflict in Afghanistan, it is evident, from a humanitarian and moral point of view that the conflict which exists between the established Government and the foreign State on its side on one hand, and the various organized opposition movements on the other, must be considered as one of a non-international character within the meaning of article 3 of the Geneva Conventions. The Special Rapporteur is of the view, therefore, that the parties to the conflict are bound by article 3 of these Conventions, which reads as follows:

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.

30/ Michel Veuthey, Guérilla et droit humanitaire, Genève, CICR, 1983.

(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.

162. However, even if it is considered that these norms of humanitarian law, as set out in article 3 of the Geneva Conventions, are not applicable for merely formal reasons, there can be no doubt that both States are bound by the international human rights 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 application of human rights; the least that may be said is that the erga omnes theory of the Barcelona Traction case 31/ must be applicable to the present conflict. The acts prohibited under article 3 common to the Geneva Conventions are violations of those human rights which are guaranteed by the international instruments to which the State parties adhered and which are considered to be applicable erga omnes in the said judgement of the International Court of Justice.

163. A number of considerations would indicate that representatives of the Afghan opposition movements consider themselves bound by the Geneva Convention relative to the Treatment of Prisoners of War; five Afghan opposition movements have expressed their willingness to ICRC to respect the spirit of the Third Geneva Convention and are ready to do so in writing. The Special Rapporteur is satisfied as to the sincerity and veracity of this information which is based on reliable sources. Furthermore, it is publicly known that prisoners taken by Afghan opposition movements from the foreign army were handed over to ICRC as a result of a special agreement concluded between them and ICRC. As stated in the ICRC Bulletin: 32/

"In addition, being deeply concerned by the plight of persons captured by the Afghan opposition movements and by information to the effect that several such persons had been executed, the ICRC tried to find a way of protecting the lives of both Afghan and Soviet captured persons.

Negotiations carried out by the ICRC with, successively, the USSR, the Afghan opposition movements, Pakistan and Switzerland led to partial success. The parties agreed to the transfer and internment in a neutral country of Soviet soldiers detained by the Afghan opposition movements, in application, by analogy, of the Third Geneva Convention, relative to the treatment of prisoners of war.

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

32/ International Committee of the Red Cross, Bulletin No. 101, June 1984, p. 3.

On the basis of this agreement, the ICRC has had access to some of the Soviet prisoners in the hands of the Afghan movements and has informed them, in the course of interviews without witness, of the possibility for transfer by the ICRC to Switzerland, where they would spend two years under the responsibility and watch of the Swiss Government before returning to their country of origin.

The ICRC made this proposal to the Soviet prisoners on the basis of the principle worked out at the 1949 Diplomatic Conference and stipulated in the Geneva Conventions, i.e. that repatriation of a prisoner of war signifies the return to a normal situation and is in the best interests of the prisoner. The above-mentioned procedure therefore applies only to Soviet soldiers who consider themselves to be in a situation comparable to that of a prisoner of war in enemy hands. Consequently, the entire operation is based on respect for the principle according to which the ICRC never acts against the wishes of the person it is assisting.

To date, eleven Soviet soldiers have accepted the proposal. The first three were transferred to Switzerland on 28 May 1982. Eight others arrived in August and October 1982, January and October 1983, and February and April 1984. One of them escaped to the Federal Republic of Germany in July 1983."

164. However, the Special Rapporteur notes that, in practice, the application of the Third Geneva Convention by the 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, religion or faith, sex, birth or wealth. The Special Rapporteur was informed that prisoners taken by the Afghan opposition movements were treated differently, depending on whether they were Afghan conscripts, members of the Afghan Communist Party, important persons, or members of the foreign armed forces.

D. Self-determination

165. The Human Rights Committee in its General Comments on article 1 of the International Covenant on Civil and Political Rights states that the right to self-determination belongs to all peoples regardless of their legal status. Mr. Gros Espiell in his study The Right to Self Determination: Implementation of United Nations Resolutions 33/ states that "the right of peoples to self-determination exists as such in modern international law, with all the consequences that flow therefrom, where a people is subject to any form or type of colonial and alien domination of any nature whatsoever." "Clearly ... the foreign occupation of a territory ... constitutes an absolute violation of the right to self-determination". 34/ The Afghan Government, in reply to questions of the Special Rapporteur, Mr. Gros Espiell, expressed the view that "'alien domination' is understood as covering all forms of domination, both direct and indirect, regarded or declared 'alien' by peoples of any area and which constitutes an impediment or a suppressive factor in the realization of their fundamental freedoms and human rights, as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights". 35/

33/ United Nations publication, Sales No. E.79.XIV.5.

34/ Ibid., para. 45

35/ Ibid., para. 43, note 19.

166. Article 1 of the International Covenant on Civil and Political Rights, General Assembly resolution 1514 (XV) and many other resolutions of United Nations organs affirm and recognize the right to self-determination. Thus "... this right includes political, economic, social and cultural aspects. For the right to be fully effective, the existence of all these elements is required". 36/

167. The models of self-determination are indicated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. 37/ The right to self-determination can be applied externally and internally. The struggle of people under alien domination does not imply a violation of the Charter or of the above-mentioned Declaration. "The struggle of peoples for their self-determination in face of ... alien domination gives rise to an international armed conflict and does not create a situation of civil war." 38/

168. The right to self-determination is linked to the right to vote embodied in article 25 (b) of the International Covenant on Civil and Political Rights. The exercise of this right is an important element for the application of the right to self-determination. Although an emergency situation, referred to in article 4 of the International Covenant, does not necessarily interfere with the right to self-determination (otherwise article 4 of the International Covenant would exempt article 1 from derogation), it is a clear contradiction of the right to self-determination when a government does not represent the entire population of the territory without distinction as to race, creed or colour. The contradiction is more obvious when a government is supported de facto or de jure by foreign troops, regardless of the basis for the presence and the actions in a given country. Non-interference in internal affairs and respect for the right to self-determination must be considered as an integral whole.

169. In the case of Afghanistan, the right to self-determination is integrally linked with a representative democracy. Traditionally, this has been provided by Loya-Jirgah, the organ in which the People of Afghanistan were represented and had a say in the running of their country. In article 35 of the Fundamental Principles the Loya-Jirgah is recognized. However, it is held in abeyance "until conditions are appropriate" and, until such time as a Loya-Jirgah is established, the power normally in the hands of this supreme organ is entrusted to the Revolutionary Council which, under the Fundamental Principles, is empowered to act as the highest organ of the State. Therefore, to this extent, and independently of the alien and/or foreign domination aspect, the fact that the most representative organ in the State is not freely elected indicates that the right to self-determination in Afghanistan is not yet enjoyed.

36/ Ibid., para. 46

37/ General Assembly resolution 2625 (XXV).

38/ United Nations publication, Sales No. E.79.XIV.5, para. 96.

V. CONCLUDING OBSERVATIONS

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. In the foregoing chapters, 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 regime, 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 regime which was installed in December 1979, like its immediate predecessors, was a regime 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 regime 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 regime 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 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 common article 3 of 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 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.

VI. RECOMMENDATIONS

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 regime, 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 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.

Annex I

FUNDAMENTAL PRINCIPLES OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN

Preamble

The Historic Statement Issued by the Revolutionary Council of the Democratic Republic of Afghanistan, Adopting and Proclaiming the Fundamental Principles of the Democratic Republic of Afghanistan on 14 April 1980.

The Revolutionary Council of the Democratic Republic of Afghanistan on the basis of the real will and interests of workers, peasants, tradesmen, nomads, the intelligentsia and other toilers and the entire democratic and patriotic forces from all nationalities, tribes and clans:

- With a profound respect to and a serious observation of the national historical, cultural and religious traditions of the noble people of Afghanistan,
- Decisive observance of Islam as a sacred religion,
- With due respects to the Universal Declaration of Human Rights,
- Following a policy of peace, friendship and co-operation with all peoples of the region and the world,
- With a view to safeguarding national independence, national sovereignty, territorial integrity and the people's order in the Democratic Republic of Afghanistan,
- Successfully develop the national democratic Saur Revolution and realise its lofty objectives and aspirations based on creation of a new society of peaceful work, freedom and justice, fraternity and equality, democracy and progress.

Democratic Republic of Afghanistan, proclaiming its publication and enforcement effective 21 April 1980.

The Saur Revolution (1978) which entered its new phase on 27 December 1979 in the glowing annals of Afghanistan ushered a national, democratic, anti-feudal and anti-imperialist uprising. As a result of the Saur Revolution, a new type government was created in the Democratic Republic of Afghanistan, reflecting the aspirations and safeguarding the long-standing interests of workers and all the peoples of the country. The honourable working people of Afghanistan were placed in the course of transformation of their social revolution and national uprising to bring to final victory their national democratic resurrection and build a new society based on peace and freedom, progress and justice, fraternity and equality. To enable Afghanistan to overcome its underdevelopment and begin social, economic and cultural advancement under the leadership of the People's Democratic Party of Afghanistan, the party of the working class and all the toilers of the country on the basis of the will of vast masses of people, a profound respect and serious observance of national, historical, cultural and religious traditions of the people with definite adherence to the principles of Islam as a sacred religion, respect to the Universal Declaration of Human Rights based on the policy of peace, friendship and co-operation with all peoples of the region and the world.

The Democratic Republic of Afghanistan deems it its prime duty to safeguard national independence, national sovereignty, territorial integrity, consolidation of the gains of Saur Revolution and realization of its lofty objectives and aspirations, strengthening, developing and further evolution of the vanguard progressive system in the Democratic Republic of Afghanistan, ensuring vast and active participation by workers and all democratic forces of the country in the national democratic, anti-feudal and anti-imperialist changes and safeguarding the homeland and the Saur Revolution under the auspices of the People's Democratic Party of Afghanistan and the Revolutionary Council.

In order to realise the above objectives, the Revolutionary Council of the Democratic Republic of Afghanistan as the highest authority wielding State power and the real representative of the free will of the entire people of Afghanistan decided that pending the adoption of Afghanistan's constitution by "Loya Jirga", the Supreme Council, these Fundamental Principles should be adopted and put into effect.

"1. Fundamentals of social, political and economic order

...

ARTICLE ONE - The Democratic Republic of Afghanistan is an independent, democratic State belonging to all Moslem working people of Afghanistan ranging from workers, peasants, nomads and the intelligentsia to other toilers and the entire democratic and patriotic forces from all nationalities, tribes and clans of this country.

ARTICLE TWO - The Government shall make efforts to ensure for the people a prosperous, happy, peaceful, secure and tranquil life as well as develop individuals from all viewpoints, protect their rights, ownership, dignity, national customs and traditions. State power in the Democratic Republic of Afghanistan belongs to working people in towns and villages and exercised through exclusively State and local organs established through democratic methods.

...

ARTICLE FIVE - Respect, observance and preservation of Islam as a sacred religion will be ensured in the Democratic Republic of Afghanistan and freedoms of religious rites guaranteed for Moslems. Followers of other faiths will also enjoy full freedom of religious practice as long as this would not threaten tranquility and security in society.

No citizen is entitled to exploit religion for anti-national and anti-people propaganda or other actions running counter to the interests of the Democratic Republic of Afghanistan and the people of Afghanistan. The Government will help the clergy and religious scholars in carrying out their patriotic activities, duties and obligations.

ARTICLE SIX - Activities of workers' unions, women's and youth organizations, scientific, cultural, artistic and other social and democratic organizations of the working people uniting within their ranks workers, peasants, tradesmen, the intelligentsia and other inhabitants with a view to raising their organizational, social and productive standards to realise the objectives of the Saur Revolution and ensure their specific interests shall be encouraged and supported.

ARTICLE SEVEN - The Democratic Republic of Afghanistan will pursue a policy of equal rights, fraternal friendship and all-out development of all nationalities, tribes and clans which live in their indivisible homeland, Afghanistan, irrespective of their size and support solidarity among all nationalities, tribes and clans in their struggles to realise the objectives and aspirations of the Saur Revolution and ensure and guarantee their legal rights.

The Democratic Republic of Afghanistan aims at eradication of inequality as far as economic, social and cultural growth of our people in all regions of the country is concerned.

The Democratic Republic of Afghanistan will preserve and develop the best and most valuable works which comprise part of the cultural heritage and traditions of all nationalities, tribes and clans of this country.

ARTICLE EIGHT - The armed forces and the police in the Democratic Republic of Afghanistan will safeguard the gains of Saur Revolution, national independence, unity and territorial integrity and national sovereignty of the country.

The Government will adopt appropriate measures with a view to strengthening and consolidating the armed forces and the police and training them with a spirit of patriotism, loyalty to the objectives and aspirations of the Saur Revolution and solidarity with the working peoples in other countries and ensure the participation of the armed forces in social and political life and improve the financial standing of their families.

ARTICLE NINE - The Government of the Democratic Republic of Afghanistan will support the patriotic part played by tribal elders and all members of tribes which ensure peace, fraternity and tranquility in their areas and defend Afghanistan's borders and will extend to them all-out help to effectively carry out this noble task.

...

ARTICLE ELEVEN - The Democratic Republic of Afghanistan will expand and strengthen its friendship and traditional all-out co-operation with the Soviet Union and its co-operation and friendly relations with other countries of the socialist alliance on the basis of international solidarity.

ARTICLE TWELVE - The Democratic Republic of Afghanistan as a peace-loving country will make serious efforts to protect and strengthen friendly relations with other countries, especially the neighbouring nations and all Moslem countries and States on the basis of mutual respect to one another's national independence and national sovereignty, territorial integrity and non-interference in one another's internal affairs and contribute to the endeavours of Moslems and other peoples in connection with their search for universal peace, freedom, progress and co-operation.

...

ARTICLE SIXTEEN - The Democratic Republic of Afghanistan will respect and observe the United Nations Charter and the generally accepted principles of international law and supports the United Nations' activities in strengthening peace and developing international co-operation.

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2. Fundamental rights and obligations of citizens

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ARTICLE TWENTY-SEVEN - Citizenship of the Democratic Republic of Afghanistan is shared equally by all the peoples of Afghanistan.

Granting and withdrawal of such citizenship is defined by law.

Afghan citizens abroad are entitled to protection and support by the Democratic Republic of Afghanistan. No citizen of the Democratic Republic of Afghanistan shall be delivered to a foreign government.

ARTICLE TWENTY-EIGHT - All Afghan citizens are equal before the law.

All Afghan citizens share equal rights and obligations irrespective of their racial, national, tribal and linguistic affiliations or sex, domicile, religion, education, parentage, assets and social status.

Equality of rights among citizens is ensured in all economic, political, social and cultural spheres.

Nobody is permitted to use his democratic rights and freedoms against the interests of the Democratic Republic of Afghanistan and the rights of other citizens.

ARTICLE TWENTY-NINE - The following democratic rights and freedoms are ensured and guaranteed for citizens of the Democratic Republic of Afghanistan:

1. The right to lead a secure life.

2. Full freedom of practice of Islam as a sacred religion for Moslems and freedom of religious rites in the case of followers of other faiths according to law.

3. The right to work. The Government will adopt measures to ensure the right of all people to socially useful work, control working conditions and legislate and implement progressive laws about work.

4. The right to health protection and social insurance. The Government will adopt measures with regard to creation of networks of public health organizations and if possible, through free medical services, improve social insurance to be enjoyed by the working people in case of incapacity or old age and likewise when losing the bread-earner in a family.

5. The right to education. The Government will adopt measures to develop national progressive education, eradicate illiteracy, instruction in mother tongues, growth and expansion of free intermediate, high vocational and technical education.

6. Freedom of scientific, technical, cultural and artistic activities in accord with the objectives of the Saur Revolution.

7. The right to freely and openly express one's opinions, the right of assembly and of peaceful demonstrations and likewise the right to patriotically join democratic and progressive social organizations.

The extent of the advantage taken of the above right will be defined by law commensurate with social order and national security and tranquility.

8. Security of domicile and of communications including telephonic, telegraphic and other communications except in cases provided otherwise by law.

9. The right to complain or to petition individually or collectively, to State organs.

ARTICLE THIRTY - Nobody could be accused of offence except under provisions of law.

Nobody could be arrested except according to a court warrant and under the provisions of the law valid at the time of committing the offence.

The accused is entitled to submit his defence.

The accused is considered innocent until definitely sentenced by court.

Offence is a personal affair and nobody else would be punished through its commitment.

Corporal punishment runs counter to human dignity. Torturing and prosecution are not permissible.

...

ARTICLE THIRTY-TWO - Socially useful and honest work based on impeccable patriotic conscience is an important obligation and glorious action of each citizen of the Democratic Republic of Afghanistan who is able to work.

ARTICLE THIRTY-THREE - Defence of the motherland and the gains of Saur Revolution, loyalty to its objectives and aspirations and service to the people comprise the lofty sacred obligations of each citizen. Serving the ranks of the armed forces of the Democratic Republic of Afghanistan is regarded a lofty, glorious, patriotic obligation of each citizen of the Democratic Republic of Afghanistan.

ARTICLE THIRTY-FOUR - The Democratic Republic of Afghanistan prepares the ground so that its citizens may effectively enjoy their democratic rights and freedoms.

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7. Legal system and court activities

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ARTICLE FIFTY-FOUR - Judgement is passed in the Democratic Republic of Afghanistan by courts in accordance with democratic principles. Sentences are passed by the Supreme Court of the Democratic Republic of Afghanistan, provincial, city and woloswali courts and likewise through the armed forces tribunals.

Special courts are to be set up to assess specific cases according to law.

Organization, mode of establishment and activities of such courts will be defined by law.

ARTICLE FIFTY-FIVE - The Supreme Court is the highest judicial organ in the Democratic Republic of Afghanistan and composed of the President, Vice-Presidents and members.

The Supreme Court will supervise the activities of various courts according to provisions of law and ensures a uniform application of laws by all courts.

The Supreme Court reports about its performance to the Revolutionary Council, and during the interim period, to its presidium.

Judges of all courts are appointed by the Presidium of the Revolutionary Council.

ARTICLE FIFTY-SIX - Courts are empowered to assess all civil and criminal cases.

Judges are entitled to independently assess cases as they are only subject to laws. Cases are assessed and verdicts passed by courts on the basis of equality of citizens before the law courts.

When assessing cases, the court applies the laws of the Democratic Republic of Afghanistan.

In cases when the law is not clear, the courts will settle cases in accordance with "Shariat" and the principles of democratic legality and justice.

Cases are assessed by courts in open sessions. Circumstances under which cases shall be discussed in camera will be anticipated by law.

However, the verdict must be declared openly in all cases.

ARTICLE FIFTY-SEVEN - Cases are to be discussed and settled in courts in Pashtu, Dari or in the local majority language. In case both parties to the dispute fail to understand the language in which the case is discussed, their right is guaranteed to employ an interpreter to acquaint them with materials contained in the documents and to converse in their mother tongue.

ARTICLE FIFTY-EIGHT - All court verdicts are issued in the name of the Democratic Republic of Afghanistan.

Court verdicts must be based on arguments.

Court verdicts are final. Execution sentences shall be carried out after the approval of the Revolutionary Council Presidium."