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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 1988/67

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### Introduction

1. Pursuant to Commission on Human Rights resolution 1988/67 and Economic and Social Council decision 1988/136 which extended his mandate by another year, the Special Rapporteur submitted in November 1988 an interim report (A/43/742) to the General Assembly containing preliminary conclusions and recommendations. After considering the report, the General Assembly adopted resolution 43/139, in which it decided to keep under consideration, during its forty-fourth session, the question of human rights and fundamental freedoms in Afghanistan in order to examine this question anew in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.
2. During the period of his present mandate, the Special Rapporteur carried out two visits to the area in order to obtain the most broadly-based information possible. The first visit took place from 4 to 19 September 1988 (Pakistan from 4 to 9 September and Afghanistan from 11 to 19 September) and its findings are reflected in the interim report to the General Assembly. The Special Rapporteur again visited Pakistan from 27 January to 1 February 1989 and Afghanistan from 2 to 5 February 1989 with a view to gathering up-to-date information for purposes of the present report.
3. During his visit to Pakistan, he had talks in Islamabad with representatives of the Ministry of Foreign Affairs and the Office of the High Commissioner for Afghan Refugees as well as with Professor S. Mojjadidi, President of the Islamic Unity of Afghan Mujahidin and with commanders of the alliances. During these conversations he exchanged views on the overall situation in Afghanistan, with particular reference to present developments related to the complete withdrawal of the Soviet troops.
4. In the North West Frontier Province, he visited the refugee camps Nasr Balkh and Khar in the district of Baujur where he had extensive talks with newly arrived refugees from the Kunar province. He also visited hospitals which had been set up especially to treat wounded Afghans. The Special Rapporteur also travelled to the Khyber-pass outpost where he noted that persons could move across the border at a place near the frontier post of Turkham.
5. In order to inquire into specific cases of torture, the Special Rapporteur visited the Psychiatric Centre for Afghans in Peshawar, where he interviewed six patients. Also in Peshawar he had talks with various representatives of humanitarian organizations and private individuals.
6. While in Peshawar, the Special Rapporteur viewed several films provided by various sources.
7. During his visit to Afghanistan, he was received, in accordance with the programme established in consultation with the Afghan authorities, by the Minister of Justice, the Minister for National Security, the Minister of the Interior, the Minister for Defence, the Minister for Repatriation and the Minister for Foreign Affairs.
8. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi prison and the detention centre in Shashdarat. He also visited hospitals where he interviewed several wounded civilians.

9. The Special Rapporteur wishes once again to place on record the particularly valuable assistance and full co-operation he has received from the governmental authorities of the two countries visited.

10. The Special Rapporteur also wishes to take this opportunity to thank the Government of the Islamic Republic of Iran for having invited him, in his capacity as Special Rapporteur of the Commission of Human Rights, to attend the First Scholarly and Academic Seminar on Afghanistan held in Tehran on 15 and 16 January 1989 and hopes that he will be able to pursue his contacts with the Iranian Government should the situation so require. On this occasion the Special Rapporteur met with Mr. Khalili, spokesman of the alliance based in the Islamic Republic of Iran.

11. As in the past, the Special Rapporteur has continued to avoid taking into account any unconfirmed rumours, speculations and hearsay. No reference is therefore made to non-identifiable sources. Furthermore he is not basing his report on any kind of generalization about certain events which seem to make the headlines. In his view such generalizations cannot constitute a sound basis for the analysis of the human rights situation in Afghanistan, especially under the present circumstances.

12. In this connection, it should be recalled that three essential factors characterize the prevailing situation in Afghanistan:

(a) The decision of the Government of the Union of Soviet Socialist Republics to withdraw its forces/troops from Afghanistan before 15 February 1989, in conformity with the Geneva Agreements; and de facto withdrawal as a condition for the exercise of the right to self-determination;

(b) The increasingly urgent wish of forces outside Afghanistan to form an "interim government" in Afghanistan. In this connection a significant development is the talks that took place, at the initiative of the Union of Soviet Socialist Republics with different elements of the alliances in Pakistan and in the Islamic Republic of Iran in order to explore the possibility of setting up a "broad-based government" which would include members of the present Government in Kabul;

(c) The continuation of the armed conflict in Afghanistan.

13. The creation of an "interim government" requires that a common political basis be found on which all the parties of the alliances in Pakistan and in the Islamic Republic of Iran can agree. It is in fact envisaged that a 519-member consultative body (Shura) be selected as described in paragraph 61 after the withdrawal of the Soviet troops on 15 February 1989 and remain in power until general elections can be held.

14. Nevertheless, and in spite of certain recent developments which create the impression that the situation is about to be resolved, the Special Rapporteur notes that the bombing of the civilian population continues, starvation threatens in Kabul, in particular those parts of the population which are short of financial means, and might well spread to other regions, if adequate and timely food supplies are not sent from outside; medical provisions are also highly insufficient.

15. The return of the refugees seems to have been halted as a result of the insecurity that prevails in many of the provinces, the presence of mines scattered all over the country, and the general feeling of political uncertainty as to the future of Afghanistan.

16. Aware of the importance of the issues at stake the Special Rapporteur has again attempted to assess the human rights situation in Afghanistan in his present report to the Commission of Human Rights in the most impartial and objective manner, in the sole hope that it might contribute to an improvement and reduce human suffering. At this juncture, the Special Rapporteur would like to stress that the situation in the region is such that the lives of the civilian population are constantly in danger and that every day counts.

17. The information contained in this report completes that reflected in the interim report to the General Assembly at its forty-third session (A/43/742). On the basis of the information collected during the last two months, the present report describes, in chapter I, the specific problem of the refugees and, in chapter II, assesses the human rights situation in the government-controlled areas, in combat areas as well as in the regions not under government control. Chapter III contains the conclusions and recommendations drawn from the analysis of the additional information the Special Rapporteur has gathered recently.

#### I. SITUATION OF THE REFUGEES

18. The particularity of this conflict is that it has given rise to a massive movement of refugees to the neighbouring countries. The total number of refugees is thought to be approximately five million.

19. The Special Rapporteur has continuously stressed the importance of the refugee problem. He believes that in the present circumstances, this is the most fundamental human rights problem in Afghanistan.

20. In his interim report to the General Assembly, the Special Rapporteur had indicated that the number of refugees was on the rise. The reason for this increase is thought to be the escalation of the war in different areas of Afghanistan. Information received during the recent visit to Pakistan shows a further increase in the number of refugees, which is considered to be the result of intensive bombing of the provinces of Nangarhar, Bamyan, Wardak, Maydan and Kandahar. Some new refugees who were interviewed by the Special Rapporteur, explained that they had decided to leave the country because of the continuous bombing raids. These refugees also mentioned two conditions for their return to Afghanistan: firstly, that an Islamic government be installed in Kabul after the complete withdrawal of Soviet troops, and secondly, the need to clear the country of mines.

21. During a visit to the camp of Naser Bagh in Khar, district of Baujur, the Special Rapporteur was told that in December 1988, 790 new families had arrived in the camp (30,000 to 40,000 persons).

22. The Special Rapporteur was informed by various sources that during the period November 1988 to February 1989 the number of refugees returning to Afghanistan was very limited, if not completely inexistent. However, according to official estimates submitted to the Special Rapporteur by the Afghan Ministry for Repatriated Refugees, the number of refugees returning to

the country rose from 150,850 at the end of August 1988 to 185,945 at the end of January 1989, made up as follows: 101,814 from Pakistan and 84,131 from the Islamic Republic of Iran. The Government has provided the following infrastructure for returnees: 31 "Peace Guest Houses", 4 receiving points, 12 receiving camps and 8 clinics.

23. The Special Rapporteur has so far not been able to study the situation of the Afghan refugees in the Islamic Republic of Iran in any detail. He has, however, had occasion to briefly meet with some leaders of Afghan refugees living in the Islamic Republic of Iran on the occasion of the first Scholarly and Academic Seminar on Afghanistan held in Tehran on 15 and 16 January 1989, which he had attended at the invitation of the Iranian Government.

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

### A. General

24. During his visits to both Pakistan and Afghanistan, the Special Rapporteur has tried to gather a maximum of information on the questions of the right to life, the right to freedom and personal security, the conditions of detention in prisons, the alleged cases of torture and ill-treatment, and on the consequences of the conflict on the enjoyment of economic, social and cultural rights.

25. In this context, the Special Rapporteur, in his interim report to the General Assembly had already stated that a certain degree of progress in these areas was visible, which can be attributed to the process of the so-called national reconciliation.

26. During the visit to Afghanistan from 2 to 5 February 1989, the representatives of the Government, whom the Special Rapporteur met stated that the so-called policy of national reconciliation was being pursued, in spite of the difficulties encountered in its full application. They mentioned, inter alia, that the opposition movement had systematically turned down all propositions tending to normalize the situation in the country, which would be conducive to respect for and protection of all human rights.

27. In the opinion of the leaders of the alliances, this policy has had no effect whatsoever, either on the return of the refugees or on the restoration of human rights in the country. This was demonstrated by the return of only a very insignificant number of Afghan refugees (and even these had returned to the "liberated areas" only), due to the fact that systematic bombing raids continued, people were still being arbitrarily arrested, and that torture and ill-treatment remained common.

28. In his interim report to the General Assembly (A/43/742, paras. 33-38) the Special Rapporteur analysed the Geneva Agreements of 14 April 1988, stating that it was a matter of satisfaction that the United Nations had been able to demonstrate that conflicts can be resolved through peaceful negotiations and had succeeded in making all parties accept the necessity of the withdrawal of foreign troops from Afghanistan. The latter condition enables the Agreements to be regarded as a basis for the exercise by the Afghan people of their right to self-determination.

## B. Situation of human rights in government-controlled areas

29. In the course of his visits the Special Rapporteur focused in particular on the situation of the right to life, prison conditions, the problem of torture, other civil and political rights and the right to self-determination and the enjoyment of economic, social and cultural rights.

30. The announcement of the total withdrawal of Soviet troops by 15 February 1989, in accordance with the Geneva Agreements, was followed by repeated attempts on the part of the Government to retain control over the areas formerly occupied by the Soviet troops. It is difficult to ascertain with any precision which areas are still under the control of the Government. In this connection, the Special Rapporteur has been informed that all major administrative centres and important strategic posts as well as the country's road and rail networks are still under government control. However, according to members of the opposition movements as well as other sources of information, the rest of the country is no longer controlled by the Government.

31. According to information received both in Pakistan and Afghanistan during the period under consideration, the Soviet troop withdrawal has been hindered by repeated attacks by the opposition forces, resulting in much loss of civilian life and damage to property. One of the most striking incidents reported to have occurred towards the end of January 1989, which inflicted severe civilian losses, consisted in prolonged artillery attacks in the area around the Salang tunnel, north of Kabul, which allegedly claimed 600 civilian victims. According to Soviet sources, such military action on the part of Soviet troops was an act of self-defence on the part of the withdrawing forces and had no other purpose. Similar bombings resulting in heavy civilian losses have taken place in other areas, such as Kunar, Panshir Valley, Barwan, Bamyan, Wardak, Nangarhar and Maydan.

32. While visiting various hospitals in Pakistan and Afghanistan, the Special Rapporteur was able to speak with recently admitted persons, who were mainly suffering from wounds resulting from mine explosions. According to figures provided to him by the hospitals, the number of mine victims had increased drastically during the period from December 1988 to January 1989.

### Allegations concerning disappearances

33. The question of disappeared persons has again been brought to the attention of the Special Rapporteur, including some specific cases which the Special Rapporteur has not been able to verify. The Special Rapporteur received in particular in the Naser Bakh camp a list of 30 persons who allegedly disappeared on 22 May 1979, during the Taraki-Amin Government, in the sub-district of Shighal, district of Asmal, Kunar province. A list of the names of these persons is reproduced in annex I to the present report. The Special Rapporteur is of the view that an in-depth investigation of the reported disappearances would be warranted.

### Situation of the prison population and conditions of detention

34. During his last visit to Afghanistan, the Special Rapporteur has been informed that, since 1986, 16,110 prisoners had been freed from prisons all over the country. On the other hand, during the same period 3,405 more persons had been imprisoned. Since September 1988, 83 prisoners had been freed according to the amnesty decree of 21 October 1988 and other decrees; 147 prisoners had been released for medical reasons.

35. In order to inquire into allegations about the prison population in Pol-i-Charkhi, the Special Rapporteur at his request visited this prison once more on 4 February 1989. At the time of his visit, prison authorities announced to him that there were 2,745 prisoners in Pol-i-Charkhi. This figure included: 580 persons detained for criminal offences and 317 still under interrogation; it also included 58 foreigners and 37 women. In addition, the Special Rapporteur was informed that 84 prisoners had been transferred to Pol-i-Charkhi from the prisons of Balkh, Nangarhar, Ghazni and Khandahar.

36. The Special Rapporteur was allowed to visit all blocks of the prison. He observed the following: block I was almost empty; in block II over 300 prisoners were being kept for purposes of interrogation or awaiting trial; in block III three floors were occupied by some prisoners and one floor was empty; block IV, reserved for non-political prisoners had a population of some 580; block V was occupied by over 1,000 prisoners; block VI was empty and block VII was occupied by the 37 female prisoners.

37. It should be added that the Special Rapporteur had heard from different sources that the actual number of prisoners in Pol-i-Charkhi could be about 12,000 to 15,000 prisoners. After his visit, however, he thinks that neither of the above estimates can be true nor can the figures mentioned in the preceding paragraph be considered as a precise reflection of the situation.

38. According to government sources, adolescents between 15 and 18 years of age are not held in Pol-i-Charkhi. They are kept in an education centre (Dar El Taadib). The Special Rapporteur has not visited this centre and has, therefore, no possibility to express views about it.

39. The Special Rapporteur has also had the opportunity to visit cells where foreign prisoners are kept. He had an open discussion, in English, with some of these prisoners, who asked him to intervene in their favour with the authorities so that they could be amnestied. The Special Rapporteur presented this request to the authorities. In this connection, he was subsequently informed of the release of some Iranian prisoners.

40. The Special Rapporteur visited in Kabul, for the second time, an interrogation centre known as Shashtarak. At the time of his visit there were 67 prisoners on remand in this centre. The Special Rapporteur was able to verify reports that hygienic conditions had improved to a certain extent. The authorities called his attention on a new law dated 1 January 1989, regulating the conditions of detention for prisoners on remand. The Special Rapporteur was thus informed that food rations had been increased, forced labour forbidden and family visits facilitated. The Special Rapporteur was not able to verify the application of this new law.

#### Allegations of torture and ill-treatment

41. The Special Rapporteur had been informed during his visit to Pakistan, of cases of torture and ill-treatment during interrogation. He raised the matter in Kabul, but the authorities refuted these allegations categorically. He was told that a new petition system had been introduced several months ago for use by prisoners who consider that they have been subjected to torture or ill-treatment. The Special Rapporteur was, however, not able to verify the effectiveness of the new system.



42. As to the existence of interrogation centres other than Sadarat and Shashtarak, the Special Rapporteur could not obtain any reliable evidence. Despite denials by the government authorities, the Special Rapporteur has had access to information which tends to confirm that other similar centres exist and that interrogations take place in 11 police stations in Kabul where suspects may be held for up to 72 hours in accordance with the law.

43. During his prison visit, the Special Rapporteur noticed that the situation of the prisoners awaiting trial after interrogation is deplorable, especially during winter since the cells are without heating.

44. It should be added that the ICRC has been able to conduct a full inspection of the Pol-i-Charkhi prison but has not had so far the opportunity to inspect places where persons are kept under interrogation.

#### Implementation of the Constitution

45. The Special Rapporteur is of the opinion that the gradual loss of control over different parts of the country seriously restricts the range of the application of the Constitution and of the laws and ordinances promulgated by the Government. It should be said, however, that irrespective of the factual control over some territories, the legal system remains valid.

46. However, if the present situation were to further degenerate, Articles 143 and 144 of the Constitution providing for a state of emergency could be applied, which read as follows:

##### "Art. 143:

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

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

##### Art. 144:

The President shall have the following powers in a state of emergency.

1. Extension of the tenure of the National Assembly.
2. Delegation of powers of the National Assembly in part to the Council of Ministers.
3. Delegation of powers of courts in part to special courts and military courts.
4. Suspension and or limitation of Articles 30, 44, 45, 46, 49, 50 and the last item of Article 51, Articles 53 and 60 of the Constitution. 1/
5. Exercise of other powers in accordance with the law."

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1/ For the Articles mentioned see annex II.

C. The human rights situation in combat areas

47. The situation in combat areas has drastically changed over the last two months, and the downward trend in casualties reported to the General Assembly has reversed in the meantime. The opposition movements have turned down the second offer of a cease-fire proposed by the Government, and have so far not been prepared to enter into any negotiations whatsoever with the present Afghan Government.

48. As previously mentioned in the case of Salang, it has been asserted that the Soviet forces have used military strength to safeguard the withdrawal of their troops. In some instances, government troops have attacked areas recently vacated by Soviet forces in order to maintain control over the principal cities and villages, while in other instances, they were battling with opposition forces for the control of such areas. In all instances, the majority of victims were civilians.

49. In the course of his visit to Afghanistan, the Special Rapporteur visited the ICRC surgical hospital, where he was able to see some of the patients who had been wounded during fighting in areas contested by government and opposition forces. During his visit to the Indira Ghandi Institute of Child Health in Kabul, the Special Rapporteur observed children injured as a result of the fighting in the Salang area. He was also informed about cases of malnutrition which principally affected the children as a consequence of food shortages.

50. The Special Rapporteur would like once more to draw the attention of the Commission on Human Rights to the fate of prisoners of war, and in particular to those kept in combat areas who are frequently being used as a means of bargaining or exchange. This practice and the treatment of prisoners in general does not so far meet the provisions laid down in the Geneva Conventions of 1949, and as such, should be a matter of immediate concern to all parties involved in the conflict.

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

51. The Special Rapporteur has not had an opportunity to visit areas outside government control. However, on the basis of information received, two types of areas may be distinguished:

(a) Areas in which the policy of so-called national reconciliation has led to the creation of "peace zones" and "peace provinces"; and

(b) Areas administered by the opposition after government forces and Soviet troops left them.

52. For the first category of areas, the Government and the opposition must have arrived at some kind of arrangement for the administration of these areas. Already in his interim report, the Special Rapporteur had mentioned the case of the district of Anardara in the province of Farah (A/43/742, para. 60).

53. The second category concerns territories entirely administered by the opposition movements. In these areas, the opposition movements are trying to set up the administrative infrastructure necessary to rule the areas but,

according to information received by the Special Rapporteur, continued fighting has led in many of the areas to the departure of this civilian population.

54. As for the human rights situation in these areas, due to the scarcity of information available and since he has been unable to visit any of the areas, the Special Rapporteur cannot unfortunately add much to the observations he already made in the interim report. Nevertheless, the Special Rapporteur received information that some humanitarian non-governmental organizations based in Peshawar, Pakistan, such as the Austrian Relief Committee for Afghanistan and the Swedish Committee for Afghanistan, had started to transfer the centre of their activities to areas not under government control.

55. The Special Rapporteur also heard allegations from a variety of corroborating sources concerning cases of killing of Afghan soldiers and civilians by members of the alliance in Kunduz, Kunar and Nangarhar and considers it necessary to draw the attention of the Commission, by way of example, to the following cases said to have occurred between September 1988 and January 1989:

(a) In September-October 1988, after the fall of Chigal in Kunar Province, 22 Afghan soldiers have allegedly been executed after having surrendered to the Mujahidin in the garrison of Asmal. During the same period looting by the opposition movements was reported to have occurred in two villages, Dam-Kaley and Dari-i-Nour;

(b) Between 3 and 11 November 1988, 79 Afghan army personnel who surrendered in the course of the fall of the Turkham area were allegedly executed in or around Turkham and Daka;

(c) In the beginning of January 1989, after the fall of the Khewa district in the province of Nangarhar, about 22 women were allegedly killed and some Afghan soldiers had their throats cut by forces belonging to the opposition movements.

#### E. Consequences of the presence of mines for the safety of the population

56. For the period November 1988 to February 1989, the Special Rapporteur received no information concerning the use of booby-trap mines. However, in his interviews with patients in Pakistani hospitals, he was informed that the number of casualties from anti-personnel mines was on the increase. The threat to the right to life which the existence of mines constitutes requires immediate action as part of the international community. In this connection, attention is drawn to the efforts made by the United Nations Co-ordinator for Humanitarian and Economic Assistance Programme relating to Afghanistan with a view to initiating training in mine clearance with the help of international experts. A mine awareness programme and training started in Pakistan in mid-February 1989.

57. As to the particular problem of mines scattered over Afghanistan, the situation is still the one described in the interim report (paras. 81 to 85). Information received during the last visit tends to confirm the allegation that Soviet troops have laid new mines during their withdrawal from various areas. As previously stated mines scattered over the whole territory are a major obstacle to the return of refugees.

#### F. Terrorist acts

58. In this regard, the Special Rapporteur's position is the same as that stated in the interim report (paras. 118-121).

59. The Special Rapporteur was told by different sources that a significant increase in the number of acts of terrorism against the population inside the country had occurred in September, October and mid-November 1988. Government authorities, for their part, provided the Special Representative with figures of casualties which they consider to be the result of acts imputed to opposition forces, as follows: 3,954 dead, including 1,165 civilians, and 5,201 injured, including 2,027 civilians.

#### G. Self-determination

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

61. As to the free choice of government, the Special Rapporteur must stress that only a portion of the population has accepted the type of government provided for by the Constitution of December 1987, since the 5 million refugees have not had the opportunity to express themselves on this Constitution. On the other hand, the alliances are attempting to designate a traditional consultative body, called the Shura, composed of selected members from the parties of the alliances based in Pakistan and in the Islamic Republic of Iran, military commanders, tribal chiefs, Ulemas (religious chiefs), Afghan intellectuals and "good muslims" from within the present administration who are not involved in the PDPA.

62. The Special Rapporteur considers that the only way out of this situation consists in the search for a peaceful political solution among all the Afghan parties concerned. In the absence of such a solution respect for fundamental human rights will continue to be a matter of major concern.

### III. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

63. The following conclusions are drawn taking into account the current developments in the conflict and its consequences on the observance of fundamental human rights. Because of the seriousness of the suffering to which the civilian population in Afghanistan continues to be subjected, the situation remains a matter of deep concern.

64. The human rights situation in Afghanistan is characterized by an armed conflict which has created enormous human suffering. In spite of the withdrawal of the Soviet forces in accordance with the Geneva Agreements, the armed conflict has not stopped. The number of casualties, many of them fatal, is increasing.

65. At the time of completion of the present report, the Special Rapporteur is convinced that the withdrawal from the territory of the Republic of Afghanistan is taking place in conformity with the Geneva Agreements.

66. There are still some 5.5 million refugees outside the country. The efforts of the Afghan Government to bring the refugees back to their homes have failed; according to government figures only 185,945 refugees - 101,814 from Pakistan and 84,811 from the Islamic Republic of Iran - have returned.

67. The return of refugees is impeded by factual and "ideological" elements. The factual elements are the continuation of the fighting despite the withdrawal of foreign troops, and the existence of the minefields. New weapons utilized by the government forces (Scud) create particular anxiety. Refugees also assert that new mines have been laid. The "ideological" element consists in the demand of most refugees for the establishment of an Islamic government or a "broad-based government" without members of the PDPA.

68. The territorial sovereignty of the Afghan Government is not fully effective since some provinces of Afghanistan are totally or partly in the hands of traditional forces. The responsibility for the respect of human rights is therefore divided. Even if the present state of affairs is considered as an emergency situation within the meaning of article 4 of the International Covenant on Civil and Political Rights, a minimum of human rights and in any event the provisions of humanitarian law must be respected by all the parties involved in the conflict.

69. Where the Government has control over the territory, the Constitution and all rights stipulated therein, including the human rights instruments, have to be respected. In fact, they are not fully effective. In spite of the expressed will of ministers and high government officials that this be the case, there are still reliable reports about human rights violations by governmental authorities, in particular as regards interrogation practices of the police and Khad agents during which ill-treatment and torture seem to be, allegedly, still widely used.

70. The official figure given for political prisoners amounts to some 3,500 persons. The Special Rapporteur could not verify whether there were also prisoners in places other than known detention centres.

71. Conditions in Kabul prisons have generally improved. However, the condition of prisoners awaiting trial remains deplorable. In the event of a further aggravation of the situation, the fate of the prisoners may become even more uncertain. Prisoners of Iranian and Pakistani nationality have not benefited from general amnesties.

72. There are numerous allegations, some of them supported by films and photos, of atrocities committed by opposition movements in Kunduz, Kunar and parts of the Nangarhar province against Afghan soldiers, civil servants and their families. On the other hand, the Special Rapporteur has witnessed the

fact that some Afghan soldiers, civil servants and members of their families coming as refugees from the "liberated" Kunar province (Asmal) to camps in Pakistan have been treated well.

73. As a result of the conflict, the food supply, in particular in Kabul, has decreased dramatically. Food traffic via the Khyber Pass and via the Salang Highway is interrupted. These shortages affect in particular the lower strata of the population and especially children.

74. The establishment of a government freely chosen by a people is an essential element of the right to self-determination. As long as there are two different concepts for the future government of Afghanistan, one being a broad-based government including members of the present administration, the other being the creation of an Islamic government without participation of members of the PDPA, a major obstacle to the full exercise of the right to self-determination will persist.

#### B. Recommendations

75. The Special Rapporteur wishes to reiterate the recommendations contained in his interim report (A/43/742) to the General Assembly (paras. 148-158), which are still valid. Since the Special Rapporteur has a specific mandate to make recommendations concerning human rights before, during and after the withdrawal of foreign troops from Afghanistan, he considers it appropriate to add or emphasize the following recommendations:

76. In the case that warfare continues, all provisions of humanitarian law should be strictly respected by all parties to the conflict.

77. The parties to the conflict, in the meaning of humanitarian law, must be reminded of their duty to respect human life as well as property and to increase their efforts to solve the conflict by peaceful means at all levels.

78. In the case that a peaceful solution to the conflict cannot be found in the near future, an international conference should be envisaged soon.

79. Humanitarian non-governmental organizations, in particular the ICRC, should be allowed unrestricted access to all parts of the country.

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

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

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

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

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

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

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

Annex I

LIST OF PERSONS WHO DISAPPEARED ON 22 MAY 1979

1. Vakil, son of Mohamad Akbar
2. Faghir, son of Mohamad Akbar
3. Darim Khan, son of Mir Akbar
4. Zarif, son of Mir Akbar
5. Pardel Khan, son of Mohamad Khan
6. Elm Khan, son of Mohamad Khan
7. Mousa Khan, son of Abdallah Khan
8. Abdolrahman, son of Momin
9. Rahmatollah Khan, son of Abdollah
10. Djan Mohamad, son of Rahamatollah
11. Rasone Mollah
12. Abdolwali, son Abdolghana
13. Hazratollah, son of Abdolghana
14. Hazratwali, son of Abdolwali
15. Nadjmeddine, son of Mohammad Mir
16. Nematollahkhan, son of Nour Mohamad
17. Hazrate Gol Wali, son of Nour Mohamad
18. Golabshir, son of Gol Wali
19. Mohammad Zarin, son of Mohamad Rahim
20. Habib Ollah, son of Amir Djamal
21. Shabghadr, son of Nadjmollah Khan
22. Eyn Gol, son of Hazrateddine
23. Hazrate Mohamad Eddine, son of Touti
24. Nader, son of Ghazi
25. Modjahid, son of Sadbar
26. Amir Soltan, son of Eslam Khan
27. Torkhan, son of Mobarezkhan
28. Mohamad Hussein, son of Tourkhan
29. Nour Mohammad Khan, son of Nour Rahim
30. Khan, son of Nour Rahim



Annex IIARTICLES OF THE CONSTITUTION WHICH MAY BE SUSPENDED  
OR LIMITED IN A STATE OF EMERGENCYArt. 30:

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

Art. 44:

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

Art. 45:

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

Art. 46:

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

Art. 49:

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

Art. 50

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

Art. 51:

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

Art. 53:

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

Art. 60:

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