

AFGHANISTAN

The Forgotten War

Human Rights Abuses and Violations of the Laws of War Since the Soviet Withdrawal

February 1991

An Asia Watch Report

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GLOSSARY

Afghan Mellat	A nationalist organization of Pashtun professionals that formed in Kabul in the 1960s. A party that was particularly strong in Ningrahar, its members have become a focus of attacks by some fundamentalist <i>Mujahidin</i> groups.
AIG	The Afghan Interim Government formed by the seven resistance parties based in Peshawar.
<i>alim</i>	Scholar of Islamic law. The plural is <i>ulama</i>.
<i>fatwa</i>	Religious decree.
Hazara	Shi'a minority from central Afghanistan.
<i>imam</i>	Muslim priest.
ISI	Pakistan's Inter-Services Intelligence, the country's military intelligence organization which has had substantial control over all external assistance to the Afghan resistance.
<i>jirga</i>	Pashtun tribal assembly or council. <i>Loya jirga</i> means supreme council.
KHAD	<i>Khademat-e Ettela'at-e Dawlati</i>, or State Information Service: the secret police. In 1986 it became a full ministry and the name was changed to Wazarate Amaneyat-e Dawlati (WAD) (Ministry of State Security).

Khalq	"The masses." A faction of the PDPA led by Taraki and Amin which was opposed to the pro-Soviet Parcham wing of the party.
<i>madrassa</i>	Religious school.
<i>maulvi</i>	Muslim religious scholar.
<i>mujahidin</i>	The term generally used for the Afghan resistance. It literally means those fighting a <i>jihad</i>, or holy war. The singular form is <i>mujahid</i>.
<i>mullah</i>	Muslim cleric.
Parcham	"Flag." The pro-Soviet faction of the PDPA whose leaders included Babrak Karmal and Najibullah.
Pashtuns	The dominant ethnic group in Afghanistan, particularly in the south and east of the country.
PDPA	The People's Democratic Party of Afghanistan, which has ruled the country since it took power in a coup on April 27, 1978. In June 1990 it renamed itself the Watan (Homeland) party.
<i>pir</i>	Sufi spiritual master.
<i>qazi</i>	Judge who applies the <i>sharia</i>
<i>sharia</i>	<i>Islamic law.</i>
<i>shura</i>	Council or assembly.
<i>Tajik</i>	Persian-speaking ethnic group from the north of Afghanistan.

ulama Scholars of Islamic law. The singular is *alim*.

Uzbek A Turkic-speaking ethnic group from the north of Afghanistan.

Wahhabi A puritanical interpretation of Islam patronized by the Saudi royal family. Arab volunteers who have fought with some mujahidin forces in Afghanistan are generally called "Wahhabis."

WAD See KHAD.

Watan party See PDPA.

**"Regrettably, both the conflict and the people seem to have
become
a `forgotten war' and a `forgotten people.'"**

**["Situation of Human Rights in Afghanistan," *Report to the U.N. General
Assembly*, Felix Ermacora, U.N. Special Rapporteur on Afghanistan, October 30,
1990.]**

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I. INTRODUCTION

Since 1984, Asia Watch, together with Helsinki Watch, has published five reports on human rights in Afghanistan.¹ These reports were among the first to document systematic human rights violations by the Afghan government and by Soviet forces after the Soviet invasion of Afghanistan in December 1979. The reports were based primarily on fact-finding missions to the border cities of Peshawar, Parachinar and Quetta, Pakistan, where Asia Watch and Helsinki Watch representatives interviewed refugees who provided testimony about the indiscriminate bombings, massacres, summary arrests and torture that had driven them into exile.

The accumulated testimony of the victims of the war in Afghanistan describes a pattern of human rights violations that is among the worst in recent history. Over one million Afghan civilians are believed to have been killed since the war began, most in aerial bombardments. Tens of thousands have disappeared – many of them the victims of summary executions and massacres in the countryside. Most of Afghanistan's villages have been reduced to rubble, and the countryside turned into a live mine field, with perhaps millions of mines of every description scattered throughout its grazing fields, highways and mountain passes. Asia Watch and Helsinki Watch also documented abuses by the resistance forces, including indiscriminate attacks on civilians and summary executions of prisoners of war.

The final withdrawal of the Soviet forces from Afghanistan in February 1989 marked the beginning of a new phase in the conflict. No longer a war against a foreign aggressor, the conflict became a civil war pitting the Soviet-backed government of President Najibullah against the *mujahidin*, a complex resistance movement composed of different ethnic, tribal and political factions all fighting in the name of Islam. By late 1990, global developments promised further change, as the U.S. and the Soviet Union neared agreement on a political settlement that

¹ *Tears, Blood and Cries: Human Rights in Afghanistan Since the Invasion, 1979-1984*, 1984; *To Die in Afghanistan*, 1985; *To Win the Children*, 1986; *By All Parties to the Conflict* 1988; Jeri Laber and Barnett R. Rubin, *A Nation is Dying* (Evanston IL: Northwestern University Press, 1988).

would end their support for their respective clients. But in the Afghan countryside and in the cities, the war continues, as forces on all sides continue to launch indiscriminate attacks on each other at the cost of civilian lives.

Across the border in Peshawar, Pakistan, where most of the *mujahidin* parties have their headquarters, uncertainty about the future has contributed to rising tensions among different factions of the *mujahidin*. Afghan intellectuals and relief workers have been murdered, imprisoned and tortured, and refugees attempting to return to Afghanistan have been attacked. Although these abuses have occurred inside Pakistan, the Pakistani authorities refuse to investigate them, and in fact encourage some abuses, including indiscriminate attacks which cause heavy civilian casualties.²

In Kabul, meanwhile, President Najibullah's government has embarked on a program of reform intended to win the support of Afghans in the cities and the approval of the West. While there has been some relaxation of state controls on civil and political rights and some amelioration in prison conditions, it is still too early to tell whether the reforms undertaken will lead to real improvements in human rights. Genuine improvements will depend not only on the government's commitment to change, but also on its ability to implement reforms outside the limited territory it now controls.

In mid-1990, two Asia Watch delegations³ traveled to Pakistan and Afghanistan to examine violations of the laws of war, or international humanitarian law, by all parties to the conflict, and to evaluate the human rights reforms undertaken by the government of President Najibullah. This was the first time the current government of Afghanistan had permitted a private human rights organization to visit the country.⁴ In Afghanistan, the delegation conducted an extensive interview with President Najibullah to discuss the government's new commitment to political pluralism and new amendments to the Constitution that may offer some protection for civil liberties. The delegation also raised with President Najibullah Asia Watch's concerns about the war, including indiscriminate attacks on civilians.

² See chapter 5.

³ For listing of participants see Acknowledgments, p. i.

⁴ Requests from Asia Watch and Helsinki Watch to send missions in 1984, 1985 and 1988 were not granted. A delegation from Amnesty International visited Kabul in February 1980.

The delegation also interviewed senior ministers in the government, among them Minister of Foreign Affairs Abdul Wakil; Minister of Defense Mohammad Aslam Watanjar; Minister of State Security Ghulam Faruq Yaqubi; and Minister of Justice Ghulam Muhayuddin Dareez. The delegation also visited Pol-e Charkhi Prison in Kabul and was permitted an unprecedented visit to the Sedarat detention center in Kabul. Members of the delegation traveled to Herat, where we visited the Herat provincial jail, and to Islam Qala on the Iranian border, where the government has established a refugee repatriation center. In both Kabul and Herat, we interviewed representatives of international organizations and private relief agencies, diplomats, journalists, academics, and ordinary Afghan citizens.

Access to independent sources was limited, however, in part because war conditions have made it difficult for many international organizations to operate in Afghanistan. There were few foreign correspondents, and the diplomatic community was significantly reduced after the Soviet withdrawal. While we were able to meet with a number of Afghans outside the government who provided us with their views, most Afghans remain understandably cautious about speaking openly with foreigners.

The Asia Watch mission to Pakistan interviewed refugees, foreign diplomats, representatives of international relief organizations, journalists, academics, and lawyers. Both delegations documented abuses and discussed preliminary findings with those concerned. The findings are contained in this report, along with policy recommendations for all of the parties to the conflict and for the outside powers which have supported them, including the United States, the Soviet Union, Pakistan and Saudi Arabia.

Summary of Concerns

This report is divided into three sections. The first (chapter 3) describes violations of the laws of war by Afghan government forces and by certain

mujahidin forces.⁵ This section documents indiscriminate missile and rocket attacks on civilian areas by Afghan government forces and resistance guerrillas, the use of land mines by all parties to the conflict, the government practice of forced conscription, and abuses by paramilitary militia in government security operations. The second part (chapter 4) discusses the reforms undertaken by the Najibullah government in the context of the continuing war, the protections provided by these reforms, and the measures which still need to be taken to guarantee full freedom of expression and association and the rights to due process and fair trial. The third part (chapter 5) discusses human rights abuses by the resistance forces in areas controlled by the *mujahidin* in Afghanistan and in areas inside Pakistan where they have operated with impunity.

In summary, our concerns are as follows:

Violations of Humanitarian Law

- Although indiscriminate bombing of civilian-populated areas has declined significantly since the Soviet withdrawal, government offensives against *mujahidin* strongholds continue to rely on methods of warfare, including Scud missiles, that cannot be targeted with sufficient accuracy to ensure that civilians are not placed at undue risk.
- The practice of summary execution of captured prisoners that was widespread in earlier years of the war has also declined. However, Asia Watch obtained evidence of a number of incidents of such abuses since the Soviet withdrawal. The execution without trial of prisoners is impermissible under any circumstances, and the government should promptly investigate all reports of such killings and prosecute those responsible. The reduction in the number of reported incidents does not diminish the government's obligation to make every effort to investigate such abuses and make the findings public, and bring to justice those responsible as a way of preventing similar abuses in the future.
- Reports of reprisal killings of ordinary civilians suspected of

⁵ The *mujahidin* are far from homogeneous; thus, we have tried to indicate when the abuses are characteristic of all *mujahidin* and when they are characteristic only of certain elements.

supporting the *mujahidin* have also decreased. Asia Watch was told, however, about a number of incidents in which such killings took place, including one near Jalalabad in which civilians taken into custody after a government bombing raid were accused of providing food to the *mujahidin* and burned alive. The government should promptly investigate this and all such reports, and prosecute those responsible for abuses.

- Militia operating in alliance with the government have also engaged in abuses against civilians, including indiscriminate attacks on civilian-populated areas, summary executions of *mujahidin* prisoners, and looting of civilian property. The government must exercise stricter control over the recruitment, training and supervision of such forces, and prosecute members of such forces that engage in abuses.

- Certain *mujahidin* commanders, some of whom have been recruited by the Pakistan Inter-Services Intelligence (ISI),⁶ have launched indiscriminate rocket attacks on cities inside Afghanistan, killing hundreds of civilians. The Pakistan ISI and the U.S. Central Intelligence Agency have encouraged these attacks, with the ISI supplying weapons to commanders who undertake them.

- Certain *mujahidin* forces have summarily executed government soldiers captured in combat, as well as members of rival *mujahidin* forces.

- All parties to the conflict have laid and continue to lay mines without adequate marking or mapping and without taking precautions to ensure that civilians are warned of minefields. Such precautions are required under international humanitarian law,⁷ which provides for the protection

⁶ Pakistan's Inter-Services Intelligence Directorate, or ISI, is the country's military intelligence organization. Under President Zia-ul-Haq the organization was granted control over all external assistance to the Afghan resistance, which gave the organization significant influence over the conduct of the war.

⁷ In particular, the 1981 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II), annexed to the 1981 UN Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be

of civilians against weapons, such as land mines, which may have indiscriminate effects.

Violations of International Human Rights Law

- The practice of arbitrary arrest common while the Soviets were in Afghanistan appears to have decreased in government-controlled areas, although such arrests have occurred since the Soviet withdrawal. Detainees have been held for periods of several weeks before being produced before any judicial authority; they rarely have access to defense counsel or to family members. Trials, which are often summary proceedings, fall short of international standards of due process.
- While prison conditions for sentenced prisoners have improved markedly, conditions for detainees do not meet the U.N. Standard Minimum Rules for Treatment of Prisoners, and Asia Watch has received credible reports of torture and mistreatment of detainees during interrogation. Access to these detainees by the International Committee of the Red Cross would be an important safeguard against such abuses.
- Freedom of association and freedom of speech, while protected in the law, are still subject to some restrictions which have hindered the formation of genuine opposition political parties and an opposition press. For example, no party may call for the president to resign. While limited criticism of the government is permitted, editors routinely practice self-censorship and are prohibited from publishing material that could be considered "un-Islamic" or "war propaganda." Although there has been some relaxation of state controls at Kabul University, Ministry of State Security forces maintain surveillance of students and professors on campus and in the classroom.
- Certain *mujahidin* parties -- particularly those supported by the

Excessively Injurious and to Have Indiscriminate Effects: Final Act, app. C, opened for signature April 10, 1981, U.S. Doc. A/CONF.95/15 (1980), reprinted in 19 ILM 1523, 1529 (1980), hereafter referred to as the Land Mines Protocol. The Republic of Afghanistan has not signed the Land Mines Protocol, which is described on p. 56.

Pakistan ISI, which have also received the largest share of U.S.-supplied weapons -- have kidnapped and murdered or imprisoned members of rival Afghan political organizations and Afghan intellectuals and relief workers in Pakistan and in areas under their control in Afghanistan. International humanitarian organizations do not have access to *mujahidin* prisons in Pakistan; torture in these prisons is reported to be routine.

- Under the Pakistan Frontier Crimes Regulation (FCR) Act, Afghan refugees deemed to be "security risks" may be detained without trial or charge for up to six years. Pakistani authorities have used this legislation to detain Afghan refugees because of their political views.**

*** * * * ***

The withdrawal of the last Soviet forces from Afghanistan in February 1989 had raised hopes for an end to the war and a chance for the refugees to return and rebuild their country in peace. By early 1991, that optimism had vanished as Afghanistan's bloody war wore on, still funded by foreign powers but largely forgotten by the outside world.

It is a war in which the many parties to the conflict continue to engage in grave violations of humanitarian and human rights law. Most of the victims of these abuses are Afghan civilians: those in the cities who have been killed or injured in rocket attacks, and those in the countryside killed or driven into exile by indiscriminate shelling and missile attacks by government forces. Prospects for ending these abuses remain slim as long as the parties involved, and their foreign sponsors, encourage such attacks.

Twelve years of war have also destroyed Afghanistan's civil and social institutions. In this vacuum, political authority remains highly fragmented, posing a serious obstacle to genuine improvements in human rights protection. In much of the country, the government has abdicated its authority to ethnic militia who are accountable to no one. Elsewhere, *mujahidin* commanders have established their own power bases, where they too rule by the authority of the gun. The ongoing efforts by foreign powers, particularly Pakistan, to impose their designs on the war have contributed to the fragmentation of authority and have aggravated conditions of insecurity and fear for refugees returning to Afghanistan

and those remaining in Pakistan.

The reform measures undertaken by the Najibullah government represent only a partial step toward the protection of human rights. Until there is an end to the supply of arms to parties that have used those weapons to perpetrate serious human abuses, Afghans will have little opportunity to test the civil liberties now promised to them and little reason to hope for an end to the bloodshed. The mass destruction that characterized the war before the Soviet withdrawal has ended, but for the Afghans, human rights abuses, like the war itself, have not.

II. HISTORICAL BACKGROUND

On April 27, 1978, the People's Democratic Party of Afghanistan (PDPA), a small, factionalized Marxist-Leninist party, took power in a *coup d'état*, an event that marked the beginning of Afghanistan's civil war. Ten years later, the U.S., the Soviet Union, Pakistan, and Afghanistan signed a set of accords in Geneva designed to bring about an end to the war. By then, the war, which had intensified especially after the entry of Soviet troops into Afghanistan in December 1979, had taken an estimated 1.24 million⁸ Afghan lives and driven another five million⁹ Afghans into refugee camps in Pakistan and Iran.

The ground for the 1978 coup by the PDPA had been prepared by events going back several years. The PDPA was founded in Kabul in 1965 after King Zahir Shah promulgated a number of reforms that permitted political groups to organize, although not to participate in elections. In 1967, the PDPA split into two factions: Khalq (masses) and Parcham (flag). Nur Mohammad Taraki and Hafizullah Amin became the leaders of the Khalq faction, which drew its support mainly from educated rural Afghans who were predominantly Pashtun, an ethnic group long considered to be the largest and the most powerful in Afghanistan.¹⁰ The Khalqis, who were opposed to the ruling elite, advocated radical social change and agrarian reform. The Parcham faction, led by Babrak Karmal, differed little from the Khalqis in ideology, but although the Parchamis were also

⁸ A Swiss demographer calculated the civilian toll at 1.24 million, based on an estimated pre-war population of 15.5 million. See Marek Sliwinski, "Afghanistan: The Decimation of a People," *Orbis*, vol. 33, Winter 1988-89, pp. 39-56.

⁹ The precise number of refugees is impossible to determine. Five and a half million is a widely-used estimate, with some 3.2 million registered refugees in Pakistan and an estimated 500,000 unregistered. In Iran, there are some 2.3 million registered refugees. See Felix Ermacora, "Situation of Human Rights in Afghanistan," *Report to the General Assembly of the United Nations*, U.N. A/45/664, October 31, 1990, p. 7. Hereafter referred to as *U.N. Report* 1990.

¹⁰ Afghanistan is home to a number of ethnic groups in addition to the Pashtuns, including the Persian-speaking Tajiks and the Turkic-speaking Turkoman and Uzbek groups, who predominate in the north and across the border in Soviet Central Asia. The Hazaras, a Shi'a minority, are found in the central part of the country. (Most Afghans are Sunni Muslims.)

predominantly Pashtun, they drew on the support of urbanized Afghans from various ethnic groups, including members of the ruling elite who advocated more gradual reforms.

In the late 1960s and early 1970s a number of Islamic radical organizations were also formed at Kabul University. They were strongly opposed to the communists and to all non-Islamic foreign influence in Afghanistan. These groups formed an important part of the resistance after the 1978 coup. The first student group to form was the Muslim Youth, which in 1972 renamed itself the Jamiat-e Islami after it was joined by several professors who had been supporting the group quietly. A government crackdown forced many of the group's members into exile in Pakistan in 1973-4. In 1976-77, in Pakistan, the organization split. Burhanuddin Rabbani, a professor of theology, remained as head of Jamiat-e Islami. Engineering student Gulbuddin Hekmatyar headed the breakaway Hezb-e Islami, which split again in 1979 to form a second Hezb-e Islami headed by Yunis Khales, an *alim*, or religious leader, from Ningrahar. A number of more traditional Islamic parties joined the resistance movement after 1978.¹¹ Pakistani authorities did not permit parties that were considered less Islamic to organize openly.

In July 1973, the king's cousin, Daoud Khan, with the help of the Parchamis, staged a nearly bloodless coup, ousting King Zaher Shah. Having no more need of the Parchamis after gaining power, Daoud removed them from his government and began to distance himself from the Soviet Union. Under pressure from the Soviets, the Khalq and Parcham factions of the PDPA reunited in 1977. The assassination of a Parchami leader on April 17, 1978 provoked widespread protests to which Daoud responded by arresting the PDPA leadership. PDPA officers in the military then launched a coup, killing Daoud and seizing power.

Days later, Nur Mohammad Taraki became president of the newly proclaimed Democratic Republic of Afghanistan, and Babrak Karmal and Hafizullah Amin became deputy prime ministers. Prominent former political leaders were immediately arrested and executed. Within months, conflict again broke out between Khalq and Parcham, resulting in a purge of Parchamis from the government. Some, including Babrak Karmal, were exiled abroad as ambassadors,¹² and others were arrested. Under Amin's direction, the government

¹¹ The major parties are listed in Appendix A.

¹² Louis Dupree, *Afghanistan* (Princeton: Princeton University Press, 1973), p. 773.

then launched a campaign of radical agrarian reform and mass repression that resulted in the arrest and execution of tens of thousands. Those targeted included former political figures, religious leaders, students and teachers, lawyers and other professionals, members of various ethnic groups, particularly the Hazaras, and members of Islamic political organizations. Subsequent governments have acknowledged that some 12,000 people were executed just in Pol-e Charkhi Prison in Kabul during this period; as many as 100,000 people may have been killed in the countryside.¹³

The government's unprecedented and badly planned attempt to intervene in rural society by decree and terror, and the executions of Islamic leaders and members of key ethnic groups, provoked a number of uprisings across the country, to which the government responded with greater repression. The army, racked by mutinies and desertions, rapidly disintegrated. Alarmed by Amin's strong-armed tactics and the disintegration of the Afghan army, the Soviet Union apparently plotted in September 1979 to have Amin removed, but the plot failed and instead an embittered Amin assassinated Taraki and made himself president.¹⁴ Finally, on December 24, 1979, the Soviet Union airlifted thousands of troops into Kabul, and three days later a crack Soviet force assassinated Amin and installed Babrak Karmal as president.

The Soviet presence soon grew to some 115,000 troops, and all aspects of government quickly came under the supervision of Soviet advisers, including the state security agency, which was reorganized and placed under the control of Dr. Najibullah.¹⁵ The invasion greatly expanded the resistance, which organized around the *mujahidin* parties based in Pakistan and Iran. Foreign support for the resistance increased after the Soviet invasion, with Pakistan, the U.S., Saudi Arabia, China and Iran playing leading roles. Massive aerial bombardments by Soviet forces in the countryside and repression in the cities swelled the flow of refugees, with some three million fleeing to Pakistan and another two million to Iran. Negotiations to end the war gained momentum after 1987, culminating in the

¹³ Olivier Roy, *Islam and Resistance in Afghanistan* (Cambridge: Cambridge University Press, 1986), pp. 95, 97.

¹⁴ See Laber and Rubin, pp. 7-8. Taraki was perceived as more amenable to Soviet influence, while Amin resisted Soviets attempts to control the PDPA. See also Dupree, p. 777.

¹⁵ In 1986, Najibullah replaced Babrak Karmal, first as head of the party and then as president of the country.

1988 Geneva Accords.

The centerpiece of the Geneva Accords was the agreement by the Soviet Union to remove all of its uniformed troops from Afghanistan over a nine-month period from May 15, 1988 to February 15, 1989, with half the troops to be removed by August 15. The text of the accords also called for all aid through Pakistan to the *mujahidin* to be terminated at the beginning of the pull-out period. As the final round of talks dragged on, the Reagan administration, under bipartisan pressure from a Congress which strongly supported the *mujahidin*, informed the U.S.S.R. that it would not accept the accords as formulated, arguing that as long as Soviet aid to the Kabul government continued, an end to aid to the *mujahidin* constituted unacceptable asymmetry. The U.S. proposed that both sides commit themselves to end such assistance (negative symmetry), but the Soviets, citing treaty obligations to Afghanistan, refused. Secretary of State George Shultz then made a formal reservation to the accords, stating that the U.S., while signing them, reserved to itself the right to aid its friends in Afghanistan so long as the Soviets aided their friends (positive symmetry). Since the accord entered into force, the U.S. has continued to adhere to positive symmetry.

The *mujahidin* were not included in the negotiations leading up to Geneva and did not accept its results. Also, the Geneva Accords said nothing about the future government of Afghanistan, which was to be left to a second track of diplomacy or to the fortunes of the battlefield.

During the first three months of their pullout, the Soviets withdrew their remaining forces to the capital, Kabul, and the principal roads and bases connecting it to other major towns and to the U.S.S.R. Unable to maintain a far-flung presence without Soviet help, the Afghan army withdrew or was pushed out of a number of important military bases and towns along the Pakistan border and in the deep interior of the country. By November 1988, resistance forces controlled all posts along the contested frontier with Pakistan, as well as the provincial capitals of Kunar, Paktiya, Bamiyan, Takhar, and Laghman.

Their forces also overran a demoralized garrison in the important economic center Kunduz, near the Soviet border, but government forces, probably with the aid of Soviet aircraft, reoccupied the city. During a number of these offensives, *mujahidin* fighters who were either undisciplined or adherents of a

radical version of Islam imported to Afghanistan by Arab "Wahhabi"¹⁶ forces, killed and raped civilians who had been living under government control.

Fearful that the government in Kabul might disintegrate before the final withdrawal of their troops and angry over the continued American aid to the resistance under the doctrine of positive symmetry, the Soviet leaders introduced new weapons of mass destruction to Afghanistan in November 1988: Scud-B missiles, which carry warheads of 1,000 kilograms and are highly inaccurate.¹⁷ Since then, these missiles have been fired blindly into many areas of Afghanistan, including some densely populated agricultural zones. The *mujahidin* have also fired rockets and missiles, some with fragmentation warheads, indiscriminately into Kabul and other towns.

The final stages of the Soviet withdrawal were accompanied by both a purge of hardliners in Kabul and diplomatic attempts to assemble a new government. The Soviet ambassador to Afghanistan, Deputy Foreign Minister Yuli Vorontsov, held an unprecedented set of meetings with leaders of the Pakistan-based Sunni resistance groups, the Iran-based Shi'a resistance groups, and the former king, Zaher Shah, who has lived in exile in Rome since 1973. Vorontsov's efforts were aimed at finding a formula under which all of these groups would be willing to meet in a *shura* (council) with members of the PDPA to form a new government. All refused his proposals, however. President Gorbachev laid out the new Soviet plan in a December 1988 address to the U.N. in which he also proposed that all countries cease aid to all Afghan parties (negative symmetry). The U.S. refused, citing an "imbalance" created by accelerated Soviet supplies. American officials also estimated that the Kabul government would fall of its own accord within six to twelve months.¹⁸

¹⁶ Wahhabism is a puritanical interpretation of Islam patronized by the Saudi royal family. Arab volunteers supported by the Muslim Brotherhood and by prominent Saudi entrepreneurs have fought with some *mujahidin* forces in Afghanistan since the early 1980s.

¹⁷ For further details on the destructive capability of the Scud-B missile, see Chapter 3, p. 29.

¹⁸ This Defense Intelligence Agency estimate was widely cited by U.S. officials. See "Developments in Afghanistan and Their Implications for U.S. Policy," *Hearings before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, U.S. House of*

To fill the anticipated political vacuum, the U.S., Pakistan, and Saudi Arabia, the main backers of the principal *mujahidin* groups, pressured the exiled political leadership of the resistance groups to hold a *shura* to choose what was billed as an interim government in exile. The *shura* convened in Rawalpindi, Pakistan on February 10, 1989. Despite intensive negotiations with Iran and with Shi'a resistance groups, no formula was agreed to regarding their representation, and they did not participate. The *shura* also rejected representation for the former king (several thousand of his supporters were attacked by members of the Hezb-e Islami of Gulbuddin Hekmatyar two days before the *shura*) and for the Kabul government. The Afghan Interim Government (AIG) chosen at the *shura* was headed by Sibghatullah Mojaddidi, a respected religious scholar, but that result was rejected by resistance commanders inside Afghanistan and by most of the refugees, who regarded it as having been manipulated by the Pakistani and Saudi intelligence services.

In order to bolster its claim to legitimacy, the AIG needed a territorial base inside Afghanistan. To that end, its foreign supporters and in particular the ISI, chose Jalalabad, a city in the eastern Afghan province of Ningrahar. The battle for Jalalabad, launched on March 7, 1989, became a major turning point of the war. Many of the *mujahidin* commanders in the area had opposed the offensive as premature and lacking in sufficient political preparation. Furthermore, they were bitterly divided and lacked experience in conventional warfare. In the end, they failed to coordinate their attacks and held back from assisting rival groups. The defending garrison, fearing massacres by extremist *mujahidin* (including some Arab volunteers) as had happened in nearby areas in January, refused to

Representatives, February 21 and June 14, 1989 (Washington D.C.: U.S. Government Printing Office, 1990), hereafter referred to as "Hearings, 1989." According to James Rupert, an assistant foreign editor at the *Washington Post* in the final stages of the Soviet withdrawal, "The CIA's Afghan Task Force dramatically slowed arms deliveries to the *mujahidin*, apparently because it feared an almost immediate collapse of the Najibullah government and wanted to avoid flooding the country with excess weaponry after a *mujahidin* victory. The theory that Najibullah was doomed was widely accepted by Westerners in the *mujahidin*'s exile capital of Peshawar. There, the heavy betting in a pool at the American Club's bar was that the *mujahidin* would announce their installation in power on Kabul Radio as early as March or April." See James Rupert, "Afghanistan's Slide Toward Civil War," *World Policy Journal*, Vol. VI, No.4, Fall 1989, p. 781, n.2.

surrender and eventually stopped the *mujahidin* outside the city.¹⁹ The result was a major morale boost for Kabul.

In July 1989, the *mujahidin* received another blow when conflict erupted in northern Afghanistan between commander Ahmad Shah Massoud of Jamiat-e Islami and his rival, Gulbuddin Hekmatyar. The conflict led to the massacre of more than a dozen top Jamiat-e Islami commanders by the Hezb-e Islami.²⁰ In the ensuing conflict, Hekmatyar suspended his participation in the AIG. A number of offensives against government forces later in the year also came to nothing. Resentful of the AIG and lacking political direction, the *mujahidin* commanders were essentially on strike.

The belief that the Afghan resistance organizations were Western-style, hierarchically-organized political parties whose "leaders" in Peshawar could decide matters for their "followers" in Afghanistan was always an illusion; this became even clearer after the Soviet withdrawal. Faced with a foreign enemy trying to subjugate them and impose an alien ideology, the *mujahidin* accepted the leaders who acted as intermediaries in obtaining the assistance they needed. That never meant that they envisaged those leaders as rulers of a new Afghanistan. Nor did their common Islamic cause amount to a unified political vision. Islam in Afghanistan is a defining cultural value, and there is broad agreement about who its enemies are, but there is no common view of what it requires politically.

Inside Afghanistan, the war had enabled a variety of leaders to build up different types of followings, many based implicitly on ethnic or tribal identities, even though all articulated their views in universalist Islamic terms. A narrowly based leadership, composed of religious leaders and newly educated rural Pashtuns from one part of the country (the east) dominated by Pakistan could not represent the western and southern Pashtuns, the Persian speakers, the Uzbeks, the Shi'a, or the Westernized city dwellers of Kabul.

President Najibullah's position grew stronger as the opposition became more divided. He continued to pursue a policy he termed as one of "national

¹⁹ The battle was very costly in both military and civilian casualties. It is discussed in more detail in chapter 3, pp. 31-34, 36-38.

²⁰ The incident is discussed on pp. 54-55.

reconciliation," putting more non-party members in charge of ministries in Kabul and offering full autonomy and extensive aid to all local leaders and resistance commanders who agreed not to fight the government. His government, no longer besmirched by the presence of Soviet troops, increasingly portrayed itself as the defender of Afghan nationalism against guerrillas supported by Pakistani militarists and Saudi Wahhabis. This rhetoric found a growing, if still skeptical and bitter, audience in the cities -- even among those who were not members or supporters of the party.

Washington, however, still publicly stated its faith in and support of the AIG as the most representative group of Afghans. Although the administration did not recognize the AIG as a government, in June 1989 the U.S. appointed Peter Tomsen as special envoy to the resistance. The U.S. held to the position that it favored a political settlement, but that the departure of Najibullah and his immediate cohorts from power was a pre-condition for any negotiations over transfer of power.

On March 6, 1990 the most important event since the battle for Jalalabad occurred in Kabul. Defense Minister Shahnawaz Tanai, leader of the radical Khalq faction of the PDPA, launched a coup against Najibullah.²¹ Tanai was apparently supported by those important Khalqis who remained in the Politburo, who have since been imprisoned. More important, he immediately won the support of Hezbe Islami leader Gulbuddin Hekmatyar. The ISI, apparently without consulting the U.S. Embassy in Islamabad, attempted to pressure the other *mujahidin* groups to get behind Hekmatyar (still outside the AIG) and support the coup.

Najibullah succeeded in suppressing the coup, and the ISI failed to get the resistance behind Tanai, whom most of the factions viewed as an opportunistic war criminal and hardline communist who had been responsible for the carpet-bombing of portions of the major western city of Herat in March 1979, killing thousands of people. The alliance between communist and Islamic extremists provoked many Afghans to question further the extent to which the war was being waged over Islamic ideals rather than personal power. While publicly asserting that the attempted coup exposed the weakness of the regime in Kabul,

²¹ Tanai was leader of at least the main body of Khalqis since its former leader Sayyed Mohammad Gulabzoy was exiled as ambassador to Moscow in September 1988 as part of the political preparation of the Soviet pullout.

U.S. officials acknowledged privately that the Pakistani military had followed its own interests in supporting the coup without consulting them and that the affair also exposed the ineffectiveness of the AIG, which had failed to come up with any meaningful response to the coup attempt. Furthermore, the AIG, which was to have organized some form of elections to gauge its popular support, failed to do so and has yet to make real progress toward agreeing on any political initiative.

The PDPA, however, continued to take such initiatives. In June 1990, it held its Second Congress, the first since it was founded at a meeting in Taraki's house on New Year's Day in 1965. At this Congress it renamed itself as the Watan (Homeland) Party. In the redrafted constitution, the government renounced Marxism, Leninism, socialism, and most of its own past policies and practices, at least on paper. It made Islam its official religion -- the party is now open only to practicing Muslims -- and called for political pluralism and a market economy. Although most Afghans still regard the pronouncements of President Najibullah with some skepticism, they are also waiting for any effective response from his opponents.

Meanwhile, the United Nations has been active, as have some policy-makers in both Washington and Moscow, in elaborating plans for a political settlement. By June 1990, both the U.S. and the U.S.S.R. had agreed to the basic content of a "non-paper" authored by U.N. Assistant Secretary General Benon Sevan, who was at that time the Secretary General's special assistant on Afghanistan. In this scenario, the U.N. Secretary General was to be encouraged to assist Afghans in forming a transitional body of respected individuals acceptable to all sides. This body was to exercise certain powers during a transitional period and to organize elections in accord with Afghan cultural and national traditions to choose a new government in a process in which all Afghans could freely participate. There was also agreement on the need for a cessation of hostilities during the transition period and on the need to discuss both an end to weapons supplies and the possible removal of weapons. What this proposal left unanswered was what exact powers the transitional body would have and what would be the role of Najibullah.

In early October 1990, as the U.S. Congress began for the first time to cut back the administration's already reduced requests for aid to the resistance,²² the

²² The *mujahideen's* failure to deliver a victory appeared to be the reason for a \$50 million

U.S. and Pakistan encouraged the *mujahidin* to open a coordinated offensive in several parts of the country. The ISI, freed of even vestigial political constraints since the dismissal of the government of Pakistan Prime Minister Benazir Bhutto on August 6, continued to work for the preeminence of Gulbuddin Hekmatyar. Resistance sources claim that an ISI plan in September to make Hekmatyar the defense minister of a reorganized AIG was frustrated at the last minute by American intervention. Major commanders refused to participate in the offensive, which they regarded as initiated by Pakistan and lacking an acceptable political framework. Many of them participated instead in a *shura* of top commanders which discussed steps to coordinate a military strategy and create a representative government that could constitute an alternative to the Kabul government. American diplomats on the ground, conceding that the offensive never had a chance of overthrowing the Kabul government, had hoped that it would shake the Soviet negotiating position and lead to a superpower diplomatic agreement. By the end of October 1990, the offensive was widely reported to have failed, at a cost of countless civilian lives,²³ and the provincial capitals retaken by government forces.²⁴

Despite hopes for a U.S. Soviet agreement at the December meeting between U.S. Secretary of State James Baker and Soviet Foreign Minister Eduard Shevardnadze, by year's end, negotiations between the U.S. and the Soviet Union over a transition process leading to elections remained stalemated over the question of what role Najibullah would play in the interim period. The Soviet Union continued to hold to the position that the transitional body's power should be limited to organizing the elections and that Najibullah should stay where he is. The U.S. has consistently objected, saying that Najibullah's command of the army

congressional aid cut, the first since the war began, and for the decision to condition release of half of the remaining \$250 million on another vote in 1991. On November 30, 1990, President Bush vetoed the 1991 intelligence authorization bill which had included the congressional restrictions on aid to the *mujahidin*. (The administration's objection related not to Afghanistan but to a provision related to the Iran-Contra controversy.) The House and Senate Select Intelligence Committees tentatively scheduled reconsideration of the bill for early 1991, when they are expected to offer modified legislation retaining the provisions on covert operations in Afghanistan and other countries.

²³ See Steve Coll and James Rupert, "Afghan Rebels Veto Drive for Kabul," *Washington Post*, November 4, 1990.

²⁴ "Kabul Rebels Reported to Kill 200 Soldiers," *New York Times*, November 11, 1990.

and secret police (which he headed from 1980 to 1985) and of the broadcast media would give him an unfair advantage in intimidating voters and manipulating the outcome. The U.S. therefore has called for the transitional body to have ultimate authority over all matters related to ensuring a free and fair elections process, including control over the army, police, other security forces, and mass media. Both sides would like to issue a joint statement at the foreign minister level turning over responsibility for resolving the conflict to the U.N., following the Namibian and Cambodian models, but disagreement on important details prevented them from reaching a settlement.

The resignation on December 20 of Foreign Minister Shevardnadze, prompted in part by the Soviet army's insistence on a greater role in foreign policy, including a demand for continued military support for President Najibullah, marked a serious setback in the negotiations. In January 1991 the Soviet Union renewed its commitment to military and economic aid to the government of President Najibullah.²⁵ By February 1991, it was clear that the outbreak of war in the Persian Gulf and the ongoing leadership struggle in the Soviet Union would continue to jeopardize any hope for a settlement in the near future.

²⁵ See Ahmed Rashid, "New Soviet Aid to Kabul Threatens Afghan Peace Plan," *The Independent*, January 24, 1991.

III. VIOLATIONS OF THE LAWS OF WAR BY THE GOVERNMENT OF THE REPUBLIC OF AFGHANISTAN AND BY THE AFGHAN RESISTANCE

By July and August 1990 when field research for this report was undertaken, the intense fighting that had characterized earlier years of the war had diminished in much of the Afghan countryside. Although indiscriminate attacks on civilian-populated areas have decreased, military operations by all parties continue to cause extensive civilian casualties. Government bombardments and missile attacks were reported from contested areas around Jalalabad and Khost, and in the Paghman hills northwest of Kabul, among other areas. Certain *mujahidin* commanders²⁶ have also continued to launch rocket attacks against Kabul and other cities, causing heavy civilian casualties.

In their military operations, Afghan government forces have employed Scud missiles and other methods of warfare which cannot be targeted with sufficient accuracy to ensure that civilians are not placed at undue risk. In a number of incidents, these attacks have caused extensive civilian casualties. The use of weapons that cannot be directed at a specific military objective is a violation of the laws of war. There has been apparently little effort on the part of the government to warn civilians to evacuate the areas in advance of such attacks, which is required under the laws of war where feasible.

Summary executions of captured prisoners by government forces that was widespread in earlier years of the war and reports of reprisal killings of ordinary civilians suspected of supporting the *mujahidin* have also decreased. Nevertheless, such killings continue to take place, as described below. Militia operating in alliance with the government have also participated in the indiscriminate shelling of civilian targets and the summary executions of *mujahidin* prisoners. If the government is sincere in its commitment to human rights, it should promptly investigate these and all such reports and prosecute those responsible for abuses.

²⁶ They include commanders allied primarily with Hekmatyar, Khales and Sayyaf, as well as other commanders recruited by the ISI.

Some *mujahidin* commanders, including those acting under the direction of the ISI, have launched indiscriminate rocket attacks on Kabul and other cities, killing civilians. The rockets used in these attacks are notoriously inaccurate; one variety has a fragmentation warhead that delivers up to 98 anti-personnel bomblets. The Pakistan ISI and the U.S. Central Intelligence Agency have encouraged these attacks and have supplied weapons to commanders who undertake them. Some *mujahidin* forces have also summarily executed government soldiers captured in combat and members of rival *mujahidin* forces captured following internecine clashes.

All parties to the conflict have laid and continue to lay mines without adequate marking or mapping and without taking precautions to ensure that civilians are warned of minefields. The mines, the vast majority of which were laid by the Soviets and which number at least in the tens of thousands and possibly in the millions, are concentrated in dense agricultural and forest zones and along mountain passes. Those civilians most at risk are women and children grazing flocks or foraging for firewood. Roads that are used to transport returning refugees, among other things, have been mined by both government-sponsored militia and by *mujahidin* forces.

By mid-1990, the territory under government control was limited to the cities and their immediate environs, with several areas of the country, particularly in the north and along the Pakistani border, effectively under the control of *mujahidin* factions. Although many of these areas are still largely depopulated, refugees have begun to return to some provinces, particularly in the north, and in southern Qandahar province. In these areas, the functions of government are in the hands of the local *shura*, or council, made up of commanders and in some cases tribal elders or other civilians. In Takhar province, an area that was recaptured from government forces in 1988, Jamiat-e Islami commander Ahmad Shah Massoud has established an administrative structure that incorporates local civilians in the police force and *shura* meetings. According to recent press reports, he has also called for elections in the province to be held in early 1991. Massoud's administration forms part of the Supervisory Council of the North, which coordinates the activities of Jamiat-e Islami commanders in several northeastern provinces.

Fighting between *mujahidin* factions and Arab volunteer forces in some

areas, notably Kunar, has led to the creation of competing *shuras* as the groups struggle for control over territory. Throughout 1990, there were bloody skirmishes in Kunar between Hezb-e Islami forces and those of Wahhabi leader, Jamil-ur-Rahman. Sporadic fighting continues to break out between other *mujahidin* factions, including Hezb-e Islami and Jamiat-e Islami forces in the northeast.

In other areas, particularly those bordering government-held territory, the government has negotiated agreements with former *mujahidin*, providing weapons and ceding control in exchange for a cease-fire. These militia²⁷ often supplement government forces on the battlefield and have been used to create buffer zones around government-controlled cities. In exchange for providing support to government forces -- and agreeing not to fight the government -- militia commanders are permitted to control territory, and the government has neither the political nor the military capability to exercise its authority over them.

The Rules of War

In any armed conflict, all parties are responsible for respecting the "rules of war," the principles enshrined in the 1949 Geneva Conventions to which states can become party. The Republic of Afghanistan has acceded to the Geneva Conventions.

With the withdrawal of Soviet armed forces from Afghanistan, the hostilities there again assumed a purely non-international or internal character under international humanitarian law, i.e., the law of armed conflict. Accordingly, both the Afghan government and the various *mujahidin* forces are bound by those rules set forth in Common Article 3 common to the four 1949 Geneva Conventions ("Common Article 3") to which Afghanistan is a High Contracting Party, and those customary international law rules applicable to all internal armed conflicts. While not directly applicable to the Afghan conflict, Protocol II additional to the 1949 Geneva Conventions ("Protocol II") does contain certain rules by which the conduct of hostilities in that conflict can be judged, even though Afghanistan is not a party to it.

²⁷ The term "militia" is used to refer both to former *mujahidin* who switch sides and to tribal paramilitary organizations who fight with the government in exchange for arms and money.

Common Article 3 is automatically applicable as soon as a situation of internal armed conflict exists within the territory of a party to the Geneva Conventions. It imposes fixed legal obligations on the parties to such a conflict for the protection of persons not, or no longer, taking an active part in the hostilities by absolutely prohibiting:

- 1. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**
- 2. taking of hostages;**
- 3. outrages upon personal dignity, in particular humiliating and degrading treatment;**
- 4. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

Common Article 3 also imposes an obligation on the parties to the conflict to collect and care for the wounded and sick.

Unlike human rights law which applies only to violations committed by a government or its agents, Common Article 3 expressly binds both parties to the conflict, i.e., Afghan government and *mujahidin* forces. Moreover, the obligation to apply Common Article 3 is absolute: even if the *mujahidin* forces engage in summary executions of Afghan soldiers, or fire poorly aimed rockets into the heart of Kabul, the Afghan government is still obliged to prohibit "violence to life and person" of non-combatant civilians.

Significantly, Common Article 3 is the only provision of the four Geneva Conventions that directly applies to internal armed conflicts. The parties to such a conflict have no legal obligation to comply with the other articles of the Conventions that apply solely to an international armed conflict. The Afghan government, therefore, is not obliged to accord the *mujahidin* prisoner of war status and can punish captured guerrillas for the commission of crimes under its domestic laws. A guerrilla who kills a government soldier, for example, can be tried for murder, treason, sedition or other offenses, but the trials must be conducted in accordance with the standards set forth in Common Article 3.

Unlike the law governing international armed conflicts, Common Article 3 contains no rules regulating the means and methods of warfare. In addition, the terms "civilian" and "combatant" do not appear in any of the provisions of Common Article 3. Although Common Article 3 does not provide explicit protection for the civilian population from attacks, its prohibition of "violence to life and person" against "persons taking no active part in the hostilities" may be broad enough to encompass attacks by one side against civilians in territory controlled by the other side in an internal armed conflict.

The primary purpose of Common Article 3, however, is to ensure absolutely that anyone not or no longer taking part in hostilities is treated humanely. Persons protected by Common Article 3 include members of both government and *mujahidin* forces who surrender, are found wounded, sick, or unarmed, or are otherwise captured by the other side. Individual civilians are similarly protected, even if they had fought for the opposing party, or indirectly participated in the hostilities by providing either party with food or other logistical support. Under these circumstances, if these persons die as a result of execution or torture inflicted by a party to the conflict, their deaths are tantamount to murder.

Customary International Law Applicable to Internal Armed Conflict

Although Common Article 3 does not, by its terms, prohibit attacks against the civilian population in non-international armed conflicts, such attacks are prohibited by the customary laws of armed conflict. United Nations General Assembly Resolution 2444, *Respect for Human Rights in Armed Conflicts*,²⁸ adopted by unanimous vote on December 19, 1969, expressly recognized this customary principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times.²⁹

²⁸ G.A. res. 2444, 23 U.N. GAOR Supp. (No. 18) at 164, U.N. Doc. A/7433 (1968).

²⁹ The preamble to this resolution clearly states that these fundamental humanitarian law principles apply "in all armed conflict," meaning both international and internal armed conflicts. Furthermore, the International Committee of the Red Cross has long regarded these principles as basic rules of the laws of war that apply in all armed conflicts. The

Another fundamental principle of customary humanitarian law is the principle of humanity, which both complements and inherently limits the doctrine of military necessity. It is defined by the U.S. Air Force (Pamphlet on the Conduct of Armed Conflict and Air Operations) as forbidding:

... the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes. This principle of humanity results in a specific prohibition against unnecessary suffering and a requirement of proportionality ... The principle of humanity also confirms the basic immunity of civilian populations and civilians from being objects of attack during armed conflict.³⁰

Protocol II

Protocol II goes beyond these general provisions to specify ways in which the civilian population should be protected in an area of conflict and states, "the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited." (Those living near or among combatants who provide to them non-military support, such as food, are still considered civilians.)

Because Afghanistan has not ratified Protocol II, that instrument cannot directly bind either the government or *mujahidin* forces. It can still, however, provide standards for the conduct of internal armed conflict. By inference, Protocol II protects civilians against indiscriminate or disproportionate attacks. These include:

- 1. an attack by bombardment by any method or means which treats as a single military objective a number of clearly separate and distinct military objectives located in a city, town, village or other areas containing a similar concentration of civilians or civilian objects;**

United States government also has expressly recognized these principles as declaratory of existing customary international law.

³⁰ **Air Force Pamphlet AFP 110-31, International Law - the Conduct of Armed Conflict Air Operations 1-6 (1976).**

and

2. an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.³¹

The use of land mines, which by their nature tend to cause extensive civilian casualties, is one of the most devastating aspects of the war in Afghanistan. The principle of confining attacks to military targets also applies to the use of land mines, which is described in more detail below.

Throughout the Afghan conflict each of the provisions outlined above has been systematically violated by all parties. With the withdrawal of Soviet forces from the conflict, indiscriminate attacks by government forces on civilian population centers diminished but did not end; in some areas civilians continue to suffer disproportionately because of bombing raids and missile attacks.

A. VIOLATIONS OF THE LAWS OF WAR BY THE GOVERNMENT OF THE REPUBLIC OF AFGHANISTAN

Indiscriminate Attacks on Civilians by Afghan Government Forces

In the years following the Soviet invasion in December 1979, the shelling and aerial bombardment of rural villages and cities by government and Soviet

³¹ These prohibitions are spelled out in Protocol I, but the most authoritative commentary on Protocol II states they are "inferentially included" within the prohibition of making civilians the object of attack. See M. Bothe, K. Partsch and W. Solf, *New Rules for Victims of Armed Conflict – Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Geneva: 1982) p. 671

forces³² was almost constant. The mass destruction caused by these bombing raids has been the primary cause of over one million civilian deaths during the course of the war and for the exodus of five million refugees from Afghanistan into Pakistan and Iran.

In the period just before the withdrawal of Soviet troops in February 1989, heavy bombing raids were reported in Qandahar and north of Kabul along the Salang Highway -- the route for the withdrawal of the Soviet troops. As many as 600 people were reported to have been killed when Soviet forces carpet-bombed villages in the Panjshir Valley and Salang Pass in January and February 1989.³³ Scud missiles were also reported to have been used extensively in these attacks, with some 21 Scud missiles reportedly being launched between January 23 and February 8.³⁴ A number of villages devastated in the attacks were far from the strategic Salang Highway; in the village of Khenj, some 60 kilometers from the highway, 70 people were reportedly killed by Scud missiles.³⁵ Western journalists also cited reports of high-altitude bombing and shelling of villages north of Kabul in the weeks before the Soviet withdrawal.³⁶

Since the Soviet withdrawal, bombing raids carried out by Afghan government forces have declined in much of the country. In fact, in certain areas, notably Qandahar, the provincial government has resisted responding to *mujahidin* attacks by return fire in order to bolster its image and win the support of civilians. However, in areas of concentrated fighting, missile attacks and shelling of civilian areas have continued. These attacks have been carried out in

³² Bombing raids by Soviet forces continued until the end of the withdrawal in February 1989.

³³ Interview by Asia Watch representative with Engineer Mohammad Es'haq, a political officer of Jamiat-e Islami, February 8, 1989.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ See James Rupert, "Rebels Send Food Convoy to Kabul," *Washington Post*, January 27, 1989; Elaine Sciolino, "Afghan Campaign Said to Intensify," *New York Times*, January 21, 1989; Richard Weintraub, "'300 People Died' in One Village," *Washington Post*, February 5, 1989. In an interview with John Newhouse, Soviet journalist Artyom Borovik, who had reported on the war for the liberal Soviet weekly magazine *Ogonyok*, stated: "We had an operation scheduled for January 23-26, 1989 ... Najibullah was afraid that the rebels would close the road linking Kabul to the Soviet Union ... Hundreds of Afghan women, children and old men were killed." See "Chronicling the Chaos," *New Yorker*, December 31, 1990, p. 57.

apparent reprisal for guerrilla assaults on government army positions or to protect strategic routes to the cities. In the latter cases, the attacks have been conducted in such a way that civilian-populated areas have been the primary targets. Such attacks are indiscriminate since they either are directed against civilians or are in disregard of laws protecting the civilian population from disproportionate attacks. They therefore flagrantly violate the most basic laws of war.

The weapons used by the Afghan government forces in such attacks have included Scud-Bs, which are unguided, long-range, surface-to-surface missiles,³⁷ and Frog-7 rockets, which are unguided, short-range, surface-to-surface missiles.³⁸ Other rockets, including the BM-21 and BM-22,³⁹ have also been used.

Afghan government officials interviewed by Asia Watch have stated that when they fire rockets they aim only for military targets and that they understand the need to evacuate civilians from areas under fire.⁴⁰ However, the weapons, as deployed in such attacks, particularly the Scud missiles, are so inaccurate that they constitute a means of combat which are as likely to hit civilians and civilian objects as military targets without distinction. Refugees interviewed by Asia

³⁷ The Scud-B SS-1 missile is a Soviet-made missile about 12 meters long which carries a 1,000 kilogram warhead and has a maximum range of 280 kilometers. In Afghanistan, the missiles have carried high-explosive warheads. (They may also be fitted with nuclear or chemical warheads.) The missiles are highly destructive and have a CEP (Circular Error Probable – the standard measure of accuracy) of 1000 yards. For further information on the specifications of weaponry used in the war, see the guide to *Afghanistan: The Making of U.S. Policy 1973-1990* (Alexandria VA: National Security Archives and Chadwyck-Healey, Inc. Forthcoming in March, 1991). The CEP estimate cited was provided by the Center for Defense Studies, Washington, D.C.

³⁸ The FROG missile weighs 2,300 kilograms and has a maximum range of 70 kilometers. It has been used in Afghanistan since 1985. It has a CEP of 550-750 yards. *Ibid*

³⁹ The BM-21 is a multiple rocket launcher which is capable of creating a "high concentration of firepower in a very short time." In Afghanistan, the BM-21 has been used to destroy agricultural land and may carry incendiary sub-munitions. The BM-22 delivers rockets that deliver high-explosive bomblets or mines. Because of its delivery system, the rocket is sometimes described as a "cluster bomb." See the guide to *Afghanistan: The Making of U.S. Policy 1973-1990*.

⁴⁰ Interview with Minister of Defense General Mohammad Aslam Watanjar, July 25, 1990.

Watch testified that they had not received advance warnings to evacuate the area.⁴¹ Some stated, however, that they had learned to anticipate reprisals following offensive operations by local *mujahidin*, and moved their families accordingly. Afghan Foreign Minister Abdul Wakil told an Asia Watch delegation in October 1990 that when the *mujahidin* were prepared to stop using rockets, the government would stop using Scuds.⁴² However, the government's obligation to abide by the laws of war is independent of any actions taken by the guerrillas. If Scuds are causing disproportionate civilian casualties, they should not be in use at all.

Afghan government officials also claim that many of the areas targeted are depopulated of civilians. A *mujahidin* commander interviewed by Asia Watch unintentionally confirmed this when he derided the government's efforts against the *mujahidin*, stating that in some provinces, the rockets were hitting areas long depopulated.⁴³ In other provinces where intensive fighting has continued, the refugees driven into Pakistan interviewed by Asia Watch in 1989 and 1990 all reported that they left because of the bombing.

Aerial Bombardments and Shelling in Jalalabad District

The eastern city of Jalalabad came under siege by *mujahidin* forces in March 1989, with fierce fighting between government forces and the *mujahidin* through May 1990. The area remained contested and sporadic fighting continued during 1990 and into 1991. In July 1990, Asia Watch interviewed dozens of men and women who had fled the fighting and had settled in camps near Peshawar, Pakistan. They had been in the camps less than a year at the time of the interviews. Most of those we interviewed were relatives of *mujahidin* and freely admitted that the guerrillas had been present at the time the villages came under attack. If the principles of humanity and proportionality are to be observed, however, the existence of legitimate military targets in the area may not justify the kind of carpet-bombing that apparently took place.

⁴¹ See p. 21.

⁴² Interview by Asia Watch with Foreign Minister Abdul Wakil and the Afghan Ambassador to the U.N., Noor Ahmad Noor, in New York, October 5, 1990.

⁴³ Interview with Commander Mullah Malang, in Quetta, Pakistan, July 7, 1990.

One woman, Fawzia, 36, from Jalalabad district, described the government bombing that drove her to Pakistan in late 1989:⁴⁴

In the weeks before the bombing, government tanks would come through about once a week. Then they started coming every day to search the area for about three hours. One day the bombing started around 9 or 10 at night. It lasted for about half an hour, then started again in the early morning for about one-and-a-half hours. My husband died in the bombardment, buried under the house. It was difficult to recognize his body, it was so badly crushed. My daughter, Nafaz Gul, two years old, was also crushed under the house. In other houses, there were dismembered bodies of children and dead animals. In all, about 20 families' houses in that area were destroyed. Some 45 people in all were killed, and more than that wounded, according to what the families here have said. The survivors all left. We heard bombing in other areas in days that followed. I came to this camp with three sons and one daughter.⁴⁵

Zeiba, 26, came to Pakistan from Surkhrud, Ningrahar. The area was subjected to aerial bombing and shelling in March 1989:

My brother-in-law was hit by a shell so big that he had no heart left; there was only a big hole in his body. My husband, a day laborer, was also killed. He had been carrying grass to the cow when the planes came from the mountainside. The bombing went on six days and nights. Our family went and hid in a cave. Two other relatives were killed; another woman, Khatina, aged 20, was wounded in her back and was evacuated to Kabul where we heard that she died. One man working on the land was broken in two parts, a man named Akbar. The mosque was levelled and the *mullahs*⁴⁶ died.

⁴⁴ Asia Watch was not able to confirm precise dates for any of the bombing incidents described by refugees. They described incidents that had taken place in the months before their arrival in Pakistan. Many of the refugees were from the Jalalabad area and some of the incidents appear to have taken place in the months following the 1989 battle for Jalalabad city. (For a further discussion of the battle, *see* p.43-44).

⁴⁵ Interview in Interchurch Aid Project camp outside Peshawar, Pakistan, July 1, 1990.

⁴⁶ A *mullah* is a Muslim cleric.

Madinah, 30, a widow with six children from the village of Bakhtan in Surkhrud district, came to Pakistan in mid-1989 after that area was bombed:

My paternal uncle, his two sons, another uncle and two of my mother's brothers died in one mud house. In another house, five died: a mother, daughter and three brothers. The rockets we saw were the length of a forearm.⁴⁷

Another woman, Heisalallah, lost five of her sons and a four-year-old daughter in a bombardment in early 1990 in the village of Mimbaraq, Chaharbagh district. Her house and two neighbors' houses were destroyed; all her cows and donkeys were killed. She came to the camp with three daughters and two sons.

Rabow, a woman about 45 years old, had fled from Shewa, Jalalabad, an area that *mujahidin* aligned with Hekmatyar's Hezb-e Islami claimed as "liberated." She came to the camp some time in March 1989 after her village was bombed. Seven people in her family were killed, including her husband; Haji Gul, 40, a cousin; Shera Gul, 16, a niece; Naim, 30, a cousin; Ahsan Jan, 20, a cousin; and two others (relationship unknown), Lala Gul and Hansaman. She told Asia Watch:

There was nobody to bury the dead afterwards. We left immediately and don't know for sure what happened after. The bombs left big craters. Every house hit was destroyed. Bombing went on morning and night for a week. On the way to Pakistan, we traveled by night because of the bombing. It took eight weeks to get to Pakistan. Six to seven hundred came to Pakistan from our village.⁴⁸

Another man, Zaman Ghani, a high school teacher from Shegai, saw Rabow's uncle, Haji Gul, try to move the body of Rabow's husband. As he did so, the body exploded. After that incident, he said, the people tied ropes around one leg of the bodies so that they could at least salvage one piece. The placing of grenades by Afghan government forces (and Soviet forces before their withdrawal) under the bodies of those killed in bombing raids had been reported throughout the

⁴⁷ Interview in Interchurch Aid Project camp outside Peshawar, Pakistan, July 1, 1990.

⁴⁸ *Ibid.*

war.⁴⁹ The laws of war specifically prohibit booby-trapping dead bodies.⁵⁰

One man showed us a scar on his stomach resembling a long cut that he said he had received from shrapnel. Gulmar Jana, a woman perhaps 50 or 60 years old, from Shewa, told Asia Watch that her husband, Hadi Gul, a farmer, had been killed in a bombing raid three months earlier along with their 18-year-old son, Fazlullah. Both had been in the house when the bombing started. The old man and Gulmar Jana described two kinds of bombs that were used: one that created "deep craters" and another that "scattered small bombs":

There was no one to bury them; the dead bodies were eaten by dogs. The bombing went on for two days. Some of the wounded went to Jalalabad; we don't know how many died there. We couldn't reach the graveyards to bury the dead because of the army outposts between the village and the cemetery.⁵¹

In the incidents cited above, there was apparently no effort on the part of the government to warn civilians of the impending attack so that they would be able to evacuate the area. While we are not in a position to determine whether the circumstances attending these bombardments justified not giving civilians advance notice of these attacks, the evidence suggests that the government rarely, if ever, gives such notice. In any event, such notice would not free the attacking party from observing the rule of proportionality in attacking military objects.

Aerial Bombardment and Shelling in Other Districts

Refugees from the Barakzai tribe in Faryab, a province in northwest Afghanistan, described how they had twice been driven to seek refuge because of government aerial bombardment and shelling. They were first driven out of Faryab in late 1988 when Soviet and Afghan government forces, with the support of an Uzbek militia force aligned with the government, encircled the area. According to Nasruddin, the tribal leader:

⁴⁹ See Asia Watch/Helsinki Watch reports cited in footnote 1.

⁵⁰ Land Mines Protocol, Article 6(b)(iii).

⁵¹ Interview in Interchurch Project Aid camp outside Peshawar, Pakistan, July 1, 1990.

From our family, around eight people were killed; the other families lost 17 or 18. As soon as we buried them we left, but the bombing continued in the mountains on the way to Badghis.

Another member of the family continued:

Last year two or three days after 'Id [an Islamic holy day] the mortars and bombing started. We left Badghis, traveling at night to avoid the fighting.⁵²

A number of members of the clan had been injured, apparently by the shelling. One man showed us his foot, partially severed and twisted. He said the injury was caused by shrapnel from the bombs.

In other cases, the bombing operations are clearly reprisals against guerrilla strongholds following attacks on government army posts. While we are not in a position to determine whether all of these attacks were indiscriminate, the numbers of civilians killed and the extent of the damage to civilian objects suggests that the government forces launched these attacks in disregard of laws protecting civilians from disproportionate attacks.

Asia Watch interviewed an old man who arrived in the Nasirbagh camp in early July 1990 after walking all the way from Mazina where he had lived since mid-1989. He described the bombings that had twice driven him to find refuge. Originally from Zarkhel, he had left after the Soviets bombed his village there. He told us, "If the *mujahidin* don't attack, the government doesn't retaliate." He described the bombings of civilian-populated villages in Zarkhel and Mazina:

The bombing started around supper time. My son was killed and Zarkhel razed to the ground. In Mazina, my other son was injured by shrapnel, but he's now recovered. Then the soldiers came in with tanks, so many we couldn't count them.⁵³

In another incident, a massive bombardment at the end of May 1989 in Paghman followed a local guerrilla attack on a militia outpost. Asia Watch

⁵² Interviews in Tratta refugee camp, outside Quetta, Pakistan, July 7, 1990.

⁵³ Interview in Nasirbagh refugee camp, outside Peshawar, Pakistan, July 8, 1990.

interviewed a number of men who had left the area at that time. The bombardment apparently followed a joint operation by forces aligned with Hekmatyar, Khaled and Sayyaf to attack a government militia post. One of those interviewed said that the attacks appeared to be timed to cause heavy civilian casualties:

The bombing began after the attack; we had known what their response would be. It started at night, with striped planes dropping bombs that exploded into four or five bomblets. They pick times to bomb when people are crowded together, making meals or at prayer. They look for smoke coming up, a sign of cooking, that people are at home eating.⁵⁴

One of the men, Yusuf, stated, "In these situations, we know it will happen. We shift our families out of the area."⁵⁵

Summary Executions and Reprisal Killings

During the Soviet participation in the hostilities in Afghanistan, bombing raids were frequently followed by sweep operations in which Soviet and government troops conducted searches for suspected *mujahidin* and their supporters. During those search operations, civilians were frequently arrested and sometimes executed on the spot. It was not unusual for an entire village to be destroyed, and many of its residents killed.⁵⁶ Such operations have greatly decreased since the Soviet withdrawal; however, Asia Watch interviewed witnesses who described a number of incidents in which suspected guerrillas and civilians supporting them were summarily executed.

Khanum Jan and her sister-in-law Zarmina from Siq Sang, Jalalabad, described the executions which they said took place in late 1989 after the bombing of their village:

Afterwards the Afghan militia came and separated the men in the village, the old from the young. They brought out everyone in front of the mosque and shot the young ones who had carried guns. In our family, the

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ See Laber and Rubin, pp. 37-41.

following men were shot:

Gulzar, a nephew, 22 years old.
Khan Mohammad, a cousin, 30 years old, married with children.
Ali Khan, a stepson, 28, married with one child.
Anat Khan, a stepson, 25.
Mayin Khan, 18, the child of a cousin.
Ruidar, a cousin, 20, married with no children.
Khwarai, nephew, 35.
Malai Khel, about 30, son-in-law.

All of them were members of Hezb-e Islami (Hekmatyar).⁵⁷

Ordinary civilians have sometimes been the victims of summary execution or reprisal killing because they are suspected of supporting the *mujahidin*. Heisalallah, an old woman from Chaharbagh district, Jalalabad, described the killings that followed the bombing of her village of Mimbaraq, in early 1990. She stated that the army took her husband, Khodai Nurshah, aged 30, a day laborer; Arif Mohammed, her brother-in-law, aged 9; and Sheengul, her father-in-law; along with several other people and poured gasoline on them, because they were accused of giving the *mujahidin* food:

One night at midnight, the bombing started and lasted for about two days. My house and two other houses nearby were destroyed, so were all the green trees. Then soldiers with tanks came into the village. At 7 in the morning, soldiers came and asked my husband, "Why did you give food to Gailani? Who came to your house? Which commander was it?" Then they took the two men and the little boy in a black car and then to a public square about two kilometers away and burned them alive. Many people saw it although I didn't. Two other people were also burned: Mateen, a neighbor, who died, and Khaisan, a 20-year-old man, who survived, only now he has no hair and looks like he's 90.

She said her brother was fighting with the NIFA (Gailani) faction of the *mujahidin*. "When the *mujahidin* come, you do as they say. When the army comes,

⁵⁷ Interviews in Interchurch Project Aid camp, outside Peshawar, Pakistan, July 1, 1990.

you do as they want."⁵⁸

Halim Jan, a prisoner who had been captured in 1984 and who was released from Mahabas jail in Jalalabad in 1989, described the summary execution of prisoners he had witnessed when he was first detained:

Usually they tied their hands, blindfolded them, put them in an ambulance, and drove away and shot them. At the beginning, maybe 25 people a day were executed ... They would bring in herds of people at a time.⁵⁹

He claimed that the practice continued after the Soviet withdrawal, but cited no specific examples. Asia Watch was not able to confirm whether summary executions of this kind have continued to take place in Jalalabad prison. Such executions without charge or trial would constitute extremely grave violations of Common Article 3.

Forced Conscription of Prisoners

Particularly after the Soviet withdrawal, the Afghan government, anticipating that the resistance forces would launch a major attack on Jalalabad, released a number of prisoners before the expiration of their sentences and inducted them immediately into the army. The practice of releasing prisoners directly into the army started several years earlier. The prisoners were released under Decree No. 37, dated April 26, 1987, of the Presidium of the Revolutionary Council, which declared that "prisoners who are eligible for service in the armed forces should be remitted." According to Amnesty International, the prisoners were told that the remaining part of their prison sentences would be spent in military service; in fact, that service amounted to "a punitive practice similar to continued imprisonment."⁶⁰ Asia Watch interviews with former conscripts indicated that the conscripts were treated more like prisoners than soldiers.

⁵⁸ *Ibid.*

⁵⁹ Interview in Munda refugee camp, outside Peshawar, Pakistan, July 9, 1990.

⁶⁰ Amnesty International, "Afghanistan: Unlawful Killings and Torture," *AI Index* ASA 11/02/88, May 1988.

Sayyed Rahman from Shegi, Shewa, a man about 24 years old who was arrested when he was about 16, was released early from Mahabas prison in Jalalabad and immediately inducted into the Afghan army shortly before the Soviet withdrawal when the Afghan army faced an acute shortage of men. Along with other former prisoners, he remained under restriction while in the army. For example, he stated that the prisoners were not allowed to go anywhere alone; even when they went to relieve themselves, a guard would stand with his foot on the prisoner's shirttail. They were confined to military barracks No. 81, near Jalalabad, the boundaries of which had been mined. According to Sayyed Rahman, a number of prisoners were killed by the mines when they tried to escape.⁶¹

Militia

In addition to its regular defense forces, the government uses paramilitary forces from various tribal groups to supplement its security around the cities and to provide extra forces on the battlefield. In some cases, these militia are former *mujahidin* forces that have signed protocols with the government giving them control over areas of the country as well as cash and weapons in exchange for a cease-fire. Although the Ministry of State Security signs the protocols with the militia,⁶² these groups operate outside the chain of command of the ordinary armed forces. The government effectively abandons any effort to assume administrative control over these groups while providing them with the same range of weapons available to its regular forces. The members of these militias are combatants for whose conduct the armed forces are ultimately responsible, and they are bound to conduct their military operations in accordance with the laws of war.

President Najibullah told Asia Watch that the militia forces are needed to "protect civilians" and "prevent Pakistan from using these people against us."⁶³ In some cases, the Ministry of Defense works with the local tribal *jirgas* (Pashtun tribal assemblies) to organize militia.⁶⁴ Government officials acknowledged to Asia Watch that some militias have robbed returning refugees, but stated that the

⁶¹ Interview in Munda refugee camp, outside Peshawar, Pakistan, July 9, 1990.

⁶² Interview with Colonel Bahbod, Acting Governor of Herat Province, July 29, 1990.

⁶³ Interview with President Najibullah, July 26, 1990.

⁶⁴ Interview with Minister of the Interior Raz Mohammad Pakteen, July 24, 1990.

army had been instructed to prevent such abuses. Although the attorney general is apparently authorized to take action against militia members who violate the law, there is no indication that any such action has been taken.

In fact, independent organizations have reported that when discipline problems with the militia arise, the government disowns any responsibility for them.⁶⁵ The Jozjani militia, an Uzbek force which has been provided with tanks and other advanced weapons by the government, was initially deployed in Qandahar but reportedly engaged in a number of abuses, including looting the local hospital, until the government moved it back to guard the outskirts of Kabul. Refugees in Quetta stated that the Uzbek forces had participated in searching homes in the villages, looting property and arresting young men to serve in the army.⁶⁶ Other militia operating in the Qandahar area, including those under the command of Rashid Dustam and Esmat Muslim, have been accused of looting civilian property. Refugees described the indiscriminate shelling of civilian areas in Faryab and Badghis by both Afghan government and Uzbek militia forces.

Militia have also laid mines without marking or providing maps of minefields. Because a number of the areas, including border crossings, to which refugees are returning are under the control of militia, the use of mines by these groups poses a great risk to civilians. For example, the road from the Iranian border to Herat, which is used by returning refugees, is heavily mined by both *mujahidin* forces and by local militia. According to independent sources interviewed by Asia Watch, trucks carrying refugees frequently strike these mines, causing civilian casualties.⁶⁷

The militia also detain enemy combatants and civilian prisoners. One militia commander in the Herat area, who was formerly with Jamiat-e Islami, told Asia Watch that the commander and the deputy commander have the authority to settle disputes and that in criminal cases, the judgement of the *qazi*, or Islamic judge, is final. Before the militia commander signed the protocol with the government, prisoners were detained in jails or detention camps maintained by the commander; now prisoners sentenced by the *qazi* are imprisoned in

⁶⁵ Interviews with international relief agency representatives in Kabul, July 22, 1990.

⁶⁶ Interviews in Tratta refugee camp, outside Quetta, July 7, 1990.

⁶⁷ Interview with international relief agency representatives in Kabul, July 23, 1990.

government jails.⁶⁸ A.B Sarwary, the attorney general's representative in Herat, told Asia Watch that an attorney from the office attends the militia court proceedings; but he confirmed that the government accepts prisoners from the militia without questioning the verdict or the proceeding. Detainees charged with political crimes, including captured members of *mujahidin* forces, are sent to the National Security Court for trial.⁶⁹

B.VIOLATIONS OF THE LAWS OF WAR BY ELEMENTS OF THE AFGHAN RESISTANCE

A number of *mujahidin* commanders, many of whom have been recruited by the Pakistan ISI have launched indiscriminate rocket attacks on Kabul and other cities, causing high civilian casualties. The ISI and the U.S. Central Intelligence Agency have encouraged these and other attacks and have provided U.S.-supplied weapons to commanders who agree to undertake them.

A number of *mujahidin* forces have summarily executed government soldiers captured in combat, including some who surrendered on the understanding that they would be given safe passage. *Mujahidin* forces from certain factions have also assassinated rival resistance leaders and have executed *mujahidin* prisoners following clashes between rival resistance forces. Torture of detainees in *mujahidin* prisons is reported to be common.

Many *mujahidin* forces lay mines without taking precautions to ensure that civilians are warned of minefields. Often they themselves forget where the mines were laid. Because of the divisions within the resistance, the minimal mapping that is done is not made accessible to all parties. Such precautions are required under international humanitarian law, which provides for the protection of civilians against weapons, such as land mines, which may have indiscriminate effects.

Indiscriminate Attacks on Civilians

⁶⁸ Interview with Moman Khair Mohammad, Deputy Commander under Sayyed Ahmed, in Herat, July 28, 1990.

⁶⁹ Interview with the A. B. Sarwary, of the Attorney General's office in Herat, July 29, 1990.

Following the completion of the withdrawal of the Soviet forces from Afghanistan in February 1989, a number of *mujahidin* commanders launched a series of offensives against government forces that included the indiscriminate rocketing of government-controlled cities. The first target of the offensive was Jalalabad, which came under siege by resistance forces from March to May 1989. Journalists who visited the city reported widespread destruction to civilian objects:

Large sections have been bombarded and abandoned, while others, especially the mud-walled sections of the old town, have been shattered by the unrelenting rocket and artillery attacks of rebels ... some streets have hardly any homes that have not been hit by rockets or shells ... The city's main high school, its university, its courthouse, its prison, at least two hospitals, and several major government buildings appeared to have been so badly damaged as to be unusable.⁷⁰

U.S. officials played down reports of devastation to residential areas. In testimony before the House Subcommittee on Asian and Pacific Affairs on June 14, 1989, Deputy Assistant Secretary of Defense for Near East and South Asian Affairs Edward W. Gnehm stated, "It is our firm belief that most of the insurgent groups have specifically avoided targeting the civilian areas, and ... that destruction is not nearly as large-scale as had been feared."⁷¹ According to Afghan government sources, however, 500 civilians were killed and more than 2,000 injured in rocket attacks and shelling of Jalalabad in the two months after the offensive began in early March 1989.⁷²

In the first nine months after the Soviet withdrawal in February 1989, Western aid experts based in Kabul reported that at least 600 people died in guerrilla rocket attacks on Kabul, over 90 percent of them civilians.⁷³ Western relief agencies estimated that by the end of 1989, 1,000 civilians had died in

⁷⁰ John Burns, "Inside Jalalabad: A Sad Crumbling Shell," *New York Times*, May 11, 1989.

⁷¹ *Hearings*, p. 74.

⁷² John Burns, "Inside Jalalabad: A Sad Crumbling Shell," *New York Times*, May 11, 1989; Mark Fineman, "Jalalabad Devastated but Quiet," *Washington Post*, May 11, 1989.

⁷³ John Burns, "Don't Give Rockets to Rebels, Kabul Tells U.S.," *New York Times*, November 29, 1989.

rocket attacks on Kabul alone.⁷⁴ In an interview published in the *Washington Post* in July 1989, Jean-Jacques Fresard, the head of the International Committee of the Red Cross mission in Kabul at the time, stated that 99 percent of those killed in the rocket attacks had been civilians.⁷⁵

Since the siege of Jalalabad, resistance commanders have continued to fire rockets and surface-to-surface missiles into government-controlled cities, particularly Kabul, despite the high civilian casualties caused by these attacks in relation to the importance of the military targets. The *mujahidin* have also used mortars in these attacks. These mortars reportedly require daily readjustment to be accurate; failure on the part of the guerrillas to do so may also explain some of the high civilian casualties.⁷⁶

Most of the civilian casualties in Kabul are caused by indiscriminately deployed rockets, primarily Egyptian-made Sakr rockets, supplied to the *mujahidin* through the ISI and purchased with funds from the U.S. The Sakr rocket that is used most extensively disintegrates into high-velocity shrapnel hurled from the site of impact at a 60 degree angle.⁷⁷ In the course of the Asia Watch mission in late July and early August 1990, some 12 to 20 rockets struck Kabul every day. Asia Watch representatives visited the sites of several rocket explosions in Kabul in July 1990.

One such rocket exploded on a street in a residential neighborhood of Kabul on July 22, 1990. Shrapnel shattered the windows of a pharmacy; witnesses stated that the owner and a customer who had just left the store were killed. At about the same time, a second rocket struck a taxi on a nearby street, leaving it a charred shell; local residents told Asia Watch that one passenger was killed, another three injured. In these incidents, the rockets landed far from the airport and any other visible military targets.

The other kind of Sakr rocket which has been fired into Kabul are the M42

⁷⁴ John Burns, "Now They Blame America," *New York Times Magazine*, February 4, 1990, p. 24.

⁷⁵ James Rupert, "Afghans Prepare for Summer Offensives," *Washington Post* July 13, 1989.

⁷⁶ Interview with representatives of international relief agencies, in Kabul, July 22, 1990.

⁷⁷ Interview with experts at the HALO Trust, a British mine clearing organization in Kabul, July 27, 1990.

and M46 which have a range of between 20 and 30 kilometers and deliver between 42 and 98 antipersonnel bomblets that are packed inside each other in rows in the nose cone of the rocket.⁷⁸ In mid-1989, approximately 25 percent of the rockets fired into Kabul were of this kind; since then the rocket has been used far less frequently.⁷⁹

The bomblets have a lethal range of 15 meters. According to munitions experts, 70 percent of them explode on impact and the rest remain active on the ground. The bomblets are light in weight and are attached to a loop of tape that allows some of them to become snared in tree branches and to fall to the ground later when dislodged by wind. After rains, the bomblets may also sink into the ground.⁸⁰

The Sakr is also a "blind" rocket and cannot be accurately aimed. The laws of war specifically prohibit the use of weapons "which employ a method or means of combat which cannot be directed at a specific military objective." The Land Mines Protocol further prohibits the use of remotely-delivered mines⁸¹ except in the following situations:

- when mines are only used within an area which is itself a military objective or which contains military objectives,
- when their location can be accurately recorded or when an effective

⁷⁸ Because of the rocket's "cluster" delivery system, the rocket is sometimes described as a "cluster bomb." Experts in Kabul told Asia Watch that the precise number of bomblets varies, making it difficult for explosives experts trying to clear them to know how many of these bomblets they must locate.

⁷⁹ According to experts at the HALO Trust, these rockets accounted for 25 percent of the rockets fired between June and August 1989; they accounted for one in 50 during the same months in 1990. De-mining experts have described the M42 and M46 as the "worst thing used here now." Interview in Kabul, July 27, 1990.

⁸⁰ *Ibid.*

⁸¹ The Land Mines Protocol defines a "mine" as "any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle." A "remotely-delivered mine" is "any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft." Land Mines Protocol, Article 2(1).

self-destructing mechanism is used on each such mine, when the mines no longer serve a military purpose,

– when the civilian population is given advance warning of the delivery of such mines, unless circumstances do not permit.⁸²

In the vast majority of cases, the rockets fired into Kabul and other cities have not struck military targets or areas that contain them.⁸³ The bomblets that are scattered by the Sakr rockets contain no self-destruct mechanism, nor is the civilian population forewarned of these attacks.

In early October 1990, a number of resistance commanders, under the direction of the ISI, undertook a major offensive against Kabul. The rocketing of the city intensified during this period, and civilian casualties rose proportionately. In its October 1990 newsletter, the International Committee of the Red Cross (ICRC) reported that rocketing caused heavy civilian casualties not only inside the city, but in Mir Bacha Kot, in *mujahidin*-controlled territory 40 kilometers north of Kabul.⁸⁴ The report describes some of the patients received by its hospital on October 18:

The new patients, most of them civilian and none older than 22, lie moaning on stretchers.... One of them is a very young man bleeding heavily from serious abdominal and leg injuries. He dies on the operating table. Another is a four-year-old girl who has a shrapnel wound to her brain.... The number of patients in the hospital soars to an alarming 228 as rockets continue to fall on the city and fighting goes on in the outlying areas.⁸⁵

⁸² Land Mines Protocol, Article 5.

⁸³ Areas that may contain military objectives, but also contain largely civilian populations do not constitute a legitimate objective because the rule of proportionality prohibits attacks in which the civilian casualties outweigh the military importance of the objective.

⁸⁴ The fact that the rockets landed in opposition-held territory may indicate the degree to which the rockets are inaccurate. There was fighting between government forces and *mujahidin* around Kabul at the time, but it is not possible to state with certainty whether the rockets were aimed at any military targets.

⁸⁵ International Committee of the Red Cross, *Bulletin* No. 177, October 1990.

Relief workers and members of the diplomatic community that Asia Watch interviewed in Kabul in July and August 1990 confirmed that civilian casualties from the attacks remained very high. The U.N. Special Rapporteur on Afghanistan, Felix Ermacora, stated in his October 1990 report that official sources in Kabul have stated that 4,771 civilians were killed and 11,756 were wounded as a result of rocket attacks on Kabul between March and October 1990.⁸⁶ In December 1990, the ICRC reported that about 50 percent of the wounded treated at its surgical hospital in Kabul were women and children under 14 years of age who had been wounded in rocket attacks.⁸⁷

The following list of rocket attacks represents only a handful of the incidents in which civilians have been killed in Kabul. The information here is all derived from non-governmental sources:

- On August 16, 1990, a rocket struck the compound of the ICRC orthopedic center, killing two patients and wounding an ICRC employee and 12 other patients, three seriously.⁸⁸
- On July 30, 1990, the daughter of an Afghan employee of the U.N. Development Program was killed in a rocket attack as she was walking home from school.⁸⁹
- On April 12, 1990, 12 children and two adults were killed when a rocket exploded at a bus stop.⁹⁰
- On November 26, 1989, a Sakr-30 exploded in the center of Kabul, killing 25 people including traders in a bazaar, patients outside a clinic and laborers. A second rocket exploded at a primary school, killing 13 schoolboys.⁹¹

⁸⁶ *U.N. Report* 1990, p. 20. Asia Watch had no way of confirming these figures.

⁸⁷ International Committee of the Red Cross, *Bulletin*, No. 179, December 1990.

⁸⁸ International Committee of the Red Cross, *Bulletin*, No. 176, September 1990.

⁸⁹ Asia Watch learned of the incident that day during an interview with Ross Mountain, the Director of the United Nations Development Program (UNDP) in Kabul.

⁹⁰ Reuters, "Afghan Rebel Attack Kills 14," *New York Times*, April 13, 1990.

⁹¹ John Burns, "Don't Give Rockets to Rebels, Kabul Tells U.S.," *New York Times*, November 29, 1989.

• On October 28-29, 1989, rockets exploded in residential areas, killing 16 people.⁹²

• On August 6, 1989, rockets exploded in a vegetable market and a residential neighborhood, killing 10 people.⁹³

• On July 31, 1989, rockets exploded at a bus stop and an auto repair shop, killing 21 people.⁹⁴

• On July 22, 1989, rockets exploded in a bazaar, in an alley beside a mosque, and at the Ministry of Planning building, killing more than 22 people.⁹⁵

Asia Watch interviewed a doctor who had worked at the civilian hospital in Qandahar through 1989 who stated that as a result of *mujahidin* attacks on the city, civilian casualties inside the city had increased in late 1989-90 to the point where they were greater than in areas of fighting outside the city.⁹⁶ Meanwhile, *mujahidin* attacks on Qandahar also intensified, and by mid-1990, 50 to 150 missiles and mortars landed on the city nearly every other day, with casualties averaging 40 a week.⁹⁷ The *mujahidin* commanders responsible for the attacks have been primarily Hezb-e Islami and factions commanded by Abdul Rasul Sayyaf.⁹⁸ According to a Qandahar resident, "When the rocketing picks up, we know Hekmatyar or Sayyaf is inspecting the troops."⁹⁹

⁹² "Guerrilla Rockets Pound Kabul," *Washington Post*, October 29, 1989; "Kabul Rocketed for Second Day," *Washington Post*, October 30, 1989.

⁹³ "Shelling in Kabul," *Washington Post*, August 8, 1989.

⁹⁴ Associated Press, "Guerrilla Rockets Kill 21 in Afghan Capital," *Washington Post*, August 1, 1989.

⁹⁵ John Burns, "20 Die as Rocket Hits a Kabul Bazaar," *New York Times*, July 23, 1989.

⁹⁶ Previously, high civilian casualties were the result of government bombardments of *mujahidin* strongholds. Since early 1989, the governor reportedly ordered a halt to such operations and has not responded to the *mujahidin* attacks. Interview with a doctor from Qandahar, in Quetta, Pakistan, July 7, 1990.

⁹⁷ *Ibid.*

⁹⁸ Interview with Afghan relief worker in Quetta, July 7, 1990.

⁹⁹ *Ibid.*

Commanders in the Qandahar area interviewed by Asia Watch argued that they aimed at military cantonments and government buildings. According to a Qandahar resident, these military targets are surrounded by civilian areas. Westerners working for relief agencies said that much of the civilian hospital had been destroyed by the shelling.¹⁰⁰

When asked why they were shelling civilian areas, some commanders responded that the civilians "should leave."¹⁰¹ A commander in the Qandahar area also said civilians were warned beforehand of planned attacks;¹⁰² however other Qandahar sources reported that they had no knowledge in advance of the attacks.¹⁰³ One Afghan relief worker told Asia Watch that some commanders used to send letters into the cities warning people of planned attacks, but that they no longer did so.¹⁰⁴ Even if such warnings were provided, however, the weapons used in the attacks are so inaccurate that damage to civilian objects would be almost unavoidable.

Commanders interviewed by Asia Watch denied that they were under pressure to launch attacks against the cities, arguing instead that if they did not rocket the cities it would amount to a *de facto* cease fire. They also contend that the rocketing is a means of keeping up pressure on the government.¹⁰⁵ Other Asia Watch sources told us that since early 1989, the ISI has increased pressure on commanders to undertake attacks and has supplied payments for attacks -- a system which one source described as "mercenary warfare."¹⁰⁶ Payments for attacks reportedly amount to Rs. 20,000 (U.S. \$1,000) per attack; the nearer to Kabul the commander fires, the greater the payment.¹⁰⁷ In Peshawar, Asia Watch examined reports submitted by commanders to ISI officials in which they

¹⁰⁰ Interview with international relief agency representatives in Quetta, July 8, 1990.

¹⁰¹ Interview with Afghan doctor from Qandahar, in Quetta, July 7, 1990.

¹⁰² Interview with Commander Mullah Malang in Quetta, July 7, 1990.

¹⁰³ Interview with Afghan doctor from Qandahar in Quetta, July 7, 1990.

¹⁰⁴ Interview with Afghan relief worker, Quetta, July 8, 1990.

¹⁰⁵ Interview with Engineer Mohammad Es'haq, Peshawar, July 7, 1990.

¹⁰⁶ Interview with former Afghan diplomat in Peshawar, February 11, 1989.

¹⁰⁷ Interview with Afghan journalist in Peshawar, July 10, 1990. Another Afghan exile told Asia Watch that payments may run as high as Rs. 500,000 (U.S. \$25,000). Interview with Afghan exile in Washington, D.C. January 21, 1991.

acknowledged receipt of such payments. We obtained a photocopy of one report dated May 11, 1990 which had been submitted to ISI officials by Amir Sayed Ahmed of Deh Sabaz district (an area north of Kabul), a commander allied with Sayyaf. In the report, Sayed Ahmed described a two-hour attack on Kabul in which 14 Sakr-20 rockets were fired and "35 communists" killed.

Asia Watch sources have also described efforts by ISI officials to pressure commanders in the Qandahar area to blow up the Dahla Dam, 18 miles north of Qandahar on the Arghandab River – an operation that would flood the city and cost hundreds of civilian lives. Commanders with families in the region have resisted the pressure and refused to attack the dam. In May 1989, Asia Watch interviewed a member of the Qandahar *shura* who stated that the ISI had offered commanders money and weapons if they would blow up the dam saying that then the *mujahidin* would be able to easily kill "the communists."¹⁰⁸ Colonel Faizan, the head of the ISI in Quetta at that time, reportedly had encouraged the attack.¹⁰⁹ The commanders refused and have since posted a guard at the dam site to prevent any such attack.¹¹⁰

Afghan relief workers in Quetta told Asia Watch that in a series of meetings with tribal elders and regional commanders from the Qandahar area in late June 1990, the U.S. envoy to the resistance, Peter Tomsen, told area commanders that the U.S. Congress "wanted to see progress" before committing the U.S. to further assistance. Unless accompanied by a clear condemnation of indiscriminate attacks on civilians, such statements may be seen as encouraging such attacks. Tribal elders at the meeting reportedly replied that they favored a settlement, and elections but not continued fighting.¹¹¹

Since early 1989, ISI officials have also pressured the Qandahar *shura* to shell the city of Qandahar and its airport, promising U.S.-supplied weapons in return. The commanders have insisted that the civilians be evacuated first, and that the ISI make arrangements to provide for them. When the ISI refused to do so

¹⁰⁸ Interview with Afghan exile in Washington D.C., May 1989.

¹⁰⁹ Interview with Afghan exile in Washington, D.C. January 21, 1991.

¹¹⁰ Interview in with an Afghan relief worker and an Afghan journalist in Washington D.C., May 1989.

¹¹¹ Interview with an Afghan relief worker in Quetta, July 8, 1990, and an Afghan exile in Washington D.C. January 21, 1991.

and instead formed a second *shura* with commanders who were willing to shell the city, the first *shura*, which was one of the few resistance institutions headed by a civilian, collapsed.¹¹² In November 1990, the ISI reportedly supplied rockets to a Sayyaf commander, Qari Abdul Aziz, who launched a major attack on the city of Qandahar, causing heavy civilian casualties. Area commanders have since expelled him from Qandahar.¹¹³

Summary Executions of Prisoners

Common Article 3 of the Geneva Conventions prohibits the summary execution of prisoners. In Afghanistan, the difficulties inherent in taking enemy combatants prisoner in a guerrilla war are further complicated by divisions within the resistance. According to one leading Afghan intellectual:

There is no one voice or center of power in the *mujahidin*. If a soldier surrenders to Gailani, his life is threatened by Mojaddidi's forces, who will ask, "Why did you surrender to Gailani?" If he surrenders to Jamiat, then he is pursued and killed by Hezb. If he surrenders to Hezb, he is attacked by Khaless or Sayyaf.... There is no one voice who can declare convincingly that an amnesty for all will mean a safe and secure surrender. So a Kabul soldier who wants to surrender does not know to whom he can surrender and who will be able to protect his life. And for how long.¹¹⁴

The Tarin Kot and Qalat Massacres

In October 1990, following a major offensive by a number of *mujahidin* commanders from various parties, the provincial capitals of Qalat and Tarin Kot came under siege. On October 4, the governor of Oruzgan province, Abdul Shakoor, surrendered in Tarin Kot along with the Afghan government garrison. Some 95 soldiers who surrendered were taken into custody by *mujahidin* guerrillas and

¹¹² *Ibid.*

¹¹³ Interview with Afghan exile, Washington D.C., January 21, 1991.

¹¹⁴ Larry Lifschultz, "Afghanistan: An Interview with Shafiq Rastgo," *Economic and Political Weekly*, December 16, 1989, p. 2765.

executed.¹¹⁵ Another group of soldiers who either surrendered or were captured at Qalat, numbering as many as 170, were also executed.¹¹⁶ According to press reports, the soldiers had been promised safe passage by the guerrillas.¹¹⁷

According to U.S. government officials, in November 1990 Peter Tomsen wrote to both the AIG and the commanders' *shura* condemning the incidents and calling on all parties to adhere to the Geneva Conventions.

The Torkham Massacre

In November 1988, 141 soldiers from the Afghan government garrison at Torkham, 40 kilometers from the Pakistan border near Peshawar, surrendered to the Pakistani authorities. They were then handed over to *mujahidin* forces under Yunis Khales and 77 of them were summarily executed and their bodies packed into tea crates and dumped across the border. A second group which surrendered stipulated beforehand that they would only surrender to the President of the AIG, Sibghatullah Mojaddidi. According to independent reports, he accepted 200 of them, all of whom had immediate access to the ICRC. Most were later released.¹¹⁸

Engineer Mohammad Es'haq, political officer of Jamiat-e Islami, admitted to Asia Watch that prisoners captured in the field were sometimes executed, stating that:

You sometimes face difficult questions. Suppose you have a large number of prisoners and the enemy arrives and you know if the enemy gets to them, you'll have all of them fighting against you. What do you

¹¹⁵ According to Afghan sources in Quetta, the *mujahidin* forces included those under the command of Mullah Naqib of Jamiat-e Islami, who took some 60 soldiers into custody, and those under the command of Mullah Farooq, also of Jamiat-e Islami, who took 30 soldiers into custody. The soldiers were reportedly executed because "no one could guarantee that they were good Muslims." Interview with Afghan exile in Washington, D.C., January 21, 1991.

¹¹⁶ The soldiers reportedly belonged to the Noorzai militia, which has a particularly brutal reputation. Afghan sources have suggested that this was the reason for the killing. Interview with Afghan exile in Washington D.C., January 21, 1991.

¹¹⁷ "Kabul Rebels Reported to Kill 200 Soldiers," *New York Times*, November 11, 1990.

¹¹⁸ Interviews with international relief agency representatives in Peshawar, February 5, 1989.

do? You fire. It's different if the number of prisoners is small or the enemy is far away. Then you can save them for exchange. But with a highly mobile army in combat, it's difficult.¹¹⁹

The treatment of government soldiers depends on the commander who captures them or to whom they defect. Asia Watch interviewed a *mujahidin* representative in Peshawar who described the February 7, 1989 capture of five army defectors outside Jalalabad. The soldiers' officer, who had established contact with the local *mujahidin* commander, handed them over to the commander at a government checkpoint outside Jalalabad airport. The soldiers, all of whom had been conscripted into the army after a sweep by the security forces in Kabul, were reportedly sent to Peshawar. *Mujahidin* sources told Asia Watch that because the commander knew the detainees' fathers and was "certifying them," they would have no difficulties.¹²⁰

In another case witnessed by an Asia Watch representative in 1989, a *mujahidin* in Ningrahar discovered a suspected member of the local militia, an old man, and brought him to the local commander for questioning. One of the *mujahidin* threatened him with beating and hanging him by the feet if he did not reveal the location of a weapons cache. In exchange for the arms, he supposedly received the price for one-fifth of the weapons he had handed over, because he was "one of five brothers in the militia."¹²¹

Rival *mujahidin* forces have also summarily executed *mujahidin* prisoners they have captured.

The Farkhar Massacre

On July 9, 1989, members of the Hezb-e Islami (Hekmatyar) ambushed members of the Jamiat-e Islami in the Farkhar Valley as the latter were returning from a strategy meeting in Takhar province in northern Afghanistan. According to Richard MacKenzie, an American journalist who was in the area at the time, and to other reports, five Jamiat-e Islami members were killed in the ambush, while

¹¹⁹ Interview with Engineer Mohammed Es'haq, in Peshawar, July 7, 1990.

¹²⁰ Interview with *mujahidin* commanders in Ningrahar, February 7, 1989.

¹²¹ *Ibid.* The old man was in the militia of Mohmand Khan, a former Jamiat-e Islami *mujahid* who had fallen out of favor with the ISI. In 1984-85, he went over to the government.

some 25 who were taken into custody by the Hezb-e Islami forces, led by commander Sayyed Jamal, were summarily executed afterwards.¹²² The prisoners taken were divided into two groups, those from Takhar and those from Kunduz, and held in custody for 24 hours. During this time the men from Takhar were reportedly tortured – some by having their eyes gouged out, others by having gunpowder poured in their eyes and lit.¹²³ Those who were still alive were then executed. After the Takhar men were killed, the men from Kunduz were reportedly told that they were free to go, but as they prepared to leave, Hezb-e Islami forces opened fire on them, shooting at least five of them in the back.¹²⁴

On August 5, Hekmatyar rejected claims that his followers had carried out the killings on his orders, arguing that a fight had broken out following a local quarrel between the two groups, and that casualties had resulted on both sides. According to U.S. diplomatic sources and Western journalists, Jamiat-e Islami representatives claimed that intercepted radio communications revealed the killings were sanctioned by one of Hekmatyar's closest deputies in Peshawar. Jamiat-e Islami forces subsequently captured and tried members of the Hezb-e Islami responsible for the killings.¹²⁵

C. MINES - VIOLATIONS BY ALL PARTIES TO THE CONFLICT

Tens of thousands of civilians have been killed or maimed in Afghanistan by anti-personnel mines that remain scattered or buried in fields, mountainsides, riverbanks, and in villages and cities throughout the country. Most of these mines were placed by Soviet and Afghan government forces before the Soviet withdrawal. As one refugee told an Asia Watch source in 1989, "The ground will be fighting us for years after the Soviets have left."¹²⁶ Government forces continue to

¹²² See Richard MacKenzie, "A Murderous Jolt for U.S. Policy," *Insight Magazine*, (Washington DC: *Washington Times*) August 1989, pp. 39-40; Steve Coll, "Afghan Rebel Faction Decries Attack by Rivals," *Washington Post*, July 20, 1989; "Afghan Rebel Killings," *Washington Post* August 6, 1989.

¹²³ MacKenzie, pp. 39-40.

¹²⁴ *Ibid* p. 40.

¹²⁵ For a discussion of the trial, *see* pp. 104-105.

¹²⁶ Interview with Jan Goodwin, executive director, Save the Children USA, in Peshawar, February 7, 1989.

lay anti-personnel and anti-vehicular mines.

The resistance forces also have used both anti-personnel and anti-vehicular land mines. In most cases, they have not recorded the location of the mines, as required under international law. In cases where the location of the mines is known, information is not shared because of the deep rivalries among resistance factions and between resistance forces and various tribal militias. Often information about the location of mines is in the hands of individual commanders. If a commander dies, the information dies with him.¹²⁷ In general, mines placed without customary precautions, and which are unrecorded, unmarked, or which are not designated to destroy themselves within a reasonable time, may also be blind weapons in relation to time, and are thus prohibited.¹²⁸ Contact land mines may also violate prohibitions on the use of weapons "the primary purpose of which is to spread terror among the civilian population."¹²⁹

The most explicit source of international law governing the use of land mines and booby traps is the Land Mines Protocol, part of a 1981 U.N. Convention.¹³⁰ The basic purpose of the protocol is to give effect to two fundamental customary principles of the laws of war, namely that (1) the right of the parties to an armed conflict to adopt methods or means of warfare is not unlimited, and (2) that the use of weapons, projectiles, or materials calculated to cause superfluous injury or unnecessary suffering is prohibited. Another customary principle of the laws of war – the protection of the civilian population against the effects of hostilities – is cited in the Convention as well. These international principles are expressly recognized in United Nations Resolution 2444.

The Land Mines Protocol calls upon combatants to warn civilians of the placement of land mines whenever possible. Since many of the provisions of the Land Mines Protocol embody, reaffirm, or implement these same principles, the forces of both the government of Afghanistan and the Afghan resistance should regard those provisions, independent of that instrument, as part of the customary laws of war which mutually binds them in their conduct of hostilities, even though

¹²⁷ Interview with Rae McGrath, head of the non-governmental Mines Advisory Group in Peshawar, July 5, 1990.

¹²⁸ Bothe, Partsch and Solf, *New Rules*, p. 305.

¹²⁹ Protocol I, Article 51(2).

¹³⁰ *See* fn. 7.

the government of Afghanistan has not signed the covenant or the protocol.

The thousands¹³¹ of anti-personnel land mines in Afghanistan placed by the Soviets were often deliberately aimed at the civilian population and were not for any military objectives, in clear violation of the laws of war. During sweeps through the countryside, Soviet troops left mines in food bins and other parts of houses, in mosques, on roads and in grazing areas.¹³²

During the Soviet participation in the conflict, thousands of "butterfly"¹³³ mines, known technically as PFM-1 and PFM-1s, were randomly disseminated by helicopter over large areas of the country.¹³⁴ Because the mine is so lightweight, it is easily carried by rain or melting snow; there are no records for the locations of these mines, nor is there any idea how many there may be. The method by which the mines were disseminated violates of the Land Mines Protocol because it is not possible for "measures [to be] taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences."¹³⁵

According to Asia Watch sources in Pakistan and Afghanistan, the butterfly mines have not been dropped since the Soviet withdrawal;¹³⁶ however, of the thousands that were, most are still active because the PFM-1, which was more

¹³¹ There is no accurate estimate of the number of active mines in Afghanistan. Estimates range as high as three million; but the number is at least in the tens of thousands, making Afghanistan potentially the largest minefield in the world.

¹³² See Laber and Rubin, pp. 42-48; *Tears, Blood and Cries*, pp. 55-63; *To Die in Afghanistan*, pp. 33-39; and *By All Parties to the Conflict*, pp. 26-30.

¹³³ The mine is called a butterfly because of its two plastic wings that enables it to flutter to the ground.

¹³⁴ The Mi-8 helicopters used in these operations generally disseminated the mines in units carrying 144 mines in foil packets of 12 mines each which scattered the mines over a wide area. The Mi-8 helicopters were usually fitted with two such units. The PFM-1 and PFM-1s were also disseminated by fixed-wing aircraft and by artillery fire in plastic packets containing some 20 mines which were launched by a 240 mm. mortar, scattering the mines randomly up to a distance of 200 meters on impact. Letter from Rae McGrath to Asia Watch, January 23, 1991.

¹³⁵ Land Mines Protocol, Article 4(2)(b).

¹³⁶ Rae McGrath, letter to Asia Watch, November 19, 1990.

widely used, has no built-in self-destruct mechanism.¹³⁷ The Soviets have claimed that the PFM-1s self-detonates after six months; however, mine experts have not been able to confirm this.¹³⁸

According to Rae McGrath, head of the non-governmental Mines Advisory Group in Peshawar, the greatest hazards to non-combatants derive from other land mines, including the PMN, the PMD and the POMZ-2 anti-personnel devices.¹³⁹ As to these, "there have been very few attempts to mark those mined areas where marking would have been possible by either Soviet or regime [Afghan government] forces."¹⁴⁰ Afghan government officials told Asia Watch that they possess maps showing where Soviet forces planted mines. Yet they have not engaged in efforts to inform civilians in those areas where the mines are located.¹⁴¹

Among the mines planted by the resistance forces, one of the most lethal goes by the name Technovar. It is an all plastic mine of Italian design manufactured without license in Egypt. Purchased with American funds, it has been supplied to the resistance by the ISI. Because it is entirely plastic, it is undetectable by mine detectors. The firing pin and spring are made of metal but even these are masked by a rubber ring. The Technovar anti-personnel mines are designed to maim; the anti-vehicular can destroy a tank. The latter contains six

¹³⁷ Rae McGrath, letter to Asia Watch, January 23, 1991.

¹³⁸ Some experts believe that the PFM-1s may self-destruct in some cases but only because of a design flaw that may cause one spring to expand faster than the other when exposed to heat. Interview at the HALO Trust, Kabul, July 27, 1990.

¹³⁹ The PMD and PMN are pressure-detonated land mines of a basic box-like design; the POMZ is attached to a trip wire. Other mines that have been used in large numbers are the OZM and OZM-3 "bounding" mines which are lethal because when they explode they take off the upper part of the body. They are considered "anti-morale" weapons. Interview with Rae McGrath in Peshawar, July 5, 1990.

¹⁴⁰ Rae McGrath, letter to Asia Watch, November 19, 1990.

¹⁴¹ Interview with the Ambassador of Afghanistan to the U.N., Noor Ahmad Noor, and Minister of Foreign Affairs Abdul Wakil, in New York, October 5, 1990. On December 11, 1990, President Najibullah inaugurated a "National Commission for Clearing Mines and Unexploded Ordnance from the Lands of the Republic of Afghanistan" under the chairmanship of Prime Minister Fazl Haq Khaliqyar. Asia Watch has no information on the activities of the commission to date.

kilograms of high explosives, and the most frequent casualties have been civilian trucks.¹⁴²

Mines have been dug up and sold or hoarded for later use. Refugees have reported that in order to avoid minefields, they must obtain the assistance of local resistance leaders in each area through which they travel. A demining expert told Asia Watch that the nature of old tribal conflicts would be completely changed this way, as such groups gain the ability to seal off whole areas and major roads.¹⁴³

Demining Programs

The first major program to clear Afghanistan's minefields was launched by the United Nations in 1989. Headed by former U.N. Assistant Secretary-General Benon Savan, the Office of the Coordinator for Afghanistan (UNOCA),¹⁴⁴ based in Pakistan, has focused primarily on training Afghans in mine awareness and clearance. Unfortunately, until now, efforts have been slow to achieve results, largely because of continued fighting in parts of the country and because of the lack of a coordinated plan among U.N. agencies and officials overseeing the program. Independent projects, including the Mines Advisory Group based in Peshawar, have had more success in conducting reliable surveys and training teams to destroy mines. In Kabul, an independent British organization known as the HALO Trust has also begun a mine awareness program and has carried out a pilot clearance project to test the accuracy of Soviet maps.¹⁴⁵

¹⁴² Interview with Rae McGrath, in Peshawar, July 5, 1990.

¹⁴³ *Ibid.*

¹⁴⁴ Until November 1990, the program was headed by Prince Sadruddin Aga Khan.

¹⁴⁵ The maps that have been tested so far have reportedly proved generally reliable; however, they are not available for most of the country's minefields. Interview at HALO Trust, Kabul, July 27, 1990.

IV. HUMAN RIGHTS IN AREAS OF AFGHANISTAN UNDER THE CONTROL OF THE REPUBLIC OF AFGHANISTAN

At the time of the Asia Watch visit to Kabul in mid-1990, the government's major efforts at reforming Afghanistan's constitution to provide for greater protections for civil liberties were barely three months old. It is premature, therefore, to attempt to measure fully any progress made toward reform. The areas in which changes have been measured, including improvements in prison conditions, were the result of earlier decisions.¹⁴⁶ While the government was eager to demonstrate to Asia Watch its commitment to a more open society, it was too early to tell whether the reforms would be implemented as planned or, indeed, whether the government in Kabul could effect meaningful change beyond the cities. In some cases, the proposed reforms introduce concepts new to the legal culture of Afghanistan, including the right to defense counsel, which would take time to root, not only in Afghanistan's legal institutions, but in the minds of the Afghan people. More important, it was clear that the proposed reforms could not by themselves create a climate in which Afghan citizens would feel free to exercise these rights without fear of reprisal.

While arbitrary arrests are less frequent than in the past, there are few safeguards to prevent illegal detention. Detainees have been held for periods of several weeks or longer before being produced before a judicial authority; family members are not informed of the detainee's whereabouts. Despite changes to the 1990 Constitution which guarantee the rights of fair trial and access to defense counsel, trials, which are often summary proceedings, still fall short of international standards of due process. The accused seldom has access to counsel and is given little time to prepare a defense.

Prison conditions for sentenced prisoners have improved, but conditions for detainees under investigation remain precarious. The severe overcrowding

¹⁴⁶ The most important of these was the decision in 1988 to grant the ICRC access to sentenced prisoners.

that was common under the Soviets has eased. The practice of torture, which had been systematic and widespread, has also declined but some forms of torture and mistreatment persist.

Restrictions on freedom of association and freedom of speech have prevented the formation of genuine opposition political parties and an opposition press. Limited criticism of the government is permitted; however, editors routinely practice self-censorship and the Ministry of State Security forces maintain surveillance of faculty and students at Kabul University.

On May 4, the state of emergency, which had been imposed following the withdrawal of Soviet troops from the country, was lifted.¹⁴⁷ The lifting of the emergency paved the way for other changes. Between May 27-29, 1990, the government convened a *loya jirga*, or supreme council, to ratify constitutional changes proposed by the government. The *loya jirga* was reportedly made up of 772 participants including the vice-presidents, National Assembly chairmen and members, other government officials, and religious and political figures appointed by the government. The *loya jirga* also included a number of representatives from the provinces, apparently chosen by the government.

The most important changes ratified by the *loya jirga* included a stated commitment to "political pluralism," ending the People's Democratic Party of Afghanistan's (PDPA) monopoly on power. The constitution was also amended to designate the Republic of Afghanistan as an Islamic state. On June 27, 1990, the PDPA convened an extraordinary party congress, the second in its history, at which it renamed itself the Watan (Homeland) Party, renouncing its historical commitment to Marxism and recasting itself as a party of national reconciliation.

At the time of the Asia Watch visit, the implementing legislation for many of the reforms in the amended Constitution remained in the drafting stage. For example, the law on political parties had not yet been ratified, nor had legislation on legal aid -- a law that would apparently provide for the training of defense

¹⁴⁷ Under the State of Emergency, President Najibullah's formally acquired increased powers; however, according to the report of the U.N. Special Rapporteur on Afghanistan, the State of Emergency did not bring about "significant change" in human rights conditions. See Felix Ermacora, "Situation of Human Rights in Afghanistan," *Report to the General Assembly of the United Nations*, U.N.A/44/669, October 30, 1989, p. 10.

attorneys.¹⁴⁸ Where such legislation does exist, as with the laws governing assemblies, demonstrations and strikes, it is discussed below.

Although political parties are now officially permitted, none yet exist which might challenge President Najibullah's right to remain in power; government officials made it clear that opposition parties that would take such a position would not be considered peaceful and therefore would not be allowed, for example, to hold demonstrations. Almost all of the parties that have formed are closely aligned with the ruling Watan party; associations that might constitute more genuine opposition parties were reluctant to establish themselves as such out of fear of reprisal.

Controls on the press have been relaxed, but as of mid-1990, there were no truly independent newspapers in Kabul, and editors routinely practice strict self-censorship. The government also has retained complete control of radio and television. Criticism of the government does appear in the press but is limited and does not extend, for example, to calls for the government to resign. By not encouraging the establishment of private presses and publishing houses, the government dissuades those seeking opportunities for a free press to develop.

Although the rigid controls that had governed university life have been largely dismantled, professors and teachers are still restricted in what they may teach. Ministry of State Security forces maintain some surveillance of students and professors on the campus and in the classroom.

The practice of arbitrary house searches and mass arrests of dissidents that was common under the Soviets appears to have decreased. Most detainees apparently are arrested because of their alleged involvement with one of the guerrilla factions, but merely voicing criticism of the government is no longer a common basis for arrest. Large-scale amnesties have resulted in the releases of thousands of political prisoners.

The 1990 Constitution guarantees both the right to counsel and to fair trial -- rights that were never fully recognized even before the April 1978 revolution

¹⁴⁸ According to Abdul Karim Shahdan, Chairman of the National Security Court, the law on defense counsel has been submitted to the National Assembly. Letter to Asia Watch, November 11, 1990.

– but as yet these new rights are little respected in practice. Trials of persons charged with political crimes are conducted by the National Security Court which gives the accused scant opportunity to prepare a defense. At the time of the Asia Watch mission, the government was reportedly preparing legislation to provide legal training for defense attorneys; however, other changes are necessary to bring trials into conformity with international standards of fair trial. Among these, the powers of the attorney general must be strengthened if that office is to act as a safeguard against illegal detention and if it is to provide a check against abuses by militia commanders allied with the government who also hold prisoners.

While the International Committee of the Red Cross (ICRC) has access to all sentenced prisoners; it does not have access to those under interrogation. In August 1990, Asia Watch visited the Sedarat detention center in Kabul – the first such visit by a human rights organization. Although we were not able to interview detainees in private, Asia Watch has received credible reports of torture and mistreatment of detainees during interrogation. Access to prisoners is an important means of curbing such abuses against detainees, as the confidential reports by the ICRC to top government officials insure that they are made personally aware of cruel practices and, thereby, cannot evade their own responsibility for torture and other mistreatment.

Freedom of Association and Assembly

Reforms promulgated by the government under the 1990 Constitution remove prohibitions on the formation of opposition parties and other associations not officially sanctioned by the government. Under the new law on public assembly, demonstrations and strikes are permitted so long as they are peaceful, i.e. they do not "violate public rights and public security" and are "not against national unity or the constitution." As with other reforms, these restrictions may still be interpreted to prohibit peaceful gatherings and may proscribe associations that represent a genuine political challenge to the government. While the reforms have had the effect of permitting some organizations to form and to voice limited criticism of the government, no opposition political parties have yet formed, and the other associations that have been organized are self-consciously circumspect in their public criticism out of fear of losing the limited

freedom they possess at present.

The law legalizing political parties marks an important point in the history of constitutional reform in Afghanistan. The first legislation to legalize political parties in 1963 was never signed by Zaher Shah; however, the parliamentary system he instituted provided the climate for the formation of a number of political organizations, including the PDPA. Other Marxist and Maoist groups also formed at that time, as did a number of Islamic radical¹⁴⁹ and nationalist groups. Under Article 126 of the 1964 Constitution, the government was to prepare "ordinances relating to elections, basic organization of the state, the press, and judicial organization and jurisdiction [and] ... to prepare draft bills relating to political parties and Provincial Councils, and submit them to Parliament."¹⁵⁰ Political parties were not allowed to participate in the elections to choose that parliament, however, nor the one that followed in 1969.

Several months after the 1978 coup, when the Khalqis under Nur Mohammad Taraki and Hafizullah Amin seized power from Daoud Khan, persons associated with political organizations and with virtually every other social group were arrested and thousands of them executed.

Those arrested and killed included political leaders of the New Democracy period; Daoud's family and other members of the royal family; religious scholars and spiritual leaders; high school teachers and students; university professors and students, including leading scholars; lawyers and judges; government and diplomatic officials; military officers; Parchamis, Maoists, Social Democrats, and members of Islamic political organizations; Hazaras and Nuristanis.¹⁵¹

As Olivier Roy states, "The goal was clear: to cause the 'old' Afghanistan to disappear, by dissolving the social structures and uprooting them from the memory of a whole people."¹⁵²

¹⁴⁹ These groups, including the Jamiat-e Islami and Hezb-e Islami, formed the core of the armed resistance after 1978.

¹⁵⁰ Louis Dupree, *Afghanistan* (Princeton, NJ: Princeton University Press: 1980), p. 584.

¹⁵¹ Laber and Rubin, p. 6.

¹⁵² Olivier Roy, *Islam and Resistance in Afghanistan*, (Cambridge, MA: Cambridge University Press, 1985), p.97.

Political Parties

The 1990 Constitution also removes from the PDPA the pre-eminent position it has held in the government since the revolution. Instead the party¹⁵³ officially has only the status of any other party in a system the government now describes as pluralistic. At the time of the Asia Watch visit, a number of cabinet positions were not filled by party members, including the posts of the Prime Minister, the Minister of Justice, the Minister of Finance, and the Minister of Communications. Other positions, including all judges and the Attorney General, cannot be filled by party members. The most important cabinet positions, however, including that of the President, Minister of Foreign Affairs, Minister of Defense, Minister of State Security and Minister of the Interior are still filled by party members. The Watan party has a membership of 174,000 according to one Central Committee member.¹⁵⁴ Although this membership is said to include persons from the major ethnic communities,¹⁵⁵ the leadership of the PDPA has traditionally been Pashtun,¹⁵⁶ and this remains the case.

Since June 1989, parties have been allowed to register with the government. According to government officials, the registration process includes a disclosure of the "goals and objectives" of the group, as well as its finances. Of the parties which had registered as of August 1990, however, none can be considered genuinely independent. Instead, they represent interest groups long associated with the PDPA, including youth associations and trade unions such as the National Union of Afghanistan Farmers, and the Afghanistan Workers Vanguard Party.¹⁵⁷

¹⁵³ At the Second Congress of the PDPA in June 1990 the party renamed itself the Watan, or "Homeland" party.

¹⁵⁴ Interview with Zahir Tannin in Kabul, July 26, 1990.

¹⁵⁵ One Central Committee member told Asia Watch that the party's current membership was 46% Pashtun, 48% Tajik, Turkoman and Uzbek, 3% Hazara and 3% other. Interview with Zahir Tannin in Kabul, July 22, 1990. Asia Watch has no way of verifying these figures.

¹⁵⁶ However, Parchami Pashtuns are largely Persian-speakers from Kabul; Khalqis are rural Pashto speakers.

¹⁵⁷ A complete list of political parties appears in Appendix B.

The one possible exception is the SAZA party, recently renamed the Afghanistan Democracy Movement, which represents interests from the north, especially the Tajik ethnic group.¹⁵⁸ During a vote of confidence in the *loya jirga*, a SAZA representative¹⁵⁹ reportedly criticized Najibullah's government and the party in terms that formerly would have resulted in certain imprisonment. Instead, the debate was reportedly broadcast live over state-run television and no action was taken against the SAZA member.¹⁶⁰

The existence of the National Salvation Society (NSS), an organization of retired university professors, government officials and military officers formerly associated with the monarchy represents a more accurate measure of the government's tolerance for opposition views. The organization, which was founded in September 1989, describes itself as "independent, impartial and non-aligned." It has made recommendations to the government regarding a transitional government and elections, and has also called for a cut-off of arms supplies to all parties.¹⁶¹ Because the organization makes no claim on political power, it poses no real threat to the ruling party's hold on power, which in part may explain the government's tolerance.

Government officials told Asia Watch that there are no restrictions which would prohibit any group or individual from forming a party – even the radical *mujahidin* leader Gulbuddin Hekmatyar – so long as he renounced violence.¹⁶² However, it is clear that unwritten restrictions still prevent the formation of parties that might pose a genuine challenge to the government's policies. In June 1989, all of the founding members of one opposition party, the National Unity Party, were arrested apparently just as they were preparing the required papers to register their organization.¹⁶³ The government accused the party of having links to

¹⁵⁸ The SAZA party, also known as the Setam-e-Melli, reportedly has Maoist leanings and endorses Tajik and Uzbek separatism.

¹⁵⁹ This was reportedly former Justice Minister Baghlani.

¹⁶⁰ Interview with Foreign Minister Abdul Wakil, July 26, 1990.

¹⁶¹ *Declaration of Intent by National Salvation Society*; and "Open Letter by the National Salvation Society of Afghanistan Addressed to the Ministers of Foreign Affairs of the USSR and the USA," July 11, 1990.

¹⁶² Interview with the Ambassador of Afghanistan to the U.N., Noor Ahmad Noor, and Minister of Foreign Affairs Abdul Wakil, in New York, October 5, 1990.

¹⁶³ For a discussion of the arrest, *see* pp. 88-90.

mujahidin factions; later in the year all but one of those arrested were released.¹⁶⁴ As long as there is a likelihood of similar reprisals, other opposition groups remain understandably reluctant to organize into political parties.

Demonstrations and Strikes

The reforms specify a number of guidelines for holding public gatherings and demonstrations. These guidelines also may be used to prohibit certain opposition groups and activities. For example, the organizer of any demonstration, like the organizer of any political party, must inform officials by letter of the "goal and objectives" of the event.¹⁶⁵ Government officials told Asia Watch that groups that were "not peaceful" would not be permitted to demonstrate. When Asia Watch asked the Minister of the Interior whether a political party would be allowed to publicly call for President Najibullah's resignation, he responded, "Those who would raise this are against maintaining peace. Only our enemies would raise such questions."¹⁶⁶

The guidelines provide for the dispersing of demonstrations which turn violent; however, they also state that gatherings may be dispersed if the participants "deliver destructive speeches or shout slogans against the security forces and public regulations." The guidelines authorize the use of force only after the authorities attempt to end a violent demonstration by first issuing warnings, "leading the demonstration to a safe location," "spraying water," or "setting up barriers."

The law on strikes follows the same guidelines, also requiring "the organizer of the strike ... to notify the management by written notice." Failure to do so incurs a fine or prison sentence; failure to disperse when a warning is given is considered a criminal offense. In addition, demonstrators who "violate the law by resorting to speech, shouting slogans, distributing manuscripts or pictures, will be punished according to the law." However, the law explicitly permits press coverage of all demonstrations and strikes. Members of the armed forces and children under 18 are not permitted to participate in demonstrations or strikes.

¹⁶⁴ Amnesty International, "Urgent Action," May 22, 1990. *AI Index* ASA 11/08/90.

¹⁶⁵ Interview with Minister of the Interior Raz Mohammad Pakteen, July 24, 1990.

¹⁶⁶ *Ibid.*

Freedom of Expression

Freedom of the Press

In 1990, the government promulgated a number of reforms which on paper provided for a partial relaxation of the strict censorship controls that have restricted freedom of the press and prevented the establishment of independent publications in Afghanistan. The 1990 Constitution prohibits "pre-censorship" under Article 49, and guarantees the right of freedom of speech "within the provisions of the law." However, despite evidence that the reforms have had the effect of permitting some limited criticism of the government, the rights of freedom of speech and freedom of the press remain circumscribed.

Freedom of the press has never received adequate protection in Afghanistan. The 1931 Constitution was the first to provide for nominal freedom of the press, but in fact the government maintained complete control over it. In 1949, laws protecting freedom of the press were passed by Parliament, but when opposition papers began to publish, they were banned and the editors arrested. The 1964 Constitution again provided for limited freedom of the press. The limits to that freedom were enunciated in the 1965 Press Law which stated among its objectives "safeguarding public security and order the interest and dignity of the State and individuals from harms which they may be subjected to by the misuse of freedom of press," and "safeguarding the fundamentals of Islam, constitutional monarchy and the other values enshrined in the Constitution."¹⁶⁷

Nevertheless, a number of independent publications began publishing in 1965, among them *Khalq*, published by Nur Mohammad Taraki, and *Afghan Mellat*.¹⁶⁸ These and other publications were subject to government restrictions: *Afghan Mellat* was banned repeatedly in the late 1960s, and *Khalq* was closed less than a month after it began publishing, accused of being "anti-Islamic and anti-constitutional." *Gahiz*, the "Voice of the Islamic Movement," was closed for its

¹⁶⁷ Dupree, pp. 608-9, fn. 8.

¹⁶⁸ This was the publication of *Afghan Mellat*, a nationalist organization made up of Pashtun professionals that characterized itself as social democratic but was accused of "Maoist" leanings.

"anti-leftist" views. *Parcham* was permitted to publish for 14 months, from March 1968 until July 1969, but was finally banned along with several other publications during the 1969 elections. Many others were closed for their "anti-government" views.¹⁶⁹ The Press Law also banned the publication of any material that implied "defamation of the principles of Islam" or that was "defamatory to the King," "Incitement to disobey the country's laws ... [or] disrupt public security," "publication of false or distorted news," and "publication of matters with a view to weakening the Afghan army" were also prohibited.¹⁷⁰ By 1972, all of the major opposition papers had been banned.

Following the April 1978 coup, the government under Taraki seized control of the country's newspapers and magazines. Among the thousands of persons arrested during this period, many of whom subsequently disappeared or were summarily executed, were writers and other intellectuals who were actual or potential opponents of the PDPA. The suppression of freedom of expression continued under the Soviets during the government of Babrak Karmal. Soviet advisers helped enforce strict controls at the government news agency, Bakhtar, the *Kabul New Times* and Radio Kabul. All other publications were subject to strict censorship. Hundreds of writers, journalists, university professors were arrested for expressing views critical of the government.

At the time of the Asia Watch mission in mid-1990, communications remained almost entirely under state control. The electronic media continued to be run as a state monopoly, with little scope for opposition views. Asia Watch was informed of only one occasion in which criticism of the government was aired on Kabul Radio and Television: on May 28-29, 1990, the proceedings of the National Assembly were broadcast live, including criticism of the government and the party by some of the delegates. Although government officials have stated that they would allow other parties access to the broadcast media, Asia Watch knows of no instance in which they have actually done so.

No genuinely independent newspapers publish in Afghanistan. In addition to the government-run *Kabul New Times*, a number of smaller newspaper and magazines have begun publishing, but these are still subject to government control. Nor can they be considered independent: for example, the editor of

¹⁶⁹ See list of publications and reasons for closure in Dupree, pp. 600-619.

¹⁷⁰ *Ibid.*, p. 608, fn.8.

Akhbar-e Hafta (News of the Week) -- a magazine which describes itself as independent is also a newly elected member of the central committee of the Watan Party. Still, the new reforms have permitted these publications to publish limited criticisms of the government. The editor of *Akhbar-e Hafta* cited to Asia Watch the following as examples:¹⁷¹

- In 1990, the magazine reprinted in full a *Washington Post* article on the March 1990 coup attempt; an *International Herald Tribune* article by Selig Harrison on the coup attempt and a *New York Times Magazine* cover article by John Burns on Afghanistan. *Akhbar-e Hafta* also printed material from CBS, and the BBC World Service, and an interview with the local BBC correspondent. In each case, however, the information that was published was generally favorable to the government.

- The magazine quoted the *mujahidin* leader Mojaddidi's statement that "military pressure had to be maintained" on the Najibullah government "so that economic conditions would worsen and bring down the government."

- In April 1990, the magazine published 13 articles on the subject of national leadership, debating the qualities of President Najibullah and ex-king Zahir Shah. Smaller space was allotted to articles on the Pakistan-based *mujahidin* leaders and none to *mujahidin* commanders. One article included in the series considered the argument that Najibullah should step down. However, the article concluded by endorsing Najibullah's position.

- In October 1989, the magazine came under heavy pressure from some government officials over an article on the Soviet intervention in Afghanistan. However, the article was published and sold for Afs. 2,000 (U.S.\$4 in mid-1990) in the market, despite the Afs. 20 cover price. In June 1990, the editor gave an interview describing the invitation to the Soviet troops to enter Afghanistan as "a crime."

In a gesture that seemed indicative of the government's heightened sensitivity to outside views, during the Asia Watch visit, the Watan Party

¹⁷¹ Interview with Zahir Tannin in Kabul, July 26, 1990.

newspaper *Payam* reported on discussions in which Asia Watch took part and cited Asia Watch's concerns about human rights in Afghanistan. While these examples reflect more openness than existed previously, they also support the government's reform measures and general political posture and do not push much further. One editor also complained that there is no way to compel a positive government response, even to this limited criticism.¹⁷²

Material considered to be "outside the framework of the constitution" or "against Islam" is subject to censorship. Precisely what this means is not spelled out; rather, the restrictions are sufficiently vague to ensure that writers continue to practice self-censorship. One editor informed Asia Watch that while his newspaper has been able to report the views of Gulbuddin Hekmatyar, the reporting was limited to those views which "do not provoke censorship." Anything considered to be "war propaganda" is censored. Foreign newspapers and magazines are not available for purchase in Kabul, although they are circulated in limited quantities within government circles.

Other restrictions obstruct the establishment of independent publications. The government owns and manages the only publishing house in the country (which was also the case before the April 1978 coup) and has a monopoly on the supply of newsprint. The means for transporting and distributing the printed copies is also almost entirely controlled by the government. Under the Constitution, free printing facilities are to be provided for independent publications, but the implementing legislation has not yet been enacted. Asia Watch was informed that negotiations to establish private printing houses, including one partially funded by the Iranian government and one supported by an Afghan business interest, are underway, but we had no way of confirming these reports. High printing charges, and the cost of obtaining a license may also hinder the establishment of independent publications.

Independent groups such as the National Salvation Society (NSS) have been permitted to print documents at the government printing press and to circulate them widely.¹⁷³ While far from radical, the NSS has criticized the government and called for reforms that go beyond what Najibullah's government

¹⁷² Interview in Kabul, July 26, 1990.

¹⁷³ Critics of the NSS have cited this as evidence that the organization cannot be effective as a government critic.

has instituted.

Foreign Journalists

Since 1986, foreign correspondents have been permitted access to areas in Afghanistan under government control.¹⁷⁴ A number of foreign news services also post correspondents in Kabul. Until 1989, journalists were restricted in their ability to move around the city without government escort; since then they have generally had free access to travel within Kabul. However, telex and telephone lines used by them are monitored by the Ministry of State Security.¹⁷⁵

Journalists who have entered the cities in the company of the *mujahidin*, or who have been arrested along with suspected guerrillas, have been tried for spying and have been imprisoned. Asia Watch is aware of the following arrests since 1988:

- On August 1, 1989, Jorge Juan Sanchez Garcia, a journalist with the Barcelona-based magazine *Ajoblanco*, was arrested after entering Afghanistan with members of a *mujahidin* group. On October 15, he was sentenced to five years imprisonment on charges of entering the country illegally and "collecting anti-government propaganda." He was released on November 11, 1989, after an appeal by Spanish Prime Minister Felipe Gonzalez.¹⁷⁶
- In 1989, Abdul Rahman, a Saudi journalist, was arrested along with an Egyptian journalist, Hisamuddin Mehmud. Abdul Rahman was released

¹⁷⁴ Visas for journalists, as for other visitors, are limited to one month. Asia Watch interviewed journalists in Kabul who told us that visas are not formally renewed, although journalists are generally allowed to stay on after the expiration without difficulty. Some journalists believe the government does this in order to have an excuse to deport them if they are too critical. While Asia Watch knows of no case where this has happened, the possibility of expulsion may make journalists circumscribe their reporting. Interviews with foreign correspondents in Kabul, July 20, 1990, and in Washington D.C., January 12, 1991.

¹⁷⁵ *Ibid.*

¹⁷⁶ See Committee to Protect Journalists, *Update #38*, May 1990, p. 3.

on March 2, 1990. Hisamuddin Mehmud was charged with "participating in an armed revolt against the government along with extremists" and sentenced to 20 years. He has been imprisoned in Pol-e-Charkhi.

- Abdul Rahman Qatib (or Khatib), a Jordanian cameraman, formerly with *Al-Buniyan*, was arrested while filming the siege of Jalalabad in February or March of 1989. His whereabouts are unknown.

- Tony O'Brien, an American journalist on assignment with *Life* magazine, was arrested on June 4, 1989, after entering Kabul with members of a *mujahidin* group. He was detained in Pol-e Charkhi and released on July 21.

- Syed Abdul Samad and Mohammad Nazar were tried and convicted of spying and "avoiding the military service" in January 1988 after they entered Afghanistan illegally with Alain Guillo, a French journalist who was also captured but was released in May 1988 after an appeal by French President Francois Mitterand. Samad and Nazar were sentenced to 16 years imprisonment. According to Guillo, they were accompanying him as bodyguard and translator.¹⁷⁷

Freedom of Speech

Under the Soviets, strict control of the press extended to informal means of communication. Helsinki Watch and Asia Watch reports described the restrictions which at that time prohibited the circulation of any literature critical of the government:

Because all legal channels for publishing literature of protest are closed off, the residents of Kabul and other cities in Afghanistan have turned to clandestine literature. The most common form is the pamphlet or "night letter" (*shah nameh*), mimeographed or copied by hand and secretly left in public places. Distribution or even possession of anti-regime "night letters" is a crime in Afghanistan. Many high school and college students have been arrested, tortured and sentenced to prison terms of

¹⁷⁷ See Appendix C.

several years for possession or distribution of such pamphlets.¹⁷⁸

Although the mass arrests and disappearances associated with the repression of free speech under the Soviets have ended, the fear of reprisal still acts as a deterrent for ordinary Afghans. Afghans in Kabul expressed fear of openly criticizing the government because they believed that the secret police forces of the Ministry of State Security (WAD, or as is still known more commonly, KHAD¹⁷⁹) continues to use informants to gather intelligence on suspected opponents of the government. One man arrested during the March 1990 coup attempt told Asia Watch that during his interrogation, WAD officials used statements he had made in private as evidence of his links to rebel groups and foreign agents:

They accused me of being an enemy of the government, a member of the *mujahidin*, a CIA agent, and an Iranian spy. They used my own words against me, saying, 'You have said there is no democracy in Afghanistan.'¹⁸⁰

Security laws in force also restrict freedom of speech. For example, in March 1989, Mawlawi Abdul Rauf, the *imam* of the Pol-e Kheshti mosque in Kabul was arrested after he delivered a sermon in which he reportedly criticized President Najibullah, saying "You have done nothing for your Creator, so you cannot do anything for his creatures."¹⁸¹ He was released by presidential decree after seven months' imprisonment; the decree acknowledged that the arrest had been a "mistake."¹⁸² Despite this admission and the constitutional reforms that permit "free speech and assembly," restrictions on the exercise of these rights and the threat of arrest remain for anyone who might openly call the government

¹⁷⁸ Laber and Rubin, p. 109. See also the Helsinki Watch and Asia Watch reports cited in fn. 1.

¹⁷⁹ KHAD stands for *Khademat-e Ettela'at-e Dawlati* (State Information Service), the secret police, which was organized by the Soviet KGB in 1980, under the Prime Minister's office. In 1986 it became a full ministry, and its name was changed to WAD (*Wazarat-e Amaneyat-e Dawlati*). The head of KHAD/WAD has always been a Politburo member of the PDPA/Watan Party.

¹⁸⁰ Interview in Kabul, July 31, 1990.

¹⁸¹ Amnesty International, *Report 1990* (London: Amnesty International, 1990), p. 27.

¹⁸² *U.N. Report* October 1989, p. 12.

to step down. A group or political party that would do so would not be considered peaceful.¹⁸³

Academic Freedom

Before the April 1978 coup, Afghanistan had one university in Kabul and a medical college in Jalalabad. At present only Kabul University continues to function. In the 12 years of war, some 70 percent of its faculty have been imprisoned or killed or are living in exile abroad.¹⁸⁴ Since 1989, the university has been closed on a number of occasions -- sometimes for weeks on end -- because of dangers posed by *mujahidin* rocket attacks.¹⁸⁵

Under the Soviets, all aspects of academic life came under the control of the state. Faculty appointments were made on the basis of party loyalty rather than academic qualifications. Soviet staff also replaced Afghan professors, although according to former and current university professors interviewed by Asia Watch, very few were qualified to be instructors, and few had the language skills to teach. Thousands of books were confiscated or destroyed, particularly those from Western countries and those in English. Professors were made to accept deliveries of hundreds of Soviet books, regardless of whether they wanted them or could use them.¹⁸⁶

Students were also pressured to join the party and to study in the Soviet Union. The schools and universities were infiltrated by agents of KHAD who kept students, teachers and professors under surveillance. Professors who resisted efforts to change the curriculum to conform to official ideology, and students who attempted to organize protests or circulate night letters were taken in for interrogation and torture by the KHAD.

Since June 1989, the government has instituted a number of reforms that have created a marginally more open atmosphere at the university. However,

¹⁸³ *See* p. 69.

¹⁸⁴ *See* Laber and Rubin, p. 115.

¹⁸⁵ Interview with Kabul University professor during visit to campus, August 1, 1990. At the time of this interview, the campus was closed because of heavy rocketing by the *mujahidin*.

¹⁸⁶ *Ibid.*

serious obstacles to academic freedom and freedom of expression remain, not the least of which is the climate of fear created by 12 years of repression.

In June 1989, following an impromptu meeting between a number of faculty members from Kabul University and President Najibullah,¹⁸⁷ reforms were instituted to replace the system of appointment with elections for the positions of dean and rector and for the members of the council. A secret ballot vote to elect these officers had been the rule before 1978 coup.¹⁸⁸

Surveillance of university professors and students by state security agents continues, although there are indications that it is not as pervasive as before. University staff interviewed by Asia Watch stated that until a year ago, they were followed everywhere by WAD agents. Although the surveillance has apparently been reduced, WAD informants posing as students are still present on campus.¹⁸⁹

Until January 1990, certain compulsory subjects in philosophy and political economy were still determined by the government. Since then, decisions about curricula have been returned to individual departments and the university rector, and there has been a relaxation in ideological orthodoxy. However, certain subjects remain taboo, particularly in political science and history, because faculty members fear that WAD agents will inform on them. Moreover, students

¹⁸⁷ *Ibid.* In June 1989, a number of faculty members were brought in to the Foreign Ministry to meet with Najibullah when the bus in which they were returning from a memorial service for a deceased colleague was abruptly redirected. There, according to one faculty member who was present, President Najibullah addressed the professors and invited their criticism about the functioning of the Education Ministry. During the discussion, a number of faculty members were reportedly very outspoken, including the present Justice Minister Ghulam Muhayuddin Dareez, who was a professor of law at the time. As an immediate result of the meeting, the Minister of Higher Education was replaced. Interview with Kabul University professor in Kabul, July 25, 1990.

¹⁸⁸ Dupree, p. 600.

¹⁸⁹ The Head of the Seventh Department at the Ministry of State Security (WAD) is reportedly responsible for surveillance at the university. According to one professor interviewed by Asia Watch, agents posing as students are identifiable because although they carry student cards, they have not passed the entrance examination. Interview with Kabul University professor during visit to campus, July 25, 1990.

are still required to spend six hours a week in military studies. Although suspect books are no longer routinely destroyed, orders for books which do not meet the approval of the authorities simply go unfilled, and no answer for the delay is provided. One faculty member told Asia Watch that Kabul University has no books published more recently than 1980.¹⁹⁰

The Legal System

The two decades before the April 1978 coup saw Afghanistan's first attempts at reforming a legal system that embraced both an inchoate state structure in the cities which included the *sharia* (Islamic law) as part of the written legal code, and the traditions of Islamic and tribal justice in the countryside. With the promulgation of the 1964 Constitution, the government attempted to reconcile the largely rural *qazi* (Islamic judge) system with the standards of state law. One of the most important changes in this area was a provision granting the judiciary the status of an "independent organ of the state" which "discharges its duties side by side with the legislative and executive organs."¹⁹¹ That independence has unfortunately never been fully realized.

According to Dupree, the judiciary had always been "semi-religious and semi-secular, with the hundred-odd *qazi* ... often semi-trained, but each having the power of life and death."¹⁹²

Theoretically, the *qazi* made decisions under the Hanafi *sharia*, but in the time of King Mohammad Nadir Shah (1929-33), law increasingly moved into the hands of provincial administrators ... After the promulgation of the 1964 Constitution, all legal decisions have been transferred (at least theoretically) to the *qazi*, but secular law has supremacy."¹⁹³

¹⁹⁰ *Ibid.*

¹⁹¹ 1964 Constitution, Title VII. See Dupree, p. 580.

¹⁹² Article 69 of the 1964 Constitution also stated that 'excepting the conditions for which specific provisions have been made in this Constitution, a law is a resolution passed by both houses [of Parliament] and signed by the king. In the area where no such law exists, the provisions of the Hanafi jurisprudence of the *sharia* shall be considered as law.' See Dupree, pp. 580-81.

¹⁹³ *Ibid.* p. 579.

The 1964 Constitution also established for the first time the office of the Attorney General, which functioned as part of the executive and had the responsibility for investigating crime and presiding over hearings and trials.¹⁹⁴ As part of a series of changes in the country's legal institutions after the coup in 1973, the office was granted additional powers and was separated from the executive as an independent organ. With the Constitution of 1987, the Attorney General's office came directly under the president. Since then, it has had oversight not only over national security cases but also over ordinary cases and military crimes. According to Minister of Justice Dareez, a new amendment will bring it back under his ministry.¹⁹⁵

A 1965 judicial law introduced the first important reform in the area of defendants' rights by specifying a time by which charges must be filed, and the accused must be given a hearing. Before that, there were no such limits, and detainees were frequently held for many months before seeing a judge.¹⁹⁶ The first penal code was not approved until 1976. It attempted to define crimes and regularize punishments as a safeguard against the arbitrary nature of *qazi* justice.¹⁹⁷ Efforts were also made to provide lawyers and judges with legal training in Europe for civil law and in Egypt for the *sharia*.¹⁹⁸ All these attempts at gradual legal reform ended with the April 1978 coup.

Following the 1978 coup the PDPA (Khalq) government of Hafizullah Amin embarked on a campaign of terror that resulted in mass arrests and the summary execution of political opponents; there was no due process. Lawyers and judges were among the professional groups which were particularly targeted during this period.¹⁹⁹

¹⁹⁴ *Ibid.* p. 584.

¹⁹⁵ Interview with Minister of Justice Ghulam Mahuddin Dareez, July 21, 1990. All legislation must be approved by the National Assembly.

¹⁹⁶ Dupree, p. 582.

¹⁹⁷ *Ibid.* p. 764.

¹⁹⁸ Most lawyers were trained in the *sharia* at al-Azhar in Cairo; the government disapproved of the *madrasahs* (theological schools) in Pakistan and India.

¹⁹⁹ According to Roy, "for this period, the aim was the total elimination of certain social categories (the clergy and the people of influence) rather than genocide." He lists among those killed in huge numbers the "middle-class people of influence (rather than the

After December 1979, the legal system came entirely under the control of KHAD and its Soviet advisers. Surveillance, disappearances and mass arrests continued, and torture became a routine part of the interrogation process. Trials were held before the KHAD's Revolutionary Court in the Sedarat detention center.²⁰⁰

It is the KHAD, rather than the court, that determines innocence or guilt. The court confirms the KHAD's "guilty" verdict and determines the sentence in accordance with the recommendation of the KHAD... There is no appeal from the decision of the Revolutionary Court.²⁰¹

Since the Soviet withdrawal, the numbers of arrests in government-controlled areas appear to have declined, according to independent observers Asia Watch interviewed in Kabul. Nevertheless, the few existing legal safeguards appear to be inadequate to prevent arbitrary arrest.

Most arrests are still carried out by security forces under the Ministry of State Security, the WAD. The other security force that is empowered to carry out arrests is the police or *sarandoi*, which is responsible to the Ministry of the Interior. Certain *sarandoi* detachments provide support for the WAD security forces under which they have a paramilitary function.²⁰² The *sarandoi* also has responsibility for ordinary police functions, including traffic patrols and interdiction of smuggling. The government reportedly has also retained urban self-defense groups, associated with the party youth organizations and other groups affiliated with the government.²⁰³ The President has his own special

aristocracy, considered to be less dangerous because cut off from the people), the *'ulama*, guardians of age-old Islamic culture, and finally young Marxist intellectuals, who might have shown a different way toward modernity." Lawyers and judges who had been trained in the West were killed along with others associated with the Daoud government. *See* Roy, pp. 95-97.

²⁰⁰ Sedarat is the site of the office of the Prime Minister. Because KHAD was originally under the authority of the Prime Minister, the central interrogation center is located in the compound.

²⁰¹ Laber and Rubin, p. 100.

²⁰² Interview with Minister of the Interior Raz Mohammad Pakteen, July 24, 1990.

²⁰³ These were previously known as "Groups for the Defense of the Revolution." Asia Watch was not able to obtain information about their current designation.

security force, reportedly made up of elite members of the defense forces and WAD.

Security laws continue to define crimes so broadly as to restrict the non-violent exercise of freedom of speech and assembly. However, the decline in the number of arrests indicates that the net is not cast as widely as it was before. Independent sources in Kabul told Asia Watch that people now openly engage in activities that would have led to certain arrest in the past; for example, displaying photographs of ex-King Zaher Shah, or meeting with foreigners without prior government permission. Most of the sentenced prisoners Asia Watch interviewed or about whom Asia Watch received information were convicted on charges of "being an active member of" or "participating in the military activities of" one of the guerrilla forces at war with the government.

Access to Defense Counsel

Although the 1990 Constitution provides that every accused person has the right to defend himself or to obtain the services of defense counsel, Afghanistan has no tradition of legal defense; and so for most of the defendants awaiting trial, the right is not observed. The Minister for State Security confirmed to Asia Watch that "every accused has a right to a lawyer, but in our country the system of defense by lawyers is not so [common]."²⁰⁴ According to another government official, the shortage of lawyers has been a problem since the time of the monarchy. "We do not have the institution of lawyers as exists in the West ... The number of competent advocates in this country is only ten."²⁰⁵ This assessment is corroborated by scholars of Afghanistan's political history. According to Dupree, most lawyers trained in Western civil law entered the diplomatic service, leaving very few to practice law. The government is reportedly taking some steps to address this need. The Asia Watch delegation was told that a law on legal aid is being drafted.²⁰⁶

²⁰⁴ Interview with Minister Yaqubi, July 24, 1990.

²⁰⁵ Interview with Chairman of the National Security Court Karim Shahdan, July 31, 1990.

²⁰⁶ Such a service is badly needed; however, the government may not be able to effectively implement the legislation because of financial constraints.

The attorney general (*Saranwa*) is supposed to "supervise the investigation process from the point of arrest of the accused until the case goes to court and the conclusion of the investigation,"²⁰⁷ and determine if there are sufficient grounds for continued detention.²⁰⁸ He is also supposed to ensure that the prosecution has sufficient evidence, and prepare the indictment on the basis of that evidence. The accused is presented with a summary of the interrogation and evidence. Although the Attorney General is also empowered to question the legality of decisions of the courts, there was no evidence of his ever having done so.

Government officials stated that the independence of the Attorney General serves as a check against illegal detention and torture of detainees.²⁰⁹ Although the Attorney General is supposed to investigate reports of mistreatment or illegal detention, in fact, his authority is much more limited.

An attorney from the Attorney General's office is supposed to see all detainees within 72 hours of arrest, and ensure that the defendant "has access to defense."²¹⁰ However, detainees interviewed by Asia Watch, almost invariably

²⁰⁷ Interview with Attorney General Sharafuddin Sharaf, July 31, 1990.

²⁰⁸ *Ibid.*, July 25, 1990. The Attorney General is an investigating magistrate on the French model (the Faculty of Law at Kabul University was originally affiliated to the University of Paris). According to Article 120 of the 1990 Constitution, the Attorney General has the power of "high supervision over the implementation and uniform observance of laws" by all state agencies, private institutions, political parties and individual citizens. Article 106 of the 1976 Constitution stated that, "The detection of crimes by the police, and the investigation, pursuit and prosecution thereof by the Attorney General, who are part of the executive organ, shall be conducted in accordance with the provisions of the law."

²⁰⁹ The Attorney General told Asia Watch that he answers only to the President and not to any other governmental office. Interview with Attorney General Sharaf, in Kabul, July 25, 1990. The fact that the Attorney General had declined any position in the government since 1986 was cited as evidence of his independence. Interview with Foreign Minister Abdul Wakil, in Kabul, July 26, 1990. The 1990 Constitution also states that "the attorney offices are independent in the performance of their duties and are subject only to the law and the Attorney General."

²¹⁰ According to the Attorney General, an individual prisoner may be held for up to 72 hours before he can be seen; if however, the accused is part of a group of people arrested and there is "danger that evidence could be removed," the period of detention before they may be seen is apparently not limited. Interview in Kabul, July 31, 1990.

stated that they intended to defend themselves; obtaining defense counsel was not recognized as an option. One 21-year-old prisoner, sentenced to 15 years for participating in an "armed uprising" told Asia Watch, "I didn't want a lawyer, it costs money."²¹¹ A prisoner who had been sentenced to 15 years for a bombing incident said he had been told by an attorney from the Attorney General's office that seeing a lawyer was not possible given the nature of his crime.²¹² Our government translator interjected that in cases where a person is "caught red-handed," there is no need for counsel, "although some intellectual people who understand these things, they get a lawyer."²¹³ When we asked whether anyone was ever denied access to a lawyer, it was clear that for most cases, the option did not even exist.²¹⁴

The defendant is given no more than a few days to prepare a written statement in which he or she must either accept or refute the charges and evidence that the attorney has put forward. This is the first opportunity the accused has to see the evidence, and the statement he or she must write apparently constitutes the whole of the defense. Prisoners who were detained during the Babrak Karmal years also described being told to write a written defense after they were provided with a summary of the interrogation by security officials.²¹⁵ Government officials told Asia Watch that it was "very rare" for an accused to provide evidence that would prove his innocence, or would substantiate mitigating circumstances.²¹⁶ None of the detainees Asia Watch interviewed at Sedarat had been informed of their trial date, or had been told how long they would be held for interrogation. There is no bail for detainees arrested on suspicion of "opposition activities."

²¹¹ Interview with prisoner at Pol-e Charkhi prison, July 31, 1990.

²¹² Interview with prisoner at Pol-e Charkhi prison, July 31, 1990.

²¹³ The remark was that of Ali Ahmed Joushan, one of our translators and guides from the Ministry of Foreign Affairs, July 31, 1990.

²¹⁴ We were also told that foreigners are sometimes provided with lawyers, and that illiterate persons are sometimes given such assistance.

²¹⁵ See Laber and Rubin, pp. 99-101. See also Amnesty International, "Afghanistan: Torture of Political Prisoners," AI Index: ASA/11/04/86, November 1986, p. 21.

²¹⁶ Interview with Abdul Karim Shahdan, Chairman of the National Security Court, July 31, 1990.

Arrests During the March 1990 Coup Attempt

The absence of effective safeguards against arbitrary arrest was evident in the mass arrests that took place following the abortive coup attempt on March 6, 1990. On that day, then Defense Minister General Shahnawaz Tanai,²¹⁷ attempted a *coup d'état* against the government of President Najibullah, and quickly won the support of Hezb-e Islami leader Hekmatyar. For some 24 hours, Kabul was the scene of fierce fighting between forces loyal to Najibullah's government and those backing the rebels. During that period, over 600 persons were arrested,²¹⁸ according to official sources, and detained without access to family or defense counsel for periods ranging from several days to several months. The event underscored the fact that, despite constitutional reforms, there is as yet little protection against arbitrary arrest.

Asia Watch interviewed Anwar,²¹⁹ an employee of an international relief organization, who was among those arrested on March 6. He was taken to the PDPA Central Committee headquarters, where the detaining officer accused him of trying to contact the rebels. He was detained there overnight, and the next day taken to the Arg, the presidential palace. All his personal documents, including his passport, were taken from him and he was not permitted to make contact with his employers.

At the Arg, Anwar was taken to a large room where about a dozen people were being held. He recognized most of them as the drivers of Central Committee members who had apparently fled or had gone into hiding. Evidently, the security forces had arrested these drivers when they were not able to locate the committee members they suspected of involvement in the coup attempt. Anwar was held at the Arg for 17 hours, during which time his hands were tied behind his back and he was ordered not to speak. He was then transferred to the Sedarat detention center, and later to Pol-e Charkhi. Anwar described his interrogation in the WAD headquarters in Sedarat:

They started with accusations: "Are you against the government? Are you

²¹⁷ Tanai is from the Khalq faction of the PDPA, historically opposed to the Parcham faction of which President Najibullah belongs.

²¹⁸ Asia Watch also received unconfirmed reports of larger numbers of arrests.

²¹⁹ Not his real name.

with the opposition? Are you a spy for the Iranian Embassy? Are you a spy for the CIA? You have paid a fee to the rebels; I have the list and your name is on it." Finally I told them "If my name is on a list, I don't know. I am sorry if my name has been given to you, but I am not involved."²²⁰

As was previously the case, WAD relies on informants who gather intelligence on suspected opponents of the government. In this case, the prisoner believed he had been informed on by WAD agents who had infiltrated his work place. He was held for three months before being released without explanation. When he asked for a certificate that would prove his innocence, he was refused.

Government officials told Asia Watch that, in the days following the coup attempt, the Attorney General requested and was granted permission by the Ministry of State Security to see all the persons who had been arrested. The Attorney General also told Asia Watch that his representatives visited all of the detainees within three days of arrest.²²¹ However, if the attorney general had genuine authority in this area, he should not need to request permission for such visits. Asia Watch interviewed one detainee who told us that he was not seen by a government attorney until 25 days after his arrest, and then only in the presence of security officials. When he complained about having been illegally arrested, the attorney told him that it was "not the right time" to raise the issue. The detainee then pleaded to meet with the attorney in private, but the attorney refused to do so.²²²

In total, 644 people were arrested following the coup attempt, according to Minister of State Security Ghulam Yaqubi.²²³ Asia Watch was told that of these, 205 were reportedly released after investigation when it was determined that they were "either not very involved or very repentant."²²⁴ The remaining 439 were tried before a special court constituted for these cases with judges from both the National Security Court and the military court. This court reportedly sat in the State Security complex for three months. None of the defendants had access to a

²²⁰ Interview in Kabul, July 31, 1990.

²²¹ Interview with Attorney General Sharafuddin Sharaf, July 25, 1990.

²²² Interview in Kabul, July 31, 1990.

²²³ Interview in Kabul, July 24, 1990. Asia Watch has also received unconfirmed reports of higher numbers from *mujahidin* sources.

²²⁴ *Ibid.*

lawyer; the Chairman of the National Security Court, Karim Shahdan, told Asia Watch, "No lawyers would defend them, because they hate them [the coup plotters]." He added that none of the persons accused in the coup had wanted a lawyer.²²⁵ International law and Afghanistan's constitution guarantee the right to a defense attorney. It is clear that the government faces difficulties in providing attorneys due to the dearth of trained lawyers in the country. However, denying counsel because of the nature of the crime is inexcusable.

The Arrests of the National Unity Party Members

Suspected links with *mujahidin* factions in Pakistan was the official reason for the arrest in June 1989 of the founding members of the National Unity Party (NUP). At the time of their arrest, they were apparently preparing the required papers to register their organization under a new law on political parties. The party's supporters have stated that the NUP, an association of university lecturers, scientists and retired and active army officers, was committed to seeking "to create an atmosphere for the peaceful transfer of power to a government elected by the people of Afghanistan, and to be committed to a campaign for civil liberties and equality between men and women."²²⁶ Independent sources Asia Watch interviewed in Kabul stated that most of the members of the party supported the ex-King Zaher Shah and that the party formed in 1988 in order to propose a peaceful political solution to the conflict. According to one supporter who was arrested, among the reasons for the arrests was the fear that the group had penetrated the military and that it had established contact with *mujahidin* leaders.

One of the founding members, Mohsen Mohammad Formoly, of the Academy of Science, was originally reported to have "disappeared" after his arrest, but after inquiries from the U.N. Special Rapporteur on Afghanistan, he was discovered to be in detention at the Shashdarak interrogation center in Kabul.²²⁷

²²⁵ Interview with Abdul Karim Shahdan, Chairman of the National Security Court, Kabul, July 31, 1990.

²²⁶ Amnesty International. "The Arrest of Members of the National Unity Party," January 1990, *AI Index* 11/04/90.

²²⁷ *U.N. Report* 1989, p. 11.

In addition to those who were actually members of the party, a number of party supporters were arrested, including Dr. Osman Rustar, a lecturer in the faculty of law and political science. He was arrested on June 10, 1989, as he was leaving the university in his car. Denied sleep for four consecutive days and nights during his interrogation, he was released four weeks later.

When Asia Watch questioned Minister of State Security Ghulam Yaqubi about the arrests, he stated that the group had "acted as an underground political organization, without being registered," and that they were trying to "weaken the armed forces" and were "collecting arms and explosives for an offensive and were linked with [the radical *mujahidin* leader] Sayyaf." Minister Yaqubi assured Asia Watch that "if they did not collect weapons, we would not have bothered with them."²²⁸ In an address to the Academy of Science on July 30, 1990, President Najibullah also stated that "some members of this [National Unity] party in their confessions disclosed that the question of an armed uprising was raised in its ranks," and that "arms and ammunition were recovered from a number of its members."²²⁹ However, Asia Watch sources have indicated that the group was entirely non-violent, and although one member of the group apparently visited Pakistan in the months before the arrests, he had opposed the radical positions taken by Sayyaf and some other *mujahidin* groups.

Most of the members of the NUP were released late in 1989. According to official government sources, those who had been sentenced by the National Security Court were later pardoned and released. When Asia Watch questioned the fact that the party members were released despite the serious charge of aiding the *mujahidin*, Minister Yaqubi responded, "We realized they were repentant."²³⁰ If, in fact, the group was involved in arms smuggling, this hardly seems a satisfactory response. Instead, it appears that the government was reacting to international criticism of its arrest of the party members at a time when it is trying to project an image of political pluralism and openness. When one of those arrested was released, he was reportedly told, "We see that you are not a fundamentalist. Our policy is only against fundamentalists."²³¹

²²⁸ Interview with Minister of State Security Ghulam Yaqubi in Kabul, July 24, 1990.

²²⁹ Address of President Najibullah to the Academy of Science, Kabul, July 30, 1990 (as cited by Bakhtar News Agency).

²³⁰ Interview with Minister Ghulam Yaqubi, July 24, 1990.

²³¹ According to an Asia Watch source interviewed in Kabul on August 1, 1990, the official

Trials

Political cases are tried by the National Security Court, which was established in 1988.²³² The National Security Court system comprises both primary courts and appellate courts. All judges are appointed by the President, after consultation with the Chairman of the National Security Court, who reports directly to the President. Under the Constitution, neither the judges nor the Chairman of the Court may be party members. According to government officials, the judges appointed to the National Security Court must be graduates of either the Faculty of Law and Political Science or the Faculty of Theology, or graduates of a *madrassa* where they studied the *sharia*, or they must have served 12 years in a judicial capacity. Members of the National Security Court also make up a special judicial council of the Supreme Court. Judges and administrative staff of the National Security Court also travel to the provinces to hold sessions.

Government officials told Asia Watch that court sessions ordinarily do not last longer than a day, and that as many as three sessions are routinely scheduled in a single day.²³³ In the past, as many as seven sessions would be held in a day. The accused is given three to six days to prepare a defense before the trial begins. According to Chairman of the National Security Court Abdul Karim Shahdan, the accused is given the opportunity to cross-examine witnesses. Although we were told that only confessions made before the court are considered valid, in fact, any confession, including those made during initial interrogation, may be read to the court. The accused is reportedly given the opportunity to deny the confession, but it is nevertheless presented as evidence for the prosecution.²³⁴

Officials also stated that *in camera* proceedings are permitted whenever

who said this was the head of the Seventh Department in the WAD which deals with intellectuals who have been arrested and reportedly provides agents who pose as students to keep university faculty and students under surveillance.

²³² Prior to 1988, political cases were tried before Special Revolutionary Courts, which had been established in 1980.

²³³ Interview with Chairman of the National Security Court Abdul Karim Shahdan, July 31, 1990.

²³⁴ *Ibid.*

the case involves governmental secrets; presumably, this could apply to every "national security" case. Since defendants do not have access to lawyers or to family members before the sentencing, and are given almost no advance notice of the trial date, it would be difficult for anyone else to attend the trial even if access were permitted. Some trials, however, have been televised, apparently for propaganda purposes.

Under the State of Emergency, prisoners sentenced to less than 10 years' imprisonment were denied the right of appeal. Government officials informed Asia Watch that with the lifting of the Emergency on May 4, 1990, such restrictions on the right of appeal have ended. However, prisoners arrested before the Emergency was lifted do not benefit from the changes and are still not allowed to appeal their sentence. The majority of these prisoners may, however, be eligible for one of the amnesties announced by the government since 1989. According to government officials, when the verdict is announced by the primary court, the defendant is given a document that states the sentence. He or she has 30 days to register an appeal of either the sentence or the verdict. The appeals court must hear the case within three months.²³⁵

Since 1988, the government has implemented a series of amnesties for various categories of political prisoners. Official sources told Asia Watch that since the end of 1986, 18,000 prisoners have been amnestied.²³⁶ According to Minister of the Interior Raz Mohammad Pakteen, 1,000 prisoners were released between May and July 1990.²³⁷ It was not possible to verify these figures independently, however. Among the prisoners eligible for amnesty are those who have already served six or more years of their sentence, those aged 60 or older, and members of the government's forces who deserted to join the opposition.

The imposition of the death penalty has been common during most of the

²³⁵ *Ibid.*

²³⁶ Interview with Director of Prisons Colonel Mohammad Yusuf Khetmatyar at Pol-e Charkhi Prison, July 31, 1990. At the time of the U.N. Special Rapporteur on Afghanistan's visit in 1990, official sources states that 19,514 prisoners had been amnestied under 20 general amnesty decrees, and another 366 individual amnesty decrees had been pronounced. The report notes that "the number of incoming prisoners is less than the number of those who are released." *U.N. Report* 1990, pp. 11-12.

²³⁷ Interview with Minister of the Interior Raz Mohammad Pakteen, July 24, 1990.

war. Although when Babrak Karmal became President of the Democratic Republic of Afghanistan in 1980, he stated his intention to "abolish executions under favorable conditions,"²³⁸ throughout his presidency, the government announced death sentences and executions. In 1980 the government announced 18 executions; in 1981, 14; in 1982, 16; and in 1983, 13. In 1984, the government announced 68 executions and 77 death sentences; in 1985, the government announced 40 death sentences, but stopped announcing executions. Amnesty International believes that in each of these years "these were only a proportion of the total number of death sentences that were imposed."²³⁹ According to former prisoners and defecting officials and prison personnel, actual executions in these years far outnumbered those announced. By 1987, the government stopped announcing most death sentences and executions, but executions continued.²⁴⁰

Since 1989, there has been a moratorium on death sentences, according to government officials. President Najibullah told Asia Watch that no executions have been carried out in since 1989, and that all death sentences, which he said numbered 21 at that time, were under review.²⁴¹ However, the Pakistani papers reported that some 54 army officers had been sentenced to death for their alleged involvement in the March coup attempt.²⁴² A large number of executions were also reported to have been carried out in Pol-e Charkhi just before the Soviet withdrawal; however, Asia Watch has not been able to confirm these reports.

Torture

After the Soviet invasion, torture of political detainees became systematic and widespread. Although torture had been carried out under previous governments, it only became a fully integrated part of the interrogation process under Babrak Karmal. Throughout the war, refugees interviewed in

²³⁸ *Kabul New Times*, January 1, 1980.

²³⁹ *Amnesty International: Report 1985* (London: Amnesty International, 1985), p. 197; *Amnesty International Report 1986* (London: Amnesty International, 1986), p. 207; *Amnesty International Report 1987* (London: Amnesty International, 1987), p. 216. *See also* Laber and Rubin, p. 102.

²⁴⁰ *Amnesty International: Report 1988* (London: Amnesty International, 1988), p. 147.

²⁴¹ Interview with President Najibullah, July 25, 1990.

²⁴² *Frontier Post* (Pakistan), June 29, 1990.

Pakistan described in detail the torture and mistreatment to which they were subjected. Methods included severe beatings, electric shock, burning with chemicals and cigarettes, and deprivation of food and sleep.

During the Asia Watch mission to Afghanistan in mid-1990, we were not able to interview detainees privately nor to locate many released prisoners who could provide us with first-hand information about whether mistreatment and torture persist as a component of interrogation for detainees under investigation. From reports we received it appears that systematic use of torture during interrogation has declined; however, we were able to interview a number of detainees who were deprived of sleep for periods ranging from one night to four consecutive days and nights during interrogation.²⁴³ The U.N. Special Rapporteur on Afghanistan received reports that, in one case following the attempted coup in December 1989, Brigadier Abdul Sami Azizi was reportedly tortured to death in prison.²⁴⁴

Unfortunately, assurances by government officials that torture is not tolerated have not been accompanied by adequate measures to prevent torture. Such measures should include at least granting the ICRC immediate access to all detainees and ensuring the detainees have access to family members and defense counsel.²⁴⁵ All reports of torture should be fully investigated, and those responsible prosecuted. Minister of State Security Yaqubi told Asia Watch that seven WAD officers had been prosecuted on charges of maltreating detainees since 1986. Asia Watch was not able to obtain information about specific charges, the rank of the officers, and the sentences, if any.²⁴⁶

Minister of State Security Yaqubi also told Asia Watch that the "best

²⁴³ Interview in Kabul, July 31. Felix Ermacora, the U.N. Special Rapporteur on Afghanistan, also acknowledged receiving reports that "deprivation of sleep is a constant practice during interrogation." *U.N. Report* 1990, p. 13.

²⁴⁴ *U.N. Report* 1990, p. 13.

²⁴⁵ The ICRC has access only to sentenced prisoners, and improvements in the treatment of these prisoners is probably due in large part to their presence. Unfortunately, until October 1990, heavy fighting around Jalalabad had prevented the ICRC from visiting sentenced prisoners in Jalalabad jail. Asia Watch has received reports of mistreatment and severe conditions for prisoners and detainees held there.

²⁴⁶ Interview with Minister Ghulam Yaqubi in Kabul, July 24, 1990.

guarantee for preventing torture"²⁴⁷ was Article 42 of the 1990 Constitution, which states that

... torture and excruciation are prohibited. Obtaining [a] confession, testimony or statement from an accused or other person by compulsion or threat is prohibited. Statements or testimony taken from an accused or other person by means of compulsion shall not be valid. A public servant who tortures an accused or any other person for obtaining statements, testimony or confession, or who issues orders for torture, shall be punished in accordance with the law. Acting on the orders of superiors in the commission of unlawful deeds cannot be the ground for the plea of innocence.

However, as noted above,²⁴⁸ any confession, including those made during interrogation, may be read to the court, although the accused may deny the statement. Attorney General Sharaf told Asia Watch that because the accused is usually caught "with the evidence" there was no need for torture.²⁴⁹

Detention Conditions

Following arrest, a detainee is taken to army camps or WAD detention centers where he is held for anywhere from a few days to several months. Prisoners who have not been sentenced are detained in one of a number of detention centers and "supervision houses."²⁵⁰ According to the Minister of State Security, there are 21 detention centers throughout the country and three in Kabul. These three include Blocks 1 and 2 in Pol-e Charkhi Prison, Sedarat and the WAD headquarters at Shasdarak. There are also detention centers in every province.²⁵¹

²⁴⁷ *Ibid.*

²⁴⁸ *See* p. 91.

²⁴⁹ Interview with Attorney General Sharaf, in Kabul, July 25, 1990.

²⁵⁰ Interview with Director of Prisons, Colonel Mohammad Yusuf Khetmatyar, Pol-e Charkhi Prison, July 24, 1990. The supervision houses are under the control of the Ministry of State Security.

²⁵¹ During Asia Watch's mission to Kabul, the delegation was unable to obtain information as to whether these centers remain in operation. Interview with Minister of State Security Ghulam Yaqubi, July 24, 1990.

In previous years, interrogation was also reported to take place at a number of unofficial interrogation centers, including the Ministry of the Interior, which is operated by the *sarandoi*, a security force under that Ministry; and at least five offices in Kabul: Offices numbered Three, Four and Five; the Ahmad Shah Khan house, a house in Wazir Akbar Khan; and the KHAD office in the Howzai Barikat district. In Qandahar, in addition to the KHAD headquarters, interrogation and torture was reported to have taken place at Darwazan and the Musa Khan building.²⁵² During the Asia Watch mission, we were not able to determine if these interrogation centers remain in use.

At the time of the Asia Watch visit, government officials told us that 97 detainees were under investigation in the provinces and 133 in Kabul. In addition, the investigation process had been completed in another 465 cases in Kabul, and the detainees were said to be waiting for the verdict of the court.²⁵³ The Minister of State Security told Asia Watch that, with the exception of the March coup attempt arrests, the total number of detainees for 1990 was the lowest of any recent year, and credited the new law on political parties with reducing underground activity.²⁵⁴

Detainees are held in the detention centers until the completion of the investigation, a process that previously took as long as a year.²⁵⁵ Director Hakim of the Detention Center at Sedarat and Chief of Investigation Ghanim informed Asia Watch that investigations took no longer than two months, or in unusual cases, three to four months. Asia Watch was not permitted to interview detainees at Sedarat in private; the detainees we spoke to had each been detained for a month, and they did not know how long they would be held.²⁵⁶ After the

²⁵² Amnesty International, "Afghanistan: Torture of Political Prisoners," pp. 6-7.

²⁵³ Interview with Minister of State Security Ghulam Yaqubi, July 24, 1990. According to the U.N. Special Rapporteur on Afghanistan, Felix Ermacora, official figures for the number of detainees as of September 1990 were 574: 26 persons under interrogation; 319 awaiting trial or sentencing and 229 convicted prisoners. *U.N. Report* 1990, p. 12.

²⁵⁴ Interview with Minister of State Security Ghulam Yaqubi, July 24, 1990.

²⁵⁵ Prisoners Asia Watch interviewed told us that they had been held in detention for periods ranging from seven months to a year before being sentenced. Interviews at Pol-e Charkhi, July 31, 1990.

²⁵⁶ Interviews with detainees at Sedarat Detention Center, Kabul, August 1, 1990.

investigation is complete, the prisoner is afforded an abbreviated trial before the National Security Court, and then generally is transferred to Pol-e Charkhi or to a provincial prison. In some cases, a detainee may be transferred before the investigation is complete. *Mujahidin* captured in the field are also said to be detained in army custody, where interrogation takes place in some cases for several months before the prisoner is tried and transferred to prison.

At the time of the Asia Watch visit, Pol-e Charkhi held 3130 prisoners, 2275 of whom were political prisoners, according to government officials.²⁵⁷ The severe overcrowding that characterized prison life in Pol-e Charkhi during most of the war has eased,²⁵⁸ in large part because of amnesties which have resulted in the release of some 19,000 prisoners from Pol-e Charkhi and other prisons since 1988.

However, for detainees who have not been sentenced, conditions remain precarious. Detainees arrested following the March 1990 coup attempt described conditions of severe overcrowding and inadequate food during the first weeks following the arrests.²⁵⁹ While sentenced prisoners are permitted regular visits (every 15 days) from family members,²⁶⁰ detainees are not permitted such visits. The government should abolish all such unofficial detention centers and hold prisoner only in registered places of detention to which the detainees' family members and defense counsel have access. The ICRC should be granted immediate access to all detainees.

Foreign Prisoners

²⁵⁷ Interview with Director of Prisons Colonel Mohammad Yusuf Khetmatyar, Pol-e Charkhi Prison, July 24, 1990.

²⁵⁸ Throughout most of the war, Pol-e Charkhi held an estimated 10,000 to 15,000 prisoners -- well in excess of the 5000 it was built to accommodate. Prisoners interviewed by Asia Watch and Helsinki Watch described conditions of severe cold, poor sanitation, inadequate food and widespread disease among prisoners. *See* Helsinki Watch/Asia Watch reports cited in fn. 1.

²⁵⁹ Interviews in Kabul, July 24, 1990.

²⁶⁰ In the past, prisoners were not permitted access to family members. Independent sources interviewed by Asia Watch confirmed that such visits regularly take place for sentenced prisoners.

In addition to Afghans imprisoned under charges of participating in an "armed uprising against the government," the Afghan government has imprisoned a number of foreigners, including Pakistanis, Egyptians, Saudis and Jordanians, on charges of "spying" or of "assisting the opposition forces."²⁶¹ In some cases, these arrests are not acknowledged and the prisoner is not permitted visits from representatives of his government. For example, Asia Watch received reports that despite requests to do so, the Pakistani chargé d'affaires has not been permitted to see Pakistani detainees and prisoners, and that he has received no reply to a request to exchange prisoner lists. The government of Afghanistan should ensure that all imprisoned foreign nationals be permitted access to representatives from their governments, and that all such arrests be acknowledged and the prisoners permitted visits by the ICRC.

²⁶¹ **At the time of the Asia Watch visit, 33 foreign prisoners were held at Pol-e Charkhi: 22 Pakistanis, seven Iranian and four Arabs of unspecified nationality. Interview with Director of Prisons Colonel Mohammad Yusuf Khetmatyar, Pol-e Charkhi prison, July 24, 1990.**

V. HUMAN RIGHTS VIOLATIONS BY ELEMENTS OF THE AFGHAN RESISTANCE

A number of factions of the *mujahidin* are responsible for human rights abuses in the areas they control inside Afghanistan and also for abuses committed inside Pakistan. These abuses include kidnappings and murders of Afghan intellectuals who have been outspoken in their independent political views, Afghans associated with Western relief agencies based in Pakistan, and other Afghan refugees, particularly those associated with political groups who support a secular or moderate political position. Most of these killings have been carried out by the more "fundamentalist" *mujahidin* parties. These parties have also imprisoned and tortured members or supporters of rival *mujahidin* parties. Journalists who have attempted to investigate these abuses have been threatened; foreign representatives of relief organizations and Afghan women working for these agencies have also been threatened and attacked.

Despite the fact that many of these abuses occur inside Pakistan,²⁶² Pakistani authorities have failed to investigate them properly, and have prosecuted no one for any of these crimes. Pakistan's failure to investigate these crimes and bring those responsible to justice amounts to a policy of complicity in human rights abuses committed by these groups within Pakistani territory. In a number of cases, Pakistani authorities, especially the ISI, have participated in abuses, including the detention of Afghan refugees suspected of opposing some of the parties favored by Pakistan, or handing over suspects to the parties for interrogation and torture.

Within the Afghan refugee community in Pakistan, disputes are generally resolved and justice dispensed in accordance with traditional norms adhered to by these same groups inside Afghanistan. At the same time, the political

²⁶² In many cases, the abuses occur within Pakistani territory proper; in others, they occur within the Tribal Agencies that border Afghanistan. The population in these areas is related to the ethnic groups inside Afghanistan. These agencies, which were established under British colonial law, are semi-autonomous regions administered directly by a political agent appointed by the federal government who has complete authority for administrative and judicial matters. There are no regular courts in these areas.

pressures that have been created by the war have given rise to other kinds of crimes, including the politically motivated kidnapping and murder of Afghan refugees. The *mujahidin* parties believed responsible for many of these abuses are those which receive Pakistan's support and the bulk of weapons supplied by the U.S. and Saudi Arabia.

All of the *mujahidin* parties maintain prisons either inside Pakistan or across the border inside Afghanistan, or both. For most of the parties, the prisons are used to detain prisoners taken in combat. However, some of the parties also use these prisons to detain members of rival *mujahidin* parties and Afghan refugees who are members of parties that are not recognized as Islamic or of secular parties. Torture of detainees is reportedly common in the latter case. Pakistani officials also engage in illegal detentions, using a colonial regulation permitting administrative detention to arrest Afghans deemed to be "security risks" and to hold them without trial for up to six years.

Asia Watch was unable to visit areas inside Afghanistan under the control of the *mujahidin*. However, the delegation was able to interview a number of *mujahidin* commanders from areas inside Pakistan, as well as relief workers, refugees and others who travel frequently inside Afghanistan. Trial procedures vary greatly in the areas under *mujahidin* control, and in many cases, *mujahidin* commanders have as much say in the verdict as the Islamic judges appointed to hear cases.

The International Committee of the Red Cross has access to some of the prisoners held by commanders inside Afghanistan, but neither the ICRC nor anyone else has been able to visit prisoners held by the *mujahidin* in Pakistan, where there are reported to be thousands and where torture is reportedly widespread.

***Mujahidin* Prisons**

All of the parties in the resistance maintain prisons either inside

Pakistan or across the border in Afghanistan. Some do both.²⁶³ In addition, commanders in the field sometimes detain captured Afghan government soldiers. Control of these prisons, and detention procedures is entirely in the hands of the commander or the party; the treatment of prisoners varies depending on the practices of individual commanders and party leaders. International humanitarian organizations have access to some of the jails in Afghanistan and in the Tribal Agencies, but not to those in Pakistan. No uniform standards govern detention procedures, and there are few if any safeguards against ill-treatment and torture of prisoners. Even the location of these prisons and detention centers is difficult to confirm, as are numbers of those detained. The detention centers under the control of the *mujahidin* parties, not including several small jails in private houses in University Town and Jahangirabad, are as follows:

Shamshatoo. (Hekmatyar) The prison is located 10-15 kilometers east of Peshawar, in the Shamshatoo refugee camp. It is reportedly a two-story prison, part of which is underground. According to some reports, it is located behind a clinic in the camp. Torture is reported to be routine, including severe beatings and the use of electric shock. The prison reportedly includes a section for women prisoners.²⁶⁴

Shamshatoo 2. (Khales)

Warsak MicinL. Shagai, 25 kilometers north of Peshawar. It is at a Hezb-e Islami (Hekmatyar) military camp and may hold 1200 detainees.²⁶⁵

Mohammad Gart. Kunar Province in Afghanistan, on the Pakistan border (Hekmatyar and Sayyaf).

²⁶³ Three parties reportedly do not maintain prisons inside Pakistan. They are NIFA (Gailani), Jabha-yi-Najat-e-Milli Islami (Mojaddidi), and Harakat-e Inqilab-e Islami (Mohammadi). Jamiat-e Islami reportedly has held prisoners inside Pakistan. The majority of prisoners are held by Sayyaf, Khales and Hekmatyar.

²⁶⁴ During interviews with Afghan refugees and exiles in Pakistan, Asia Watch collected the names of number of persons reportedly held in Shamshatoo; the names cannot be made public because the relatives fear reprisals.

²⁶⁵ Mojaddidi and Gailani also have military camps nearby, but hold no prisoners there.

Bagzal No. 1. Khar Dand, Kurram Agency. (Hekmatyar and Sayyaf).

Jhawar. It is run by Jalaluddin Haqqani, a commander loosely affiliated with Kholes, and is located inside Afghanistan. Prisoners there are reportedly kept in chains in dark, crowded cells, and torture is reportedly routine.

Khund Bachelor. Spina Shega, near Teri Mangal, Kurram Agency (Hekmatyar).

Sadda Shasu. (Sayyaf), Kurram Agency.

In Jaji, various groups have prisons, including some Arab groups, Sayyaf, Hekmatyar and Rabbani.

It is not known how many prisoners may be held in any of these detention centers, but estimates range into the hundreds. Asia Watch has received reports of a number of disappearances of Afghan refugees in Pakistan and Afghanistan, some of whom may be detained in these prisons. In addition to those cases listed below²⁶⁶, several *mujahidin* commanders who have disappeared may be imprisoned in rival *mujahidin* jails, including two who were kidnapped in May 1990:

- General Abdul Baqi, chief of the military department of Harakat-e Inqilab-e Islami, was kidnapped in Pandoo, Peshawar, on May 25, 1990, allegedly by Hekmatyar's Hezb-e Islami.
- Engineer Ghaffar, a deputy commander under Commander Abdul Haq of Kholes' Hezb-e Islami, was reportedly kidnapped in Peshawar by Harakat-e Inqilab-e Islami.

As noted above, conditions of detention vary by individual commanders and are not governed by any uniform standard. Restraining devices, including leg irons, appear to be widely used. The Hezb-e Islami guerrillas captured by Jamiat-e

²⁶⁶ See pp. 114-119.

Islamic forces after the Fakhra massacre were required to wear them during exercise periods twice a day, according to an American journalist who visited the site.²⁶⁷ In another case from the Qandahar area, detainees were kept in leg irons with their hands handcuffed behind the backs for 24 hours while awaiting sentencing.²⁶⁸

Due Process

Common Article 3 prohibits "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 all civilized peoples."

Judicial practices vary among individual commanders. In some cases, Afghan government soldiers who have surrendered or have been captured have been held until they could be traded for imprisoned *mujahidin* prisoners. Commanders also sometimes try captured soldiers. The objective of the trial appears to be to determine whether the captured soldier is an "unrepentant communist" or whether he might be "converted" to Islam and inducted into service for the *mujahidin*. One *mujahid* from the Jalalabad district told Asia Watch that it was customary within his *mujahidin* faction to hold a prisoner on probation for up to one year. He stated that those who do not "accept Islam" may be executed.²⁶⁹

In some "liberated" zones where commanders have established control over an area and have introduced a minimal administration, local courts have been established to try criminal and political cases. Asia Watch obtained information about trial procedures by Jamiat-e Islami commanders, who apparently attempt to enforce a consistent legal code among commanders affiliated with the party. In this respect, the Supervisory Council of the North, under Ahmad Shah Massoud, is unique in that it has a more evolved system of

²⁶⁷ Richard MacKenzie, "'Essential Justice' After a Massacre," *Insight Magazine* (Washington, DC: *Washington Times*), January 22, 1990, p. 30.

²⁶⁸ Interview with Afghan relief worker, Quetta, Pakistan, who witnessed the arrest, July 7, 1990.

²⁶⁹ Interview in Khashki refugee camp, Pakistan, July 5, 1990.

civilian administration and justice than is found elsewhere in *mujahidin*-controlled territory in Afghanistan.

According to a Jamiat-e Islami spokesman, Massoud's system recognizes both political and ordinary crimes. A local judicial system generally handles petty cases, but murder and serious political crimes are tried by a central judge, who is an *alim*.²⁷⁰ The organization also appoints a judge for each district, chosen from among other *ulama* for his experience and knowledge of law. The organization uses the jails that were previously used by the government in addition to others it has constructed. Not all political cases go before the court. In cases of suspected government agents, including women and children who are being used as infiltrators by the government, the organization tries to contact the family and get them to take custody of the suspects and guarantee their good behavior.²⁷¹

Judicial Proceeding Following the Fakhar Valley Massacre

Following the massacre of Jamiat-e Islami commanders by Hezb-e Islami forces in the Fakhar valley in August 1989,²⁷² Massoud reportedly captured some 100 Hezb-e Islami guerrillas, and their commander Sayyed Jamal, who had been allegedly involved in the killings. A judicial investigation conducted under magistrates in Massoud's organization reportedly spent several weeks investigating the case.²⁷³ According to the investigators, Sayyed Jamal confessed to the killings but stated that he was acting under orders.

The case against Sayyed Jamal was ultimately decided by a 43-member court of *maulvis*, or religious scholars, who sentenced him and his brother, Eshan Mirza, also a Hezb-e Islami commander, his brother-in-law, Babor Shah, and his deputy, Syed Fakhiruddin, to execution by hanging. The execution was reportedly

²⁷⁰ An *alim* is a religious scholar recognized as an authority on the *sharia*, or Islami law. The plural of *alim* is *ulama*.

²⁷¹ Interview with Jamiat-e Islami political spokesperson Engineer Mohammad Es'Haq in Peshawar, June 7, 1990.

²⁷² See pp. 54-55.

²⁷³ According to Richard MacKenzie, an American journalist who interviewed Massoud at the time.

carried out in a public square on December 24, 1989.²⁷⁴ According to Engineer Es'haq, a Jamiat-e Islami representative, "The only thing that could have saved them was forgiveness from the families of the victims, but they weren't prepared to forgive."²⁷⁵ To Asia Watch's knowledge, the remaining Hezb-e Islami guerrillas involved in the massacre remain in custody.

Another refugee described to Asia Watch the system of justice in an area controlled by Hezb-e Islami near Jalalabad:

If anyone was caught in a crime, the *mujahidin* determine the sentence. If you steal, you're killed. There are *mullas* who sit as judges, but they're approved by the *mujahidin*. If people are found to be KHAD, they're sentenced to death. In liberated areas, the *mujahidin* use the government prison as their jail. If the captured men come over to their side, they are sent to Pakistan.²⁷⁶

Asia Watch learned of one case in which a *mujahidin* judicial proceeding was subjected to interference by the Pakistani ISI. According to Asia Watch sources, the collapse of the Qandahar *shura*²⁷⁷ was detrimental to the functioning of the local court that had jurisdiction for *mujahidin*-controlled territory around Qandahar. The polarization that resulted from the collapse of the *shura* eroded the credibility of the court because it was then widely believed to have collaborated with the ISI. A second court has since formed which is considered to have more legitimacy.²⁷⁸ It consists of a commander who functions as chief judge, a number of other commanders, persons from district administration, and the head of the *shura*.²⁷⁹ According to one Qandahar commander, each *mujahidin* headquarters appoints a *maulvi* as a judicial authority, who bases his decisions

²⁷⁴ *Afghan Information Centre, Monthly Bulletin*, Nos. 105-106, December 1989-January 1990, p. 42. The incident is also discussed in an interview with Abdullah Ezam, a member of a commission established by the AIG to investigate the incident, published in *AFGHANews*, Vol. 6, No. 2, January 15, 1990, p. 4.

²⁷⁵ Interview with Jamiat-e Islami political spokesperson Engineer Mohammad Es'Haq in Peshawar, July 7, 1990.

²⁷⁶ Interview with refugees in Munda Camp, July 7, 1990.

²⁷⁷ *See* p. 51.

²⁷⁸ Interview with Afghan relief worker in Quetta, July 4, 1991.

²⁷⁹ Interview in Quetta, July 7, 1990.

on the *sharia*.²⁸⁰

Detentions in Pakistan

Most if not all of the factions carry out intelligence operations and maintain their own internal security forces. The Hezb-e Islami (Hekmatyar) secret police are known by the term *Istikhharat*.²⁸¹ Some of the security forces, including those of Hekmatyar and Khales, have kidnapped suspected opponents. In some cases private ambulances -- or vehicles painted as such -- have reportedly been used for abductions.²⁸²

Throughout the war, refugees arriving in Pakistan have been subjected to a screening process to determine their party affiliation and to ensure that they were not KHAD informants. Refugees have been required to be affiliated to one of the parties in order to obtain assistance from the Pakistan refugee program.²⁸³ From the first major influx of refugees in 1979-80, the Pakistani authorities approved only a limited number of parties to which the refugees could be affiliated. The so-called "middle parties," such as Afghan Mellat,²⁸⁴ were proscribed, as were professional associations of former civil servants from the cities.²⁸⁵ Since the withdrawal of Soviet forces from Afghanistan, refugees entering Pakistan are no longer registered. However, the screening process has continued. Refugees who arrived in Pakistan after the Soviet withdrawal are also considered suspect because they remained inside the country for much longer

²⁸⁰ Interview with Commander Mullah Malang, Quetta July 7, 1990.

²⁸¹ The name means "information bureau."

²⁸² Interviews with Afghan intellectual, Washington D.C., June 21, 1990; and with Afghan writer, Peshawar, July 10, 1990. Both of these sources, whom Asia Watch believes to be credible, requested to remain anonymous.

²⁸³ The screening process gave the parties a veto over whether a refugee would receive assistance. Although in fact refugees who were not members of any party did receive aid, it was much more difficult for them. *See By All Parties to the Conflict* pp. 89-90.

²⁸⁴ Afghan Mellat is a nationalist organization made up of Pashtun professionals that characterizes itself as social democratic. In the late 1980s, the group began to espouse the values of an Islamic state.

²⁸⁵ Interviews with Western relief agency representatives in Peshawar, February 2, 1989.

than most of the other refugees.²⁸⁶

During the screening process, the refugees are classified as "white," meaning they pose no security threat and are allowed to move about freely; "grey," meaning they are placed under surveillance until one of the parties vouches for them; or "black," signifying they are deemed to pose a security risk and are detained without charge or trial under Section 40 of the 1901 Frontier Crimes Regulation (FCR), a British colonial law which is applicable only in the Tribal Agencies. The number of "black" cases has reportedly declined, but persons continue to be detained on the basis of the classification. The interrogation is conducted by the Joint Interrogation Team (JIT) which is made up of officials from Commissionerate of Afghan Refugees (CAR) and officers of the Special Branch and the Intelligence Branch of the police, and sometimes the ISI when the case is considered high-security. In cases of defecting Afghan army personnel, a representative for the Pakistani army may participate in the interrogation. According to Asia Watch sources, as many as 50 percent of the cases investigated by the JIT are political, and in at least one case that Asia Watch learned of in which the ISI took part, the interrogation included torture.²⁸⁷

In some cases, especially high security cases, the deputy inspector general of police has reportedly bypassed this process and relied solely on *mujahidin* party leaders to identify suspected KHAD agents or former ranking Afghan government officials. In other cases, refugees who have been classified as "black" have been handed over to one of the parties, most frequently Hekmatyar's Hezb-e Islami, which works closely with Pakistan's intelligence and security forces. Since the beginning of the war, government soldiers who were captured by the guerrilla forces in Pakistan were also handed over to the parties in Pakistan for investigation. Asia Watch was informed that this is less the case now than it was previously, in part because the deputy inspector general of police has been replaced, and in part because the number of "black" cases has declined.²⁸⁸

²⁸⁶ They are known collectively by the disparaging term, Sakr-bis (Sakr-20), after the rocket that the *mujahidin* have used in rebel attacks on the cities, the implication being that these refugees did not leave until the *mujahidin* began to attack the cities.

²⁸⁷ Interviews with international aid workers in Peshawar, July 3, 1990.

²⁸⁸ Interview with Western relief agency representative and Pakistani attorney in Peshawar, July 13, 1990.

Refugees classified as "black" cases have also been detained under the Frontier Crimes Regulation (FCR), may be detained for up to three years, renewable on the order of the political agent (the administrator for the Tribal Agency) for another three years.²⁸⁹ It is not necessary to provide new evidence or facts to justify the renewal; all that is required is that the political agent state that the reasons for the detention still prevail.²⁹⁰ The agent's decision to detain may not be challenged and is not subject to judicial review.²⁹¹ The High Court has no jurisdiction in the Tribal Agencies, and there is no right of appeal nor of *habeas corpus* under the FCR.

Although the FCR only applies to persons arrested in the Tribal Agencies, it is also used illegally to detain Afghans who have been arrested in Peshawar or other areas under the provincial authorities and transported to a tribal area where they are jailed by the political agent. According to Asia Watch sources, the FCR provides the means for Pakistani authorities to detain Afghans associated with any political organizations out of favor with the Pakistani government or the ISI.²⁹² Although the FCR provides that the warrants for the arrest must be issued by the political agent and that the detainee must be produced before a magistrate who may then order that the detainee be taken to a Tribal Agency, this procedure is seldom, if ever, followed. A Pakistani attorney who has challenged the legality of the FCR told Asia Watch, "The procedure should be followed when they detain Afghans but in fact it is just kidnapping."²⁹³

In December 1989, two Afghan men, Mohammad Khan and Sayyed Amin,²⁹⁴ were arrested after Pakistani Special Branch police raided their house in Islamabad. Before coming to Pakistan in 1988, Mohammad Khan had held a position in the Kabul police and had links to Hezb-e Islami; Sayyed Amin had held an administrative job in the Afghan army and joined Hezb-e Islami after he

²⁸⁹ Frontier Crimes Regulation Act, 1901; chap. 5(45) and (46)(4).

²⁹⁰ FCR, 1901; chap. 5, (46)(3).

²⁹¹ International relief representatives in Peshawar told Asia Watch that the decision of the political agent may be reviewed by the provincial commissioner.

²⁹² The FCR is the primary law in effect in the Tribal Agencies, providing both a civil and criminal code for these areas.

²⁹³ Interview with Pakistani attorney in Peshawar, July 11, 1990.

²⁹⁴ Not their real names.

reached Pakistan. The two men were detained for 12 days for interrogation, after which the officer in charge reportedly apologized for the arrest, but told them that for formal reasons he would have to hand them over to the CAR (Commissionerate for Afghan Refugees). They were then interrogated by the JIT for another month and five days. On the basis of the interrogation, they were sentenced to three years administrative detention under Section 40 of the FCR and sent to Dera Ismael Khan Jail in February 1990. They have never been informed of the reasons for the arrest.

Afghans living in the Tribal Agencies may also be denied due process under the FCR. In one case, Amin Shah,²⁹⁵ a doctor who had lived in the Khwaja Ali Baba refugee camp (Bushera) and was a member of Hezb-e Islami, was arrested in November 1989 and interrogated by Kurran JIT in Parachinar and declared "black" on the grounds that he was engaged in "anti-*mujahidin*" activities, although he has never been informed of any specific charges. He was then handed over to the authority of the deputy inspector general of police (Special Branch) in Peshawar in early 1990 and has been detained under the FCR since then.

Some Afghan prisoners are also held in Pakistani prisons in the Northwest Frontier Province and in Baluchistan. In some cases, party leaders inform the ISI about persons they believe to be Afghan government military personnel, and the ISI arrests them.²⁹⁶ According to Asia Watch sources, a number of Afghan prisoners arrested on the basis of such suspicion are currently detained in Peshawar Central Jail, Dera Ismail Khan Central Jail, Haripur Jail, and Rawalpindi Central Jail. International humanitarian organizations have not had access to these prisoners.

Killings of Rival Resistance Leaders by Elements of the *Mujahidin*

Political killings of *mujahidin* leaders in Pakistan and Afghanistan have occurred throughout the war. Since the Soviet withdrawal, however, these killings appear to have increased. As with other acts of violence alleged to have been

²⁹⁵ Not his real name.

²⁹⁶ Interviews with Western relief agency representative and Pakistani attorney in Peshawar, July 11 and July 13, 1990. Interview with Pakistan police official in Peshawar, July 13, 1990.

committed by one or the other of the resistance parties, these killings cannot be attributed with certainty to any particular party or organization. However, in a number of cases the violence falls into a pattern which implicates certain groups. The Pakistani authorities, however, have failed to investigate any of these killings despite the fact that they have occurred inside Pakistani territory.

The cases listed below represent some of the killings since the Soviet withdrawal.

- **On June 11, 1990, Nasrullah Shariatyar, a Hezb-e Islami commander in Khanabad District, Kunduz, and a member of the Supreme Jihad Council of Hezb-e Islami, was assassinated in Peshawar. Asia Watch sources believe that the killing may have been the result of infighting within the Hezb-e Islami.**

- **On March 25, 1990, Mullah Nasim Akhundzada, a leading commander of Harakat-e-Inqilab-e Islami, was assassinated along with five other commanders (his bodyguards), in Cherat, 25 kilometers east of Peshawar. One suspect, Allah Noor of Helmand, was caught and sent to Harakat-e-Inqilab-e Islami officials in Quetta where he was reportedly executed; another suspect was imprisoned. Akhundzada was a major heroin producer, with some 10,000-15,000 men under his control. Over the previous three or four years, he reportedly sold heroin to Hezb-e Islami forces for processing; before his assassination he had struck an agreement with U.S. officials to cut production in exchange for U.S. A.I.D. funds. Since that agreement, his men had been locked in a bitter feud with Hezb-e Islami forces. In revenge for Akhundzada's murder, Abdul Haq of Hezb-e Islami was reportedly imprisoned and tried by Harakat-e-Inqilab Islami forces. According to one source, he was reportedly executed in early June 1990. Other sources claim that his fate remains unknown.**

- **On September 14, 1989, Haji Hussain Khel, a commander with Mojaddidi and a leading member of the Ahmedzai tribe, was assassinated along with his pregnant wife in the Bada Bira camp outside Peshawar.**

- **On August 9, 1989, Haji Abdul Latif, a commander of the National Islamic Front of Afghanistan (Gailani) in Qandahar, died as a result of poisoning.**

His son reportedly claimed that two of Latif's bodyguards confessed to having been paid by "Soviet-trained Afghan agents" for the murder and were subsequently executed. However, in private his son blamed Hekmatyar for the murder. Latif was considered to be a supporter of ex-king Zahir Shah, and he had recently convened several gatherings of *mujahidin* at which he criticized the interim government and called for elections to be held in areas held by the resistance. During an interview with the BBC shortly before he was killed, Latif also criticized the policy of some of the resistance groups of launching rocket attacks on the cities. According to an Asia Watch source, the ISI had warned him that he would be killed. He reportedly had developed a good relationship with the governor of Qandahar. His alleged assassins were executed within hours of their reported confessions without a full trial or investigation. Since 1988, other important moderate resistance figures from the Qandahar area have been assassinated, including Senator Abdul Razzaq, the Popolzai tribal leader Haji Habib, and two others. Their associates suspect that rival *mujahidin* were responsible.

Killings and Disappearances of Afghan Relief Workers and Intellectuals

Since 1978, the war in Afghanistan has driven some three million refugees into Pakistan, where most live in sprawling camps that are home to the world's largest refugee population. As the resistance parties have competed for international recognition and political power, control of the refugee population has been an important factor in that conflict. With the withdrawal of the Soviet forces from Afghanistan in February 1989, tension among the resistance parties has led to more frequent clashes among rival groups inside Afghanistan and an increase in killings of those aligned with various parties inside.

Refugees aligned with organizations espousing a relatively secular or monarchist position have become a particular target of attack, apparently by members of the extremist Islamic parties. Leading members of Afghan Mellat have been assassinated and other members have received death threats in letters and telephone calls. According to Asia Watch sources, the threats against Afghan Mellat increased after February 1989, when Afghan Mellat leaders criticized the Afghan Interim Government as a creation of the Pakistani military. Members of the Maoist organizations Shola-e Javed and SAMA (Sazman-e

Azadbakhsh-e Mardom-e Afghanistan, or Liberation Organization of the People of Afghanistan) have also been killed and threatened.

Relief workers associated with Western aid organizations have been murdered, have disappeared or have been threatened. Western representatives of those organizations have also been threatened or killed, and the premises of some of the organizations have been vandalized. Afghan intellectuals who have been seen as independent or critical of these extremist Islamic parties have also been murdered, or have received threats. As one prominent Afghan intellectual told Asia Watch, "The only way to protect yourself is silence."²⁹⁷

Although such attacks have occurred throughout the duration of the conflict, the changed character of the war, and international moves toward a political settlement appear to have exacerbated tensions among the parties, leading to an increase in such attacks. In addition, the influence of Saudi Arabia and the efforts by some of its clients, including Sayyaf, Hekmatyar and the various Wahhabi groups, to enforce stricter adherence to Islamic law has heightened suspicion of Western aid agencies as vehicles for the spread of un-Islamic and, especially, Christian values. Organizations that have employed Afghan women or have attempted to provide health and education assistance to women refugees have been particularly targeted, as have the Afghan women employed by them.

Tribal conflicts and personal grievances may also be a factor in some of the violence. Under such circumstances, it is virtually impossible to attribute responsibility for any of the attacks to a particular political organization or party or its members.

In most cases of murders, kidnappings and other attacks on Afghan refugees, there are no eye-witnesses who can speak without endangering themselves. Asia Watch interviewed a number of refugees who had been threatened because of their knowledge of attacks or because they had tried to carry out investigations themselves. Journalists who have reported these incidents have received death threats or, in one case, have been killed.

The following list of murders, disappearances and threats is far from complete. According to Asia Watch sources, the number of intellectuals, relief

²⁹⁷ Interview with Afghan intellectual in Peshawar, July 13, 1990.

workers and other Afghans murdered or disappeared in Pakistan and in areas of Afghanistan controlled by the *mujahidin* during the war may number in the hundreds. The cases listed below date primarily from the Soviet withdrawal in February 1989 until mid-1990, the time of the Asia Watch mission to Peshawar. However, Asia Watch continues to receive reports of threats, disappearances and murders of Afghans in Pakistan and across the border inside Afghanistan.

- On June 3, 1990, Farida,²⁹⁸ an employee of the Women's English Language Program of the International Rescue Committee (IRC), received warnings calling on her to cancel a planned trip abroad and demanding that the language program be shut down. Posters appeared accusing foreign aid agencies of encouraging licentious behavior among Afghan women. Three posters threatened those who did not heed the warning with reprisals, including death. Although she reported the incident to the police, authorities at the Pakistani Commissionerate of Afghan Refugees told her that "it could not provide her with police security" and advised her to stay home and refrain from going to the school. Women who had been studying at the school were also pressured to leave.

- On June 2, 1990, Professor Mohammedan Zaher Khatib was assassinated at his home in Tahkal-e-Payan, Peshawar. According to reports received by Asia Watch, Khatib was asleep when armed men broke into his home and opened fire on him with Kalashnikovs. Khatib was 44 years old and a graduate of the Faculty of Theology at Kabul University. Khatib was also a professor at Jihad University in Pabbi, east of Peshawar. His father, Maulavi Mohammad Jan, was a religious scholar from Laghman who led Friday prayers.²⁹⁹ He was a leading member of the Jamiat-e Islami.

- In late May or early June 1990, Reza,³⁰⁰ a 16-year-old boy, disappeared. He was a distinguished student at the International Rescue Committee (IRC) Experimental School in University Town where he had just finished

²⁹⁸ Not her real name.

²⁹⁹ *AFGHANNews*, Vol.6, No.12, June 15,1990. [*AFGHANNews* is a publication of Jamiat-e Islami].

³⁰⁰ Not his real name.

an examination when he was abducted. According to his friends, who witnessed the abduction and reported it to the family, he was stopped on his way home from school by armed men in a black car who asked for him by name and forced him into the car and covered his mouth. When relatives questioned Hezb-e-Islami authorities, they reportedly denied any involvement in the kidnapping. The family were all KHALES supporters. When they reported the incident to the Pakistani police, they were told, "You are refugees; you are guests in our country. This isn't our job." Another brother disappeared four years earlier.

- On May 15, 1990, Malalai, a nurse working at Dr. Ihsan Khattak's Clinic in Jehangirabad, Peshawar, was abducted along with 12 other Afghans. In July 1990, there were conflicting unconfirmed reports that she was killed shortly afterward or that she was detained in Hekmatyar's prison in the Shamshatoo refugee camp. Hekmatyar has denied the allegation.³⁰¹ Before coming to Pakistan, she reportedly had been a military nurse with the Afghan government and had earlier received a death threat with a bullet in the envelope.

- On the morning of March 27, 1990, Dr. Saadat Shagiwal, a 39-year-old physician from Ningrahar and head of the Afghan Aid Association, was shot dead by two or three men in a car who were waiting for him outside his office. The clinics he operated were located in an area in Ningrahar reportedly under the control of KHALES. He was also a leading member of Afghan Mellat. According to Asia Watch sources, following an attack on the Afghan Welfare Centre in August 1989, Shagiwal was threatened in a letter not to go to his office. Despite assurances from the police that an investigation would be carried out and despite the testimony of several eye-witnesses, no investigation has taken place.

- On January 27, 1990, Abdul Qayyum Rehbar, who was said to have been a leading member of the Maoist organizations, Shola-e-Jawed and SAMA,³⁰²

³⁰¹ *Frontier Post*(Pakistan), June 8, 1990.

³⁰² According to *AFGHANews*, Vol.6 No.4, Feb 15, 1990, he was a leader of SAMA and had been a professor in West Germany. Rehbar's elder brother, Abdul Majid Kalakani, had been the founder of Shola-e-Jawed and was arrested in 1980 and executed under Babrak Karmal.

was shot in front of his brother-in-law's home in Hayatabad, a suburb of Peshawar. His 20-year-old nephew Massiyed was wounded in the attack. Rehbar was reportedly preparing to leave for West Germany and had gone to Hayatabad to visit relatives there before leaving.

- On January 21, 1990 some 15 unidentified armed men broke into the house of Mrs. Noor Saraj Safi, the project chief of an IRC income-generating project for women. They ransacked the house and threatened to kill the family. All of the men wore hoods over their faces. Within days, the family decided to leave Pakistan.

- On January 17, 1990, Hedayatullah Ahmedi, an employee with the United Nations Office of Coordination for Afghanistan (UNOCA); Liaqat Ali, an employee of IRC; two of his brothers, Abdul Hakim and another (name unknown); Mohammad Asif, an unemployed graduate student; and Mohammed Ali, also employed at IRC, all disappeared from their house in Peshawar. Asia Watch sources have stated that witnesses observed three of the men being taken away in a pick-up truck on the evening of January 16. The witnesses also stated that the house was left open and the lights were left on, which seemed to suggest that the occupants expected to return. The motive for the disappearance is not clear; Liaqat Ali was said to have been outspokenly critical of the Peshawar-based *mujahidin* parties; Mohammad Asif's father, Mohammed Latif, was a former governor of an Afghan province, and his brother, Dr. Sultan Madagar, a dentist, is said to have espoused "controversial" political views. According to some sources, several of the men were alleged to have links to Shola-e Javid. All of the men were ethnic Hazaras.³⁰³

- In November 1989, in Wardak Province, two Afghan employees of an American aid organization were imprisoned for one week by members of Hezb-e Islami (Hekmatyar). They were only released after one of the men was able to prove that he was also a member of Hezb-e Islami.

- In October 1989, Engineer Ataullah, a former employee of the Ministry of

³⁰³ Ethnic conflict between Hazaras (Shi'a Muslims, who are a minority in Afghanistan) and Pashtuns (Sunni Muslims, who are the majority in Afghanistan) may also be a factor in some political disputes.

Communications in Kabul who had arrived in Pakistan some months earlier, disappeared after he was taken in for questioning by the ISI. According to an Asia Watch source, he may have been handed over to Hekmatyar's Hezb-e Islami to be killed.

- Shah Mohammad Bazgar, an employee of the French relief organizations AFRANE and Solidarity Afghanistan, was killed in October 1989 along with three other relief workers when the car he was traveling in was ambushed near Qandahar.

- Abdul Fatah Wadud, an employee of the U.N. World Food Program in Peshawar, who had served five years as a political prisoner in Kabul, disappeared on September 3, 1989, after leaving his office to meet with a member of Hezb-e Islami (Hekmatyar). His relatives believe he was subsequently abducted. A Hezb-e Islami spokesman in Peshawar reportedly told the family that "his release would not be easy." Before he was employed at WFP, he had worked for the IRC. He was registered with the Harakat-e Inqilab-e Islami party.

- On September 19, 1989, an armed man attempted to shoot the principal of the Malalai girls school in Peshawar, an IRC school. A gateman for the school was wounded in the incident. The school had received a number of threats before the attack.

- Mohammad Zakir, a field worker for the International Committee of the Red Cross, was murdered in Peshawar on August 28, 1989. His relatives and friends believe he was killed because of his outspoken criticism of the more fundamentalist *mujahidin* and because of his membership in Afghan Mellat.

- In July 1989, Dr. Mohammad Nasim Ludin, an Afghan refugee physician who had operated several refugee clinics funded by foreign organizations in Peshawar, was shot and killed in front of his home in Peshawar. Two of the men involved in the shooting appeared at the hospital apparently to see if Ludin was still alive. When witnesses identified them, they were arrested. They were released shortly afterward without explanation. Witnesses who identified the men stated that they had links to Khales. Ludin was formerly a professor at the

Ningrahar Medical College. In Pakistan, he directed the Afghan Welfare Organization and organized teams of medical workers to go across the border into Afghanistan to provide health services.³⁰⁴

• Dr. Farida Ahmadi, a leading member of the Revolutionary Association of Women of Afghanistan (RAWA), an organization which works for the promotion of women's rights among Afghan opposition groups, was arrested at her home in Quetta, Pakistan, on February 2, 1989, on charges of spying. Ahmadi was the first Afghan woman to travel to the West to testify about torture by KHAD in 1983-84. Although Pakistani police carried out the arrests, Asia Watch believes that they may have been acting under the orders of Afghan resistance leader Gulbuddin Hekmatyar. Arrested with Ahmadi were three of her relatives, identified only as Javid, Hassan and Asif, and two RAWA colleagues, Abdul Salan and Dr. Homayoon. According to some reports, the detainees may have been ill-treated in custody. The arrests came two days before a scheduled RAWA rally to commemorate the second anniversary of the assassination of the former head of RAWA, Mina Keshwar Kamal. Ahmadi was released on bail on March 12, 1989.

• On February 11, 1988, Syed B. Majrooh was assassinated in his home in Peshawar by unidentified gunmen. Majrooh was a prominent exiled intellectual and poet who published the *Afghan Information Bulletin* and ran the Afghan Information Centre. Throughout the war, he assisted journalists, scholars and human rights groups, including Helsinki Watch and Asia Watch, in reporting the war and documenting violations. Shortly before his death, Majrooh had published a survey which indicated that 70 percent of the refugees in Pakistan favored the return of ex-King Zahir Shah – a position bitterly opposed by the "fundamentalist" parties. According to an Asia Watch source, Majrooh had received threats from Hezb-e Islami one week before he was murdered.

³⁰⁴ According to an independent source Asia Watch believes to be credible but who fears to be identified, Dr. Ludin's name was found on a list of Afghan intellectuals marked for execution by Khaled' Hezb-e Islami. At least four former faculty members of Kabul University who had worked for years to support the resistance in Peshawar fled to Western countries in July 1989 after being informed that their names were also on the list.

Threats Against Women

Foreign relief programs targeted at women have received threats, usually in the form of letters posted at night. Women working for foreign relief agencies have also received threats. One women's organization received a letter which stated that if its members did not stop attending a "health course," they would be killed. In early September 1990 a *fatwa* (ruling by an Islamic judicial authority) signed by the "*Ulama* Union of Afghanistan,"³⁰⁵ prohibited women from dressing in "close-fitted" clothes or clothes "similar [to that of] ... male[s] [or] non-Muslims." Wearing perfume or cosmetics, going out "without her husband's permission," "talking with men who are not her close relatives," "walking with pride," and "walking in the middle of the street" are also prohibited. The *fatwa* also named a number of schools for women in Peshawar, calling them "un-Islamic," and called on "the leaders of *jihad* [holy war] and the AIG to stop women from going to the schools," stating that "women are not allowed to learn modern technology and new science because only men are responsible to feed the family."

Threats to Journalists; Restrictions on Freedom of Speech

In addition to the threats against Afghan intellectuals, *mujahidin* groups have also threatened journalists for publishing unfavorable reports or for attempting to investigate abuses by the parties. One journalist who was investigating the kidnapping and disappearance of an Afghan refugee by one of the parties received a threatening phone call warning him against "showing too much interest in the case ... lest he meet the same fate."³⁰⁶

According to Asia Watch sources, many of the parties also attempt to bribe journalists to cover their press conferences and other events by sending them envelopes of money. Journalists also told Asia Watch that they are unable to report on the war itself, out of fear of reprisal by one of the parties. All of the parties operate press offices, some of which have also been attacked.

³⁰⁵ The names of the organizations that appear on these letters vary, and it is not possible to identify with certainty which *mujahidin* parties are responsible for the threats.

³⁰⁶ Interview with Afghan journalist in Peshawar, July 2, 1990.

- On June 27, 1990, Mansoor Khan, a Pakistani correspondent for the *Democrat* newspaper in Peshawar, was attacked by unidentified men who beat him and threw acid in his face. He died in the hospital on July 3. The motive for the attack is not clear. However, Mansoor Khan had reported on the abduction of the nurse, Malalai (*see* above), which he linked to Hezb-e Islami in a report published shortly before he was attacked. Other accounts alleged that his reporting on the November 1989 car bomb explosion that killed Abdullah Azam, a Palestinian leader of the Muslim Brotherhood, had angered Wahhabi groups in Peshawar. Still other sources suggested that the attack may have had personal motivation. To Asia Watch's knowledge, no one has been charged in the crime.

- An Asia Watch source who had given interviews to the press after the March coup attempt and who had reported on interviews he had conducted among *mujahidin* commanders who were critical of former Defense Minister Tanai, who led the coup attempt, received phone calls shortly after the broadcast from unidentified persons threatening to kill him. Another journalist received similar threats after the coup attempt in which the callers told him, "It would be easy to kill you."

- In February 1989, the English-language publication of Hezb-e Islami, *Resistance*, published the names of 11 writers and journalists in a threatening editorial, castigating them for publishing books and articles critical of the organization.

Attacks on Foreign Relief Agency Personnel

Foreign employees of relief agencies receive periodic warnings from groups accusing them of "undermining Islamic values." Organizations with a Christian basis, such as Shelter Now International, have been singled out for such attacks. However, other foreign and international organizations have also received such warnings. Foreign representatives of relief agencies have also received death threats, and some have been kidnapped and murdered. As with the cases listed above, it is difficult to attribute responsibility for these attacks to a particular group.

- Early in September, 1990, a number of foreign relief organizations, including the UN, received a warning which accused the groups of "using money in attempting to divide the resistance." The letter accused a number of named individuals of being "CIA agents" and "agents of a Zionist conspiracy," and warned them to leave Peshawar.

- On June 22, 1990, a number of foreign aid organizations in Peshawar received a letter signed by a group calling itself "International Afghan *Jihad*" which stated:

Any assistance from UN agencies and Christian NGOs taken into Afghanistan will be considered tools for division of *mujahidin* parties and Afghan people ... we will make your life so miserable that you will be forced to leave Pakistan for good. Our next target will be Tom Yates [the head of the International Rescue Committee].

The letter followed a June 16 attack on the director of Shelter Now International, Dr. Thor Armstrong. Armstrong was accosted while driving in the Hayatabad area outside Peshawar by a group of armed men who ordered him to stop. When he refused, they opened fire, spraying the car with bullets. Neither Armstrong nor his son who was with him was injured. The family left Peshawar the next day. Shelter Now International had been accused of Christian proselytizing. On April 26, the Shelter Now project office in the Nasir Bagh Refugee camp was attacked, and some time later the organization's plant in Ningrahar province was looted.

- On November 1, 1989, John Tarzwell, a Canadian national and office manager for the Christian relief agency SERVE, was kidnapped, reportedly by one of the *mujahidin* parties. There has been no information about his whereabouts since the abduction.

Failure of the Pakistani Authorities to Investigate Abuses

Many of the abuses described above have occurred inside Pakistani territory where Pakistani law applies. While there is credible evidence to link certain groups to some of the attacks on Afghan refugees and relief workers, as well as threats against aid organizations, there has been no effort on the part of Pakistani authorities to investigate these attacks, nor sufficient pressure from any of the foreign patrons of these groups for an end to these crimes and an accountability for past abuses. Since the Soviet invasion of Afghanistan in December 1979, hundreds of Afghan refugees have been the victims of political violence in Pakistan. One Pakistani police official privately admitted to Asia Watch that he had seen the death list of the Hezb-e Islami (Hekmatyar) party and had visited the prison in Shamshatoo. In some cases, particularly before 1988, Pakistani security personnel effectively authorized these abuses by handing over selected refugees to the parties for detention.³⁰⁷

Despite the fact that Afghans in Peshawar have filed complaints against members of groups alleged to have participated in acts of violence, and despite credible evidence linking certain parties with some of the attacks, the Pakistani authorities have effectively permitted the parties to act outside the law with respect to the refugee population.

³⁰⁷ Interviews in Peshawar with Western relief agency officials, July 13, 1990.

VI. U.S. POLICY

Since the Soviet invasion of Afghanistan in December 1979, the goal of U.S. policy had been to secure the withdrawal of Soviet forces from the country. To that end, U.S. policy-makers allocated an estimated \$2 to \$3 billion over the course of the past decade in military and economic assistance to the resistance forces.³⁰⁸ Throughout the war, the U.S. has granted Pakistan wide discretion in channelling that aid to the groups that based themselves in Peshawar, giving relatively limited consideration to the politics of these groups or to their human rights records.

In the months preceding the Soviet withdrawal, U.S. policy-makers believed that the Soviet departure would result in a battle for control that would quickly find these resistance groups in power after ousting the government of President Najibullah. That prognosis proved false, and instead what has followed in the wake of the Soviet withdrawal has been a protracted civil war which has continued to cause devastating civilian casualties on all sides. Despite the changed nature of the war, U.S. policy changed little throughout 1989, remaining committed to securing a military victory for the *mujahidin*.

Since early 1989, the Bush administration has also supported the

³⁰⁸ The precise amount of covert aid that was supplied is not known. According to James Rupert, an assistant foreign editor of the *Washington Post* who has covered the Afghan war since 1985, aid to the resistance increased dramatically after 1981: "The United States was at first not so generous. The CIA, apparently unconvinced that the *mujahidin* could really win the war, resisted a large covert aid program. But congressional supporters of the *mujahidin* pushed the Reagan administration to enlarge the program from a reported level of \$50 million in FY 1981 to \$630 million in FY 1987. U.S. officials cited over the years in the *Washington Post*, the *New York Times* and other media gave figures for the annual military aid allocations that, totaled from FY 1980 through FY 1989, equaled about \$2.8 billion .. This does not include more than \$150 million in food, surplus (non-lethal) Defense Department equipment, and transportation assistance given the guerrillas and their supporters under a program administered by the U.S. Agency for International Development." See James Rupert, "Afghanistan's Slide Toward Civil War," *World Policy Journal*, Vol. VI, No. 4, Fall 1989, pp. 759-785, p. 759, 781 fn. 1.

Peshawar-based Afghan Interim Government, and has attempted to promote it as a representative body acceptable to the Afghan people. However, the AIG has failed to win the support even of *mujahidin* commanders from the parties that formed it, and is seen by many Afghans as a tool of Pakistan's own political ambitions and not as viable or legitimate leadership structure. The Pakistan ISI has continued to work for the pre-eminence of Gulbuddin Hekmatyar, going so far as to attempt in September 1990 to make Hekmatyar the defense minister of a reorganized AIG.³⁰⁹ Resistance sources in Peshawar claim that that effort was blocked by U.S. intervention.

By November 1990, U.S. and Soviet officials appeared to be nearing an agreement on a political settlement that would include internationally supervised elections in Afghanistan.³¹⁰ However, while State Department officials have pursued negotiations toward such a settlement, in October 1990, U.S. diplomats and intelligence officers in Pakistan backed a Hezb-e Islami (Hekmatyar) offensive on Kabul, directed by the ISI.³¹¹ Many resistance commanders opposed the Pakistan-sponsored offensive on the grounds that it would cause extensive civilian casualties and was aimed at building up Gulbuddin Hekmatyar at the expense of other *mujahidin* leaders.³¹²

³⁰⁹ Hekmatyar suspended his participation in the AIG in mid-1989 following the massacre by Hezb-e Islami forces of Jamiat-e Islami prisoners in the Farkhar Valley, and the subsequent investigation conducted by the AIG. For further details about the incident, *see* pp. 54-55, 106-107.

³¹⁰ Negotiations between the U.S. and the Soviet Union over a transition process leading to elections remained stalemated over the question of what role Najibullah would play in the interim period and also on the terms for an aid cut-off to both sides. For further details of the negotiations, *see* pp. 18-19.

³¹¹ Some administration officials who were opposed to the offensive and who have opposed the ISI's attempts to promote Hekmatyar, attach greater importance to the *shura* of top commanders that met at the same time to plan an alternative political and military strategy.

³¹² *See* Steve Coll and James Rupert, "Afghan Rebels Veto Drive for Kabul," *Washington Post*, November 4, 1990. Hekmatyar, who has always been favored by the ISI, received the largest share of U.S.-supplied weapons throughout most of the war. In November 1989, the administration reportedly decided to stop providing Hekmatyar with military support directly funded by the U.S. However, at the same time the U.S. and Saudi Arabia agreed to a \$715 million covert aid package to the *mujahidin*, of which the Saudi portion (approximately

Support by the CIA for the offensive exposed a rift between the agency and the State Department over U.S. policy in Afghanistan. According to press reports, by January 1991 the CIA was continuing to push for a military victory for the *mujahidin*. *New York Times* correspondent Clifford Kraus, who interviewed Robert M. Kimmitt, Undersecretary of State for Political Affairs, reported that "in recent weeks Kimmitt has battled with Central Intelligence Agency officials who would like to unleash the guerrillas in Afghanistan in one last effort to defeat the Soviet-backed government of President Najibullah ... [Secretary of State] Baker wants to work closely with Moscow to coax the rebels and the Najibullah regime into democratic elections." During the interview, Kimmitt stated, "If they have a problem at the agency it is with me carrying out a policy that has been set down by the Secretary and reaffirmed by the President during the June summit ... I have no hesitation in saying that their problem is not with me but with the senior leadership of this department and this Government. I think they are just bucking policy."³¹³

The *mujahidin's* failure to deliver any significant military victory since the Soviet withdrawal appeared to be the reason for the October 1990 \$50 million Congressional aid cut to the resistance, the first since the war began, and for the decision to withhold half of the remaining \$250 million subject to another vote in 1991. The administration initially argued against the aid cut, saying that it would send the wrong signal at a time when negotiations toward a settlement were making progress. On November 30, President Bush vetoed the bill, apparently because of a provision limiting the executive's opportunities to solicit third country support for covert operations. (The provision relates not to Afghanistan but to the Iran-contra controversy.) The House and Senate Select Intelligence Committees have scheduled reconsideration of the bill for early 1991, and are expected to offer modified legislation which would not significantly alter the aid cut.

Throughout the war, U.S. policy-makers have vigorously condemned Soviet and Afghan government human rights abuses but have been reluctant to

\$435 million) was not subject to any restrictions and went primarily to Hekmatyar. *See* Robin Wright, "U.S. and Saudis Agree to Fund Afghan Rebels," *Los Angeles Times*, November 19, 1989.

³¹³ Clifford Kraus, "In Hot Spots Like the Gulf, He's Baker's Cool Hand," *New York Times*, January 3, 1991.

condemn publicly human rights abuses by elements of the resistance because these groups have received U.S. aid. These abuses have included indiscriminate attacks on civilians, summary executions of prisoners, politically-motivated killings of relief workers and intellectuals, and the imprisonment and torture of political opponents.

In written responses submitted for a hearing before the House Subcommittee on Asian and Pacific Affairs on July 18, 1990, the State Department stated that civilian deaths resulting from the *mujahidin*s attacks on the cities were "the regrettable result of attacks on militarily significant targets." In fact, heavy civilian casualties are the predictable result of the *mujahidin* strategy. Moreover, the military impact of the rocketing of the cities has been negligible, in part because of the notorious inaccuracy of the U.S.-supplied Sakr rockets used by the *mujahidin* and the inadequate training of resistance troops. Again, in written responses submitted for a hearing before the House Subcommittee on Asian and Pacific Affairs on November 2, 1990, the State Department excused these attacks on the grounds that the "military installations" targeted were "located in or near residential areas" and that the *mujahidin* "express deep regret for civilian casualties." The administration should have used the opportunity of the hearings to call upon the *mujahidin*, and Pakistan, to desist from practices which incur such heavy civilian casualties. The U.S. should also call for a halt to the supply of weapons that disproportionately kill civilians, including Sakr rockets. A moratorium on arms deliveries to *mujahidin* parties that have engaged in gross human rights abuses is long overdue; however, the Bush administration must also lean on U.S. allies who keep such groups supplied. Without a similar commitment from Saudi Arabia and Pakistan, a decision to cut U.S. deliveries may do little to stop the arms flow.

At the November 2 hearing, the State Department also stated that "reports of human rights violations" by the *mujahidin* are brought "to the attention of resistance leaders." Regrettably, such expressions of concern have seldom been made public, diminishing their force. The administration also acknowledged, in statements submitted for the November 2 hearing, reports of human rights abuses within *mujahidin* prisons. The administration's assurances that these reports were being investigated were welcome. However, statements calling for access to these prisons by international humanitarian organizations would go further toward ending these abuses.

In a welcome gesture, in mid-November 1990, a letter was sent to six of the *mujahidin* factions by the U.S. special envoy to the Afghan resistance, Peter Tomsen, regarding the massacre of government soldiers at Tarin Kot and other incidents. In that letter the State Department strongly condemned the execution of prisoners under any circumstances, calling such executions gross violations of the laws of war.

However, U.S. officials have been unwilling to pressure Pakistani authorities to investigate those abuses that have occurred in Pakistan, and to prosecute those responsible for torture and murder. In written responses submitted for the July 18 congressional hearing, the State Department went so far as to credit the Pakistani authorities with conducting "a serious investigation" into the 1988 murder of Professor Sayd Majrooh. In fact, the Pakistani police resisted following credible leads implicating Gulbuddin Hekmatyar's faction in the murder. Dozens of similar murders have been carried out with impunity by elements of the *mujahidin*.

Even though the Pakistani ISI has participated in these abuses, and has pushed commanders to launch attacks which have disproportionately killed civilians, U.S. officials have not pressed the Pakistani authorities about these abuses, nor publicly called for an end to such attacks, as they should. The U.S. should also call for the abolition of the Frontier Crimes Regulation Act, and urge Pakistan to ensure that Afghan prisoners are not subject to arbitrary arrest by any agency operating inside Pakistan. *Mujahidin* forces are not legally empowered by Pakistani law to make arrests, or mete out forms of punishment that are reserved to the state, and such acts by the *mujahidin* should not be tolerated by the Pakistani authorities.

If the U.S. and the Soviet Union do reach agreement on a political settlement to the Afghan conflict, they should support a transition process in which all sections of Afghan society can be represented, under the aegis of a neutral organization, such as the U.N. If elections – or a more traditional process by which Afghans can choose their own government – are to take place, measures must be taken to ensure the immediate and future safety and rights of Afghans in the cities and returning refugees.

VII. CONCLUSION AND RECOMMENDATIONS

The final withdrawal of the Soviet forces from Afghanistan in February 1989 was seen as the first step toward ending Afghanistan's civil war. Two years later, that war – largely unnoticed by the outside world – goes on, and all sides to the conflict continue to engage in grave human rights abuses and violations of humanitarian law.

By early 1991, as negotiations between the Soviet Union and the U.S. for a settlement to the conflict remain stalled, the outbreak of war in the Persian Gulf further complicated the chances for peace in Afghanistan. Although the countries allied in the Gulf War include those that were most divided over Afghanistan, their temporary alliance has not led to agreement over a settlement to the Afghan conflict.

Divisions between the administration and U.S. intelligence officials over policy in Afghanistan, the new chill in U.S.-Pakistan relations following a cut in U.S. aid, and the Soviet army's increasingly hard-line position on foreign policy suggest instead that the opening that appeared in 1990 offering a chance for peace in Afghanistan is fast closing. Before it does, both superpowers and the international community should urge all parties to the Afghan conflict, and their foreign sponsors, to take steps to end the abuses and ensure that the rights and security of all Afghans are protected. Such measures would include at least the following:

Recommendations

- Throughout the conflict, forces on all sides have used methods of warfare – including Scud missiles and Sakr rockets – which are inaccurate and which consequently cause disproportionate civilian casualties. All parties to the conflict should desist from using such weapons, and their foreign sponsors, including the United States, the Soviet Union, Saudi Arabia and Pakistan, should stop supplying them, and should call publicly for an end to indiscriminate attacks.**

• While reports of summary execution of captured prisoners and reprisal killings of civilians by government forces have declined, such incidents continue to take place. Such abuses are in violation of international humanitarian law, and the government of Afghanistan should promptly investigate all reports of such killings and prosecute those responsible. The reduction in the number of reported incidents does not diminish the government's obligation to make every effort to investigate such abuses, make the findings public, and bring to justice those responsible as a way of preventing similar abuses in the future.

• Members of militia forces allied with the government are bound to conduct their military operations in accordance with the laws of war. The government of Afghanistan should exercise greater control over the recruitment, training and supervision of such forces and prosecute militia members who have engaged in abuses.

• *Mujahidin* forces have also engaged in the summary executions of prisoners and other violations of the laws of war. Members of the resistance forces should comply with the provisions of international humanitarian law relating to the treatment of civilians and prisoners during periods of armed conflict.

• All parties to the conflict should make available all maps of minefields and cooperate with efforts by international and private agencies in mine clearance.

• While conditions for sentenced prisoners have improved markedly in government prisons, conditions for detainees remain precarious. The government of Afghanistan should grant the ICRC immediate access to all detainees, and ensure that detainees have access to defense counsel and to family members. Conditions in detention centers should be brought in line with the U.N. Standard Minimum Rules for Treatment of Prisoners. All reports of torture and mistreatment should be promptly investigated, and those found responsible for abuses prosecuted. The powers of the Attorney General should be strengthened as a check against illegal detention.

• The government of Afghanistan should ease restrictions that have

prevented the formation of genuine opposition parties and an opposition press. Such measures would include ending all forms of censorship and restrictions of freedom of speech, promoting the establishment of independent publishing houses, and curtailing state security surveillance at the university.

- Pakistani authorities should fully investigate reports of murder, torture and kidnapping by *mujahidin* parties that have occurred inside Pakistan, and prosecute those responsible for abuses. Pakistani officials who have participated in such abuses should also be prosecuted.

- Pakistani authorities should not permit *mujahidin* factions to hold prisoners inside Pakistan, and should permit international humanitarian organizations immediate access to all Afghan detainees in Pakistani jails. The preventive detention provisions of the Pakistan Frontier Crimes Regulation Act should be abolished. The Bush administration should call publicly for an end to these abuses, and press Pakistani authorities to prosecute *mujahidin* members who have committed such abuses.

- The U.S. Congress should conduct an immediate investigation into the CIA's activities to ensure that the CIA is not implementing an independent foreign policy in Afghanistan, and investigate reports that CIA officials, together with the Pakistan ISI, have encouraged indiscriminate attacks on cities which have caused heavy civilian casualties.

- If the U.S. and the Soviet Union reach agreement on a political settlement to the conflict, they should support a transition process in which all sections of Afghan society will be permitted to participate. If elections take place, measures must be taken to ensure the immediate and future safety and rights of Afghans in the cities and of returning refugees.

APPENDIX A: MUJAHIDIN PARTIES³¹⁴

Mujahidin Parties Based in Pakistan:

- **Harakat-e Inqilab-e Islami** (Islamic Revolutionary Movement of Afghanistan), headed by **Maulvi Mohammad Nabi Mohammadi**, is a coalition party of traditionalist clergy, with a Pashtun base and some Tajik and Uzbek support.
- **Hezb-e Islami** (Islamic Party) headed by **Gulbuddin Hekmatyar** is the most ideologically radical of the "fundamentalist" Islamic parties. It is favored by the ISI and by Saudi Arabia. Throughout most of the war, it received the largest share of CIA covert military assistance provided to the resistance. It is supported mainly by Pashtuns but has some support from other ethnic groups.
- **Hezb-e Islami** (Islamic Party) headed by **Yunis Khales** is a splinter party that broke away from Hekmatyar's in 1979. It is a traditional Islamic coalition party with a Pashtun tribal base that is particularly strong in the Jalalabad area.
- **Ittihad-e-Islami Bara-ye Azad-e Afghanistan** (Islamic Union for the Liberation of Afghanistan) is headed by **Professor Abdul Rasul Sayyaf**, was established to attract support from Arab Wahhabi sources and has received considerable aid from Saudi Arabia and the Organization of the Islamic Conference (OIC). With that aid it has been able to attract commanders inside Afghanistan.
- **Jamiat-e Islami** (Islamic Society), headed by **Professor Burhanuddin Rabbani**, an Islamic scholar, has a predominantly Tajik following with some Pashtun support. It has closer ties to the traditional religious establishment than Hekmatyar's Hezb-e Islami party. It has the largest following of any of the parties and is considered the most moderate of the "fundamentalist" parties. Jamiat-e Islami's charismatic commander Ahmad Shah Massoud controls the Panjshir

³¹⁴ For a further explanation of the history of these parties, see Olivier Roy, *Islam and Resistance in Afghanistan*, (Cambridge: Cambridge University Press, 1986), pp. 219-220. See also *Afghanistan: The Making of U.S. Policy 1973-1990* (Alexandria, VA: National Security Archives and Chadwyck-Healey, Inc., forthcoming in March, 1991).

Valley and major parts of northeast Afghanistan.

- **Jabha-yi-Najat-e-Milli** (National Salvation Front) is led by **Professor Sibghatullah Mojaddidi**, the head of a family of prominent Kabul clerics of a Sufi (mystical) order. It has support among some elements close to the former monarchy and some tribal elements. It is the smallest party.

- The **Mahaz-e-Milli-yi-Islami** (National Islamic Front of Afghanistan or NIFA) is led by wealthy businessman **Sayed Ahmed Gollani**, a *pir* (spiritual master) who favors a return to a nationalist government. The party is favored by pro-royalist Pashtun tribes, especially near Qandahar and the east, and by Western-educated elites of the old regime. It is considered the most moderate of the parties.

***Mujahidin* Parties Based in Iran:**

(There are a number of Shi'a parties based in Iran. These are considered the most active.

- **Harakat-e Islami**, headed by **Sheikh Mohammad Asef Mohseni**, is a radical Islamic party with urban Shi'a support.

- **Sazman-e Nasr** is a pro-Iranian Islamic radical party with support among Hazara intellectuals. It is the largest of the three main Shi'a parties.

- **Sepah-e Greh-e Pasdaran** is associated with the Iranian Pasdaran (Guardians of the Revolution).

- **Shura-ye-Ittefaq-e Inqilab-e Islami**, headed by **Sayyed Beheshti**, is the only major traditionalist Shi'a party.

APPENDIX B: POLITICAL PARTIES REGISTERED WITH THE REPUBLIC OF AFGHANISTAN³¹⁵

Political Parties Registered with the Republic of Afghanistan (as of July 1990):

- **Afghanistan Workers Vanguard Party**, headed by Mohammad Zahir Ufaq.
- **Afghanistan Young Workers Vanguard Party**, headed by Abdul Shakoor.
- **Hezb-e-Hezbollah** (Hezbollah Party), a Shi'a party headed by Sheikh Wasooqi. It is reportedly modeled on the Iranian party of the same name.
- **Hezb-e Islami Afghanistan** (Islamic Party of Afghanistan), headed by Hanifi. The party's following is Pashtun.
- **Hezb-e-Karigaran Jawan Afghanistan** (Afghanistan Young Workers Party), headed by Sofi Ashna. The party is associated with the **Karigaran-e-Jawan Afghanistan** (KAJA) and the **Afghanistan Democracy Movement**.
- **Ittefaq-e-Muharazan Sulh wa Taraqi Afghanistan** (Union of Strugglers for Peace and Development of Afghanistan), headed by Zaman Gul.
- **Ittehad-e-Ansarullah** (Union of Ansarullah), headed by Satar Mohammad Khadim. The party has mainly a Pashtun following.
- **Ittehad-e-Hambastagi Afghanistan (Fedayan)** (Union of Coordination of Afghanistan), headed by Mohammad Sarwar Nooristani.
- **Ittehad-e-Melli Desqanan Afghanistan** (National Union of Farmers of Afghanistan), headed by Abdul Hakim Tawana. The party reportedly publishes a newspaper by the name of *Adalat*. It has a mainly Pashtun following.

³¹⁵ Information about these parties is derived primarily from official government (Republic of Afghanistan) sources. Many of the associations listed appear to represent specific interest groups and not political parties. For a discussion of Asia Watch's concerns about freedom of association in Afghanistan, *see* chapter 5.

- **Karlgaran-e-Jawan Afghanistan** (Workers of Afghanistan), headed by Abdul Ghafar Sharifi. It has a Tajik following.

- **Nohmat-e-Democracy Afghanistan** (Afghanistan Democracy Movement), formerly the SAZA party. It is headed by Manbullah Koshani. The SAZA party (also known as *Setam-e Melli*) reportedly had Maoist leanings and endorsed Tajik and Uzbek separatism. The Nohmat-e-Democracy Afghanistan still has support among Tajiks. It reportedly publishes a newspaper, *Maihan*.

- **SABZA Party**, headed by Tazah Khan (Ujar), the party has a mainly Pashtun following.

- **Sazman-e-Karlgaran Afghanistan** (Afghanistan Workers Organization) headed by Satar Serat. The party was formerly known as Hezb-e Islami.

- **Sazman-e-Zahmat Kshan-e-Afghanistan**. (SAZA) It is headed by Hamidullah Gran and has a mainly Pashtun following.

- **Watan** (Homeland), formerly **People's Democratic Party of Afghanistan**, headed by President Najibullah. The PDPA has been the ruling party in Afghanistan since the 1978 coup. *Payam* is the party's publication.

APPENDIX C: PARTIAL LIST OF PRISONERS

During the Asia Watch mission to Afghanistan in July and August 1990, we requested information from the Ministry of State Security about a number of prisoners whose cases had come to our attention as disappearances, torture cases, or possible examples of people imprisoned for non-violent political activity. In all cases, we were concerned about the fairness of the trial proceedings involved. The government responded in writing on the following cases.

- **Amin Yusufzai**, former Director of Economic Affairs at the Ministry of Planning, was reportedly detained at Kabul airport in January 1986, after he was found to be carrying a photograph of his brother, a member of the *mujahidin*. The Ministry of State Security informed Asia Watch that on January 19 1986, Yusufzai was sentenced to 20 years imprisonment on charges of spying.

- **Nisamuddin Mehmud**, an Egyptian journalist was arrested in 1989 along with a Saudi journalist, Abdul Rahman. The Ministry of State Security informed Asia Watch that Mehmud was charged with "taking part in military operations in Ningrahar Province and participation in armed revolt against the Government of the Republic of Afghanistan." He was sentenced to 20 years of imprisonment. The Ministry of State Security provided no information on the fate of Abdul Rahman.

- **Sayed Hamza**, son of Sayed Mahboob, was arrested on December 24, 1987. According to Amnesty International, he was reportedly tortured during interrogation at Sedarat and was not allowed family visits. He was sentenced to death on April 20, 1988. The Ministry of State Security informed Asia Watch that Sayed Hamza was charged with being a member of Jamiat-e Islami and with "transporting ammunition from Pakistan into Republic of Afghanistan, firing of 12 surface-to-surface rockets on residential areas of Kabul, and several other anti-state activities." His death sentence has yet to be approved by President Najibullah.³¹⁶

³¹⁶ See Amnesty International, "Urgent Action: Afghanistan: Seyed Hamza, son of Seyed Mahboob," *AI Index* ASA 11/12/90, November 14, 1990.

• A number of Afghans who had been employed at the U.S. Embassy in Kabul were arrested in the early years of the war. Six who were arrested in 1982 and 1983 remain in jail. They are:

Ghulam Sakhi Ahmadzai, arrested in April 1982.

Jalaluddin Talibee, arrested in April 1983.

Abdul Qayum, arrested in April 1983.

Abdul Kudus Kadri, arrested in March 1983.

Mohammed Essa, arrested in March 1982.

Fazal Ahmad, arrested in April 1983.

The Ministry of State Security informed Asia Watch that all six were sentenced to 20 years' imprisonment on charges of spying.

• **Dr. Mohammad Younis Akbari**, a nuclear physicist who was arrested in 1983 on charges of "being member of a Maoist movement," "indulging in activities against the law," "distributing arms to extremist elements," and "persuading people to participate in armed revolt against the government," was sentenced to death by hanging by a Special Revolutionary Court in 1984. The Ministry of State Security informed Asia Watch that the sentence had been carried out, but they did not inform us when Akbari was executed.

• **Syed Abdul Samad** and **Mohammad Nazar** were tried and convicted of spying in January 1988 after they entered Afghanistan illegally with French journalist Alain Guillo (who was released in May 1988 after an appeal by President Mitterand). Samad and Nazar were sentenced to 16 years' imprisonment. According to Guillo, they were accompanying him as bodyguard and translator. The Ministry of State Security informed Asia Watch that Samad had been sentenced to 16 years' imprisonment for spying and avoiding military service, and that Mohammad Nazar had been sentenced to 16 years' imprisonment for cooperating with Alain Guillo and avoiding military service.

• **Commander Abdul Wahed** was captured in the Paranda Valley, Panjshir in 1984. His arrest was widely publicized by the government, after which he was believed to have disappeared. The Ministry of State Security informed Asia Watch that a Special Revolutionary Court had sentenced Abdul Wahed to death by hanging and that the sentence was carried out in 1985.

- **Shinwari, son of Safdar from Gulbuta, Dara-i-Noor, outside Jalalabad, was arrested after a government bombardment of the area while he was reportedly trying to remove mines that had been placed by government forces. The Ministry of State Security informed Asia Watch that he had been charged with "indulging in terrorist and destructive activities, organizing explosions, and having links with Hezb-e Islami (Hekmatyar)." He has been sentenced to 20 years' imprisonment.**