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Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Afghanistan

1. The Committee on Economic, Social and Cultural Rights considered the combined second to fourth periodic reports of Afghanistan on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/AFG/2-4) at its 15th, 16th and 17th meetings, held on 12 and 14 May 2010 (E/C.12/2010/SR.15, 16 and 17) and adopted, at its 26th and 27th meetings, held on 21 May 2010, the concluding observations as set out below.

A. Introduction

2. The Committee welcomes the submission of the combined second to fourth periodic reports of Afghanistan and the written replies to its list of issues (E/C.12/AFG/Q/2-4/Add.1). The Committee appreciates the frank and constructive dialogue with the delegation of the State party, which included representatives from various ministries with expertise on the subjects covered by the Covenant.

3. The Committee notes with appreciation the contribution of the Afghanistan Independent Human Rights Commission to the reporting process.

B. Positive aspects

4. The Committee welcomes the major legislative and institutional changes that have been introduced in the State party with a view to promoting and protecting human rights, including economic, social and cultural rights, as well as its efforts to establish new programmes and policies in line with its obligations under the Covenant and the Millennium Development Goals.

5. The Committee welcomes the adoption of the New Constitution in 2004, which extensively addresses the areas covered by international human rights standards, including economic, social and cultural rights and the principle of non-discrimination.

6. The Committee notes with satisfaction the ratification by the State party of various international human rights instruments, including: (a) the Convention on the Elimination of all Forms of Discrimination against Women (in 2003); and the two Optional Protocols to the Convention on the Rights of the Child, namely, on the involvement of children in armed conflict (in 2003) and on the sale of children, child prostitution and child pornography (in 2002).

7. The Committee notes with satisfaction the suppression of inhuman practices discriminating against women, as well as the adoption of the Elimination of Violence against Women Act in 2009; the establishment of the 10-year National Action Plan for the Women of Afghanistan, which pays due attention to economic, social and cultural rights; and the creation of the Ministry of Women's Affairs in 2008.

8. The Committee notes with satisfaction the adoption of Presidential Decree No. 297 (2006) on Dignified Return and the Regulation on Afghan Workers Abroad.

9. The Committee takes note with satisfaction of the efforts made by the State party to improve the health system, including the establishment of mobile health teams aimed at providing health services in the rural areas.

10. The Committee welcomes the rejection of previous restrictions on female education and the efforts deployed by the State party to guarantee free and compulsory basic education, which have resulted in an increase in school enrolment.

11. The Committee notes with satisfaction the establishment of the Mine Action Coordination Centre of Afghanistan and the ongoing demining activities carried out by the Centre.

C. Factors and difficulties impeding the implementation of the Covenant

12. The Committee acknowledges that Afghanistan is a country in transition that faces a wide range of challenges, and that has been ravaged by armed conflicts for over three decades, in which it has experienced destruction of institutions and infrastructure that is seriously impeding the implementation of the rights enshrined in the Covenant.

D. Principal subjects of concern and recommendations

13. The Committee, while noting that according to article 7 of the new Constitution the State party shall observe the international human rights treaties, remains concerned at the fact that the Covenant has not yet been fully incorporated into domestic law and that the Covenant rights have not been invoked before, or directly enforced by, domestic courts, tribunals or administrative authorities.

The Committee recommends that the State party accord the Covenant a legal status that would enable it to be invoked directly within the domestic legal system. In this regard, the Committee refers to its general comment No. 9 (1998) on the domestic application of the Covenant. The Committee requests the State party to include detailed information on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights in its next periodic report.

14. The Committee notes with concern that, although the Afghanistan National Development Strategy contains benchmarks that have human rights relevance, they are not

planned as legal entitlements and integrate only some elements of various economic, social and cultural rights, while civil and political rights are given priority.

The Committee strongly recommends that the State party take measures to ensure that a holistic human rights-based approach is put into practice in the implementation of the Afghanistan National Development Strategy, explicitly recognizing the international human rights framework that includes economic, social and cultural rights.

15. The Committee notes with concern that the State party has not adopted effective measures to combat widespread corruption and impunity. It regrets the lack of concrete information regarding the cases of civil servants, judges and other officials having been prosecuted and sentenced on charges of corruption.

The Committee recommends that the State party: (a) adopt a legal framework to combat corruption and impunity, in conformity with the international standards; (b) train lawmakers, national and local civil servants and law enforcement officers on the economic and social costs of corruption; (c) take measures to prosecute cases of corruption; (e) ensure the transparency of the conduct of public authorities, in law and in practice, and establish an independent monitoring mechanism to this end; (f) elaborate, in cooperation with relevant organizations and institutions, guidelines and a code of ethics; and (g) conduct awareness-raising campaigns. The Committee requests the State party to provide detailed information in its next periodic report about the progress made in combating corruption and impunity and any obstacles encountered.

16. The Committee notes with concern that the traditional dispute resolution mechanisms, which absorb more cases of dispute than the formal judicial system, are not compatible with human rights standards, including the Covenant rights. The Committee regrets the fact that the rights of women and children, as well as those of nomadic tribes and the poorest sectors of society, are particularly affected by the lack of access to formal justice mechanisms.

The Committee urges the State party to take effective measures to guarantee that the traditional dispute resolution mechanisms are fully compatible with international human rights standards, including the Covenant rights. The Committee recommends that the State party intensify its efforts to ensure access for the population to the formal judicial system and take adequate measures to build the trust of the population in the formal judicial system.

17. The Committee, while taking note of the adoption of the 2008 Afghanistan National Disability Action Plan, regrets that the report does not accurately reflect the current situation of persons with disabilities and characterizes disability mainly as a matter of charity and a medical concern. The Committee is concerned at the lack of sufficient measures to implement the Action Plan (art. 2).

The Committee recommends that the State party take concrete steps to implement the 2008 Afghanistan National Disability Action Plan without discrimination and, in this regard, consider ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

18. The Committee is concerned at the fact that women continue to face discrimination in many domains, due to the pervasive social, political and economic discrimination against women, the insecurity in the country and the persistence of stereotypes and customary practices that marginalize them, despite the efforts made by the State party to promote gender equality. The Committee regrets the discrepancy between the legal framework and the inequality in practice in sectors such as work, public life, education and health. It is particularly concerned at the fact that some provisions of the Shia Personal Status Law

remain discriminatory against women, including with regard to guardianship, inheritance, underage marriages, and limitations on movements outside the home (arts. 2 and 3).

The Committee requests the State party to take more stringent and effective legal and practical measures, including through the use of the media and education, to address the historical discrimination and inequality, cultural barriers and patriarchal attitudes in order to counter inequality between the sexes and discrimination against women, as required by article 2, paragraph 2, and article 3 of the Covenant. In this regard, it urges the State party to fully harmonize the domestic law, including the Shia Personal Status Law, with international human rights standards. In this regard, the Committee draws the State party's attention to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights. The Committee also recommends that the State party develop and implement a national public awareness campaign, aimed at both women and men, including community leaders.

19. The Committee, while noting that the State party has introduced a temporary quota in favour of women for the Parliament and Provincial Council, remains concerned at the low level of women's representation in decision-making positions in Afghanistan (art. 3).

The Committee recommends that the State party promote the equal participation of women in decision-making processes, in particular peacebuilding and reconciliation processes, and take temporary special measures to redress gender imbalance in society in line with article 3 of the Covenant.

20. The Committee notes with concern that persons have been subjected to forced or compulsory labour in the State party as a punishment for holding or expressing political or ideological views (art. 6).

The Committee urges the State party to take the adequate measures, including a review of the Penal Code, to ensure that forced or compulsory labour is not used as a penalty.

21. The Committee is concerned at the fact that the unemployment situation in the State party is difficult to quantify due to the lack of relevant and reliable labour statistics and labour market information (art. 6).

22. The Committee is concerned at the lack of employment opportunities for young people, returnees and internally displaced persons (IDPs), in particular in the agricultural sector (art. 6).

The Committee recommends that the State party adopt adequate mechanisms to measure the level of unemployment within its territory in order to take efficient measures to address this problem. It recommends that the State party seek formal technical assistance from the International Labour Organization in this regard.

The Committee urges the State party to adopt and implement action plans for employment that will progressively reduce unemployment in the informal sector, in particular in the agricultural sector.

23. The Committee regrets that the minimum wage set by the State party is not sufficient to provide workers and their families with an adequate standard of living (art. 7).

The Committee urges the State party to take appropriate measures to raise the minimum wage and thus enable workers and their families to meet their essential needs.

24. The Committee notes with concern that the principle of equal remuneration for men and women workers for work of equal value is not guaranteed in the State party (art. 7).

The Committee urges the State party to increase its efforts to ensure equal remuneration for work of equal value, in accordance with the Covenant, and to reduce the wage gap between men and women. In particular, the Committee recommends that the State party establish a mechanism to monitor the implementation of the rights of workers, including equal pay for work of equal value, and conduct awareness-raising campaigns in this respect.

25. The Committee, while noting that the Labour Code incorporates many of the Covenant provisions, regrets that it still contains many deficiencies, such as not addressing the right to strike and dispute resolution. The Committee is concerned at the lack of an adequate mechanism to monitor the implementation of the Labour Code, as well as the low impact of the National Skills Programme (art. 8).

The Committee recommends that the State party intensify its efforts to protect the rights of workers, and in this regard, that it revise the Labour Code, in compliance with the requirements of the Covenant, to incorporate the right to form a trade union, the right to collective bargaining and the right to strike. The Committee also recommends that the State party establish a mechanism to improve coordination and communication among the Government agencies in the process of preparing draft laws related to work.

26. The Committee notes with concern that the State party has not yet put into place a basic social security system and that therefore a large number of disadvantaged and marginalized individuals and groups, including older persons, self-employed persons, women, in particular single mothers, IDPs, returnees and refugees are not entitled to any protection (art. 9).

The Committee recommends that the State party design a national plan for social security and progressively supplement a social security scheme to ensure the protection of disadvantaged and marginalized groups. In this regard, the Committee encourages the State party to explore the possibilities of international cooperation in line with article 2, paragraph 1, of the Covenant and the Committee's general comment No. 19 (2008) on the right to social security.

27. The Committee is concerned that many of the poorest families are excluded from various poverty reduction programmes (art. 9).

The Committee recommends that the State party, in collaboration with non-governmental organizations, review the eligibility criteria for poverty reduction programmes in order to ensure that the poorest families are included in such programmes.

Given the fact that older persons are in a particularly difficult situation, either because they have no families or because their families are no longer able to support them, the Committee suggests that protection of older persons be addressed as a priority concern within the national plan for social security.

28. The Committee, while taking note of the National Strategy for Children at Risk adopted in 2006, remains concerned at the extent of violence against children, including forced and child marriage. It regrets that a high number of children, having a living parent, remain unnecessarily in care institutions (art. 10).

The Committee recommends that the State party: (a) intensify its efforts to combat violence against children and to prohibit corporal punishment of children in all settings; and (b) adopt and implement social protection programmes to enable the most disadvantaged and marginalized families to meet their basic needs and to care for their children. The Committee requests the State party to provide further information in its next periodic report on the system of institutional care for children,

regulatory mechanisms, the updated number and qualifications of orphanage staff, and admission policies. The Committee would also appreciate receiving updated information on the results of the implementation of the National Strategy for Children at Risk.

29. The Committee notes with concern that child labour is a serious problem in the State party and that many children are vulnerable to all the worst forms of child labour, including forced or bonded child labour and commercial sexual exploitation (art. 10).

The Committee urges the State party to intensify its efforts to combat child labour and protect children from all forms of sexual and economic exploitation, including the worst forms of child labour, inter alia, by: (a) strengthening its national legislation prohibiting child labour in accordance with international standards; (b) increasing the number of labour inspections in order to monitor compliance with its national legislation prohibiting child labour; (c) strictly enforcing the imposition of fines and criminal sanctions against persons making use of illegal child labour; (d) organizing mandatory training for law enforcement officials, prosecutors and judges; and (e) adopting appropriate measures to facilitate access to educational opportunities for former child workers. The State party is invited to conduct a comprehensive survey on the extent of child labour, if necessary by seeking international cooperation and assistance.

30. The Committee notes with concern that children are recruited by armed groups and forces, including by the Afghan National Security Forces (art. 10).

The Committee recommends that the State party take firm measures to put a stop to all recruitment of child soldiers by armed groups and forces. To this end, a monitoring system should be instituted to prevent any further recruitment of minors. The Committee also recommends that the State party step up its efforts to assist and reintegrate children who have been recruited in armed groups and forces.

31. The Committee is deeply concerned at the alarming levels of violence against women, in particular domestic violence and so-called honour killings, despite the adoption of the Law to Eliminate Violence against Women in 2009. The Committee is also concerned at the fact that perpetrators of such crimes remain unpunished (art. 10).

The Committee recommends that the State party: (a) take effective measures to eradicate practices that are harmful to women and girls by enacting legislation and policies, in line with article 54 of the Constitution; (b) review all national legislation, including the Penal Code, the Civil Code and the Marriage Act to ensure compliance with the Constitution and international human rights law; (c) ensure that women are able to register complaints with the police without fear of reprisals, that all cases are duly prosecuted without delay, and that perpetrators of violence against women are sanctioned; and (d) launch awareness-raising campaigns to combat harmful traditional practices against women, and educate parents, particularly mothers and children, as well as the community leaders.

32. The Committee notes with concern that the State party is a source, transit point and destination country for human trafficking and that women and girls are kidnapped, lured by fraudulent marriage or job proposals, or sold into marriage or commercial sexual exploitation, despite the efforts made by the State party (art. 10).

The Committee recommends that the State party intensify its efforts to eradicate human trafficking, including by imposing appropriate sanctions on the perpetrators.

33. The Committee notes with concern that drug trafficking persists in Afghanistan, and that the State party is a major processor and exporter of heroine and opium. The Committee is further concerned at the violence and negative effects of drug trafficking in the enjoyment

of the rights enshrined in the Covenant, including the right to the enjoyment of the highest attainable standard of physical and mental health.

The Committee urges the State party to adopt a comprehensive strategy to combat drug trafficking, taking into account that counternarcotics efforts should not lead to adverse impacts on the enjoyment of economic, social and cultural rights.

34. The Committee notes with concern that, notwithstanding the Afghanistan National Development Strategy, a large proportion of Afghans live in poverty or extreme poverty, in particular the inhabitants of rural and deprived urban areas, landless persons, children, families and households headed by women, persons with disabilities, IDPs and refugees (art. 11).

The Committee recommends that the State party take measures to ensure that the Afghanistan National Development Strategy fully integrates economic, social and cultural rights, in line with the Committee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee recommends that the State party adopt measures to assess the impact and identify the weaknesses of the National Development Strategy. It requests the State party to include in its next periodic report comparative data, disaggregated by sex, age and rural/urban populations, together with figures showing the number of persons living in extreme poverty and indicators on the progress made in combating poverty.

35. The Committee notes with concern that a high percentage of the population in Afghanistan lack basic services such as drinking water, waste removal, sanitary facilities and electricity, and that due to the lack of sewage systems, water sources are contaminated and unsafe, thus causing serious health problems (art. 11).

The Committee urges the State party to provide rural and urban communities with appropriate systems for ensuring access to drinking water and to adequate sanitation infrastructure, in line with the Committee's general comment No. 15 (2002) on the right to water, in particular for low-income, disadvantaged and marginalized individuals and groups, if necessary by seeking international cooperation and assistance.

36. The Committee notes with concern the persistence of illegal land seizures in Afghanistan as well as the numerous cases of land disputes, which undermine the rule of law and the enjoyment of the Covenant rights. It regrets that, due to the lack of trust in the formal judicial system, many land-dispute issues have been left to informal dispute resolution mechanisms, and that discriminatory practices have provided certain ethnic groups with preferential access to land to the detriment, in particular, of the Kuchis. The Committee notes that the deteriorating security situation and landlessness are factors that prevent the reintegration of IDPs and returnees, as well as the return of refugees (art. 11).

The Committee recommends that the State party: (a) adopt a coherent and comprehensive legal framework as well as policies and administrative measures to resolve the land-related disputes; (b) revise the Land Allocation Scheme of 2005 and harmonize it with the Covenant rights and international human rights standards; (c) strengthen the programmes related to landlessness, with particular focus on returnees and IDPs; (d) set out a monitoring mechanism to mitigate the risk of corruption in the Land Allocation Scheme; and (e) take effective measures to prevent discrimination against women in cases of land disputes.

37. The Committee notes with concern the high level of malnutrition and hunger in the State party, as well as the numerous persons who face food insecurity. It regrets the little support received by the agricultural sector and the significant decline in accessibility to food

in rural areas since 2006, due to a growing disparity between food prices and income (art. 11).

The Committee recommends that the State party revise its existing policies, strategies and programmes, including the Food Security for All programme, with a view to adequately addressing the food insecurity and nutritional needs of the population, and ensuring the right to food of everyone, in particular the most disadvantaged and marginalized individuals and groups in Afghanistan. An inter-ministerial policy and strategy to ensure a more comprehensive approach to address food security and malnutrition effectively should be envisaged.

38. The Committee is deeply concerned about the acute shortage of adequate housing in the State party, including sound housing units, especially in the densely populated urban areas where the disadvantaged and marginalized individuals and groups, such as poor families, IDPs, older persons and people with disabilities, live in informal settlements, shelters and camps which lack basic infrastructure and basic facilities and services.

39. The Committee is concerned about the forced eviction and demolition of tenements that take place in the State party, without due process of law or sufficient notice and without adequate compensation or alternative accommodation.

The Committee urges the State party to impose a moratorium on all forced evictions, pursuant to the recommendation made by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living in the 2004 report on his mission to Afghanistan (E/CN.4/2004/48/Add.2, para. 73) until it adopts and implements a proper legal framework to ensure that persons forcibly evicted are provided with adequate compensation and/or relocation that is in line with the guidelines adopted by the Committee in its general comment No. 7 (1997) on the right to adequate housing (art. 11.1 of the Covenant): forced evictions. The Committee requests that the State party provide detailed information on any progress made in this regard. The Committee also reiterates its request to the State party to provide updated information on the extent of homelessness in the State party and the measures taken to address this problem in its next periodic report.

40. The Committee, while taking note of the efforts undertaken by the State party to promote the right to health, through Basic Package of Health Services coverage, remains concerned about the high maternal, infant and child morbidity and mortality rates, as well as the failure of the health system to respond adequately to the needs of women, and the lack of a gender-sensitive approach in health services provision. The Committee also notes that the harmful practices and barriers (for example, women cannot be examined by a male doctor without a chaperone) have detrimental impacts on the women's health, and regrets the lack of sufficient female nurses and doctors in the hospitals (art. 12).

The Committee urges the State party to take appropriate steps to meet the basic health needs of the population, including by improving basic health services and increasing public spending on health. To this end, the Committee refers to the State party's attention its general comment No. 14 (2000) on the right to the highest attainable standard of health. The Committee recommends that the State party train and recruit female medical staff, in particular midwives, nurses, obstetricians and gynaecologists, especially in rural areas. The Committee further recommends that the State party intensify its efforts to implement the Basic Package of Health Services, in particular by increasing the number of mobile health teams to reach a larger proportion of the population.

41. The Committee notes with concern the lack of reproductive health services for women in the State party.

The Committee recommends that the State party put in place reproductive health services for women and implement education programmes on sexual and reproductive health.

42. The Committee is concerned that over two million Afghans are affected by mental health problems due to the long period of armed conflict (art. 12).

The Committee recommends that the State party take adequate measures to address the health problems of Afghans who suffer from war-related traumatic disorders, if necessary by seeking international cooperation and assistance.

43. The Committee, while noticing the efforts made by the State party to improve and promote access to education and reduce gender disparities, notes with concern and in particular that the right to education is not guaranteed in the State party without discrimination, and is also concerned at the poor situation of education in Afghanistan. In particular, the Committee is deeply concerned about the increase in the number of child victims of attacks against schools by insurgents and the throwing of acid to prevent girls and female teachers from going to school (arts. 13 and 14).

The Committee recommends that the State party, in implementing its National Education Strategy Plan, take into account the Committee's general comments No. 11 (1999) on plans of action for primary education and No. 13 (1999) on the right to education and establish an effective monitoring mechanism for the plan. In particular, the Committee recommends that the State party take adequate steps to encourage the school enrolment of girls, including by providing facilities in schools (for example separate toilets for girls), and by training and recruiting female teachers, in particular in rural areas. The State party should improve security for children in school as well as on their way to and from school, and increase awareness of the value of girls' education. The State party is also encouraged to continue seeking technical advice and assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO) for improving access to education.

44. The Committee, while acknowledging the efforts of the State party to allow the re-emergence of the arts in Afghanistan, notes with concern that, over the past several decades, many areas and elements of the cultural heritage of the State party were illegally excavated, vandalized, looted, deliberately destroyed or simply allowed to deteriorate without protection. The Committee also regrets the lack of adequate measures to protect the linguistic diversity of the State party (art. 15).

The Committee recommends that the State party adopt a comprehensive national cultural policy that ensures respect for cultural and linguistic cultural heritage and diversity. The Committee also recommends that the State party enhance its current practice with regard to the registration and protection of historical monuments and archaeological sites and pursue its efforts to facilitate the return of the objects illegally exported from Afghanistan. The Committee also recommends that the State party establish mechanisms to coordinate the activities of Government agencies and ministries in regard to illicit excavation and export of cultural property.

The Committee recommends that the State party take the necessary steps to ensure that the Afghanistan Independent Human Rights Commission receives adequate funds to perform all the functions set out in its mandates, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134).

45. The Committee recommends that the State party provide students at all levels with education on economic, social and cultural rights, and conduct extensive human rights training for members of all professions and sectors with a direct role in the

promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, immigration officers, community leaders, the police and the military.

46. The Committee strongly recommends that the State party draw on the technical assistance offered by the Office of the United Nations High Commissioner for Human Rights and the relevant United Nations specialized agencies and programmes in its efforts to realize economic, social and cultural rights in accordance with its international legal obligations under the Covenant and when preparing and submitting its next report and implementing the present concluding observations.

47. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

48. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

49. The Committee recommends that the State party consider ratifying the following International Labour Organization Conventions: No. 2 concerning Unemployment; No. 102 concerning Minimum Standards of Social Security; No. 117 concerning Basic Aims and Standards of Social Policy; No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security; No. 122 concerning Employment Policy; No. 160 concerning Labour Statistics; No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; and No. 174 concerning the Prevention of Major Industrial Accidents.

50. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among State officials, members of the judiciary, community leaders and civil society organizations, and to inform the Committee in its next periodic report of the steps taken to implement them. It also encourages the State party to include non-governmental organizations and other members of civil society in the national discussions that are held prior to the submission of its next periodic report.

51. The Committee invites the State party to update its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting.

52. The Committee requests the State party to submit its fifth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2014.