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Summary record of the 15th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 12 May 2010, at 10 a.m.

Chairperson: Mr. Marchán Romero

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The meeting was called to order at 10.10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Second to fourth periodic reports of Afghanistan (E/C.12/AFG/2-4; E/C.12/AFG/Q/2-4 and Add.1; HRI/CORE/AFG/2007)

1. *At the invitation of the Chairperson, the delegation of Afghanistan took places at the Committee table.*
2. **Mr. Hashimzai** (Afghanistan), introducing the second to fourth periodic reports of Afghanistan (E/C.12/AFG/2-4), said that Afghanistan, a post-conflict country emerging from decades of war that had had a devastating impact on every aspect of its development, had selected a people-centred model as the appropriate framework for its development efforts. On the basis of that model, his Government had developed the Afghanistan National Development Strategy for 2008–2013, which doubled as its poverty reduction strategy paper and which included its strategy for achieving the Millennium Development Goals and reaching the benchmarks set out in the Afghanistan Compact. The main pillar of the strategy was economic and social development in the areas of infrastructure and natural resources, education, health, agriculture and rural development, social protection, and economic governance and private-sector development. Human rights played a key role in the strategy and gender was considered a cross-cutting issue. The Government's priorities were to reduce poverty, achieve sustainable development through a private-sector-led market economy and improve human development indicators. Indeed, those indicators and the economy had improved considerably since 2001.
3. In 2009, the State party had ratified Protocols I and II of the Geneva Conventions of 12 August 1949 and, in 2010, it had ratified various conventions of the International Labour Organization (ILO). Parliament was currently reviewing the Convention on the Rights of Persons with Disabilities.
4. His Government considered health a fundamental human right, and had adopted two service packages in 2002 to improve health care in an equitable and sustainable manner: the Basic Package of Health Services and the Essential Package of Hospital Services. As a result, between 2001 and 2008, it had achieved a 37 per cent drop in mortality among children under 5 years of age and a 33 per cent fall among those under 1 year of age, thus reaching the benchmarks for child mortality set out in the Afghanistan Compact.
5. All children had access without discrimination to quality education. The vast majority of schools were State-run: 37 per cent of pupils and 30 per cent of teachers were female. The Government was promoting the use of local languages in schools: primary school textbooks had already been prepared in languages such as Uzbek and Turkmen, and the preparation of secondary school books was under way. The new curriculum was based on Islamic principles and national values, and reflected modern scientific standards and the needs of Afghan society. Among the priorities in the strategic plan for education were technical and vocational education, the campaign against illiteracy, and gender education.
6. The Government had formed "development clusters" in three areas of development: agriculture and rural development, to foster inclusive, equitable and market-led licit economic growth and the sustainable development of natural resources; human resources development, to provide an educated workforce in line with market needs and to improve vocational training and higher education so as to reduce unemployment, reduce illiteracy and improve access to education, especially for girls; and economic and infrastructure development, with particular emphasis on forming strategic partnerships with extractive

industries, facilitating private-sector-led growth, delivering cost-effective energy and improving energy, water, sanitation and health services in cities.

7. The foundation for addressing human rights issues in Afghanistan was the 2001 Bonn Agreement, which had established the Afghan Independent Human Rights Commission. The number of periodic reports submitted to various treaty bodies was the main indicator of the Government's capacity to comply with its treaty obligations, and the State party was well on the way to meeting its benchmark in that respect. Moreover, it had begun to review its laws to ensure they were in keeping with the newly established Constitution and the international treaties to which Afghanistan was a party. As a result, it had amended or adopted laws on Shia personal status, the elimination of violence against women, freedom of the press and family planning, among other things. A law had also been passed to establish a commission to supervise the implementation of the Constitution. At the institutional level, the Ministry of Women's Affairs had been established, a directorate of human rights and women's international affairs had been established in the Ministry of Foreign Affairs, and several ministries now had human rights and gender units.

8. The principles of non-discrimination and equal rights were enshrined in the Constitution and various laws. However, Afghanistan faced huge challenges that had slowed its progress towards the full realization of its goals in the field of human rights. Insecurity had impeded economic and social development, and scarcity of financial resources had impeded the establishment of nationwide welfare programmes, in particular for the disabled, children and women. The cooperation of government bodies, civil society and the international community would be essential for improving the human rights situation in Afghanistan.

9. **Mr. Pillay** said that information before the Committee indicated that the provisions of the Covenant were not invoked by the courts in Afghanistan. The implementation and enforcement of legislation on economic, social and cultural rights appeared to be limited because the judicial system was weak and hobbled by widespread corruption. Citizens had no faith in that system and tended not to turn to it to seek redress for human rights violations. It appeared that only about 150 of the 1,100 cases of human rights violations brought to the attention of the Committee had been examined by the authorities. He would like to know what measures had been taken to address that situation. He asked if the Government planned to provide adequate resources to the Afghan Independent Human Rights Commission, an independent body that did valuable work in Afghanistan in compliance with the principles relating to the status of national institutions (the Paris Principles).

10. **Mr. Atangana** said that he would like to know how the Government was dealing with the climate of insecurity engendered by armed groups in the narcotic drugs trade, which was paralysing the judicial system and undermining society.

11. **Mr. Riedel**, referring to question 4 on the Committee's list of issues (E/C.12/AFG/Q/2-4), said that the Committee would appreciate some examples of situations in which non-State dispute settlement mechanisms had addressed issues of economic, social and cultural rights. He wondered what monitoring mechanisms were in place to ensure that equal standards of human rights protection were guaranteed by all mobile courts. He drew attention to the Bonn Workshop Consensus on capacity development for sustainable development and national ownership, which was particularly relevant in the post-conflict situation in Afghanistan. He asked what measures were being taken to promote and protect Covenant rights in that situation, which clearly had a profound impact on the enjoyment of all economic, social and cultural rights.

12. **Mr. Sadi** said that he felt uncomfortable questioning the delegation about the implementation of economic, social and cultural rights, given that Afghanistan had been

ravaged by war for decades and the Government did not have full control over the country. The situation was extremely serious, and the priority must be to establish security, since that was a prerequisite for the exercise of any human rights.

13. He asked how a free market economy could work in a country with such serious problems as Afghanistan, and how the transition to such an economy would affect the implementation of the Covenant. He requested further information on the status of the Covenant in the domestic legal system, and in particular whether there had been any cases in which it had been directly invoked by the courts. In a country where acid was thrown at the faces of girls on their way to school, there was clearly a serious deficiency in human rights education. He wondered how the Government intended to begin to raise public awareness of human rights issues, and whether it was considering introducing human rights education in schools. He asked how differences between international human rights standards and certain interpretations of Islam could be reconciled.

14. While taking note of the progress made in respect of legislation and policy to overcome corruption, he said he would appreciate information on specific cases in which corruption had been addressed. He asked to what extent the contributions of civil society had been incorporated into the State party's report. Although legislation had been adopted on the elimination of violence against women, there were a number of other problems in the State party relating to equal rights for men and women: they included underage marriage and giving away girls to settle debts. Had the Government found a way to address those problems? Afghanistan faced considerable challenges on a number of fronts, notably in the areas of security, corruption and narcotic drugs, and must start by addressing them at the national level. He asked where the Taliban drew its support from, and how that support could be explained.

15. **Ms. Barahona Riera**, referring to articles 2 and 3 on non-discrimination, said that the situation for women and children in the State party was extremely serious. The widespread and silent violation of women's rights had been occurring systematically for decades. Afghanistan was facing a situation where serious violations of human rights were combined with problems related to drugs, trafficking and the power of warlords. The first step must be to identify the root causes of that situation and bring about peace. Although regulatory measures which recognized women's right to equality had been taken — including the adoption of the Constitution and legislation on women's rights and the establishment of the Ministry of Women's Affairs — obstacles to the implementation of women's rights remained. She asked what, in the delegation's view, the main obstacles were. She would like to know how much of the national budget was set aside for the protection of women's rights. Noting that some elements of Shia personal law contradicted international human rights standards, which left a void in the protection of women's rights, she asked how the courts monitored the implementation of women's rights. While efforts were being made to address the cultural traditions that violated human rights, considerable resources would be required to ensure that gender equality became a priority in the education system.

16. **Ms. Bonoan-Dandan** asked, with regard to the Afghanistan Compact and the Afghanistan National Development Strategy, what the State party's understanding was of the term "people-centred development paradigm". The State party had cited its submission of periodic reports to the United Nations human rights treaty bodies as an indicator of its achievements in the field of human rights. She wished to know what people-centred measures were being taken to promote and protect human rights. Five years from the 2015 deadline for attaining the Millennium Development Goals, Afghanistan still faced enormous challenges; she would like to know which of those Goals the Government thought it might fail to meet.

17. According to the State party's report, Afghan companies recruited foreign workers because of a perception that Afghans had a low level of professional skills. In light of that, she wished to know what proportion of the civil service were Afghan citizens, and in which sectors Afghans found employment. She asked how complaints filed with the Afghan Independent Human Rights Commission were dealt with, and whether the work of the Commission was monitored and its findings assessed. The Commission had a good reputation for independence and diligence, yet it relied on funding from foreign sources. She shared the concern expressed by Mr. Pillay, that the Government should provide adequate funding for the Commission in future.

18. She wished to know what percentage of the State budget was used for spending on social services, how that budget was spent, and what proportion of international aid reached its intended recipients. She asked what the findings of the review of personal laws had been, and whether the State party was considering using the results of that review for the empowerment of women. While the State party mentioned, in paragraphs 52 to 54 of its report, the measures taken in respect of persons with disabilities, the Committee had been informed that in Afghanistan disability was considered a medical issue, and a matter for charity. While persons with disabilities had the right to receive social security, that assistance was purely financial; they were not provided with opportunities to be integrated into the labour force and to exercise freedom of choice. It had been reported that priority was given to those disabled as a result of the conflict, which was a discriminatory practice. She asked whether the Government had any plans to adopt a national law on disabilities, and whether it expected Parliament to approve ratification of the Convention on the Rights of Persons with Disabilities.

19. **Ms. Bras Gomes** said that the Committee was aware of the serious problems faced by Afghanistan and hoped that the State party was beginning a process of reconstruction. Economic, social and cultural rights appeared not to be considered as important as civil and political rights in Afghanistan, and while that was understandable to a certain extent, given the gravity of the situation in the State party, the fact that it had ratified the International Covenant on Economic, Social and Cultural Rights meant that Covenant rights must be respected. The Afghanistan Compact and the Afghanistan National Development Strategy focused on civil and political rights, yet economic, social and cultural rights were particularly relevant in the context of reconstruction. Indeed, human rights in general must be at the heart of development.

20. Although provisions on non-discrimination could be found in several pieces of legislation, there was no comprehensive anti-discrimination law in place. She wondered whether the Government had considered adopting such legislation. While she acknowledged that deep-rooted societal prejudice against women would take several generations to change, the Government could demonstrate the political will necessary to begin that process and could take steps to promote women's rights. She wondered whether the Government had considered instituting an effective marriage registration system, as a deterrent to early and forced marriages. According to the written replies to question 26 on the Committee's list of issues (E/C.12/AFG/Q/2-4/Add.1), a special prosecution unit targeting violence against women had been established in the Office of the Attorney-General, and had received 21 complaints since it had been opened in January 2010. She wondered what the outcome had been of the first complaint to come before the courts, and also what the status was of the remaining 20 complaints.

21. **Mr. Kedzia**, noting that the Government was currently seeking international assistance and cooperation, requested information on its main objectives in the field of economic, social and cultural rights.

22. Given that up to two thirds of the population opted to take their complaints to the traditional justice system rather than the formal one, he asked to what extent the two

systems could be regarded as complementary. It would be interesting to know whether traditional justice played a role in guaranteeing the protection of economic, social and cultural rights. He wished to know whether the Government or other stakeholders had undertaken to disseminate the standards and principles of economic, social and cultural rights among the leaders of the traditional justice system.

23. The Committee would appreciate additional information on how the periodic report had been prepared, particularly as there had apparently been no input from civil society. He asked whether the Government planned to cooperate with NGOs on future reports.

24. Information before the Committee indicated that the social, economic and political situation varied significantly between different regions and provinces in Afghanistan, and that governors and local authorities played an important role in social organization. It would be useful to know whether the Government assessed the impact of economic, social and cultural rights on the policies and activities of local authorities.

25. Adding his voice to colleagues' concerns about corruption and widespread discrimination against women in the State party, he asked what social and educational policies were in place to remedy those practices, which appeared to be essentially cultural phenomena.

26. **Mr. Abashidze** requested clarification on the status of the Covenant in the State party's legal system. In particular, he asked whether it took precedence over domestic legislation in the case of a conflict between the two. It would be useful to know what mechanism was in place to ensure that domestic legislation was in line with the international instruments the State party had ratified.

27. He asked whether there had been a census since 1979. If not, why not? And if so, why were the resulting data not available? Given that the figures that had been provided were approximate and often contradictory, it was surely impossible to use them as a basis for planning.

28. The State party should indicate what steps it was taking to establish a constructive dialogue with NGOs. Such a dialogue was particularly important because those organizations reflected the views and interests of the public, and the Government needed to win the support of the public, especially for its efforts in the area of law enforcement.

29. The judiciary clearly suffered from insufficient funding and malfunctioning mechanisms. In light of that situation, he asked if the Government was taking any measures to attract law graduates from the Russian Federation and other countries of the Commonwealth of Independent States.

30. **Mr. Schrijver** said that, while he understood that the State party had suffered considerable turmoil in recent decades, it was regrettable that it had previously submitted only one report to the Committee, and that as far back as 1992. Given that the Government was currently making efforts to engage with international human rights bodies, it would be interesting to know what steps were being taken at the domestic level to raise public awareness of the content, scope and enforceability of the rights enshrined in the Covenant. He requested clarification on the effective remedies to which Afghan nationals had recourse if they believed the State had violated their human rights. The delegation should explain what formal and informal mechanisms existed for individuals seeking the implementation of their rights. Lastly, he would appreciate details on the applicability of the rights contained in the Covenant to people living in areas that were under the control of opposition forces and in areas that were de facto under the control of foreign troops, and also to the many Afghan nationals living outside the State party, some of whom were refugees.

31. **Mr. Dasgupta** asked whether the State party had truly become a post-conflict country, as the head of the delegation had asserted in his opening address to the Committee. He would appreciate further details on the Afghanistan Compact and the Afghanistan National Development Strategy, particularly on the benchmarks they contained. In light of the heart-rending assertion in the periodic report that some families sold their children to traffickers owing to extreme poverty, he would welcome an assurance that poverty eradication was the centrepiece of the Afghanistan Compact.

32. **Mr. Abdel-Moneim** said that, since the lack of security in the State party was the main factor impeding economic development, it was worth emphasizing that strict observance of the rules of international humanitarian law was the key to international human rights law. He requested details on the status of the Cairo Declaration on Human Rights in Islam in the State party's legal system, particularly since the Organization of the Islamic Conference resolution adopting the Declaration had indicated that the articles of the Declaration were merely guidelines. Lastly, he said it would be useful to know whether the State party had discovered petroleum or gas on its territory.

33. **Mr. Tirado Mejía** commended the State party on the effort it was making to improve an extremely difficult situation. The most striking problem in the State party appeared to be discrimination against women, illustrated by the lowest life expectancy for women in the world, and the fact that, contrary to the global trend, women's life expectancy was lower than men's. In addition to administrative and legislative measures, the State party would need to implement a vigorous cultural campaign in order to eradicate gender discrimination.

34. **The Chairperson**, speaking in his capacity as Country Rapporteur, asked whether the State party had undertaken any broad-based, comprehensive research to determine which of the norms of traditional justice violated human rights principles. If so, it would be interesting to know which body had conducted the study and how that body was composed. In particular, he asked whether interested parties, especially women, had been represented on the body. He asked whether the State party had established a procedure for amending those norms.

The meeting was suspended at noon and resumed at 12.20 p.m.

35. **Mr. Hashimzai** (Afghanistan) said, with regard to the questions about the possibility of invoking the Covenant in the courts and about corruption and impunity, that, once Afghanistan acceded to an international instrument, that instrument was incorporated into domestic law, as, for example, the United Nations Convention against Corruption had been. It should not be forgotten that Afghanistan had passed from being a conflict society to being a post-conflict society and was again in conflict, so inevitably there was some corruption and impunity. Once a person was prosecuted, however, it was very difficult to stop the process.

36. With regard to claims of human rights abuses made by some NGOs, his delegation could comment only on claims that could be proved. For example, one organization had claimed without substantiation that there had been 1,100 cases of violence against women. The Government was doing its best. It had signed the Convention on the Elimination of All Forms of Discrimination against Women and a law specifically prohibiting violence against women had been adopted by Parliament. People who committed violence against women were punished and the Government was providing resources for the detection of such offences; when identified, the perpetrators were prosecuted. With regard to the question of remedies for victims, he said that public resources were constrained, but the perpetrator of an offence was required to pay restitution to the victim.

37. With regard to the question of the lack of confidence in the courts, he said that, 10 years earlier, the Government had drawn up a road map for the development of the courts

and an independent judiciary, predicated on security, good governance, the rule of law, human rights and economic and social development. Much progress had been made: the prison system had been improved, new prisons had been built and prisons built by the foreign forces would be handed over to the Afghan authority.

38. There was no impunity for drug traffickers; on the contrary, they were subject to severe punishment. By law, a prisoner had to serve his sentence near his family, but that rule did not apply to drug offenders, who were kept in a special prison in Kabul, if their sentence was longer than five years.

39. With regard to the question of traditional or informal justice, he acknowledged that such justice was prevalent, but it was not always a negative phenomenon. In each of the 50,000 villages of Afghanistan, there would be a person trusted to rule on such matters as land disputes, albeit only if the parties agreed. Such a person must act in accordance with the law and could deal only with civil cases. For the participants, informal justice was easy, quick and cheap; but it had also created difficulties. Sometimes decisions were contrary to the law or were detrimental to the welfare of individuals, especially women. If the law enforcement agencies became aware of them, such cases could be dealt with in a court of law. The Government was conducting research into the matter and would try to establish a link between the informal justice system and the courts, so that the courts could persuade the purveyors of informal justice not to act against women. Increasingly, villages were turning directly to the formal system of justice.

40. With regard to the question of how the free market economy could work if the central Government was not in control of the country, he said that the Government did control virtually all the provincial and district capitals, although that was not always the case in the countryside.

41. **Ms. Burhani** (Afghanistan) said that women's rights were a priority for the Government. In accordance with the provision guaranteeing equal rights for women under the Constitution, the Government had set up the Ministry of Public Health and the Ministry of Women's Affairs. A law on violence against women had been adopted in 2009 and a commission had been established to combat discrimination against women. A consultative body supervised all activities relating to women's rights and a budgetary rule had been introduced that the budgets of relevant ministries and agencies were conditional on due regard for gender issues. Thus, half the budget of some projects was devoted to women's issues or, in some cases, the whole budget was devoted to women's health or to awareness campaigns on women's rights, run by the ministries of education, higher education, women's affairs and public health. Safe Motherhood Day and International Women's Day were observed.

42. There were, however, many difficulties. For example, a national survey had shown that the literacy level among women was 12 per cent. Many women lived under the poverty line and also faced the social and cultural barriers of traditional society. Yet the Supreme Court and the various ministries were tackling the issues, step by step.

43. Uniquely in the world, life expectancy in Afghanistan was higher for men than for women, at 47 years and 45 years, respectively. The reasons were mainly social and economic, such as poor access to maternal health services and a high level of violence against women. It was not coincidental that the mortality rate of children under 5 was also high. The Government's priority was therefore to reduce maternal and child mortality and to improve maternal health. The National Risk and Vulnerability Assessment 2007/08 showed that there had been a 7 per cent reduction in child mortality and progress had been achieved in antenatal care, use of contraceptive services and mental health care. Another survey was due to be carried out in June 2010 and it was hoped that it would reveal further improvements in health and life expectancy.

44. **Mr. Hashimzai** (Afghanistan) said that some members of the Committee had questioned the adoption of Shia personal law, saying that it discriminated against women. In fact, the Constitution allowed minorities the right to have their own family law. After objections had been raised by the international community, however, on the grounds that they were discriminatory, the controversial provisions had been dropped and the law had been amended. There was sometimes a gap between the adoption of a law and its implementation, but such gaps were usually rectified when the courts ruled that a given principle was contrary to human rights.

45. He had used the phrase “people-centred development” in acknowledgement of the fact that the Afghanistan National Development Strategy was a democratic creation: the Government had put forward proposals, which had been debated in every province, and the people’s views had been taken into account in the final version of the strategy.

46. **Mr. Muhmand** (Afghanistan) said that, when the Government had started to implement the Afghanistan National Development Strategy in 2008, it had decided to focus on poverty reduction in the face of social and cultural difficulties. There were three pillars to the strategy: security, good governance and social protection. The benchmarks for the latter were combating drug-related activities in Afghanistan; job opportunities for the young; refugee settlement; provision for the needs of vulnerable women; and children’s interests. A planning body was attached to each benchmark and legislation would be adopted on each. The *Afghanistan Human Development Report* issued by the United Nations Development Programme (UNDP) had noted considerable progress in the realization of the social and economic pillars of the Afghanistan National Development Strategy. Human rights formed a separate subsector and gender was a cross-cutting issue. The largest proportion of the budget allocated to the strategy went on health and education.

47. **Mr. Hashimzai** (Afghanistan) said, with regard to the question of the lack of resources for the Afghan Independent Human Rights Commission, that initially, in the post-conflict era, the Government had lacked funds, but the international community was currently helping it raise revenue through taxes. A new commission had been appointed and UNDP was paying its expenses until the Government was in a position to do so. The commission was indeed independent: its reports were critical of the Government, as well as containing extensive data that had proved useful in the preparation of Afghanistan’s second to fourth periodic reports to the Committee. The commission had branch offices in the provinces and heard claims on human rights abuses. It was already fairly influential and, as it gained experience, would soon become a powerful voice in society. It was planned to set up a human rights unit in the Ministry of Justice, which would report on the human rights performance of other government departments. Eventually there would be a human rights unit in every ministry.

48. **Mr. Muhaqqique** (Afghanistan) said that a new, modern curriculum had been prepared for human rights education in primary and secondary schools, covering the rights of women, parents, teachers, neighbours, elders, children and even animals. Education was an inalienable right: children should have fair and equal access to education, without distinction as to race, ethnicity, religion, language, geographical origin or social status. The Constitution stated that free education to graduate level would be provided to all Afghans. His vision was to develop Islamic transparency on human rights by providing access to quality education to all in order to enable them to participate actively in sustainable development, economic growth and national security.

The meeting rose at 1 p.m.