

.....**AFGHANISTAN:**

Cruel, inhuman or degrading treatment or punishment

Most governments in Afghanistan's recent history have been opposed to the punishments of stoning, amputation and flogging and the practice was generally believed to be rare occurring only in rural areas. However, following the revival of religious sentiments after the Soviet occupation of the country, some armed Mujahideen factions encouraged these punishments in the localities they captured. Senior Mujahideen leaders or local commanders with no legal background disposed summary justice.

Following the emergence of the Taleban armed political group in late 1994 and their military success against opposing factions, the application of these punishments has appeared to increase. The strict interpretation of Islamic law applied by the Taleban includes stoning for adultery, amputation for theft and flogging for drinking alcohol or committing minor sexual offences. Men accused of sodomy have been crushed under a wall which had been toppled on them. All these punishments have been inflicted in public in Taleban-controlled areas after manifestly unfair trials.

The years 1992 to 1995

In the climate of severe lawlessness that dominated much of Afghanistan after the collapse of the Soviet backed government in April 1992, armed Mujahideen guards some of whom were as young as 14 years old acted as 'judges', punishing people for anything they considered to be 'un-Islamic'.

The victims as recorded by Amnesty International during this period included a woman who was stoned to death in Sarobi (near Jalalabad) in May 1993. She was reportedly the wife of a *Hezb-e Islami* commander who had disappeared for eight years and in whose absence she had married another man. When the commander returned and found his wife had remarried he ordered his men to stone her to death in public. In another instance a man was hacked to death in March 1994 in Kabul's Chel Sotoon district for sending his 15-year-old girl to school while the same guards raped the girl next to the dead body of her father.

1995 onwards

Civil war broke out in Afghanistan in 1979 after Soviet troops invaded the country to back the communist government in power. Islamic and tribal groups opposed to the policies of the communist government and the Soviet occupation responded by mounting armed opposition. For ten years the country became a Cold War battleground, as Soviet and Afghan government troops fought against armed Islamic guerrilla fighters backed by the USA and its European allies, Pakistan, Saudi Arabia and Iran.

After the Soviet withdrawal in 1989, fighting continued between government and opposition forces until the communist government finally collapsed in 1992. The fall of the government did not bring peace, however, as the loosely allied and fractious Mujahideen groups started fighting each other for control of territory and administrative institutions. Despite the formation of a coalition interim government, central political authority was weak and unstable, and Afghanistan plunged into lawlessness.

At the end of 1994, a new political and military force - the Taleban - emerged on to the scene. Stating as their aim to rid Afghanistan of corrupt Mujahideen groups, the Taleban have succeeded in capturing large areas of country from opposing armed groups. They are now said to control around 80 per cent of Afghanistan. Fighting however continues between the Taleban and opposition forces and the political situation remains volatile.

With the military success of the Taleban, who are now said to control around 80 percent of Afghanistan, the nature of the civil war in Afghanistan has changed. Compared to the lawlessness of the Mujahideen groups of the past, the Taleban have appeared to bring a degree of order to areas of the country brought securely under their control. However, they have sought to impose this order through the imposition of cruel and inhuman punishments. Stating as their aim to impose on Afghanistan their strict interpretation of Islamic law, the Taleban authorities have been uncompromising in their response when confronted with the criticism that such punishments violate international humanitarian law. Taleban officials have been quoted as saying "The Islamic Emirate (of Afghanistan) will bow under no kind of influence in the implementation and enacting of *Shari'a* punishment and divine orders".

The first reported amputation of hands and feet in Afghanistan in recent years was carried out in Helmand province in February 1995. An Islamic court set up by the Taleban had ordered the amputations on three men found guilty of theft. People reportedly flocked to an open ground in Lashkargah, the capital of Helmand province, where Taleban officials had announced through loudspeakers that the amputations would take place. An Islamic cleric reportedly narrated the background to the theft before two medical doctors severed the limbs of the three men under local anaesthetic. The men were taken to the city's hospital where they received treatment for their injuries. Since then dozens of amputations have been reported from various parts of Afghanistan.

The punishment of flogging has also been inflicted by the Taleban for religious offences such as drinking alcohol or pre-marital sexual intercourse. In such situations, it has been inflicted after a

Taleban court has imposed the sentence. In addition, the personnel of the Department for the Promotion of Virtue and Prevention of Vice give on the spot punishment of whipping and beating to men and women defying the various Taleban edicts.

A new form of cruel, inhuman or degrading punishment was introduced in Afghanistan by the Taleban in early 1998 when five men

Warring factions maintain that they have total control over the areas they have captured. In reality, this is not the case. Each faction is all but an alliance of a wide range of local military commanders who have for many years established a fiefdom in their locality. These commanders have their own agenda and do not necessarily share the religious or political objectives of the faction they are allied with. They change sides either for expediency or after they receive substantial sums of hard currency - usually in US dollars. All that their alliance with a warring faction means is that they agree to keep the forces of the rival factions at bay. They do not consider themselves to be accountable to any central authority. They run their own administration, collect what taxes they can, and subject people in their locality to any punitive action they choose if need be. Both the Taleban and the anti-Taleban forces have blamed some of the excesses against the civilian population on the local forces with whom they have an alliance but over whose conduct they have no control.

convicted of sodomy were sentenced to death by crushing a wall on them. In February 1998, a battle tank was used to topple the wall on three men in front of thousands of spectators at Kotal Morcha north of the city of Kandahar. They were seriously injured but didn't die immediately. Two of them died in hospital the next day; the third man survived but his condition is unknown. In March 1998, two men were placed under a wall of dried mud in the sports stadium of the city of Herat and the wall was bulldozed upon them. They had been detained four months earlier accused of sodomy and sentenced by a Taleban court to this cruel punishment. Others killed in this way include two men convicted of sodomy by a Taleban court and publicly crushed to death on 2 March 1999 in Kandahar when a tank pushed a mud wall on top of them.

Scores of people are believed to have been executed since the Taleban took power. All executions take place in public but only some of these appear to be reported. In cases where the defendant is found guilty of murder, the court orders the "execution" of the prisoner by the relatives of the victim. They may choose to receive so-called "blood money" instead and let the convicted prisoner go free. The court's decisions are said to be final after which the name of the convicted prisoner is presented to Mullah Mohammad Omar for his approval of the sentence. This process appears to suggest that some prisoners are likely to have their sentences commuted, but Amnesty International does not have the details of any such commutations.

Unfair trials

Defendants in the Taleban courts which impose these cruel, inhuman punishments do not receive a fair trial. Judges in these courts, many of whom are virtually untrained in law and unaware of human rights safeguards, reportedly base their judgements on a mixture of their personal understanding of Islamic law and a tribal code of honour prevalent in the Pushtun areas. These courts often decide a dozen different cases in the same day in sessions which may only take a few minutes. Defendants do not have the right to have a lawyer, the presumption of innocence is dispensed with and verdicts are final save, in certain cases, for the decision of the Taleban leader Mullah Mohammad Omar. There is no mechanism for appropriate judicial appeal.

The right to a fair trial is at all times a fundamental right of every human being. It becomes even more important when defendants risk losing their limbs or their lives. Taleban courts are set up in the absence of a constitution guaranteeing the fundamental rights of the citizens, a legislature committed to safeguarding people's fundamental rights, and an administration committed to internationally agreed human rights standards. These courts have been established since 1994 in various parts of Afghanistan.

So far, they do not appear to conform to the internationally recognized standards set out in the Universal Declaration of Human Rights which proclaim the right of every person to a fair and public hearing by an independent and impartial tribunal. These rights exist regardless of the identity or status of the judicial authority.

Prison Conditions

Prison conditions in Afghanistan have been appalling at all times. Prisoners have been held, and continue to be held, in overcrowded detention centres, deprived of adequate food, sleeping space and toilet facilities. Torture is reported to be standard practice. During the Soviet occupation of

the country, prison conditions appeared to have been deliberately created as a form of punishment for anti-Soviet activity. Some of the detainees were held for years with no communication or visits of any kind with their relatives being permitted. Pul-e Charkhi prison in Kabul which had been built originally for some 5,000 prisoners, was by 1996 holding over 10,000 - far in excess of its capacity even after it had been enlarged to an extent. Sanitary conditions were appalling with the majority of prisoners receiving no change of clothes. Conditions of detention in other prisons such as in Ghazni, Kandahar, Jalalabad and Mazar-e Sharif were similarly harsh. Most prisoners had no mattresses or pillows. Cells were intolerably hot in summer and cold, with no heating in winter. Damp cells and poor hygiene were the prime causes of infectious diseases.ⁱ

Between 1992 and 1995 when various Mujahideen warlords ruled different parts of Afghanistan, Amnesty International received reports of the appalling conditions in almost all of the jails run by these groups, including Shura-e Nezar, the two factions of Hezb-e Islami, and Hezb-e Wahdat, to name a few.ⁱⁱ

Prison conditions have not improved in areas controlled by the Taleban. In most cases there has been no news about the whereabouts of the prisoners. It is feared that many of them may be subjected to beatings or other cruel, inhuman or degrading treatment while in custody.

The biggest prison run by the Taleban authorities is reportedly in Kandahar where the majority of political prisoners or military combatants are held. Prisoners are reportedly made to do forced labour on the building of a new storey to the prison. Some prisoners have reportedly died of exhaustion or from the beating by the prison guards. Many prisoners reportedly have burns on their hands from active lime. Food is reportedly inadequate - one piece of bread in the morning and one piece at night - and prisoners who cannot afford to buy additional food face starvation.

Similar reports have been received on the conditions of detention in prisons in Kabul, Shebarghan, Mazar-e Sharif, Qala-e Zaini and Maimana.

On one occasion, the Taleban authorities agreed to a visit by an Afghan human rights organization to the prison in Mazar-e Sharif on 20 February 1999, and reportedly released some 70 prisoners on recommendation from the human rights organization.

There have also been sporadic reports in the Afghan vernacular media about the excessively harsh conditions of detention in jails currently run by armed groups within the anti-Taleban alliance but despite attempts by Amnesty International it has not been possible to obtain detailed testimonies from such former detainees.

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International takes no position with respect to the cultural, political or religious values which underlie judicial or legal systems. However, it opposes all executions as they constitute the ultimate form of cruel, inhuman or degrading punishment in violation of the most fundamental right of every human being: the right to life. It considers that judicial amputation as well as other forms of corporal punishment and torture violate the most elementary standards of humane treatment. The prohibition of mutilation, cruel treatment and torture is part of customary international law and is recognized in Common Article 3 of the Geneva Conventions which is binding on all parties in Afghanistan.

The present courts in Afghanistan which impose cruel, inhuman punishments must be considered to be arbitrarily constituted, and it is doubtful that in their present form they can provide a fair trial. However, Amnesty International acknowledges the need for a judicial mechanism to bring to justice those guilty of criminal offences including perpetrators of human rights abuses. To that end it is urging all armed groups in Afghanistan including the Taleban to seek assistance from the United Nations in ensuring that any judicial processes they administer adhere to internationally-recognized standards for fair trial.

Recommendations to the Afghan Armed Groups:

- Forbid the imposition of the death penalty, amputations and other forms of cruel, inhuman or degrading punishments in areas they control.
- Forbid the execution of any sentences which may have already been imposed by these courts.
- Release all prisoners who have been detained for their peaceful exercise of fundamental human rights including their advocacy of an end to the armed conflict and the establishment of a broad-based government in Afghanistan.
- Provide detailed information about the whereabouts and status of other prisoners;
- Ensure that no one is arrested or detained arbitrarily on account of their non-violent opposition to the policies of the warring factions.
- Ensure that no one is tortured or ill-treated
- Seek assistance from the United Nations in setting up courts that adhere to the human rights principles which include presumption of innocence before conviction; examination of the case by judicial authorities who are competent, impartial and independent; the right of the accused to defend themselves in person if they so wish, or through a legal counsel of their own choice in an atmosphere free from coercion or intimidation; and the right of the accused to examine witnesses against them and to obtain the attendance and examination of witnesses on their own behalf.

- Provide Afghan and international human rights and humanitarian organisations access to all prisons in Afghanistan

Recommendations to the International Community:

- The international community and particularly those governments with influence over the warring factions in Afghanistan should bring pressure to bear on the armed groups to respect fundamental human rights standards as well as the principles of humanitarian law - specially those set down in the Common Article 3 of the Geneva Conventions of 1949

The main countries with influence are brought together by the UN in the “Six plus two” group, which meets regularly under UN auspices to discuss ways of bringing peace to Afghanistan. This consists of the six countries bordering Afghanistan - Pakistan, Iran, Turkmenistan, Uzbekistan, Tajikistan, China - plus the USA and Russia.

Other countries with influence that have attended UN meetings on Afghanistan: Egypt, France, Germany, India, Italy, Japan, Kazakhstan, Kyrgyzstan, Netherlands, Saudi Arabia, Sweden, Turkey, UK and the Organization of the Islamic Conference (OIC).

Afghanistan Support Group brings together main donors and organizations working in Afghanistan. These countries overlap with the UN groupings: Denmark, Finland, France, Germany, Italy, Netherlands, Sweden, Britain, the US, Australia, Russia, Canada, Norway, Japan, and the EU’s executive commission.

Please send appeals based on the recommendations above to:



YOUR OWN GOVERNMENT

THE EMBASSIES OF PAKISTAN, SAUDI ARABIA, IRAN, AND THE USA IN YOUR OWN COUNTRY

THE TALEBAN :

Alhaj Mullah Mohammad Rabbani

Salutation: Dear Mullah Rabbani

**(Chairman of the Taleban Caretaker Council)
Embassy of the Islamic Emirate of Afghanistan
House No 8, Street No. 90
G-6/3 Islamabad
Pakistan**

and

**Mullah Mohammad Omar
(leader of the Taleban)**

Salutation: Dear Mullah Omar

**Embassy of the Islamic Emirate of Afghanistan
House No 8, Street No. 90
G-6/3 Islamabad
Pakistan**

THE UNITED FRONT (ANTI-TALEBAN ALLIANCE):

**Embassy of the Islamic State of Afghanistan
31 Prince's Gate
London
SW7 1QQ
United Kingdom**

ENDNOTES

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- i. See Amnesty International, *Afghanistan: Torture of Political Prisoners* November 1986 (AI Index: ASA 11/04/86).
 - ii. Amnesty International *Afghanistan: International responsibility for human rights disaster*, November 1995 (AI Index: ASA 11/09/95).