

AFGHANISTAN

New forms of cruel, inhuman or degrading punishment

Introduction

Amnesty International has received reports that on 7 September 1992 three men, Sayed Sakander, Mohammad Gul and Mohammad Rafit, were publicly hanged in Kabul after an Islamic court had found them guilty of robbery, looting and murder, and sentenced them to death. According to reports in the international press, the public had had no access to the trials. The three men apparently had had no right to appeal against their sentence to a higher court or to seek pardon. A government spokesman declared that further executions may follow as similar cases were pending in court.

Defence Ministry spokesman Yunus Qanuny declared, their deaths served as an example to others and were necessary to restore law and order in the capital. Another official told the thousands of spectators of the executions that "the men are being executed so people can feel safe and lead a normal life. Let this be a lesson to others." Yunus Qanuny declared that other people had been detained for similar

crimes and their cases were pending in court. He did not specify their number.

On 7 June four members of the militia were publicly hanged in the southern town of Kandahar after an Islamic court had found them guilty of breaking into a private house, raping a girl and killing the two Mujahideen who tried to arrest them after the crime. To Amnesty International's knowledge this was the first instance of an Islamic court imposing the death penalty in Afghanistan and these were the first instances of judicial executions in Afghanistan after the change of government in late April 1992.

Amnesty International is concerned that under new government policies the death penalty may be extended to crimes for which lesser punishments were imposed in the past. Amnesty International also fears that forms of punishment such as amputation of hands and feet, public stoning to death and flogging may be introduced which are considered cruel, inhuman and degrading treatment by international human rights standards.

Amnesty International is also concerned that in the context of a new government reform program, several fundamental freedoms such as the freedom of association and the freedom of expression have been severely restricted. The organization fears that people who persist in peacefully exercising these rights may be detained or punished.

The organization also fears that the human rights of religious minorities may be insufficiently protected and that they may have been exposed to harassment and attack.

In July and August 1992 fierce fighting broke out between different Mujahedin groups and between the government and the Hesb-e-Islami (Islamic Unity Party). Reports indicate that several hundred people have lost their lives in the course of repeated heavy bombardment of Kabul. Amnesty International is concerned that the civilian population may have been targeted by the firing and bombardment.

Introduction of Islamic law

Though the constitution of the then Republic of Afghanistan adopted by the Loya Jirga (Supreme National Tribal Assembly) in 1987 declared that Islam was the religion of Afghanistan and that "no law shall run counter to the principles of Islam", in practice trials were held under the secular penal code of Afghanistan. Several Mujahideen groups are, however, known to have set up Islamic courts in the territories under their control which were presided over by Muslim clergy and sometimes tribal elders and Mujahideen commanders. For instance in January 1990 four members of the Hesb-e-Islami (Islamic Unity Party) were reportedly hanged in public after an Islamic court in Taloqan had found them guilty of involvement in the murder of more than 30 commanders of the rival Jamiat-e-Islami (Society of Islam) in July 1989.

Following the resignation of the communist government of President Najibullah on 16 April 1992, a Jehad (Holy War) Council

was formed under an agreement signed in Peshawar, Pakistan, by the major Mujahideen groups. Its chairman, Professor Sibghatollah Mojaddedi, leader of the moderate Jabha-i-Milli Najat-i-Afghanistan (National Liberation Front of Afghanistan) and former president of the Afghan Interim Government in exile in Pakistan, assumed the office of President on 28 April. He was, as stipulated in the Peshawar Agreement, replaced on 28 June by another interim government headed by Professor Burhanuddin Rabbani, leader of the Jamiat-e-Islami. The new government is to hold elections within four months and would then be replaced by an elected government.

The interim government of President Mojaddedi altered the state's name to the Islamic State of Afghanistan to reflect its new Islamic orientation. When he assumed office, Professor Mojaddedi mentioned plans to introduce Islamic law and on 30 April, amid fighting between rival Mujahedin groups and looting in Kabul, the state-controlled Radio Kabul warned that offenders would be punished in accordance with Islamic law. However, Professor Mojaddedi is reported at the end of May to have counselled against rushed Islamization and the 51-member Jehad Council, a broadly representative body without clearly defined functions and powers, took only cautious steps towards the introduction of Islamic law.

The new president, Professor Burhanuddin Rabbani, is known to favour a more rigorous program of reform, including the speedy introduction of Islamic law. The 10-member Leadership Council,

composed of the Mujahideen leaders who signed the Peshawar agreement and presided over by Burhanuddin Rabbani, began to implement a reform program already during the tenure of the interim government of President Mojaddedi. Amnesty International is not aware of a formal mandate of the Leadership Council to effect wide ranging legal changes.

In one of its first sessions on 6 May, the Leadership Council decided to set up a special tribunal to try "traitors and violators" and to safeguard public security. The Leadership Council also declared that all laws that do not conform to Islamic injunctions stand abolished, apparently as of that date. To Amnesty International's knowledge, the Leadership Council did not specify which laws were to be abolished, nor by which body and procedure they were to be identified. In early July, under the interim government of President Rabbani, the High Judicial Council of the Supreme Court appointed a commission to assess laws and the procedural guidelines of the judicial system. When the commission took up its work on 7 July, Chief Justice Mawlawi Abdollah Fayzolbari advised the members of the judiciary to assess all laws in the light of Islamic principles.

The Leadership Council also confirmed the general amnesty declared by President Mojaddedi after the fall of the government of President Najibullah which benefitted a large number of political prisoners. It clarified that the amnesty which applied to all members of the former government, constrained only state prosecution and did

not affect the rights of individuals to initiate proceedings regarding the same offences to which the amnesty extends.

The current structure and status of Afghan courts remains uncertain. On 11 May, President Mojaddedi announced the establishment of a new court with "full authority", although its jurisdiction may have been limited to Kabul. From the reports available to Amnesty International it is not clear if the Islamic court in Kandahar which sentenced four members of the militia to death had been established earlier and continued to function under the new government or whether it has been newly set.

While Mujahideen who caught alleged looters and paraded them through the streets of Kabul threatened that the offenders would have their "hands surgically removed", Minister for Islamic Affairs in the interim government of President Mojaddedi, Maulawi al-Salah Rakhmani, is reported to have said in early May: "As for thieves, we don't intend to cut off their hands. May be in the future this will change, but for now we hope to find another way to punish thieves." Some days later, on 27 May, Deputy Minister of Justice in the Mojaddedi government, Abdul Rahim, told an international news agency in an interview that under Islamic law, which had now replaced all other laws, adultery would be punished with stoning to death and offenders convicted of theft would have a hand or a foot severed. The consumption of alcohol would be punished with 80 lashes, while the death penalty may be imposed for trading in alcohol. The

purchase, sale and consumption of alcoholic drinks and other narcotics had earlier been banned by the Leadership Council on 7 May.

The publicly announced change to an Islamic system of law appears to have created a climate in which some members of the public have taken the law in their own hands in a manner that they may believe to be in accordance with Islamic precepts. For instance it was reported on 24 May that vigilante groups had executed 66 of some 120 people caught looting in Kabul. Islamic law does not prescribe the death penalty for theft or even robbery, which is in Islamic law distinguished from theft, and it is unclear under what authority the vigilantes were acting.

Restrictions of fundamental freedoms

The Leadership Council has imposed restrictions on several fundamental freedoms in the context of enforcing Islamic law and norms of behaviour.

Freedom of expression appears to have been severely restricted. The Leadership Council on 10 May approved a resolution which says among other things: "The Ministry for Culture and Information is assigned to remove all communist and previous government's slogans from the walls and other places and to replace them with Islamic slogans." On 12 May the Leadership Council announced that all

Marxist and other alleged "anti-religious" books would be seized and held in a specified place.

On 1 June the Leadership Council decided to set up a body to control television and radio with a view to removing "un-Islamic elements". The transmission of music on Radio Kabul is, according to a decision of the Leadership Council of 27 May, not "acceptable any longer". On 28 July female broadcasters were removed from national television. On 7 May the Leadership Council declared "All Muslim sisters should strictly observe Sharia' Hejab (Islamic dress)".

On 9 May the Acting Minister for Culture and Information in the Mojaddedi government, Mohammad Siddique Chakari, admonished cinema owners in Kabul that "cinemas, which play an important role in society should show films which are in line with the spirit of Islam. Artistic teaching and education should be in keeping with Mohammad's Sharia ... The showing of films that are against the spirit of Islam, obscene and made with the aim of making money should be avoided". On 2 May several cinema houses in Kabul that showed films deemed to be offensive were reportedly destroyed by Mujahideen, and on 9 May some cinema houses were reportedly raided by armed Mujahideen, who ordered everyone present to leave the room and attend Friday prayers in the mosque.

The freedom to form a political association has similarly been curtailed. On 1 June the Leadership Council passed a resolution to

ban all non-Islamic parties; earlier the Watan (Homeland) Party had been dissolved though not formally banned by the government.

The Leadership Council also imposed certain Islamic religious obligations. On 12 May it for instance declared: "All civil servants and employees of state and private enterprises must perform congregational prayers at their places of work."

There has been no official statement by either the interim government of President Mojaddedi or the present interim government of President Rabbani on how breach of the dress code for women, the ban on non-Islamic writings, the ban on forming non-Islamic parties or the injunction to take part in congregational prayers will be punished.

The Government of Afghanistan has so far not issued any public statement of how the fundamental rights of the non-Islamic minorities are to be safeguarded. Amnesty International raised its concern with the new government after it had received reports that on 2 May the homes of Hindus and Sikhs had been attacked. On 18 June unidentified Mujahideen were reported to have tied up three members of a Hindu family in Kabul and to have electrocuted them. While Afghan officials attributed such attacks to the general lawlessness prevailing in Afghanistan, President Mojaddedi reportedly apologized to the non-Muslim minority and promised them the same protection as available to any other person living in Afghanistan. Amnesty International is concerned that the government's reform

programm may have created an atmosphere in which members of non-Muslim minorities may be particularly vulnerable to human rights violations.

Amnesty International's concerns and recommendations

Amnesty International in May 1992 expressed its concern to the interim Government of Afghanistan about reports of torture, ill-treatment and extra-judicial executions between late April and early May 1992 (see: Afghanistan: Reports of torture, ill-treatment and extrajudicial executions of prisoners, late April - early May 1992, AI Index: ASA 11/01/92). The government of President Mojaddedi responded to Amnesty International by reiterating its firm dedication to the observance of civil and political rights of all Afghans. However, the organization is concerned that the legal reforms initiated by the Leadership Council and the current government may result in the imposition of punishments that constitute cruel, inhuman or degrading treatment according to international human rights standards.

While Amnesty International takes no position with respect to the cultural, religious or political values that underlie a particular system of law, Amnesty International insists that laws and judicial

procedures must conform to internationally recognized human rights standards. As a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Afghanistan is legally bound to observe the provisions of these instruments and to ensure that they are fully reflected in the country's human rights protection. President Rabbani in his first speech on national television after assuming office declared, "the Islamic state of Afghanistan values and respects the charter of the UN, the world declaration of human rights and other accepted principles and standards of international law, which do not contradict Islamic tenets".

Amnesty International is also concerned that the new legal and judicial system and the new type of courts set up or to be set up in Afghanistan have not been made known to the public. Article 14 of the ICCPR lays down the provisions for a fair trial which include the requirement that all defendants have full information concerning laws, court procedures and possible punishments.

Amnesty International is also concerned that the persons convicted by an Islamic courts in Kandahar and Kabul and subsequently executed, may not have had adequate legal assistance as laid down in Article 14(3)(d) of the ICCPR which says that everyone shall have the right "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right ...". Further Article 14(5) lays down that "Everyone convicted of a crime shall

have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Article 6(4) of the ICCPR explicitly states that "Everyone sentenced to death shall have the right to seek pardon or commutation of the sentence." Amnesty International fears that the four persons convicted and executed in Kandahar and the three persons convicted and executed in Kabul may not have had the possibility to appeal to a higher court against their sentence. Amnesty International urges the Government of Afghanistan to ensure that all trials, particularly those involving offences for which the death penalty can be imposed, strictly conform to the fair trial and appeal provisions contained in the ICCPR.

While recognizing the severity of the crimes with which the four persons in Kandahar and the three persons in Kabul were charged, Amnesty International unconditionally opposes the death penalty as it constitutes the ultimate form of cruel, inhuman and degrading treatment and is a violation of the right to life. It urges the Government of Afghanistan to ensure that no further executions take place. Amnesty International also believes that public executions exert a brutalizing effect on everyone present.

Punishments such as amputation of hands or feet violate Article 5 of the Universal Declaration of Human Rights which states: "Nobody shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Similarly, Article 7 of the ICCPR and Article 16 of the Convention Against Torture prohibit such

punishments. Amnesty International urges the Government of Afghanistan to ensure that in the process of legal reforms in Afghanistan all possible measures are taken to prevent the imposition of cruel, inhuman or degrading punishments.

Amnesty International is also concerned that several fundamental freedoms, such as the freedom of association laid down in Article 22 of the ICCPR and the freedom of expression as laid down in Article 19 may be severely restricted by the provisions of the government's reform program. The organization is concerned that people who persist in peacefully exercising these rights may be imprisoned; the organization would consider such persons prisoners of conscience.

Article 27 of the ICCPR lays down the right of religious minorities to enjoy the right to "profess and practice their own religion", which the government is called upon to protect. Amnesty International believes that the present Government of Afghanistan should make a strong public statement in support of the rights of religious minorities in order to prevent further violations of such rights by members of Mujahideen groups, the army and the militia. The Government of Afghanistan should also ensure that violations of human rights of religious minorities that are reported to have taken place in recent months are investigated by an independent and impartial inquiry and that those found to have been responsible for them are brought to justice. Amnesty International also urges the present Government of Afghanistan to provide for the protection of

human rights of the religious minorities in the new constitution of Afghanistan.