

AMNESTY INTERNATIONAL

Public Statement

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Afghanistan: President must reverse death penalty decision

Amnesty International urges the new Afghan president to reverse the death sentence passed against six men and signed by President Hamid Karzai on his last day in office. Five of the men were convicted in connection with the gang-rape of four women in Paghman district of Kabul in August 2014 and a sixth was convicted of robbery, kidnap and murder in a separate case.

During his inauguration speech on 29 September 2014, Afghanistan's new president, Ashraf Ghani Ahmadzai, acknowledged the weaknesses in the Afghan judicial system, including corruption and unfair trials. The trials of seven men in the gang-rape case, of whom five were given death sentences and two received sentences of 20 years' imprisonment, have been marred by inconsistencies, un-investigated torture claims and political interference.

On the night of 22 August, a group of armed gang members dressed in police uniforms stopped cars travelling along a road between Paghman and Qargha areas in the vicinity of Kabul. The occupants of the cars were returning from a wedding. The gang members reportedly tied up the men travelling in the cars and then kidnapped and gang-raped at least four women. They also stole valuables. The case only came to the attention of the police after the rape victims were taken to a local hospital by family members for treatment, and the doctors informed the police about the incident.

Police conducted an investigation and on 29 August arrested seven of 10 suspected perpetrators on suspicion of rape, armed robbery and kidnapping. The seven men were put on trial and on 7 September convicted by a primary court of "zina" (sex outside marriage, a charge which failed to acknowledge the case as rape) as well as armed robbery, kidnapping and crimes against national and international security and sentenced to death. On 15 September, an appeals court in Kabul – which confused matters further by referring to "rape" rather than "zina" – upheld the conviction and confirmed the death sentence for five of the men, sentencing the other two to 20 years in prison. On 24 September, the Supreme Court upheld the convictions and the death penalty for the five men, which was subsequently signed-off by then President Karzai on 27 September.

By originally charging the men with "zina", the authorities continued a pattern of addressing rape in a completely flawed manner – not as a crime against the dignity, autonomy and bodily integrity of the woman, but as a crime of "morality" and a crime against marriage, thereby objectifying women instead of treating them as right-holders.

Several aspects of the trial hearings appear to have violated the right of the defendants to a fair trial:

- At least one of the seven suspects claimed to have been tortured by police officers into confessing to the crime before the trial started. These claims have not been investigated, and were not mentioned by the judge in the appeals hearing, nor assessed by the Supreme Court;

- It was not clear on what basis the men were being charged and convicted at the primary and appeals stages. They were originally charged with “zina”, a provision under the penal code which is itself a violation of human rights, in particular the right to privacy, as it criminalizes consensual sexual relations between adults. But the appeals court apparently convicted them of rape, thereby in effect convicting them of a crime for which they were neither previously charged nor convicted, and could therefore not be prepared to defend themselves against. The judge in the primary court also referred to “crimes against national and international security”; but Afghan law contains no specific provisions on crimes against international security;
- The trial was marred by political interference. Before it had even started, President Karzai’s office called for “the strongest possible sentences as soon as possible” against the accused, while the president himself said that he urged the Supreme Court to hand down death sentences. These and similar statements undermined the prospects of a fair trial and the defendants’ rights to a presumption of innocence;
- The short period of time from their arrest, through the trial, conviction, two appeals and the endorsement of the convictions and sentences by the Supreme Court denied the defendants and their lawyers adequate time to prepare their defence.

Amnesty International welcomes the acknowledgment by President Ghani in his inaugural speech of deep flaws in Afghanistan’s legislation, law enforcement system and judiciary, and his commitment to addressing and tackling gender-based violence against women. Amnesty International considers rape an appalling crime and a serious abuse of human rights and is campaigning against sexual and other violence against women worldwide.

At the same time, the organization opposes the death penalty in all circumstances and for all crimes, considering it to be a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. There is no evidence whatsoever that the death penalty acts as a particular deterrent to crime, and executing these men will do nothing to tackle the weakness of the administration of justice in Afghanistan nor will it challenge the gender discrimination and stereotyping that fuels the high levels of violence against Afghan women and girls.

President Ghani should commute these and all other outstanding death sentences, and impose an immediate moratorium on all executions, as a first step towards abolition of the death penalty.

President Ghani should also order a thorough and impartial review of the evidence against the defendants as well as the proceedings in the initial trial and the appeals court. Crucially, he must ensure that the alleged torture by police of the defendants is independently and thoroughly investigated and if it is verified, the perpetrators must be brought to justice and all statements obtained by torture must be withdrawn as evidence in any subsequent proceedings.

The Afghan authorities must ensure that these and all rape survivors in Afghanistan receive justice. They should also receive all necessary medical, psychological and other support and other forms of reparation in accordance with international standards, and protection from re-traumatization during the judicial process.