

AFGHANISTAN

The human rights crisis and the refugees

Photo caption: A family fleeing Kabul in late 1993 after their house had been bombed

1. Introduction

Hundreds of Afghans in Western Europe and a number of other countries whose claims to asylum have been rejected continue to live in fear of being deported to Afghanistan. They are usually permitted to stay in the countries that have denied them asylum, but their status is unclear and subject to change. To Amnesty International's knowledge, one group of Afghans were deported against their will from Russia to Afghanistan in 1994 and in 1993, one Afghan asylum-seeker was forcibly returned from Denmark to Kabul.¹

In scores of cases when there was threat of deportation, Amnesty International has intervened to appeal against the forcible return of Afghans the organization believed would be at risk of being subjected to human rights violations in Afghanistan.

¹ See, *Afghanistan: political crisis and the refugees* (AI Index: ASA 11/01/93).

Although no other deportation of Afghan asylum-seekers have been reported in recent years, Amnesty International is concerned about the view held by some governments that Afghans can return to certain areas in Afghanistan. In Amnesty International's view, this approach is dangerous. Grave human rights violations are reported from all parts of the country and are reportedly perpetrated by virtually all the armed Mujahideen groups. In a number of areas, some political or ethnic groups may be temporarily safe but the changing political alliances and the frequent changes in the control of territory can create an unexpected political atmosphere conducive to human rights violations. Areas previously considered safe for some groups may suddenly be controlled by other groups which oppose these groups and expose them to human right abuses.

In Afghanistan all sections of the population have been subjected to human rights violations and continue to be at risk of being subjected to further human rights violations including torture and killings. Those most at risk include members of specific ethnic, religious or political groups in areas controlled by warlords hostile to them, educated Afghan women, secular-minded individuals, Afghan academics and other professionals, officials of the former government and journalists covering the political crisis. Virtually all warring factions are reported to be engaged in grave human rights abuses; some human rights abuses appear to be permitted, condoned or even ordered by the political groups' leaders, while others may be committed by ordinary armed guards who are loosely affiliated to a political grouping but not accountable to them.

Amnesty International is urging all governments to ensure that no Afghan asylum-seeker is compelled to leave a country of asylum as

long as the current human rights crisis persists in Afghanistan. It reiterates its view that there is no reliable means of ensuring that such returned asylum-seekers would not be subjected to human rights abuses.

Governments should also refrain from deporting Afghans whose asylum claim has been rejected to either Iran or Pakistan. In Pakistan, where all Mujahideen groups maintain a strong presence, such returned asylum-seekers may not be safe from attacks and human rights abuses by such groups. In Iran, the government is reported to have periodically deported Afghans against their will to Afghanistan, irrespective of the risks to which they may have been exposed upon return.

Amnesty International believes that the renewed flight of refugees from Afghanistan has arisen as a direct consequence of serious and widespread human rights violations in the country, many of which are committed in the context of the ongoing civil war. It therefore urges all governments to pay close attention to the link between the human rights catastrophe in the country and the refugee crisis. Only if the grave levels of human rights violations in Afghanistan are brought to an end, will the mass exodus of Afghans stop and a safe return of Afghan refugees become possible.

2. Historical background

Afghanistan became a Cold War battleground when Soviet troops entered the country in December 1979 to keep the newly established communist government in power. Human rights violations and abuses by the government and the armed opposition escalated in the following years. Domestic civil structures were unable to combat these and international human rights organizations found it increasingly difficult to investigate them.

The withdrawal of Soviet troops - completed in February 1989 - did not end the civil war. The former USSR continued to supply arms to the government side while the USA, Pakistan, Iran and Saudi Arabia supplied arms to the Mujahideen.

Some improvement in the human rights situation was noticeable between 1987 and early 1992; the International Committee of the Red Cross and the UN Special Rapporteur for Afghanistan were allowed to visit the country and to monitor human rights violations and abuses. Nonetheless, gross human rights violations and abuses continued to be committed by both sides in the conflict.

In April 1992 the government of President Najibullah was overthrown, but was not replaced by an effective central government. Lawlessness spread all over the country and the civilian population was subjected to widespread human rights abuses as warlords sought greater power for themselves, for their political party or for their clan. Kabul, the capital, suffered most as it became a battle-ground

for rival political groups fighting each other fiercely over the control of various administrative institutions.

3. The current political situation

No effective central authority has yet been established in Afghanistan, and the UN efforts to promote a broad-based government acceptable to the various factions have so far been unsuccessful. The term of office of Afghanistan's current president, Borhanuddin Rabbani, came to an end on 28 December 1994 but he has remained president pending the outcome of the current UN-sponsored peace negotiations. Reports indicated that the UN peace envoy, Mahmoud Mestiri, had finalized a proposal for transfer of power to broad-based interim administration by the end of February but this plan had to be postponed in the light of recent political developments, particularly the emergence the new political grouping, the Taleban (see below). As of late February 1995, President Rabbani's government had not extended its control beyond some areas of Kabul but forces allied to his party, Jamiat-e Islami, controlled a number of provinces in the north and west of the country.

Afghanistan continues to be in the grip of a devastating civil war with an estimated 25,000 people, the majority of whom are believed to have been civilians, killed since April 1992 when the Mujahideen forces took power. Kabul itself has remained divided by the various armed political groups.

Alliances and hostilities between the warring factions are based on personal loyalties, ethnic identities and political affiliation to any one of the main political groupings; they are subjected to frequent changes. Armed guards of one political group reportedly consider any member of a clan or residents of a locality affiliated to a rival political group as an enemy whether or not they are combatants. All warring factions reportedly carry out deliberate artillery attacks on residential areas. At the same time, no faction is believed to have made any effort to move its own defence and artillery system outside a residential area. Consequently, with the border between what is and what is not seen as a military target being blurred, a couple of armed guards patrolling along a street could invite the bombardment of that whole locality by a rival faction.

Artillery attacks against residential areas invariably result in the killing of unarmed civilians and the destruction of their homes. The vast majority of the victims have been killed in the streets of Kabul, at bus stops, in their houses or in dwellings in the city where they had sought shelter after their homes had been destroyed. Many unarmed civilians have died or have been injured in deliberate attacks on mosques, schools and hospitals in Kabul. Similar attacks have been carried out on residential areas in other parts of the country.

It is extremely difficult to identify any permanently safe area where the right to life and the security of the person are ensured.

Afghans fleeing Afghanistan have reported a general sense of continued insecurity throughout the country.

Until early 1995, there were two major political groupings fighting each other over control of territory and political authority in Afghanistan. These were:

a) The alliance referred to as Shura-e Nezar (Supervisory Council) under Ahmad Shah Masoud which includes all commanders belonging to Jamiat-e Islami including the influential governor of Herat province, Ismael Khan. It also includes a number of smaller parties.

b) The alliance between the northern General Abdul Rashid Dostum and Gulbuddin Hekmatyar referred to as the Supreme Coordination Council. It also includes the Shi'a party, Hezb-e Wahdat.

As of February 1995, a strong and popular political force known as the Taliban (religious students) had reportedly taken control of nine of Afghanistan's 30 provinces, by far the largest number of provinces controlled by any single party. The Taliban, many of whom are graduates of Pakistani Islamic colleges, emerged in November 1994 when they captured the city of Kandahar from Mujahideen commanders and moved on to the provinces of Helmand, Khost and Wardak. They faced little effective resistance from other parties. Their most significant advance was the capture in February 1995 of the headquarters of Gulbuddin Hekmatyar's Hezb-e Islami in Charasyab south of the capital, Kabul.

Little is known about the Taleban's actual political program, although they have appeared to be orthodox Muslims intent in establishing a strict Islamic system.

4. The human rights catastrophe

A human rights catastrophe continues to be unfolding in Afghanistan as deliberate and arbitrary killings, arbitrary detention and torture including widespread rape of women and children, are reportedly carried out by virtually all armed political groups.

There is no civilian political structure with substantive authority in place, and armed political groups are able to act with total impunity. The judicial system is virtually non-existent in most parts of the country and armed faction leaders sentence prisoners to execution, stoning to death or whipping with no legal safeguards. In a few areas, Islamic courts are reported to conduct trials leading in some cases to public flogging or executions. Thousands of people have been unlawfully imprisoned in detention centres maintained by Mujahideen factions on grounds of political opinion, religion or ethnic origin. Hundreds of people have "disappeared".

Tens of thousands of civilians have been killed and tens of thousands more have been wounded in artillery attacks deliberately aimed at residential areas by all factions in the civil war. These killings

have been carried out with arms and ammunition supplied to the political groups by outside powers. Vast quantities of arms were sent to Afghanistan up to April 1992 when the government of the Watan (Homeland) party was overthrown, but it is believed that fresh supplies of arms and ammunition have continued to reach the warring factions from countries in the region. Hundreds of thousands of people have been displaced or have fled the country as a result of the civil war and to escape widespread and systematic human rights violations. It is estimated that some 3,000,000 Afghans refugees are living in Iran and Pakistan.

5. Main patterns of human rights violations

EXTRAJUDICIAL EXECUTIONS/DELIBERATE AND ARBITRARY KILLINGS: Hundreds, possibly thousands, of men, women and children have reportedly been executed extrajudicially by government forces or killed deliberately and arbitrarily by armed guards of the various Mujahideen groups during raids on homes in Kabul and other parts of the country.

TORTURE: Unarmed civilians belonging to, or suspected to belong to, rival political or ethnic groups reportedly continue to be subjected to torture and other forms of cruel, inhuman or degrading treatment or punishment in private jails of the Mujahideen groups. Former detainees have said they had been beaten with rifle butts, tied to dead bodies for several days and forced to eat what they were told was human flesh. Some detainees have reportedly received electric shocks,

have been subjected to near-death suffocation, or have had their testicles crushed by pliers. Scores of detainees have reportedly died under torture. Prisoners who cannot pay enough money for their release are most at risk of further torture or of being deliberately and arbitrarily killed. Rape, a form of torture, is reportedly inflicted on male and female detainees, often on children and juveniles.

POLITICAL DETENTION: People continue to be unlawfully imprisoned in private detention centres on grounds of political opinion, religion or ethnic origin, or as hostages for eventual exchange for other prisoners or to extract money. Journalists covering the war have been detained or imprisoned by the warring factions.

"DISAPPEARANCES": Thousands of people have reportedly "disappeared" in all parts of Afghanistan since April 1992, after they had been abducted by armed guards belonging to the various armed political groups.

UNFAIR TRIALS AND CRUEL PUNISHMENTS: The judicial system is virtually non-existent in most parts of the country and leaders of armed groups try, convict and sentence prisoners to punishments including executions, stoning to death or whipping. In a few areas, Islamic courts are reported to have dispensed summary justice, including public flogging or executions. The trials by warlords and Islamic courts reportedly fail to meet internationally recognized standards for fair trial. Adequate possibilities for defence, impartial

hearings, legal assistance to the defendants, or the possibility of appeal against sentences are simply non-existent.

6. The food blockade

A food blockade was imposed on Kabul and a number of other cities for several months during 1994. It was lifted in December 1994. According to reports, an agreement was reached between the UN agencies and Gulbuddin Hekmatyar in early 1994 under which equal amounts of food supplies would go to the areas of Kabul under the control of Jamiat-e Islami as were provided to the Charasyab headquarters of Hezb-e Islami outside Kabul. Under this agreement, the Hezb-e Islami undertook not to stop the movement of food convoys from Pakistan to Kabul. The then Prime Minister Hekmatyar reportedly demanded that food supplies despatched to Kabul should not be used to feed President Rabbani's forces and that Hezb-e Islami monitors should accompany food convoys going to Kabul. This condition was reportedly accepted by the UN. Nonetheless, Hekmatyar refused to provide monitors after the first few convoys entered the city earlier in 1994. The result was that no convoys could be sent to Kabul because they would be subjected to attack. In January 1995, Hezb-e Islami was reported to have imposed the food blockade again. In February 1995, when the headquarters of Hezb-e Islami in Charasyab were taken over by the Taleban, the food blockade was lifted and food supplies were allowed to reach Kabul.

7. The displaced persons

Following the closure of the border by Pakistan in January 1994, hundreds of thousands of people have been newly displaced within Afghanistan and the number is growing. Most of the displaced people from Kabul are received in camps in Jalalabad. Two camps are reportedly run by the UN agencies, one by the ICRC and two by the local governing Shura which is a coalition of a number of political groups. Altogether, almost one million Afghans have reportedly been displaced by the conflict in the country. As of November 1994, 250,000 displaced Afghans had arrived in camps around Jalalabad since the Mujahideen took power in Kabul in April 1992.

According to reports, certain categories of displaced Afghans in these camps have complained that they have received death threats and that their lives are at risk. Such people include both men and women, usually with a professional background - doctors, former civil servants, government employees or clerks. Some former members of the KHAD (the previous government's secret police) have also expressed fears of being at risk in these camps.

8. Refugees in Iran

Early in 1994, the governor of Iran's Khorasan province where a significant proportion of Afghan refugees live, was reported to have announced a detailed plan for the return to Afghanistan of Afghan refugees. He had also reportedly expressed concern about the status of

some Afghan children whose parents had not properly registered their marriages. However, the Iranian authorities stated in October 1994 that no plan for involuntary repatriation of Afghan refugees was being pursued. They further explained that there are three categories of Afghan refugees in Iran:

1. Afghan refugees with permanent residence permits who have registered their marriages and whose children have identity cards. They number about 1,270,000 and can stay in Iran with no restrictions.

2. Afghans with temporary residence permits who have not obtained appropriate registration documents and whose children have no identity cards. If they wish to stay in Iran they have the opportunity to apply for, and obtain, permanent residence permits. If they choose not to obtain such documents, they would have to leave Iran. The number of Afghans with such temporary residence permits is about 560,000.

3. The third category are those who have no residence permit at all because they have not applied for either temporary or permanent permits. If they apply to the authorities, they would get temporary residence permits which would allow them to stay in Iran. Their number is 50-60,000.

However, aid agencies have reported that a significant proportion of Afghan refugees returning to Afghanistan in September 1994 had

been compelled to leave Iran. According to reports, Iran is planning to take new steps for the return of Afghan refugees in 1995.

9. Refugees in Pakistan

Since Pakistan's closure of the border with Afghanistan at Torkham in January 1994, no Afghan refugees can legally enter Pakistan to escape the risk of human rights violations in Afghanistan. However, Afghans may obtain visas in Jalalabad. About 100 Afghans are said to be given visas each day.

The majority of Afghans who are unable to obtain visas, flee to Pakistan by illegally crossing the border at Torkham and paying bribes. They usually stay with their relatives in Pakistan as they have no means to support themselves. A large number, the majority of whom are Afghans from rural areas, settle in camps near Peshawar.

Afghan refugee camps or parts of such camps in Pakistan are usually under the control of Afghan political groupings. Refugees in the camps are not prepared to talk to outsiders unless they can feel confident that what they say is not going to expose them to retaliation by the party controlling the camp. Hardships in the camps have increased over the last year as donor agencies have reduced or stopped their relief contributions.

Secular-minded Afghan academics and professionals who have fled to Pakistan have reported that they face frequent threats to their lives, and abuses, by Mujahideen groups. Some of the warring factions reportedly see such Afghans as their enemies because they are seen to be potentially capable of offering an alternative leadership in a future peace settlement.

Afghans with a professional and educated background living as refugees in Pakistan have reportedly been receiving death threats, and some of these threats have reportedly been carried out. As a result, some of these Afghans have fled Pakistan for a safer country. Others have moved to various parts of the country, living in fear of being found out.

Educated Afghan women living as refugees in Pakistan, particularly those working for the education and welfare of Afghan women and children, have repeatedly been threatened by Mujahideen groups. Most of these death threats are attributed to Hezb-e-Islami of Gulbuddin Hekmatyar. Several prominent Afghan women in Pakistan have reported that they cannot rely on Pakistani police for protection. The police was reported to have used excessive force during an Afghan women's demonstration in April 1993 in Peshawar, leaving scores of peacefully demonstrating women injured. There are reports that Pakistani police may side with Afghan Islamists in curbing Afghan women's political activities.

10. Refugees in other countries

Hundreds of Afghans have reportedly sought asylum in Western Europe and a number of other countries. Amnesty International has worked on the cases of scores of Afghan asylum seekers facing deportation. In all such cases Amnesty International has urged the government of the asylum country to refrain from returning Afghan asylum seekers to Afghanistan or to Pakistan.

Russia

In September 1994, Amnesty International raised its concern with the Government of the Russian Federation about reports of the forcible expulsion of 20 Afghans who reportedly had links with the government of the former president, Najibullah, and therefore a justifiable fear of returning to their country of origin. The organization also raised its concern about lack the of a procedure to provide effective and durable protection to refugees and asylum-seekers in the Russian Federation, as well as the precarious situation of refugees and asylum-seekers at the international airport in Moscow.

The Government of Russia replied in October 1994 saying that it shared Amnesty International's concerns regarding the observance of human rights in areas concerning the protection of refugees in the Russian Federation. It stated that:

"Regarding the concrete circumstances mentioned in your letter, the deportation of citizens of Afghanistan as you may be aware was based on the formal absence of written petitions requesting refugee status in Russia from these individuals to the Federal Migration Service, which according to the law they were obliged to submit. This case and a number of other unfavourable conditions including at 'Sheremyetevo-2' airport demonstrates the need for urgent review of the current instructions in the light of the new legislation. This would in future enable to avoid the negative humanitarian consequences from decisions taken by competent authorities."²

Denmark

As of 5 December 1994, over 250 Afghan asylum-seeker were reportedly awaiting a decision about their asylum application in Denmark. 175 Afghan asylum seekers had reportedly entered Denmark in the first eleven months of 1994.

Germany

According to official statistics, Afghan asylum-seekers constitute the fifth largest group of people by country of origin seeking asylum in Germany. Asylum-seekers arriving by land at the German borders are

² Translated from the Russian text.

sent back to the country through which they travelled - the so-called "safe third country" - without having any access to the asylum procedures. Germany has designated all its neighbouring countries as "safe third countries", so effectively no Afghans entering Germany by land can invoke the constitutional right to asylum.

Asylum seekers who manage to enter Germany clandestinely by land and then submit their application are also sent back to the third country if the authorities can establish the third country and if that third country accepts them. When the authorities are unable to establish the third country, the asylum-seekers will have access to a procedure in which the Federal Agency for the Recognition of Refugees will determine whether they fulfil the persecution criteria for refugee status as set out in the German Aliens Act relating to non-refoulement.

Asylum-seekers who can prove their arrival by air and who have valid travel documents are given access to the normal asylum procedures.

Application for asylum by people who have no valid travel documents are considered to be 'manifestly unfounded' and are not processed, but such asylum-seekers have a chance to challenge this through an accelerated procedure at the airport where they have a chance to rebut the presumption that their claim is unfounded. They can then appeal to an administrative court against a negative

decision; this application automatically puts a stay on the deportation order while the appeal is in progress.

Under current German law, asylum is granted only to those who are persecuted by a state. The authorities therefore argue that since there is no effective state in Afghanistan to prosecute an Afghan asylum seeker, there is no obligation on the part of the German authorities to consider asylum applications from Afghans. Nonetheless, the courts have usually ruled that Afghan asylum-seekers cannot be returned to Afghanistan where the right to freedom and the right to life, as contained in the German aliens law and in the European Convention for the Protection of Human Rights and Fundamental Freedoms, cannot be guaranteed.

Most Afghans seeking asylum in Germany in 1994 had arrived there by air via Moscow. The majority of Afghan asylum-seekers in Germany in the last couple of years have been people from educated backgrounds. A number of these Afghans have reportedly been officials of the former secret police known as the KHAD.

From January to December 1994, the number of Afghans seeking asylum in Germany was 5,642, according to official statistics.

During September and October 1994, 257 Afghan asylum-seekers were given refugee status and 1,494 asylum applications from Afghans were rejected. During November and December 1994, 259 Afghan asylum-seekers were recognized as refugees and 1,577 applications were rejected.

There have been no reports of the deportation of Afghan asylum-seekers from Germany. In a number of cases, the German authorities have rejected the argument that the freedom and the right to life of the Afghan asylum-seekers would be at risk in Afghanistan, informing the asylum-seekers that they would be deported. However, in all cases known to Amnesty International, administrative courts have stopped the deportation of Afghan asylum-seekers to Afghanistan under the current circumstances.

Canada

In Canada, it is easier for asylum seekers in possession of valid travel documents and who can provide sufficient proof of identity, to have their cases processed within a reasonable time. But asylum applications from those with no valid documents are still processed.

The number of Afghans seeking asylum in Canada in early 1993 was believed to be over 110, of whom five cases were reportedly withdrawn, eight rejected and the rest were given refugee status. Asylum seekers closely associated with members of the former government reportedly undergo close scrutiny by the Canadian authorities for evidence of complicity in crimes against humanity. The majority of Afghan asylum-seekers reportedly receive refugee status. No Afghan asylum seeker is reported to have been returned

involuntarily from Canada to Afghanistan, or Pakistan or a third country.

11. Categories of people particularly at risk of being subjected to human rights violations

It is extremely difficult to identify any safe areas in Afghanistan during the current state of civil war and political instability. There is a general sense of continued insecurity throughout the country, and nothing remains the same for an extended period of time. Tribal social structures have been destroyed in years of civil war, depriving individuals of much needed support structures. So far, no real safe haven for returning Afghan refugees has been created. Even camps for displaced persons, such as the ones near Jalalabad, are not safe for certain categories of Afghans.

All sections of the population could be subjected to human rights violations including torture and killings. They include any member of an ethnic or religious group in an area controlled by a hostile warlord; secular-minded Afghan men and women; Afghan academics and other professionals; officials of the former government; and journalists covering the political crisis.

12. Conclusions

Amnesty International believes that the human rights situation in Afghanistan is of such a grave nature that no asylum-seekers could be

considered to be safe on return. As the paper highlights, certain groups of asylum-seekers may be particularly at risk of attack by the Mujahideen groups in Pakistan and it is questionable whether such asylum-seekers would have effective and durable protection if returned to Iran.

As far as Amnesty International is aware, in only a two instances Afghan asylum-seekers have been forcibly returned from countries outside the region to Afghanistan in the last couple of years. However, hundreds of Afghans whose asylum applications have been rejected continue to live in a state of uncertainty about their future without effective and durable protection. It appears that the authorities who have examined asylum claims from such Afghans, have given insufficient weight to the gravity of the human rights situation in Afghanistan. Amnesty International wishes to highlight the human rights crisis in Afghanistan so that all governments are alerted to this crisis and ensure that no Afghan asylum-seeker is compelled to leave a country of asylum as long as the current human rights crisis persists in Afghanistan.

Amnesty International's concern for refugees and asylum-seekers derives from its overall human rights mandate by which it opposes the detention of prisoners of conscience (people detained for their belief or because of their ethnic origin, sex, colour or language, and who have not used or advocated violence), torture, "disappearance", execution and unfair trials of political prisoners. Accordingly it opposes any

person being sent against their will to a country where they risk any of these human rights violations.

In this aspect of its work Amnesty International bases its policy on relevant international standards which have been developed over the years for the protection of refugees. These include the fundamental principle of non-refoulment, which is recognized by the international community as international customary law binding on all states; Article 14 of the Universal Declaration of Human Rights which deals with the right to seek and to enjoy asylum, the 1951 Convention relating to the Status of Refugees, and relevant Conclusions of the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR).

The principle of non-refoulement obliges states not to send anyone to a country where they claim to be at risk of serious human rights violations, unless it is established in a full and fair procedure that they would not, in fact, be at risk.

Amnesty International has documented serious human rights violations and abuses in Afghanistan. In view of these violations and abuses, it is urging all governments to ensure that no Afghan asylum-seeker is compelled to leave a country of asylum as long as the current political crisis obtains in Afghanistan.