

Response

Afghanistan: National arrest warrants

Topics/questions:

- Can Landinfo say anything in general about the issuing of national arrest warrants in Afghanistan? Is it likely that an arrest warrant would be issued to a person who has made blasphemous statements by criticising a mullah during Friday prayers?

National arrest warrants

The police authorities' competence – registration of criminal offences/ issuing of arrest warrants

Pursuant to the Afghan Constitution Article 27 (2), any deprivation of liberty must be authorised by law: 'No one shall be pursued, arrested, or detained without due process of law' (Constitution 2004). There must be a legal basis for deprivation of liberty, and those who deprive someone of their liberty must be authorised to make arrests. It will normally be the police or the local public prosecutor (*saranwal* / *Primary Saranwal*) who initiate arrests.

The *Interim Criminal Procedure Code for Courts* (ICPCC) states that the police are obliged to report any suspicion of criminal offences to the Primary Saranwal. It is further stated in article 22 of the ICPCC (2004) that:

The Primary Saranwal has the obligation to introduce the penal action for prosecution of all crimes, known directly by him, committed in the territory of the district, unless otherwise expressly provided by law.

Only under certain circumstances may the police make arrests. This includes cases in which an offender is caught in the act of committing a crime, cases in which there is a risk of violence erupting, or cases of suicide. An arrest must be approved by the Primary Saranwal within 24 hours. Within 15 days of the arrest, the Primary Saranwal must decide whether the suspect is to be charged.

The following is stated in article 30 of the ICPCC:

Judicial Police's Arrest

- 1. The judicial police shall arrest on their own initiative: a) the offender who is caught in state of flagrante delicto of misdemeanors, punished by medium term imprisonment, or felony; b) the person who is allegedly the author of a felony and there is risk of his disappearance.*
- 2. In all other circumstances, the judicial police perform arrests only in execution of orders of the judicial authorities.*

Article 15 of the Afghan Police Law (2005) states the following concerning arrests:

Article Fifteen

In normal cases, the police may detain a person in custody if:

- 1. His life or physical body is in danger and can not be protected otherwise; in this case the police is duty bound to resort to action within the time slot stipulated in paragraph (4) of this article to avoid the aforesaid danger as much as possible.*
- 2. His identification is not possible otherwise.*
- 3. He intends to commit suicide; in this case the police is duty bound to bring him/her to the nearest local hospital within the time stipulated in paragraph (4) of this article.*
- 4. Provided for by the law in other cases.*

The period of detention can not be more than 72 hours. The police must inform him of the reason and case as soon as the person is detained.

The Saranwal's role is described as follows in the ICPCC (2004):

Article 35 Arrest and Seizures by the Primary Saranwal

- 1. In the course of the investigations activities the Primary Saranwal can order the arrest of the alleged author of a misdemeanor punishable by medium term imprisonment or felony and seizure of items and goods connected with the crime.*
- 2. The person arrested shall be interrogated within forty-eight hours.*

Article 36 Terms for Indictment in Case of Arrest

- 1. When the arrest performed by the Judicial Police is sanctioned or when the arrest has been ordered by the Saranwal and it remains in force, the arrested person shall be released if the Saranwal has not presented the indictment to the Court within fifteen days from the moment of the arrest except when the Court, at the timely request of the Saranwal, has authorized the extension of the term for not more than fifteen additional days.*

As Landinfo understands the legislation, the police cannot on their own initiative issue arrest warrants or make arrests, subject to the exceptions encompassed in the cited provisions. The

public prosecutor's office can issue arrest warrants. Likewise the courts can issue arrest warrants, for example in connection with the pronouncement of judgments.

As far as Landinfo knows the Afghan police are not issuing arrest warrants Nor does Landinfo know whether other legislation exists for issuing arrest warrants in Afghanistan than what is described above. A formal framework may exist without this being commonly known. A source Landinfo met in Kabul in November 2010 is working systematically to collect all legislation currently applicable in the country, but the source has not even managed to gain an overview of officially published legislation (gazetted laws and regulations). The source believed that the authorities deliberately put forward obstacles to prevent laws and regulations from becoming publicly known (conversation in Kabul, November 2010).

Several factors indicate that it is unlikely that the police are capable of coordinating information at the national level, including administering and issuing arrest warrants.

The police have insufficient training, and the basis for recruitment and promotion is often not professional qualifications, but personal connections. According to journalist Tor Aksel Bolle, police recruits undergo six weeks of training before they start working (Bolle 2010).

In November 2010, Landinfo met a source in Kabul who is involved in building the competence of the Afghan police. The source confirmed the very low competence level of the police authorities and informed that some police officers receive even less training than Bolle indicates.

According to Antonio Giustozzi, the police do not register cases systematically, neither at the local nor at the central level, and there is no national register (Giustozzi 2010). Many police stations have practically no writing paper. This was confirmed by one of Landinfo's interlocutors in Kabul, who claimed that there was neither paper nor writing material at most police stations. Many police officers are also illiterate. According to Bolle (2010), figures from NATO show that 83% of police recruits read and write more poorly than Afghan third-grade school pupils.

The Independent (Brady 2010) describes the police as follows:

'Corruption, desertion and drug abuse within the Afghan police are threatening its ability to take over the fight against the Taliban and the UK's chances of an exit from the country, government documents show.'

The police force is characterized by extensive corruption, lack of management and control, drug abuse and desertion. Bolle (2010) also claims that the Afghan police authorities are evolving into a semi-military instrument at the expense of ordinary civil tasks as they are increasingly being used in the fight against the Taliban and other insurgents.

In many areas, it is not very likely that the Afghan police authorities issue written arrest warrants. The question of arrest warrants issued by the police was discussed with a local source in Kabul in November 2010, who claimed never to have seen or heard of an arrest warrant being issued by the Afghan police. Another source, who, among other things, is involved in an advisory capacity in connection with larger high-profile criminal cases in Afghanistan, had experienced that arrest warrants were issued in some cases. However, they had not been issued by the police, but by the courts.

Criticism of Islam

Landinfo has no opinion about the likelihood of arrest warrants being issued in specific cases. Criticism of Islam and religious leaders in connection with Friday prayers is an unknown phenomenon in the Afghan context, and it would be associated with a high risk of reprisals and serious assaults. Even comments that can be perceived as relatively moderate criticism can lead to assaults from private actors. Furthermore the Afghan court system has heard some cases (very few specific cases have been reported by key sources since 2001) pursuant to the articles on religious crime in the Afghan Penal Code, articles 347 and 348, and pursuant to Sharia law in accordance with the Constitution Articles 130 and 131. Pursuant to the prevailing interpretation of the law in Afghanistan, blasphemy is punishable by death.

In 2007, student and journalist Sayed Parwez Kambaksh from the Balkh province was sentenced to death by a local court (Primary Court) in Mazar-I-Sharif, a city with a relatively conservative Ulema Council. The basis for the accusation was that Kambaksh had downloaded and distributed an article criticising women's rights in Islam. The appeal was later handled by both the Court of Appeals and the Supreme Court in Kabul. According to Amnesty (2009), the ruling was upheld, but the death penalty was reversed to 20 years' imprisonment. He was later pardoned by President Hamid Karzai.

The process against Kambaksh illustrates that, particularly in high-profile cases, communication and connections can be established between both local and central religious communities and the national police and the judiciary. The available information also indicates that legal measures and processes that involve serious accusations of blasphemy are widely exposed in Afghanistan.

The Country of Origin Information Centre (Landinfo) is an independent body that collects and analyses information on current human rights situations and issues in foreign countries. It provides the Norwegian Directorate of Immigration (Utlendingsdirektoratet – UDI), Norway's Immigration Appeals Board (Utlendingsnemnda – UNE) and the Norwegian Ministry of Justice and the Police with the information they need to perform their functions.

A response consists of answers to specific questions presented to Landinfo by case workers within the Norwegian immigration authorities. Responses are not intended to provide exhaustive reviews of a topic or theme, but should answer the specific questions posed and include relevant background information.

Landinfo's responses are not intended to suggest what Norwegian immigration authorities should do in individual cases; nor do they express official Norwegian views on the issues and countries analysed in them.

References

Written sources

- Amnesty International (2009, 6. September). *Afghanistan: Perwiz Kambakhsh's release raises hopes for other detainees*. London: Amnesty International. Available at <http://www.amnesty.org/en/for-media/press-releases/afghanistan-perwiz-kambakhsh%E2%80%99s-release-raises-hopes-other-detainees-2009> [Retrieved 6. December 2010]
- Bolle, T. A. (2010, November). *Politi på samlebånd. Stadig verre sikkerhetssituasjon gir masseproduksjon av politifolk*. Bistandsaktuelle, s. 18 - 19, 9/2010, Oslo.
- [Constitution] (2004, 3. January). *Constitution of Afghanistan*. Kabul: The Islamic Republic of Afghanistan. Available at http://www.supremecourt.gov.af/PDFfiles/constitution2004_english.pdf [Retrieved 4. February 2011]
- Brady, B. (2010, 28. March). Drugs and desertion: how the UK really rates Afghan police. *The Independent*. Available at <http://www.independent.co.uk/news/world/asia/drugs-and-desertion-how-the-uk-really-rates-afghan-police-1929508.html> [Retrieved 21. December 2010]
- ICPC, ie. Interim Criminal Procedure Code for Courts (2004). Kabul: Government of Afghanistan. Available at [http://www.icrc.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/2ee7715e48bfca37c1257114003633af/\\$FILE/Criminal%20Procedure%20Code%20-%20Afghanistan%20-%20EN.pdf](http://www.icrc.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/2ee7715e48bfca37c1257114003633af/$FILE/Criminal%20Procedure%20Code%20-%20Afghanistan%20-%20EN.pdf) [Retrieved 4. February 2011]
- Police Law (2005, 22. September). Kabul: Government of Afghanistan. Available at <http://www.rolafghanistan.esteri.it/NR/rdonlyres/94667686-6B09-4E6E-9972-905E21EEC1E4/0/PoliceLaw.pdf> [Retrieved 8. February 2011]

Oral sources

- Giustozzi, A. (2010). *The Taliban: aspects of their modus operandi*. Introduction held in Oslo 25. November 2010
- Conversations with representatives from national and international organisations during Landinfo's fact-finding mission to Afghanistan, November 2010

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