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– Judicial process under the Communist regime (1978-1992)

Delegations will find attached a report from the Netherlands delegation on the above subject. ¹

¹ Translated into English only.
This report may be released to the public.

Judicial process in Afghanistan

under the Communist regime (1978-1992)

Directorate for Movements of Persons, Migration and Consular Affairs,
Asylum and Migration Division

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1. Introduction

As a follow-up to the previous official general reports on the "Situation in Afghanistan" of 16 September 1999 and 9 May 2000 and the official general report on "Security forces in Communist Afghanistan (1978-1992)" of 29 February 2000, this official report covers judicial process in Afghanistan under the Communist regime with a view to assessing asylum applications.

This report will deal with the change in the nature of Afghan law after the Saur Revolution of 1978 until the collapse of the Communist regime in 1992 as regards the prosecution of political offences (sections 2.1 and 2.2). The setting up of the Revolutionary State Prosecution Service (section 2.2.1) and the Special Revolutionary Court (section 2.2.2) by the Revolutionary Council established a legal basis for the prosecution of political opponents of the communist regime.

At the same time Afghanistan still had a regular legal system. The prosecution of non-political offences (section 2.3) was the responsibility of various public prosecutor's offices answerable to the Office of the Chief Public Prosecutor (section 2.3.1).

The repressive nature of the legal system under the Communist regime led to many human rights violations. Section 3 lists those within the judiciary who bear responsibility for these. The official report concludes with a summary.

This official report is based on confidential reports from the Netherlands embassy in Islamabad. In addition, use was made of publications by Amnesty International, Human Rights Watch and the US State Department. The reports on the human rights situation in Afghanistan by Felix Ermacora, who was the United Nations Human Rights Commission Special Rapporteur in the eighties, were also consulted. Lastly, specialist literature on Afghanistan was used. Page 23 gives a summary of the public information sources consulted.

2. Judicial process 1978-1992

2.1. Legal system after the Saur Revolution

On 27 April 1978 a military coup took place in Afghanistan, followed by proclamation of the "Democratic Republic of Afghanistan" (DRA). The coup, which became known as the "Saur Revolution", ushered in the dictatorship of the strongly Soviet-influenced "People's Democratic Party of Afghanistan" (PDPA), which was to last fourteen years.

The legal nature of the Afghan regime changed considerably after the Saur Revolution. The 1977 Constitution was set aside and legislative, executive and judicial powers were all assigned to the Revolutionary Council ¹ under the leadership of the President of Afghanistan. In May 1978 the Communist regime of the first DRA President, Nur Muhammad Taraki, set up a security service known as *Da Afghanistan da Gato da Satalo Adara* (AGSA). ² Taraki and his successor, Hafizullah Amin, also put into operation a very repressive system for tracking down political opponents. The AGSA/KAM ³ played a very active role in the tracking down, interrogation, detention, maltreatment, torture and summary execution of political opponents of the Afghan Communist regime.

¹ The setting up of the Revolutionary Council was announced in Decree No 1 of 30 April 1978. UN, Felix Ermacora, Special Rapporteur of the UN Human Rights Commission, Report on the situation of human rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights resolution 1984/55 (E/CN.4/1985/21, 19 February 1985), p. 21. For the Revolutionary Council see also the official general report entitled "Situation in Afghanistan" of 16 September 1999, p. 9.

² UN (E/CN.4/1985/21, 19 February 1985), p. 16.

³ Amin changed the name of the security service to *Kargarano Amniyyati Mu'assassa* (KAM). See the official general report entitled "Security services in Communist Afghanistan (1978-1992)" of 29 February 2000.

From 1978 to 1979, according to Western estimates, around 35 000 to 50 000 Afghan citizens lost their lives.⁴ A substantial proportion of these 35 000 to 50 000 Afghan victims were summarily executed. After the takeover by Brabak Karmal in December 1979 the legal system fell completely under the control of the Afghan security service (KhAD, later WAD)⁵ and its Soviet advisors.

On 21 April 1980, pending the introduction of a new Constitution,⁶ the Revolutionary Council proclaimed the "Fundamental Principles of the Democratic Republic of Afghanistan". These principles provide inter alia for the right to personal security (Article 29(1)) and the right to freedom of expression (Article 29(7)). Article 30 of the principles stipulated protection from (arbitrary) arrest without an appropriate warrant or outwith the legal provisions which were in force when the offence was committed, together with the right to be considered innocent until proved guilty and the right to be defended by a lawyer. Torture was expressly prohibited on the basis of Article 30.⁷

Article 54 provided for "a special court" to handle "specific cases to be determined by law." Article 56 provided that "judges must try their cases independently." This Article also opened up the possibility of trying cases behind closed doors: "the circumstances in which cases must be tried behind closed doors shall be laid down by law in advance." Judgments were final and had to be approved by the presidium of the Revolutionary Council (Article 58).⁸

⁴ H.S. Bradsher, Afghan communism and Soviet intervention, (Oxford 1999), p. 62

⁵ In January 1980 Karmal set up the *Khadimat-e Atal'at-e Dowlati* (KhAD) to succeed the KAM. In January 1986 the KhAD was transformed into a separate ministry under the name *Wazarat-e Amaniat-e Dowlati* (WAD). For the historical background to these services, see the official general report entitled "Security services in Communist Afghanistan (1978-1992)" of 29 February 2000.

⁶ The new Constitution was adopted on 30 November 1987. UN (E/CN.4/1988/25, 26 February 1988), p. 4.

⁷ Amnesty International, Background Briefing on the Democratic Republic of Afghanistan (ASA 11/13/83, October 1983), p. 4.

⁸ Amnesty International (ASA 11/13/83, October 1983), pp. 4-5 and Yearbook 80/91.

Although Karmal had, on taking power, distanced himself in no uncertain terms from the terror which Amin had spread among the population, his regime too only seemed able to hold its own by using brute force. The Fundamental Principles of the Democratic Republic of Afghanistan were in practice scarcely adhered to, if at all. The situation hardly changed when Muhammad Najibullah pushed Karmal aside in 1986 and had himself elected President.

2.2. Prosecution of political offences

2.2.1. Revolutionary State Prosecution Service

When the Communists came to power in 1978 they decided to set up a Revolutionary State Prosecution Service (*Saranwale-i-Ikhtesasi-i-Inqelabi*) and a Military Revolutionary Court (*Mahkama-i-Ikhtesasi-i-Inqelabi*)⁹

The Revolutionary State Prosecution Service was not independent, but formally answerable to the Revolutionary Council. Practically all public prosecutors (*saranwals*) had been recruited from the Afghan State security service. They remained members of the KhAD/WAD and maintained close contacts with the State security service. While performing their duties they did no work for the KhAD/WAD. They were not subject to the KhAD/WAD rota system. After being appointed, public prosecutors remained in their posts.

⁹ On coming to power, the new regime had announced eight reform decrees intended to turn Afghanistan into a socialist State. Decree No 3 of 14 May 1978 concerned the setting up of the Revolutionary Military Court under the responsibility of the Revolutionary Council. UN (E/CN.4/1985/21, 19 February 1985), p. 21.

The Revolutionary State Prosecution Service was specifically responsible for prosecuting political offences committed by opponents of the Communist regime.¹⁰ In this way the regime wanted to establish a legal basis for the prosecution of its political opponents so as to increase its authority. The regime had made it a priority to safeguard and protect the achievements of the Saur Revolution.¹¹ There were no hard and fast criteria or definitions of political offences. Theft committed by a party member was also treated as a political offence and tried by the Special Revolutionary Court.¹²

The Revolutionary State Prosecution Service worked alongside the Afghan State security service, KhAD/WAD, which had infiltrated all sections of Afghan society. It was the task of the KhAD/WAD to identify enemies of the Communist regime and to arrest them. In this the security service had unlimited freedom of manoeuvre. In practice, the slightest sign of disloyalty or opposition provided a pretext to regard someone as an enemy.¹³

¹⁰ The Communist regime in Afghanistan distinguished between external and internal enemies. The first group included political opponents from outside the PDPA, such as left-wingers, Islamists, independent intellectuals and Mujahedin fighters. The second group included political opponents from within the PDPA, such as disloyal and disaffected members.

¹¹ UN (E.CN.4/1986/24, 17 February 1986), p. 6.

¹² Amnesty International, Afghanistan. Unfair Trials by Special Tribunals (ASA/11/03/91, August 1991), p. 15.

¹³ See also the official general report entitled "Security services in Communist Afghanistan (1978-1992)", p. 11.

Between 1979 and 1992 around 150 000 to 200 000¹⁴ Afghans are reported to have been arrested by the KhAD/WAD charged with political offences.¹⁵ After arrest,¹⁶ they were brought to one of the KhAD/WAD interrogation centres.¹⁷ Those arrested in Kabul were frequently taken first to Shashdarak, the headquarters of the KhAD/WAD. During their stay in these interrogation centres they were questioned.

Persons suspected of crimes against the State could by law initially be held in custody for no more than 72 hours. However, as early as 1978 the Revolutionary Public Prosecutor had the right to detain a person for five months for special preliminary investigation.¹⁸

In practice, the investigation period following arrest could vary from a few months to a few years. Political prisoners suspected of involvement in armed opposition or of non-violent anti-government activities were kept incommunicado in solitary confinement during their initial interrogation, often lasting several months.

¹⁴ Afghan communism and Soviet intervention, p. 139.

¹⁵ From July to October 1980 a total of 500 members of the Maoist *Shu'la-i Jawed*, including the leader Osman Landi and other leftist factions, including SAMA members, were arrested on suspicion of anti-government activities. Between May and July 1983 several hundred members of the *Afghan Mellat* (Afghan Social Democratic Party), a leftist nationalist faction, are reported to have been arrested. Among those arrested were students of Kabul University (because of alleged membership of the prohibited Moslem brotherhood), former government officials and university professors, alleged Islamic guerrilla fighters and dissident members of the government in 1981. Amnesty International, Yearbooks 1982 and 1984.

¹⁶ Arrests generally took place at night without a warrant and usually the officials failed to identify themselves. Amnesty International, Yearbook 1984. Jeri Laber & Rubin R. Barnett, "A Nation is Dying". Afghanistan under the Soviets, 1979-87 (Evanston, 1988), pp. 77-78.

¹⁷ There are said to have been more than twelve interrogation centres in Kabul and an unknown number in other cities. Amnesty International, Reports of Torture and Long-Term Detention without trial (ASA 11/01/91, March 1991), p. 3. Amnesty International, Yearbook 92. For the KhAD/WAD interrogation and detention centres, see also the official general report "Security services in Communist Afghanistan (1978-1992)", pp. 16-20.

¹⁸ UN, Situation of human rights in Afghanistan. Note by the Secretary General (A/42/667, 23 October 1987).

The KhAD/WAD conducted the preliminary criminal investigation. After the initial interrogation, it pronounced on the question of guilt. Some of those arrested were found "not guilty" and set free without any explanation. Those found "guilty" by the KhAD/WAD received a document, the *Surat-e Da'awa*.¹⁹ This "statement of indictment" contained, under the KhAD/WAD letterhead, the conclusions of the investigation, the legal basis for the charge and a recommendation to the Special Revolutionary Court as to sentencing.

Many were then transferred to Sedarat, the central KhAD/WAD interrogation centre in Kabul, where they were sometimes detained for months before being questioned.

Political prisoners were then interrogated again by the public prosecutor of the Revolutionary State Prosecution Service. During this interrogation the suspect had no right to a lawyer. Family visits were strictly prohibited during the interrogation period.

In order to make a suspect confess, all methods were permitted. During the investigation there was often no mention of hard evidence. On the contrary, many suspects were arrested on the basis of vague, sometimes wholly unfounded accusations. However, this did not prevent the State security service and the Revolutionary State Prosecution Service from arresting people and detaining them for long periods.

¹⁹ "A Nation is Dying", p. 99.

Many confessions were extracted by torture,²⁰ both during the first interrogation and during the interrogation in Sedarat. Security service members tortured suspects systematically at the instigation of public prosecutors. Sometimes public prosecutors themselves used torture to gain a confession.²¹ Elsewhere in Afghanistan too there were KhAD/WAD interrogation and detention centres where prisoners were tortured.²² Confessions were then used in sittings of the Special Revolutionary Court.

Political prisoners were totally powerless in the face of the torture methods to which they were subjected. There was not one body to which they could complain. Suspects were completely at the mercy of the whims of the State security service and the Revolutionary State Prosecution Service.

²⁰ According to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted for the purpose of obtaining information or a confession, or for punishment, intimidation or coercion when such pain or suffering is inflicted by or with the consent or acquiescence of a public official (General Assembly Resolution 39/46, Annex, 10 December 1984). In addition to "torture", this report also uses the term "maltreatment". "Maltreatment" is a form of cruel or inhuman treatment.

²¹ Amnesty International reported in 1984 that torture methods had systematically been used during interrogation in eight KhAD interrogation centres in Kabul, namely Office 5 (*Khad-i Panj*), the KhAD headquarters in the Shashdarak district, the Ministry of the Interior, the Sedarat central interrogation centre, the office of the military branch of the KhAD (*Khad-i Nezami*), the Ahmad Shah Khan House, the Wasir Akbar Khan House and the KhAD office in the Howzai Barikat district. Amnesty International, Yearbook 1984.

²² For the various torture practices, see the official general report "Security services in Communist Afghanistan (1978-1992)", section 2.6. See also Amnesty International, Yearbook '87.

Under the regime of Karmal and Najibullah torture was an integral part of the interrogation process²³. The culture of violence frequently resulted in suspects dying before they had made a confession.²⁴ Within the Revolutionary State Prosecution Service and the State security service cruelty was regarded as efficiency. The culture of violence was deliberately fostered by the political leadership of these departments. The Communist regime wanted to make it clear to the Islamic opposition that it would not hesitate to employ any means to ensure its survival.

In mid-1988, as part of the policy of national reconciliation²⁵, the Revolutionary State Prosecution Service was renamed the Public Ministry of National Security (*Saranwale-I-Ikhtesasi-I-Amniyuti Milli*) and housed in the Office of the Chief Public Prosecutor (*Loi Saranwale*). The change was, however, purely cosmetic. The nature of the Revolutionary State Prosecution Service remained the same, inter alia because its staff were not replaced.

2.2.2. Special Revolutionary Court

After the Revolutionary State Prosecution Service had collected the evidence, the suspect was brought before the Military Revolutionary Court. In 1980 this was replaced by the Special Revolutionary Court.²⁶ On the basis of Article 7 of the Law on Special Revolutionary Courts, the Court had a president, a vice-president and members who were all appointed by the presidium of the Revolutionary Council.²⁷

²³ "A Nation is Dying", p. 81.

²⁴ See also the official general report "Security services in Communist Afghanistan (1978-1992)", pp. 20-24

²⁵ For the policy of national reconciliation, see the official general report "Security services in Communist Afghanistan (1978-1992)", p. 10.

²⁶ Amnesty International (ASA 11/03/91, August 1991), p. 4.

²⁷ Amnesty International (ASA 11/13/83, October 1983), p. 5. UN (A/42/667, 23 October 1987), p. 15.

The Special Revolutionary Court was empowered to try offences committed against Afghanistan's internal and external security, against territorial integrity, sovereignty and national independence, against the State and the achievements of the Saur Revolution.²⁸ Lastly, it was competent to try offences committed by staff of the Ministry of State Security.

The Special Revolutionary Court was based in the central interrogation centre, Sedarat, in Kabul and was presided over by one or more judges.²⁹ There were five chambers, each dealing with a particular target group (such as youth, officials, political parties) and a mobile unit which travelled the country hearing cases. From time to time judges travelled to the provinces to hold sittings. They conducted both "open" and "closed" trials.³⁰

The Special Revolutionary Court was not independent but formally answerable to the Revolutionary Council. The judges of the Special Revolutionary Court were members of the PDPA, almost all to some degree connected with the State security service and in some cases directly recruited from the KhAD/WAD.³¹ Judges remained members of the KhAD/WAD and maintained close contacts with the State security service, but when performing their duties they did no work for the KhAD/WAD. They were not subject to the KhAD/WAD rota system. After being appointed, judges remained in their posts.

²⁸ The *Kabul New Times* of 8 July 1980 reported that the Special Revolutionary Court had tried a number of people who were arrested on charges ranging from undermining the achievements of the Saur Revolution to damaging national independence and sovereignty. The government stated that they were accused of spying, disseminating news and false information, membership of treasonable factions and of treasonable acts such as inciting the populace to counter-revolutionary activities. Amnesty International, *Yearbook 1980/1981*.

²⁹ UN (A/42/667, 23 October 1987). For Sedarat, see also the official general report entitled "Security services in Afghanistan" (1978-1992), pp. 17-18.

³⁰ The judges of the Special Revolutionary Court visited the central prison in Jalalabad in March 1984. The death penalty was imposed on twelve prisoners who had already been detained for more than two years without trial. Another two hundred prisoners were sentenced to between two and twenty years. "A Nation is Dying", p. 101.

³¹ Amnesty International (ASA 11/03/91, August 1991), p. 4.

Judges of the Special Revolutionary Court could only obtain their posts and carry out their duties if they subscribed fully to the repressive nature of the Communist legal system. Most of them had no legal or court experience at all.³²

Trials did not comply in any way with internationally recognised standards. Hearings were not public and family members were not told that a trial was in progress. Sittings of the Special Revolutionary Court, composed of a panel of three judges, generally lasted only a few minutes.³³ In many cases bright lamps were positioned behind the judges so that the accused could not see the judges' faces. In the period 1979-1986, the PDPA flag was positioned behind the judges next to the Afghan flag.

The accused had no right to legal assistance, but had to conduct his own defence. He could, however, prepare a short written statement of his defence or this could be done for him. Sometimes the accused was permitted to read out his defence, but often his written defence was simply added to the file without further consideration. The judge, dressed as an ordinary citizen, always complied with the demands of the public prosecutor, which were based on the recommendation of the KhAD/WAD. It was also well-known that the confession had been obtained through torture. We know of no cases in which the judge did not comply with the prosecutor's demands.³⁴ In effect, then, the sentence had already been pronounced before the accused entered the courtroom.

On one occasion only cameras were allowed into the court for an "open" trial broadcast by Afghan State television. It was a show trial of well-known dissidents. The spectators consisted of party

³² Amnesty International, Afghanistan. Torture of political prisoners (Amsterdam, 1986), p. 20. UN (A/40/843, 5 November 1985), p. 20.

³³ Amnesty International (ASA 11/13/83, October 1983), p. 4. "A Nation is Dying", pp. 99-100. Amnesty International (ASA 11/3/91, August 1991), p. 4.

³⁴ "A Nation is Dying", p. 100.

members, KhAD/WAD officials and members of the court. The ordinary citizen had no access to such trials. Even in these "open" trials, the verdict had already been decided in advance. The Communist regime wanted to use them to send a deterrent message to the Afghan people.³⁵

Generally speaking, the Special Revolutionary Court imposed particularly severe sentences, including the death penalty.³⁶ Contrary to the provisions of international law, there was no possibility of appeal against a judgment of the Special Revolutionary Court. A judgment was thus irrevocable and only in the case of a death sentence did it have to be confirmed by the presidium of the Revolutionary Council.³⁷ The condemned were detained in blocks I and II of the Pul-i-Charki³⁸ prison in Kabul and also in prisons in Jalalabad, Herat, Aibah in the province of

³⁵ In the summer of 1981 Television Kabul showed the "trial" of a British archeologist named Pinder-Wilson. After his arrest he had been kept incommunicado for several months on suspicion of smuggling art out of Afghanistan, giving false information to the Western media and helping Afghans to flee the country. Pinder-Wilson was deported by order of President Karmal himself. The trial was a sham and is said to have been planned completely in advance by the State security service. US Department of State, Country Reports on Human Rights Practices for 1982 (February 1983), p. 1077.

³⁶ The Afghan government has never published figures of the number of cases in which the death penalty was pronounced. According to statements by a former public prosecutor, in the period 1980-1988 around eight thousand people were executed after being sentenced to death by the Special Revolutionary Court. Amnesty International (ASA, 11/03/91, August 1991), p. 5.

In October 1990 President Najibullah was reported to have commuted 58 death sentences to imprisonment on the basis of Article 75(8) of the Constitution. However, in the same month, *Radio Kabul* reported that six people had been executed. Amnesty International, Yearbook 91.

³⁷ One source reports that all judgments had to be referred to the presidium of the Revolutionary Council for confirmation. Amnesty International (ASA 11/13/83, October 1983), p. 5 and (ASA 11/03/91, August 1991), p. 4. "A Nation is Dying", p. 101.

³⁸ Pul-i-Charki had several blocks. Block I was reserved for former ministers and other prominent political prisoners. Those under a death sentence and foreign prisoners were also said to be detained in Block I. Block II was mainly intended for political prisoners who still had to stand trial. Both blocks were run by the KhAD/WAD. Blocks III-VII were under the control of the Ministry of the Interior. Amnesty International (ASA 11/03/91, August 1991) and (ASA 11/01/91, March 1991), pp. 5-7. See also the official general report entitled "Security services in Afghanistan 1978-1992", p. 19, note 3.

Samangan, Kunduz, Kandahar, Nangarhar, Baghlan, Badghis, Mazar-i-Sharif and Jowzjan.³⁹

Many people were sentenced by the Special Revolutionary Court in the knowledge that they had been tortured during interrogation. Also, many people were sentenced without a shred of hard evidence against them. Many of these people who had been sentenced unjustly were later set free during so-called "amnesties".⁴⁰ In fact, prisoners were released who had received too long a sentence in the first place or who were obviously innocent. Despite periodic amnesties, people suspected of political crimes were still arrested in large numbers and sentenced by the Special Revolutionary Court after an unfair trial.

Conditions in prison were bad. During their interrogation in Kabul, prisoners were kept in dark cells. In Sedarat, where there were between one and four prisoners per cell, the windows were painted over so that the daylight could not penetrate. In Shashdarat the cells were underground. The hygiene conditions left a lot to be desired. For example, in Pul-i-Charki there were four washbasins and four toilets per cell containing on average 80 to 140 prisoners. At one point there were said to have been as many as 400 prisoners in a cell.⁴¹

³⁹ On average, according to official figures, there were always around three thousand political prisoners during the period of the Communist regime. However, according to opposition forces, the number was much higher at around 20 000, 8000 of whom were detained in Pul-I-Charki and 15 000 elsewhere in the Afghan provinces. UN (E/CN.4/1990/25, 31 January 1990 and (E/CN.4/1991/31, 28 January 1991). Amnesty International, Yearbook 1980/1981.

⁴⁰ At the end of July 1987 around 7000 political prisoners were said to have been set free as a consequence of a general amnesty announced in January. US Department of State, Country Reports on Human Rights Practices 1988.

⁴¹ This picture emerges from the reports of the Special Rapporteur of the UN Commission on Human Rights, Felix Ermacora, who in 1987 visited Shashdarak and Sedarat, inter alia. UN (A/42/667, 23 October 1987).

In mid-1988, as part of the policy of national reconciliation ⁴², the Special Revolutionary Court was incorporated into the High Council (*Stera Mahkama*), where it continued its work under the name of Special National Security Court (*Mahkama-i-Amniyuti Milli*). This change of name was, however, purely cosmetic. The nature of the Special Revolutionary Court remained the same, partly because the staff members were not replaced.

In March 1991 President Najibullah announced that the Special Court no longer existed. Prosecution of political opponents no longer had top priority because of the violent struggle against the Mujahedin which was then in progress.

The legal system was to be standardised and in the process the infamous system of the Special Revolutionary Court was abolished. ⁴³ In Kabul the number of detention centres where detainees were interrogated was reduced from twelve to two, namely Sedarat and Pul-i-Charki. In the rest of Afghanistan ten detention centres remained in the provinces of Baghlan, Balkh, Farah, Ghazni, Herat, Kandahar, Kunduz, Nangarhar, Paktia and Parwan. ⁴⁴

Within the regular court system certain chambers continued to concern themselves with the prosecution of political dissidents. Najibullah's "new" system still failed to guarantee a fair trial. During interrogation, political prisoners were still subjected to torture. ⁴⁵

⁴² For the policy of national reconciliation, see the official general report "Security services in Communist Afghanistan (1978-1992)", p. 10.

⁴³ Amnesty International, *Yearbook 92*. UN (E/CN.4/1992/33), 17 February 1992), p. 25 and (CCPR/C/57/Add.5, 11 March 1992), p. 11.

⁴⁴ See footnote 17.

⁴⁵ Those accused of taking part in the alleged coup of March 1990 told the Special Rapporteur of the UN Commission on Human Rights that they were deprived of sleep and forced to stand against a wall in solitary confinement. UN (E/CN.4/1992/33, 17 February 1992), p. 26.

After the abolition of the Revolutionary State Prosecution Service and the Special Revolutionary Court, the public prosecutors and judges were dismissed. A number were appointed to other government posts. Others remained unemployed and subsequently went abroad.

The abolition of the Special Court was seen as an attempt by Najibullah, whose position was becoming increasingly untenable, to give the impression, by changing the judicial procedure, that he was distancing himself from Communist ideology. His attempt was in vain. In April 1992 the Communist regime fell and thereafter thousands of political prisoners were freed. Mass graves were discovered which held the bodies of thousands of people who had probably been summarily executed in previous years.⁴⁶

2.3. Prosecution of non-political offences

2.3.1. Office of the Chief Public Prosecutor

Until 1964 the Afghan legal system had traditionally been based on a combination of Islamic (shari'a) and secular law with around a hundred *qazi*, Islamic judges. Afghan judges, lawyers and other court officials were trained abroad, both in the West (particularly France) as regards secular law and in Pakistan, India and Egypt as regards religious law. Judges, lawyers and other officials were also trained at Kabul University.⁴⁷

There were simple religious courts in the Afghan countryside and, in addition, three levels of higher courts: a Primary Court (*Ibtedata*) in the districts, a Secondary Court (*Istinaf of Morafia*) in the provincial capitals and a Third/Supreme Court or High Council (*Stera Makhama*) in Kabul.⁴⁸ In principle, every convicted person had access to the High Council.

⁴⁶ Amnesty International, *Yearbook 93*.

⁴⁷ "A Nation is Dying", p. 123; Asia Watch, *Afghanistan, the Forgotten War*. (New York, Washington, February 1991), pp. 79-80; Dupree, *Afghanistan*, p. 580.

⁴⁸ Dupree, *Afghanistan*, p. 582.

With the introduction of the first Afghan Constitution in 1964 secular law gained supremacy. On the basis of Article 103 of the Constitution, an "Office of the Chief Public Prosecutor" was set up. The Article further stipulated that crimes were investigated by the Chief Public Prosecutor (*Loi Saranwal*).

Even during the period 1978-1992 the Chief Public Prosecutor headed the whole State Prosecution Service and was therefore formally responsible for all the separate prosecution services discussed below.⁴⁹

State Criminal Prosecution Service

The State Criminal Prosecution Service, or "regular" State Prosecution Service (*Mauwen-i-Tahqiq wa Ta'gib*) was responsible for prosecuting criminal offences detected by the police and tried by regular courts (*Mahkama-i-Adi*). The regular State Prosecution Service and regular courts came under the responsibility of the Minister of Justice.

During the period 1978-1979 the police force and the regular judicial apparatus, in close cooperation with the State security service, were mainly deployed in detecting, interrogating and trying political opponents of the regime. During this period, those suspected of a criminal offence, partly because of the very repressive nature of the investigative machinery, were subject to almost the same treatment as political dissidents and criminals. Those suspected of a criminal offence were often regarded as "reactionary enemies of the revolution" because in the eyes of the Communist authorities a criminal offence was also directed against the working class and therefore against the ruling regime.

In this period torture was systematically used in interrogations, the accused were denied the right to a lawyer, the court's verdict was irrevocable, there were no means of redress, inordinately severe penalties were imposed and extrajudicial executions were commonplace.

⁴⁹ *Ibidem*, p. 584.

After Karmal took over at the end of 1979 there was a considerable improvement in the judicial process for non-political offences. Karmal's Soviet advisors took the view that adopting too severe an approach to people not suspected of political offences was counter-productive.

During investigations into a criminal offence, from 1979 onwards suspects in principle had the right to a lawyer. They could also appeal against a verdict. Nevertheless, it could happen that suspects were deprived of both possibilities.

According to the law, those suspected of a criminal offence could be held for only twenty-four hours. Thereafter they had to be charged and brought before a judge. If this was not possible, the suspect had to be released. After the suspect was charged, the public prosecutor could by law detain him for one week at most, after which he had to be brought before the judge. The judge decided whether further judicial investigation was justified.

However, the legal rules were frequently contravened. Many people suspected of criminal offences were detained for long periods before being charged and brought before the judge. The Ministry of Justice did nothing to prevent this.

The Ministry of Justice also connived in having long sentences or even the death penalty imposed on political suspects on the pretext that they had committed a criminal offence. This improper use of the criminal law for political purposes was less frequent after the policy of national reconciliation was proclaimed in 1986. It also happened that cases arising out of criminal offences were transferred to the Special Revolutionary Court and tried as political offences.⁵⁰

⁵⁰ UN (A 40/843, 5 November 1985), p. 20.

Penalties for criminal offences were less severe than those for political offences. However, in a number of cases the death penalty was pronounced and carried out, particularly for serious offences such as murder, manslaughter, rape and armed assault. The situation in the prisons fell far short of the "Standard Minimum Rules for the Treatment of Prisoners" laid down internationally by the United Nations in 1955.

Under the regime of Karmal and Najibullah those suspected of criminal offences were not systematically tortured during questioning. However, they were maltreated.⁵¹ Treatment during questioning was also noticeably worse in the country than in the town. In the country maltreatment of suspects was much more frequent. This was particularly true of isolated, underdeveloped regions. Testimony given following maltreatment could in principle not be used. However, in practice it did happen. Food, medical care and living conditions in the overcrowded cells left a lot to be desired.

Military State Prosecution Service

The Military State Prosecution Service (*Saranwale-i-Qua-i-Musallah*) was responsible for prosecuting criminal and disciplinary offences and misdemeanours committed within the Afghan armed forces (army and airforce) by conscripted soldiers, non-commissioned officers and officers.⁵² They were tried by the Military Court-Martial/Disciplinary Tribunal (*Mahkama-I-Quaye-i-Musallah*). However, if, during preliminary inquiries, the Military Prosecution Service stumbled on politically sensitive issues or had indications that certain soldiers or (non-commissioned) officers harboured anti-government views or engaged in activities dangerous to the State, the Khad/WAD and the Revolutionary State Prosecution Service were immediately brought in.

⁵¹ See footnote 20.

⁵² This included refusal to serve and desertion, except for political reasons, when the case was transferred to the Revolutionary State Prosecution Service.

Judicial process for the prosecution of misdemeanours or offences by the Disciplinary Tribunal did not comply with minimum legal requirements, but was nevertheless better than for political offences.⁵³

In principle, the defendant had the right to defend himself and the right to a lawyer. In practice, this did not happen. Under Najibullah's regime it was possible to appeal against the judge's verdict. During the preliminary legal investigations a suspect was detained on the military base, but for no longer than one year. Once convicted, he had to serve his sentence in a normal prison. Under the Taraki, Amin and Karmal governments in particular, conditions of detention were especially poor. This improved under the Najibullah regime.

Administrative State Prosecution Service

The Administrative State Prosecution Service (*Mauwen-i-Nezarat-Bar Quanniyat*) was responsible for handling administrative and civil disputes. This Prosecution Service did not have its own court, but, where prohibited or illegal acts had taken place, it referred cases to the criminal court or the Special Revolutionary Court.

⁵³ Between 1979 and 1992 the Afghan airforce was accessible only to loyal members of the PDPA. For that reason, in the event of a disciplinary misdemeanour or criminal offence, members of the airforce were generally treated fairly. Prosecutors were, after all, their party comrades and, provided the individuals concerned were not suspected of prohibited political activities or disloyalty to the PDPA, there was no question of inordinately severe action being taken.

3. Responsibility for human rights violations

3.1.1. Political offences

The climate of terror and fear which the Communist regime had created in Afghan society also reigned within the judiciary. Prosecution of political opponents by the Revolutionary State Prosecution Service and the Special Revolutionary Court ⁵⁴ under the Communist regime in the period 1978-1991 systematically involved gross violations of human rights. The regime did not hesitate to employ every means to combat Islamic resistance to ensure its own survival.

Public prosecutors in the Revolutionary State Prosecution Service

During preliminary investigations in the KhAD/WAD interrogation centres, torture of political detainees was systematic. Generally speaking, public prosecutors gave members of the State security service the job of torturing suspects until a confession was obtained. Sometimes public prosecutors carried out the torture themselves. A culture of excessive violence reigned in the Revolutionary State Prosecution Service. This frequently resulted in suspects dying before they had made a confession.

It was impossible for public prosecutors in the Revolutionary State Prosecution Service to keep their jobs without acquiescing in the torture methods. All public prosecutors in the Revolutionary State Prosecution Service thus bear part of the responsibility for the human rights violations which took place in the Communist period from 1978 to March 1991.

⁵⁴ The term "Special Revolutionary Court" in this section and in the "Summary" section also covers the forerunner and successor to this court.

Judges in the Special Revolutionary Court

Judges in the Special Revolutionary Court could only obtain their posts and carry out their duties if they subscribed fully to the repressive nature of the Communist legal system. Judges in the Special Revolutionary Court did not in any way respect the right to a fair trial and knowingly imposed harsh sentences even if no hard evidence was available and if a confession had been obtained by torture. Seen in that light, all judges of the Special Revolutionary Court also bear responsibility for human rights violations committed in the Communist period between 1978 and March 1991.

Former Communist public prosecutors and judges of the Revolutionary State Prosecution Service and the Special Revolutionary Court run a higher risk of persecution by the Taliban. Despite the absence of specific action by the Taliban against former Communists⁵⁵, the possibility that they will pursue such highly-placed senior officials of the Communist regime cannot be ruled out.

3.1.2. Non-political offences

During the first eighteen months after the 1978 coup the judicial prosecution system for criminal offences was such that it is highly likely that human rights were violated, since the detection system put into operation after the revolution by party leaders Taraki and Amin was extremely repressive. At that time those suspected of criminal offences were also often regarded as "reactionary enemies of the revolution" and treated as such.

During the period from 1979 to 1992 the judicial prosecution system for criminal offences did not comply with the minimum legal requirements laid down in international treaties on human rights. Suspects were often detained for long periods without being charged and did not always have access to a lawyer or possibilities of appeal. Although torture was not systematic, it did occur in certain cases. Prison conditions were generally poor.

⁵⁵ See also section 3.4.5 of the official general report "The situation in Afghanistan" of 16 September 1999.

Nevertheless, the treatment of those suspected of criminal offences (except in the period 1978-1979) was noticeably better than the very inhumane treatment meted out to opponents of the Communist regime.

The Military State Prosecution Service and the Military Disciplinary Tribunal were not directly involved in human rights violations. Only if there was a suggestion of prohibited political activities, contacts with the Islamic resistance or disloyalty towards the PDPA was the prosecution transferred to the KhAD/WAD. The KhAD/WAD, on the other hand, was guilty of human rights violations on a large scale. The Disciplinary Tribunal was not specifically involved here, but was certainly aware of the consequences for suspects of having their cases transferred to the KhAD/WAD.

In view of the type of offences it dealt with, the Administrative State Prosecution Service as such was not involved in human rights violations. However, administrative cases were regularly passed on to the Revolutionary State Prosecution Service under the pretext that they were political. Officials of the Administrative State Prosecution Service must have been aware of this.

3. Summary

During the period 1978-1992 Afghanistan had no independent legal system which guaranteed fundamental human rights. After the Communist takeover in 1978 the regime's top priority in the first few months was to locate and root out its political opponents from society. Under the regime of Nur Muhammad Taraki and Hafizullah Amin this led to savage, large-scale purges.

With the creation of the Revolutionary State Prosecution Service and the Special Revolutionary Courts after the Saur Revolution the prosecution of political opponents of the regime acquired a legal basis. In the period 1979-1992 around 150 000 to 200 000 Afghans were said to have been arrested by the KhAD/WAD on suspicion of political offences.

Suspects were systematically tortured during interrogation. Public prosecutors generally gave members of the State security service the task of torturing suspects until a confession was obtained. Political prisoners were totally powerless in the face of the torture methods to which they were subjected. Suspects were completely at the mercy of the State security service and the Revolutionary State Prosecution Service.

All public prosecutors of the Revolutionary State Prosecution Service therefore bear part of the responsibility for human rights violations committed in the Communist period, 1978-1991.

Many people were convicted by the Special Revolutionary Court in the knowledge that they had been tortured. In addition, many were convicted without a shred of hard evidence against them. The judge always complied with the demands of the public prosecutor. Judges of the Special Revolutionary Court could not retain their posts if they did not fully subscribe to the repressive nature of the Communist legal system.

All judges of the Special Revolutionary Court bear responsibility for human rights violations committed in the Communist period, 1978-1991.

Prosecution of non-political offences was in the hands of the Office of the Chief Public Prosecutor. He directed the various departments of the State Prosecution Service. The Criminal (or "regular") State Prosecution Service was responsible for prosecuting criminal offences detected by the police and tried by regular courts.

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