

AFGHANISTAN

Reports of torture, ill-treatment and extrajudicial execution of prisoners, late April - early May 1992

Recent political developments

On 16 April 1992, former president Najibullah was replaced by a four-member council of the ruling Watan (Homeland) Party, and government officials met with Mujahideen commanders outside Kabul to negotiate a non-violent transfer of power after 14 years of fighting. Rivalry over control of Kabul continued among powerful Mujahideen commanders, at times leading to violent clashes.

Efforts for a political compromise led to the formation on 24 April, of a 51-member ruling council headed by Professor Sibghatollah Mojaddedi to take power in Kabul, and to be replaced after two months by an Interim Government headed by Professor Burhanuddin Rabbani, which would hold elections in six months and would then be replaced by an elected government. This plan was rejected by *Hezb-e-Islami* (Party of Islam) led by Gulbuddin Hekmatyar and *Hezb-e-Wahdat Islami* (Islamic Unity Party) of Iran-based Mujahideen groups, but other Mujahideen parties accepted it.

On 25 April, rival Mujahideen groups entered Kabul. Intense fighting between *Jamiat-e-Islami* (Society of Islam) forces of Ahmad Shah Masood supported by the militia forces of General Abdul Rashid Dostum, and *Hezb-e-Islami* (Hekmatyar) forces led to the latter's withdrawal to the outskirts of Kabul from where they bombed the city killing scores of unarmed civilians until a ceasefire was announced on 7 May.

On 28 April, Professor Mojaddedi entered Kabul and took over as head of the new Islamic State of Afghanistan. Other Mujahideen leaders have entered Kabul since, and Professor Mojaddedi has drawn up a list of 35 members of his cabinet.

Past human rights violations

Over the years, Amnesty International has continuously opposed torture, the death penalty, unfair trial of political prisoners by special courts and extrajudicial executions in Afghanistan, urging successive governments to improve their human rights records and introduce effective

safeguards against these violations. Its latest publications included a report in 1991¹, in which Amnesty International expressed concern about torture and detention without charge or trial of political prisoners in *Riasat* (Directorate) interrogation centres, and in Blocks 1 and 2 of Pul-e-Charkhi prison near Kabul for period lasting up to nine years. It urged the government of former president Najibullah to bring to justice anyone found to have been responsible for these violations. It further urged the former government to ensure that no-one was held in unacknowledged detention; that all political prisoners had access to relatives, lawyers and doctors; that all places of detention operated by the Ministry of State Security were open to full and regular inspection by independent international humanitarian organizations.

In another report² published in 1991, Amnesty International stated that thousands of political prisoners including prisoners of conscience who had been sentenced by special courts to various terms of imprisonment and to death, had not received a fair trial and that hundreds were still being held. It urged the former government to set up an independent and impartial review procedure to examine the cases of all such prisoners, emphasizing that the review body should be empowered both to order the immediate and unconditional release of any prisoners found to have been sentenced simply for the non-violent expression of their political opinion or religious beliefs, and to order a re-trial of other political prisoners by a court that conformed to the minimum international safeguards for a fair trial.

Amnesty International's concerns about present human rights violations

Amnesty International has expressed concern to the government of Professor Mojaddedi about current reports of torture, ill-treatment and extrajudicial execution of prisoners, as well as statements by some Mujahideen officials that prisoners may be tried in courts which may impose sentences of death or amputation under Islamic law.

Amnesty International is urging the new Afghan Government to ensure that Mujahideen and militia personnel do not detain anyone solely on grounds of political affiliation or ethnic origin; to ensure that firm safeguards against any form of torture or cruel, inhuman or degrading treatment or punishment are established and enforced; to halt extrajudicial executions; and to ensure that political prisoners receive fair trials in accordance with the standards specified in international human rights instruments.

The current political situation in Afghanistan makes it difficult for Amnesty International to conduct full investigations of reported human rights violations. The organization has, however, received reports of such violations with serious concern.

¹ See *Afghanistan: Reports of torture and long-term detention without trial*, AI Index (ASA 11/01/91)

² See *Afghanistan: Unfair trial by special tribunals*, AI index (ASA 11/03/91).

A most alarming report concerned the summary execution of a man suspected of being a member of the former ruling party loyal to a faction of the armed opposition forces opposing the government. He was reportedly arrested in the Ministry of the Interior by government troops who took the building from rival Mujahideen groups. Eye witnesses reported that a member of the militia tied him up and kicked him down a flight of stairs. On the ground floor a government fighter reportedly clubbed him with a rifle butt. He then reportedly turned his gun around and fired at least 10 bullets at the prisoner. After that he tried to cut the dead man's throat with a blunt ceremonial officer's sword.

Another report quoted foreign diplomats as saying that Mujahideen guerrillas have summarily killed some 40 members of the former government security forces who had been taken prisoner on 30 April 1992.

The former Chief Justice of Afghanistan, Abdul Karim Shadan, was reportedly abducted, tortured and killed in Kabul on 3 May. Amnesty International fears that his death may be the result of an extrajudicial execution carried out by Mujahideen or militia groups acting on behalf of the new government in reprisal for his activities as a senior official of the former government. At least eight other former government officials have also reportedly been abducted by groups allegedly acting on behalf of the government. Among those abducted was the former Civil Aviation Minister, Wadier Safi, who was reportedly released on 6 May as a result of negotiation between the government and his captors.

In another incident in central Kabul on 30 April, Javed Asanahi, a high school teacher accused of looting, was reportedly blindfolded and tied to a lamp post. His captors reportedly stated that he would be tried by an Islamic court which would sentence him to have his hands "surgically removed". Javed Asanahi told foreign journalists who were photographing him that he had not been involved in looting, that he was picked up from his house without any evidence of looting but the guards reportedly ordered him not to talk.

An unidentified man was reportedly shot dead on 1 May in Kabul by the militia forces of General Abdul Rashid Dostum and then robbed of all his possessions.

Other reports indicate that hand grenades have been thrown by unknown persons into the houses of Sikh and Hindu families in Kabul. Similar attacks were reported to have been carried out on 2 May. Amnesty International urges the new government in Afghanistan to ensure that lives of members of religious minorities in Afghanistan are fully protected.

These instances of human rights violations are all prohibited under the provisions of international human rights law. As a state party to the International Covenant on Civil and Political Rights and the Convention against Torture, Afghanistan is legally bound to observe the provision of these instruments. Amnesty International urges the Government of Afghanistan to

ensure that these provisions are fully reflected in human rights protection and legal safeguards to be provided by the new government.

Torture and ill-treatment

The prohibition of torture and ill-treatment is a fundamental norm of international law and is enshrined in several international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), to which Afghanistan acceded in 1983. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". No derogation from this article may be made under any circumstances.

Article 2.1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Convention against Torture), which was ratified by Afghanistan on 1 April 1987, requires each state party to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". It also provides that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Extrajudicial executions

Extrajudicial execution refers to deliberate and unlawful killing by state agents acting outside the framework of the judicial system. Extrajudicial executions violate the Universal Declaration of Human Rights which states in Article 3: "Everyone has the right to life, liberty and security of person."

Article 6(1) of the International Covenant on Civil and Political Rights states: "Every human being has the inherent right to life. This shall be protected by law. No one shall be arbitrarily deprived of his life."

The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions in Principle 1 lays down: "Governments shall prohibit by law all extra-judicial, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances ..."

Fair trial

Amnesty International takes no position with respect to the cultural, political or religious values which underlie a judicial system. Regardless of the underlying values, the judicial procedures must conform to internationally established standards for fair trial. In this regard Amnesty International would point in particular to Afghanistan's obligation contained in article 14 of the ICCPR, which includes the right to a fair and public hearing by an independent and impartial tribunal, to be presumed innocent until proved guilty, to present a defence and to be defended by a lawyer of one's choosing, to summon and examine witnesses and to be able to appeal to a higher tribunal against conviction or sentence.

Amnesty International urges The Government of Afghanistan to ensure from the outset that Afghanistan's judicial system conforms to these fair trial safeguards.

Judicial amputation and the death penalty

Amnesty International is concerned about reports that some courts in Afghanistan may pass sentences of death or amputation. Amnesty International opposes unconditionally the death penalty as the ultimate form of cruel, inhuman or degrading punishment. The use of the death penalty also violates the most fundamental right of every human being, that is the right to life.

The Islamic Affairs Minister, Maulawi al-Salah Rakhmani, is quoted in the international press to have said that:

"As for thieves, we don't intend to cut off their hands. May be in the future this will change, but for now we hope to find another way to punish thieves."

Amnesty International welcomes this statement and urges the new government to ensure that no judicial amputation takes place in Afghanistan. Amnesty International considers that judicial amputation as well as other forms of corporal punishment amount to cruel, inhuman or degrading punishment in contravention of Article 7 of the ICCPR and Article 16 of the Convention against Torture. The United Nations Special Rapporteur on torture continues to intervene in cases of judicial amputation and has stated that "corporal punishment as 'lawful sanctions' under domestic laws may constitute 'severe pain or suffering' under international law. Consequently, this kind of chastisement should be revised in order to prevent torture, particularly amputations, caning or flogging."

Amnesty International urges the Afghan Government to pay special attention to the protection and promotion of human rights in Afghanistan particularly with a view to preventing a repetition of the type of human rights violations described in this document.