

## AFGHANISTAN

### CAT A/48/44 (1993)

50. The Committee considered the initial report of Afghanistan (CAT/C/5/Add.31) at its 120<sup>th</sup> and 121<sup>st</sup> meetings, on 10 November 1992 (see CAT/C/SR.120 and 121).

51. The report was introduced by the representative of the State party, who pointed out that his country was not always in a position to respect its international commitments on account of domestic problems and the lack of infrastructure needed to apply international standards. In that connection, Afghanistan would welcome any assistance that could be provided by the United Nations and the advisory services of the Centre for Human Rights. The representative drew particular attention to the fact that the report under consideration had been prepared and submitted by the previous regime, in power in January 1992, and that it had a number of shortcomings, particularly with regard to measures taken to give effect to the provisions of the Convention. Since the report had been drafted, enormous changes had taken place in Afghanistan and the new administration was combating social injustice in accordance with Islamic doctrine. The transitional government was facing difficulties due to Afghanistan's internal conflicts, but free and democratic elections would help normalize the situation. A new constitution was being drafted which was based on Islamic principles and which would be in accordance with international human rights instruments. Measures were also taken to improve the judiciary and to prevent criminal acts in the country.

52. Members of the Committee recognized the seriousness of the problems Afghanistan was facing and recalled that under the Convention no exceptional circumstances may be invoked as a justification of torture. They generally wished to know how international law was currently incorporated into domestic law, whether the Constitution quoted in the report was still in force, how the legal system of criminal law operated in Afghanistan, to what extent Islamic law was incorporated into Afghan criminal law and whether the new regime in power considered itself bound by the international conventions ratified by the previous regime. Members of the Committee also sought clarification on the structure of the judiciary, its independence and its relation with Islamic courts. With regard to the report under consideration, members of the Committee took note of the fact that it did not reflect the point of view of the present Government and they agreed that a new comprehensive report was necessary to understand how the Convention was applied in Afghanistan.

53. With reference to article 2 of the Convention, members of the Committee requested more detailed information on the rights of persons under arrest, including the right to be informed of charges against them, the right to remain silent, the right to have their relatives informed of their whereabouts, the right to communicate with a lawyer and to be examined by a doctor of their choosing. It was also asked whether there was in Afghanistan a code of conduct for methods of interrogation, whether a register was kept of persons under arrest, whether the accused was responsible for obtaining and paying a lawyer and whether the State provided such services. In addition, information was requested on the length and conditions of police custody and the procedure through which a person held in custody was brought before a judicial official. It was asked, in this connection, whether there had been any cases of torture in Afghanistan and whether representatives of the International Committee of the Red Cross were authorized to visit detention centres in the country. It was further observed that a recent trial in Afghanistan, in which four

persons has been sentenced to death, had been held in camera and that no appeal or review had been allowed and it was asked whether trials were open to the public under the new legal system and whether provision had been made for review or clemency in the case of persons convicted for serious offences.

54. With reference to article 4 of the Convention, clarification was sought as to what criminal penalties could be applied to those found guilty of practicing torture.

55. In connection with article 8 of the Convention, it was observed that the constitutional provisions prohibiting the extradition of Afghan citizens to another State might not comply with the requirements of that article, unless provision was also made domestically for the prosecution of such citizens. It was pointed out that article 8 implied that even Afghan citizens must be extradited, for example, when they are accused of having committed torture in another State.

56. In connection with articles 10 and 14 of the Convention, it was asked whether education regarding the prohibition of torture was provided to various categories of medical personnel other than doctors, whether any medical rehabilitation programmes had been set up in Afghanistan, how victims of wrongful acts committed by agents of the State were compensated and whether there were statistics showing that any citizen had ever received such compensation.

57. With reference to article 15 of the Convention, clarification was requested about the sentences in the report which stated that confessions or statements obtained by compulsion were not "valid".

58. In connection with article 16 of the Convention, it was pointed out that, according to information received from Amnesty International, three persons had been publicly hanged in Kabul on 7 September 1992 and it was observed that public hangings could be regarded as cruel and degrading punishment. It was also noted that, according to the same source of information, a person in Afghanistan could be stoned to death for adultery or could be mutilated and submitted to corporal punishment for certain crimes punishable under Islamic law and it was asked whether Afghanistan characterized such penalties as "pain or suffering arising only from, inherent in, or incidental to, lawful sanctions", as stated in article 1 of the Convention.

59. In his reply, the representative of the State party stated that since the Islamic State had been restored in Afghanistan, torture as defined in the Convention was not practised; it was considered contrary to Islamic law and prohibited by the Penal Code. The legislation mentioned in the report was still valid, but it was likely to be amended following the adoption of the new Constitution and would be brought in line with Islamic precepts. He then referred to the categories of penalty in Islamic law and stated that the principle of the separation of powers was fully respected in his country. Judges were appointed by the head of State, who also decided on their promotion on the basis of reports made by the Minister of Justice. At present, the courts applied the Shariah laws, but not very strictly. In the event of any conflict between internal law and the Convention, the Convention took precedence. The representative stressed that the current leaders of Afghanistan would respect all conventions to which the country was a party under the previous regime and would submit a more detailed report to the Committee.

60. With reference to article 2 of the Convention, the representative stated that a state of siege had

not been officially decreed in Afghanistan and that, following the general amnesty, all prisoners, including criminals, had been released. There were no longer any prisons in Afghanistan, but small detention centres only. There was a system of legal aid or legal assistance for the accused, but it was somewhat unsatisfactory, mainly because Afghanistan was an underdeveloped country.

61. In connection with article 14 of the Convention, the representative pointed out that the courts determined the nature and amount of compensation for loss or injury on the basis of the relevant Islamic precepts.

#### Conclusions and recommendations

62. The Committee was generally of the opinion that, in view of the enormous changes Afghanistan had been going through recently, the Government of Afghanistan should submit a new report combining the information required in an initial report, an additional report and a periodic report in a single document. The new report should take account of all the questions asked and follow the general guidelines of the Committee regarding the form and contents of reports to be submitted by States parties. It should focus, in particular, on such aspects as the structure of the legal system, conditions of detention and the role of training and education; it should also clarify to what extent Islamic law was incorporated into Afghan criminal law. The new report should be submitted by the end of June 1993, so that the Committee could discuss it at its November 1993 session. The Committee further recalled that the Centre for Human Rights was at the disposal of the Government of Afghanistan to help it draft its report and to provide technical assistance in the field of human rights.