

ANNEX

Response from the *De Facto* Ministry of Foreign Affairs of the Islamic Emirate of Afghanistan

Islamic Emirate of Afghanistan

Ministry of Foreign Affairs

Directorate General of Human Rights and Women's International Affairs

Information about corporal punishment and execution in Afghanistan in response to the draft report of UNAMA Human Rights Service in Kabul

- **Legal framework in accordance with Islamic principles and international laws**

Regarding the implementation of *Hudūd and Qisās* and its comparison with human rights and international laws, it should be stated that 99 per cent of the people of Afghanistan follow the holy religion of Islam and Islamic principles, therefore, the laws are determined in accordance with Islamic rules and guidelines. In the event of a conflict between international human rights law and Islamic law, the government is obliged to follow the Islamic law.

- ***Hudūd and Qisās***

Each political system has its own standards and approaches to distinguish from each other. The distinction between an Islamic system and other political systems in the world is based on the implementation of Islamic rules. Therefore, *Hudūd and Qisās* by the Islamic Emirate are not only punishments but the implementation of the divine laws. Human life and the protection of property and life are integral to *Qisās*, and these punishments are based on complete documentation, evidence, proof of crime and implemented with great care which results in ensuring complete security and a safe environment for the people. *Qisās* is not for all crimes, but for intentional killings. Likewise, *Hudūd* crimes have fixed punishments and in the absence of any doubt, the delayed or non-implementation of which is also a crime. The Islamic Emirate is carrying out all its activities in light of the holy religion of Islam and is fully committed to it.

Regarding the death penalty, it should be mentioned that this is in the jurisdiction of the Islamic courts to issue a death penalty against a criminal or consider other punishments for them.

Islamic rulings consider all aspects of a human life in the society and other circumstances, for instance, a person who has not reached the age of adulthood or has a permanent mental or intellectual disorder, such persons are considered to be *marfiu'-ul-qalam*¹ and the punishment is not applicable to them. This is also one of the privileges of Islam.

- **Implementation of punishments**

With regards to the punishments and the use of forced confessions, the security organs of the Islamic Emirate carry out their activities strictly in line with its operational policies and are completely against the use of forced confessions by means of threats, physical or mental torture and consider this a crime. Such confessions have no legal or *Sharia* basis for proving a crime. The Islamic religion orders for good behavior with captives and prisoners. In the event of violating the operational guidelines of the security organs, the perpetrators will be subject to serious and legal consequences.

In Islam, the punishment determined for the criminal derived from the type of crime committed is a principle itself which plays an extremely important role in the elimination and reduction of crimes and helps create a stable society including fulfilling the five necessities: their faith (deen), their life (nafs), their posterity (nasl), their wealth (mal) and their intellect (a'qal), and following the complete rule of the Islamic Emirate over the country, we have witnessed the realization of all these. With reference to corporal punishments and executions or the death penalty in Afghanistan, the human rights report of UNAMA specifically referred to the interview of Mullah Nooruddin Turabi, Acting Director of the Office of Prison Administration, who in his interview with the Associated Press had stated that “cutting off of hands is very necessary for security”. In this regard, the Office of Prison Administration, as an accountable national entity has the responsibility to protect, rehabilitate and educate prisoners and juveniles through the provision of education, rehabilitation, vocational and employment programs for detainees. This means that the Office of Prison Administration does not interfere in the pursuit of crimes/criminals, the issuance of verdicts and the implementation of severe punishments, including execution, amputation and other corporal punishments. Since the victory of the Islamic Emirate of Afghanistan until now, with the exception of one case which was also mentioned in UNAMA’s report, there has been no incident of corporal punishment, execution and or death of prisoners in the prisons of Afghanistan. The Office of Prison Administration, as always, pursues its work towards ensuring the rights of prisoners and timely follow up of their cases in the courts.

- **Detention of individuals**

Security organs, as a part of the government of the Islamic Emirate of Afghanistan, have the authority and obligation to protect and investigate suspects who have been arrested on suspicion, in line with their operational policy. Accusations against suspects can be acts that weaken government rule, create security problems, and cause economic, cultural, social and religious sabotage, therefore, it is necessary to have the suspect under their custody.

In the draft report, it is mentioned that four residents of Kunduz Province were arrested on the charges of killing vaccinators. In this case, it should be noted that the mentioned suspects were

¹ An Arabic term that refers to a person who is not accountable for his/her crime, i.e. a person with mental disability or a minor.

released following the court's decision due to lack of sufficient evidence and documentation to prove the crime against them.

The report claims about corporal punishment of people by members of the Islamic Emirate in some provinces, including on 16 January 2022 in Chapa district of Baghlan Province, on 16 January 2022 in Lashkargah City, Helmand Province, and the killing of a woman as a result of corporal punishment in Samangan Province. In the above-mentioned cases, relevant departments have shared the reports with concerned officials in the capital and provinces who, as a result, confirmed that their security personnel are not involved in torture and the above reports are only allegations and that there is no evidence in this regard.

In UNAMA's report, there is an instance of extrajudicial killing on 14 February in Nusay district of Badakhshan province, where it is stated that the *de facto* governor of the district, in the presence of a group of people, implemented the stoning on a woman. This issue was shared with the authorities of Badakhshan province through the relevant department and they were asked for detailed and comprehensive information related to this case. Information gathering has not been completed yet and the issue is being followed up closely.

Regarding the activities of the Ministry of Promoting Virtue, Preventing Vice and Hearing Complaints (MoPVPV), it should be mentioned that this Ministry has its own internal rules and regulations based on which the inspectors perform their duties. The inspectors of MoPVPV cannot implement their programs without following legal procedures or carry out arbitrary activities. As stated in UNAMA's draft report: "On 13 August 2022, in Bamyan province, a PVPV inspector lashed two girls and one woman because they were not wearing burqas." If these instances and violations of inspectors are proved, the perpetrators will be given appropriate punishment. In order to prevent such incidents, this Ministry has its own monitoring and investigation departments to identify violations and apply appropriate administrative punishments against the perpetrators. In addition, this Ministry has drafted its own law in order to carry out its work as efficiently and systematically as possible, in which specific provisions have been included to guarantee the implementation of the aforementioned law.

- **Torture and access to justice**

It is worth mentioning that, in addition to the rules and regulations of each department under Islamic Emirate, the 99-article Code of Conduct issued by the *Amir al-Mu'laminin* as well as the rules of the Islamic *Sharia* prohibit harassment and any type of torture of prisoners and the Islamic Emirate, its monitoring mechanisms, is seriously monitoring the implementation of the Code.

With regards to defense lawyers, it is reported that they are facing difficulties in meeting with clients, accessing places of detention and being sidelined in judicial processes. It is to be mentioned that the Office of the Prison Administration is committed to bringing reforms in the prisons across the country and ensuring the implementation of the legal and *Sharia* based rights of the prisoners. With regards to the access of defense lawyers, the Office of Prison Administration, based on the applicable laws, facilitates the access of defense lawyers to prisons and has taken the following steps towards ensuring the rights of detainees and access of defense lawyers to prisons:

1. Coordination meetings with the Ministry of Justice regarding the provision of legal assistance for vulnerable prisoners and prisoners' access to defense lawyers.
2. Organizing awareness raising programs about the rights of prisoners who are imprisoned in the prisons across the country.
3. Organizing training workshops for central and provincial employees of the Office of Prison Administration on how to guarantee and support the human rights and Islamic rights of prisoners.
4. Prisoners' access to defense lawyers in central and provincial prisons.
5. Facilitating the visits of the representatives of the United Nations and the Human Rights Service of UNAMA to the prisons across the country.

In view of the above and the steps taken especially with regards to prisoners' access to their basic rights, the Office of Prison Administration is committed to bringing reforms in the prisons, rehabilitation of the prisoners and prevention of the violation of the human rights of the prisoners.

During the process of arrest and detention of suspects and during the period when the suspect is under the custody of the security organs, no department, office or individual, in line with our policies, has the right to torture physically and mentally, insult or humiliate the suspects. In this context, the Department of Human Rights and other relevant departments have the obligation and complete authority to take action against the perpetrating officials in case of violation.

In some cases where legal violations were committed by individuals, investigations were conducted and the results were shared with the leadership of the security organs and based on the instructions of the leadership, the perpetrators were given *Tazir* punishments.

Last year, 93 violations were recorded and investigated, and some of the perpetrating employees were dismissed from their duties and punished according to their crimes. Suspects whose investigation period and files were completed, their files along with related attachments were sent to courts immediately for determining their faith and subsequent proceedings were carried out based on the court decision.

As mentioned above, *Hudūd* and *Tazir* punishments are specified in Islam, and their implementation should be carried out in public. In addition, if a person has not reached the age of adulthood, he/she is considered to be *marfuū'-ul-qalam*, and the age of adulthood in international laws is considered to be 18 years while in Islam it is unanimously agreed to be 15 years.

For the implementation of lashing, there is a specific person in the court called *Jallād* (the executioner) and there are specific number of lashes that are applied in public according to the conditions of the criminal. The participants of these gatherings are the employees of PVPV. In short, we can say that the implementation of punishments, as mentioned above, is not the duty of every person, and that no one is allowed to interfere in sensitive matters as such.

End.