Afghanistan - Researched and compiled by the Refugee Documentation Centre of Ireland on Tuesday 16 November 2010

Information on an amnesty law applicable to all persons who renounce the Taliban at any point in time. Does this amnesty law protect from prosecution those with alleged or actual involvement with the Taliban in the course of the years 2008-2010?

An article in *The Guardian* published in February 2010 states:

> "Taliban fighters who have maimed and murdered but who lay down their weapons will be given immunity from prosecution according to a law that came into force without announcement in the weeks running up to last month's London conference on Afghanistan. The sudden implementation of the controversial law, which had been shelved for almost two years since it was passed by a slim parliamentary majority in 2007, has raised fears that the Afghan government is ignoring the rights of Taliban victims for the sake of President Hamid Karzai's push for a quick peace deal with insurgents. The reconciliation and general amnesty law also gives immunity from prosecution to all of the country's warlords, the former factional leaders, many of whom are hated for the atrocities they committed during Afghanistan's civil war in the 1990s" (The Guardian (11 February 2010) *Afghanistan quietly brings into force Taliban amnesty law*).

In February 2010 it is noted by *Amnesty International* that:

> "Under this legislation, people who committed serious human rights violations and violations of the laws of war, including massacres, widespread enforced disappearances, and systematic use of torture, rape, public executions and other forms of ill-treatment would be immune to criminal prosecution if they pledge cooperation with the Afghan government" (Amnesty International (9 February 2010) *Afghanistan must not grant impunity to war criminals*).

This document also states:

> "Under the provisions of this legislation, Taleban figures who agree to cooperate with the Afghan government would also be immune to prosecution. The Afghan government and its international supporters identified reconciliation with the Taleban as a priority during the London conference in January 2010" (ibid).

A paper issued in February 2010 by the *International Centre for Transitional Justice* notes the following:

> "It is very difficult to see how this amnesty would operate in practice. It is unusual in its open-ended nature and does not set time-lines for compliance. It is unclear from Art. 3 (2) whether certain conditions attach, such as adherence to the Constitution, disarmament, etc. Moreover, it is unclear how

> the extraordinary commission referenced in Art. 5 will function" (International Centre for Transitional Justice (21 February 2010) *Discussion Paper on the Legality of Amnesties*,p.9).

In March 2010 a report by *Human Rights Watch* notes:

> "Human Rights Watch expressed concern that the law may be used to provide immunity from prosecution for members of the Taliban and other insurgent groups who have committed war crimes. The government and its international backers have made a reconciliation process a main plank of their counter-insurgency strategy. "It [the amnesty law] was collecting dust for nearly three years," Fawzia Kufi, a member of parliament, told Human Rights Watch. "But now that the president wants to talk to the Taliban - for his own interests, and for his friends' interests - he makes it law." The law says that those engaged in current hostilities will be granted immunity if they agree to reconciliation with the government, effectively providing amnesty for future crimes. "The amnesty law is an invitation for future human rights abuses," said Adams. "It allows insurgent commanders to get away with mass murder. All they need to do is offer to join the government and renounce violence and all past crimes will be forgiven - including crimes against humanity." " (Human Rights Watch (10 March 2010) *Afghanistan: Repeal Amnesty Law*).

Reviewing events of 2009 the *United States Department of State* note in a publication released in March 2010 that:

> "The Law on National Reconciliation and Amnesty, which was published in December 2008, grants amnesty to persons engaged in conflict during the past 25 years" (United States Department of State (11 March 2010) *2009 Human Rights Report: Afghanistan*, Section 1d 'Arbitrary Arrest or Detention/Amnesty').

The *International Centre for Transitional Justice* in March 2010 reports:

> "A law that provides blanket immunity and pardons former members of Afghanistan's armed factions for war crimes and human rights abuses committed prior to December 2001 was quietly enacted three years ago by parliament, despite previous assurances by President Hamid Karzai that he would not sign it or allow it to take effect" (International Centre for Transitional Justice (16 March 2010) *Afghanistan Enacts Law That Gives War Criminals Blanket Immunity*).

This document also notes:

> "The International Center for Transitional Justice (ICTJ), an organization founded in 2001 that assists countries in their pursuit of accountability for mass atrocities or human rights abuses, said "blanket amnesties promote impunity and are currently deemed unlawful under international law" " (ibid).

The *UN News Service* in March 2010 states:

> "The United Nations human rights office in Afghanistan today called for the repeal of a controversial amnesty law in the Asian country, saying that it green-lights impunity for serious crimes and continued rights violations" (UN

News Service (25 March 2010) *Top UN human rights official in Afghanistan calls for repeal of amnesty law*).

Eurasianet in March 2010 states:

> "As worded, the law covers "all political factions and hostile parties who were involved in a way or another in hostilities before establishing of the interim administration [in 2001]," as well as "those individuals and groups who are still in opposition to the Islamic Republic of Afghanistan and cease enmity after the enforcement of this resolution and join the process of national reconciliation and respect the constitution and other laws and abide them." Without a cut-off date, the law offers those committing crimes impunity to continue doing so until they please" (Eurasianet (14 March 2010) *Afghanistan: Amnesty Law Fuels Debate on Reconciliation Process*).

A paper in April 2010 by the *Afghanistan Research and Evaluation Unit* states:

> "Many CSOs (Afghan and international) question the timing of the publication of law in the month leading up to the announcement of the national "Peace and Reintegration Programme." Significantly, Section 3, Clause 2, extends immunity from prosecution by the government to: armed people who are against the government of Afghanistan, after the passing of this law, if they cease from their objections, join the national reconciliation process, and respect constitutional law and other regulations of the Islamic Republic of Afghanistan. They will have all the perquisites of this law. The timely appearance prompted some human rights activists to suggest that it was designed to incentivise the Taliban to reconcile. However, Karzai's spokesman, Waheed Omar, claimed there was "no link" between the gazetting of the law and reconciliation plans. Regardless of the intent behind the publication, the law could perhaps be used to demonstrate to Taliban insurgents that they will not face criminal prosecutions if they lay down arms. It is worth noting that in the aforementioned clause, there is no mention of any time limitations on the benefits of amnesty. Theoretically, this could mean that amnesty could be granted for an indefinite time" (Afghanistan Research and Evaluation Unit (April 2010) *The State of Transitional Justice in Afghanistan, Actors, Approaches and Challenges*,pp.9-10).

In April 2010 *Eurasianet* notes:

> "The Afghan government has proposed a law that would grant amnesty to Taliban fighters in order to peel them away from the radical Islamic movement and to promote a durable peace in Afghanistan. The government, however, has not made public details of the legislation, including who would be eligible for the amnesty, what crimes might be excluded, and what Taliban members would have to do to be eligible for the amnesty" (Eurasianet (5 April 2010) *Afghanistan: Rights Experts Have Doubts about Reconciliation with Taliban*).

Citing the APRP (Afghan Peace and Reintegration Programme), a document published by *IRIN News* in June 2010 states:

> ""Amnesty will be granted to ex-combatant commanders and foot soldiers, vetted by security institutions and communities, where local grievances can be resolved and where ex-combatants will live in accordance with the laws

> and Constitution of Afghanistan, renounce violence, and have no current or future ties to Al-Qaeda or other terrorist groups," states the APRP. Senior Taliban leaders on a UN Security Council blacklist will have their names cleared if and when they side with the government, according to the APRP. As a confidence-building gesture, five Taliban officials were removed from the list in January. Human rights organizations, however, criticize a blanket amnesty for Taliban fighters and say no viable peace can be achieved without justice. "The worsening human rights situation in Afghanistan has deep-rooted connections to bad governance, the existence of the culture of impunity in Afghanistan, absence of the accountability for the past and continuous human rights violations," Claudio Cordone, secretary-general of the UK-based Amnesty International, told IRIN" (IRIN News (31 May 2010) *Analysis: "Flawed" peace strategy in Afghanistan*).

A report published in July 2010 by *Human Rights Watch* states:

> "The Amnesty Law states that all those who were engaged in armed conflict before the formation of Afghanistan's Interim Administration in December 2001 shall "enjoy all their legal rights and shall not be prosecuted." It also says that those engaged in current hostilities will be granted immunity if they agree to reconciliation with the government, effectively providing amnesty for future crimes. The law thus provides immunity from prosecution for members of the Taliban and other insurgent groups, as well as progovernment warlords, who have committed war crimes" (Human Rights Watch (12 July 2010) *The "Ten-Dollar Talib" and Women's Rights*,p.52).

A paper issued in October 2010 by the *Afghanistan Research and Evaluation Unit* states:

> "A common refrain was that the amnesty law will be instrumental in enticing insurgent groups and their leaders to come to the table through generating assurances that no action, retributive or otherwise, will be taken against them for their actions in the years of conflict. Some interviewees saw the passage of the amnesty law and its sweeping nature—it potentially forgives past, present and future crimes…" (Afghanistan Research and Evaluation Unit (October 2010) *Peace at All Costs? Reintegration and Reconciliation in Afghanistan*).

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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