

**Treatment of  
Conflict-Related Detainees:  
Implementation of Afghanistan's National  
Plan on the Elimination of Torture**



**United Nations Assistance Mission in Afghanistan  
Office of the United Nations High Commissioner for Human Rights**

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## Glossary of terms

### Acronyms

AIHRC	Afghanistan Independent Human Rights Commission
ALP	Afghan Local Police
ANA	Afghanistan National Army
ANBP	Afghanistan National Border Police
ANP	Afghanistan National Police
ANDSF	Afghanistan National Defence and Security Forces
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (often shortened to Convention against Torture)
CID	Criminal Investigations Department (ANP)
CPD	Central Prisons Directorate
CRC	Convention on the Rights of the Child
CPC	Criminal Procedure Code
IED	Improvised Explosive Device
JCRC	Juvenile Corrections and Rehabilitation Centre
MoD	Ministry of Defence
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NDS	National Directorate of Security
NPM	National Preventive Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme

### Dari and Pashto Words

Hawza	Cadastral zone within a city
Taliban	Armed opposition group fighting against the Government of Afghanistan and international military forces

## Mandate

This report, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture* was prepared by the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). This is the fourth report of UNAMA/OHCHR on the treatment of conflict-related detainees, and it covers the period from 1 January 2015 to 31 December 2016.

UNAMA/OHCHR efforts to promote the protection of human rights in detention are conducted in compliance with Human Rights Council Decision 2/113 (27 November 2006), which requests OHCHR/UNAMA to continue to monitor the human rights situation in Afghanistan, provide and expand advisory services and technical cooperation in the field of human rights and the rule of law, and report regularly to the Council on the situation of human rights in Afghanistan.

Since 2004, the United Nations Security Council has mandated UNAMA, among other tasks, to support the establishment of a fair and transparent justice system and to work towards strengthening the rule of law.

This report is prepared pursuant to past and current Security Council resolutions mandating UNAMA to improve respect for human rights in the justice and prisons sectors. Security Council Resolutions 2210 (2015), 2274 (2016) drew specific attention to the work of UNAMA and its public reports on detention, and the current Security Council Resolution 2344 (2017) mandates UNAMA to:

*“monitor places of detention, to promote accountability, and to assist in the full implementation of the fundamental freedoms and human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a State party.”*

The resolution also reiterates:

*“the importance of accelerating the establishment of a fair and transparent justice system, eliminating impunity and strengthening the rule of law throughout the country, (...) to improve the respect for the rule of law and human rights therein, emphasizes the importance of ensuring access for relevant organizations, as applicable, to all prisons and places of detention in Afghanistan, and calls for full respect for relevant international law including humanitarian law and human rights law.”*

## Executive Summary

“Torture has no place in the peaceful, equitable and sustainable future we are striving to build. Together, let us spare no effort to banish torture, protect people and bring torturers to justice.”

--Secretary-General of the United Nations<sup>1</sup>.

This report, *Treatment of Conflict Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture*, was prepared by the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and documents findings from interviews with conflict-related detainees conducted between 1 January 2015 and 31 December 2016.

The report compares these findings with those documented in previous public reports of UNAMA/OHCHR, and assesses the Afghan Government’s implementation of its ‘National Plan on the Elimination of Torture’ which was promulgated in February 2015.

The report has been shared in advance with the Government as part of the ongoing constructive engagement between the Government and UNAMA/OHCHR on the protection and promotion of human rights in Afghanistan. The Government’s response to this report is attached in Annex 4.<sup>2</sup>

UNAMA acknowledges the genuine efforts made by the Government to address concerns over the treatment of detainees, and steps taken to implement the 2015 National Action Plan, particularly with regard to enacting legislation, issuing policies and establishing and developing mechanisms for internal human rights oversight within its law enforcement and security institutions.

However, notwithstanding the Government’s efforts to implement its national plan, which are fully supported by UNAMA, the present report documents continued and consistent reports of torture and ill-treatment of conflict-related detainees, mainly during interrogation, and highlights a lack of accountability for such acts.

The prohibition of torture and other cruel, inhuman or degrading treatment is a customary norm of international law and Afghanistan’s legal framework explicitly criminalizes such practices. Despite this unequivocal legal prohibition, during the period covered by this report UNAMA interviewed large numbers of conflict-related detainees who gave credible accounts of being subjected to torture, and other forms of cruel, inhuman and degrading treatment in detention facilities administered by the National Directorate of Security (NDS), Afghan National Police (ANP) and other Afghan National Defence and Security Forces (ANDSF)<sup>3</sup> throughout the country.

As with its three previous reports assessing human rights and detention, UNAMA focused its monitoring activities on those detained and questioned for offences relating to the ongoing armed conflict in Afghanistan.<sup>4</sup>

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<sup>1</sup>Secretary General’s message on the 30th anniversary of the Convention against Torture, Geneva, 4 November 2014 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15268&LangID=E#sthash.R9MB8411.dpuf> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15268&LangID=E#sthash.R9MB8411.dpuf>. Accessed 16 April 2017.

<sup>2</sup> See Annex 4, *Response of the Islamic Republic of Afghanistan to the United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United Nations High Commissioner for Human Rights Annual Report on the Treatment of Conflict-Related Detainees; implementation of Afghanistan’s National Plan on the Elimination of Torture*. April 2017

<sup>3</sup> ANDSF is an umbrella term that includes the Afghan National Police, Afghan National Border Police, Afghan Local Police, Afghan Civil Order Police, Afghan National Army and the National Directorate of Security.

<sup>4</sup> Detainees suspected of offences related to the armed conflict are generally accused of committing crimes against the State codified in the 1976 *Penal Code* (which includes chapters on “*crimes against the external security of the State*” and “*crimes against the internal security of the State*”), the 1987 *Penal Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* (which includes crimes such as assassination, acts of explosion, armed looting and

The present report does not make any general findings with regard to the treatment of conflict-related detainees at the moment of arrest or capture, but focuses instead on their treatment once brought into the more closely controlled environment of an ANP, NDS or ANA facility, where the detainee is fully under the effective physical control of the detaining authorities.

In the majority of cases, the detainees interviewed for this report stated that the torture was inflicted in order to force them to confess, and that the torture and ill-treatment stopped once they had signed or thumb-printed a confession. Many of those interviewed stated that they did not understand or could not read what was written on the ‘confession’ and almost all stated that they had no access to a lawyer before they signed the confession.

It should be noted that UNAMA found no indications that such detainees experienced torture or other forms of ill-treatment once they are transferred from ANDSF custody into facilities administrated by the Central Prisons Directorate of the Ministry of the Interior.<sup>5</sup>

This report makes no distinction between acts amounting to ‘torture’ and other ‘acts of cruel inhuman or degrading treatment or punishment’ as defined under international law. Both categories of acts are prohibited under the *United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, as well as under other international human rights treaties to which Afghanistan is a party. Moreover, in practice, the definitional threshold between ill-treatment and torture is often not clear.<sup>6</sup> Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.<sup>7</sup>

UNAMA does not purport to have the capacity to make a precise legal determination of whether torture or any other form of cruel inhuman or degrading treatment, as defined under international law, took place in an individual case, nor does it seek to be an alternative for the criminal justice system. The detention monitoring programme conducted by UNAMA uses internationally accepted human rights monitoring methodologies to provide credible and reliable<sup>8</sup> information on the existence of practices which may amount to torture or other forms of cruel, inhuman or degrading treatment. The report’s findings are presented with a view to encouraging the Government to implement its commitments to prohibit and prevent torture, to carry out impartial independent and credible investigations where such treatment is alleged to have taken place, and to put in place appropriate means of redress for victims.

The findings presented in this report are based on interviews conducted by UNAMA human rights officer between 1 January 2015 and 31 December 2016 with 469 conflict-related detainees in 62 detention facilities in 29 provinces across Afghanistan.<sup>9</sup> Of the 469 detainees interviewed, 378 were adult males, six were adult females,<sup>10</sup> and 85 were children under the age of 18.<sup>11</sup>

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incitement to hostilities) and the 2008 *Law on Combat against Terrorist Offences* (which defines as terrorist offences the “use of explosive or other lethal devices,” “membership of a terrorist organization,” “offences against internationally protected persons” and other acts). UNAMA interviewed many detainees who were not aware or informed of the specific offence they were accused of and which they generally described as involvement in or support for the armed insurgency against the Government of Afghanistan, or being a member of an armed opposition group such as the Taliban.

<sup>5</sup> None of the 169 detainees interviewed for the purposes of this report who had been detained in MoI prisons (whether pre-trial or post-conviction) reported experiencing torture or other forms of ill-treatment in those facilities.

<sup>6</sup> “Torture” is a severe form of “cruel, inhuman and degrading treatment” but the difference between these different kinds of ill-treatment depends on the circumstances of each case (and the particular vulnerabilities of the individual victim) and there is no clear objective element of distinction between the two categories.

<sup>7</sup> *Committee against Torture, General Comment No. 2* (“Implementation of article 2 by States parties”), CAT/C/GC/2

<sup>8</sup> The standard of ‘credible and reliable’ used to assess the veracity of information obtained during UNAMA monitoring of places of detention is explained in more detail in the ‘Methodology’ section of this report.

<sup>9</sup> See Annex 1 for list of detention facilities visited by UNAMA.

<sup>10</sup> This report deals exclusively with the treatment of conflict-related detainees. Generally, women and girls are not arrested or detained for conflict related offences. The majority of women and girls in Afghan prisons are detained or have been convicted of violations of customary or Shari’a law, or ‘moral crimes. During the monitoring conducted for this report UNAMA interviewed six women and one girl who were being held in the same NDS facility, although none were charged with any offence. None reported ill-treatment at the hands of the detaining authorities,

In order to assess the implementation of measures to prohibit and prevent the torture and ill-treatment of detainees, UNAMA also conducted interviews with members of the ANP, NDS and the Afghan ANA, directors of prisons, judges, prosecutors, defence lawyers, Government medical personnel and other relevant interlocutors.

During the two year monitoring period covered by this report, UNAMA found that 39 per cent of detainees interviewed (181 out of 469 persons) gave credible and reliable accounts of having experienced torture or other forms of inhuman or degrading treatment whilst in the custody of ANDSF. Thirty one of those interviewed reported that they had experienced torture or other forms of prohibited ill-treatment in more than one facility. This compares with the 2015 UNAMA report (covering 1 February 2013 to 31 December 2014) in which 35 per cent of those interviewed gave credible accounts of having experienced torture or other forms of ill-treatment. UNAMA is particularly concerned that the present report documents the highest percentage levels of torture and ill-treatment of conflict-related detainees in ANP custody since its current detention monitoring programme began in 2010.

The findings set out in this report are entirely consistent with those identified in previous UNAMA reports published in 2011, 2013 and 2015. All these reports found compelling indications that a high proportion of conflict-related detainees experienced torture or other forms of cruel, inhuman and degrading treatment during interrogation in numerous detention facilities run by the NDS and ANP throughout the country.<sup>12</sup>

The report also documents allegations of torture and ill treatment of children detained on security related charges, and notes that of the 85 children interviewed for this report, 38 (or 45 per cent) gave credible accounts of being subjected to torture or ill treatment whilst in the custody of ANDSF.

Whilst UNAMA found some evidence of torture and other forms of ill-treatment of detainees by ANA personnel (including in the Afghan National Detention Facility in Parwan administered by the Ministry of Defence) the vast majority of the allegations of torture and ill-treatment of conflict-related detainees included in this report took place in NDS or ANP custody.

The forms of ill-treatment and torture most commonly described to UNAMA included: severe beatings to the body (including with sticks, plastic pipes and cables), beatings to the soles of the feet, electric shocks (including to the genitals), prolonged suspension by the arms and suffocation (both using plastic bags and through forced immersion in water.) Other reported forms of torture and ill-treatment included the wrenching of testicles, use of cigarette lighters to burn the soles of the feet, prolonged use of stress positions, sleep deprivation, sexual assault and threats of execution.

### **National Directorate of Security<sup>13</sup>**

UNAMA received credible and reliable accounts of torture and ill-treatment of detainees in NDS detention facilities throughout the period covered by this report. Of the 369 detainees interviewed who were held in NDS custody, 106 (29 per cent), gave credible and reliable accounts of having experienced torture or other forms of prohibited ill-treatment. This is consistent with the findings of UNAMA's 2015

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nor did UNAMA observe or receive any indication of ill-treatment during their interviews with the women. The conditions in which female detainees (and in many cases their accompanying children) are held in detention in Afghanistan is a broader issue that goes beyond the scope of this report

<sup>11</sup> Eighty-four boys and one girl.

<sup>12</sup> Since UNAMA began systematic monitoring of conflict-related detainees in 2010, the mission has conducted interviews with 2,218 detainees held on security charges and has received credible and reliable accounts of torture and other forms of ill-treatment committed by Afghan security forces from 910 (41 per cent) of these detainees.

<sup>13</sup> Deriving its mandate from the National Security Law governing its functions, the NDS' duties and responsibilities, include "ensuring national security" and "fighting against terrorism." Headed by a National Security Director, who reports directly to the President of Afghanistan, NDS is responsible for all intelligence and information gathering including foreign intelligence, counter-espionage, counter-terrorism and all other issues relating to national security.

report whereby 26 per cent of those interviewed by UNAMA who had been held in NDS custody reported being subjected to such treatment.<sup>14</sup>

UNAMA's monitoring indicated the systematic<sup>15</sup>, or regular and prevalent<sup>16</sup> use of torture in NDS facilities in Kandahar, Farah, Kabul (NDS 241) Herat and Nangarhar, with sufficiently credible and reliable reports of torture in NDS custody recorded in 17 other provincial and national NDS facilities.

The treatment of detainees by NDS in Kandahar remains a major concern. During the reporting period UNAMA found that 60 per cent of those interviewed who were detained at the NDS provincial facility in Kandahar gave credible and reliable accounts of having experienced torture or other forms of ill-treatment prohibited under international law. This indicates a worrisome return to the systematic use of torture and ill-treatment by NDS Kandahar, which was last documented by UNAMA in 2011-2012. UNAMA also notes the lack of any tangible improvement in the reported treatment of detainees in the NDS facility in Farah, where UNAMA documented the continued and systematic use of torture and ill-treatment to obtain confessions.

Despite NDS' efforts (with the support of international donors) to improve internal oversight mechanisms, particularly through increased capacity of its Directorate of Gender and Human Rights, there remains a pervasive culture of impunity for those NDS personnel alleged to have carried out torture or ill-treatment. Even when allegations were verified through the NDS internal oversight procedures, the perpetrators of those acts were only subject to administrative disciplinary sanctions.

In the period covered by the report UNAMA did not document any cases where NDS staff members were charged with the crime of torture under domestic law – although UNAMA is aware one recent case where two NDS staff members alleged to have ill-treated a juvenile detainee in Bamyan province were prosecuted under the legal provisions that prohibit abuse of power by public officials.<sup>17</sup>

### **Afghan National Police<sup>18</sup>**

Between January 2015 and December 2016, 77 of the 172 detainees interviewed who had been held in ANP/ANBP custody (45 per cent) gave credible reports of having been subjected to torture or other forms of ill-treatment whilst in detention.

This represents a 14 per cent increase in the incidence of torture and ill-treatment in ANP custody across the country when compared with the previous observation period and it is a significant and disturbing development.

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<sup>14</sup> Between February 2013 and December 2014 UNAMA found that 161 of 611 detainees interviewed who had been held by NDS (26 per cent) had experienced torture or ill-treatment.

<sup>15</sup> UNAMA does not argue that the use of torture is institutional Government policy. In facilities categorized in this report (and previous reports) as using torture or ill-treatment on a 'systematic' basis, one-half (50 per cent) or more of total detainees interviewed provided sufficiently credible and reliable information that they had been subjected to torture or other forms of ill-treatment. UNAMA assesses that a rate of half or more of conflict related detainees reporting torture or ill-treatment in a specific facility indicates the high probability that torture/ill-treatment was not used in isolated cases by a few individuals but reflects a consistent policy or practice of that specific facility, and the facility directors and interrogators must have known, ordered or acquiesced to the use of torture or other prohibited forms of ill-treatment. See Methodology section.

<sup>16</sup> In facilities categorised in this report as using torture or ill-treatment on a 'regular and prevalent' basis, more than one third (33 per cent) of the detainees interviewed provided sufficiently credible and reliable information that they had been subjected to torture or other forms of ill-treatment.

<sup>17</sup> The defendants were acquitted in a primary court hearing on 4 January 2017 and the verdict was not appealed. (UNAMA meeting with Prosecutor, 21 February 2017, Bamyan)

<sup>18</sup> Along with NDS, the Afghan National Police is one of the principal law enforcement authorities in the country, vested with the powers of arrest and detection of crime. Through these powers, ANP has the authority to detect and question individuals suspected of committing crimes under the Penal Code, including crimes committed in relation to the armed conflict and refer those cases to prosecutors for further investigation and prosecution. The Afghan National Border Police (ANBP), part of the Ministry of Interior, is another leading law enforcement entity, charged with policing the territorial borders of Afghanistan, including entrance and exit from the country.



UNAMA notes with particular concern that, of the 77 individuals who gave credible accounts of having been tortured or ill-treated in ANP custody, 20 of these (26 per cent) were boys under the age of 18, and all 20 of these juveniles state that they were tortured in order to extract confessions.

UNAMA documented the highest levels of abuse by ANP in Kandahar, where a staggering 91 per cent of detainees interviewed gave credible and reliable accounts of being subjected to the most brutal forms of torture and ill-treatment. UNAMA received accounts of detainees in Kandahar having water forcibly pumped into the stomach, having their testicles crushed with clamps, being suffocated to the point of losing consciousness and having electric current applied to their genitals.

Allegations also persist that ANP is responsible for a series of unexplained disappearances and extra-judicial killings of suspected insurgents in Kandahar during the period covered by this report.

UNAMA also documented a significant increase in the abuse of detainees by ANP in Nangarhar, where 12 of the 22 detainees interviewed (54 per cent) gave credible accounts of being subjected to torture or other forms of ill-treatment.

In addition to these findings indicating the systematic use of torture and ill-treatment by ANP in Kandahar and Nangarhar, UNAMA documented reports of violations in 20 other provinces, with particular concerns over the treatment of detainees by ANP in Farah and Herat provinces.

During the reporting period, the internal oversight mechanisms to address complaints of torture and ill-treatment within ANP remained under-developed. As an example, the Sub-Directorate of Human Rights in the Ministry of the Interior could only point to one case of alleged torture or ill-treatment of detainees by ANP which had been referred to the prosecution for further investigation during the period covered by this report, and they were unaware of the outcome of that investigation.<sup>19</sup>

In April 2017 the Government provided UNAMA with a list of 10 cases relating to incidents that took place between July 2015 and January 2017 where ANP staff members were prosecuted for a range of criminal acts including murder, rape, forced marriage and physical assault. Four of these cases involved allegations of beatings in custody which the Government categorized as ‘torture’.

The current status of the cases is unclear and the Government has agreed provide information on the outcome of these prosecutions.<sup>20</sup>

UNAMA is aware of one recent case where two ANP staff members were prosecuted following allegations that they had physically assaulted two boys held in the Juvenile Correction and Rehabilitation Centre in Nili city, Daikundi province. The defendants were acquitted by the primary court and the prosecutor did not appeal the verdict.<sup>21</sup>

### **Afghan Local Police**

Between 1 January 2015 and 31 December 2016, UNAMA interviewed 37 individuals who had been detained<sup>22</sup> by Afghan Local Police (ALP)<sup>23</sup> before being handed over to the competent legal authorities. Of those interviewed, 22 (59 per cent) stated that they were severely beaten by ALP either at the time of arrest or in its immediate aftermath. Nineteen of the 22 described ill-treatment that significantly exceeds the use of reasonable force necessary to restrain an individual at the time of arrest and which may also amount to torture. Three of those beaten by ALP at the time of arrest state that ALP administered the beatings in order to obtain a confession.

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<sup>19</sup> Letter from Ministry of Interior Sub-Directorate of Human Rights, February 2017 (undated).

<sup>20</sup> UNAMA meeting with representative of Government, 17 April 2017.

<sup>21</sup> UNAMA meeting with provincial prosecutor, Daikundi, March 2017,

<sup>22</sup> ALP have the authority to arrest individuals but are required to promptly hand over any suspects to ANP or NDS.

<sup>23</sup> ALP are locally recruited militia operating under the authority of the Ministry of the Interior.

The incidents took place in 12 provinces, namely: Nangarhar, Baghlan, Kunar, Badakhshan, Balkh, Faryab, Kunduz, Laghman, Paktika, Paktiya, Sar-e-Pul and Takhar.

In April 2017 the Government provided UNAMA with a list of 32 incidents which took place between August 2014 and January 2017 which resulted in ALP staff members being prosecuted for a range of acts including robbery, murder, torture and attempted rape. The Government categorized five of these cases as involving allegations of torture.

The current status of the cases is unclear and the Government has agreed to provide UNAMA with information on the outcome of these prosecutions.<sup>24</sup>

### **Afghan National Army**

Between 1 January 2015 and 31 December 2016, UNAMA interviewed 19 detainees who had been held by the Afghan National Army (ANA) in multiple locations<sup>25</sup> prior to being transferred to ANP or NDS.<sup>26</sup> Eight of them gave credible reports of having been subjected to torture or ill-treatment in ANA custody.<sup>27</sup>

Additionally, UNAMA interviewed 24 detainees who had been held in the ANA-run prison at the Afghan National Detention Facility in Parwan between January 2015 and December 2016. Given that these detainees are either convicted prisoners or are pre-trial detainees whose investigations have been completed, they are less vulnerable to being tortured or ill-treated for the purposes of obtaining a confession. However, four detainees gave credible accounts that they had been tortured or ill-treated by ANA guards in this facility.

UNAMA also received credible accounts of seemingly arbitrary acts of violence and intimidation carried out by ANA guards – including beatings and dousing detainees with water, raising concern that the detaining authorities at the Afghan National Detention Facility in Parwan used physical violence and intimidation as a means of maintaining order in the facility.

In April 2017 the Government provided UNAMA with a non-exhaustive list of 22 cases dating from February 2013 where ANA staff members were prosecuted and convicted for a range of serious offences, including extra judicial killing, assault and rape.<sup>28</sup>

### **Implementation of the National Action Plan on the Elimination of Torture**

In February 2015, in its response to the 2015 UNAMA/OHCHR Report on the Treatment of Detainees, the Government issued a National Plan on the Elimination of Torture. The national action plan sets out a clear commitment by the Government to bring forward specific legislative, capacity building and preventive measures specifically aimed at the elimination of torture.

Two years after the national action plan was issued, the Government has engaged constructively in implementing certain of its aspects, particularly with regard to revising the domestic laws on the prohibition of torture, and strengthening the capacity of internal human rights oversight and reporting mechanisms with the NDS, ANA and ANP.

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<sup>24</sup> UNAMA meeting with representative of Government, 17 April 2017.

<sup>25</sup> UNAMA documented credible allegations of torture and ill-treatment of detainees in ANA bases in Badghis, Baghlan Farah, Herat, Kabul (3 separate locations) and Kandahar provinces.

<sup>26</sup> This sample does not include those detainees held in the ANA-Administered Afghan National Detention Facility in Parwan which is dealt with separately in this report.

<sup>27</sup> All the reported incidents of ill-treatment by ANA took place before 1 January 2016 and it should be noted that ANA's own internal reporting and accountability mechanisms have resulted in at least two prosecutions and convictions of ANA personnel for acts amounting to torture during the period covered by this current report

<sup>28</sup> *Comments of the Government on UNAMA's report regarding torture and ill-treatment of AGE prisoners* (10 April 2017). On file with UNAMA.

At the time of writing this report, a new *Anti-Torture Law* and a revised *Afghan Penal Code* are in the process of being enacted into national law. The definition of the crime of ‘torture’ under the *United Nations Convention against Torture* is broadly incorporated in the new laws and paves the way for more effective prosecutions alleged perpetrators of torture. The draft *Anti-Torture law* also re-affirms the right of victims of torture to obtain compensation.

Whilst these are welcome developments, other legislative measures enacted by the Government in the period covered by this report have undermined the procedural guarantees designed to guard against torture and ill-treatment. Notably, amendments made to the *Criminal Procedure Code* now allow security personnel to hold suspects accused of terrorist crimes and crimes against internal and external security for up to 70 days without requiring those suspects to be brought before a judge. This procedural revision severely limits judicial oversight of conflict-related detainee during the period when they are most vulnerable to ill-treatment, and increases the risk that such ill-treatment will remain undetected.<sup>29</sup>

The National Plan on the Elimination of Torture explicitly provided for effective implementation of Afghanistan’s obligations under the *Convention against Torture*, including the withdrawal of Afghanistan’s reservation to the *Convention against Torture* and to sign and ratify the *Optional Protocol to the Convention against Torture*.

In April 2017, Cabinet approved both the withdrawal of the reservation, and ratification of the *Optional Protocol*. By withdrawing its reservation to the *Convention against Torture*, Afghanistan recognizes the authority of the Committee against Torture to make confidential enquiries into allegations of torture which may include conducting in-country visits to places of detention. By ratifying the *Optional Protocol to the Convention against Torture*, Afghanistan undertakes establish an independent National Preventive Mechanism, mandated to carry out visits to places of detention with the support of the United Nations Sub-Committee on the Prevention of Torture.

UNAMA welcomes both these recent developments and offers its technical support to enable full implementation of the Convention and its Protocol.

The Government, in line with its commitment under the national plan to implement ‘preventive measures’, has increased the capacity of its internal oversight mechanisms operating within Afghan security institutions to monitor the treatment of detainees. For example, in 2015 and 2016, NDS interviewed 16,400 detainees and received 1,189 allegations of beating and ill-treatment.<sup>30</sup> UNAMA welcomes the increased monitoring efforts while noting concern that these mechanisms appear to lack the required authority and independence to carry out meaningful investigations into allegations of torture or other forms of ill-treatment. Moreover, although an increased number of NDS staff have been subjected to disciplinary sanctions as a result of these internal oversight mechanisms, few of these confirmed violations have resulted in prosecutions or convictions. Of the 1,189 allegations, NDS investigations teams confirmed 54 of the allegations, with perpetrators mainly punished through dismissal, written warning, verbal warnings, salary deductions and other administrative punishments. Five NDS were referred for prosecution, with two remaining under investigation and the remaining subject to administrative punishments.

While welcoming the considerable progress and efforts to address torture and ill treatment through internal oversight mechanisms and training, UNAMA notes concern that administrative punishments for ill treatment do not serve as an effective – or lawful – deterrent, compared to a punishment in accordance

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<sup>29</sup> CCPR/C/GC/35. *Human Rights Committee General Comment No.35*, para 33

<sup>30</sup> *Comments of the Government on UNAMA’s report regarding torture and ill-treatment of AGE prisoners* (10 April 2017). On file with UNAMA.

with existing domestic law. Moreover, these measures have not led to any reduction in the credible reports of torture or ill-treatment of conflict-related detainees provided to UNAMA during the course of its monitoring.

It is a key finding of this report that those who claim to have been the victims of torture and other forms of cruel, inhuman or degrading treatment in Afghanistan lack any meaningful possibility of obtaining an effective judicial or administrative remedy for the violations they claim to have experienced. This is despite the Government's explicit statement of intent, as set out in the national plan to "*hold legally accountable those who commit torture.*" During the monitoring period, UNAMA could not identify any examples of victims of torture or ill-treatment could access any form of effective domestic remedy.

Previous UNAMA reports consistently documented the lack of judicial accountability for those members of the ANDSF alleged to have committed acts of torture or other forms of ill-treatment. Although in the present report UNAMA notes a small increase in the number of cases where ANDSF personnel were investigated and prosecuted for acts amounting to torture or ill-treatment, such prosecutions remain rare.

Whilst the various national security institutions in Afghanistan have taken positive steps to highlight the prohibition on torture both in their policies and training programmes and to put in place mechanisms to document and report internally on allegations of torture or ill-treatment, the Government still needs to take additional practical steps to end such practices, whether by conducting effective investigations into such allegations, prosecuting perpetrators, or otherwise signaling more clearly its intention to challenge the culture of impunity for torture that exists within ANDSF. In this context UNAMA therefore welcomes the recent establishment within the Office of the Attorney General of an Anti-Torture Commission which has the express mandate to ensure that allegations of torture and other forms of ill-treatment are properly investigated.

## **Observations**

It is well established that States have legitimate reasons to take the necessary appropriate measures to eliminate terrorism. Acts and strategies of terrorism aim to undermine human rights, democracy, and the rule of law, to destabilize governments and undermine civil society. Governments therefore have not only the right, but also the duty, to protect their citizens and others against terrorist attacks and to bring the perpetrators of such acts to justice.

Within these efforts, the manner in which counter-terrorism efforts are conducted can have a far-reaching effect on overall respect for human rights. Human rights law establishes a framework in which terrorism can be effectively countered without infringing on fundamental freedoms, whilst protecting the rights of all Afghans.

The use of torture and other forms of prohibited ill treatment as a tool for obtaining confessions is a dangerous paradigm that undermines broader peace-building efforts. Torture does not work - it is an unreliable and ineffective tool for gathering accurate information. Notwithstanding the destructive nature of such practices on long term stability, torture is illegal, immoral and wrong.

Afghanistan's Constitution, laws and international legal obligations provide the legal framework for prohibiting torture and other forms of ill-treatment. This framework will be strengthened by the introduction of the new *Anti-Torture Law* and the revised *Penal Code*. While some critical procedural safeguards are still lacking, effective implementation of these laws should ensure that the worst abuses are stopped and perpetrators of torture and ill-treatment are held accountable. Additionally, the ratification and implementation of the *Optional Protocol to the Convention against Torture*, which Government has now approved, will enable the establishment, with the support of the United Nations Sub-Committee on Torture, of an independent 'National Preventive Mechanism' (NPM) for the prevention of torture.

The widespread use of abusive interrogation tactics which may amount to torture and ill treatment also highlights the need for much greater attention to reforms in the judiciary, prosecution and law enforcement sectors, coupled with ongoing support from the international community. Police, prosecutors and NDS intelligence officials and interrogators should be better trained to carry out their activities within the national and international legal frameworks prohibiting torture, and should be trained in alternative forms of evidence gathering, and in interrogation techniques based on international best practice. Such techniques are proven to be more productive in gaining the cooperation of detainees and suspected perpetrators of terrorism and are more likely to provide reliable intelligence, information and testimonial evidence on which courts can make decisions in line with the fair trial standards required under domestic and international law.

## Recommendations

Only the credible prospect that those who commit torture will be held to account can deter those who carry out or order those crimes. The Government must take more effective and sustainable measures to demonstrate that there shall be no impunity for those alleged to have carried out torture and other forms of ill treatment of conflict-related detainees.

UNAMA therefore makes the following recommendations to the Government of Afghanistan:

**Compliance:** in accordance with Afghanistan's legal obligations under international human rights law and domestic law, the current practice of torture and ill-treatment of detainees must cease immediately. The Government must issue clear instructions requiring the authorities to properly and thoroughly investigate all allegations of torture and coerced confessions, and should strictly enforce prohibitions on the use in criminal proceedings of evidence obtained through torture as required by the *Constitution of Afghanistan* and the *Criminal Procedure Code*.

**Accountability:** Ensure prompt, impartial, independent and thorough investigations of all reports of torture and ill-treatment at detention facilities in Afghanistan. Where credible evidence exists that torture or ill-treatment has taken place, the case must be referred to the appropriate law enforcement authorities for investigation and prosecution. Any Afghan official and their superiors found responsible for committing, ordering or acquiescing to such practices should be held accountable in accordance with the provisions of domestic law.

**Effective remedy:** Ensure a domestic legal remedy is made available to victims of torture, including equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

**Prevention:** In accordance with the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, establish an independent oversight and accountability mechanism modeled on the national preventive mechanism with the power to conduct regular unannounced visits to all places where individuals are deprived of their liberty, conduct impartial and transparent monitoring of the treatment of detainees by Afghan security officials, and make recommendations to the government with the aim of improving the treatment of those deprived of their liberty.

**Training and capacity building:** With the assistance of international partners, strengthen training and capacity building across the justice sector to ensure that law enforcement and justice officials are provided with the resources and technical skills to carry out the detection, investigation and prosecution of conflict-related crimes in accordance with international best practice and in compliance with international human rights standards.

# Legal framework prohibiting torture in Afghanistan

## The prohibition of torture and other forms of cruel, inhuman or degrading treatment under international law

Several international treaties to which Afghanistan is a party prohibit torture and other cruel inhuman or degrading treatment. These include the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *International Covenant on Civil and Political Rights*, the *Geneva Conventions of 1949*, the *Rome Statute of the International Criminal Court* and the *Convention on the Rights of the Child*.<sup>31</sup> The absolute prohibition of torture and other cruel, inhuman or degrading treatment is also considered a peremptory norm (*jus cogens*) of international law.

The State obligation to respect the prohibition of such practices is non-derogable, meaning that it is never justified to suspend or to fail to observe the ban on its use. “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.”<sup>32</sup> Furthermore, under article 4 (2) of the *International Covenant on Civil and Political Rights*, States cannot derogate from the prohibition of torture and cruel, inhuman or degrading treatment prescribed in article 7 of the Covenant.

## The definition of torture and other forms of ill-treatment prohibited under international Law

### Torture

The definition of torture under the *Convention against Torture and Other Cruel, inhuman and Degrading Treatment or Punishment* is the most cited and authoritative definition and is considered binding under customary international law:

*“For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*<sup>33</sup>

This definition includes four elements: (1) the act of inflicting severe pain or suffering, (2) the act is intentional, (3) the act is for such purposes as obtaining information or a confession, punishment,

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<sup>31</sup>, The Government of Afghanistan ratified the *Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment* in June 1987, the *International Covenant on Civil and Political Rights* in April 1993, the *Geneva Conventions* in September 1956 (with the exception of the two additional protocols) and the *Convention on the Rights of the Child* in 1994. The *Rome Statute of the International Criminal Court* ratified by Afghanistan in February 2003 states that torture constitutes a war crime in a non-international armed conflict as follows: “[i]n the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: [...] torture [...]” (Article 8 (2) (c) (i)). The elements of the war crime of torture in a non-international armed conflict are that the perpetrator inflicted severe physical or mental pain or suffering upon a person; that the perpetrator inflicted it for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; that the person subjected to torture was either hors de combat, a civilian, medical personnel or religious personnel taking no active part in the hostilities; that the perpetrator was aware of the factual circumstances that established this status; that the conduct took place in the context of and was associated with an armed conflict not of an international character; and that the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

<sup>32</sup> *Convention against Torture*, article 2 (2). See also *Committee against Torture, General Comment No. 2* (“Implementation of article 2 by States parties”), para. 1 (available at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT per cent 2fC per cent 2fGC per cent 2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%20per%20cent%202fGC%20per%20cent%202f2&Lang=en)) and Human Rights Committee, General Comment No. 24, para. 10 (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR per cent 2fC per cent 2f21 per cent 2fRev.1 per cent 2fAdd.6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%20per%20cent%202fRev.1%20per%20cent%202fAdd.6&Lang=en))

<sup>33</sup> *Convention against Torture*, article 1.

intimidation or coercion, or discrimination, and (4) the perpetrator is a public official or other person acting in an official capacity.

The “*elements of intent and purpose [...] do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances.*”<sup>34</sup>

Under the Convention against Torture, States are required to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

### **Cruel, inhuman or degrading treatment or punishment**

*Cruel treatment*, and *inhuman or degrading treatment or punishment* are also legal terms which refer to ill-treatment causing varying degrees of suffering which may in some cases be relatively less severe than in the case of torture. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose. However the distinction between torture and cruel, inhuman or degrading treatment or punishment depends on other circumstances of the case, including the sex, age, state of health of the victim, the duration and manner of treatment, the physical and psychological effects, among other elements.

The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Exposure to significant mental or physical pain or suffering
- By or with the consent or acquiescence of State authorities<sup>35</sup>

The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.<sup>36</sup>

### **State obligations to prevent torture under international law**

Under the *Convention against Torture*, States are required to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

The *Convention against Torture* expressly requires several measures, including:

- *Criminalization*. To “ensure that all acts of torture are offences under its criminal law” including “act[s] by any person which constitutes complicity or participation in torture” and the offences shall be “punishable by appropriate penalties which take into account their grave nature.”
- *Investigations and victims’ complaints*. To conduct a “prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed” and to ensure the right of “any individual who alleges he has been subjected to torture [...] has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” and to protect the complainant and witnesses against ill-treatment or intimidation.
- *Training*. To include “education and information regarding the prohibition against torture [...] in the training” of all persons “who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”
- *Rules, directives, procedures*. To include the prohibition of torture in “the rules or instructions” issued to persons involved in the custody, interrogation or treatment of detainees and to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of [detainees] with a view to preventing any cases of torture.”

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<sup>34</sup> *Committee against Torture, General Comment No. 2* (“Implementation of article 2 by States parties”), CAT/C/GC/2 (24 January 2008), para 9.

<sup>35</sup> Giffard, Camille, *The Torture Reporting Handbook*, Human Rights Centre, University of Essex, 2000.

<sup>36</sup> *Committee against Torture, General Comment No. 2* (“Implementation of article 2 by States parties”), CAT/C/GC/2



- *Redress and rehabilitation.* To ensure “that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”
- *Exclusionary rule.* To “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”

### **State obligations to prevent acts of cruel, inhuman and degrading treatment under international law**

Under the *Convention against Torture*, States are required to prevent “other acts of cruel, inhuman or degrading treatment”<sup>37</sup> and the obligations set out above on *Investigations and individual complaints*, *Training*, and *Rules directions and procedures* apply with references to ‘other forms of cruel, inhuman or degrading treatment of punishment’ substituted for references to ‘torture.’

### **The prohibition of torture and other forms of cruel, inhuman or degrading treatment under national law**

Afghan law explicitly prohibits torture, with the *Constitution* providing that “[n]o one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished.”<sup>38</sup> Article 51 of the *Constitution* provides victims of torture and ill-treatment with a right to redress and reparations as follows, “[a]ny person suffering undue harm by government action is entitled to compensation, which he can claim by appealing to court.”

The 1976 *Penal Code* (which was in force during the period covered by this report) prohibits torture “where it is used for the purposes of obtaining a confession.”<sup>39</sup> Furthermore the *Criminal Procedure Code* excludes the use in judicial proceedings of evidence obtained through torture or other forms of coercion and imposes a positive obligation on both the prosecutor and the courts to ensure that any evidence obtained in violation of domestic law is inadmissible.<sup>40</sup>

#### *Article 21:*

- (1) The obtained evidence which is inadmissible due to violating the provisions of this law or other enforced laws shall be taken out of the file and stamped. The evidence and documents shall be maintained separately from other evidence and documents.
- (2) In all stages of the case proceedings, the prosecutor’s office and court shall ensure the existence and lack of existence of evidence and documents set forth in paragraph (1) of this article.

#### *Article 22:*

- (1) The judicial police officer, prosecutor and court themselves or through means of another person, in any case, are not allowed to force the suspect or accused to confess using misconduct, narcotics, duress, torture, hypnosis, threat, intimidation, or promising a benefit.
- (2) If the statements of the suspect or accused person are taken in violation of the provision set forth in paragraph (1) of this article, they shall not be admissible.

The revised Afghan *Penal Code*, which is anticipated to come into effect in mid-2017, is expected to expand the previously limited prohibition on torture set out in the 1976 *Penal Code*<sup>41</sup> by providing a more comprehensive definition of the elements of torture. UNAMA understands that this will broadly reflect the definition contained in the *Convention against Torture* and will also extend the definition of “torture” under Afghan domestic law to include all other acts amounting to cruel, inhuman or degrading treatment.

The expanded definition of torture contained in the new *Penal Code* should also be reflected in the new *Anti-Torture Law* (which is also anticipated to come into effect in mid-2017).

<sup>37</sup> *Convention against Torture*, article 16

<sup>38</sup> *Constitution of the Islamic Republic of Afghanistan*, Article 29.

<sup>39</sup> *Penal Code* (1976) article 275.

<sup>40</sup> *Criminal Procedure Code*, articles 21 and 22.

<sup>41</sup> Article 275 of the 1976 *Penal Code* provided that if a public official “tortures [an] accused for the purpose of obtaining a confession,” they shall be sentenced to long-term imprisonment in the range of five to 15 years.

The *Criminal Procedure Code* also includes several provisions aimed at preventing and addressing the use of torture, namely article 7 (13), which sets out the principle of *habeas corpus*, under which detainees can challenge the legality of their detention, and articles 9 (4) and 152 which makes the presence of a defence lawyer mandatory during prosecution proceedings.<sup>42</sup> In addition, investigating prosecutors have an obligation to report if “*the police and national security operatives have committed legal violations in dealing with a case*” (article 91).

Finally, *Presidential Decree 129*, issued in 2013, re-affirms the constitutional prohibition of torture and specifically orders the Ministry of the Interior, NDS and the Office of the Attorney General “*not to torture or mis-treat any suspect or detainee during interrogation and detention*”

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<sup>42</sup> A revised *Afghan Criminal Procedure Code* was published on 5 May 2014 and entered into force on 5 June 2014. The previous *Interim Criminal Procedure Code* (2004) prohibited torture and ill-treatment in article 5 (4) (“*The suspect and the accused shall not undergo intimidations or any form of physical or psychological pressure.*”) and article 5 (5) (“*Their statements shall be made in a condition of absolute moral freedom.*”)

## Methodology

### Summary of interviews and visits between 1 January 2015 and 31 December 2016

Between 1 January 2015 and 31 December 2016, UNAMA conducted structured and confidential interviews with 469 conflict-related detainees<sup>43</sup> held in 62 detention facilities in 29 provinces across Afghanistan.<sup>44</sup> Many of these detainees had been held and interrogated in multiple locations prior to being interviewed by UNAMA, and UNAMA was therefore able to use these interviews to document over 1,100 instances of detention over the two year observation period.

In line with previous practice, UNAMA detention monitoring activities focused primarily on conflict-related detainees who had been held in National Directorate of Security (NDS) and Afghan National Police (ANP) facilities. Based on its previous findings, UNAMA considers that such detainees are at particular risk of being subjected to torture or other forms of ill treatment. UNAMA makes no findings on the treatment of detainees held on suspicion of committing offences not related to the conflict.

As part of its assessment of the implementation of the National Plan on the Elimination of Torture, UNAMA also interviewed ANP, NDS and ANA officials, prison directors, judges, prosecutors, defence lawyers, Government medical personnel and other relevant interlocutors.

UNAMA interviews were conducted at ANP provincial and district headquarters, NDS provincial headquarters, Central Prison Directorate (CPD) prisons and juvenile correction centres, as well as at national facilities such as the ANA-administered Afghan National Detention Facility at Parwan and the NDS 241 and NDS 501 (Counter Terrorism and Investigation Departments).

At each detention facility, UNAMA met with detaining authorities and other relevant Government officials, visited parts of each detention facility and examined its register of detainees. Of the 469 detainees UNAMA interviewed, 435 were held on suspicion of or were convicted of offences related to the armed conflict, while the remaining 15 were held on suspicion of or were convicted of certain common criminal offences which also fall within NDS' investigative competence, such as abduction and trafficking.<sup>45</sup>

During the course of its interviews with detainees, UNAMA also documented the extent to which detainees were afforded their due process guarantees under Afghan and international human rights law.

UNAMA's over-riding priority when conducting its interviews with detainees was 'do no harm'. For that reason, and in accordance with standard practice, UNAMA kept the identities of individual detainees confidential, and did not intervene with the authorities in individual cases due to the potential risk that those detainees may face retribution if they were suspected of making allegations of ill-treatment against detention facility staff.

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<sup>43</sup> Detainees suspected of offences related to the armed conflict are generally accused of committing crimes against the State codified in the 1976 *Penal Code* (which includes chapters on "crimes against the external security of the State" and "crimes against the internal security of the State"), the 1987 *Penal Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* (which includes crimes such as assassination, acts of explosion, armed looting and incitement to hostilities) and the 2008 *Law on Combat against Terrorist Offences* (which defines as terrorist offences the "use of explosive or other lethal devices," "membership of a terrorist organization," "offences against internationally protected persons" and other acts). UNAMA interviewed many detainees who were not aware or informed of the specific offence they were accused of and which they generally described as involvement in or support for the armed insurgency against the Government of Afghanistan, or being a member of an armed opposition group such as the Taliban.

<sup>44</sup> See Annex 1 for a list of the detention facilities visited.

<sup>45</sup> In selecting detainees for interview, UNAMA used the premise that all those held in NDS custody were being investigated for conflict-related offences. However NDS is also responsible for investigating certain common crimes which may not be directly conflict-related, including kidnapping/abduction and trafficking. Detainees who were detained on suspicion of committing such offences and were held in NDS custody during the investigation were also included in the UNAMA monitoring sample.

## **Interview Safeguards and Modalities – Ensuring Credibility and Accuracy.**

At each detention facility UNAMA human rights officers randomly selected detainees held on conflict-related offences and interviewed them in private without the presence of detention facility staff, other Government officials or other detainees. UNAMA human rights officers displayed their United Nations identification cards and identified themselves as United Nations human rights officers before beginning the interview. Interviews were conducted by UNAMA international human rights officers in the detainees' mother tongue (Pashto or Dari), using UNAMA Afghan human rights staff members as interpreters.

Before each interview, the UNAMA human rights officers explained their mandate and function to the detainees, and the interview only proceeded if the detainee consented.

Every detainee interviewed was asked about his treatment at the time of arrest and during interrogations at each detention facility where he was held. The sample includes information related to 175 detention facilities where those interviewed were held over the course of their detention.

All UNAMA interviewers received standardized guidance and training on how to conduct interviews, assess credibility, protect confidentiality and corroborate and cross-check information on matters of detention, torture and ill-treatment, with extensive supervision and oversight from experts and supervisors in the UNAMA Human Rights Unit and OHCHR. Interviewers avoided leading questions and asked each detainee to tell his story in an open-ended manner.<sup>46</sup> For each interview, UNAMA interviewers recorded a detailed verbatim transcript and note of the interview which was assessed for credibility and cross checked.

UNAMA weighed all available information (including individual accounts and related corroborating evidence) to determine whether the information obtained was sufficiently credible to permit UNAMA to make findings and raise concerns, including about specific facilities.<sup>47</sup>

While all allegations of torture should be investigated, UNAMA has chosen to use the threshold of "sufficiently credible and reliable" (rather than, for example the higher evidential threshold of "beyond reasonable doubt") in order to determine whether a detainee's account should be considered as part of this report. This formulation of "credible and reliable" has been used by a number international human rights and humanitarian fact finding missions worldwide, and reflects the fact that the high standard of proof necessary in criminal trials to establish individual criminal responsibility is not appropriate for those carrying out human rights monitoring. UNAMA human rights officers work within a restricted mandate, are not law enforcement officers have no powers to subpoena witnesses, and are not in a

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<sup>46</sup> Expert practitioners in obtaining and verifying detainee accounts of treatment in detention have determined that the most reliable way to uncover false allegations is to obtain the "true version" of a detainee's statement and subject it to detailed analysis. The true version is a detainee's statement of the alleged incident in his or her own words without interruption, as opposed to a version provided in response to a series of questions. The true version better enables and supports expert analysis of whether the account is being provided through a real memory. With a falsified, embellished or enhanced account, the detainee will have memorized details and will be recalling them in response to questions. However, a true story will be described using the senses and displaying other characteristics associated with a real memory. Comparative analysis of detainee accounts has determined that real memories tend to reflect and include greater sensory detail (such as colours, size, shape and sound), greater mention of geographic detail, more mention of cognitive or other internal processing e.g. thoughts, emotions, reactions and fewer verbal qualifications or hedges. For this detention study, UNAMA interviewers asked questions that allowed detainees to tell their stories in their own words and at their own pace. Initial questions were open-ended providing the best possible means of assessing the veracity of a detainee's statements. Once a detainee had provided the basic information in response to these open-ended questions, interviewers followed up with closed-ended questions to elicit further details or clarify areas of a detainee's account. For further information see OHCHR's Training Manual on Human Rights Monitoring, available at [www.ohchr.org/documents/publications/training7introen.pdf](http://www.ohchr.org/documents/publications/training7introen.pdf).

<sup>47</sup> Stephen Wilkinson, *Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions* (2012), Geneva Academy of International Humanitarian Law and Human Rights, p. 32.

position to apply the same standard of verification to their findings than would be expected of formal judicial processes.

Where UNAMA was not satisfied about the veracity of a detainee's account, it was not included in the sample of sufficiently credible and reliable incidents of torture or ill-treatment. The sample of detainees interviewed by UNAMA included many who did not allege torture or ill-treatment, or whose allegations UNAMA did not assess as credible or reliable.

In some cases, UNAMA interviewers observed injuries, marks and scars on numerous detainees that appeared to be consistent with the allegations of torture and ill-treatment and/or bandages and other evidence of medical treatment for such injuries. Numerous detainees interviewed reported they required medical treatment due to injuries sustained during their interrogation and detention.

In a limited number of cases UNAMA obtained photographic and other evidence of injuries consistent with torture and ill-treatment of detainees, and well as medical evidence from a range of interlocutors and sources. However, in many facilities UNAMA interviewers were not authorized by officials to take mobile phones, cameras, video cameras, recording devices or computers into interviews with detainees.

For reasons of security and confidentiality, where it is necessary to refer to individual detainees, they are identified by reference to an interviewee number assigned by UNAMA. In this context, to further protect the identity of individual detainees, the term "detainee" refers to persons suspected, accused or convicted of offences.

The definition of torture (and other forms of cruel, inhuman or degrading treatment or punishment) under national and international law encompasses a range of acts involving the infliction of mental or physical suffering by, or with the acquiescence of, those acting on behalf of the state. While UNAMA interviewed individual detainees and made determinations on the plausibility of allegations of torture and other acts of ill-treatment, it does not purport to have the capacity to make a precise legal determination of whether torture (as defined under domestic or international law) took place in any given case, nor does it purport to be an alternative for the criminal justice system. The detention monitoring programme of UNAMA is designed to provide reliable and credible information on the use of torture and other forms of cruel, inhuman or degrading treatment within the Afghan legal system, with a view to encouraging the Government to implement its commitments to prohibit and prevent torture, to carry out impartial independent and credible investigations where torture is alleged, and to put in place appropriate means of redress for victims of torture.

### **Findings on Torture and Ill-Treatment: criteria of assessment**

UNAMA weighed all available information (including individual accounts and related corroborating evidence) to determine whether information obtained regarding each detainee's allegation of torture or ill-treatment was sufficiently credible and reliable to permit UNAMA to make findings, raise concerns about specific facilities and recommend criminal investigations and other measures.

In facilities categorised in this report as using torture or ill-treatment on a '*regular and prevalent*' basis, more than one third (33 per cent) of the detainees interviewed provided sufficiently credible and reliable information that they had been subjected to torture or other forms of ill-treatment.

In facilities categorized in this report as using torture or ill-treatment on a '*systematic*' basis, one-half (50 per cent) or more of total detainees interviewed provided sufficiently credible and reliable information that they had been subjected to torture or other forms of ill-treatment.

UNAMA takes the view that in those facilities where it found that torture or ill-treatment took place on a *systematic* basis, this indicates the high probability that it was not used in isolated cases by a few individuals but reflects a consistent policy or practice of that specific facility, and the facility directors and interrogators must have known, ordered or acquiesced to the use of torture or other prohibited forms of ill-treatment.

However in finding that the use of torture was ‘*systematic*’ in certain facilities or provinces, UNAMA does not argue that the use of torture is institutional Government policy. This position derives from the definition used by the United Nations Committee against Torture when assessing whether torture is being systematically practiced by a State party to the *Convention against Torture*.<sup>48</sup> In this context the Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate.<sup>49</sup>

UNAMA assesses that a rate of half or more of conflict related detainees reporting torture or ill-treatment in a specific facility indicates the high probability that torture/ill-treatment was not used in isolated cases by a few individuals but reflects a consistent policy or practice of that specific facility, and the facility directors and interrogators must have known, ordered or acquiesced to the use of torture or other prohibited forms of ill-treatment.

According to this analysis, torture may in fact be of a ‘systematic’ character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation at the local level.. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.<sup>50</sup>

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<sup>48</sup> Under article 20 of the *Convention against Torture*, the Committee against Torture is empowered to conduct confidential enquiries into “well-founded indications that torture is being practiced systematically in a State party”. As highlighted elsewhere in this report, Afghanistan has exercised its right under the *Convention against Torture* to enter a formal declaration that it “does not recognize the authority of the Committee to carry out enquiries into allegation of torture as foreseen by article 20”

<sup>49</sup> A/48/44 Add.1, para. 39 and A/56/44, para. 163.

<sup>50</sup> *ibid.*

## Background

In October 2010, with the cooperation of the National Directorate of Security (NDS) and the Ministry of Interior, UNAMA began its programme of monitoring the treatment of conflict-related detainees in Afghan custody.<sup>51</sup> This report, which covers the period from 1 January 2015 to 31 December 2016) is the fourth periodic report issued by UNAMA on the treatment of conflict related detainees. The first public report addressing this issue was released in October 2011, the second in January 2013 and the third in February 2015.

In its **February 2015 report** (covering the period from February 2013 to December 2014) UNAMA found that more than one-third of the 790 detainees it had interviewed gave credible accounts of having experienced torture or ill-treatment in facilities managed by NDS, ANP, ALP, and ANA. UNAMA found that torture or ill-treatment had been systematically used in one NDS facility and three ANP facilities. The report documented a pervasive lack of accountability for those alleged to have tortured or otherwise ill-treated detainees, noting only one single prosecution of two NDS officials for the crime of torture over the whole observation period, along with a minimal number of cases of internal disciplinary sanctions imposed on ANDSF personnel who were found to have tortured or ill-treated detainees.

In its **January 2013 report** (covering the period from October 2011 to October 2012), UNAMA found that over half of 635 conflict-related detainees interviewed experienced torture or other forms of cruel inhuman or degrading treatment. The systematic use of torture was found in two NDS facilities and seven ANP facilities.

In its **October 2011 report** (covering the period from October 2010 to September 2011), UNAMA found that nearly half of 273 detainees it had interviewed who had been held in NDS detention facilities, and one third of 117 individuals who had been detained in ANP locations experienced interrogation techniques that met the international definition of torture or cruel, inhuman or degrading treatment.

In these three previous reports, UNAMA found almost no accountability for torture or ill-treatment by NDS and ANP officials with their reported investigations into allegations of torture kept internal and prosecutions rarely pursued. UNAMA also found very limited independent, judicial or external oversight of NDS and ANP.

### Government response to previous UNAMA reports

In the five and a half years since UNAMA published its first public report on the treatment of conflict-related detainees, the Afghan Government, whilst disputing some of the findings, has nonetheless engaged constructively with UNAMA, both to facilitate its continued monitoring of places of detention, and to take steps to implement some of the key recommendations set out in those reports

In its formal response to the 2015 report, the Government set out a “National Plan on the Elimination of Torture” whereby it committed to a bringing forward a number of legislative, capacity-building and other preventive measures designed to eliminate torture and to ensure more effective implementation of Afghanistan’s commitments under the United Nations *Convention against Torture*.

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<sup>51</sup>Detainees suspected of offences related to the armed conflict are generally accused of committing crimes against the State codified in the *Penal Code* (which includes chapters on “crimes against the external security of the State” and “crimes against the internal security of the State”), the 1987 *Penal Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* (which includes crimes such as assassination, acts of explosion, armed looting and incitement to hostilities) and the 2008 *Law on Combat against Terrorist Offences* (which defines as terrorist offences the “use of explosive or other lethal devices,” “membership of a terrorist organization,” “offences against internationally protected persons” and other acts).

# National Directorate of Security

## Main findings

- 106 of the 369 detainees interviewed who had been held by NDS (29 per cent) gave credible and reliable accounts of to having experienced torture or ill-treatment whilst in NDS custody.<sup>52</sup>
- 20 of the 106 detainees (19 per cent) who gave credible accounts of torture or ill-treatment in NDS custody were children under the age of 18.
- Forms of torture or ill-treatment documented by UNAMA included severe beatings (including with pipes and cables), electric shocks (including to the genitals), prolonged suspension by the arms, sexual assault (including forcible insertion of objects into the anus), and suffocation (both using plastic bags and through forced immersion in water).
- The high levels of torture and ill-treatment by NDS in Kandahar and Farah suggest the systematic<sup>53</sup> use of torture and ill-treatment in these facilities.
- UNAMA found indications of the regular and prevalent use of torture by NDS in Herat, Nangarhar, and in NDS 241 (Counter Terrorism Department) in Kabul.

## Increased reports of torture and ill-treatment at NDS Facilities

UNAMA interviewed 369 persons who had been held by the NDS in 46 facilities in 27 provinces.<sup>54</sup> It found that 106 of the 369 detainees interviewed (29 per cent) gave credible accounts of having experienced torture or ill-treatment. This represents a three per cent increase in recorded incidents of torture and ill-treatment when compared with the previous observation period.<sup>55</sup>

This reversal of previous trends (whereby the percentage of those who gave credible accounts of experiencing torture or ill-treatment in NDS custody had decreased by 17 per cent between and October 2010 and December 2014)<sup>56</sup> is largely attributable to significant increases in the credible allegations of torture and ill-treatment observed in NDS facilities in Herat, Kandahar, Nangarhar and NDS 241 in Kabul, combined with continued high levels of such cases documented at NDS Farah.

As with its previous reports, UNAMA found that the purpose of torture and ill-treatment identified in NDS custody was almost always to obtain a confession.

Of the 106 detainees who were found to have experienced torture or ill-treatment at the hands of NDS officials, 100 (94 per cent) stated that the purpose of the ill-treatment was to force them to make a confession. 70 of the 106 detainees who experienced torture or ill-treatment in NDS custody (66 per

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<sup>52</sup> Five of these 106 detainees were found to have experienced torture or ill-treatment in two separate NDS facilities. One detainee was found to have experienced torture or ill-treatment in three separate NDS facilities.

<sup>53</sup> UNAMA does not argue that the use of torture is institutional Government policy. In facilities categorized in this report (and previous reports) as using torture or ill-treatment on a 'systematic' basis, one-half (50 per cent) or more of total detainees interviewed provided sufficiently credible and reliable information that they had been subjected to torture or other forms of ill-treatment. UNAMA assesses that a rate of half or more of conflict related detainees reporting torture or ill-treatment in a specific facility indicates the high probability that torture/ill-treatment was not used in isolated cases by a few individuals but reflects a consistent policy or practice of that specific facility, and the facility directors and interrogators must have known, ordered or acquiesced to the use of torture or other prohibited forms of ill-treatment. See Methodology section.

<sup>54</sup> Of the 369 persons interviewed, 74 detainees had been held in two separate NDS facilities at various points in the chain of custody after arrest, 16 detainees had been held in three separate NDS facilities, 10 detainees had been held in four NDS facilities, and one detainee had been held in five NDS facilities, giving 508 instances of NDS detention monitored as part of the UNAMA monitoring programme.

<sup>55</sup> Between February 2013 and December 2014 UNAMA found that 161 of 611 detainees interviewed who had been held by NDS (26 per cent) had experienced torture or ill-treatment.

<sup>56</sup> In its 2011 public report on the 'Treatment of Conflict-Related Detainees in Afghan Custody', UNAMA found that 46 per cent of those interviewed had experienced torture in NDS custody. By 2013 the percentage had decreased to 34 per cent, and to 29 per cent by 2015.



cent) stated that they had signed a confession after being ill-treated or tortured. Tellingly, no detainees reported being tortured or ill-treated after they had given a confession.

In addition to those detainees who gave credible and reliable accounts of having been subjected to torture and ill-treatment in NDS facilities in Kandahar, Farah, Nangarhar Herat and Kabul (NDS 241), UNAMA interviewed 42 detainees who gave credible and reliable accounts of having experienced torture or ill-treatment in NDS facilities in 17 other provinces between 1 January 2015 and 31 December 2016, namely; in Badghis, Baghlan, Balkh, Ghazni, Ghor, Jawzjan, Kabul, Khost, Kunar, Kunduz, Laghman, Logar, Paktya, Parwan, Samangan, Sar-e-Pul and Takhar.

## **Treatment of detainees by NDS: provinces of key concern**

### **Kandahar**

*During two nights, NDS officials in Kandahar didn't let me sleep and I was standing the whole time and if I fell asleep they would beat me with a cable. After two nights in NDS, four people started torturing me and told me that I should confess that I am a member of Taliban. I was beaten severely seven times with a cable and pipe. I didn't confess during the interrogations, which were recorded by NDS officials. I spent 15 days in NDS. After 15 days I was transferred to Kandahar prison.*

- Detainee 350, NDS Kandahar, 2016

In its 2011 and 2013 Reports, UNAMA identified Kandahar NDS Provincial Headquarters as a location where information received during UNAMA's interviews with conflict-related detainees and relevant interlocutors indicates torture and ill-treatment were used systematically. Although in its 2015 Report UNAMA recorded a slight reduction in the instances of torture and ill-treatment documented in this facility, it noted in the same report a corresponding increase in credible and reliable accounts of torture and ill-treatment of detainees in district NDS facilities in Kandahar province, particularly in Spin Boldak district.

The findings of the present report indicate that the prevalence of ill-treatment at the NDS Provincial headquarters in Kandahar has returned to former levels and that NDS Kandahar continues to use abusive interrogation techniques involving torture and other forms of cruel, inhuman or degrading treatment.

Between 1 January 2015 and 31 December 2016, UNAMA interviewed 35 individuals who had been detained in Kandahar NDS provincial facility during that period. Of those interviewed, 21 detainees (60 per cent) gave credible accounts of having been subjected to torture or other forms of ill-treatment whilst in detention in this facility.

Nine detainees reported being beaten with either cables or plastic pipes, including on the soles of the feet. Two detainees reported either being hit in the testicles or having their testicles squeezed by NDS interrogators, causing blood to appear in their urine. Other methods of torture and ill-treatment documented in NDS Provincial headquarters in Kandahar included use of electric shocks, stress positions, and sleep deprivation.

Four of the 35 detainees interviewed by UNAMA had been held at the NDS District facility in Spin Boldak before being transferred to the provincial NDS HQ in Kandahar city. They all reported experiencing ill-treatment and torture at the hands of NDS Spin Boldak. While they were held at NDS Spin Boldak at different times (months apart in some cases) the detainees gave consistent descriptions of the treatment they had experienced in this facility, namely that they were suffocated using plastic bags and beaten with cables.

Another detainee interviewed by UNAMA was held at the NDS District facility in Nesh District, Kandahar province being transferred to NDS HQ in Kandahar city. The detainee's account describes how, during interrogation at Nesh, which lasted three days, he was suffocated with a plastic bag, subjected to electric shocks, had his head forcibly immersed in water and was beaten with wires and cables.

The average period of detention for those interviewed who were held by NDS Kandahar was 20 days. None of those interviewed by UNAMA had access to a lawyer whilst in NDS custody.

With regard to Kandahar, the finding that torture is used systematically on detainees held in the NDS Provincial headquarters in Kandahar city marks a worrisome return to the high levels of torture in this facility documented by UNAMA in its 2011 and 2013 reports.

### **NDS Farah**

*“On arrival at NDS detention facility I took my dinner and spent first night with no interrogation. After that, on the second night, the NDS interrogation officer came to my cell and took me to the interrogation office. He along with other NDS personnel tied my feet and started beating me with a hose and plastic pipes on my feet and told me that I have to tell them who I work for. At their first attempt, they could not make me confess so they electrocuted me and I could not see what they were doing but was feeling electrocution on my feet. I don’t know what time it was because I was blind folded. They tied me on the door of the interrogation office and I was hanged from it for a few hours and I was not feeling anything in my hands. The process continued for almost a week and after one week they brought a few pieces of paper filled out with some information and forcibly put my inked fingers on them.”*

- Detainee 360, NDS Farah, 2016

UNAMA interviewed 18 individuals who were detained at NDS Farah provincial facility between 1 January 2015 and 31 December 2016.

Nine of the 18 detainees (50 per cent) gave credible accounts that they had suffered torture or ill-treatment in Farah provincial NDS facility. Two of those who reported torture or ill-treatment were 14 year-old boys.

Seven of these detainees reported being beaten kicked or slapped during interrogation, with two stating that they were deliberately beaten on the soles of the feet with plastic pipes. Four reported being given electric shocks, and a fifth reported being threatened with electrocution. Three reported being suspended by their arms for extended periods. Seven of the nine detainees who reported experiencing torture or ill-treatment at NDS Farah stated that they had confessed after being tortured.

Three detainees gave credible and consistent accounts of being subjected to multiple forms of torture and ill-treatment over several days, whereby they were successively beaten, given electric shocks, and suspended by the arms from the door of the cell. One of these detainees was also threatened with anal rape.

The average period of detention at NDS Farah amongst those interviewed by UNAMA was 18 days. None of the detainees had access to a lawyer during the time they were held by NDS.

In its 2015 report, UNAMA also documented the systematic use of torture and ill-treatment by NDS Farah, and UNAMA is concerned that there have been no tangible signs of improvement in this facility since its previous report was released.

## NDS Herat

*“When NDS could not get me to confess, they hung me by my hands on the door frame of the cell. I was hung from the door frame for almost an hour and my hands stopped feeling anything. I was taken down and NDS started interrogating me. They told me “if you don’t confess then we will hang you from that place again”. It was really hurting me, so I thought it would be good to tell them what they wanted so I had to lie to them and say “I am with the Taliban.” I had to confess to their claim that I was Taliban, because being tortured is not an easy thing I had to say something otherwise they could have killed me or mutilated my hands. They wrote everything down and before reading it to me they asked me to fingerprint it. I finger printed all the documents because being hung by my hands was extremely painful and I don’t want to experience it again in my life.”*

- Detainee 287. NDS Herat. 2016

UNAMA is particularly concerned with its findings in relation to Herat (where the credible reports of torture by NDS have returned to levels not seen since 2010-2011)<sup>57</sup>

UNAMA interviewed 27 individuals who were detained at NDS Herat provincial facility. Thirteen of these detainees (48 per cent) gave credible accounts of having experienced torture or ill-treatment in that facility.

All 13 reported being beaten, punched kicked or repeatedly slapped during interrogation. Three reported being beaten on the soles of the feet, and three reported being beaten with cables. Two detainees reported being subjected to electric shocks – in one case applied to the genitals. Two detainees – one of whom was a juvenile- reported being suspended by the arms with their hands tied behind their back.

None of the 27 detainees interviewed by UNAMA were given access to a lawyer during their time in NDS detention.

## NDS Nangarhar

*I was interrogated by an NDS officer two times and they told me to put thumb prints on papers. They did not read any of these documents to me. I don’t know what was written in it. The NDS officers accused me of being a member of Taliban. One night, during interrogation, an NDS Officer beat me with a plastic pipe on my feet. They told me to admit that I was member of Taliban. One night, an NDS Officer/soldier tried to force me to dance for him but I refused.*

-Detainee 158 (a 14 year old boy), Nangarhar, 2016

UNAMA observed that credible reports of torture and ill-treatment by NDS in Nangarhar have reached levels not previously seen in the six years of its focused monitoring of conflict-related detainees.

UNAMA interviewed 29 detainees who were held at the NDS Provincial Facility in Nangarhar between 1 January 2015 and 31 December 2016. Ten of these 29 detainees (34 per cent) gave credible accounts of being tortured or ill-treated in this facility. Five detainees were found to have been beaten with sticks, cables or rubber pipes, including on the soles of the feet. One detainee had a water bottle tied to his testicles with a piece of wire, and had his testicles twisted. One detainee was subjected to an electric shock, whilst two others confessed after being threatened with an electric shock.

Whilst UNAMA is concerned by the high levels of torture and ill-treatment recorded in NDS Nangarhar during the period covered by this report, it should be noted that the last incident of torture/ill-treatment documented in that facility was in March 2011. Of the 11 detainees interviewed by UNAMA who were held in NDS Nangarhar after that date, none gave credible indications that they had been tortured or ill-treated.

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<sup>57</sup> In its 2011 Report on the ‘Treatment of Conflict-Related Detainees in Afghan Custody’, UNAMA documented the systematic use of torture by NDS in Herat with more than 50 per cent of those interviewed giving credible accounts of abuse. However the levels of torture documented by UNAMA decreased in subsequent reporting periods and in 18 per cent of those interviewed for the 2015 report who were detained in NDS Herat gave credible accounts of having experienced torture or ill-treatment.

## **NDS 241 – Kabul**

*“First I was brought to NDS 241 facility. I was there for seven days and I was interrogated three times during the first three days of my detention. The NDS accused me of being Talib. During the interrogation, they beat, hit, slapped and kicked me. I do not remember how long the interrogations took. I had bruises all over my body, including my hands and face. At some point I was also unconscious. I did not confess during the interrogation, but they made me fingerprint a document. I do not know what was written on this document. Perhaps I said something while I was unconscious. They also took some photos and made me read a written statement which was video-recorded. It was written that I am Talib.”*

-Detainee 244 (a juvenile), NDS 241, April 2016

UNAMA notes that the credible reports of torture and ill-treatment documented at NDS 241 Kabul has increased markedly since the 2015 UNAMA Report.<sup>58</sup>

UNAMA has consistently documented concerns over the use of torture and ill-treatment at the national-level detention facility run by the NDS Counter-Terrorism Department 241 (formerly Department 124, formerly Department 90) in Kabul. In its 2015 Report, UNAMA assessed that the use of torture and ill-treatment in NDS 241 was regular and prevalent but had not reached systematic levels. Although this assessment remains unchanged for the current reporting period, UNAMA is concerned that levels of abuse of detainees at NDS 241 Kabul rose to the extent of verging on systematic.

For the present report, UNAMA interviewed 34 individuals who had been held in NDS 241 Kabul between 1 January 2015 and 31 December 2016. Fifteen of them (44 per cent) gave credible accounts of having been tortured or ill-treated whilst being held in this facility. Fourteen of the detainees reported being beaten, punched or kicked during interrogation, with some reporting multiple and systematic beatings over several days. Techniques included beating with chains, cables and hose-pipes, and beating to the soles of the feet. Two detainees complained of having their heads smashed against the cell wall by interrogators. One detainee stated that he was strangled until he lost consciousness. The following day, he was woken at 2am and forced to stand under a cold shower for 10 minutes. Another detainee reported having been subjected to electric shocks while immersed in water. Detainees also reported being threatened with beatings, sexual assault, and attack by dogs.

Six of the 34 detainees interviewed who had been held in NDS 241 were children under the age of 18, four of whom reported having experienced torture or ill-treatment during interrogation in that facility.

The average length of time those interviewed by UNAMA were held in NDS 241 was eight days. None of those interviewed had access to a defence lawyer whilst in this facility.

Fourteen of the 34 detainees interviewed by UNAMA were subsequently transferred from NDS 241 Kabul to NDS 501 in Kabul and another eight were transferred to NDS 501 at the Afghan National Detention Facility in Parwan. None of these detainees reported experiencing torture or ill-treatment after they were transferred out of NDS 241 Kabul.

## **NDS 501 – Kabul**

UNAMA interviewed 67 individuals who were held in NDS 501 (formerly NDS 40) Kabul between 1 January 2015 and 31 December 2016. Only one of them reported being subjected to torture or ill-treatment in this facility.

This reflects similar findings made by UNAMA in its 2015 report which recorded only one incident of torture or ill-treatment at NDS 501 that reportedly occurred in February 2013.

However, 18 of the 67 detainees interviewed for the current report (27 per cent) who were held in NDS 501 were found to have experienced torture or ill-treatment in other NDS facilities in Kabul before being

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<sup>58</sup> In its 2015 public report UNAMA found that 36 per cent of detainees interviewed who had been held at NDS 241 Kabul had experienced torture or ill-treatment. During the period covered by the present report, that figure rose to 44 per cent.

transferred to NDS 501: five in NDS Department 1 (Kabul Provincial NDS headquarters), and 13 in NDS 241.

### **Reports of torture and ill-treatment of juveniles in NDS custody**

*They were very angry and upon my arrival, they started punching and kicking me and were frequently telling me that I was not telling the truth. On the first night an NDS Officer came to my cell and took me to another cell and told me that “if you don’t confess, then I will sleep with you and you know what can I do with you” I was really scared and then started beating me with sticks, punches and kicks. The next night they wet me with tap water and then brought me to a cells and electrocuted me with a stick they had with them. This torture continued for several hours and still I didn’t confess. On the third night the tall man banged me on the window of the cell and told me next day “I will come to you and if you don’t confess then I will really screw you”, so I got scared and I had to confess. On the fourth day, they installed a camera and told me that they would tell me what to say and I should repeat it in front of the camera. Since I was scared I told everything and they also brought a document and I marked it with a finger print.*

Detainee 460 (aged 15 years), NDS Farah 2016.

Twenty of the 106 detainees (19 per cent) who gave credible reports of having been tortured or ill-treated in NDS custody were children under the age of 18. These incidents were documented in NDS facilities in Balkh, Badghis, Farah, Herat, Jawzjan, Laghman, Loghar, Kabul, Nangarhar, Sari Pul and Takhar provinces.

All 20 children stated that they were severely beaten kicked or punched during interrogation. One 16 year old detainee was beaten unconscious. A 15 year old boy lost consciousness after a NDS interrogator stood on his neck whilst he lay on the floor. His clothes were soaked with blood due to injuries sustained during the beating. One boy was dragged by his hair around the cell and beaten with a chain. Another was repeatedly soaked with water and forced to stand in his wet clothes.

Nineteen of these children stated that they were tortured by NDS in order to obtain a confession, and 13 stated that they had confessed as a result of the ill-treatment they were subjected to.

Credible and reliable reports of torture and ill-treatment by NDS: provincial breakdown

NDS facility	Detainees Interviewed <sup>59</sup>	Detainees who reported being tortured and/or ill-treated	Percentage tortured/abused
Badakshan	16	0	0
Badghis	3	2	66
Baghlan	29	2	7
Balkh	11	1	9
Bamyan	2	0	0
Farah	18	9	50
Faryab	4	0	0
Ghazni	1	1	100
Ghor	4	2	50
Herat	27	13	48
Helmand	1	0	0
Jawzjan	8	3	37
Kabul	24	7	29
Kabul NDS 241	34	15	44
Kabul NDS 501	67	1	1
Kandahar	35	21	60
Kapisa	2	0	0
Khost	17	1	6
Kunar	8	1	12
Kunduz	20	3	15
Laghman	8	4	50
Logar	2	2	100
Nangarhar	29	10	34
Paktika	15	0	0
Paktya	24	3	12
Parwan	3	2	66
NDS 241 DFIP	8	0	0
NDS 501 DFIP	26	1	4
Samangan	9	1	11
Sar-e-Pul	4	1	25
Takhar	14	4	27
<b>Total</b>	<b>473</b>	<b>110</b>	<b>23 per cent</b>

<sup>59</sup> The numbers used in this table reflect the fact that each individual detainee interviewed may have been held (and in some cases tortured or ill-treated) in multiple locations.

## Afghan National Police and Border Police

*In the first three days, I was regularly tortured by three ANP who accused me of supporting the Taliban. I was insulted during the torture and a plastic bag was put on my head. I was beaten with a cable each time for one hour. After each beating I was asked to confess and provide interrogators with names of other people working with me. For three days I did not confess until ANP used electric shocks. I then signed a confession saying I was a member of Taliban.*

-Detainee 448. ANP Kandahar, 2016

### Main Findings

- Of the 172 detainees interviewed, 77 (45 per cent) provided credible accounts of having been tortured or ill-treated when held in ANP or ANBP custody. This represents the highest levels of torture and ill-treatment by ANP/ANBP documented by UNAMA since it commenced its monitoring programme in 2010.
- UNAMA found credible indications of the systematic use of torture or ill-treatment in ANP custody in Kandahar and Nangarhar provinces, where 32 of the 44 detainees interviewed (73 per cent) reported having experienced torture or ill-treatment.
- UNAMA also found credible indications of high levels of torture and ill-treatment experienced by detainees held in ANP facilities in Farah (five out of eight detainees or 66 per cent of those interviewed) and Herat (seven out of seven detainees, or 100 per cent of those interviewed).<sup>60</sup>
- Thirty three detainees experienced torture or ill-treatment in ANP/ANBP facilities in 18 other provinces.
- Of the 77 individuals who gave credible accounts of being tortured or ill-treated in ANP/ANBP custody, 20 (26 per cent) were under the age of 18.

### Significant increase in documented cases of torture and ill treatment in ANP custody

UNAMA interviewed 172 individuals who had been held in ANP or ANBP custody in 28 provinces between 1 January 2015 and 31 December 2016.<sup>61</sup>

Of the 172 detainees, 77 (45 per cent) gave credible accounts of being subjected to torture or other forms of ill-treatment.<sup>62</sup> This is the highest level of reported torture and ill-treatment in ANP custody documented since UNAMA began its systematic monitoring of conflict-related detainees in 2010.<sup>63</sup>

Seventy of these 77 detainees (90 per cent) stated that they were tortured in order to obtain a confession.<sup>64</sup> Of the 77 detainees who reported being tortured or ill-treated in ANP/ANBP custody, 47 (61 per cent) stated that they confessed as a result of the torture or ill-treatment.

UNAMA documented the highest levels of torture and other forms of ill-treatment by ANP in Kandahar, where an unprecedented 91 per cent of those interviewed gave credible accounts of being subjected to torture or ill-treatment.

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<sup>60</sup> Notwithstanding the high percentage of those interviewed who gave credible accounts of torture or ill-treatment, the sample size was not sufficiently large for UNAMA to make the finding that the use of torture or ill-treatment was systematic in these locations.

<sup>61</sup> Sixty-five of these detainees had been held in two separate ANP/ANBP facilities, and nine detainees had been held in three separate ANP/ANBP facilities over this time period, giving a total of 252 instances of ANP/ANBP detention monitored for the purposes of this report. Of these 252 instances of detention, seven were in ANBP facilities, the remainder in ANP.

<sup>62</sup> Three of these accounts related to torture or ill-treatment in ANBP custody, with the remainder being in ANP custody.

<sup>63</sup> The 2011 UNAMA Report found that 35 per cent of those interviewed in ANP/ANBP custody had experienced torture or ill-treatment. In the 2013 Report the figure was 43 per cent, and in the 2015 Report 31 per cent.

<sup>64</sup> The remaining seven of the 77 detainees stated that they were tortured as punishment rather than as a means of obtaining a confession.

The methods of torture described by detainees held in ANP Kandahar were particularly cruel and included suffocation resulting in loss of consciousness; crushing the testicles; having water forcibly pumped into the stomach; being suspended from the ceiling by the arms or by the feet; having bricks or other heavy weights tied to the testicles; and electric shocks – including to the genitals.

However, reports of such methods were not unique to ANP Kandahar, and detainees held by ANP throughout the country also described being subjected to severe and systematic beatings with pipes and cables, being given electric shocks, having objects forcibly inserted in their rectum and being suspended by the arms for extended periods.

UNAMA also documented credible reports indicating the systematic use of torture and ill-treatment by ANP Nangarhar where the percentage of detainees who reported having experienced torture and ill-treatment was the highest recorded in this province since UNAMA began its monitoring programme in 2010.

In addition to documenting systematic ill-treatment or torture in ANP/ANBP facilities in Kandahar and Nangarhar, UNAMA recorded 45 sufficiently credible and reliable incidents of torture and ill-treatment in 20 other provinces, with particular concerns over multiple reports of ill-treatment in Farah, and Herat provinces. Although the sample size was insufficient to enable UNAMA to state categorically that torture and ill-treatment is used systematically by ANP/ANBP in these locations, the findings raise serious concern, particularly in relation to Herat, where all 7 of those interviewed by UNAMA who had been held in ANP/ANBP custody reported being tortured or ill-treated.

## **Treatment of detainees by ANP/ANBP: key provinces of concern**

### **ANP Kandahar**

*Soon after I arrived at Police District 2 they started beating me. I was hung from the ceiling and five ANP beat me. The Head of Police District 2 was present and he also punished me. I was beaten with a cable made of a bunch of electric lines and a hose. They gave me electric shocks to the genitals. I was naked and they threatened me with sexual assault unless I told them I was Taliban. Whilst I was hung from the ceiling they tied a brick to my genitals. Because of this, bleeding started from my penis. I told them they can write whatever they want, but I am not a member of Taliban. I was kept there for ten days and punished continuously for eight days.*

-Detainee 384, Kandahar Police District 2, 2016

The previous UNAMA reports on detention identified the systematic use of torture or ill-treatment of conflict-related detainees by ANP Kandahar. That assessment remains unchanged for the period covered by the current report.

UNAMA interviewed 22 detainees who were held in ANP custody in district and provincial facilities in Kandahar province between 1 January 2015 and 31 December 2016. Of those interviewed, 15 were held in two separate ANP facilities at different times, and four were held in three separate ANP facilities at different times.

Twenty of the 22 detainees interviewed (91 per cent) gave credible accounts of having experienced torture or ill-treatment at the hands of ANP Kandahar, with three detainees reporting torture or ill-treatment in two different ANP facilities in the province.

Five detainees reported experiencing torture or ill-treatment in ANP district facilities in Maiwand district (three incidents), Panjwayi district (one incident) and Zheri district (one incident). The remaining incidents of ill-treatment or torture were all reported as taking place in Kandahar city as follows: ANP Provincial headquarters (two incidents), Kandahar ANP Counter-Terrorist Unit (two incidents), Kandahar Afghan National Civil Order Police headquarters (one incident), Kandahar City Police District 2 (one incident), Police District 3 (one incident), Police District 4 (one incident), Police District 6 (five



incidents) and Police District 9 (three incidents). Two additional incidents were reported at unidentified police check posts in Kandahar city.

All those who gave credible accounts of torture or ill-treatment in Kandahar reported being systematically and repeatedly beaten, often with cables, sticks or rubber pipes, and often by multiple ANP personnel. Several reported being beaten on the back, legs, thighs and buttocks and two reported being beaten on the soles of the feet.

One of those who reported being tortured in the Police District 2 facility stated that the District Commander was present and participated in the beatings.

In addition to beatings, the forms of torture and ill-treatment most commonly reported by detainees in ANP custody in Kandahar included suffocation - either with plastic bags, or by stuffing cloth in the mouth (resulting in loss of consciousness in two cases): crushing the testicles (including by using a clamp); having water forcibly pumped into the stomach; being suspended from the ceiling (by the arms or by the feet); having bricks or other heavy weights tied to the testicles; and electric shocks – including to the genitals.

Detainees also reported having their heads held under water for extended periods, having pepper pumped into their rectum, being forced into stress positions, being stripped naked and threatened with rape, and having the soles of the feet burned with a cigarette lighter. UNAMA also received a disturbing account of degrading treatment from a detainee who reported that at ANP Maiwand District he was handcuffed and forced to fight other suspects detained on security charges “and bite each other like dogs”.

### **Allegations of Enforced Disappearances<sup>65</sup> and Extra-judicial Killings in Kandahar**

In its 2015 Report UNAMA documented credible allegations of extra judicial killings of individuals taken into custody by ANP/ANBP in Kandahar.

Those allegations persisted through the period covered by this report, with the Afghanistan Independent Human Rights Commission, as well as local and international media outlets, raising concerns over a “string of unexplained deaths” in Kandahar province in 2015 and 2016.<sup>66</sup>

These concerns were exemplified by the high-profile case of a Kandahar University student whose body was discovered in the Spin Boldak district of Kandahar province after he had been missing for almost two months. Reports received by UNAMA indicate that while the victim’s body did not show gunshot wounds, there were bruises and marks around his neck. The Kandahar Chief of Police was quoted in local media as stating that the student was a member of Taliban’s media wing, and was murdered as a result of tensions between rival Taliban factions.<sup>67</sup> However, the victim’s family publicly alleged that he had died as a result of torture whilst in the custody of the Kandahar provincial security forces. Sources in Kandahar also confirmed to UNAMA that in the weeks before his dead body was discovered they had witnessed the

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<sup>65</sup> An ‘enforced disappearance’ is defined under international law as ‘*the arrest, detention or any other form of deprivation of liberty by agents of the state... followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the whereabouts of the disappeared person, which places such a person outside the law*’ (*International Convention for the Protection of All Persons from Enforced Disappearance* (2006)). The United Nations Working Group on Enforced Disappearance has acknowledged the view that an enforced disappearance constitutes torture or other prohibited ill-treatment in and of itself, stating that ‘the very fact of being detained as a disappeared person, isolated from ones family for a long period is certainly a violation of right to humane conditions of detention and has been represented to the Group as torture’ (E/CN.4/1983/14, para 131).

<sup>66</sup> ‘*Another mysterious death in Kandahar and allegations of official torture*’ Los Angeles Times, 7 April 2016, available online at <http://www.latimes.com/world/middleeast/la-fg-afghanistan-slain-student-20160407-story.html> ; ‘Mysterious deaths of 146 people in 6 months’ Taand News, 4 April 2015. Available at <http://www.taand.com/archives/67165>

<sup>67</sup> ‘Ex-Taliban web-master killed as tensions intensify between rival factions’ Khaarma Press, 30 March 2016. Available online at <http://www.khaama.com/ex-taliban-webmaster-killed-as-tensions-intensify-among-rival-groups-0480>

victim being arrested and handcuffed by unidentified men who they believed to be members of the Afghan law-enforcement/security services.<sup>68</sup>

The continued reports of unexplained deaths in Kandahar – including but not limited to the case highlighted above - prompted a number of individuals to share concerns with UNAMA about the fate of their own relatives or community members who had “disappeared” after being taken into custody by ANP in Kandahar. Several sources provided UNAMA with accounts of their relatives or members of their community ‘disappearing’ after being arrested by uniformed ANP in Kandahar city, with the Provincial Chief of Police subsequently denying any knowledge of their whereabouts. UNAMA also interviewed one individual who gave a credible account of having been held incommunicado for six to eight months following his arrest by Kandahar ANP on suspicion of being a member of Taliban. During that time he was held in various ‘informal’ places of detention, including the basement of a private house, and was questioned on at least one occasion during his time in informal detention by the Kandahar Chief of Police.

In late 2016 the Governor of Kandahar received a group of elders and community leaders who voiced their concerns over the continuing phenomenon of ‘disappearances’ in Kandahar, but UNAMA is not aware of any concrete action being taken by the authorities to investigate the widespread public allegations that ANP is complicit in these incidents.

### **ANP Nangarhar**

*After two days, I was transferred to the ANP detention facility. I was interrogated by [redacted] of the Counter Terrorism Unit. He tried to force me to confess that I had placed the IED that had killed [redacted name/rank of security force member]. When I denied it he started beating me with a stick and with a plastic pipe on my shoulders, thighs and legs. The next day, I was again interrogated several times. I also received electric shocks on my feet and face. He also pumped pepper in my anus and also threw pepper in my eyes.*

-Detainee # 305, ANP Counter-Terrorist Unit Nangarhar, 2016

UNAMA interviewed 22 detainees who were held in ANP/ANBP facilities in Nangarhar, at district and provincial level, between 1 January 2015 and 31 December 2016. Of these, 13 were held in two separate ANP/ANBP facilities in Nangarhar during their time in custody, and one detainee was held in three separate ANP facilities.

Twelve of those interviewed (54 per cent) gave credible accounts of having been tortured or ill-treated during their time in ANP/ANBP custody in Nangarhar. One detainee stated that he was tortured or ill-treated in two separate ANP facilities.

Of the incidents of torture or ill-treatment reported in Nangarhar, three took place in the ANP Counter Terrorist Unit in Jalalabad, three in ANP Provincial headquarters Jalalabad, one in ANP Battallion 350, two in ANP facilities in Achin District, two in Bati Kot District and one in Kot District (one incident). One incident of ill-treatment was also reported to have occurred in ANBP Battalion 5 at the Torkham border.

All of the detainees who gave credible reports of being tortured or ill-treated stated that they were beaten, with six stating that they were systematically and repeatedly beaten with sticks, cables or rubber pipes (including one who was beaten on the soles of the feet.)

Three detainees interrogated by the Counter Terrorist Unit in Nangarhar gave separate and broadly consistent accounts of being beaten, given electric shocks, and having pepper sprayed in their eyes or inserted in their rectum, and named a particular CTU interrogator as being responsible.

Other detainees reported being suspended upside-down by the feet, being threatened with electric shocks, threatened with wrenching of the testicles, and threatened with death.

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<sup>68</sup> UNAMA sources could not identify the individuals.

## ANP Herat

*I was interrogated four times the same night for an hour each time. I was taken from the cell to an office, and back to the cell, over and over. I was asked the same questions. I was kicked and punched and beaten during two separate interrogations in Herat on the same night. There were one or two punches and kicks at each interrogation. I was kicked and punched when I denied the allegations. I was kicked in the shoulder and punched in the mouth. I said I wasn't Taliban. They said you are lying and you are reporting to Taliban. I was forced to thumb print some documents which I didn't understand. I don't know if they really wrote down all that I said.*

-Detainee 363. ANP HQ, Herat 2016

All seven detainees interviewed by UNAMA who had been held in ANP/ANBP custody in Herat during the reporting period gave credible accounts of having experienced torture or ill-treatment. The detainees interviewed by UNAMA had either been held in ANP HQ Herat, in Shindand District ANP headquarters, or ANBP District headquarters in Kusk District. All seven detainees reported being beaten during interrogation and two of the detainees stated they were given electric shocks in order to force them to confess.

UNAMA also documented credible and reliable reports of torture or ill-treatment in ANP/ANBP custody in Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Faryab, Ghazni, Ghor, Jawzjan, Kabul, Khost, Kunduz, Logar, Paktya, Samangan, Sari Pul, Wardak and Zabul provinces.

### Reports of torture and ill-treatment of juvenile detainees by ANP/ANBP

*I was interrogated for one time only. A fat man beat me with a black cable four times on my legs. They were forcing me to confess that I planted an IED. Another boy arrested at the same time as me was also beaten inside a separate room, because I heard his sounds and crying as a result of the beating. Both of us were kept there for the whole day. I was forced to confess against my will because I was under stress.*

-15 year old detainee. Kunduz ANP HQ, 2016

Of the 77 individuals who gave credible accounts of being tortured or ill-treated in ANP/ANBP custody, 20 (26 per cent) were under the age of 18.

Incidents involving the torture or ill-treatment of juveniles were not limited to one area or facility but occurred in district and provincial facilities in 11 provinces, namely in: Badghis, Baghlan, Balkh, Farah, Faryab, Herat, Kabul, Kunduz, Logar, Nangarhar and Wardak.

All 20 of the juveniles who gave credible reports of being tortured or ill-treated stated they were beaten in order to make them confess. Some reported being beaten on the soles of their feet, others being slapped repeatedly in the face or being beaten with sticks, cables or plastic pipes. One 17 year old boy stated that he was given electric shocks and had his head immersed in water during interrogation by ANP. Another stated that he was suspended by his arms until he confessed.

Thirteen of the juveniles stated that they made confessions as a result of their ill-treatment or torture.

Eight of the juveniles who informed UNAMA that they confessed under duress subsequently complained to their defence lawyer (three cases), to the prosecutor (two cases), or to the judge in open court (3 cases). No action was taken in any of these reported cases, either to investigate the alleged ill-treatment or to challenge the admissibility of the confession.

In one case, following his transfer from a district ANP facility (where he claimed that he was severely beaten) to the provincial ANP headquarters, a 17 year old detainee sought medical assistance in the clinic in that detention facility. He told UNAMA that he informed the doctor about recurring and persistent pains resulting from the beatings he was subjected to at the district facility. The doctor reportedly prescribed pain-killers, but did not refer the allegations of ill-treatment for further investigation.

Credible and reliable reports of torture and ill-treatment by ANP/ANBP: provincial breakdown

Province of ANP detention	Detainees interviewed <sup>69</sup>	Detainees who reported being tortured and/or ill-treated	Percentage Tortured/abused
Badakshan	8	2	25
Badghis	4	3	75
Baghlan	11	3	27
Balkh	7	3	43
Bamyan	9	2	22
Farah	8	5	62
Faryab	13	2	15
Ghazni	1	1	100
Ghor	2	2	100
Herat	7	7	100
Jawzjan	1	1	100
Kabul	3	1	33
Kandahar	22	20	91
Kapisa	1	0	0
Khost	3	1	33
Kunar	3	0	0
Kunduz	10	4	40
Laghman	3	0	0
Logar	5	3	60
Nangarhar	22	12	54
Paktika	2	0	0
Paktya	8	1	12
Parwan	1	0	0
Samangan	9	2	22
Sari Pul	3	1	33
Takhar	4	0	0
Wardak	1	1	100
Zabul	1	1	100
<b>TOTAL</b>	<b>172</b>	<b>78</b>	<b>45</b>

<sup>69</sup> The numbers used in this table reflect the fact that each individual detainee interviewed may have been held (and in some cases tortured or ill-treated) in multiple locations.

## Afghan Local Police<sup>70</sup>

*Two ALP held my legs, another held my arms and another one held my head and covered my mouth with a scarf to silence my voice. After that he started beating me again and asked me to confess. He beat me for almost one hour. After that he took me to the edge of an old well inside his check post and aimed his AK47 at me and told me to confess to being Talib. He told me if I did not confess he would shoot and kill me like he did with [names redacted]. I was scared and confessed whatever he asked me. [The men he named] were two armed Taliban who surrendered to the ALP Commander, who tortured them to death inside his check post and handed over their dead bodies to ANP, stating that they died during a firefight. After my confession the ALP commander called my father and demanded 400,000 Afs to secure my release. Eventually he decreased his demand to 50,000 Afs but my father had no money to pay, and therefore I was handed over to ANP.*

-Detainee 26, 2016

Between 1 January 2015 and 31 December 2016, UNAMA interviewed 37 individuals who had been initially detained by ALP before being handed over to the competent legal authorities. Twenty two of them (59 per cent) stated they were severely beaten by ALP either at the time of capture or during subsequent detention.

Of these 22, seven reported being beaten on arrest by ALP in Nangarhar province, five by ALP in Baghlan, two by ALP in Kunduz, and one each by ALP in Badakhshan, Balkh, Faryab, Kunar, Laghman, Paktika, Paktiya, Sar-e-Pul and Takhar

Three of those who stated they were beaten by ALP at the time of arrest informed UNAMA that ALP administered the beatings in order to obtain a confession. The other 19 detainees described being subjected to ill-treatment that significantly exceeded the use of reasonable force necessary to restrain an individual at the time of arrest and which may also amount to torture. Several detainees described being subjected to sustained beatings by multiple ALP personnel for periods up to an hour after capture, and many reported being beaten with rifle butts, sticks or cables.

Eleven of those interviewed by UNAMA described being held by ALP for between one and three days, generally at ALP check posts, before being handed over to ANP or NDS. Four of these individuals gave credible accounts of being subjected to sustained forms of ill-treatment or torture, including being beaten on the soles of the feet, forced to adopt stress positions, threatened with extra-judicial execution, and in one case, being forced to sit astride a wall with heavy weights tied to his feet for over three hours.

Steps have been taken by the Government to ensure accountability for killings, torture, sexual violence, beatings and other criminal acts carried out by ALP, noting in particular a high number of cases referred to the authorities for investigation. UNAMA notes concern that many such cases remain pending within the system and encourages the timely prosecution for such acts.

For example, NDS reported to UNAMA, a case occurring in March 2016 where NDS Nangarhar raised concerns through their chain of command that a detainee transferred to their custody had injuries that indicated that he may have been tortured or ill-treated by ALP prior to the transfer. However, 12 months after the alleged incident took place that case appears still to be under investigation.

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<sup>70</sup> ALP are locally recruited militia operating under the authority of the Ministry of the Interior. ALP are required to promptly hand over any suspected insurgents to ANP or NDS.

## Afghan National Army

*ANA soldiers cuffed my hands and told me that you are Talib. They took me to a military station in [redacted] district and kicked and choked me to make me confess that I am Talib. I was afraid of being killed and felt a lot of pain but there was no option but to tolerate torture and they used bad words against me. I told them do not use bad words, but they beat me. Finally, I told them that I am Talib to make the torture stop. They wrote on a paper and got my finger print on it, they kept me for a few hours. On the same day after few hours of arrest, they took me by helicopter to Qala-e-now and handed me over to NDS detention centre.*

-Detainee 54, Badghis, 2015

Between 1 January 2015 and 31 December 2016, UNAMA interviewed 19 detainees who had been held by the Afghan National Army prior to being transferred to ANP or NDS.<sup>71</sup>

Eight of the detainees gave credible reports of having been subjected to torture or ill-treatment in ANA custody. Each of the reported incidents took place in different locations<sup>72</sup>

Although UNAMA is concerned over the high percentage of detainees held by ANA who raised concerns over their treatment, the sample of those interviewed was too widely dispersed to confirm a pattern of regular and prevalent abuse of detainees by ANA in any particular location.

It is notable, however, that all the reported incidents of ill-treatment by ANA took place before 1 January 2016 and that ANA's own internal reporting and accountability mechanisms have resulted in at least two prosecutions and convictions of ANA personnel for acts amounting to torture during the period covered by this report – although it is not clear from the information provided to UNAMA whether the accused were in fact charged or tried under provisions of the *Penal Code* which specifically prohibit torture.

In the first case, in October 2015, two ANA Special Forces personnel were convicted and sentenced to six years imprisonment for threatening to rape a girl in Uruzgan province in order to coerce her mother into providing intelligence information. The convictions were subsequently upheld by the Supreme Court.

In the second case, in January 2016, the Supreme Court upheld the conviction of three ANA personnel for beating a captured insurgent to death in Helmand on 20 June 2015. The ANA personnel were sentenced to 18 years and 16 years imprisonment.

### **Afghan National Detention Facility in Parwan (DFiP)**

The Afghan National Detention Facility in Parwan is a detention compound located in Parwan province. The facility is currently managed by the Ministry of Defence, under the command of an ANA Major General and staffed by ANA Military Police guards.<sup>73</sup> It is co-located with a separately administered NDS detention facility which houses sub-units of NDS 501 and NDS 241 (Investigation and Counter Terrorism Departments)

### **Reports of torture and ill treatment of detainees in ANA custody at the Afghan National Detention Facility in Parwa**

UNAMA interviewed 24 detainees who had been held in the ANA-run prison at the Afghan National Detention Facility in Parwan between January 2015 and December 2016. Four of them gave credible accounts that they had been tortured or ill-treated by ANA guards in this facility.

Given that the detainees held at the Afghan National Detention Facility in Parwan are either convicted prisoners or pre-trial detainees who ANP and NDS have already questioned, they are less vulnerable to

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<sup>71</sup> This sample does not include detainees held in the ANA-administered Afghan National Detention Facility in Parwan which is dealt with separately in this report.

<sup>72</sup> UNAMA documented credible allegations of torture and ill-treatment of detainees in ANA bases in Badghis, Baghlan Farah, Herat, Kabul (3 separate locations) and Kandahar provinces.

<sup>73</sup> See Annex II for further details.

being tortured or ill-treated for the purposes of obtaining a confession. However UNAMA is concerned that the detaining authorities at the Afghan National Detention Facility in Parwan may be using physical violence and intimidation as a means of maintaining order in a facility that is near to its capacity, and in an environment where the ANA guards – who are not trained corrections officers – see their role purely as containing a potential security threat.

This assessment was supported by reports from a number of detainees (both victims and eye-witnesses) who gave credible accounts of arbitrary acts of violence and intimidation carried out by ANA guards – including beatings and dousing detainees with water.

Detainees gave consistent reports of ANA guards using physical punishment in response to non-violent protests by detainees against their conditions of detention. One detainee gave a credible account of being taken out of his cell after some detainees had staged a hunger strike, and being forced (along with other detainees in his block) to walk between two lines of ANA guards whilst being punched and kicked. According to the detainee's account, six of the detainees were so seriously injured as a result of this punishment beating that they were transferred for treatment at the ANA Hospital in Kabul.

In another case, two detainees held in solitary confinement in the Afghan National Detention Facility at Parwan gave separate and consistent accounts of ANA guards dousing them and their bedding with cold water, and carrying out “punishment” beatings in their cells. After UNAMA raised concerns over the safety of these two individuals with the detaining authorities, the ANA facility Commander launched an internal investigation and referred the allegations to the Office of the Military Prosecutor. As a result of the investigation two ANA guards were reportedly transferred out of the facility and returned to regular military duties. However, they were not subjected to other disciplinary or judicial sanctions.<sup>74</sup>

### **Reports of torture and ill treatment of detainees in NDS custody at the Afghan National Detention Facility in Parwan**

NDS administers two separate facilities co-located within the Afghan National Detention Facility in Parwan complex, which fall under the authority of NDS 241 (formerly NDS 124) and NDS 501 (formerly NDS 40) respectively.<sup>75</sup>

During the period covered by this report, UNAMA interviewed 34 pre-trial detainees held in NDS custody at the Afghan National Detention Facility in Parwan. Twenty six were held at NDS 501 and eight at NDS 241. Only one of the 34 detainees interviewed by UNAMA provided a credible account of having experienced torture or ill-treatment in either of these facilities.

However, nine of the 34 detainees (26 per cent) stated that they had been tortured or ill-treated in other NDS facilities prior to their transfer to the NDS detention facilities at the complex in Parwan.

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<sup>74</sup> UNAMA meeting with the ANA Commander of the Afghan National Detention Facility in Parwan, November 2016

<sup>75</sup> Before being transferred into the custody of NDS 501 or NDS 241 in the Afghan National Detention Facility in Parwan, the detainees may also have been routed through the corresponding NDS detection and investigation facilities in Kabul.

## Implementation of the National Plan on the Elimination of Torture

In response to the 2015 UNAMA Report on the Treatment of Conflict Related Detainees, the Government issued its “National Plan on the Elimination of Torture”. The national plan includes some of the key recommendations contained the 2015 UNAMA Report and was expressly intended to encompass the establishment of:

*“effective mechanisms aimed at the elimination of torture, more effective implementation of the Convention against Torture, and capacity building in different areas.”<sup>76</sup>*

### Assessment of the National Plan

This section assesses the steps taken by the Afghan Government to implement the National Plan on the Elimination of Torture.

The highlighted box-text below sets out, paragraph by paragraph the substantive provisions contained in the national plan. UNAMA then presents its observations on how each of those provisions have been implemented. A full text of the National Plan can be found at Annex III.

#### **National Plan: Para 2.1 - Amendments to the Penal Code**

*“The Afghan Penal Code needs to be reviewed and modernized. Specifically and despite the fact that torture is illegal, torture has not been defined properly. The Government of Afghanistan believes that the Penal Code should be reviewed as soon as possible; torture should be defined properly and in accordance with the Convention against Torture and in the spirit of the Constitution of Afghanistan, and the use of Torture should be prohibited at all stages of criminal procedure. To this end the Government of Afghanistan will start the amendment of the Penal Code in the near future, with the cooperation of national and international professionals and civil society representatives.”*

In September 2016, a draft revised Penal Code was finalized and placed before the Cabinet of Ministers after a four-year process supported by UNAMA. At the time of publication, UNAMA the Penal Code had been approved by the Cabinet but had not yet been passed into law.

UNAMA understands that the draft approved by Cabinet expands the definition of the crime of torture under domestic law to make it broadly compatible with the definition set out in the Convention against Torture.

In parallel to drafting the revised Penal Code, in May 2015, the Legislative Department of the Ministry of Justice began consultations on drafting a new Anti-Torture Law intended to address some of the legislative gaps highlighted in the national plan.

The drafting committee sought, in consultation with UNAMA, representatives of the Afghan Independent Bar Association and other interested civil society organizations) to bring the definition of torture in domestic law in line with the internationally accepted definition set out in the Convention against Torture.

UNAMA understands that the new Anti-Torture Law will extend the definition of “torture” in domestic law to include other forms of cruel, inhuman or degrading treatment.<sup>77</sup>

At the time of writing, the draft law had been approved by a Committee of the Cabinet of Ministers but had not been enacted into law.

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<sup>76</sup> ‘National Plan on the Elimination of Torture’, para. 1 (Introduction) – for full text see Annex III of this report.

<sup>77</sup> Although the Ministry of Justice consulted UNAMA at various stages of the drafting process, at the time of writing the text of the Anti-Torture Law approved by cabinet had not been shared with UNAMA and was not in the public domain.



## National Plan: Para 2.2 - Amendments to the Criminal Procedure Code

*“One major problem is that there is often not enough time to conduct thorough investigations. Some law enforcement officers under pressure to get a quick result put suspects under inappropriate pressure to get a confession. One of the components of the plan is to consider amending the Criminal Procedure Code to create an appropriate mechanism for extending the time period allowed for conducting an investigation for certain crimes in a manner which is consistent with the Constitution of Afghanistan.”*

Whilst correctly acknowledging that the use of torture may be driven by the intention to obtain confessions from detainees, the legislation enacted by the Government in order to give effect to section 2.2 of the national plan does not substantially reduce the risk that detainees will be subjected to torture or other forms of ill-treatment in ANP, NDS or ANA custody.

In fact, since issuing the national plan, the Government has amended the *Criminal Procedure Code* so as to potentially increase the risk of such ill-treatment, by allowing individuals suspected of terrorist crimes and crimes against internal or external security to be held for extended periods by ANDSF during the detection phase without judicial oversight.

The amended *Criminal Procedure Code* also allows prosecutors to order those being investigated for such crimes to be held for investigation for up to an additional 60 days, again without judicial oversight.

### Presidential Decree No. 76

In September 2015, Presidential Decree No. 76 made several amendments to the existing *Criminal Procedure Code* with the stated goal of improving the effective prosecution of persons responsible for committing terrorist crimes and crimes against security.

*Presidential Decree No. 76*, which has now been approved by the national assembly, allows security personnel to hold those suspected of terrorist crimes and crimes against internal and external security for up to 10 days, in order to complete proceedings and to gather incriminating evidence.<sup>78</sup>

During this time the detainee has no right under the *Criminal Procedure Code* to be brought before the court in order to challenge the grounds for detention. On completing the evidence-gathering, and in any event no later than 10 days after the date of arrest, the security personnel are obliged to transfer the case file and the arrested person into the custody of the prosecutor.<sup>79</sup>

At this stage, under the amended provisions brought in by virtue of *Presidential Decree No. 76*, the prosecutor may, if he determines there is sufficient incriminating evidence, issue an order authorizing the arrested person to be further detained to enable the prosecutor to initiate a formal investigation, for a period of up to 60 days depending on the nature of the offence.<sup>80</sup> Again the detainee has no right under national law to challenge the basis of his detention or to be brought before a judge, unless and until the prosecutor seeks a further extension at the end of the 70 day (10 + 60) period.

Under international human rights law, the requirement to be brought promptly before an impartial judge or judicial official is one of the principal procedural safeguards against arbitrary deprivations of liberty, and allows the accused to challenge the basis of their detention. The physical presence of detainees before a judge or judicial official also gives the opportunity for that official to enquire into the treatment the detainee received in custody. It thus serves as a safeguard both for the right to security of the person, and for the prohibition of torture and cruel, inhuman and degrading treatment.<sup>81</sup>

Article 31 of the Afghan Constitution specially reflects this principle by providing that “[i]mmediately upon arrest, the accused shall . . . appear before the court within the time specified by law.”

<sup>78</sup> *Presidential Decree No. 76*, article 5 ‘Security personnel may hold in custody those suspected of terrorist crimes...for up to 10 days in order to gather incriminating evidence...’

<sup>79</sup> *Presidential Decree No. 76*, article 4(1).

<sup>80</sup> *Presidential Decree No. 76* article 6.

<sup>81</sup> *Human Rights Committee, General Comment No. 35*, (CCPR/C/GC/35) para 34

The ‘time specified by law’ as required by the constitution should take into account not only the provisions of Afghanistan’s procedural laws, but also Afghanistan’s international human rights obligations.<sup>82</sup>

In this context, the *International Covenant on Civil and Political Rights* requires<sup>83</sup> that individuals arrested for crimes be brought “promptly” before a judge. The United Nations Human Rights Committee, which is charged with monitoring State party implementation of the Covenant, has observed that, “[w]hile the exact meaning of ‘promptly’ may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest [or detention].”

Some flexibility in interpreting the term “promptly” is required to accommodate varying circumstances, but the scope of such flexibility is very limited, and the period of up to 70<sup>84</sup> days detention without judicial oversight, now permitted under the *Criminal Procedure Code*, as amended by *Presidential Decree 76*, goes significantly beyond anything that the Human Rights Committee has previously found to be justified under applicable international standards.<sup>85</sup>

In practical terms however, insofar as individuals under investigation by prosecutors must, according to the applicable law,<sup>86</sup> be held in detention facilities administered by the Central Prisons Directorate, rather than in NDS or ANP facilities, once detained under an order from the prosecutor, and transferred from ANDSF custody, they should be at less risk of being subjected to torture or ill-treatment.

However, during its monitoring of ANP and NDS detention facilities, UNAMA observed many detainees who had been held in those facilities for well in excess of the 10 day time limit permitted under the amended *Criminal Procedure Code*. In some cases the detainees had been held in NDS and ANP for more than two months.

UNAMA did not attempt to determine in each individual case the procedural basis on which these detainees were being held for extended periods in ANP or NDS custody, and whether such detention was authorized by the prosecutor. However, based on UNAMA’s understanding of the applicable domestic law, such detentions in ANP or NDS custody beyond the 10 day period provided for in the amended *Criminal Procedure Code* are unlawful under the relevant provisions of the *Law on Prisons and Detention Centres*.

### **National Plan: Para 2.3 - Withdrawal of Afghanistan’s Reservation to the Convention against Torture:**

*“When acceding to the Convention against Torture in 1987 the Government of Afghanistan exercised its right to make reservations related to two issues. Now, considering the obligation of the Islamic Republic of Afghanistan to protect and promote human rights and changes in the political situation of the country it is time to review one of the reservations made to the convention and to start the process of its withdrawal. To be specific, under article 28 of the Convention against Torture, Afghanistan has not recognized the authority of the Committee against Torture to conduct visits to Afghanistan detention facilities and receive complaints from detainees. The Government of Afghanistan now believes that recognition of the authority of the Committee is necessary for the permanent elimination of torture. Therefore the Government of Afghanistan will soon commence a review of how to implement the withdrawal and the consequences of doing so.”*

<sup>82</sup> *The Constitution of the Islamic Republic of Afghanistan*. (article 7 ‘The state shall observe the United Nations Charter, inter-state agreements, as well as international treaties which Afghanistan has joined, and the Universal Declaration of Human Rights.’ Article 7 of the *Constitution* therefore obliges the state to comply with article 9(3) of the *International Covenant on Civil and Political Rights* by revising its domestic statutory law.

<sup>83</sup> *International Covenant on Civil and Political Rights*, article 9(.3)

<sup>84</sup> Ten days under under *Presidential Decree 76* article 5, followed by either 30 or 60 days under article 6

<sup>85</sup> In *Portorreal v. Dominican Republic*, the Human Rights Committee found that, based on the facts in the individual case a delay of 50 hours was too short to violate the accused’s right to be promptly brought before a judge. However, in *Jijón v. Ecuador*, the Committee found five days (or 120 hours) delay to be too long. Similarly, in *Koster*, the European Court of Human Rights (under a substantively identical provision of the *European Convention on Human Rights and Fundamental Freedoms*) found that a delay of five days in bringing an accused before a judge was too long, even considering the exigencies of military justice.

<sup>86</sup> *Law on Prisons and Detention Centres*, article 20

## Background

In February 1985, Afghanistan became one of the first States to sign and then ratify (1987) *the United Nations Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment*, which was adopted by the United Nations General Assembly on 10 December 1984.

Under the provisions of article 20 of the Convention, the United Nations Committee against Torture has the capacity to carry out confidential inquiries into allegations of torture which may include a visit to the territory of a State Party if agreed by its Government. The proceedings of the Committee against Torture are confidential and the cooperation of the State Party is sought at all stages of any enquiry. Having consulted with the State Party concerned, the Committee may, include a summary account of its proceedings in its annual report to the General Assembly.

Subject to a declaration by the State party concerned that it recognizes the competence of the Committee against Torture in this regard, the Committee is also empowered to receive individual complaint communications from those who claim to be victims of violations of the provisions of the *Convention against Torture* (article 22).

At the time of ratifying the Convention, Afghanistan exercised its right under article 28(1) to enter a formal declaration that it did “not recognize the authority of the United Nations Committee against Torture to carry out inquiries into allegations of torture as foreseen by article 20.” Furthermore, Afghanistan has not issued any declaration recognizing the competence of the Committee against Torture to receive individual complaints.<sup>87</sup>

### Steps taken by the Government to withdraw its reservation to the Convention against Torture

In its Second Periodic Report to the United Nations Committee against Torture, submitted in April 2016,<sup>88</sup> the Government of Afghanistan stated that *“the technical assessment of withdrawing the reservations has been started as a priority in relevant organizations, and final decision will require the assessment of whole national laws. After the implementing study of national law, the final decision will be taken and the Committee against Torture will be informed accordingly.”*

One year later, in April 2017, the Cabinet approved the withdrawal of the reservation, and has now therefore recognized the authority of the Committee against Torture to carry out confidential enquiries under Article 20 of the Convention.

UNAMA welcomes this decision as a positive demonstration of Afghanistan’s willingness to engage fully and constructively with the work of the Committee against Torture.

### National Plan: Para 2.4 - Ratification of the Optional Protocol to the Convention against Torture

*“As a responsible member of the international community, Afghanistan respects the universal principle of dignity of the human being. As a priority the Government of Afghanistan will examine the preparations required for acceptance of the Optional Protocol of the Convention against Torture and start, as soon as possible, the process of its ratification. The Government will study the consequences of acceptance of the Optional Protocol for the effective implementation of the Convention against Torture and will establish national mechanisms foreseen in the Optional Protocol through short-term, mid-term and long-term programmes.”*

By signing and ratifying the *Optional Protocol to the Convention against Torture* Afghanistan would be obliged to establish an independent ‘National Preventive Mechanism’ for the prevention of torture at the domestic level. This mechanism would be empowered to regularly examine the treatment of individuals deprived of

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<sup>87</sup> Article 22 provides that a State Party “may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention.”

<sup>88</sup> Available online at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAFG%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAFG%2f2&Lang=en).

their liberty, to make recommendations to the Government with the aim of improving their treatment and conditions, and to submit proposals and observations on existing and draft legislation. The mechanism would be supported in carrying out its mandate by the United Nations Sub-Committee on the Prevention of Torture, which under the Optional Protocol, would also have the authority to conduct visits to places of detention in Afghanistan.

Since the promulgation of the national plan in 2015, the Afghan Government repeatedly indicated at the highest levels that it intended to ratify the *Optional Protocol to the Convention against Torture* (including specific commitments given in both 2015 and 2016 as part of the European Union-Afghanistan Human Rights Dialogue<sup>89</sup> that Afghanistan would sign the *Optional Protocol* at the Annual UN General Assembly meeting.) During this time UNAMA has engaged in dialogue with the Government regarding the modalities of ratification and in April 2017, Cabinet approved the ratification of the *Optional Protocol to the Convention against Torture*. UNAMA welcomes this development and offers its technical support to enable full implementation of the Convention and its Protocol.

UNAMA understands that the Anti-Torture law recently approved by the cabinet and awaiting enactment into legislation, envisages the establishment of a national “Prevention of Torture Commission” that will carry out some of the tasks usually fulfilled by National Preventive Mechanisms – including monitoring places of detention and providing policy guidelines and recommendations aimed at preventing torture.<sup>90</sup>

However, given that, as UNAMA also understands, the proposed “Prevention of Torture Commission” will include senior representatives from those organizations most likely to be the subject of investigation in relation to allegations of torture – namely the NDS, the Ministry of the Interior and the Ministry of Defence, this Commission lacks the functional independence that is a pre-requisite for an effective National Preventive Mechanism as foreseen by the Optional Protocol.

## 2.5 Implementation of Presidential Decree 129 on the Elimination of Torture

*The Government of Afghanistan has always tried to lay the ground for elimination of torture and respect for human dignity. Presidential Decree 129 is a major step forward in this regard. One of the measures contained in this decree is full assessment of the extent of its implementation, including identifying obstacles. Although progress has been made in implementing the decree it is necessary to conduct a proper assessment of the status of its implementation, including recognizing obstacles and problems and identifying practical steps to overcome them.*

### Background

Following a Presidential fact-finding delegation established in 2013, former President Karzai issued *Presidential Decree 129*.<sup>91</sup> The Decree was based on the recommendations of the Presidential fact-finding delegation, and consisted of 12 separate orders requiring Government ministries and agencies to take a number of specific measures to prevent and provide accountability for torture.<sup>92</sup>

Article 12 of *Presidential Decree 129* provides that:

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<sup>89</sup> See “*Agreed Table of Deliverables and Indicators*” agreed between the EU and the Afghan Government as part of the EU-Afghan Human Rights Dialogue in 2015 and re-affirmed in July 2016 – available online at [https://eeas.europa.eu/sites/eeas/files/2016060111\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/2016060111_en.pdf).

<sup>90</sup> UNAMA was involved in consultations with the Ministry of Justice drafting committee with regard to the content of the *Anti-Torture Law*. However, at the time of writing UNAMA is not aware of the text of the final version of the law approved by cabinet.

<sup>91</sup> *Decree No. 129 of the President of the Islamic Republic of Afghanistan to implement the Afghan fact-finding delegations’s suggestions on the presence of torture and ill-treatment in detention centres.* (28/11/1391 – 16 February 2013)

<sup>92</sup> The 2015 UNAMA Report contained an assessment of the implementation of five key orders of *Presidential Decree 129*, as follows; Order 1 (Accountability for Torture), Order 3 (Prohibition of Torture), Orders 4 and 5 (Measures to increase Legal Aid for Detainees and Increase Access to Defence lawyers) and Order 6 (Access to medical Treatment in Detention). The full text of *Presidential Decree 129* is set out in Annex IV of the 2015 UNAMA report (available online at <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody>)

*“The Chief Justice, the Attorney General, the Minister of Justice, the Minister of the Interior and the Director of the NDS must seriously observe the enforcement of this Decree and the progress on implementation of this Decree should be reported to the Presidential Office every three months through the Office of Administrative Affairs and the Secretariat of the Council of Ministers”*

UNAMA did not explicitly seek updates from the Government on the extent to which the progress-reporting requirements set out in Article 12 of *Presidential Decree 129* were being met during the period of covered by this report, nor whether the Government has carried out a structured assessment of the status of its implementation.

However the Government’s commitments contained in *Presidential Decree 129* to effectively prohibit torture and ensure accountability for such practices are reflected in the National Plan on the Elimination of Torture.

#### **National Plan: Para 2.6 - Remedy for Victims of Torture**

*“The victims of torture have never been provided with appropriate remedies, which has created a negative perception of the implementation of justice and implies disregard for human dignity. The Government of Afghanistan is determined to take steps to establish a proper mechanism for reviewing the complaints of victims of torture and providing them with due remedy.”*

The *Convention against Torture* provides that “a state must ensure in its legal system that the victim of an acts of torture obtains redress and has an enforceable right to fair and adequate compensation.”<sup>93</sup> “Redress” in this context encompasses the concepts of an “effective remedy” and of “reparation”<sup>94</sup> are examined below.

#### **Effective Remedy**

It is a generally accepted principle of international law, and a specific requirement of the international human rights treaties to which Afghanistan is a party, that individuals must have access to an effective remedy for violations of human rights.<sup>95</sup>

Of the 181 detainees who provided credible accounts to UNAMA of being tortured or ill-treated in Afghan custody, 72 (42 per cent) stated that they had complained about their ill-treatment to the Afghan authorities. Four of them complained of torture or ill-treatment to the doctor of the detention facility, 14 to other staff members of the detention facility, 23 to the prosecutor, 16 to NDS Human Rights Officers, and 15 to the trial judge.

There were only two cases where the detainees informed UNAMA they were aware that any action had been taken by the authorities as a result of their complaints, after the Appeal Court requested the prosecutor to further investigate the defendants’ claims made in open court that their confessions had been obtained under duress.

The apparent lack of responsiveness on the part of the authorities to complaints of torture is of particular concern given that, under the terms of the Criminal Procedure Code both the prosecutor and the court are obliged to take active steps to ensure that all evidence obtained through coercion (or which is otherwise obtained in violation of existing laws) is inadmissible.<sup>96</sup>

In addition to these complaints directed to the Afghan authorities, 13 detainees interviewed by UNAMA stated that they had raised concerns with their defence lawyers that they had been tortured or ill-treated. Although UNAMA was not in a position to follow up on these claims with the individual lawyers concerned, it did conduct broader consultations with defence lawyers throughout the country. Many of

<sup>93</sup> *Convention against Torture*, article. 14

<sup>94</sup> *General Comment No.3 of the Committee against Torture*. (CAT/G/GC/3) Para 2

<sup>95</sup> *International Covenant on Civil and Political Rights*, article 2.3(a) “Any person whose rights are violated shall have an effective remedy”; article 2.3 (b) “Any person claiming such a remedy shall have his right thereto determined by a competent judicial administrative or legislative authority.”

<sup>96</sup> *Criminal Procedure Code* articles 21 and 22.

these defence lawyers confirmed that they received regular allegations of torture or ill-treatment from their clients, but most stated that they did not raise such allegations with the court.

In some instances, this was at the specific request of the individual detainee, but many lawyers indicated to UNAMA that they believed it was futile to raise the defence that a confession had been obtained under duress. In their experience, judges, particularly at primary court level, either did not consider the allegations of torture, or dismissed them on the grounds that there was no physical evidence that torture had taken place. Other lawyers indicated that their primary aim was to mitigate the sentence, and they felt that raising counter-allegations that detainees had been mis-treated in custody would antagonize the court.

As noted above, in the period covered by this report UNAMA documented two cases where the Appeal Court returned cases to the Prosecutor's office for further investigation, based on the defendant's claim that their confession was obtained under duress. These cases are a welcome indication that the judiciary – at least in the higher courts – is beginning to question the validity of confessions where there is credible evidence that they may have been obtained using torture or ill-treatment. However, neither of these cases appear to have led to a separate judicial investigation against the alleged perpetrator of torture.

As noted in previous UNAMA reports, credible allegations of the most egregious forms of abuse are not being sufficiently investigated by the authorities, not least because, in determining whether torture or ill-treatment has taken place, the courts appear to rely heavily on the presence of visible physical injuries. Many physical methods of torture documented in this and previous reports (including beatings on the soles of the feet, suffocation, stress positions and other related techniques), leave no lasting physical signs of harm and are unlikely to be verified by forensic medical examination. Even where ill-treatment of torture does result in visible physical injuries detainees are often unable (and in some cases unwilling) to raise concerns for several months after the injuries were sustained, by which time even the most evident physical signs of ill-treatment may no longer be visible.

Furthermore the court's apparent unwillingness to pursue allegations of torture or ill-treatment unless the detainee can demonstrate "physical" evidence of his injuries takes no account of any mental suffering, even though the deliberate infliction of mental suffering on a detainee can amount to torture in its own right.

Regarding non-judicial investigations of torture carried out by the Afghan authorities, the steps taken by NDS, the Ministry of the Interior and ANA to establish their own internal monitoring/complaints mechanisms to review individual allegations of torture and ill-treatment are examined in more detail later in this report.<sup>97</sup> In summary, the processes by which these internal mechanisms review and then refer complaints of torture to the competent judicial authorities remain opaque, and, given the difficulties faced by the Afghan authorities in effectively holding alleged perpetrators of torture to account – whether through effective judicial investigations and prosecutions, or meaningful internal disciplinary procedures – the ability of victims of torture to claim their right to an effective judicial or administrative remedy appears to be very limited.

## Reparations

In addition to the obligations required to ensure the provision of an effective remedy for victims of torture, Afghanistan, as a signatory to the *Convention against Torture*, is also obliged to ensure that victims obtain effective reparation. 'Reparation' in this context is not limited to financial compensation, but may also include medical and psychological rehabilitation, satisfaction (the right to the truth) and the guarantees of non-repetition.

The Afghan Civil Code provides individuals with the right to seek compensation for damage arising from violations of their rights.<sup>98</sup> However, UNAMA is not aware that any victim of torture has made a claim for financial compensation (or any other form of reparation) under this provision, and although a claim

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<sup>97</sup> See under National Plan on the Elimination of Torture, Section 4 – Preventive Measures.

<sup>98</sup> *Civil Code of the Republic Of Afghanistan*, article 45.

of this kind should not be dependent on the successful conclusion of a criminal proceeding<sup>99</sup>, in practice the widespread inability of victims of torture or other forms of ill-treatment to access an effective judicial remedy has also prevented them from obtaining reparation.<sup>100</sup>

### **National Plan: Para 3.1 - Human Rights and Torture Awareness Programmes**

*“Developing specific policies on the promotion of human rights will help create an environment in which torture is seen as unacceptable. These policies and operational programmes will cover different areas; there will be inclusion of human rights programmes in the curricula of security organs, coordination and collaboration with the media in broadcasting effective programmes on torture eradication and implementation of effective educational programmes for law enforcement officials.”*

Since 2015, NDS, the Ministry of the Interior, and the Ministry of Defence have continued to conduct trainings and undertake capacity building efforts at both national and provincial level to improve human rights awareness amongst their personnel.

The Ministry of the Interior and the Ministry of Defence have been particularly active in issuing policies and holding awareness-raising courses covering a number of human rights issues ranging from the prevention of discrimination to the elimination of violence against women and the protection of children. Whilst many of these policies and training are not directly related to the issue covered by the present report, they nonetheless indicate genuine efforts by the Government to put in place a policy framework that aims to uphold the applicable human rights standards.

Similarly, in the period covered by the present report the NDS, either independently or with the assistance of external partners, conducted 21 human rights training workshops for NDS staff members at national and provincial level. Over the same period, human rights officers working for the NDS Directorate of Gender and Human Rights also conducted 82 seminars for NDS staff members around the country.<sup>101</sup>

Whilst in general terms training (including the curriculum delivered at the NDS and ANP Academies) remains focused on providing a basic overview of the human rights standard, norms and obligations contained in domestic and international law, international capacity-building support provided to NDS at the central level has also enabled its training to be more effectively focused on the prevention of torture and on the development of alternative investigation techniques.

The internal oversight mechanisms aimed at ensuring human rights compliance, including the Directorates of Gender and Human Rights within in the NDS, the Ministry of the Interior and the Ministry of Defence, the ‘Police, Defence and Security Forces Ombudsperson’s Office’ and the ‘Gross Violation of Human Rights’ investigation mechanisms within the Ministry of Interior and the Ministry of Defence are considered in more detail elsewhere in this report.<sup>102</sup>

### **3.2 Discrediting Torture in Public Culture**

*Recognising that torture is not only happening in prisons it is necessary that the public culture of Afghans recognizes that torture is among the most heinous of actions. Therefore implementation of effective cultural programmes, and with the cooperation of relevant organs and civil society organizations will pave the way for a change in public perception so that the*

<sup>99</sup> General Comment No.3 of the Committee against Torture, para 26.

<sup>100</sup> UNAMA understands that the Anti-Torture Law approved by the Cabinet in March 2017, but not yet enacted into law, contains provisions intended to provide redress to victims of torture in the Anti-Torture Law. However, UNAMA has not been able to obtain a copy of the ‘bill’ approved by the Cabinet and the extent of the redress provisions in the Anti-Torture Law remains unclear.

<sup>101</sup> Comments of the Government on UNAMA’s report regarding torture and ill-treatment of AGE prisoners (10 April 2017). On file with UNAMA.

<sup>102</sup> See pages 48 to 54.

*wickedness of torture is recognized. Relevant organs will make substantive efforts in this regard, working closely with the Office of National Security and the Afghanistan Independent Human Rights Commission to draw up specific plans in cooperation with civil society institutions*

Whilst the Afghanistan Independent Human Rights Commission carries out human rights trainings and awareness raising programmes, (including specific training on the prohibition of torture) as part of its routine activities, these are not conducted within the framework of any structured plan drawn up in cooperation with the Office of National Security as foreseen in the National Plan on the Elimination of Torture.<sup>103</sup>

UNAMA is not aware of any broader efforts on the part of the Government to work with civil society to implement public programmes intended to raise awareness of the prevalence of torture, to challenge or condemn its use, or to change public perceptions regarding its acceptability or utility.

### **National Plan: Para 3.3 - Alternative Methods of Investigation and Capacity Building in the Collection and Preservation of Evidence**

*“One of the reasons incidents of torture take place is to obtain confessions. Alternative methods of investigation and building capacity in the collection, preservation and analysis of criminal evidence will remove the incentive to commit torture. The government of Afghanistan, in cooperation with legal and judicial experts, will work to build capacity relating to the collection and preservation of criminal evidence. In this regard it is necessary to draw upon the expertise of our international partners in order to strengthen capacity.”*

Evidence obtained through confessions remains key to most successful prosecutions and, as acknowledged by the Government in paragraph 3.3 of the national plan, the need to obtain confessions remains a significant driving force behind the use of torture and ill-treatment.

During the period covered by this report, Afghanistan received capacity building and infrastructure support from international partners, with the scope of that training extending across the justice sector to include a range of investigative, prosecutorial and judicial actors working on conflict-related cases.

Besides building the capacity of NDS forensic investigation teams in crime scene management and other relevant investigation techniques, international partners also provided training on international best practice in prosecuting conflict-related cases to a specialist cadre of Afghan prosecutors. During the period covered by the report this has involved joint training on evidence with NDS investigators.

International partners have supported capacity-building of the NDS forensic laboratory, together with ongoing mentoring to laboratory staff. This provides a forensic reporting, recovery, examination and reporting service to all NDS Departments.

International partners have also provided advanced evidence training to a select group of judges who serve at all levels of the court structure in Kabul.

The cross-cutting nature of the training (involving, joint and separate trainings of investigators, prosecutors and judges on the collection, use and interpretation of alternative forms of evidence) has the potential to change the way in which conflict-related cases are investigated and prosecuted, particularly in Kabul where international capacity-building efforts remain focused. However, this remains work in progress.

### **National Plan: Para 3.4 - Harmonization of National and International Educational and Advocacy Programmes with those of Government Organizations.**

*“The Government of Afghanistan will make every effort, through the establishment of effective mechanisms, to increase coordination and cooperation between human rights advocates and law enforcement organs. In addition, persons who violate*

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<sup>103</sup> UNAMA meeting with Afghan Independent Human Rights Commission, 14 March 2017, Kabul



*human rights standards will face serious repercussions and human rights issue will be separated from the political issues of the country.”*

Whilst the precise nature of the “*coordination and cooperation between human rights advocates and law enforcement organs*” foreseen by this part of the national plan is unclear, it may have been intended to pave the way for the subsequent establishment of the Police, Defence and Security Forces Ombudsman’s Office (PDSFO) within the Afghanistan Independent Human Rights Commission. In its 2015 Report, UNAMA noted difficulties experienced by staff members from the predecessor of PDSFO’s, the Office of the Police Ombudsman, in obtaining the requisite co-operation from the Ministry of the Interior in conducting its monitoring of places of detention. The Afghanistan Independent Human Rights Commission has been working since that time to improve the effectiveness of its Ombudsman’s function.

Established by a Memorandum of Understanding signed in April 2016 between the Afghanistan Independent Human Rights Commission, the Ministry of Defence, the Ministry of the Interior and the NDS, the Police, Defence and Security Forces Ombudsman’s Office is intended to enhance the ability of the Afghanistan Independent Human Rights Commission to provide effective human rights oversight of the Afghan national security bodies. Implementation has been delayed due to funding constraints but UNAMA understands that these have been resolved with the support of international donors and the Afghanistan Independent Human Rights Commission is therefore now recruiting additional staff to enable it to carry out its human rights oversight function under the Memorandum of Understanding. The background and responsibilities of the Police, Defence and Security Forces Ombudsman’s Office are reviewed later in this section.<sup>104</sup>

#### **National Plan: Para 4 - Preventive Measures**

*“To prevent continuation of torture in prisons and detention facilities, the Government of Afghanistan is determined to hold legally accountable those who commit torture. This action includes addressing torture complaints, relocation, dismissal and prosecution of persons accused of wilfully torturing prisoners and detainees. To realize this goal an effective mechanism for receiving complaints and addressing them will be designed and implemented.”*

#### **Prosecutions**

In response to concerns raised by UNAMA over the apparent lack of judicial accountability for torture and other forms of ill-treatment of detainees in ANDSF custody, in April 2017 the Government provided UNAMA with a document<sup>105</sup> detailing those cases where ANDSF staff members were referred for criminal investigation, prosecuted, and in some cases convicted, of a range of criminal offences during the period covered by the present report. The case list provided by the Ministry of the Interior contains details of 46 incidents, 12 involving ANP/ANBP personnel, 32 involving ALP, and 2 involving members of pro-government ‘national uprising’ militia, all of which were referred to the prosecutor for investigation.<sup>106</sup> However the incidents set out in the Government’s list of cases cover a range of crimes not evidently falling within the definition of torture and ill-treatment of conflict-related detainees covered by UNAMA’s present report. The case list included ‘robbery and violence against a female’, ‘killing 2 persons and injuring 8 at a funeral’ ‘arbitrary entry to a home’ and ‘forced marriage.’ Therefore of the 46 cases listed, only four involved allegations of beatings by ANP/ANBP staff members which the document categorized as ‘torture’ and only five involved similar allegations of ‘torture’ against ALP. With the exception of one alleged murder by an ALP staff member in Laghman province in 2016, where the defendant was released on acquittal by the provincial court, the Government did not provide an update of the outcome of any of the 46 cases. However the Government responded positively to the UNAMA

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<sup>104</sup> See pages 53-55.

<sup>105</sup> *Comments of the Government on UNAMA’s report regarding torture and ill-treatment of AGR prisoners* (10 April 2017). On file with UNAMA

<sup>106</sup> *ibid.*

request for additional information and is actively seeking to provide a comprehensive update on the status of proceedings in each case.

In the same document the Ministry of Defence provided a list of 22 cases spanning the period 2013 to 2016 where ANA staff members were convicted of a range of serious crimes including the deliberate killing of civilians, beating to death of prisoners of war, and committing violence against women. Once again it is unclear from the details provided by the Government whether any of these cases fall within the definition of torture and ill-treatment of conflict-related detainees covered by the present report. However, UNAMA notes that, based on the information provided by the Government, the Ministry of Defence does appear to be taking concrete steps to ensure that ANA personnel found to have committed serious crimes are brought to justice.

Of these case lists, the one provided by the NDS contained limited information regarding prosecutions, with the text stating that “*five NDS personnel were referred for prosecution*” specifying that “*three NDS 241 staff were referred to the Office of the Attorney General, one of whom was found innocent and the others are still under investigation.*”

### **Internal Complaints, Investigation and Oversight Mechanisms**

In its previous public reports UNAMA highlighted concerns over the lack of independent or external oversight of investigations into human rights violations by NDS, ANP and ANA. Whilst the Office of the Police, Defence and Security Forces Ombudsman provides the potential for increased independent oversight of such cases, UNAMA observes that many allegations of torture or ill-treatment of detainees by Afghan National Defence and Security Forces continue to be investigated and “resolved” using the internal investigation procedures of the respective security organizations, with the results not being disclosed to the victims, or otherwise made public. Even where internal investigations find credible evidence that torture or ill-treatment has taken place, very few cases are subsequently referred for further investigation or prosecution by the judicial authorities.

### **The NDS Directorate of Gender and Human Rights**

In January 2016 the NDS Human Rights Sub-Directorate (previously located within NDS 47) was re-constituted as a separate Department, the ‘Human Rights and Gender Observation Unit’, designated as NDS 13. As a result of this re-structuring, the new Director of NDS 13 (previously the head of the Human Rights Sub-Directorate within NDS Department 47) now reports directly to the General Director of the NDS.<sup>107</sup>

The broad scope of NDS-13’s activities is set out in its internal quarterly reports, which are provided to UNAMA on a periodic basis, although not made available to the public.

As the successor to the Human Rights Sub-Directorate within NDS 47, NDS 13 maintains the internal responsibility to monitor NDS detention facilities, report allegations of torture, conduct preliminary investigations and generally ensure that detainee’s rights are upheld.<sup>108</sup>

In order to achieve this, NDS 13 deploys its own human rights officers to 29 NDS facilities at provincial and national level.

These NDS Human Rights Officers carry out monitoring and observation activities, and report directly to the Director of NDS 13. In cases where NDS 13 Human Rights Officers identify prima facie evidence of ill-treatment, it refers them to the NDS 13 Complaints Review Unit (CRU) based in Kabul which may then send a delegation to carry out further investigations. If the allegations of ill-treatment are verified, the Director of NDS-13 then makes recommendations on further action, which may include either the imposition of internal disciplinary sanctions, referral to other organizations (in cases where the allegations

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<sup>107</sup> NDS Report on Implementation of Presidential Decree 129, 6 January 2016 (on file with UNAMA).

<sup>108</sup> UNAMA meeting with the Director of NDS-13. 8 August 2016.

of ill-treatment do not relate to NDS personnel) or referral to the prosecutor's office for judicial investigation.

### **Outcome of NDS 13 internal investigations into complaints of torture and ill-treatment**

In its Annual Report<sup>109</sup> covering March 2015 to February 2016, NDS 13 reported that its human rights officers had conducted 7,321 interviews with detainees in NDS custody, and received 542 complaints from detainees alleging ill-treatment by NDS personnel.

Of these, 502 (93 per cent) were rejected by NDS 13 following preliminary investigations "due to lack of convincing evidence or signs of beating."<sup>110</sup>

However NDS 13 reported that 36 complaints of torture and abuse were found to have been "confirmed" and that, as a result of these findings, 20 NDS personnel, mostly NDS provincial directors and deputy directors, were subject to internal disciplinary sanctions. In the majority of cases these sanctions merely consisted of verbal or written warnings.<sup>111</sup> One NDS provincial director and three deputy NDS provincial directors were reportedly dismissed. On the face of the information provided to UNAMA in the NDS 13 Annual Report, none of these "proven" cases of torture and abuse by senior NDS personnel appear to have been referred to the prosecutor's office for further investigation.

NDS 13 also noted in its Annual Report that its human rights officers had documented 198 complaints of "torture and abusive treatment" of detainees by ANA, ANP and ALP prior to their transfer to NDS custody.<sup>112</sup> These cases were sent to the Gender and Human Rights Departments of Ministry of Defence and the Ministry of Interior by NDS 13, for further investigation, but none were referred for prosecution.<sup>113</sup>

For the subsequent period not covered by the NDS 13 Annual Report, namely from February 2016 onwards, the Government informed UNAMA that NDS 13 human rights officers interviewed an additional 9218 detainees and documented 647 allegations of 'beating and ill-treatment.'<sup>114</sup> Of these 656 allegations were dismissed because "*no sign, proof, evidence or satisfactory arguments were found in the initial interview.*"<sup>115</sup> The remaining 18 allegations were reportedly "*confirmed after a comprehensive investigation*" but the Government provided no additional information on whether any of these cases were referred to the prosecutor.

Additional information provided to UNAMA by the Government<sup>116</sup> indicated that 5 NDS personnel (including 3 staff of NDS 241) were referred to the Office of the Attorney General for investigation, but the Government provided no further information on the nature of the alleged offences or the dates on which they took place.

### **Example of concerns about lack of accountability resulting from NDS 13 investigations**

On 29 December 2015, seven conflict-related detainees were transferred from NDS Baghlan to NDS Kunduz. When interviewed by the NDS 13 human rights officer in Kunduz, these detainees complained

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<sup>109</sup> NDS 13 Human Rights Annual Report, March 2015-March 2016. (on file with UNAMA)

<sup>110</sup> *ibid.* In its "*Comments of the Government on UNAMA's report on the torture and ill-treatment of AGE prisoners*" dated 10 April 2017 (copy on file with UNAMA) the Government provided slightly revised figures, stating that in 2015, NDS 13 interviewed 7272 detainees and received 542 complaints of 'beating and ill-treatment', of which 506 were rejected due to lack of evidence.

<sup>111</sup> NDS 13 Human Rights Annual Report, March 2015-March 2016. (on file with UNAMA).

<sup>112</sup> *ibid.*

<sup>113</sup> UNAMA meetings with the Gender and Human Rights Departments of the Ministry of Defence and Ministry of Interior, Kabul, January 2017.

<sup>114</sup> *Comments of the Government on UNAMA's report regarding torture and ill-treatment of AGE prisoners*, dated 10 April 2017. On file with UNAMA.

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid.*

that they had been ill-treated during their detention in NDS Baghlan.<sup>117</sup> After conducting a preliminary investigation into these allegations, the NDS human rights officer referred the case to the NDS 13 Complaints Review Unit in Kabul, and on 23 February a Complaints Review Unit delegation arrived in Baghlan to carry out further investigations.<sup>118</sup>

The Complaints Review Unit investigation dismissed the complaints of four of the six detainees, but determined that two detainees had been beaten on the soles of their feet during their interrogation by NDS Baghlan. As a result of this investigation, NDS-13 informed UNAMA that four NDS personnel (including those directly implicated in the abuse as well as their immediate supervisors) received minor disciplinary sanctions. These sanctions consisted of warning letters, loss of rank and suspension from eligibility for promotion and professional development training for 6 months.<sup>119</sup>

Although the investigation found sufficient evidence of torture and ill-treatment, and identified the perpetrators, NDS 13 did not forward the case to the office of the prosecutor. When UNAMA queried this decision with the Director of NDS 13, he stated that the investigation findings did not warrant a recommendation for prosecution as the beatings had been “light” and therefore did not amount to torture.<sup>120</sup>

Beatings to the soles of the feet (a method of ill-treatment sometimes referred to as ‘falanga’ or ‘bastinado’) is excruciatingly painful and can cause swellings for days or weeks, but otherwise leaves no visible trace on the victim. It is one of the limited number of acts (along with rape and water-boarding) which are recognized under international law as being so egregious that they constitute torture in and of themselves, without the need specifically to demonstrate that the victim suffered severe pain or suffering.

### **General observations on the oversight/complaints handling function of NDS-13**

The activities of NDS 13 seem generally to be supported by the General Directorate of the NDS, and, since its establishment as a separate directorate, there are positive signs, at provincial and national level, of increasing cooperation with, and acceptance of, the monitoring and oversight activities of NDS human rights officers.

However, although the designation of NDS 13 as a separate directorate allows it some level of ‘independence’ within the NDS’ organizational framework, its staff members remain self-evidently within the chain of command of the NDS General Directorate.

For those reasons alone, detainees may be reluctant to discuss confidential or sensitive issues with NDS human rights officers, particularly if they are making allegations about ill-treatment by NDS personnel. In this context, UNAMA is concerned that, in some cases, NDS human rights officers are not clearly identifying themselves as being affiliated to NDS, with the deliberate intention of obtaining information from detainees without gaining the appropriate “informed consent”.

The following quotes from NDS human rights officers are illustrative:

*“[Detainees] do not know that I am NDS staff and they think that I come from some human rights organization. If I tell them I am NDS staff they become scared and don’t tell me the truth.”<sup>121</sup>*

*“Actually while interviewing detainees I usually tell them that I am a ‘human rights officer’ or even that I am working for the Afghanistan Independent Human Rights Commission, because if they knew I am working for the NDS they may not share the truth.”<sup>122</sup>*

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<sup>117</sup> UNAMA Interview with NDS Human Rights Officer, 23 March 2016.

<sup>118</sup> *ibid.*

<sup>119</sup> UNAMA meeting with the Director of NDS 13, 4 April 2016.

<sup>120</sup> *ibid.*

<sup>121</sup> UNAMA interview with NDS human rights officer, 2016. [date and location of interview withheld]

<sup>122</sup> UNAMA interview with NDS human rights officer, 2016. [date and location of interview withheld]

The explicit admission that NDS human rights officers are deliberately misrepresenting themselves as members of independent human rights organizations in order to gain the trust of detainees raises a number of concerns. Several international and national human rights and humanitarian organizations, including UNAMA, carry out their work in places of detention in accordance with a clearly defined mandate and by reference to the over-riding ethical principles of confidentiality, informed consent and “do no harm”. The effectiveness of their work is entirely dependent on their adherence to those principles, and on the consequent relationship of trust and confidence between monitors and detainees that facilitates the sharing of confidential and sensitive information.

The unethical practices of NDS human rights officers outlined above seriously undermines the ability of legitimate human rights monitoring organizations to conduct their work.

More worryingly, this practice may also have put detainees at risk of further physical harm and reprisal. UNAMA is aware of at least one case where a detainee in NDS custody complained to an Afghan identifying himself as a ‘human rights officer’ that he had been beaten during interrogation. Some days after the interview the detainee was taken to a separate cell and beaten by the same interrogator against whom he had made the original allegations to the ‘human rights officer.’ After the beating the interrogator reportedly threatened the detainee with the words “Do you want to say again that I beat you?” The detainee interpreted this to mean that the ‘human rights officer’ had informed the interrogator of the allegations made against him.<sup>123</sup> Whilst UNAMA cannot definitively state that the ‘human rights officer’ involved in this incident worked for NDS 13, this incident took place in the same location where the NDS human rights officer had previously admitted to UNAMA that he did not identify himself as an NDS staff member when interviewing detainees.

UNAMA has shared its concerns over these misrepresentations by NDS human rights officers with the Director of NDS 13.<sup>124</sup> The Director expressed doubt that any NDS human rights officers would need to disguise their affiliation with NDS since they are permanently based in NDS provincial facilities and their identities and role are well-known to detainees. He nonetheless informed UNAMA that he would issue an instruction to all NDS human rights officers reminding them to clearly identify themselves as NDS 13 staff members when meeting with detainees.<sup>125</sup>

### **Gender and Human Rights Department of the Ministry of the Interior**

Since 2013 the Gender and Human Rights Department of the Ministry of Interior has been authorized to conduct monitoring in detention centres, to investigate cases of human rights violations (including but not limited to allegations of ill-treatment or torture of detainees), and to refer appropriate cases to the relevant authorities for prosecution.<sup>126</sup>

At the regional and provincial level (as well as within specialized units in Kabul) this monitoring and investigative function is carried out by uniformed Human Rights and Gender Officers of the Ministry of the Interior, who are deployed to regional and provincial ANP Headquarters and also to prisons administered by the Central Prisons Directorate of the Ministry of the Interior.

In practice the staff members of the Gender and Human Rights and Department do not have the capacity to conduct anything other than preliminary investigations into allegations of human rights violations, and in the case of credible allegations of torture or ill-treatment of detainees, refer these to the Deputy Minister of the Interior.<sup>127</sup> In some cases these allegations are referred to the ANP Criminal Investigation Unit but UNAMA is not aware that any prosecutions for torture or ill-treatment were brought as a result of investigations by the Gender and Human Rights and Department of the Ministry of the Interior during the period covered by this report.

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<sup>123</sup> UNAMA interview with detainee, 2016. [date and location withheld]

<sup>124</sup> UNAMA meeting with the Director of NDS 13, 8 August 2016.

<sup>125</sup> *ibid.*

<sup>126</sup> Ministry of Interior Order 0112 (15 March 2011), article 5. Original dari version on file with UNAMA.

<sup>127</sup> Meeting with Deputy Head of the Ministry of Interior Gender and Human Rights Unit, 31 January 2017, Kabul.

The Gender and Human Rights Department of the Ministry of the Interior confirmed to UNAMA that it periodically receives information from NDS-13 on “verified” allegations of ill-treatment by ANP,<sup>128</sup> but that none of these cases had resulted in prosecution, because by the time the Ministry of Interior received notice of these cases, any physical evidence of torture or ill-treatment had disappeared and the cases were therefore not pursued.

The ability of the Gender and Human Rights Department of the Ministry of the Interior to carry out its monitoring and investigative functions effectively is further constrained by the fact that, although its staff members at regional and provincial level report to the Gender and Human Rights Department in Kabul, they also have formal reporting obligations to Provincial and Regional ANP Commanders and Prison Directors.<sup>129</sup> More critically, unlike the human rights officers working for NDS-13, they are not recruited centrally, but at local level by Provincial Chiefs of Police and in some cases may find it difficult to maintain an appropriate level of independence in carrying out their monitoring and investigation activities.

### **Gender and Human Rights Department of the Ministry of Defence**

The Gender and Human Rights Department of the Ministry of Defence provides an internal human rights oversight function within that Ministry, and is also responsible for coordinating human rights capacity building and training. Staff members from the Gender and Human Rights Department are not deployed outside Kabul, but it cooperates closely with the Afghanistan Independent Human Rights Commission who provide human rights training to Ministry of Defence personnel and also carry out detention monitoring visits to ANA bases. The Gender and Human Rights Department of the Ministry of Defence has no capacity to carry out its own investigations and when it receives information on allegations of alleged human right violations by ANA (including ill-treatment of detainees) it can refer them to the ANA Legal Department for further action. In practice, according to senior staff from the Gender and Human Rights Department, only a limited number of allegations of ill-treatment have been forwarded for further investigation, and the officials who spoke to UNAMA were not aware that any of these cases had resulted in prosecution.<sup>130</sup>

### **Office of the Police Ombudsman within the AIHRC**

Established in December 2011, and absorbed by the Police, Defence and Security Forces Ombudsman’s Office in 2016, the Office of the Police Ombudsman was established in four regional offices in Kabul, Herat, Jalalabad and Mazar-i-Sharif, and conducted visits to ANP facilities and investigated complaints of ANP misconduct, including allegations of torture.

In its 2015 Detention Report UNAMA observed that the effectiveness of the Office of the Police Ombudsman was constrained both by the lack of a clear Terms of Reference and, on occasion, by limited co-operation from ANP and the Ministry of Interior.

However, in the period covered by this report, and until the merging of its functions with the Police, Defence and Security Forces Ombudsman’s Office, the Office of the Police Ombudsman monitored and documented numerous allegations of human right abuses by ANP. Although the Afghanistan Independent Human Rights Commission was not able to provide UNAMA with disaggregated data showing which of these documented cases specifically related to torture or ill-treatment, the Office of the

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<sup>128</sup> UNAMA meeting with Deputy Head of the Ministry of Interior Human Rights and Gender Unit, Kabul, 31 January 2017.

<sup>129</sup> Ministry of Interior Order 0112 (15 March 2011) article 6.

<sup>130</sup> Meeting with the Acting Head of the Ministry of Defence Gender and Human Rights Directorate, Kabul, 31 January 2017.

Police Ombudsman documented 282 human rights complaints against ANP between 1 April 2015 and 31 March 2016.<sup>131</sup>

Where the Office of the Police Ombudsman found evidence suggesting that torture or ill-treatment had taken place, it referred the cases to the Office of the Attorney General for further investigation. However, according to Afghan Independent Human Rights Commission,<sup>132</sup> none of these referrals resulted either in an effective criminal investigation or in prosecution.

### **Police, Defence and Security Forces Ombudsman's Office within the AIHRC**

In April 2016 the Ministry of Defence, the Ministry of Interior and the NDS jointly signed a memorandum of Understanding with the Afghanistan Independent Human Rights Commission, expressly intended to enhance the ability of the AIHRC to provide effective oversight of the ANDSF.

The MoU expanded the remit of the Afghanistan Independent Human Rights Commission's pre-existing Police Ombudsman's Office to cover the ANA and NDS. The signatories of the Memorandum of Understanding expressly commit to:

- Allow the Commission unimpeded access to their facilities in order to monitor human rights compliance.
- Co-operate with the Commission monitors to review complaints and investigate alleged human rights violations.
- Develop training programmes on human rights standards and ensure that those standards are observed.

The corresponding responsibilities of the Commission contained in the Memorandum of Understanding include:

- Receiving and reviewing human rights complaints against ANDSF personnel and referring them to the relevant authorities for action
- Providing reports and recommendations to ANDSF based on its findings
- Conducting capacity building programmes on human rights for ANDSF personnel.

Since the Memorandum of Understanding was signed in April 2016, the introduction of the expanded Police, Defence and Security Forces Ombudsman's was delayed as the Commission sought the necessary donor funding. In February 2017, the Commission confirmed to UNAMA that they had secured funding and had recruited 42 of the total 68 staff (two per province) who will carry out the Ombudsman's functions.<sup>133</sup>

Whilst the terms of the Memorandum of Understanding largely reflect the existing powers and responsibilities assigned to the Afghanistan Independent Human Rights Commission under relevant national laws, the Commission has acknowledged that it faces ongoing challenges in its efforts to improve human rights compliance by the ANDSF.<sup>134</sup> The Memorandum of Understanding therefore represents a

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<sup>131</sup> *Afghanistan Independent Human Rights Commission, Annual Report, 1394* (2016), page 64. (Available online at <http://www.aihrc.org.af/home/annual-reports>).

<sup>132</sup> UNAMA telephone conversations with Head of Ombudsman's Office, 13 March 2017, Kabul.

<sup>133</sup> Meeting with Afghanistan Independent Human Rights Commission Ombudsman and Research Coordinator, Kabul, 19 February 2017.

<sup>134</sup> In its 2015 Report, UNAMA noted difficulties experienced by the Office of the Police Ombudsman in obtaining the necessary cooperation from the Ministry of Interior and in its most recent Annual Report, the Afghanistan Independent Human Rights Commission noted a 17 per cent rise in complaints of human rights violations made against ANP. (AIHRC Annual Report, 1394 – available online at

welcome commitment by Ministry of the Interior, the NDS and Ministry of Defence to enhance co-operation and co-ordination with external human rights monitoring organizations.

However, it remains too early to assess whether the accountability framework established by the Police, Defence and Security Forces Ombudsman's Office will result in more effective oversight, follow up and accountability in cases where torture or ill-treatment is alleged to have taken place.

### **International Efforts to support oversight and investigation mechanisms within ANDSF**

In its 2015 Report UNAMA noted that a new determination under the *Leahy Law* may be required in view of consistent and credible reports of the persistent use of torture by units of the ANDSF which receive funding, training and other support from Government of the United States of America. The *Leahy Law* (or Leahy Amendment) is a provision of United States of America domestic legislation that prohibits the United States Departments of State and Departments of Defence from providing assistance to foreign military units which commit gross violations of human rights with impunity<sup>135</sup>.

During the period covered by the present report, the NATO Resolute Support Mission instituted a mechanism to track the investigation of allegations of Gross Violations of Human Rights by Ministry of Defence and Ministry of Interior personnel<sup>136</sup>. The 'Gross Violations Of Human Rights' mechanism only examines violations that fall within the relatively narrow definition of 'gross violations of internationally recognized human rights' contained in the *Leahy Law*, which definition explicitly includes torture and other forms of inhuman degrading treatment or punishment.<sup>137</sup> In cases where the Ministries of Defence and of Interior cannot demonstrate that they have carried out a credible and thorough investigation into the alleged violation (including conducting judicial proceedings and imposing appropriate sanctions if sufficient evidence exists) then the United States Government has the power to impose *Leahy Law* sanctions.

In order to ensure that activities of the Ministry of Interior and the Ministry of Defence are consistent with the *Leahy Law* requirements, the Resolute Support Mission has supported both Ministries in establishing internal Human Rights Committees which are tasked to address allegations of human rights violations identified through the 'Gross Violations of Human Rights' mechanism.<sup>138</sup>

Although the Resolute Support Mission takes no active part in investigating cases that fall within the framework of the 'Gross Violations of Human Rights' mechanism, it does identify cases of concern to feed into that mechanism. According to Resolute Support, both the Ministry of Defence and the Ministry of Interior have increasingly 'self-reported' cases for investigation and 'remediation' through this mechanism.

### **Other preventive safeguards against torture and ill-treatment**

#### *Medical Examination of Detainees*

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<http://www.aihrc.org.af/media/files/Reports/Annual%20Reports/English/Annual-Report-94-Eng-for-website.pdf>.

<sup>135</sup> The provisions of the US Leahy Law (discrete sections in the *Foreign Operations Appropriations Act*, Section 563 of P.L. 106-429 (2001) and the *Defence Appropriations Act*, Section 8092 of P.L. 106-259 (2001) prohibit the US from providing funding, weapons or training to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross human rights violations, unless the Secretary of State determines that the concerned government is taking effective remedial measures including bringing responsible members of security forces' units to justice.

<sup>136</sup> The 'Gross Violations of Human Rights' tracking mechanism does not cover allegations against NDS personnel as the United States of America does not provide training or assistance to NDS.

<sup>137</sup> *Foreign Operations Appropriations Act*, Section 502B(d) states "the term 'gross violations of internationally recognised human rights' includes torture or inhuman or degrading punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty and the security of persons."

<sup>138</sup> Meeting with Resolute Support EF-3 (Rule of Law) Advisers, Kabul, 24 February 2017.



In its previous reports UNAMA noted the importance of regular medical examination of detainees, and of a clear mechanism for doctors to report their concerns over the treatment of detainees as additional safeguards against abuse in detention.

International standards are clear in this respect and in December 2015 the UN General Assembly adopted a revised set of guidelines which set out the obligations of health-care professionals in detention facilities to document and report injuries consistent with the use of torture or other forms of ill-treatment:

*“If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority.”<sup>139</sup>*

In October 2015, the Ministry of Public Health and the Ministry of Interior signed a Memorandum of Understanding relating to the delivery of health services in prisons and detention centres countrywide. This document delineates the responsibilities of both ministries in ensuring that prisoners in facilities managed by the MoI’s Central Prisons Directorate have adequate access to free medical services and regular checkups by qualified medical professionals.

Although no similar memorandum of understanding for the provision of medical services exists between Ministry of Public Health and NDS, in those NDS facilities visited by UNAMA, most have the capacity to provide basic medical check-ups and treatment for detainees. Some NDS provincial facilities have well-equipped and staffed medical clinics inside the compound, whereas others only have the capacity to provide basic primary health care. Those patients whose conditions cannot be treated in the NDS medical facilities are referred to the provincial public hospital.

NDS Doctors interviewed by UNAMA consistently outlined their responsibility to conduct medical examinations of detainees on arrival at an NDS facility. The results of the medical examination are documented using a standard form which records basic health details but which is not specifically designed for documenting injuries consistent with ill-treatment or torture.

The Head of NDS 501 informed UNAMA that if any detainee exhibits signs of ill-treatment during this initial examination they would not be admitted to the facility but would be referred instead to the Forensic Department of the Ministry of Public Health for a more thorough examination. However both the Head of the NDS 501 facility and the Medical Officer of NDS 501 informed UNAMA that they had not seen any signs of ill-treatment in detainees admitted to that facility in the last four years. Notwithstanding the assurances provided to UNAMA by NDS 501 in this regard (UNAMA having no means of assessing the rigour of the medical examinations carried out at NDS 501), it should be noted that 34 per cent of the detainees interviewed by UNAMA who were held in NDS 501 reported that they had experienced torture or ill-treatment in other locations before being transferred to this facility.

Whilst the practice of conducting medical examinations upon admission to NDS facilities appears to be widespread, procedures for ongoing medical oversight of NDS detainees are less consistent. Some heads of NDS clinics stated that duty nurses visit detainees on a daily basis<sup>140</sup>, whilst in other facilities the NDS medical officers stated that they would only be permitted to examine detainees on the specific request of the Head of Facility or the NDS Investigation Unit.<sup>141</sup>

As noted in the 2015 UNAMA report, the organizational command structure within which the NDS medical personnel work makes it difficult for them to report concerns over the ill-treatment of detainees. There are no standing instructions setting out the obligations of NDS medical personnel to document and report concerns that patients in their care have injuries consistent with ill-treatment (physical or

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<sup>139</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners* (The Mandela Rules) 17 December 2015 (A/Res/70/175).

<sup>140</sup> UNAMA interview with Head of NDS Medical Clinic, Nangarhar 15 August 2016.

<sup>141</sup> UNAMA interview with NDS medical staff, Baghlan, 6 March 2016.

otherwise), and there do not appear to be any systems in place to allow the medical personnel to maintain professional independence or to ensure patients' confidentiality and protection.

As a corollary, several detainees informed UNAMA that they did not report ill-treatment or torture to NDS doctors because they perceived them as being too closely associated with the perpetrators of the abuse. UNAMA also received one disturbing allegation that an NDS doctor also participated in physical abuse of a detainee.

In some cases, NDS doctors stated that, due to the confidential and sensitive nature of the investigations carried out by NDS interrogators, they were not authorized to examine detainees without the express invitation of the NDS investigation unit, and would only report concerns over the treatment of detainees if explicitly requested to do so by the prosecutor, the NDS investigator or the NDS Human Rights Officer.

Of the 17 NDS medical staff members interviewed by UNAMA in 13 NDS facilities throughout the country, only three reported that they had identified physical injuries during medical examinations that were consistent with ill-treatment or torture. In all three cases the NDS doctors identified the injuries during the detainee's initial medical screening on admission to the facility.

Only one of these cases (involving injuries sustained in ANDSF custody prior to admission to the NDS) was reported up the chain of command to the provincial NDS Investigation Department, and the doctor was not aware of the outcome of the investigation.

One NDS doctor<sup>142</sup> informed UNAMA that he was disciplined (by way of a written warning) following an investigation by NDS 13 for failing to report signs of torture in a group of detainees who were transferred to his facility from another province. The doctor stated to UNAMA that, although he documented the detainee's injuries at the time of their initial examination, he was not aware that he had a positive obligation to report on concerns that the detainees may have been tortured or ill-treated.

This passive approach to reporting torture was also reflected in interviews with medical personnel working in Ministry of Interior prisons.

*"We just write our findings in the case files, which remain confidential. We are not authorized to follow or investigate claims of torture or ill-treatment but if we receive an official request for an examination to be conducted we report our findings in accordance with the request."*<sup>143</sup>

### **Access to Defence Lawyers**

UNAMA observed that access to defence lawyers on arrest and during initial detention by ANP and NDS has not improved since its previous report, and that, even when they had been informed of their right to legal assistance, the vast majority of detainees had no opportunity to access a defence lawyer until they were brought to court for trial.

The *Constitution of the Islamic Republic of Afghanistan*, the *Criminal Procedure Code* and applicable international human rights standards provide for detainees to have access to defence lawyers upon arrest.<sup>144</sup>

Prompt access to defence counsel provides an essential preventive safeguard against torture and ill-treatment, as, in addition to deterring ill-treatment by their physical presence, lawyers can ensure that the legal system can intervene at an early stage to prevent or identify torture, can initiate procedures for identifying and investigating officials who use torture, and can ensure that forced confessions are not used as evidence at trial.

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<sup>142</sup> *ibid.*

<sup>143</sup> UNAMA interview with Ministry of the Interior Doctor, Badghis, 09 May 2016.

<sup>144</sup> *Constitution of the Islamic Republic of Afghanistan*, article 31; *Criminal Procedure Code*, articles 9 and 152; Principle 3.20 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.

During the period covered by this report, UNAMA observed that detainees were most vulnerable to torture and ill-treatment during the first few days in custody and that the risk of being subjected to such treatment was made greater because they were generally detained incommunicado and denied access to defence lawyers.

Even when detainees were informed of their right to a lawyer, many detainees interviewed by UNAMA lacked a clear understanding of the benefits of accessing a defence counsel during the pre-trial stages of the investigation. Many were also unaware of the availability of legal aid lawyers, and had not sought legal assistance, often stating “lawyers are expensive and I have no money to pay them.”

Although it is beyond the scope of this report to carry out a comprehensive analysis of the legal aid system in Afghanistan, it should be noted that widespread difficulties in accessing legal assistance is exacerbated by limited capacity within the Ministry of Justice to provide effective oversight and coordination of the legal aid system, combined with uncertainties over the provision of sustainable funding for the provision of legal aid..

#### **National Plan: Para 5 - Continuous Observation of Implementation of this Plan**

“To ensure this plan is effective, it is necessary to continually observe its implementation and the status of the goals within it. Observation of the implementation of this plan will be performed by the AIHRC and other relevant organs of the Islamic Republic of Afghanistan. This observation will include unannounced visits to detention facilities by the Afghan Independent Human Rights Commission and governmental and non-governmental observers. Standard Operating Procedures on the observation and implementation of this plan will be drawn up by the Office of the National Security Council and the Afghan Independent Human Rights Commission”

During the period covered by the report the Afghan Independent Human Rights Commission and other mandated human rights organizations were able to carry out routine visits to places of detention largely unhindered. However, the Standard Operating Procedures foreseen in paragraph 5 of the national plan which were intended to facilitate the continuous observation of the plan by the Afghan Independent Human Rights Commission did not materialize. Instead the Commission provides its general findings and recommendations to the Office of the National Security Council, and to the relevant Afghan security institutions, within the framework of its ongoing mandated monitoring and reporting activities rather than within a mechanism or forum specifically established to monitor the Government’s implementation of the National Plan on the Elimination of Torture.<sup>145</sup>

However, in its report submitted to the United Nations Committee against Torture<sup>146</sup> in May 2016 as part of the Committee’s Second Periodic Review of Afghanistan, the Government did provide an update (albeit a relatively limited in scope) on specific issues coincidentally covered by the national plan which were of interest to the Committee, including the implementation of legislative reform, education and capacity building on the prevention of torture, and access to places of detention by independent human rights monitoring organizations.

#### **General Observations on coordinating implementation of the National Plan on the Elimination of Torture**

The National Action Plan on the Elimination of Torture incorporates a range of cross-cutting legislative, educational, capacity building and preventive measures which, by definition cannot be implemented by a single ministry, but requires coordinated engagement by a range of Government institutions. To this end, and following the release of its 2015 Report, UNAMA encouraged the Government to establish a Steering Committee comprised of senior officials from relevant institutions, and including representation

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<sup>145</sup> UNAMA telephone conversation with AIHRC, 13 March 2017, Kabul.

<sup>146</sup> See further below ‘Afghanistan’s Engagement with International Mechanisms Aimed at Preventing Torture.’

from the Afghan Independent Human Rights Commission to facilitate inter-departmental coordination to implement the National Plan.<sup>147</sup>

Although the Office of the National Security Council retains nominal “ownership” of the national plan, in April 2015 UNAMA was informed that responsibility for its development and implementation had been assigned to the Office of the Second Vice President – himself a member of the National Security Council.<sup>148</sup>

In this context the Office of the Second Vice President requested the Ministry of Justice to establish a Steering Committee, ‘consisting of senior members of the Office of the National Security Council, the Office of the Attorney General’s, the NDS, the Ministry of the Interior and Afghan Independent Human Rights Commission’,<sup>149</sup> to review the National Plan on the Elimination of Torture.

UNAMA understands that this Steering Committee met on a number of occasions under the Chairmanship of the Deputy Minister of Justice. Although the Steering Committee was given the broad authority to consider all aspects of the national plan, it decided to work through the plan systematically, beginning with the recommendations for legislative reform.

In this context, in May 2015, the Steering Committee tasked the Legislative Department of the Ministry of Justice to begin consultations on drafting an anti-torture law in order to address some of the legislative gaps highlighted in the national plan.

UNAMA understands that the Steering Committee has not held a meeting since the Deputy Minister of Justice resigned in June 2015 to take up the post of Chief Justice.<sup>150</sup>

Given that the Steering Committee has been functionally dormant since mid-2015, UNAMA has lacked a clear single focal point within the Government on this issue, and the assessment set out in this report is based information obtained in bi-lateral discussions and interactions with representatives of individual Ministries, Directorates and Departments, as well as UNAMA’s own observations and interactions with non-government interlocutors.

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<sup>147</sup> Meeting between UNAMA, the Office of the National Security Council, and civil society representatives. Kabul, 8 March 2015.

<sup>148</sup> Meeting between UNAMA and Second Vice President Danish, Kabul, 8 April 2015.

<sup>149</sup> Text of draft Order from the Office of the Second Vice President to the Ministry of Justice, establishing a working group on the National Plan on the Elimination of Torture. Draft provided to UNAMA by Office of the Second Vice President on 17 May 2015. UNAMA has not seen a copy of the final/signed order.

<sup>150</sup> At the time of writing the post of Deputy Minister of Justice remains vacant and it appears that the work of the Steering Committee remains dormant as a result.

## International Accountability

### Afghanistan's Engagement with International Mechanisms Aimed at Preventing Torture

#### Second Periodic Review under the Convention against Torture

As a state party to the *Convention against Torture*, Afghanistan is obliged<sup>151</sup> to submit periodic reports (within one year after ratification and every four years thereafter) to the United Nations Committee against Torture, setting out the measures they have taken to give effect to their undertakings under that Convention. Those undertakings include “*taking effective legislative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction*”.

Afghanistan ratified Convention in 1987 and submitted its First Periodic Report to the Committee against Torture in 1992. Its Second Periodic Report (originally due in 1996) was submitted in May 2016.<sup>152</sup>

Afghanistan's Second Periodic Report was structured as a response to the 'List of Issues', which the Committee transmitted to Afghanistan in 2010, which sought specific information on steps taken by Afghanistan to implement its obligations under the Convention.

The report will be considered by the 60th Session of the United Nations Committee against Torture between 18 April and 12 May 2017. As part of its deliberations the Committee may consider representations from various entities including NGOs the day before the report is considered. UNAMA also intends to present its findings to the Committee.

The Committee has the competence to make general comments on each report – to which the state may respond – and has the discretion to make them public in the form of 'Concluding Observations' which typically will include a statement of 'positive aspects', a section on 'statements of concern' and a section on recommendations.

#### The International Criminal Court

In its November 2016 'Report on Preliminary Examination Activities in Afghanistan' the Office of the Prosecutor of the International Criminal Court determined that there was a reasonable basis to believe that the war crimes of torture and related ill-treatment had been committed by Afghan Government forces, in particular the intelligence agency (National Directorate for Security), and the Afghan National Police, since 2003. It noted that there are allegations of the continuing commission of such war crimes up to the present day.

According to the International Criminal Court, the information available “*does not indicate that the alleged crimes by Afghan forces against conflict-related detainees were committed as part of any plans or policies at the national level. However, the information available indicates that in some cases, the alleged crimes may have been committed as part of one or more plans or policies at the facility, district or provincial level. The information available also indicates that the alleged crimes were committed on a large scale.*”<sup>153</sup>

In assessing its jurisdiction over these alleged war crimes of torture and ill-treatment, which involves an assessment under the principle of complementarity as to whether Afghanistan is willing or able to conduct genuine proceedings to hold perpetrators to account at a domestic level, the International Criminal Court found that;

“*the Government has instituted only a limited number of proceedings against alleged perpetrators. Despite the scale of alleged ill-treatment in NDS and ANP detention facilities (an estimated 35-51 per cent of conflict-related detainees according to the*

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<sup>151</sup> *Convention against Torture*, article 19.

<sup>152</sup> Available online at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAFG%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAFG%2f2&Lang=en).

<sup>153</sup> *Report on Preliminary Examination Activities 2016*, Office of the Prosecutor, International Criminal Court (14 November 2016)

*findings of UNAMA's detention monitoring program), information provided by the Government of Afghanistan to UNAMA indicates that to date the Government has prosecuted only two NDS officials (in relation to one incident), and no ANP officials, for this conduct.”*

The International Criminal Court also noted a singular lack of cooperation from Afghanistan, stating that *“the Government has not provided any information on national proceedings to the Office, despite multiple requests for such information from the Office since 2008, including two requests submitted during the reporting period.”*

In 2017, the Government has undertaken a series of actions to engage with International Criminal Court and provide information to the Office of the Prosecutor.

On 12 January 2017 the Government provided the Chief Prosecutor of the International Criminal Court with a *‘Roadmap for Cooperation’* together with preliminary information on a list of 22 cases on which her office had previously requested information.<sup>154</sup> The Government is in the process of compiling additional information for submission to the prosecutor, including information on cases involving allegations of torture.<sup>155</sup>

On February 14 2017 the National Security Council adopted a resolution establishing a ‘Coordination Committee between Afghanistan and the International Criminal Court’, comprising representatives of the Ministry of Foreign Affairs, the Office of the Attorney General, the Ministry of the Interior the Ministry of Justice and the Supreme Court. The Coordination Committee will have the authority to gather information and to be in contact with the International Criminal Court.<sup>156</sup>

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<sup>154</sup> Information provided to UNAMA in a meeting with Government official, Kabul, 15 February 2017.

<sup>155</sup> UNAMA meeting with Government official, Kabul, 18 April 2017.

<sup>156</sup> UNAMA meeting with Government official, Kabul, 15 February 2017.

## Conclusion

At the time of its promulgation in 2015, UNAMA welcomed ‘The National Plan on the Elimination of Torture’ as a positive and constructive step by the Government. Two years on, steady progress has been made in some key areas, particularly legislative. As set out in this report, many key commitments made in the National Plan remain only partially implemented and require renewed, robust and ongoing engagement from the Government, with the support of the international community.

The measures set out in the National Plan on the Elimination of Torture are inter-dependent and mutually reinforcing. Whilst the Government has taken many concrete steps to introduce legislative reform, and also to establish a more comprehensive framework of internal oversight within its security institutions, very few cases of torture or ill-treatment identified through these internal mechanisms have been referred for detection and investigation by the law enforcement and prosecutorial authorities.

Internal oversight mechanisms should complement the formal investigative and judicial processes, not be a substitute for them.

Actions should speak louder than words and the Government must clearly demonstrate its unequivocal intention to end the practice of torture in its detention facilities. In this context, UNAMA welcomes the government’s recent decision to approve the ratification of the *Optional Protocol on the Convention against Torture* and their withdrawal of Afghanistan’s reservation to the *Convention against Torture*.

Only the credible prospect that those who commit torture will be held to account will deter those who carry out those crimes. The Government must therefore ensure that existing laws policies and guidelines are effectively applied, that the existing culture of impunity for torture and ill-treatment of conflict related detainees is brought to an end, and that those who commit torture are brought to justice.

Ending torture and ill-treatment against conflict-related detainees and ensuring accountability for perpetrators will reinforce the achievements made by the Government to uphold the human rights of all Afghans, strengthen the rule of law and build a peaceful, equitable and sustainable future.

## Annex I

### Detention facilities visited by UNAMA

#### 1. NDS provincial facilities:

Faizabad (Badakshan), Pul-e-Khumri (Baghlan), Farah city (Farah), Herat city (Herat), Kabul City Departments 1, 501 and 241 (Kabul), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz city (Kunduz), Mehtarlam (Laghman), Jalalabad (Nangarhar), Sharan (Paktika), Gardez (Paktya), DFIP 241, 501 (Parwan), and Taloqan (Takhar).

#### 2. ANP provincial and district facilities:

ANP Faizabad (Badakshan), ANP Pul-e-Khumri and ANP in Dushi district (Baghlan), ANP Bamyan (Bamyan), ANP Maimana (Faryab), ANP Kabul (Kabul), ANP Kandahar (Kandahar), ANP Khost (Khost), ANP Kunduz (Kunduz), ANP Jalalabad (Nangarhar), ANP Sharan (Paktika), and ANP Gardez (Paktya).

#### 3. Central Prisons Directorate (CPD) Provincial Prisons:

Faizabad (Badakshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Mazar-i-Sharif (Balkh), Bamyan city (Bamyan), Farah city (Farah), Maimana (Faryab), Cheghcheran (Ghor), Herat city (Herat), Shiberghan (Jawzjan), *Pul-i-Charkebi* (Kabul), *Sarpoza* (Kandahar), Khost city (Khost), Asad Abad (Kunar), Kunduz (Kunduz), Mehtarlam (Laghman), Pul-e-Alam (Logar), Jalalabad (Nangarhar), Gardez (Paktya), Begram (Parwan), Ayabak (Samangan), Sari Pul (Sari Pul) and Taloqan (Takhar).

#### 4. Juvenile Rehabilitation Centres (JRCs):

Faizabad (Badakshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Farah city (Farah), Mazar-i-Sharif (Balkh), Maimana (Faryab), Herat city (Herat), Kabul city (Kabul), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz (Kunduz), Mehtarlam (Laghman), Pul-e-Alam (Logar), Maydan Shar (Maydan Wardak) Jalalabad (Nangarhar), Gardez (Paktya) and Taloqan (Takhar).

#### 5. Afghan National Army (ANA) facilities:

Afghan National Detention Facility in Parwan (DFIP)



## **Annex II:**

### **Afghan National Detention Facility in Parwan (DFiP)**

The Afghan National Detention Facility in Parwan is a detention compound located in Parwan province which includes detention facilities for adult and juvenile pre-trial detainees in ANA and NDS custody. It is currently managed by the Ministry of Defence, under the command of an ANA Major General and staffed by ANA Military Police guards.

Whilst the Ministry of Interior, through its Central Prisons Directorate, is responsible for the administration of prisons in Afghanistan<sup>157</sup>, on 9<sup>th</sup> March 2012 the Government signed a Memorandum of Understanding with the United States of America providing for the transfer of the US-run Detention Facility in Parwan to Afghan jurisdiction and control. The document stipulated that the facility was to be managed by an ANA General under the authority of the Ministry of Defence.

Whereas other prison facilities formerly managed by the Ministry of Defence, including the block housing conflict-related detainees at the Central Prison at Pul-e-Charki in Kabul, were subsequently handed over to the administration of the Ministry of the Interior, the management of the Afghan National Detention Facility in Parwan remains the sole responsibility of the Ministry of Defence.<sup>158</sup>

The prison run by the Ministry of Defence at the Afghan National Detention Facility in Parwan is co-located with a separately administered Justice Facility which comprises NDS investigation units, a prosecutor's office under the authority of the Attorney General, and a court facility that adjudicates cases at primary and secondary level.

While UNAMA has standing agreements with NDS and the Ministry of the Interior, allowing broad and largely unrestricted access to NDS, ANP and CPD detention facilities across the country, it does not have similar arrangements with the Ministry of Defence and access to the Afghan National Detention Facility in Parwan, particularly the ANA-run prison, has been consistently problematic, with the Ministry of Defence requiring advance notice of up to a week before each monitoring visit, denying access to certain categories of prisoner, and cancelling some agreed visits at short notice. Because the Ministry of Defence also provides the external security for the entire facility, including those managed separately by NDS 501 and NDS 241, these cumbersome access arrangements have also occasionally impacted on the ability of UNAMA to effectively monitor the treatment of detainees in the NDS facilities.

### **Detection and Investigation at the Afghan National Detention Facility in Parwan – NDS 241 and NDS 501**

NDS administers two separate facilities within the Afghan National Detention Facility complex, which fall under the authority of NDS 241 (formerly NDS 124) and NDS 501 (formerly NDS 40) respectively. Before being transferred into the custody of NDS 501 or NDS 241 in this national detention facility, the detainees may also have been routed through the corresponding NDS detection and investigation facilities in Kabul.

NDS 241 deals with the initial detection of crimes and holds detainees who have either been arrested during NDS operations or by other branches of ANDSF such as the Afghan National Police. Once the initial detection phase is completed, detainees are transferred to NDS 501 in Parwan which deals with the investigation phase.

During the initial detection phase within NDS 241 in Parwan, detainees are held in solitary confinement. On transfer to NDS 501 they are then held in common cells located in the same detention block. They

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<sup>157</sup> Article 17, Law on Prisons and Detention Centres (2005), as amended by Legislative Decree No. 85 (2011)

<sup>158</sup> Confirmed in Letter No. 1491/572 from the Office of the National Security Council to the Ministry of Defence. 11 February 2015 – Copy on file with UNAMA

then remain in these common cells until the indictment has been sent to the court when they are then transferred to the MoD administered prison.

### **Prosecution at Justice Facility in Parwan – Office of the Attorney General**

The prosecutors located at the Justice Facility in Parwan, which is adjacent to Afghan National Detention Facility, are under the authority of the Attorney General and are specifically attached to the military prosecution office of the Office of the Attorney General. While sometimes referred to as 'National Directorate of Security (NDS) prosecutors', they are not under the authority of the NDS.

The structure of the prosecution office at the Justice Facility in Parwan includes both a primary and an appeal prosecution, each of which comprise trial prosecutors, an investigation unit, a monitoring unit and an administration unit.

### **Tribunal – Supreme Court**

The Tribunal in the Justice Facility in Parwan is not an autonomous entity but is linked to the District Tribunal of Parwan. It consists of a primary and secondary (appeals) tribunal, but due to the nature of the crimes it considers it only has a division for public security. Each division consists of two judges and one head judge.

## **Annex III**

### **National Plan on the Elimination of Torture**

#### **1. Introduction**

Since the Government of Afghanistan is obliged, according to its Constitution as well as international treaties to which it is a party, to protect and develop human rights and to eliminate torture in prisons, detention facilities and other locations where it restricts freedom of movement, it has codified a specific plan entitled the “National Plan on Elimination of Torture,” and, with the cooperation of governmental and non-governmental national and international institutions, will finalize and implement it.

This plan encompasses effective mechanisms aimed at the elimination of torture, more effective implementation of the Convention against Torture and capacity-building in different areas. Included in the plan is the amendment of relevant laws, increase in the capacity of security and judicial officials, preventive measures regarding punishment of perpetrators, establishing centers to receive complaints of torture and the ongoing observation of implementation of the plan by national and international institutions

#### **2. Legislative Measures:**

Under Article 7 of the Constitution of Afghanistan, the Government is obliged to observe all international treaties and conventions to which it has acceded. The Convention against Torture is among the international conventions to which Afghanistan has acceded and is obliged to observe. Considering that Afghanistan has faced challenges in implementing the Convention in legislation, the Government of Afghanistan is determined to initiate necessary legal reforms, to overcome obstacles and prepare the ground for full observation and implementation of the convention.

##### **2.1 Amendments to the Penal Code:**

The Afghan Penal Code needs to be reviewed and modernized. Specifically, and despite the fact that torture is illegal, torture has not been defined properly. The Government of Afghanistan believes that the Penal Code should be reviewed as soon as possible; torture should be defined properly and in accordance with the Convention against Torture and in the spirit of the Constitution of Afghanistan, and the use of torture should be prohibited at all stages of criminal procedure. To this end the Government of Afghanistan will start the amendment of the Penal Code in the near future, with the cooperation of national and international professionals and civil society representatives.

##### **2.2 Amendments to the Criminal Procedure Code:**

One major problem is that there is often not enough time to conduct thorough investigations. Some law enforcement officers, under pressure to get a quick result, put suspects under inappropriate pressure in order to obtain a confession. One of the components of the plan is to consider amending the Criminal Procedure Code to create an appropriate mechanism for extending the time period allowed for conducting an investigation for certain crimes in a manner which is consistent with the Constitution of Afghanistan.

##### **2.3 Withdrawal of Afghanistan’s Reservation to the Convention against Torture:**

When acceding to the Convention against Torture in 1987, the Government of Afghanistan exercised its right to make reservations, related to two issues. Now, considering the obligation of the Islamic Republic of Afghanistan to protect and promote human rights and changes in the political situation of the country, it is time to review one of the reservations made to the convention and to start the process of its withdrawal. To be specific, under Article 28 of the Convention against Torture, Afghanistan has not recognized the authority of the Committee against Torture to conduct visits to Afghanistan detention facilities and receive complaints from detainees. The Government of Afghanistan now believes that recognition of the authority of the Committee is necessary for the permanent elimination of torture.

Therefore, the Government of Afghanistan will soon commence a review of how to implement the withdrawal and the consequences of doing so.

#### **2.4 Ratification of Optional Protocol to the Convention against Torture:**

As a responsible member of the international community, Afghanistan respects the universal principle of dignity of the human being. As a priority the Government of Afghanistan will examine the preparations required for acceptance of the Optional Protocol of the Convention against Torture and start, as soon as possible, the process of its ratification. The Government will study the consequences of acceptance of the Optional Protocol for the effective implementation of Convention against Torture and will establish national mechanisms foreseen in the Optional Protocol through short-term, mid-term and long-term programmes.

#### **2.5 Implementation of Presidential Decree 129 on Elimination of Torture:**

The Government of Afghanistan has always tried to lay the groundwork for elimination of torture and respect for human dignity. Presidential Decree 129 is a major step forward in this regard. One of the measures contained in the decree is full assessment of the extent of its implementation including identifying obstacles. Although progress has been made in implementing the decree it is necessary to conduct a precise assessment of the status of its implementation, including recognizing obstacles and problems, and identifying practical steps to overcome them.

#### **2.6 Remedy for Victims of Torture:**

The victims of torture have never been provided with appropriate remedies that have created a negative perception of the implementation of justice and implies disregard for human dignity. The Government of Afghanistan is determined to take steps to establish a proper mechanism for reviewing the complaints of victims of torture and providing them with due remedy.

### **3. Educational and Capacity Building Programmes:**

Most incidents of torture happen due to a lack of awareness among law enforcement officials. So, while educational and capacity building programs on human rights standards will continue, they will be fundamentally reviewed. Cognizant that torture does not happen only in prisons, the Government of Afghanistan will include human rights values and respect for human dignity as a component of training across all areas. Developing and codifying specific policies in this regard, will increase the capacity of law enforcement officials and pave the way for the elimination of torture which results from a lack of awareness.

#### **3.1 Human Rights and Torture Awareness Programmes:**

Developing specific policies on the promotion of human rights will help create an environment in which torture is seen as unacceptable. These policies and operational programmes will cover different areas; there will be inclusion of human rights programmes in the curricula of security organs, coordination and collaboration with the media in broadcasting effective programmes on torture eradication and implementation of effective educational programmes for law enforcement officials.

#### **3.2 Discrediting Torture in Public Culture:**

Recognizing that torture is not only happening in prisons, it is necessary that the public culture of Afghans recognizes that torture is among the most heinous of actions. Therefore, implementation of effective cultural programs, and with the cooperation of relevant organs and civil society institutions, will pave the way for a change in public perception so that the wickedness of torture is recognized. Relevant organs will make substantive efforts in this regards, working closely with the office of the National Security Council and the Afghanistan Independent Human Rights Commission to draw up specific plans in cooperation with civil society institutions.

### **3.3 Alternative Methods of Investigation and Capacity Building in the Collection and Preservation of Criminal Evidence:**

One of the reasons incidents of torture take place is to obtain confessions. Alternative methods of investigation and building capacity in the collection, preservation and analysis of criminal evidence will remove the incentive to commit torture. The Government of Afghanistan, in cooperation with legal and judicial experts, will work to build capacity relating to the collection and preservation of criminal evidence. In this regard, it is necessary to draw upon the expertise of our international partners in order to strengthen capacity.

### **3.4 Harmonization of National and International Educational and Advocacy Programmes with those of Government Organizations:**

The Government of Afghanistan will make every effort, through the establishment of effective mechanisms, to increase cooperation and coordination between human rights advocates and law enforcement organs. In addition, persons who violate human rights standards will face serious repercussions and human rights issues will be separated from the political issues of the country.

## **4. Preventive Measures**

To prevent continuation of torture in prisons and detention facilities, the Government of Afghanistan is determined to hold legally accountable those who commit torture. This action includes addressing torture complaints, relocation, dismissal and prosecution of persons accused of willfully torturing prisoners and detainees. To realize this goal, an effective mechanism for receiving complaints and addressing them will be designed and implemented.

## **5. Continuous Observation of Implementation of this Plan**

To ensure this plan is effective it is necessary to continually observe its implementation and the status of the goals within it. Observation of the implementation of the plan will be performed by the AIHRC and other relevant organs of the Islamic Republic of Afghanistan. This observation will include unannounced visits to detention facilities by the Afghanistan Independent Human Rights Commission and governmental and non-governmental observers. Standard Operating Procedures (SOPs) on the observation of the implementation of this plan will be drawn up by the office of National Security Council and the Afghanistan Independent Human Rights Commission.

## **Part Four Conclusion**

It is not the official policy of the Government of Afghanistan to implement torture and ill-treat detainees in order to obtain information and confessions in detention facilities under its control. Some of the incidents mentioned in the UNAMA report are not correct, while some of them could be due to individual violations by officials and personnel of the security and judicial organs. Acknowledging some problems in this regard, the Government of Afghanistan is committed to eliminating torture and ill-treatment and to develop a plan at a senior level and with the cooperation of relevant organs, for a specific program to prevent reoccurrence of such acts, which are against human rights values, in the detention facilities of the Government of Afghanistan.

The Government of Afghanistan considers UNAMA and other national and international human rights institutions as its partners, and as such takes their reports, advice and recommendations very seriously and expects their continued cooperation. The Government's response does not mean rejection of UNAMA's report, rather the Government considers the report a good guide for improvement of issues related to human rights and liberty, especially relating to detainees, and as an opportunity to take corrective action to improve the country's judicial and security systems. To eliminate torture permanently in the country,

the “National Plan on Elimination of Torture,” has been drawn up based on the UNAMA report and in accordance with the Constitution of Afghanistan.

## Annex IV

Response of the Government of Afghanistan dated [-] to the UNAMA/OHCHR Report on the Treatment of Detainees – 23 April 2017

**Response of the Islamic Republic of Afghanistan  
to the United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United  
Nations High Commissioner for Human Rights Annual Report on the Treatment of  
Conflict-Related Detainees; implementation of Afghanistan’s National Plan on the  
Elimination of Torture  
April 2017**

The Government of the Islamic Republic of Afghanistan extends its thanks to the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights for the opportunity to comment on the 2017 Report on the Treatment of Conflict-Related Detainees in Afghan Custody, Human Rights Violations, and Accountability. We welcome this frank and critical report between friends, as well as the opportunity to reiterate our shared determination to ensure the sanctity of human rights for all people in our country.

The Government of Afghanistan remains committed to the international declaration that “all human beings are born free and equal in dignity and rights” and with our international partners we remain resolute in our determination to eliminate torture and ill-treatment. We recognize that we have more to accomplish if we are to realize this shared objective. Indeed, torture, mistreatment, and lack of respect for human dignity remain wholly inconsistent with our Islamic teaching and values and so we are therefore most ardent in our determination to free our country from this scourge.

While the Government of Afghanistan does not agree with the entirety of the report and questions some of the methodologies and terminology used and conclusions drawn, we do agree that additional steps are needed to ensure that the treatment of conflict-related detainees better complies with the government’s international obligations, and its legal and moral obligations under the Constitution of Afghanistan. A more detailed description of our technical concerns can be found at the attached enclosure.

The Government of Afghanistan remains fully committed to eliminating torture and ill-treatment and to develop and implement a plan to prevent such acts.

Following the release of the 2015 report, the Government of Afghanistan developed its “*National Plan for the Elimination of Torture*” under the leadership of the National Security Council and in cooperation with security, law enforcement and judicial organizations, and with the participation of national and international human rights organizations and civil society. The government’s *National Plan for the Elimination of Torture* was aimed at more effective implementation of the United Nations Convention against Torture, and included the introduction or amendment of human rights-related legislation, capacity building among key institutions, education and training within the security forces, and increased oversight over the treatment of detainees.

The intensification of Taliban attacks in 2016 slowed Government of Afghanistan progress in many areas of civil development – to include efforts associated with execution of the 2015 National Plan on the Elimination of Torture. Nevertheless, the Government of Afghanistan has made progress in key areas.

We completed an extensive review of Afghanistan’s laws and policies so as to identify and remove any legacy statutes that might impede the government from lifting its reservations to the Convention against Torture and signing the Optional Protocol Optional Protocol to the UN Convention against Torture. We completed this preparatory work over the course of last year. On April 9, 2017, Afghanistan’s cabinet gave its approval to lifting the government’s reservation to the Convention on Torture and for signing the Optional Protocol. This opens the door to enhanced cooperation between the Government of Afghanistan, the United Nations Office of the High Commissioner for Human Rights, and the larger international human rights community in the area of human rights and the prevention of torture – and greater transparency and accountability within Afghanistan’s security and justice ministries resulting from the establishment of a National Preventive Mechanism, to include an even more rigorous inspection regime.

We have established a Human Rights Office within the Office of the National Security Advisor (ONSC) to provide overall oversight over Afghanistan’s National Preventative Mechanism. Led by a Deputy National Security Advisor, the ONSC Human Rights Office will provide national-level oversight over, and coordinates the activities of, subordinate Human Rights Committees already established within the Ministry of Defense (MOD), Ministry of Interior (MOI), and National Directorate of Security (NDS).

The ONSC Human Rights Office is also responsible for the organization and execution of inspections at every step of the detainee chain-of-custody. These inspections will include representatives from the ONSC Human Rights Office and the Attorney General’s Office; and will be accomplished in coordination with the UNHRC Committee against Torture’s Subcommittee on Prevention, and with the welcome participation of UNAMA, the Afghanistan Independent Human Rights Commission (AIHRC), and other relevant international and national human rights organizations to reinforce and complement inspections carried out under the auspices of the Optional Protocol to the UN Convention against Torture.

The ONSC Human Rights Office will also coordinate and track prosecutions of torture and other human rights abuses with the Government of Afghanistan’s Attorney General’s Office (AGO) to ensure such cases are investigated and prosecuted in a timely and effective manner.

Other areas of continuing progress on the National Plan for the Elimination of Torture include:

- (a) Implementation of Presidential Decree 129 on the Elimination of Torture.
- (b) Amendment to the Afghan Penal Code – to ensure proper definition of the term “torture”, and to ensure torture is explicitly prohibited at each stage of the criminal justice system.
- (c) Amendment to the Criminal Procedure Code to prevent extended periods of detention during investigations.
- (d) Establishment of a legal process for Victims of Torture to seek recourse – providing a legal and procedural pathway for victims to obtain compensation from the government.
- (e) Education and capacity building programs to improve essential skills on the detainee pathway. The Government of Afghanistan is incorporating Human Rights and Law of Armed Conflict principles into institutional and organizational training at all levels of the Afghan National Army (ANA), Afghan National Police (ANP), and NDS. A particular focus is initial entry training for soldiers and police given that the majority of alleged abuse occurred at or near the point of arrest and prior to the detainee being processed into a formal detention facility.



The ANP recently held a training curriculum conference at the Central Training Center in Kabul with the specific goal of enhancing Rule of Law and Human Rights training. The review will look at the Initial Police Training Course (IPTC) for basic patrolmen, non-commissioned officers, and officers and focus on such items as the Universal Declaration of Human Rights, Afghan police law as it relates to human rights, and increasing the number of hours for Prevention of Torture training. The MOI will also incorporate into curriculum the findings and recommendations from four MOI commissions sent to Nangarhar, Kandahar, Herat, and Kunduz in response to the UNAMA report MOI GVHR Committee.

Additionally, the Government of Afghanistan is establishing ANA and ANP Mobile Training Teams to conduct annual Human Rights, Law of War and Law of Armed Conflict education and training for ANDSF organizations in remote areas.

The Government of Afghanistan requests international community assistance to enhance the Human Rights training for the ANDSF and to help prevent violations such as those outlined in the UNAMA report. The execution of human rights training will be documented and tracked by the ONSC Human Rights Office and shared with UNAMA and members of the international human rights community on a semi-annual basis.

(f) Implement human rights and torture awareness programs to discredit the use of torture in Afghan society. This includes:

- Programs to ensure Afghanistan's public culture recognizes the damage caused to society by the employment of torture.
- Developing alternative methods of investigation and increasing the capacity of police to collect and preserve evidence to reduce the reliance upon confessions and the incentive that reliance creates to commit torture.
- And harmonization of national and international human rights organization's education and advocacy programs with those of the government.

In moving forward with our partners, and accepting our shortcomings, we will embrace the valued counsel offered and seek to build upon the significant progress we have achieved despite the best efforts of our enemies. We will reflect on the recommendations presented within this report, and will refine our National Plan accordingly. In doing so however we will not be hasty, rather we will be deliberate in the amendment of the Plan and subsequently our laws.

Attached, you will find a succinct overview of our technical analysis of the UNAMA report. We do not in any way seek to avoid our responsibility as a sovereign government but, in the interest of presenting a balanced picture of the situation in Afghanistan and an accurate account of the steps the Government of Afghanistan has already taken, it is necessary for us to note areas and methodologies in the UNAMA report we believe are in error or otherwise provide an inaccurate picture.

## Technical Concerns with the UNAMA 2017 Report

The Government of the Islamic Republic of Afghanistan has reviewed the UNAMA Annual Report on the Treatment of Conflict-Related Detainees; Implementation of Afghanistan's National Plan on the Elimination of Torture and its methodology, and we find it in many ways to be reasonable and helpful. However we would like to respectfully express our concern with the statistical sampling, the precision and consistency in presentation of the data, comparisons of data between reporting periods, and most notably in the statistical inferences made to support assertions throughout this report.

**Sampling Strategy.** Determination, planning and execution of the sampling strategy upon which UNAMA's data is based is neither representative of the detention population as a whole nor is it a random sample. At many stages identifiable biases are introduced and subsequently affect the sample collected or statistical inferences made. All amplify the statistical presentation in a way that presents the situation in a more negative manner.

The UNAMA sampling does not adequately meet the standard of a 'rational sample'. Nor was the sample collected in a manner to reflect the regional dispersion of detainees. Quite the contrary, the UNAMA report clearly states:

*"In line with previous practice, UNAMA's detention monitoring activities focused primarily on those persons held in National Directorate of Security (NDS) and Afghan National Police (ANP) facilities on security related charges, as these individuals are perceived to be most at risk of being subjected to torture and ill treatment." [page 18, Paragraph 2]*

Such a sampling strategy is neither random nor unbiased. Nor will it generate a rational sample.

**Precision and Consistency.** We are troubled by the collation and accounting of the data collected by UNAMA for its report. Despite a detailed review of the report, we have been unable to find coherence of the data presented. It is our unfortunate perception that neither the data sample nor the statistical representation of it has been subjected to adequate mathematical rigor and scrutiny prior to publishing.

For example, at page 35 a table of ANP/ANBP data is presented which does not correlate with the information presented in the text of the report on page 31. This inconsistency is then carried through into the statistical inference and used to support assertions:

**Below, is an extract of the UNAMA data table at page 35 of the report. We label this [Table 1](#):**

Province of ANP detention	Detainees interviewed <sup>67</sup>	Detainees who reported being tortured and/or ill-treated	Percentage Tortured/abused
Kandahar	22	20	91

<sup>67</sup> The numbers used in this table reflect the fact that each individual detainee interviewed may have been held (and in some cases tortured or ill-treated) in multiple locations.

### Information in the UNAMA report’s text relating to recording of detention instances:

“The previous UNAMA reports on detention identified the systematic use of torture or ill-treatment of conflict-related detainees by ANP Kandahar. That assessment remains unchanged for the period covered by the current report. UNAMA interviewed 22 detainees who were held in ANP custody in district and provincial facilities in Kandahar province between 1 January 2015 and 31 December 2016. Of those interviewed, 15 were held in two separate ANP facilities at different times, and four were held in three separate ANP facilities at different times.”

### We present the data drawn from the above UNAMA text our Table 2.

The color highlighting of numbers is done to assist the reader with following them from table to table as we present them.

	Number of interviewees	Generated instances <sup>159</sup> of detention recorded*
Number of those interviewed, who were held in one separate ANP Facilities – interpolated from presented data	3	3
Number of those interviewed, who were held in two separate ANP Facilities	15	30
Number of those interviewed, who were held in three separate ANP facilities	4	12
<b>Totals</b>	<b>22</b>	<b>45</b>

\* Interpolated using the method identified in the footnote given with the data table (as above)

### Below is information from the UNAMA report’s text relating to the recording of instances of torture or ill treatment in detention:

“Twenty of the 22 detainees interviewed (91 per cent) gave credible accounts of having experienced torture or ill-treatment at the hands of ANP Kandahar, with three detainees reporting torture or ill-treatment in two different ANP facilities in the province.”

### Data drawn from the above UNAMA text is presented in our Table 3:

	Number of interviewees	Generated recorded instances of torture or ill-treatment in detention*
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<sup>159</sup> A detention instance is not defined within the report; however, it is inferred as a single detainee being detained within a single facility. A single detainee could be held at more than one facility during his detention (during the period of the report) and so he could provide a record of multiple instances of detention during a single interview.

Number of detainees reporting torture or ill-treatment in two different ANP facilities – interpolated from presented data	3	6
Number of detainees reporting torture or ill-treatment in two different ANP facilities	17	17
<b>Totals</b>	<b>20</b>	<b>23</b>

■ Interpolated using the method identified in the footnote given with the data table (as above)

The impact upon the data/statistical inference presented by UNAMA is significant. We demonstrate this in our [Table 4](#):

Province of ANP detention	Detainees interviewed ■ who had been detained in a ANP facility	Detainees who reported being tortured and/or ill-treated	Percentage Tortured/abused
Kandahar	22	20	91%
Our corrected data drawn from <a href="#">Tables 2 &amp; 3</a>	45	23	51%
Variance	23	3	40%

This type of statistical error, which leads to inaccuracy in the presentation of data, is repeated frequently in the UNAMA report

**Comparisons of Report Data.** When making a comparison of interviews done in prior reporting periods with those accomplished in the current period, it is appropriate – and essential for validity – to conduct a statistical test to determine whether the proportion from one period is different from the other. This has not been done. Validity of comparison requires consistency in sampling strategy between periods.

Our [Table 5](#), below, captures comparison data collected from this and past UNAMA reports.

	2017	2015	2013	2011
Report Duration (months)	24	23	12	11
Facilities visited	62	139	89	47
Provinces visited	29	28	30	22
Men Interviewed	378	685	527	342
Women Interviewed	6	0	3	0
Juveniles Interviewed	85	105	105	37
Total detainees interviewed	469	790	635	379
Proportion of Sample juvenile	18%	13%	19%	10%
Total detention instances	>1,100	1,238	1,064	402
UNAMA Estimate of Detainee Population	Not provided	27,000	5,000	Not provided

The samples bear little resemblance between periods. Yet, the UNAMA report draws inferences – and then makes a number of assertions about the Government of Afghanistan – based on trends it seems to find in such varied statistical sampling.

**Statistical Inferences.** Using a sample to draw conclusions is known as statistical inference. The use of statistical inference underlies many of the assertions made in the UNAMA report. This method was, unfortunately, relied upon despite significant bias in the sampling strategy, a lack of accuracy and consistency in the data, and large data variations in the reporting periods. Because of this, the inferences ultimately made are unsound. The UNAMA report’s statistical inferences do not survive hypothesis tests. For example, as we capture in **Table 6**, below, the UNAMA report makes a statistical inference that torture has **increased 4%** over the previous reporting period; whereas an alternative inference when using data provided in the very same UNAMA reports (and despite bias in sampling) a more reasonable assertion is that there has been **continued improvement** in the treatment of detainees in the care of the Government of Afghanistan.

	2017	2015	2013	2011
Reported instances of torture	181	278	326	166
Total detention instances	>1,100	1,238	1,064	402
Proportion of torture and ill treatment asserted in report	39%	35%	51%	46%
Proportion of torture and ill treatment when all recorded detention instances within a report are considered*	16%	22%	31%	41%

\* Interpolated using the method identified in the footnote given with the data table (as above)