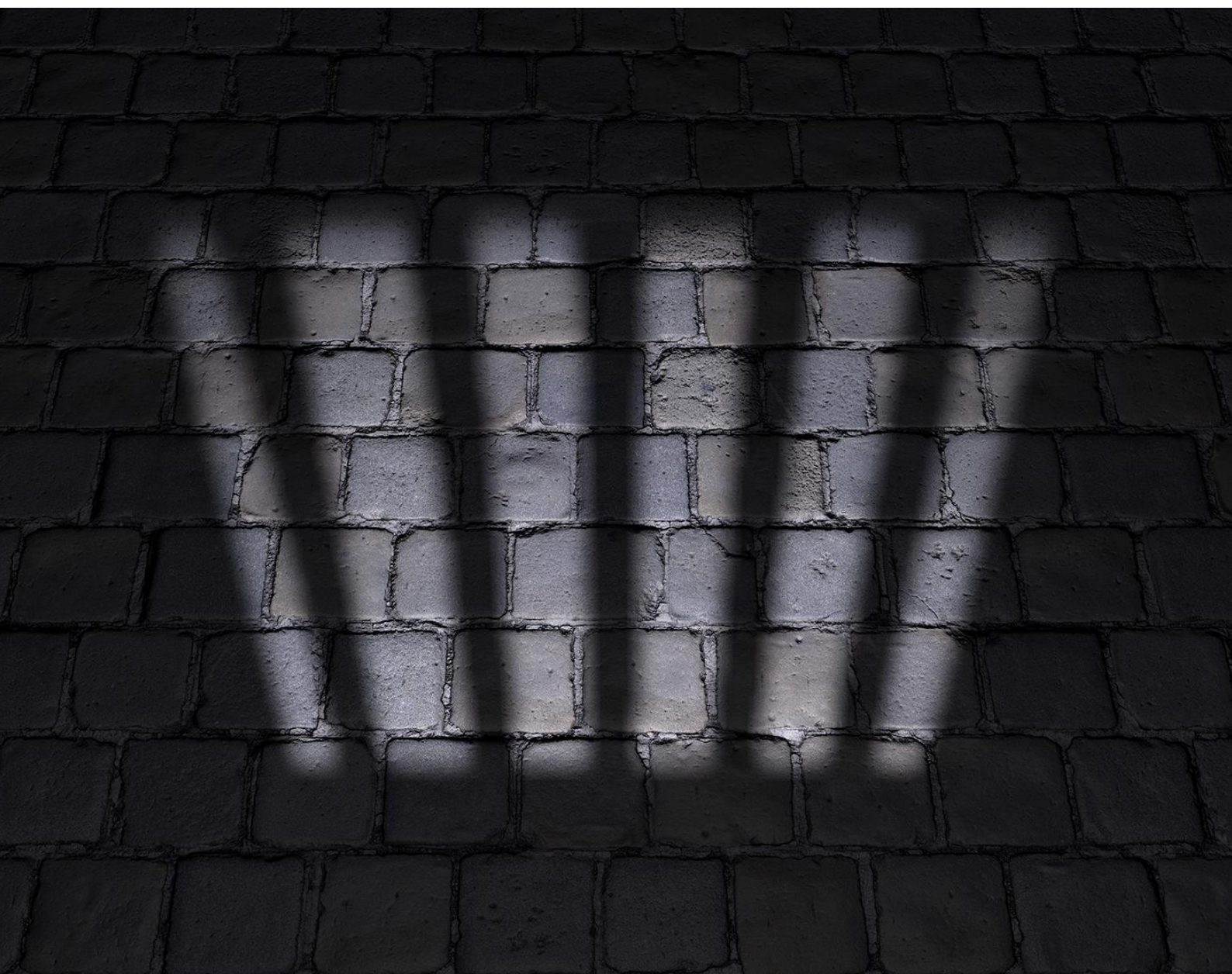


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Prison Conditions in Afghanistan

A commentary

September 2019 (COI included between 1st January 2018 and 31st July 2019)

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N.B. this version corrects typos identified on p.5 and p.9

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Introduction

The most recent UK Home Office Country Policy and Information Note (CPIN) on 'Afghanistan: Prison Conditions' was issued in 2015. Given that the Country of Origin Information (COI) contained in the report was over four years old by the summer of 2019, ARC Foundation decided to undertake research into the current conditions in Afghanistan's detention facilities. Shortly after commencing the drafting of this report, in August 2019, the 'Afghanistan: Prison Conditions' CPIN was archived, meaning that no Home Office guidance to decision makers was available on this issue at the time of publication.

Both the August 2018 UNHCR Eligibility Guidelines on Afghanistan¹ and the June 2019 European Asylum Support Office (EASO) 'Country Guidance' on Afghanistan² provide guidance on the particular profiles with regard to qualification for refugee status. However, neither give such guidance on whether prison conditions in Afghanistan violate the threshold of Article 3 of the European Convention on Human Rights.³

The UNHCR and EASO documents set out that Afghans who seek international protection in Member States of the European Union (EU) and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of EU Directive 2011/95/EU (Qualification Directive), if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.

The August 2018 UNHCR Eligibility Guidelines on Afghanistan find that "applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds that they would face a real risk of the relevant forms of serious harm (death penalty 15 or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs [Anti-Government Elements]".⁴

Similarly, the June 2019 EASO 'Country Guidance' on Afghanistan⁵ states with regards to subsidiary protection that:

[...] **Article 15(b) QD**

As noted in the chapter on Refugee status, some profiles of applicants from Afghanistan may be at risk of torture or inhuman or degrading treatment or punishment. In such cases, there would often be a nexus to a reason for persecution falling under the definition of a refugee, and those individuals would qualify for refugee status. However, with reference to cases where there is no nexus to a Convention ground, the need for subsidiary protection under Article 15(b) QD should be examined.

Under Article 15(b) QD, serious harm consists of torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.

Article 15(b) QD corresponds in general to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The jurisprudence of the European Court of

¹ UNHCR, [Eligibility Guidelines for Assessing International Protection Needs of Asylum Seekers from Afghanistan](#), 30 August 2018

² EASO, [Country Guidance: Afghanistan Guidance note and common analysis](#), June 2019

³ ECHR, [Detention conditions and treatment of prisoners](#), July 2019

⁴ UNHCR, [Eligibility Guidelines for Assessing International Protection Needs of Asylum Seekers from Afghanistan](#), 30 August 2018, I. Executive Summary, 2. Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection, p.6

⁵ EASO, [Country Guidance: Afghanistan Guidance note and common analysis](#), June 2019, III. Subsidiary protection, 2. Article 15(b) QD, p. 77

Human Rights (ECtHR), therefore, provides relevant guidance in order to assess whether a treatment may qualify under Article 15(b) QD.

Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment to which a special stigma is attached.

According to relevant international instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture is understood as:

- an intentional act
- that inflicts severe pain or suffering, whether physical or mental
- for such purposes as obtaining from the person subjected to torture or from a third person information or a confession, punishing the former for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind.

The distinction between torture and inhuman or degrading treatment or punishment is more a difference of degree than of nature. These terms cover a wide range of ill-treatment that reach a certain level of severity.

- Inhuman: refers to treatment or punishment which deliberately causes intense mental or physical suffering (which does not reach the threshold of torture).
- Degrading: refers to treatment or punishment which arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them.

The assessment whether a treatment or punishment is inhuman or degrading further implies a subjective consideration by the person who suffers such treatment or punishment. No specific purpose on the part of the perpetrator (e.g. obtaining information or a confession, punishing, intimidating) is required in this regard.

When examining the need for protection under Article 15(b) QD, the following considerations should be taken into account: [...]

- Arbitrary arrests, illegal detention and prison conditions: Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. Arbitrary arrests and illegal detention centres run by different of actors (linked to the State, to militias, to strongmen or to insurgent groups) are widespread in Afghanistan. In general, human rights are not respected in these illegal detention facilities and persons who face a real risk of being illegally detained by these actors may be in need of protection. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world. Furthermore, it can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where subjecting a person to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. It should also be stressed that in official and unofficial detention centres, torture often takes place.

See also the profile of Individuals accused of ordinary crimes.

Other profiles for which a real risk of serious harm under Article 15(b) QD may exist are, inter alia, children, individuals involved in land disputes and Afghans perceived as wealthy, etc.

Despite affirming the need to take into account prison conditions and listing relevant elements to consider in such an assessment, no COI is included in the EASO 'Country Guidance' specifically on this issue.

It was decided to present the COI on prison conditions according to those issues identified by UK⁶ and European Court of Human Rights case law⁷, the Istanbul Protocol: *Manual on the Effective*

⁶ See 'Legal Notes' in the [Appendix](#)

*Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁸ and the United Nations *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*⁹.

Research has therefore been presented on the following issues in the context of Afghanistan detention facilities:

1. Physical or psychological torture, inhuman or degrading treatment
2. Use of forced confessions
3. Deaths in custody
4. Size of cells, overcrowding [less than 3m² of personal space]
5. Solitary confinement, social isolation, incommunicado detention, constraints to out of cell activities and freedom of movement
6. Unhygienic conditions
7. Restrictions to medical care
8. Irregular or contaminated food and water
9. Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, motor activities, denial of privacy and forced nakedness, exposure to extreme temperatures
10. Number of prisoners on remand and length of pre-trial detention
11. Factors that affect length of pre-trial detention e.g. staffing of judiciary, speed with which cases are heard, corruption, discrimination
12. Effective monitoring
13. Investigations and accountability
14. Redress
15. Impunity for state human rights abuses
16. Death penalty, especially after unfair trials
17. Access to legal representation
18. Separation of and situation for women detainees
19. Situation of detained children
20. Discrimination including freedom to practice religion, special needs including treatment of disabled prisoners

⁷ See for example, European Court of Human Rights, [Detention conditions and treatment of prisoners](#), July 2019

⁸ UN, [Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), 2004

⁹ UN, [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), 17 December 2015

Explanatory Note

This report presents Country of Origin Information (COI) researched by ARC Foundation between 1st January 2018 and 31st July 2019 on issues identified to be of relevance for an assessment of conditions in Afghani detention facilities. It is presented by the themes identified above in chronological order.

The COI presented is illustrative, but not exhaustive of the information available in the public domain, nor is it determinative of any individual human rights or asylum claim.

All sources are publicly available and a direct hyperlink has been provided. A list of sources and databases consulted is also provided in this report, to enable users to conduct further research and to undertake source assessments.

The following reports pre-date the cut-off point of this report and have therefore not been included but provide detailed historical information of prison conditions in Afghanistan:

- ❖ [Integrity Watch Afghanistan, *Behind the Bars, A Labyrinth of Challenges in Prisons in Afghanistan* \(November 2017\)](#)
- ❖ [AIHCR, *The Situation of Detention Centers and Prisons in Afghanistan* \(2009\)](#)

ARC Foundation is grateful to David Neale, Legal Researcher at Garden Court Chambers, for preparing the legal notes and for his guidance in shaping this report.

Disclaimer

This document is intended to be used as a tool to help to identify relevant COI and the COI referred to in this report can be considered by decision makers in assessing asylum applications and appeals. **This report is not a substitute for individualised case-specific research and therefore this document should not be submitted in isolation as evidence to refugee decision-making authorities.** Whilst every attempt has been made to ensure accuracy, the authors accept no responsibility for any errors included in this report.

List of sources consulted

Not all of the sources listed here have been consulted for each issue addressed in the report. Additional sources to those individually listed were consulted via database searches. This non-exhaustive list is intended to assist in further case-specific research. To find out more about an organisation, view the 'About Us' tab of a source's website.

Databases

[Asylos's Research Notes](#)
[EASO COI Portal](#)
[European Country of Origin Information Network \(ECOI\)](#)
[Relief Web](#)
[UNHCR Refworld](#)

Media sources

[Afghanistan Times](#) [officially-funded, English-language]
[Al Jazeera](#)
[Al Arabiya](#)
[Daily Outlook Afghanistan](#) [private English-language]
[Arab News](#)
[Ariana News](#)
[Associated Press](#)
[Inter Press Service](#)
[Institute for War & Peace Reporting \(IWPR\)](#) [Afghanistan pages]
[Khaama Press](#)
[The New Humanitarian](#) [formerly IRIN]
[Radio Free Europe/Radio Liberty](#) [Afghanistan pages]
[Reuters Asia](#)
[Pajhwok Afghan News](#)
[Thomson Reuters Foundation](#)
[TOLO News](#)
[1TV News](#)

Organisations

[Afghanistan Analysts Network \(AAN\)](#)
[Afghanistan Independent Human Rights Commission \(AIHRC\)](#)
[Afghanistan NGO Safety Office \(ANSO\)](#)
[Afghanistan Research and Evaluation Unit \(AREU\)](#)
[Afghanistan Independent Bar Association](#)
[Afghanistan, CSO \(Central Statistics Organization\)](#)
[Amnesty International](#)
[Article 19 \[Freedom of expression and information\]](#)
[Asia Foundation](#)
[Asian Centre for Human Rights \(ACHR\)](#)
[Asian Human Rights Commission](#)
[Assessment Capacities Project \(ACAPS\)](#)
[Association for the Prevention of Torture](#)
[Atlas of Torture](#)

British Agencies Afghanistan Group (BAAG)
Caucasian Knot
Central Asia-Caucasus Institute
Council on Foreign Relations
Death Penalty Worldwide (Cornell Law School)
The Diplomat
Foreign Affairs
Freedom House
Global Detention Project
Global Security
Hands off Cain
Human Rights Watch
Institute for the Study of War
International Bar Association
International Centre for Prison Studies
International Commission of Jurists
International Crisis Group
The International Legal Foundation
International Rehabilitation Council for Torture Victims
Long War Journal
Middle East Institute
Penal Reform
Prison Insider
Samuel Hall
Special Inspector General for Afghanistan Reconstruction
UK Foreign and Commonwealth Office
United Nations Committee Against Torture
United Nations News Centre
United Nations Office of the High Commissioner for Human Rights (OHCHR)
United Nations Reports of the Secretary-General to the Security council
UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
United States Department of State
United Nations Assistance Mission in Afghanistan
UNHCR
UNOCHA
UNODC
World Organisation Against Torture
World Prison Brief

Issues for research

1. [Physical or psychological torture, inhuman or degrading treatment](#)
2. [Use of forced confessions](#)
3. [Deaths in custody](#)
4. [Size of cells, overcrowding \[less than 3m² of personal space\]](#)
5. [Solitary confinement, social isolation, incommunicado detention, constraints to out of cell activities and freedom of movement](#)
6. [Unhygienic conditions](#)
7. [Restrictions to medical care](#)
8. [Irregular or contaminated food and water](#)
9. [Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, motor activities, denial of privacy and forced nakedness, exposure to extreme temperatures](#)
10. [Number of prisoners on remand and length of pre-trial detention](#)
11. [Factors that affect the length of pre-trial detention](#)
12. [Effective monitoring](#)
13. [Investigations and accountability](#)
14. [Redress](#)
15. [Impunity for state human rights abuses](#)
16. [Death penalty, especially after unfair trials](#)
17. [Access to legal representation](#)
18. [Separation of women](#)
19. [Situation of detained children](#)
20. [Discrimination including freedom to practice religion, special needs including treatment of disabled prisoners](#)

1. Physical or psychological torture, inhuman or degrading treatment

[Amnesty International Report 2017/18 - The State of the World's Human Rights – Afghanistan \(22 February 2018\)](#)

[...] Torture and other ill-treatment

Afghans across the country remained at risk of torture and other ill-treatment, with little progress towards curbing impunity. The UN Committee against Torture found “widespread acceptance and legitimization of torture in Afghan society”.

Many of those suspected of criminal responsibility continued to hold official executive positions, including in government. The Committee also found that detainees held by the National Directorate of Security, the Afghan National Police and the Afghan Local Police were subject to “beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse”. UNAMA and OHCHR investigators who had interviewed 469 detainees said that 39% of them gave credible accounts of torture and other ill-treatment during their arrest and interrogation.

In March the government enacted an Anti-Torture Law, which criminalized torture but did not provide for restitution or compensation to victims. [...]

[Afghanistan Independent Human Rights Commission, Summary of the report ‘The Situation of Torture in Detention Centers in Afghanistan’ \(6 June 2018\)](#)

[...] Freedom from torture, cruel, inhuman or degrading treatment or punishment are among the inalienable rights of humans. International human rights instruments have recognized this right and emphasized its unconditional observance and compliance. Likewise, this right is guaranteed by the domestic laws of many countries, including the Afghan Constitution, which emphasizes the need for observance of international human rights instruments,¹ including the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Convention of Civil and Political rights prohibiting the use of torture and ill-treatment and thereby guaranteeing the right to freedom from torture without any restrictions.

In 1396 [2017], the government of the Afghanistan has made good progress in the field of legislation and fighting torture. The Law on the Prohibition of Torture and the Penal Code define torture in accordance with the International Convention on the Elimination of Torture and has considered the acts of torture as a criminal offense and determined punishment for its perpetrators. The abolition of the right to reservation, Optional Protocol to the Convention on the Prohibition of Torture was ratified and approved. In addition, under the Law on the Prohibition of Torture, the commission on the Prohibition of Torture chaired by the AIHRC was established. The commission, along with the AIHRC, is one of the special mechanisms that can monitor and investigate torture with strong legal authority.

Approval of The Law on the Prohibition of Torture

The law on the prohibition of torture was approved on 14/12/1395 by Decree No. 246 of the President of the Islamic Republic of Afghanistan. This law is one of the best achievements of the Afghan government towards the elimination of torture that reflects the will of the Afghan government to implement international human rights obligations. The law defines torture in accordance with the International Convention Against Torture and explicitly prohibits torture of persons. According to the law torture is a crime and the perpetrators are to be punished. According to this law, perpetrators of torture can be sentenced to imprisonment and compensation.

Approving the Penal Code

Fortunately, the Afghan Penal Code has recently been enforced. This Penal Code prohibits torture entirely and deems torture as a crime. One of the features of the Penal Code is that torture is comprehensively defined. While there was no comprehensive definition of torture in the previous criminal law. Comprehensive definition of torture and the determination of penalties for the

perpetrators of torture in more detail, including the aggravated cases of this crime can be one of the improvements made by the Afghan government in combating torture.

Ratifying of the Convention on the Prohibition of Torture and its Optional Protocol and the lifting of reservation

A few years ago, the AIHRC officially requested the Government of Islamic Republic of Afghanistan to accede to the Optional Protocol to the Convention on the Prohibition of Torture, as well as lift its reservation concerning the Convention on the Prohibition of Torture. The AIHRC made advocacy to the Ministry of Foreign Affairs, the Ministry of Justice and the Office of the President on this regard, and urged them to take practical steps to accede to the Optional Protocol and to lift its reservations. Fortunately, this request was answered positively by the Afghan government. The President of the Islamic Republic of Afghanistan ratified the Convention on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, and the Optional Protocol to the Convention against Torture. The United Nations also signed the Afghanistan Accession Treaty on April 18, 2018, based on which the Optional Protocol to the UN Convention on the Elimination of Torture has been enforced since May 17, 2018, and is currently enforceable.

Formation of the Commission on the Prohibition of Torture

The Commission on the Prohibition of Torture was established under the Chairmanship of the Chairperson of the AIHRC based on the provision of Article 11 of the Law on the Prohibition of Torture on Monday, Hamal 28, 1396, and its existence was announced with the conduction of its first meeting. The Commission was established based on the provision of Article 11 of the Law on the Prohibition of Torture in order to prevent torture and to follow up its cases. The law prohibits torture for the purpose of observing and protecting human dignity, ensuring the rights of suspects, accused and the convicts, preventing the use of torture and protecting victims and witnesses, prosecuting the perpetrators of the crime of torture and providing compensation to the victims, based on Legislative Decree No. 246 of the President of the Republic of Afghanistan dated 14/12/1395.

Although progress has been made in the area of legislation to prevent torture, but there has still not been a significant achievement in reducing torture cases. Some of the suspects and defendants are still being tortured in some of the detention facilities, especially in detention centers and in places of custody of the ANP and NDS.

Although the number of cases of torture has declined in recent years compared with previous years, some suspects and defendants are still being tortured during the arrest or during the interrogation in some detention facilities. The suspects and defendants are tortured for eliciting confessions and information or for punishment. The suspect and the accused persons are being tortured and battered during the arrest. Torture and battery take place during the arrest due to the suspect's and defendant's resistance, and sometimes for punishment or taking revenge.

Based on the assessment and information obtained by the AIHRC, through conduction of numerous monitoring and interviews with 621 suspected and accused persons at detention centers in 1396, 79 cases of torture were recorded in these offices. The comparison of the statistics of torture in 1396 with that in 1395 indicates a fall of more than 22%. In 1395, 102 cases of torture were registered at the regional and provincial offices of the AIHRC.

It must be said that cases of torture have been fluctuating in recent years, some years the figures have been rising, but in other years it has been declining. In 1391, 73 cases, in 1392, 74 cases, in 1393, 305 cases, in 1394, 93 cases and in 1395, 102 cases and in 1396, 79 cases of torture were registered in the AIHRC's Offices.

In 1396, the police committed the highest number of torture. Of 79 cases of torture, registered in 1396, 62 cases were perpetrated by the Police. Other 13 cases were perpetrated by NDS, and 4 cases of torture by ANA soldiers.

AIHRC while appreciating the significant achievements of the Government of Afghanistan in the area of torture, expresses its concern regarding the existence of torture in the detention centers, and

presents the following recommendations to the Afghan government, in particular the defense, security and justice organs:

The AIHRC suggests to the Ministry of the Interior and NDS that those officials of the departments who have been charged with or suspected of torture should not be appointed in important security positions.

The AIHRC requests the Ministry of Interior and the NDS to provide effective monitoring ground for the AIHRC's monitors, so that they can individually interview individuals under the custody or detention.

The AIHRC requests defense and security organs to train prohibition of torture to all its staff, especially those dealing with suspects and defendants.

The AIHRC requests justice and judicial authorities to seriously prosecute torture cases in accordance with applicable laws and punish their perpetrators.

The AIHRC requests the Attorney General's Office to carefully investigate and prosecute torture cases and prosecute the perpetrators.

The AIHRC requests the Ministry of Justice to implement United Nations recommendations on the prohibition of torture and to prepare and adopt a clear and enforceable action plan for the effective implementation of those recommendations.

AIHRC suggests to the National Directorate of Security (NDS) that, in accordance with the laws of the country, pave the ground for the lawyers to have access to their clients within legal time. [...]

1 Government of the Islamic Republic of Afghanistan, Constitution, 1382, Article 7, publication of AIHRC.

[FCO – UK Foreign and Commonwealth Office, Human Rights and Democracy: the 2017 Foreign and Commonwealth Office report \(16 July 2018\)](#)

[...] Chapter 5: Human Rights Priority
Afghanistan

[...] In a report from UNAMA in April²² entitled 'Treatment of Conflict-Related Detainees in Afghan custody', 39% of detainees interviewed gave credible accounts of having been tortured or ill-treated. Most cases allegedly took place in the custody of the National Directorate of Security or of the Afghan National Police. The UN Secretary General's Special Representative for Afghanistan expressed serious concern, but acknowledged "the genuine commitment and the efforts of the government to deal with this issue". The Afghan government announced a series of welcome measures, including lifting Afghanistan's reservation to the Convention Against Torture, signing its Optional Protocol, and establishing a National Preventative Mechanism. [...]

22 https://unama.unmissions.org/sites/default/files/24april_2017-_torture_of_detainees_in_afghanistan_persists_-_un_report_english.pdf

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session, 21 January-1 February 2019, Summary of Stakeholders' submissions on Afghanistan* Report of the Office of the United Nations High Commissioner for Human Rights \(6 November 2018\)](#)

[...] C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Human rights and counter-terrorism²⁴

19. HRW noted that while the government has fulfilled its obligation to bring national legislation into conformance with the Convention against Torture, incorporating the crime of torture in domestic law, it has not enforced the law. However, amendments to the Criminal Procedure Code 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. Such provisions increase the risk of torture.²⁵ [...]

24 For relevant recommendations see A/HRC/26/4, paras. 136.81.

25 HRW, p. 2.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session, 21 January–1 February 2019, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Afghanistan \(13 November 2018\)](#)

[...] B. Rule of law and good governance²⁶

[...] Prevention of torture²⁹

[...] 66. Article 29 and 30 of the Afghanistan Constitution prohibits torture, inhuman treatment and cruel punishment and dismisses any confession obtained as a result of torture.

67. The provisions of the Convention against Torture have been incorporated in the Afghanistan new Penal Code. The Law on Prohibition of Torture was enacted in 2017, which based on its article 11 the GoIRA obliged to create the Commission on Prohibition of Torture. In 2018, the GoIRA acceded to the Optional Protocol to CAT without any reservation. From 2016-2018, 783 cases of torture have been registered from which 643 being under legal persecution.³⁰ [...]

26 Recommendation 15, 39 and 89.

29 Recommendation 82 and 84.

30 Voluntary Commitments A/72/377 Nr. 4 (a).

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

1. Right to life, liberty and security of person¹⁹

[...] 16. The Committee against Torture remained deeply concerned by the specific situation of national security-related detainees, or conflict-related detainees, who were most at risk of being subjected to acts of torture or ill-treatment. The Committee was further concerned by reports that torture and physical abuse were widely and increasingly practised by the National Directorate for Security, the Afghan National Police and the Afghan Local Police, primarily to extract confessions or information to be used in criminal proceedings.³¹ UNAMA acknowledged the genuine efforts made by the Government to address those concerns. However, it found compelling indications that detainees experienced torture during interrogation in numerous detention facilities run by the National Directorate for Security and the Afghan National Police throughout the country, including reports of torture and ill-treatment of juvenile detainees by the Afghan National Police and the Afghan National Border Police. The Mission also documented credible allegations of extrajudicial killings of individuals taken into custody by the same authorities in Kandahar. It concluded that only the credible prospect that those who committed torture would be held to account would deter those who carried out such crimes. The Mission reported that the Office of the Prosecutor of the International Criminal Court (ICC) had determined that there had been a reasonable basis to believe that war crimes of torture and related ill-treatment had been committed by government forces since 2003. It noted that there were allegations of the continuing commission of such war crimes up to the present day.³² OHCHR/UNAMA reported that the new Anti-Torture Law, approved by the parliament on 15 July 2018, would be sent to the President for endorsement.³³

17. The Committee against Torture was concerned that foreign elements were involved in the running of detention centres where national security-related detainees were held. It recommended

that Afghanistan cooperate with the International Criminal Court and ensure that any foreign adviser or consultant respected the Convention against Torture.³⁴ The Committee urged Afghanistan to ensure that all instances and allegations of torture and ill-treatment were investigated promptly, effectively and impartially by an independent body; and ensure that alleged perpetrators were prosecuted and, if found guilty, convicted in accordance with the gravity of the acts committed.³⁵ The Committee urged Afghanistan to acknowledge its obligation to victims of torture and guarantee that they benefited from effective remedies and could obtain redress.³⁶

18. The same Committee remained concerned by the widespread practice of arbitrary and illegal detention³⁷ and by the credible allegations that detainees in Parwan detention facilities were routinely tortured. It urged Afghanistan to take immediate measures to ensure that the administration of Parwan was transferred from the Ministry of Defence to the Ministry of Justice.³⁸ [...]

19 For relevant recommendations, see A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

31 CAT/C/AFG/CO/2, para. 9

32 OHCHR/UNAMA, “Treatment of conflict-related detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture” (Kabul, Afghanistan, April 2017). pp. 5, 7–8, 33, 35, 61 and 63. See also ICC, Report on Preliminary Examination Activities 2016 (14 November 2016) pp. 43–51. Available from www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

33 OHCHR/UNAMA submission, p. 6. See also OHCHR/UNAMA, “Treatment of conflict-related detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture” (Kabul, Afghanistan, April 2017).

34 CAT/C/AFG/CO/2, paras. 19–20.

35 Ibid., para. 12.

36 Ibid., para. 42.

37 Ibid., para. 13.

38 Ibid., paras. 17–18.

[Civil Society and Human Rights Network \(CSHRN\) and The World Organisation against Torture \(OMCT\), Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment \(UNCAT\) & Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan’s Second Periodic Report \(16 November 2018\)](#)

[...] B. Recommendation 8 (C) Culture of impunity

3. In its concluding observations, the Committee expressed deep concern about the general climate and the culture of impunity regarding torture in Afghanistan and the involvement of senior State officials in a large number of cases of alleged human rights violations. The Committee recommended the government of Afghanistan:

(c) To ensure that all candidates for official executive positions have not perpetrated any human rights violations and, if found responsible for past human rights violations, including torture, are not nominated.

4. On this recommendation, the government’s follow-up report reads as follows “*to this end, the Administrative Office of the President sends the CVs of candidate ministers, provincial governors and district governors to Afghanistan Independent Human Rights Commission (AIHRC) well before their appointments. The AIHRC background checks the candidates for human rights violations and committing of torture and reports the findings to the Administrative Office of the President and thus prevents the appointment of individuals accused and/or convicted of clear violations for human rights*”.

5. As per the information gathered by civil society and through discussions with senior AIHRC staff members, this is unfortunately not correct. The CVs of the candidate ministers, provincial governors and district governors have never been sent to the AIHRC for background checks on their human rights compliance. We encourage the government to follow the procedure described in their follow-up report.

6. In the context of the culture of impunity for torture cases and the involvement of State officials, we would like to expose three emblematic cases which have taken place since the adoption of the Concluding Observations. The first case is the arrest of Nizamuddin Qaisari,² a district police chief, on 2 July 2018. He was arrested together with his bodyguards and allegedly tortured at the hands of security officials. As will be described, there are still question marks regarding possible implications of top executive officials in the case.

7. On 2 July 2018, Nizamuddin Qaisari was arrested together with his 29 bodyguards after allegedly threatening security officials during a security meeting.³ Mr. Qaisari and his 29 bodyguards were reportedly ill-treated and tortured and three of the bodyguards were killed.⁴ Mr. Qaisari was transferred to Kabul immediately after his arrest where his whereabouts remained unknown to his family, the AIHRC and civil society organisations for two weeks. During this time, Qaisari had no access to a defense lawyer and later Mr. Qaisari told the media that he was given electric shocks for three days while in custody.⁵

8. On 14 July 2018, a video emerged on social media showing Afghan security forces (army commandos and National Directorate of Security officers) using profane language, kicking blood-soaked detainees identified as bodyguards of Mr. Qaisari, and stepping on their heads while posing for the camera.⁶

9. On 15 July the President ordered an immediate probe into the alleged misconduct of the security forces following the release of the above-mentioned video.⁷ Mr. Qaisari claimed that Dr. Yasin Zia, the deputy of the National Security Council was behind his arrest.⁸ Mr. Qaisari is from the Uzbek minority in Afghanistan. It is believed that President Ghani is in pursuit of sidelining other ethnicities, such as the Uzbek minority, to consolidate power.

10. On July 21, members of the Afghan Anti-torture Commission (appointed by the government) asked representatives of the Ministry of Defense and the National Directorate of Security – also members of the Anti-torture Commission – to follow-up on the case of Mr. Qaisari, to identify and hold the perpetrators to account. This request was also communicated via an official letter. However, on 14 October 2018, during the last meeting of the Afghan Anti-torture Commission, representatives of the Ministry of Interior, the Ministry of Defense and the National Directorate of Security stated that no action had been taken so far regarding ensuring accountability in Mr. Qaisari's case.

11. Afghan civil society organizations are concerned that the possible implications in this case of top executive officials will not be investigated and that focus will be put on lower ranking officers. There is a persistence of the sentiment that executive officials are untouchable for torture cases in Afghanistan.

12. The second emblematic case is the one of Mohammad Hussain Shujaie.⁹ At dawn on October 6, 2018, around 30 officers from Army Commandos, Intelligence and Police forces, reportedly stormed a house in Asad Abad village of Lal-o-Sarjungle district of Ghor province. The security officers were in pursuit of a local commander, Alipoor, nicknamed as Commander Shamsheer. Mr. Shujaie was the bodyguard of Mr. Alipoor and was present in the house in Asad Abad. Security forces accuse Mr. Alipoor of owning illegal arms and leading an illegal squad of armed people. Whereas Mr. Alipoor himself, a Shia Islam follower from Hazara ethnicity, as well as a great part of the citizens of the Ghor province, also Hazaras, claim that Mr. Alipoor forms part of the local resistance against the Taliban and ISIS insurgents.

13. Between 9:00 - 10:00 am on October 6, 2018, Mr. Alipoor, together with his men – including Mr. Hussain Shujaie – and with the support of local communities, disguised himself and broke the house siege and escaped on motorbikes. The security forces guarding the house became aware of the break out and chased the motorbikes. They fired on the escapees and the last motorbike carrying Mohammad Hussain Shujaie and a man from the local community were hit. During this incident eight civilians were killed including two women and a child; 18 others were injured. According to eyewitnesses, the security forces were allegedly deliberately shooting towards civilians with excessive use of force.¹⁰

14. The security forces arrested Mr. Hussain Shujaie and they tied him to a rope fastened to a police vehicle. They towed him to the house from where he had escaped. Mr. Hussain Shujaie was towed approximately four hundred meters on unpaved roads, stones and bushes. Afterwards, the security officers untied him and threw him in a police vehicle and moved him to the capital of the Ghor province. Allegedly, Mr. Hussain Shujaie was tortured to death while in police custody. After two days his body was delivered to his family. While his family and local mourners were washing his body for burial there were signs of torture on his body; bruises; pebble stones rammed into his flesh due to being towed; and, deep wounds, mainly on his thighs.¹¹ It would be impossible for such a grave incident to occur without the knowledge and possible consent of higher officials.

15. The third emblematic case is the one of Mahdi Kazemi. On 6 August 2018, Mr. Kazemi, from Nowa- bad district of Saripul Province was arrested on charges of drug trafficking and kept in the police station for hours. During this time, he was allegedly tortured by the Office-in charge of the second police district of the Province, Mr. Maiwand. Reportedly, Mr. Kazemi was given electric shocks and was beaten up with a metal cable.¹² Zabihullah Amani the provincial governor's spokesperson confirmed the torture to media and affirmed that the perpetrator of the beatings, Mr. Maiwand, was under police investigation.

16. However, with later follow-up the Afghan anti-torture coalition found out that Mr. Maiwand was not under police investigation; on the contrary the victim, Mr. Kazemi, had to leave Saripul Province for Mazar-Sharif and eventually to Kabul, following threats from Mr. Maiwand.

17. Afghan civil society organisations are worried that the cases of Mr. Qaisari, Mr. Hussain Shujaie and Mr. Kazemi are only the tip of an ice berg and show that Afghan authorities and officials only pay lip service to fighting torture and addressing the possible involvement of high-level officials in such cases. Afghan civil society organisations are very concerned by the reported cases of torture and underline the absolute and unequivocal prohibition of torture and the obligation to bring the perpetrators to justice.

18. Given what has been stated above, Afghanistan cannot be considered having implemented follow-up recommendation number 8 (C) and should therefore be assessed with a C.

[...] E. Noteworthy developments since the adoption of the Concluding Observations

[...] 32. The Afghan civil society anti-torture coalition would like to draw the Committee's attention to five cases of reported torture in the Kandahar Province that have taken place in March 2018, to show the seriousness and persistence of torture and ill-treatment in Afghanistan. The Afghan civil society anti-torture coalition met with the victims in Kandahar's detention facility and all the statements were concurring and coherent. In this report, the names of the individuals have been altered to protect their security.

33. On 3 March 2018, representatives of the Afghan anti-torture coalition met Mahmood who was arrested a few days earlier on the charges of acts of terrorism in the Kandahar Province. He claimed that he was tortured by the police at the time of arrest and also when being held in the police station. The signs of torture were still visible on several spots on his body. Despite several complaints to judicial authorities no action had been taken.

34. On 12 March 2018, representatives of the Afghan anti-torture coalition met Abdullah at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and in custody. His right leg was severely hurt, and he could hardly walk. Signs of beatings were also visible on several areas of his body.

35. On 26 March 2018, representatives of the Afghan anti-torture coalition met Mustafa at the Kandahar detention facility. He alleged that he was tortured by police at the time of arrest and in detention. Signs of torture were visible on both his feet and hands. He was arrested on charges of acts of terror.

36. On 26 March 2018, representatives of the Afghan anti-torture coalition met Wali at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and in custody. Signs of torture were visible on his right foot and left hand. Medical documents from Public Health authorities confirm his claims. He was arrested on charges of terrorism.

37. On 26 March 2018, representatives of the Afghan anti-torture coalition met Ghani at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and also later in the police station. Signs of torture were visible on both his feet, hands and buttocks. He was arrested on charges of terrorism.

38. All of the five cases mentioned above have been presented to relevant authorities by the victims' defense lawyers, but no action has been taken so far. [...]

2 Nizamuddin Qaisari is a close ally of General Dostum who also leads local resistance against Taliban and ISIS forces. General Dostum, current first Vice-president, and the leader of the Junbish Milli Islami was forced to leave Afghanistan after he was accused of abducting and sexually assaulting a political opponent Ahmad Eshchi the former governor of Jawzjan province. He left Afghanistan to receive medical treatment and lived in a self-imposed exile in Turkey for over a year. However, Mr. Dostum rejected the accusation calling it a made-up story against him. The Ghani-Dostum differences surfaced not too long after President Ghani took office. In several events, Dostum, publicly complained that despite his role in securing Ghani the presidency, he is not heard by the President.

3 <https://etilaatroz.com/62931/%D9%81%D8%B1%D9%87%D9%85%D9%86%D8%AF-%D9%86%DB%8C%D8%B1%D9%88%D9%87%D8%A7%DB%8C-%D8%A7%D9%85%D9%86%DB%8C%D8%AA%DB%8C-9-%D9%86%D9%81%D8%B1-%D8%A7%D8%B2-%D8%A7%D9%81%D8%B1%D8%A7%D8%AF-%D9%82%DB%8C/> accessed 2018-10-10.

4 <https://www.hushdar.com/1397/04/23/afghan-parliament-reaction-2/> accessed 2018-10-10.

5 <http://khabarnama.net/blog/2018/08/11/how-qaisari-was-arrested-and-tortured/> accessed 2018-10-10.

6 <https://www.khaama.com/ghani-orders-immediate-probe-into-alleged-misconduct-by-afghan-forces-05582/> accessed 2018-10-10.

7 Ibid.

8 Ibid.

9 <https://etilaatroz.com/66738/%D8%B9%D9%85%D9%84%DB%8C%D8%A7%D8%AA-%DA%A9%D9%88%D8%B1-%D8%AF%D8%B1-%D8%BA%D9%88%D8%B1%D8%9B-%DA%A9%D8%B4%D8%AA%D8%A7%D8%B1-%D8%BA%DB%8C%D8%B1%D9%86%D8%B8%D8%A7%D9%85%DB%8C%D8%A7%D9%86-%D9%88-%D8%A7/> accessed 2018-10-24.

10 Ibid.

11 Ibid. See also Annex A – photo of Mr. Shujaie published in various media outlets (Mr. Shujaie's family agreed to the publication of the photo).

12 <https://yash.news/?p=21707> accessed 2018-10-10.

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] I. Executive Summary

[...] 2. Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection

[...] Afghans who seek international protection in Member States of the European Union (EU) and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of EU Directive 2011/95/EU (Qualification Directive), if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.¹⁴ In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds that they would face a real risk of the relevant forms of serious harm (death penalty¹⁵ or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.¹⁶

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

[...] Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below).¹²⁶

[...] In successive reports, UNAMA has documented the widespread use of torture and ill-treatment of

conflict-related detainees held by the National Directorate of Security (NDS), the Afghan National Police (ANP), the Afghan Local Police (ALP) and the Afghan National Army (ANA).¹²⁸ Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.¹²⁹ Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers.¹³⁰ Public statistics on the number of conflict related detainees held outside the regular prison system are not available.¹³¹ In June 2017, the UN Committee Against Torture expressed its deep concern about the general culture of impunity, with perpetrators of war crimes and gross human rights violations, including torture, still holding or having been nominated for official positions, including in government.¹³² The Committee expressed its concern that this in turn contributes to creating widespread acceptance and legitimization of torture in Afghan society.¹³³ [...]

[...] Arbitrary and illegal detention reportedly remain widespread.¹³⁵ Law enforcement agencies reportedly use torture in order to coerce confessions from detainees, particularly conflict-related detainees.¹³⁶ There are reports of female prisoners being subjected to sexual abuse and bullying.¹³⁷

[...] 4. Civilians Suspected of Supporting Anti-Government Elements

The Constitution provides that no one shall be arrested or detained without due process of law, and contains an absolute prohibition on the use of torture.³⁴² The use of torture is criminalized in the Penal Code,³⁴³ while harsh punishment against children is prohibited in the Juvenile Code.³⁴⁴ Additionally, in January 2018 the upper house of the National Assembly approved the consolidated text of a new antitorture law.³⁴⁵ Despite these legal guarantees, concerns have been raised about the use of torture and cruel, inhuman or degrading treatment against detainees, especially conflict-related detainees accused of supporting AGEs, in detention facilities operated by the NDS, ANP (including the Afghan National Border Police, ANBP), ANA and ALP.³⁴⁶ In 2017 UNAMA reported that the use of torture was “systematic or regular and prevalent” in NDS facilities in five provinces,³⁴⁷ “with sufficiently credible and reliable reports of torture in NDS custody recorded in 17 other provincial and national NDS facilities”.³⁴⁸ UNAMA also documented a “systematic use of torture and ill-treatment” in ANP or ANBP detention facilities in Kandahar and Nangarhar provinces,³⁴⁹ as well as “reports of violations in 20 other provinces, with particular concerns over the treatment of detainees by the ANP in Farah and Herat provinces”.³⁵⁰ Among the detainees who were found to have been subjected to torture were children.³⁵¹

UNAMA also reported incidents of extrajudicial killings and enforced disappearances of detainees held

by the ANP and ALP.³⁵² Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.³⁵³ Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.³⁵⁴

Concerns also continue to be raised about arbitrary detention.³⁵⁵ In addition, amendments to the Criminal Procedure Code introduced in 2015 “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”, leaving suspects more vulnerable to ill-treatment.³⁵⁶

[...] ALP and ANDSF officers as well as members of pro-government armed groups also reportedly use threats, intimidation and physical violence against civilians suspected of supporting AGEs,³⁵⁸ while in some instances such civilians have reportedly been killed,³⁵⁹ including family members of AGE [Anti Government Element] recruits.³⁶⁰

[...] In light of the foregoing, UNHCR considers that civilians suspected of supporting AGEs [Anti Government Elements] may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State for reasons of (imputed) political opinion or other relevant Convention grounds,

depending on their individual profile and circumstances of the case. [...]

14 Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and

individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, arts 2(f), 15.

15 Article 170 of Afghanistan's revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of hudood crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; hudood punishments include execution and stoning to death. See also, Hossein Gholami, Basics of Afghan Law and Criminal Justice, undated, http://www.auswaertigesamt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal_Manual.pdf; Cornell Law School, Death Penalty Database, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

16 It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

126 International Criminal Court, Public Redacted Version of "Request for Authorisation of an Investigation Pursuant to Article 15", 20 November 2017, ICC-02/17-7-Conf-Exp, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-7-Red>, pp. 78-86; UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

128 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html> (earlier reports were published in 2015, 2013 and 2011); UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 9, 25.

129 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 45-46, 50-53, 59; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 11, 17.

130 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 34. UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

131 SIGAR, Quarterly Report to the United States Congress, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

132 UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11, 15.

133 Ibid., para. 7. [...]

135 UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 13, 15, 17, 25; UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

136 "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." UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 7, and see more generally pp. 6-7, 13; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 27.

137 The Diplomat, The Women in Afghanistan's Moral Prisons, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistansmoral-prisons/>; Daily Times, Torture and Sexual Violence in Afghanistan, 13 February 2017, <https://dailytimes.com.pk/29186/torture-andsexual-violence-in-afghanistan/>; HRW, Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>.

342 Articles 27 and 29 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. Afghanistan has ratified the Convention Against Torture (CAT). On 17 April 2018 it acceded to the Optional Protocol, which establishes a system of independent monitoring visits to detention centres. See <http://indicators.ohchr.org/> for ratification status. Afghanistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subject to arbitrary arrest or detention (Article 9).

343 Afghanistan, Penal Code, as published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 450 and 451.

344 Afghanistan, Juvenile Code, as published in the Official Gazette No. 846, 23 March 2005, <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/>, Article 7.

345 “The draft law contains a revised definition of the crime of torture in domestic law that is consistent with the definition contained in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It also sets out provisions allowing victims of torture to claim redress in civil and criminal courts.” UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 29. See also, *Afghanistan Times*, ED: Anti-Torture Law Approved, 24 December 2017, <http://afghanistantimes.af/ed-anti-torture-law-approved/>; *Pajhwok Afghan News*, MPs Endorse Anti-Torture Law in Prisons, 23 December 2017, <https://www.pajhwok.com/en/2017/12/23/mps-endorse-anti-torture-law-prisons>.

346 UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html> (hereafter: UNAMA, *Treatment of Conflict-Related Detainees*, April 2017), pp. 6-7. In June 2017 the UN Committee Against Torture expressed its concern over “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 9. See also, HRW, *Afghanistan's Entrenched Systemic Torture*, 19 April 2017, <https://www.hrw.org/news/2017/04/19/afghanistans-entrenched-systemic-torture>.

347 “The high levels of torture and ill-treatment by NDS in Kandahar and Farah suggest the systematic 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.” UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 24. According to UNAMA, especially the “treatment of detainees by NDS in Kandahar remains a major concern. 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.” *Ibid.* Similarly, in June 2017 the UN Committee Against Torture expressed deep concern especially regarding the situation in Kandahar province following numerous reports on “(a) the worrisome number of detainees of the National Directorate of Security and the national police who have allegedly experienced torture or ill-treatment, including suffocation, crushing of the testicles, water forcibly pumped into the stomach and electric shocks; and (b) the allegations that the national police have been responsible for incommunicado detention, enforced disappearances, mass arbitrary detention and extrajudicial killings, during counterinsurgency operations.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

348 UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 8. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 9.

349 UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 31. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

350 UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 9. Of the 172 detainees in ANP custody interviewed by UNAMA between 1 January 2015 and 31 December 2016, 77 (45 per cent) gave credible accounts of being subjected to torture or other forms of ill-treatment. This represents a 14 per cent increase compared to the previous observation period and is the highest level of reported torture and ill-treatment in ANP custody since UNAMA began its systematic monitoring of conflict-related detainees in 2010. 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. UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 31.

351 Overall, of the 85 underage detainees interviewed by UNAMA between 1 January 2015 and 31 December 2016, 38 (45 per cent) gave credible accounts of being subjected to torture or ill treatment whilst in the custody of ANDSF. UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, pp. 6-7, 9, 24. In June 2017 the UN Committee Against Torture stated that it was “deeply concerned by the numerous allegations that at least 160 children in Parwan are detained with and under the same regime as adult detainees [...] the Committee is further concerned by reports that minors associated with armed groups involved in insurgent movements are being punished instead of rehabilitated.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 17. In December 2016, 167 boys were detained on national security charges, including for alleged association with armed groups. UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.htm>, para 23.

352 UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 9, 10, 33-34.

353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2,

<http://www.refworld.org/docid/596f4f754.html>, para 9. “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.” UNAMA, Treatment of Conflict Related Detainees, April 2017, p. 6; see also *ibid.*, p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

355 UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 3. See also, UN General Assembly, The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 73.

356 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 11; see also, AAN, Torture as Prevalent as Ever: New UN Report Finds No End to Impunity for Afghan Torturers, 24 April 2017, <https://www.afghanistan-analysts.org/torture-as-prevalent-as-ever-new-un-report-finds-no-end-to-impunity-for-afghan-torturers/>; UNAMA/OHCHR, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html>, paras 52-54; AAN, Casting a Very Wide Net: Did Ghani Just Authorise Interning Afghans Without Trial?, 21 January 2016, <https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/>; HRW, Afghanistan: Reject Indefinite Detention Without Trial, 15 November 2015, <http://www.refworld.org/docid/564b4a124.html>.

358 In 2017 UNAMA documented 13 incidents of threat, intimidation, and harassment by ALP officers, causing the injury of 12 civilians, including severe beating of civilians, burning of homes, and harassment of staff and patients at medical facilities. On 4 October 2017, in Ali Abad district, Kunduz province, ALP officers blocked the movement of approximately 100 village residents to the district centre and bazaar, preventing them from attending work and selling their goods in the bazaar after accusing the residents of supporting AGEs, reportedly due to the ethnicity of the residents. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 50. Additionally, in 2017 in Sari Pul city, ALP burnt down at least four homes of civilians they believed related to AGEs and tortured one man by beating him to the an extent requiring hospitalization in retaliation for the AGE abduction of five sons of an ALP commander. UNAMA, Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 59.

359 For example, in 2017 UNAMA reported that a 60-year old man suspected of supporting the Taliban was shot death by ANP officers, following his arrest in Shah Wali Kot district, Kandahar province. Additionally, civilian victims reportedly mistaken for AGE members by ANDSF accounted for 38 civilian casualties in 2017, including 23 civilians killed and 15 injured during 26 incidents. UNAMA also recorded an incident of ALP opening fire on residents of Darzab district, Jawzjan province on 18 July 2017 after accusing the residents of providing food, water and shelter to Islamic State fighters, injuring a woman and two men. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 48-49.

360 On 8 May 2017 in Almar district, Faryab province, pro-Government armed group members reportedly shot dead the father of an AGE recruit, while on 17 April 2017 in the same district, pro-Government armed group members shot dead another civilian related to an AGE member. UNAMA, Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 60.

[Document #2012982; FCO – UK Foreign and Commonwealth Office: Human Rights and Democracy: the 2018 Foreign and Commonwealth Office report](#)

[...] Chapter 5: human rights priority countries
Afghanistan

[...] The Afghan government has been able to reduce, but not eliminate, instances of torture and ill-treatment of people detained by the Afghan National Police and National Directorate of Security, since the publication of UNAMA’s 2017 Treatment of Detainees report. [...]

[Human Rights Watch, World Report 2019 – Afghanistan \(17 January 2019\)](#)

[...] Torture

[...] A June 2018 report by the Afghanistan Independent Human Rights Commission noted that while Afghanistan had ratified the UN Optional Protocol on the Convention against Torture, enacted legislation criminalizing torture, and established a government commission on torture, the government had not significantly reduced torture since it assumed office in 2014, and did not prosecute any senior officials accused of torture.

On July 22, First Vice President Abdul Rashid Dostum returned to Afghanistan after more than a year abroad evading charges on the abduction, illegal imprisonment, and sexual assault of a rival Uzbek politician, Ahmad Ishchi. Although a Kabul criminal court, in 2017, convicted seven of Dostum's bodyguards in absentia of sexual assault and illegal imprisonment, and sentenced them to five years in prison, none had been imprisoned at time of writing. [...]

[Freedom House, Annual report on political rights and civil liberties in 2018: Freedom in the World 2019 – Afghanistan \(4 February 2019\)](#)

[...] F. RULE OF LAW: 2 / 16

[...] F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 0 / 4

[...] The torture of detainees by Afghan police, military, and intelligence services reportedly remains common. Government-aligned strongmen and powerful figures within the security forces operate illegal detention centers. In 2018, President Ghani claimed to be cracking down on militia commanders who have perpetrated widespread abuses. In July, however, videos emerged of security personnel, deployed to arrest a Faryab military commander accused of rights violations, apparently abusing the commander's bodyguards, stoking outrage and leading to condemnation by human rights groups. At the end of the year, no charges had been filed against any of the perpetrators. [...]

[UNAMA, Afghanistan Protection of Civilians in Armed Conflict Annual Report 2018 \(February 2019\)](#)

[...] IV. Pro-Government Forces [...]

b. Tactics and Incident Types Causing the Most Harm to Civilians [...]

ii. Search operations [...]

[...] UNAMA has also received reports of unlawful and arbitrary detention, including following mass arrests, by different National Directorate of Security Special Forces,¹⁶² and the Khost Protection Force. It received credible accounts of detainees having experienced torture or ill-treatment while held in places under the authority of these entities.¹⁶³ [...]

162 According to information received from the National Directorate of Security (letter #12855 of 06/09/1397, on file with UNAMA), none of the NDS operational units and special units have detention centers of their own. Upon arrest, NDS special units refer suspects and accused persons to NDS detention centers in the capital and provinces for initial investigations.

163 UNAMA publishes reports on the treatment of conflict-related detainees on a biannual basis. For more information, see <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody>.

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from: [...]

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [...]

[...] Prison and Detention Center Conditions

[...] The Ministry of Defense runs the Afghan National Detention Facilities at Parwan. There were credible reports of private prisons run by members of the ANDSF and used for abuse of detainees.

[...] Although the constitution and law prohibit such practices, there were numerous reports that government officials, security forces, detention center authorities, and police committed abuses.

NGOs reported security forces continued to use excessive force, including torturing and beating civilians. On April 17, the government approved the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, building on the prior year's progress in passing the Antitorture Law. Independent monitors, however, continued to report credible cases of torture in detention centers.

UNAMA, in its April 2017 *Report on the Treatment of Conflict-Related Detainees*, stated that of the 469 National Directorate for Security (NDS), ANP, and Afghan National Defense and Security Forces (ANDSF) detainees interviewed, 39 percent reported torture or other abuse. Types of abuse included severe beatings, electric shocks, prolonged suspension by the arms, suffocation, wrenching of testicles, burns by cigarette lighters, sleep deprivation, sexual assault, and threats of execution.

The Afghanistan Independent Human Rights Commission (AIHRC) stated in its June report on the use of torture in detention centers that of the 621 detainees they interviewed, 79 persons, or 12 percent, reported being tortured, for the purpose of both eliciting confessions as well as punishment. The AIHRC reported that of these 79 cases, the ANP perpetrated 62 cases, with the balance by the NDS and ANDSF. [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan, March 2019](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] Amnesty International states that people detained by the NDS or police are at risk of being tortured. (see also 3.4.6.)³³² The CAT expressed its concern about the many credible allegations and the fact that complaints of mistreatment and torture were ignored by the Afghan government due to lack of evidence, because the alleged victims had not been given a medical examination, or not soon enough. It was also concerned because, although the law states that no use may be made of forced confessions, in practice they have frequently been used as evidence forming the basis for prosecution or conviction at trial. The Committee also expressed its concern at the lack of prosecutions and convictions of public officials who have obtained forced confessions.³³³

[...] The Ministry of Defence runs a national detention centre in Parwan. According to the US State Department, there are also unofficial prisons run by members of the ANDSF where detainees are Abused.³⁵⁵

[...] 3.4.6 Torture, maltreatment and threats

On 22 April 2017, the Afghan government published the law on the prohibition of torture in the state newspaper. This law was issued by the government in March 2017 and is based on Articles 64 and 69 of the 2004 Constitution. The new Penal Code deals with torture in Chapter 9 (Articles 450-452) and must be taken in conjunction with what is stated in the law on the prohibition of torture. Article 6 of the law on the prohibition of torture states that police, officers of the National Directorate of Security and Defence, officers of the public prosecutor's office, judges, public officials and any other person or persons acting in an official capacity will under no circumstances whatsoever torture suspects, convicted persons or anyone else during the judicial process. Article 7 emphasises that no justification for torture can be derived from a state of war, danger of war, internal political instability or other circumstances, or from an order from a superior or a competent government official.³⁴²

In August 2017, the government also agreed on a compensation scheme for torture victims, as stated in Article 5 of the aforementioned law. The new laws and regulations have brought the definition of torture in line with the provisions of the United Nations Convention against Torture. In addition, a new supervisory body has been established, the Torture Commission (under Article 11 of the law), chaired by the AIHRC with members of the Ministry of Justice and the Ministry of Interior Affairs, the judiciary, the legal profession and civil society.³⁴³ This has led to complaints about torture

that were rejected by a court of first instance being referred for appeal. According to a well-established source, the awareness of judges in appeal cases in particular is gradually being raised, and this is preventing confessions from being forcibly obtained during interrogations under pressure of torture or ill-treatment.³⁴⁴

On 17 April 2018, Afghanistan acceded to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) and dropped its reservation concerning the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), as the government had promised to do during the campaign for Afghan membership of the Human Rights Commission.³⁴⁵

Despite the improved legislation and the international obligations that the government has entered into, there is still no evidence that torture in government detention has been reduced in practice, and perpetrators are rarely prosecuted or tried.³⁴⁶

Information could not be obtained from the Afghan government about the prosecution of perpetrators of torture, severe mistreatment and rape. The perpetrators of such crimes succeed in avoiding prosecution and convictions because they are usually influential people, warlords and personnel of the security services, police or other law enforcement services.³⁴⁷ Amnesty International states that many individuals suspected of being responsible for such crimes remain in government service, including in the administration.³⁴⁸

In January 2017, the Public Prosecution Service ordered the hearing of nine personal security guards of first Vice-President Dostum. They were suspected of involvement in the kidnapping, illegal detention and assault of the Uzbek politician Ahmad Ischi, a political rival of Dostum. In absentia, seven of the bodyguards were convicted of sexual assault and illegal detention and sentenced to five years in detention. None of them were in detention at the end of 2017.³⁴⁹

UNAMA monitors the implementation of the February 2015 *National plan on the elimination of torture*. In its last report in April 2017, UNAMA noted that despite the Afghan government's efforts to implement the plan, credible claims are regularly made about the torture and ill-treatment of people detained in connection with the conflict. Torture and ill-treatment mainly take place during interrogation. There also continued to be a lack of accountability for such acts by the Afghan security forces, in particular the NDS and the ANP, and to a lesser extent the ALP and the ANA.

There were no prosecutions.³⁵⁰ Another source indicated that although there appears to be a decrease in the number of cases of torture in recent years, torture is still taking place during investigations and interrogations by the ANP, the NDS and the Afghan National Army (ANA). These bodies use torture to enforce confessions, to obtain information or as punishment or revenge for losses.³⁵¹ Judges, police, lawyers, prosecutors, government officials and even some citizens are, according to this source, aware of what takes place in these detention centres. Citizens are aware of this situation because so many people are held, released or convicted.³⁵²

Between 1 January 2015 and 31 December 2016, UNAMA spoke to 469 conflict-related detainees in 62 detention facilities in 29 Afghan provinces. Of these 469 prisoners, 378 were adult men, six were adult women, and 85 were children under the age of 18. UNAMA found that 39% of prisoners interviewed gave credible accounts of having experienced torture or other forms of inhuman treatment. The most common torture and abuse involved severe beatings to the body (including with sticks, plastic pipes and cables), beatings to the soles of the feet, electrical shocks (including to the genitals), prolonged suspension by the arms and suffocation (both using plastic bags and through forced immersion in water).

Other 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. UNAMA recorded the highest number of credible accounts of torture at the ANP. At NDS detention centres at national and provincial level there was systematic or regular and frequent use of torture. In most cases, prisoners indicated that torture was used to enforce a signed or thumb-marked confession. Almost all detainees reported that they had no access to a lawyer before signing the confession. UNAMA found no indications that detainees continued to be tortured

or ill-treated after they had been transferred from an Afghan security forces detention centre to a prison run by the *Central*

Prisons Department of the Ministry of Interior Affairs.³⁵³ UNAMA found no information indicating that criminal prosecutions had been initiated against NDS officials during 2015 or 2016. In January 2017, however, two NDS officials are said to have been convicted by a court of first instance on charges of mistreatment of a minor in Daikundi province.³⁵⁴

AIHRC recorded 79 cases of torture in 2017 based on monitoring and speaking to 621 suspects and accused persons in detention centres. In 2016, AIHRC recorded 102 cases of torture, and in 2014 there were 305 cases. Of the 79 cases relating to torture, 62 involved the ANP, 13 the NDS and 4 the ANA.³⁵⁵

In its June 2017 report, the United Nations Committee against Torture stated, on the basis of a large number of investigative reports by the UN, the International Criminal Court, the Afghan Independent Human Rights Commission and NGOs, that beatings, electric shocks, suspensions, threats, sexual abuse and others forms of mental and physical abuse are widely and increasingly used on detainees held in facilities managed by the *National Directorate of Security* (NDS), the Afghan National Police and the Afghan Local Police. Such practices are mainly used to extract confessions or information to be used in criminal proceedings. The Afghan government is said to have dismissed or demoted a number of NDS employees for involvement in abuse and torture. However, the Committee noted that there had been hardly any prosecutions and convictions. The detention centre at the Bagram military base in Parwan province was still being run by the Ministry of Defence in 2017. Prisoners are thought to be routinely tortured there as punishment for past terrorist activities or as a disciplinary measure. Lawyers had limited access to prisoners in Parwan.³⁵⁶

UNAMA stated in an April 2018 report that it had recorded the largest number of reports of torture during police custody of people held in connection with armed conflicts since 2010. The report focused in particular on the extent – more than 90% of detainees – and nature of police torture in Kandahar province.³⁵⁷ The United Nations Committee against Torture indicated in its report of June 2017 that such practices occur in several provinces in Afghanistan such as Farah, Herat and Nangarhar. The situation was particularly concerning in Kandahar province.³⁵⁸ [...]

332 Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

333 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, points 11 and 27, 12 June 2017.

335 US Department of State, *Country reports on human rights practices for 2017: Afghanistan*, p. 4, 4 March 2018.

342 Confidential source, p. 21, 7 November 2018.

343 UNGASC, *The situation in Afghanistan and its implications for international peace and security*, S/2018/539, p. 9, 6 June 2018; Confidential source, p. 21, 7 November 2018; Confidential source, p. 4, 7 December 2018; Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

344 Confidential source, 25 September 2018.

345 Confidential source, 11 June 2018; UNGASC, *The situation in Afghanistan and its implications for international peace and security*, /2018/539, p. 9, 6 June 2018.

346 Confidential source, 11 June 2018; Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018; UNHCR, *Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan*, p. 24, 30 August 2018; International Criminal Court, *Public Redacted Version of "Request for Authorization of an Investigation Pursuant to Article 15"*, pp. 7-8, 20 November 2017.

347 Confidential source, pp. 18-20, 7 November 2018; UNHCR, *Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan*, p. 23, 30 August 2018.

348 Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

349 Human Rights Watch, *Country summary Afghanistan*, January 2018.

350 UNAMA, *Treatment of conflict-related detainees: implementation of Afghanistan's national plan on the elimination of torture*, pp. 6-11, April 2017. https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf; Human Rights Watch, *World Report 2018: Afghanistan: Events of 2017*, 2018.

351 Confidential source, p. 4, 7 December 2018.

352 Confidential source, pp. 17 and 18, 7 November 2018.

353 UNAMA, *Treatment of conflict-related detainees: implementation of Afghanistan's national plan on the elimination of torture*, pp. 6-11, April 2017. https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf.

354 UNAMA, *Treatment of conflict-related detainees: implementation of Afghanistan's national plan on the elimination of torture*, p. 9, note 17, April 2017, https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf.

355 Confidential source, p. 4, 7 December 2018.

356 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, pp. 2 and 3, 12 June 2017.

357 Human Rights Watch, *Country summary Afghanistan*, January 2018.

358 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, pp. 3 and 4, 12 June 2017. Among other sources, the Committee refers to UNAMA reports from 2015 and 2017; UNAMA, *Treatment of conflict-related detainees: implementation of Afghanistan's national plan on the elimination of torture*, April 2017, https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf.

[UN General Assembly, Report of the Working Group on the Universal Periodic Review* Afghanistan \(3 April 2019\), A/HRC/41/5](#)

[...] I. Summary of the proceedings of the review process

[...] A. Presentation by the State under review

[...] 9. Afghanistan had incorporated the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the new Penal Code, withdrawn its reservation, and ratified the Optional Protocol thereto. With the enactment of the law on the prohibition of torture and the establishment of the commission thereon, Afghanistan had reduced concerns about the mistreatment of prisoners. Furthermore, the Government had taken steps to improve prison infrastructure and to expand health-care and rehabilitation services. [...]

[Kate Clark, published by AAN – Afghanistan Analysts Network, “Better, But Still Bad: UNAMA releases new report on the torture of security detainees” \(17 April 2019\)](#)

[...] UNAMA has released its latest two-yearly report on the treatment of conflict-related detainees in Afghanistan and finds perpetrators of torture in the Afghan National Security Forces are still enjoying immunity from punishment. Overall rates are down, especially in the Afghan intelligence agency, the NDS, but the proportion of those detained giving credible accounts of torture is still almost one third. UNAMA says the decline in the use of torture is not yet significant enough to “indicate that the remedial measures taken are sufficient.” AAN co-director Kate Clark reports that torture continues to be concentrated in particular facilities, with the worst culprits being the Kandahar police, NDS Special Forces and the Khost Protection Force. [...]

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

The analysis presented in this report further indicates that the normative and legislative steps taken by the Government led to tangible improvements compared to the previous reporting period (1 January 2015 to 31 December 2016), in particular:

- An overall reduction in the percentage of conflict-related detainees in custody of the Afghan National Defence and Security Forces (ANDSF) who gave credible reports of torture and ill-treatment, from 39 per cent to 31.9 per cent, with an even more marked reduction in 2018.
- A substantial decrease (from 29 per cent to 19.4 per cent) in the prevalence of torture or ill-treatment among those interviewed in the custody of the National Directorate of Security (NDS) in 2018, with particularly noteworthy improvements in Kandahar (from 60 per cent to 7.4 per cent) and Herat (from 48 per cent to 8.4 per cent).
- A significant reduction from the record high levels of torture and ill-treatment by Afghan National Police (ANP) from 45 per cent to 31.2 per cent.

[...] While the steps taken by the Government are encouraging, the overall figures of torture and ill-treatment of conflict-related detainees remain disturbingly high, with almost one in three conflict-related detainees providing credible and reliable accounts of having been subjected to torture or ill-treatment. The figures indicate that:

- Younger persons are at a higher risk of suffering from torture or ill-treatment in ANDSF custody.
- The treatment of conflict-related detainees in some NDS facilities remains of concern, particularly those located in Kabul, Khost and Samangan provinces, as well as NDS 241 (counter-terrorism department).

The report also highlights accounts of torture or ill-treatment, as well as unlawful and arbitrary detention, including following mass arrests, by different NDS Special Forces, in particular NDS 03 in Kandahar, and the Khost Protection Force.

- Serious concerns about the conduct of ANP in Kandahar persist, with a staggering 77 per cent of detainees providing credible and reliable accounts of being subjected to the most brutal forms of torture or ill-treatment. Allegations of enforced disappearances in Kandahar also persisted during the reporting period.
- Poor conditions of detention observed within the Afghan National Army-run Detention Facility in Parwan give rise to concern, including inadequate lighting, overcrowding, the use of solitary confinement as the sole disciplinary measure, and restrictions with regard to family visits and access to lawyers.

The decline in use of torture or ill-treatment is not yet significant enough to indicate that the remedial measures taken are sufficient. In particular, the report emphasizes violations and challenges in the following areas:

- Legal limitations of the right of conflict-related detainees to judicial oversight, in contravention of international law.
- Limitations in implementing key procedural and other legal safeguards to prevent torture and ill-treatment, such as access to lawyers and contact with the family during investigation; medical screening; information provided to detainees on their rights; and reliance on forced confessions.
- Continued lack of accountability for perpetrators, with investigations into allegations of torture and ill-treatment remaining internal and opaque, with very limited referrals to prosecution.
- Lack of any meaningful possibility of obtaining an effective judicial or administrative remedy for the violations that detainees claim to have experienced.

[...] 2. Methodology

[...] A. Detention monitoring visits and interviews

[...] In line with previous practice, UNAMA detention monitoring activities focused primarily on conflict-related detainees who had been held in NDS and ANP facilities. Indeed, based on its previous findings, UNAMA considered that detainees were at particular risk of being subjected to torture or other forms of ill-treatment in these facilities. UNAMA did not examine the treatment of detainees held on suspicion of committing offences not related to the conflict.

[...] 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 on their treatment once brought into the more closely controlled environment of an ANP, NDS or ANA facility, where they are under the full and effective physical control of the detaining authorities.

[...] In facilities categorized in this report as using torture or ill-treatment on a regular and prevalent basis, one third (33 per cent) or more 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 the 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 a rate of one third 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.

However, UNAMA does not argue that the use of torture or ill-treatment is part of a systematic national or institutional Government policy.¹⁵ According to its analysis, torture may in fact be of a regular and prevalent or systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has a 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.

[...] 5. Findings on Torture and Ill-treatment

The findings presented in this report are based on interviews UNAMA conducted with 618 conflict-related detainees, including four women, held in 77 facilities in 28 provinces across Afghanistan, between 1 January 2017 and 31 December 2018.⁴⁰ Many of these detainees had been held and interrogated in multiple locations before being interviewed by UNAMA, and UNAMA was therefore able to use these interviews to document over 1,444 instances of detention over the two-year observation period.

A. Overall findings

During the two-year monitoring period covered by this report, UNAMA found that 31.9 per cent of conflict related detainees interviewed (197 out of 618 persons) gave credible and reliable accounts of having experienced torture and other forms of inhuman or degrading treatment whilst in custody of ANDSF. Forty-seven of the 197 individuals reported they had experienced torture or other forms of ill-treatment in more than one facility.

A year-by-year breakdown of the information gathered by UNAMA during the period covered by this report shows a more nuanced picture. From 1 January to 31 December 2017, 36.7 per cent of conflict-related detainees interviewed by UNAMA (112 out of 305) who had been held in ANDSF custody gave credible accounts of having experienced torture and other forms of ill-treatment. These figures still compare to the 2017 UNAMA/OHCHR report, which found that 39 per cent of detainees (181 out of 469 persons) gave credible and reliable accounts of having experienced torture or other forms of ill-treatment between 1 January 2015 and 31 December 2016. However, from 1 January to 31 December 2018, UNAMA documented a decrease in the prevalence of torture, with 27.1 per cent (85 out of 313) of those interviewed giving credible reports of being subjected to torture or other forms of ill-treatment in ANDSF custody.

While the overall figures remain disturbingly high, UNAMA welcomes this reduction in the prevalence of torture documented in ANDSF facilities during 2018 as indicating that steps taken by the Government to prohibit and prevent torture have a tangible impact. UNAMA notes however that it will require further periods of monitoring to be able to determine that this is a trend and not a temporary development.

Similar to findings in previous UNAMA/OHCHR reports, the overwhelming majority of detainees who gave credible and reliable accounts of torture or ill-treatment stated that such treatment was inflicted in order to force them to confess. In most cases, the interviewees reported that the treatment would stop following a confession.

[...] B. National Directorate of Security

[...] UNAMA interviewed 510 detainees who were held in NDS custody in district and/or provincial facilities between 1 January 2017 and 31 December 2018. Of the 510 detainees, 128 (25.1 per cent) gave credible and reliable accounts of having experienced torture or other forms of ill-treatment.

[...] The report outlines in further details below some of the findings in relation to NDS facilities in various provinces in Afghanistan. While the overall figures include allegations in relation to NDS district facilities, the below focuses on specific NDS provincial facilities.

[...] C. National Directorate of Security Special Forces and Khost Protection Force

[...] During the reporting period, UNAMA received credible and reliable allegations of torture and ill-treatment and reports of unlawful and arbitrary detention, including following mass arrests, by different NDS Special Forces,⁵² and the Khost Protection Force (KPF).

[...] UNAMA interviewed 45 detainees held in the NDS 03 detention facility in Kandahar during the reporting period. Of these, 17 (37.7 per cent) gave credible and reliable accounts of having been tortured or ill-treated, indicating a regular and prevalent use of torture and ill-treatment. In addition to beatings, including with a cable, the majority of detainees separately and consistently described a specific form of treatment as the main technique used – being covered by a blanket and sitting on their back while suffocated with a plastic bag.

Khost Protection Force

UNAMA interviewed 23 detainees held in the KPF detention facility in Khost during the reporting period. Four of them (17.3 per cent) gave credible and reliable accounts of torture and ill-treatment, describing beating as the main technique. In addition, two detainees stated they were tortured or ill-treated in a KPF facility in Sabari and Tere Zayi districts.⁵⁶ As in the case of NDS Khost, UNAMA is concerned by the fact that all allegations refer to 2018, while none of the allegations received were in 2017.⁵⁷

[...] D. Afghan National Police⁵⁸

UNAMA interviewed 179 detainees who had been held in at least one Afghan National Police (ANP) facility (including district and provincial facilities) during the period covered by this report. Fifty-four of them (31.2 per cent) gave credible and reliable accounts of having been subjected to torture or other forms of ill-treatment whilst in ANP custody. Fifteen reported they had experienced torture or other forms of ill-treatment in more than one ANP facility. Contrary to the overall figures presented above, a year-by-year breakdown of the information gathered by UNAMA does not indicate any decline in percentage in credible reports of torture or other forms of ill-treatment documented in 2018 (23 out of 74 – 31 per cent) when compared to 2017 (31 out of 105 – 29.5 per cent).

Whilst this remains a disturbingly high figure, it nonetheless marks a significant reduction from the record high levels of torture and ill-treatment by ANP (45 per cent of those interviewed) documented in the 2017 UNAMA/OHCHR Report.

However, despite the overall downward trend in credible reports of torture or ill-treatment documented in this report, UNAMA remains concerned over the high levels of reports of torture and ill-treatment by ANP, in particular in Kandahar province.

Some of the findings in relation to ANP district and provincial facilities in various provinces in Afghanistan are outlined in further detail below.

[...] Afghan Local Police

[...] The Afghan Local Police (ALP) are locally recruited and operating under the authority of the Ministry of Interior.⁶⁵ Between 1 January 2017 and 31 December 2018, UNAMA interviewed nine detainees who were initially held by ALP before being handed over to the competent legal authorities. Six of them (66.6 per cent) gave credible and reliable reports of having been subjected to torture or other forms of ill-treatment, indicating severe beatings as the main technique. These incidents took place in five provinces: Badakhshan, Balkh, Faryab, Kandahar, Jawzjan and Parwan. The detainees described they had been held by ALP for between one to six days. ALP are required to promptly hand over any suspected insurgents to ANP or NDS.

While UNAMA is concerned over the high percentage of detainees held by ALP who provided credible and reliable accounts of torture or ill-treatment, the sample of those interviewed who gave credible reports of ill-treatment was too widely geographically dispersed to make any meaningful findings on patterns of treatment of detainees by ALP in any particular location.

[...] F. Afghan National Army

[...] Between 1 January 2017 and 31 December 2018, UNAMA interviewed 33 detainees who had been held by the Afghan National Army (ANA) before being transferred to ANP or NDS. Twelve of them (36.4 per cent) gave credible and reliable reports of having been subjected to torture or other forms of ill-treatment whilst in detention, indicating severe beatings as main technique. These

incidents took place in nine provinces: Balkh, Herat, Helmand, Kabul, Kandahar, Kunduz, Laghman, Logar and Nangarhar.

As with its findings on ALP, while UNAMA is concerned over the high percentage of detainees held by ANA who provided credible and reliable accounts of torture or ill-treatment, the sample was too widely geographically dispersed to make any meaningful findings on patterns of treatment of detainees by this group in any particular location.

G. Afghan National Detention Facility in Parwan

[...] The Afghan National Detention Facility in Parwan (DFiP) is a detention compound located in Parwan province.

The facility is managed by the Ministry of Defence, under the command of an ANA Major General and staffed by ANA Military Police guards. It is co-located with a separately administered NDS detention facility, which houses sub-units of NDS 501 and 241 (national investigation and counter-terrorism departments).⁶⁶

During the period covered by this report, UNAMA interviewed 46 detainees held in the ANA-run prison at DFiP. It did not document any credible reports that conflict-related detainees experienced torture or ill-treatment by ANA-guards in the facility. UNAMA welcomes the decision of the Government to stop detaining juveniles in DFiP at the end of 2017.

[...] UNAMA also interviewed 46 pre-trial detainees held in NDS custody at DFiP. Twelve were held at NDS 241 and 34 at NDS 501. Only one of the detainees interviewed provided credible and reliable accounts of having been tortured or ill-treated at NDS 241 and two detainees alleged having been threatened in NDS 501 to confess.⁶⁷ [...]

15 This position derives from the definition used by the United Nations Committee against Torture when assessing whether torture is systematically practiced by a State party to the Convention against Torture; see article 20 under which the Committee against Torture is empowered to conduct confidential enquiries into “well-founded indications that torture is being practiced systematically in a State party”. 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; see A/48/44 Add.1, para. 39 and A/56/44, p. 63.

40 Please see annex III, which lists the facilities visited by UNAMA. UNAMA also conducted interviews in January and February 2019. The report however only covers the cases of individuals arrested or detained during 2017 and 2018.

41 For the overall figures, UNAMA took into account the number of detainees who gave credible and reliable accounts of torture or ill-treatment in one or more instances of ANDSF custody. The figures for individual entities (NDS, ANP, ANA and ALP) reflect that one person may have been held by different entities. For example, if one detainee was held by ANP before being handed over to NDS, the figures for both ANP and NDS would include the same detainee. The same applies if a detainee was held in different provinces by the same entity. For example, if a detainee was held by NDS in Nangarhar and then transferred to NDS in Kabul, he/she would be counted under both (as these were separate instances of detention), whereas the overall figures for NDS only count one detainee.

52 NDS 01 covers the Central Region. Please see under ‘Kabul’ above [...]

56 One of them reported having been tortured or ill-treated in two separate KPF facilities.

57 Four out of 14 detainees (28.6 per cent) interviewed in 2018 gave credible and reliable accounts of torture or ill-treatment.

58 Previous reports also included the Afghan National Border Police under this section. In 2018, following the security sector reforms under the framework of the 2017 Afghan National Defence and Security Forces Roadmap, the former Afghan Border Police and the Afghan National Civil Order Police were transferred from the Ministry of Interior to the Ministry of Defence. UNAMA documented two instances of detainees reporting of having been detained by Afghan National Border Police; one of the individuals gave credible and reliable accounts of having been tortured or ill-treated in 2017.

65 ALP was created in 2010 to provide a community-based policing capability as part of counter-insurgency efforts. Though nominally reporting through the Afghan National Police and the Ministry of Interior, ALP is considered a de facto part of the armed forces due to its combat-related functions.

66 Whilst the Ministry of Interior, through its Central Prisons Directorate, is responsible for the administration of prisons (article 17 of the Law on Prisons and Detention Centres), on 9 March 2012, the Government of Afghanistan 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.

67 All incidents mentioned referred to 2017

[...] III. Human rights

[...] 33. On 17 April, UNAMA and the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a joint public report on the treatment of conflict-related detainees and the elimination of torture, covering the period from 1 January 2017 to 31 December 2018.² Of the 618 conflict-related detainees interviewed, nearly 32 per cent gave credible accounts of having experienced torture and other forms of inhuman or degrading treatment while in the custody of the Afghan National Defence and Security Forces. Although UNAMA has documented a reduction in the number of cases of torture since 2016, it notes its ongoing concerns about the use of torture and ill-treatment of conflict-related detainees, mostly in detention facilities run by the National Directorate for Security and the Afghan National Police. The report also documented violations and challenges in implementing key procedural safeguards, such as access to lawyers, and a continued lack of accountability for perpetrators. [p. 8] [...]

[...] VIII. Observations

[...] 67. I take note of the legislative and policy steps taken by the Government to address the issue of torture and ill-treatment of conflict-related detainees, and of the overall reduction in the percentage of conflict-related detainees reporting torture and/or ill-treatment in Government-run detention facilities. However, accountability measures fell short of relevant international standards, as nearly one in three detainees still provided credible accounts of having been subject to ill-treatment and torture, according to the latest report by UNAMA and OHCHR on the treatment of conflict-related detainees. Efforts must be increased to ensure the effective implementation of the policies to combat ill-treatment and torture. [p.15] [...]

² See www.ohchr.org/Documents/Countries/AF/PreventingTortureReportApril2019.pdf.

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

[...] Afghan State authorities and their associates are accused of committing a wide range of human rights violations. There have been reports of illegal detention, ill-treatment and torture by the Afghan National Security Forces (ANSF), mainly by the National Directorate of Security (NDS) and some local police forces, pro-government militias (PGMs) and powerful individuals. Often torture is used in order to extract a confession. In this regard, targeting of civilians takes place, including based on family ties, kinship and tribal association [*Conflict targeting*, 2.2; *Key socio-economic indicators 2017*, 3.3.3, 3.4.4.3]. There have also been reports of extrajudicial killings of civilians, suspected to be anti-government elements (AGEs), committed by the ANSF [*Conflict targeting*, 2.1]. Some Afghan Local Police (ALP) have been involved in extortion, threats and sexual abuse of civilians [*Conflict targeting*, 2.6].

Different State agents such as ministers, governors and ANSF personnel are reported to have acted beyond the scope of their legal authority. Moreover, police and judicial authorities are susceptible to the influence of powerful individuals [*Conflict targeting*, 2; *Key socio-economic indicators 2017*, 3.4.4.1, 3.5.3, 3.5.4].

Besides the ALP [Afghan Local Police], an unknown number of PGMs [pro-government militias] are fighting on the side of the government against insurgents. They have been accused of targeted killings and threatening, intimidating and harassing civilians. It is reported that such human rights abuses occur in an atmosphere of impunity due to their links to local or national powerbrokers [*Conflict targeting*, 2.6]. [p. 44] [...]

[...] 5. Members of insurgent groups and civilians perceived as supporting them [...]

a. Targeting by the State

[...] COI summary

Insurgent groups, as well as people suspected of supporting them, are reported to face the death penalty, extrajudicial killings, targeted attacks, torture, arbitrary arrests and illegal detention. There are also reports of incidents of extrajudicial killings and killings by ANSF abusing their position of power. Conflict-related detainees are often subjected to torture and ill-treatment. Convictions by Afghan courts are often based solely on confessions extracted through torture and ill-treatment, although the use of confessions extracted this way is strictly prohibited by the Criminal Procedure Code [*Conflict targeting*, 2.1, 2.2]. [p. 52] [...]

Article 15(b) QD [...]

- Arbitrary arrests, illegal detention and prison conditions: Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. Arbitrary arrests and illegal detention centres run by different actors (linked to the State, to militias, to strongmen or to insurgent groups) are widespread in Afghanistan. In general, human rights are not respected in these illegal detention facilities and persons who face a real risk of being illegally detained by these actors may be in need of protection. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world. Furthermore, it can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where subjecting a person to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. It should also be stressed that in official and unofficial detention centres, torture often takes place.

See also the profile of Individuals accused of ordinary crimes.

Other profiles for which a real risk of serious harm under Article 15(b) QD may exist are, inter alia, children, individuals involved in land disputes and Afghans perceived as wealthy, etc. [...]

2. Use of forced confessions

[Civil Society and Human Rights Network \(CSHRN\) and The World Organisation against Torture \(OMCT\), Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment \(UNCAT\) & Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan's Second Periodic Report \(16 November 2018\)](#)

[...] C. Recommendation 28 (C) Coerced confessions

The Committee also expressed concern over numerous allegations of the widespread use of forced confessions and recommended the government of Afghanistan to:

(c) Take appropriate remedial measures and ensure that all cases of coerced confessions are promptly and impartially investigated, prosecuted and punished.

In the follow-up report of Afghanistan, a number of articles of different laws for prevention of torture are cited. While appreciating the legal safeguards for the prevention of torture and progresses made so far, in practice, these articles are rarely applied.

The AIHRC published a report on the situation of detention centers which was released on 6 June 2018.¹³ The AIHRC had interviewed 621 detainees and came to the conclusion that torture is still prevalent in detention to extract confessions, information or for punishment. The AIHRC documented 79 cases of torture in the detention facilities they had visited. Of the 79 cases of torture, 62 cases were perpetrated by the police, 13 by the National Directorate of Security and 4 cases by Afghan National Army soldiers.¹⁴

It is worth mentioning, that the AIHRC still does not have access to detention facilities in remote areas where insecurity is high and there is an important prevalence of conflict-related detainees, despite repeated attempts from the AIHRC to obtain access to detention facilities in rural areas. United Nations Assistance Mission in Afghanistan's (UNAMA) reports show a consistent high level of torture of conflict-related detainees around 35-39%.¹⁵ The majority of the reported cases of torture was inflicted to exert a confession.¹⁶ It would be instrumental that AIHRC had access to detention centres also in remote areas to better be able to map the persistence of torture and ill- treatment throughout Afghanistan and in particular in relation to coerced confessions.

It is stated in the state follow-up report that the Anti-torture Commission visits detention facilities on a regular basis. However, the Anti-torture Commission meets regularly, every three months, but it doesn't visit detention facilities regularly. From the inception of the Commission in 2017, it has paid only one visit to a detention facility at the headquarter of the police and the Juvenile Rehabilitation Center in Kabul in March 2018.

In March 2018, for the first time a delegation of the Anti-torture Commission visited the Juvenile Rehabilitation Center in Kabul. Representatives both from the Ministry of Justice and the Ministry of Interior are members of the Anti-torture Commission, and the detention facility seemed to have been forewarned about the visit; the administration and the personnel appeared prepared for the visit, which should have been unannounced. The personnel of the institution were closely accompanying the Anti-torture Commission at all times. During the visit, several detainees complained to the delegation that they were beaten up at the time of arrest and they were forced to confess to crimes they allegedly did not commit; their thumb prints were forcefully put to validate confessions in their dossiers.

Given what has been stated above, Afghanistan has not taken any substantive action to implement follow-up recommendation number 28 (C) and should therefore be assessed with a C. [...]

¹³ http://www.aihrc.org.af/home/research_report/7398# accessed 2018-10-10.

¹⁴ Ibid.

¹⁵ United Nations Assistance Mission in Afghanistan, OHCHR, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, p. 7, available at:

https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf accessed 2018-10-10.

16 Ibid. see for instance pages 6, 8, 24, 25 and 31.

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

[...] Arbitrary and illegal detention reportedly remain widespread.¹³⁵ Law enforcement agencies reportedly use torture in order to coerce confessions from detainees, particularly conflict-related detainees.¹³⁶ There are reports of female prisoners being subjected to sexual abuse and bullying.¹³⁷

[...] UNAMA also reported incidents of extrajudicial killings and enforced disappearances of detainees held by the ANP and ALP.³⁵² Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.³⁵³ Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.³⁵⁴ [...]

136 “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.” UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 7, and see more generally pp. 6-7, 13; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 27.

137 The Diplomat, The Women in Afghanistan’s Moral Prisons, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistansmoral-prisons/>; Daily Times, Torture and Sexual Violence in Afghanistan, 13 February 2017, <https://dailytimes.com.pk/29186/torture-andsexual-violence-in-afghanistan/>; HRW, Afghanistan: End ‘Moral Crimes’ Charges, ‘Virginity’ Tests, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>.

353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 9. “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.” UNAMA, Treatment of Conflict Related Detainees, April 2017, p. 6; see also *ibid.*, p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

[...] • Limitations in implementing key procedural and other legal safeguards to prevent torture and ill-treatment, such as access to lawyers and contact with the family during investigation; medical screening; information provided to detainees on their rights; and reliance on forced confessions.

[...] 6. Legal and Other Procedural Safeguards to Prevent Torture and Ill Treatment

[...] D. Evidence obtained through confessions / documents signed without the knowledge of

Detainees

Prosecutions often remain dependent on confessions as opposed to other sources of evidence, creating a climate where torture is more likely to take place to obtain confession. Experience has however shown that the use of torture and other forms of ill-treatment as a tool for obtaining confessions is a dangerous paradigm. In addition to being illegal and immoral, it is also an unreliable and ineffective tool for gathering accurate information.⁷⁸

Yet, consistent with previous UNAMA findings, the overwhelming majority of detainees interviewed for this report who gave credible and reliable accounts of torture or ill-treatment stated that the treatment was inflicted in order to force them to confess. In most cases, they reported that the treatment would stop following a confession.

Additionally, many of those interviewed stated they did not understand or were not able to read documents that they were required to sign or thumb-print during or after interrogations without the presence of a lawyer. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment recommends the exclusion of evidence which was obtained in violation of the principles, such as methods of interrogation which impair a detainee's capacity of decision or judgment or take advantage of the situation to compel a statement.⁷⁹ [...]

78 See for instance, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, A/HRC/13/39/Add.5, para. 93.

79 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principles 21 and 27.

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan, March 2019](#)
[P. 65]

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] Amnesty International states that people detained by the NDS or police are at risk of being tortured. (see also 3.4.6.)³³² The CAT expressed its concern about the many credible allegations and the fact that complaints of mistreatment and torture were ignored by the Afghan government due to lack of evidence, because the alleged victims had not been given a medical examination, or not soon enough. It was also concerned because, although the law states that no use may be made of forced confessions, in practice they have frequently been used as evidence forming the basis for prosecution or conviction at trial. The Committee also expressed its concern at the lack of prosecutions and convictions of public officials who have obtained forced confessions.³³³ [...]

332 Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

333 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, points 11 and 27, 12 June 2017.

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

[...] Afghan State authorities and their associates are accused of committing a wide range of human rights violations. There have been reports of illegal detention, ill-treatment and torture by the Afghan National Security Forces (ANSF), mainly by the National Directorate of Security (NDS) and some local police forces, pro-government militias (PGMs) and powerful individuals. Often torture is used in order to extract a confession. In this regard, targeting of civilians takes place, including based on family ties, kinship and tribal association [*Conflict targeting*, 2.2; *Key socio-economic indicators 2017*, 3.3.3, 3.4.4.3]. [p. 44]

[...] 5. Members of insurgent groups and civilians perceived as supporting them

[...] a. Targeting by the State

COI summary

Insurgent groups, as well as people suspected of supporting them, are reported to face the death penalty, extrajudicial killings, targeted attacks, torture, arbitrary arrests and illegal detention. There are also reports of incidents of extrajudicial killings and killings by ANSF abusing their position of power. Conflict-related detainees are often subjected to torture and ill-treatment. Convictions by Afghan courts are often based solely on confessions extracted through torture and ill-treatment, although the use of confessions extracted this way is strictly prohibited by the Criminal Procedure Code [*Conflict targeting*, 2.1, 2.2]. [p. 52] [...]

3. Deaths in custody

[Civil Society and Human Rights Network \(CSHRN\) and The World Organisation against Torture \(OMCT\), Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment \(UNCAT\) & Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan's Second Periodic Report \(16 November 2018\)](#)

[...] B. Recommendation 8 (C) Culture of impunity

[...] 14. The security forces arrested Mr. Hussain Shujaie and they tied him to a rope fastened to a police vehicle. They towed him to the house from where he had escaped. Mr. Hussain Shujaie was towed approximately four hundred meters on unpaved roads, stones and bushes. Afterwards, the security officers untied him and threw him in a police vehicle and moved him to the capital of the Ghor province. Allegedly, Mr. Hussain Shujaie was tortured to death while in police custody. After two days his body was delivered to his family. While his family and local mourners were washing his body for burial there were signs of torture on his body; bruises; pebble stones rammed into his flesh due to being towed; and, deep wounds, mainly on his thighs.¹¹ It would be impossible for such a grave incident to occur without the knowledge and possible consent of higher officials. [...]

[Anadolu Agency, 4 killed in Afghan prison as inmates, police clash, 14 May 2019](#)

[...] At least four prisoners were killed and dozens of other inmates and policemen injured after a brawl in central prison in the Afghan capital Kabul on Tuesday, an official statement confirmed.

The Interior Ministry confirmed the scuffle about an hour after the fight broke out at the Pul-e-Charkhi prison in the east of the city.

Nusrat Rahimi, a spokesman for the Interior Ministry, said the clash erupted when the security forces entered the prison cells of inmates convicted with drugs related crimes.

He said the policemen, accompanied with judicial officers, went ahead with the search plan in line with court orders, but a number of prisoners resisted and attacked them.

Last month, a joint report by the UN Assistance Mission in Afghanistan and the UN Human Rights Office concluded that nearly a third of conflict-related detainees interviewed provided credible and reliable accounts of having been subject to torture or ill-treatment.

The report was based on interviews with 618 detainees held in 77 facilities in 28 provinces across the country between 2017-2018.

The report also acknowledged progress performed by the Kabul government in implementing Afghanistan's National Plan on the Elimination of Torture, and highlighted that this enforcement has had tangible results, with a reduction in torture or ill-treatment of conflict-related detainees across different security entities in the country. [...]

4. Size of cells, overcrowding [less than 3m2 of personal space]

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\] \[p.19\]](#)

[...] Prison buildings: Of the eight prisons in the areas covered by the Kabul Regional Office, five prisons have state buildings and mostly newly built; Pul-e-Charkhi Prison has a state building that some parts of it have been destroyed during the war years, but has been reconstructed and rehabilitated in recent years, and among them, block eighth of the prison is rebuilt. The prisons of the provinces of Logar, Maidan Wardak and Kapisa have been constructed in recent years, with an independent and state-owned buildings. The prisons in Ghazni, Parwan and Panjshir provinces are not new and standardized, and human rights standards have not been observed and are not a suitable place for detainees. The prisons in Ghazni and Parwan provinces are among a number of residential houses that provided the opportunity for the criminals to escape.

Over-crowding in prisons: overcrowding in the prisons covered by the Kabul Regional Office is another problem that has been observed by human rights monitors and has been raised repeatedly with the authorities, but is still not resolved in some prisons. Particularly Pul-e Charkhi prisons is more likely to face this problem than other prisons. According to some Pul- e-Charkhi prison officials, the building of this prison has been constructed for about 5,000 to 7,000 people, but according to the latest statistics, there are currently 10392 inmates in the prison. [...]

[Ariana News, There Are More Prisoners than Detention Centers in Afghanistan: AIHRC, 9 May 2018](#)

[...] The latest findings of the Independent Human Rights Commission (AIHRC) indicate that 30,315 people in Afghanistan are being held in prisons and detention centers.

Addressing a press conference on Tuesday in Kabul, the head of AIHRC Sima Samar said that the Afghan prisons do not have the capacity to keep the high number of inmates.

“The number of prisoners is higher than the detention centers as we have [in the country]; e.g. about 600 to 700 people are being in a prison in provinces unlike its capacity that can have 200 to 300 inmates inside,” Samar said.

According to AIHRC, lack of detention centers can bring livelihood issues to the people being held inside. [...]

[UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’, Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session: AFGHANISTAN \(July 2018\)](#)

[...] Annex

[...] II. Treaty Bodies

Committee against Torture

Concluding Observations, (12 June 2017), CAT/C/AFG/CO/2

Conditions of detention

29. While taking note of the State party’s challenges regarding the lack of budget and welcoming the Law on Prisons and Detention Centres, the Committee remains deeply concerned about the poor conditions of detention, including severe overcrowding, inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. In that connection, the Committee is particularly concerned by the situation of women in prisons. It is also concerned by the situation in Pul-e-Charkhi prison, where the renovation project allegedly remains uncompleted due to corruption. [...]

[Afghanistan Times, Pol-e-Charkhi prisoners on hunger strike \(15 August 2018\)](#)

[...] AT-KABUL: Inmates in the Pol-e-Charkhi prison continue hunger strike, saying they were deprived of presidential amnesty orders, transferring them to the jails in their respective provinces, misbehavior by the jailers and bad accommodation.

The inmates have claimed that some of their fellow-prisoners have died due to the strike, while some others were in critical health condition. [...]

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions.¹³⁴ [...]

134 IWPR, Afghanistan: Female Prisoners Jailed Far From Home, 27 February 2018, <https://iwpr.net/global-voices/afghanistan-femaleprisoners-jailed-far-from>; IWPR, Afghan Prison Deemed Death Trap, 13 December 2017, <https://iwpr.net/global-voices/afghan-prisondeemed-death-trap>; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 29; SIGAR, Quarterly Report to the United States Congress, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

1. Right to life, liberty and security of person¹⁹

[...] 19. The Committee remained deeply concerned about the poor conditions of detention, including severe overcrowding, inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. It was particularly concerned by the situation of women in prisons and recommended taking measures to alleviate overcrowding in detention facilities.³⁹ [...]

19 For relevant recommendations, see A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

39 CAT/C/AFG/CO/2, paras. 29–30.

[Human Rights Watch, World Report 2019 – Afghanistan \(17 January 2019\)](#)

[...] Torture

[...] A report by Integrity Watch Afghanistan in late 2017 documented inhumane conditions in Afghan prisons and detention centers, with severe overcrowding and insufficient toilets, potable water, mattresses, and other facilities. Through the first half of 2018, prisoners in Pul-e-Charkhi prison carried out a hunger strike to protest conditions. The situation remained particularly poor for female prisoners, many of whom have been imprisoned for so-called morality crimes and who are often imprisoned with their children, far from home. [...]

[SIGAR Special Inspector General for Afghanistan Reconstruction, Quarterly Report to the United States Congress \(30 January 2019\)](#)

[...] Afghan Correctional System [p. 130]

As of October 31, 2018, the General Directorate of Prisons and Detention Centers (GDPDC) incarcerated 29,268 males and 795 females, while the MOJ's Juvenile Rehabilitation Directorate (JRD) incarcerated 666 male and 19 female juveniles. These incarceration totals do not include detainees held by any other Afghan governmental organization, as State's Bureau of International Narcotics and Law Enforcement Affairs (INL) does not have access to their data.⁴¹⁹ The average growth rate of adult prisoner and detainee populations held by the GDPDC over the last five years is 5.03% per year, as calculated in October of each year.⁴²⁰

According to State, overcrowding is a persistent, substantial, and wide- spread problem within GDPDC facilities for adults, despite stagnant prison population numbers. As of October 31, the total male provincial-prison population was at 183.7% of capacity, as defined by the International Committee of the Red Cross's (ICRC) minimum standard of 3.4 square meters per inmate. The total female provincial-prison population was at 102.1% of the ICRC-recommended capacity.⁴²¹ [...]

419. State, INL, response to SIGAR data call, 12/21/2018.

420. State, INL, response to SIGAR data call, 12/21/2018.

421. State, INL, response to SIGAR data call, 12/21/2018.

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan, March 2019](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] Prison conditions

General conditions in prisons are poor because they are overcrowded and unsanitary. There is only limited access to medical care. The government has insufficient facilities to keep suspects separate from convicted prisoners.

[...] The detention centres of the security service, the *National Directorate of Security* (NDS), are also overcrowded, mainly with people accused of terrorism or crimes against national and international security. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] Prison and Detention Center Conditions

Prison conditions were difficult due to overcrowding, unsanitary conditions, and limited access to medical services.

[...] Physical Conditions: Overcrowding in prisons continued to be a serious, widespread problem. Based on standards recommended by the International Committee of the Red Cross (ICRC), 28 of 34 provincial prisons for men were severely overcrowded. The country's largest prison, Pul-e Charkhi, held 13,118 prisoners, detainees, and children of incarcerated mothers as of October, 55 percent more than it was designed to hold. In August more than 500 prisoners at Pul-e Charkhi participated in a one-week hunger strike to protest prison conditions, particularly for elderly and ill inmates, and the administration of their cases. [...]

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] G. Afghan National Detention Facility in Parwan

[...] UNAMA is however concerned about the conditions of detention observed within the facility, including, overcrowding, the use of solitary confinement as the sole disciplinary measure, restrictions with regard to family visits and access to lawyers, and inadequate lighting. [...]

[Reuters, Clashes in Afghan prison leave four dead, dozens injured \(14 May 2019\)](#)

[...] Last year, hundreds of inmates at the Pul-e-Charkhi went on a hunger strike to demand better conditions, but it remains overcrowded and lacking in basic infrastructure. [...]

[Tenth report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2255 \(2015\) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan \(13 June 2019\)](#)

[...] III. Islamic State in Iraq and the Levant in Afghanistan

[...] 65. Member States have expressed concern about radicalization and terrorist activity within Afghan prisons, especially Pul-e-Charkhi, in eastern Kabul. The prison is filled beyond its intended capacity and there is no adequate system in place to segregate extremist prisoners from others, including drug dealers and other organized criminals. [...]

5. Solitary confinement, social isolation, incommunicado detention, constraints to out of cell activities and freedom of movement

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\]](#)

[...] Lack of training programs and vocational training in some prison: There are no effective educational programs in some of the prisons covered by the Kabul Regional Office. On the other hand, there are no effective vocational programs in prisons, while based on the provisions of the law on prisons and detention centers there should be vocational training programs in all prisons.⁶ For example, in the prisons of Panjshir and Parwan provinces, due to lack of enough space the two programs are not effectively in place. [...]

[ICRC, Afghanistan Facts and Figures \(January-December 2018\)](#)

[...] 59 visits in 19 detention centres (housing over 28,000 detainees).

[...] 680 detainees arrested in relation to the conflict, of whom 380 were visited [sic] for first time in order to ensure they are treated humanely and with dignity.

[...] 6,500 families visited their loved ones in the Prison and Detention Facility in Parwan. [...]

[Pahjwok Afghan News, ICRC helps over 6,600 families contact kin in prison \(30 July 2018\)](#)

[...] The International Committee of the Red Cross (ICRC) says it has helped over 6,600 Afghan families maintain contact with their relatives in prison this year.

Representatives of the humanitarian organisation also visited more than 27,000 detainees to ensure they were treated with dignity, an ICRC statement said on Monday.

[...] Visiting detainees and maintaining family contact

- Carried out 33 visits in 17 detention centres (housing over 27,913 detainees).
- Visited 313 people in detention arrested in relation to the conflict, of which 160 were visited for the first time.
- Exchanged over 5,616 Red Cross Messages between detainees and their families, with the support of the ARCS. Red Cross Messages are hand-written messages that may be described as “brief messages containing family news”, “brief personal messages to relatives made otherwise unreachable by armed conflict [or by events]”, etc.
- Helped families of detainees in the Prison and Detention Facility in Parwan (PDF-P) to re-establish and maintain contact with relatives through 6,300 phone calls, 338 vide teleconference calls and 3,367 family visits.
- Supported 151 families to visit their family members held in Pul-i-Charkhi prison.

Received 82 queries from families looking for people alleged to be arrested, out of which 55% of the cases were successfully solved and received 94 requests from families that have lost contact with 295 family members. [...]

[UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’, Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session: AFGHANISTAN \(July 2018\)](#)

[...] II. Treaty Bodies

Committee against Torture

Concluding Observations, (12 June 2017), CAT/C/AFG/CO/2

Conditions of detention

The Committee is also deeply concerned by:

- (a) The situation of detainees in solitary confinement, a practice which is applied to persons with epidemic diseases, persons with mental illnesses, and terrorists for prolonged periods of time;
- [...] (f) Develop educational programmes to ensure that prison staff abide by the law and adhere strictly to rules and regulations. [...]

[ICRC, Reuniting families in Afghanistan: After 2 years of disappearance, Naqibullah stuns family as he “comes alive” \(24 October 2018\)](#)

[...] Overwhelmed with sadness, Naqibullah's parents could not even grieve properly because their days were spent taking care of their seven other children. Having accepted its fate, this family in Dand-e-Ghori district of Baghlan province was stunned to learn one fine day that Naqibullah was alive.

Naqibullah was injured during the armed conflict two years ago. Badly wounded, he was brought home, where his mother gave him a bath. Soon after, unidentified men took him away on the pretext of getting him medical help. That was the last time the family saw Naqibullah. A mere farmer and with no resources at his disposal, Imam Nazar could not even carry out a proper search for his dear son.

In September 2016, the staff from the International Committee of the Red Cross (ICRC) met Naqibullah in prison. He had no information about his family's whereabouts. While the other detainees would get visitors, nobody ever came to meet Naqibullah, because for the world, he was no longer alive.

It took over a year for the ICRC team to track Naqibullah's family. There is a marketplace in Dand-e-Ghori where locals come to restock their kitchen supplies. With the hope that Naqibullah's family too would visit the bazaar, they left a message with the shopkeepers. To their relief, that day finally came and they received a phone call from Naqibullah's family.

The family rushed to the ICRC office in Kabul as soon as they could, following which their transportation to the detention facility was arranged. Impatient to meet their disappeared loved one, Naqibullah's parents along with his brother Hekamat and sister Zahra made their way to the prison.

[...] Like Naqibullah and his family, many others have benefitted from the ICRC's Restoring Family Links programme launched in 2008. As part of this programme, the ICRC transmits Red Cross messages between families separated by conflict and helps maintain links between detainees and their families by way of phone calls, visits and video conferences.

Since the beginning of 2018, the ICRC has helped over 6,500 families of detainees to reestablish and maintain contact with their relatives through phone calls, video teleconferences and family visits.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

1. Right to life, liberty and security of person¹⁹

[...] 20. The Committee was concerned by the situation of detainees in solitary confinement, a practice applied to persons with epidemic diseases, persons with mental illnesses and terrorists for prolonged periods of time.³⁹ [...]

19 For relevant recommendations, see A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

39 CAT/C/AFG/CO/2, para. 29.

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

[...] • Poor conditions of detention observed within the Afghan National Army-run Detention Facility in Parwan give rise to concern, including inadequate lighting, overcrowding, the use of solitary confinement as the sole disciplinary measure, and restrictions with regard to family visits and access to lawyers.

[...] • Limitations in implementing key procedural and other legal safeguards to prevent torture and ill-treatment, such as access to lawyers and contact with the family during investigation; medical screening; information provided to detainees on their rights; and reliance on forced confessions.

[...] G. Afghan National Detention Facility in Parwan

[...] UNAMA is however concerned about the conditions of detention observed within the facility, including, overcrowding, the use of solitary confinement as the sole disciplinary measure, restrictions with regard to family visits and access to lawyers, and inadequate lighting. In addition, during its interviews with detainees held in the facility, UNAMA received numerous reports that the poor conditions of detention and the lack of programmes and facilities for detainees contribute to widespread mental health problems among the prison population.

[...] 6. Legal and Other Procedural Safeguards to Prevent Torture and Ill-treatment

[...] B. Contact with the outside world / Notification of the family or third person concerning the arrest and detention of an individual

Incommunicado detention is a main risk factor of torture and ill-treatment. Thus, information on the whereabouts of a detained person and contact with the outside world are another crucial safeguard against such treatment besides serving to reassure families and detainees. It may facilitate reporting and possible action on treatment or other complaints.

Many detainees interviewed for this report indicated they had had no opportunity or were denied the possibility to contact their family members, particularly during the investigation phase. According to interviews conducted by UNAMA, contact with the family is overall more easily facilitated in detention facilities administered by the Central Prisons Directorate of the Ministry of the Interior and the Ministry of Justice (Juvenile Rehabilitation Centres). [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] Prison conditions

[...] According to a confidential source, the NDS uses a system whereby it first holds detainees for up to ten days after arrest without talking to them. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] Prison and Detention Center Conditions

[...] Administration: The law provides prisoners with the right to leave prison for up to 20 days for family visits. Most prisons did not implement this provision, and the law is unclear in its application to different classes of prisoners. [...]

6. Unhygienic conditions

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\] \[p. 11\]](#)

[...] During the fiscal year 1396, 150 recommendations were presented to the relevant authorities to improve the situation of the detention centers, including a written recommendation, 9 telephone contact and 140 or more oral recommendations.

For example, it was a few years since the rooms in detention center were sprayed with insecticide, and the rooms, quilts of prisoners were also very old and the prison authorities were not able to provide them with new ones, therefore, in order to solve this problem, a letter No- 32 dated 8/1/1369, was sent to the Ministry of the Interior, and fortunately all the rooms were sprayed with insecticide.

Another example of the implementation of the recommendation of the Kabul Regional Office is improving the situation of places of custody in one of Kabul police districts. Staff members of the Ombudsman Unit of Kabul Regional Office, during the monitoring of the district's detention centers, observed that those in custody had no access to the toilets, they were using mineral water bottles for the purpose, and the bottles were placed in the corner of the room. [...]

[ICRC, Afghanistan: Managing wastewater to help improve living conditions \(14 February 2018\)](#)

[...] Ahmad Zubair Abdurahman, a detainee in the prison, said the smell used to be terrible as all the windows in his block are facing the waste area. Detainees used plastic to cover the windows to block the smell and keep out the flies. This prevented fresh air from coming in causing further health hazards from poor ventilation. The detainees can now breathe freely in the blocks.

The wastewater system has also proved to be a huge relief for the prison's neighbours. Shah Zalmi, the head of the community next to the prison, said that before the system was installed their children were always getting sick and the smell was intolerable. He added that the local community is very grateful for the initiative.

Engineer Wakil Ahmad Barak, an environmental expert at the Herat governor's office, said the project has had a significant impact on the reduction of air pollution and groundwater. The accumulation of wastewater can cause serious damage to the environment, he added.

Though the system is now up and running, the work is not over. The ICRC has trained a committee made up of detainees and staff to operate and maintain the system. For the first three months, the ICRC engineers will monitor the system.

The ICRC is also working to expand the system to the female section of the prison. Work should be completed by March 2018 ensuring all detainees will benefit from improved conditions. [...]

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions.¹³⁴ [...]

¹³⁴ IWPR, Afghanistan: Female Prisoners Jailed Far From Home, 27 February 2018, <https://iwpr.net/global-voices/afghanistan-femaleprisoners-jailed-far-from>; IWPR, Afghan Prison Deemed Death Trap, 13 December 2017, <https://iwpr.net/global-voices/afghan-prisondeemed-death-trap>; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 29; SIGAR, Quarterly Report to the United States Congress, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

1. Right to life, liberty and security of person¹⁹

[...] 19. The Committee remained deeply concerned about the poor conditions of detention, including severe overcrowding, inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. It was particularly concerned by the situation of women in prisons and recommended taking measures to alleviate overcrowding in detention facilities.³⁹ [...]

19 For relevant recommendations, see

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] Prison and Detention Center Conditions

Access to food, potable water, sanitation, heating, ventilation, lighting, and medical care in prisons varied throughout the country and was generally inadequate. [...]

A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

39 CAT/C/AFG/CO/2, paras. 29–30.

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] Prison conditions

General conditions in prisons are poor because they are overcrowded and unsanitary. There is only limited access to medical care. The government has insufficient facilities to keep suspects separate from convicted prisoners. [...]

7. Restrictions to medical care

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\]](#)

[...] Absence of quality medicine in prison clinics: There are no adequate and high quality medicine in prison clinics in the areas covered by the Kabul Regional Office, and in some prison clinics medicines date is expired, prisoners' access to health services is limited. This will prevent the timely treatment of the sick prisoners and the illness will become a major health problem in the prison. [...]

[UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights', Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session: AFGHANISTAN \(July 2018\)](#)

[...] Annex

[...] II. Treaty Bodies

Committee against Torture

Concluding Observations, (12 June 2017), CAT/C/AFG/CO/2

Conditions of detention

29. While taking note of the State party's challenges regarding the lack of budget and welcoming the Law on Prisons and Detention Centres, the Committee remains deeply concerned about the poor conditions of detention, including severe overcrowding, inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. In that connection, the Committee is particularly concerned by the situation of women in prisons. It is also concerned by the situation in Pul-e-Charkhi prison, where the renovation project allegedly remains uncompleted due to corruption. [...]

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

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³⁹ CAT/C/AFG/CO/2, paras. 29–30.

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] Prison and Detention Center Conditions

Prison conditions were difficult due to overcrowding, unsanitary conditions, and limited access to medical services. [...]

[...] EXECUTIVE SUMMARY

[...] • Limitations in implementing key procedural and other legal safeguards to prevent torture and ill-treatment, such as access to lawyers and contact with the family during investigation; medical screening; information provided to detainees on their rights; and reliance on forced confessions.

[...] G. Afghan National Detention Facility in Parwan

[...] C. Medical examinations

[...] Generally, among those facilities visited by UNAMA, most have the capacity to at least provide basic medical check-ups and treatment which is accessible for all detainees. UNAMA has no means of assessing the quality of medical services provided and of the medical examinations carried out. Nevertheless, it observed that the practice of initial medical screening of detainees upon admission, while undertaken in a number of facilities, is not a standard practice countrywide. Interviewees regularly reported that the procedure consisted solely of questions and self-reporting rather than an actual physical examination. UNAMA also received reports of delays in or denial of access to doctors by the detaining authorities despite requests from detainees, in particular during the early stages of the investigation. A number of detainees also indicated that they had reported to doctors about the ill-treatment they had experienced. While, in some instances, they received medical treatment, none of the detainees was aware of any other follow-up action taken by the medical personnel.⁷⁷ [...]

77 See also below under 'Redress for victims of torture and ill-treatment'

8. Irregular or contaminated food and water

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\] \[p. 19\]](#)

[...] Lack of potable drinking water: The majority of detainees complain about the lack of safe drinking water, especially the prisons in Panjshir, Parwan and Maidan Wardak provinces, have more serious problems. For example, in the Panjshir Province, the water is provided from a remote and the highland area where there is a pit in which water is gathered, and then this unhealthy water is transferred to the prison through tabs, and on the other hand during the summer season this water is decreasing tremendously.

Inadequate and inappropriate food: Based on the official food dish, each prisoner at 24 hours, has 85 Afs as food and fuel allocation, of which 15 Afs are for fuel, and 70 Afs for food, 23 Afs for each meal (three times a day). Therefore, intended food is not sufficient for prisoners, especially female prisoners with children, and most of prisoners complain of inadequacy of food. At the same time, there are also complaints about the cooking, its quality and sanitation.

[...] Improvement of the situation of prisons as a result of monitoring and presentation of recommendation

Human Rights monitors of the Kabul Regional Office issued recommendations to relevant authorities in order to improve the human rights situation in the prisons, after conducting regular visits and monitoring to these centers, significant improvements were made in prisons by implementing these recommendations. In this part, some of the improvements are referred to as follows:

- o The provincial prison in Kapisa did not have electricity power before, and this shortage also caused restrictions in the prisoners' access to drinking water. This problem was raised with the general chief of the prisons and detention centers, and the relevant recommendation was followed at the provincial and central levels, as a result the electricity was connected to the prison. By connecting the electricity, the problem of drinking water was also solved. [...]

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

[...] 1. Right to life, liberty and security of person¹⁹

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39 CAT/C/AFG/CO/2, paras. 29–30.

[Human Rights Watch, World Report 2019 – Afghanistan \(17 January 2019\)](#)

[...] Torture

[...] A report by Integrity Watch Afghanistan in late 2017 documented inhumane conditions in Afghan prisons and detention centers, with severe overcrowding and insufficient toilets, potable water, mattresses, and other facilities. Through the first half of 2018, prisoners in Pul-e-Charkhi prison carried out a hunger strike to protest conditions. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[...] Prison and Detention Center Conditions

Access to food, potable water, sanitation, heating, ventilation, lighting, and medical care in prisons varied throughout the country and was generally inadequate. The GDPDC's nationwide program to feed prisoners faced a severely limited budget, and many prisoners relied on family members to provide food supplements and other necessary items. In November 2017 the local NGO Integrity Watch Afghanistan reported that Wardak Prison had no guaranteed source of clean drinking water and that prisoners in Pul-e Charkhi, Baghlan, and Wardak had limited access to food, with prisoners' families also providing food to make up the gap. [...]

- 9. Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, motor activities, denial of privacy and forced nakedness, exposure to extreme temperatures**

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

[...] • Poor conditions of detention observed within the Afghan National Army-run Detention Facility in Parwan give rise to concern, including inadequate lighting, overcrowding, the use of solitary confinement as the sole disciplinary measure, and restrictions with regard to family visits and access to lawyers.

[...] G. Afghan National Detention Facility in Parwan

[...] UNAMA is however concerned about the conditions of detention observed within the facility, including, overcrowding, the use of solitary confinement as the sole disciplinary measure, restrictions with regard to family visits and access to lawyers, and inadequate lighting. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Prison and Detention Center Conditions

[...] Access to food, potable water, sanitation, heating, ventilation, lighting, and medical care in prisons varied throughout the country and was generally inadequate. The GDPDC's nationwide program to feed prisoners faced a severely limited budget, and many prisoners relied on family members to provide food supplements and other necessary items. In November 2017 the local NGO Integrity Watch Afghanistan reported that Wardak Prison had no guaranteed source of clean drinking water and that prisoners in Pul-e Charkhi, Baghlan, and Wardak had limited access to food, with prisoners' families also providing food to make up the gap. [...]

10. Number of prisoners on remand and length of pre-trial detention

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

[...] Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.¹²⁹

[...] 4. Civilians Suspected of Supporting Anti-Government Elements

Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.³⁵³ Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.³⁵⁴

[...] Detainees reportedly lack access to remedial mechanisms, independent medical examination and care, as well as meaningful access to defence counsel, especially during the investigation and the prolonged pre-trial detention period, including in particular in remote detention facilities.³⁵⁷ [...]

129 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 45-46, 50-53, 59; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 11, 17.

353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 9. “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.” UNAMA, Treatment of Conflict Related Detainees, April 2017, p. 6; see also *ibid.*, p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

357 UNAMA, Treatment of Conflict-Related Detainees, April 2017, pp. 12, 45-49, 58-59.

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] d. Arbitrary Arrest or Detention

[...] Arrest Procedures and Treatment of Detainees

[...] Pretrial Detention: The law provides a defendant the right to object to his or her pretrial detention and receive a court hearing on the matter. Nevertheless, lengthy pretrial detention remained a problem. Many detainees did not benefit from the provisions of the criminal procedure code because of a lack of resources, limited numbers of defense attorneys, unskilled legal practitioners, and corruption. The law provides that, if there is no completed investigation or filed indictment within the code’s 10-, 27-, or 75-day deadlines, judges must release defendants. Judges, however, held many detainees beyond those periods, despite the lack of an indictment. [...]

[...] 4. Legal Framework Prohibiting Torture and Ill-treatment in Afghanistan

[...] F. Special provisions and procedures for conflict-related crimes

[...] During its monitoring, UNAMA repeatedly observed detainees who had been held in ANP and NDS custody for well in excess of the 10-day time limit permitted under Annex 1 of the Criminal Procedure Code. In some cases, the detainees had been held in NDS custody for more than 70 days. UNAMA did not attempt to determine in each individual case the procedural basis by 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, detention in ANP or NDS custody beyond the 10-day period provided for in Annex 1 of the Criminal Procedure Code is unlawful under the relevant provisions of the Law on Prisons and Detention Centres. [...]

11. Factors that affect the length of pre-trial detention

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] I. Executive Summary

[...] 1. Refugee Status under the 1951 Convention

[...] UNHCR considers that individuals falling into one or more of the following risk profiles may be in need of international refugee protection, depending on the individual circumstances of the case:

- (1) Individuals associated with, or perceived as supportive of, the Government and the international community, including the international military forces;
- (2) Journalists and other media professionals;
- (3) Men of fighting age, and children in the context of underage and forced recruitment;
- (4) Civilians suspected of supporting anti-government elements (AGEs);
- (5) Members of minority religious groups, and persons perceived as contravening Sharia law;
- (6) Individuals perceived as contravening AGEs' interpretation of Islamic principles, norms and values;
- (7) Women with certain profiles or in specific circumstances;
- (8) Women and men who are perceived as contravening social mores;
- (9) Individuals with disabilities, including in particular mental disabilities, and persons suffering from mental illnesses;
- (10) Children with certain profiles or in specific circumstances;
- (11) Survivors of trafficking or bonded labour and persons at risk of being trafficked or of bonded labour;
- (12) Individuals of diverse sexual orientations and/or gender identities;
- (13) Members of (minority) ethnic groups;
- (14) Individuals involved in blood feuds;
- (15) Business people, other people of means and their family members.

7. Women with Certain Profiles or in Specific Circumstances⁴²⁸

[...] a) Sexual and Gender-Based Violence

[...] As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death.⁴⁶²

[...] 8. Women and Men Who Are Perceived as Contravening Social Mores⁴⁸⁶

[...] A significant proportion of the girls and women detained in the country have been charged with "moral crimes".⁵⁰⁰ Female prisoners are reportedly often subjected to physical violence as well as and sexual harassment and abuse.⁵⁰¹ Since accusations of adultery and other "moral crimes" may elicit violence or "honour killings",⁵⁰² in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.⁵⁰³

[...] 11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour

[...] The Government also reportedly arrested, imprisoned or otherwise punished persons who had fallen victim to trafficking, penalizing such persons for crimes such as prostitution or "moral crimes".⁵⁶³

[...] 12. Individuals of Diverse Sexual Orientations and/or Gender Identities

Consensual same-sex sexual acts are illegal in Afghanistan and are punishable by imprisonment of up to two years under the new Afghan Penal Code.⁵⁶⁵

[...] Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.⁵⁷⁰ Overall, "homophobic views and violence against LGBT groups in Afghanistan are pervasive".⁵⁷¹ The police reportedly fail to provide protection to individuals of

diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.⁵⁷²

[...] C. Human Rights Situation

Despite the Afghan Government's stated commitment to upholding its national and international human rights obligations, its record in protecting human rights continues to be inconsistent. Significant sectors of the population, including women, children, ethnic minorities, detainees, and others, reportedly continue to experience numerous human rights abuses by various actors.¹¹⁹ [...]

462 Pajhwok News reports that in 2017 "nearly 40 women were killed in the name of honor and other issues." Pajhwok Afghan News, Nearly 40 Women Murdered in the East This Year: Officials, 10 December 2017, <https://www.pajhwok.com/en/2017/12/10/nearly-40-women-murderedeast-year-officials>. "Any misbehavior or sexual improprieties (adultery, abduction, rape) by women are considered as serious violations of the Pashtunwali code, and can be killed by male relatives to preserve the honor of the family." Austrian Country of Origin Information Department (Bundesamts für Fremdenwesen und Asyl (BFA)), AfPak: Principals of the Tribal & Clan Structure, 5 April 2017, https://coi.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf, p. 51. "So-called 'honour killings' are not uncommon in conservative Afghanistan and relations between men and women outside marriage are strictly controlled under local and Islamic practices, with violations often punishable by death." The Express Tribune, In 'Honour Killing', Mob Lynches Afghan Couple for Eloping, 12 February 2017, <https://tribune.com.pk/story/1324630/mob-lynches-afghan-couple-eloping-honourkilling/>. "Occurrences of honor killings are widespread, notably in the countryside and rural areas, and often go unreported or unsolved due to cultural factors and the silencing of victims." Gender Concerns International, The Situation of Women in Afghanistan, undated, <http://www.genderconcerns.org/country-in-focus/afghanistan/the-situation-of-women-in-afghanistan>. See also, New York Minute Magazine, Afghanistan's Honor Killings Must End, 17 July 2017, <http://www.newyorkminutemag.com/afghanistans-honor-killings-must-end/>; RFE/RL, Young Afghan Lovers Lynched By Armed Mob In Latest Horrific 'Honor' Killing, 16 February 2017, <https://www.rferl.org/a/afghanistan-honorkilling-fateha-lynched/28314022.html>. Article 398 of the Afghan Penal Code of 1976 exempted perpetrators of honour killings "from punishment for laceration and murder", and instead imposed a term of imprisonment of no longer than two years. This article was however removed in the revised Penal Code of 2017. Afghanistan, Penal Code, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. An unofficial translation of the 2017 Penal Code is on record with UNHCR. See also IWPR, Afghanistan's Domestic Violence Loophole, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>

500 In March 2017 there were reportedly "420 women serving prison sentences in Afghanistan, either for murder or for 'moral crimes', while a further 410 women had been charged and were under investigation. IWPR, Afghanistan: Female Detainees Face Sexual Abuse, 28 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-face-sexual-abuse>. "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'." UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 6, note 10. "[A] large percentage of female prisoners are imprisoned for 'moral crimes', including running away from abusive relationships." Australian Government: Department of Foreign Affairs and Trade, Country Information Report: Afghanistan, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, pp. 29-30. "The vast majority of women in prison are accused of moral crimes and were therefore forced to undergo virginity tests". Civil Society and Human Rights Network, Shadow Report to the Committee Against Torture on the Occasion of the Examination of the Second Periodic Report of Afghanistan at its 60th Session, March 2017, https://www.ecoi.net/en/file/local/1400873/1930_1496217729_int-cat-cssafg-27015-e.pdf, p. 6. In May 2015, the Special Rapporteur on violence against women reported that 428 women, or 58 per cent of all women imprisoned across Afghanistan, were detained on "moral crimes" charges. UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 23.

501 IWPR, Afghanistan: Female Detainees Face Sexual Abuse, 18 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-facesexual-abuse>; Reuters, Most Afghan Women Serve Sentences in Elders' Homes, Not Prisons, 11 October 2016, <https://www.reuters.com/article/us-afghanistan-women-prisons/most-afghan-women-serve-sentences-in-elders-homes-not-prisonsidUSKCN12A2KR>.

502 See for example RFE/RL, Mob Beats Afghan Woman for Alleged Affair, 2 February 2018, <https://www.rferl.org/a/afghanistan-womenbrutally-beaten-affair/29015213.html>; Tolo News, Father Kills Daughter and her Male Friend, 2 July 2017, <http://www.tolonews.com/afghanistan/father-kills-daughter-and-her-male-friend>; The Observers, The Place in Afghanistan Where It's "Easy To Kill Women", 13 April 2017, <http://observers.france24.com/en/20170413-place-afghanistan-where-it%E2%80%99%E2%80%99Easykill-women%E2%80%9D>; RFE, Young Afghan Lovers Lynched by Armed Mob in Latest Horrific 'Honor' Killing, 16 February 2017, <https://www.rferl.org/a/afghanistan-honor-killing-fateha-lynched/28314022.html>. For more information about the prevalence of "honour killings" in Afghanistan, see Section III.A.7.

503 “When protection is offered to women, it is under a patriarchal guise. We see that scores of women are kept in ‘protective’ detention, where they are detained in order to ensure their protection from threats, such as honour crimes, but also to ensure that they will testify against the perpetrator in court. Such detention has been reported as continuing for up to 14 years.” Penal Reform International, *Eliminating Violence Against Women in the Criminal Justice System*, 21 November 2017, <https://www.penalreform.org/blog/eliminating-violence-women-criminaljustice-system>. See also, The Diplomat, *The Women in Afghanistan’s Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/thewomen-in-afghanistans-moral-prisons>

563 US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37; SIGAR, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>, p. 19; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, <http://www.refworld.org/docid/587783564.html>; HRW, *Afghanistan: End ‘Moral Crimes’ Charges, ‘Virginity’ Tests*, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>. See also Section III.A.7.a: “Women with Certain Profiles or in Specific Circumstances: Sexual and Gender-Based Violence”

565 Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 646 and 647. During the Universal Periodic Review for Afghanistan in 2014, Afghanistan did not accept a recommendation from Norway to “ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex.” See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, <http://www.refworld.org/docid/539064f14.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum*, 16 June 2014, <http://www.refworld.org/docid/5671934a4.html>. It should be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another man, the latter of which is considered a sin in Islam and punishable under Sharia law. See, for example, Afghanistan Human Terrain Team, *Pashtun Sexuality: Research Update and Findings (Unclassified)*, 2009, <http://info.publicintelligence.net/HTTPashtunSexuality.pdf>; Shivananda Khan, *Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), September 2008, http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf, pp. 22, 29; and S. Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30 March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf, pp. 17, 63. [...]

Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.⁵⁷⁰ Overall, “homophobic views and violence against LGBT groups in Afghanistan are pervasive”.⁵⁷¹ The police reportedly fail to provide protection to individuals of diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.⁵⁷²

119 See for example, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 8-14; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>; UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

[Freedom House, Annual report on political rights and civil liberties in 2018: Freedom in the World 2019 – Afghanistan \(4 February 2019\)](#)

[...] F. RULE OF LAW: 2 / 16

[...] F1. Is there an independent judiciary? 1 / 4

The judicial system operates haphazardly, and justice in many places is administered on the basis of a mixture of legal codes by inadequately trained judges. Corruption in the judiciary is extensive, with judges and lawyers often subject to threats and bribes from local leaders or armed groups. Informal justice systems, employing variants of both customary law and Sharia (Islamic law), are widely used to arbitrate disputes, especially in rural areas. The Taliban have installed their own judiciary in areas

they control, but many Taliban commanders impose arbitrary punishments without reference to this system.

F2. Does due process prevail in civil and criminal matters? 0 / 4

Prosecutions and trials suffer from a number of weaknesses, including lack of proper representation, excessive reliance on uncorroborated witness testimony, lack of reliable forensic evidence, arbitrary decision-making, and failure to publish court decisions. The police force is heavily militarized and primarily focused on its role as a first line of defense against insurgents in administrative centers. There are high levels of corruption and complicity in organized crime among police, particularly near key smuggling routes.

There is an entrenched culture of impunity for the country's political and military power brokers. In 2016, the former governor of Jowzjan Province, Ahmad Ishchi, accused First Vice President Abdul Rashid Dostum of ordering his arbitrary detention and sexual assault. During the subsequent investigation, Dostum was reportedly placed under house arrest but later left the country and remained abroad until July 2018. Upon his return, the charges against Dostum reportedly remained active, but authorities had not moved to prosecute him at year's end, and he was allowed to remain in office. Dostum had previously clashed with President Ghani, raising suspicions that the government was using the case to marginalize him politically, even if it lacked the will or power to uphold the law. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] d. Arbitrary Arrest or Detention

[...] The law prohibits arbitrary arrest and detention, but both remained serious problems. Authorities detained many citizens without respecting essential procedural protections. According to NGOs, law enforcement officers continued to detain citizens arbitrarily without clear legal authority or due process. Local law enforcement officials reportedly detained persons illegally on charges not provided under local criminal law. In some cases authorities improperly imprisoned women because they deemed it unsafe for the women to return home or because women's shelters were not available to provide protection in the provinces or districts at issue (see section 6, Women). The law provides a defendant the right to object to his or her pretrial detention and receive a court hearing on the matter, but authorities generally did not observe this requirement.

[...] e. Denial of Fair Public Trial

The law provides for an independent judiciary, but the judiciary continued to be underfunded, understaffed, inadequately trained, largely ineffective, and subject to threats, bias, political influence, and pervasive corruption.

Judicial officials, prosecutors, and defense attorneys were often intimidated or corrupt. In May, UNAMA reported that the Anticorruption Justice Center, established in 2016 to combat corruption, has thus far indicted 142 cases, including charges of misuse of authority, embezzlement, bribery, forgery of documents, and money laundering. Bribery and pressure from public officials, tribal leaders, families of accused persons, and individuals associated with the insurgency impaired judicial impartiality. Most courts administered justice unevenly, employing a mixture of codified law, sharia, and local custom. Traditional justice mechanisms remained the main recourse for many, especially in rural areas. Corruption was common within the judiciary, and criminals often paid bribes to obtain their release or a sentence reduction (see section 4).

There was a widespread shortage of judges, primarily in insecure areas, leading to the adjudication of many cases through informal, traditional mediation. A shortage of women judges, particularly outside of Kabul, limited access to justice for women. Many women cannot and do not use the formal justice system because cultural norms preclude their engagement with male officials. Only 234 of 2162, or 12 percent, of judges are women. The formal justice system was stronger in urban

centers, closer to the central government, and weaker in rural areas. Courts and police forces continued to operate at less than full strength nationwide. The judicial system continued to lack the capacity to absorb and implement the large volume of new and amended legislation. A lack of qualified judicial personnel hindered the courts. Some municipal and provincial authorities, including judges, had minimal training and often based their judgments on their personal understanding of sharia without appropriate reference to statutory law, tribal codes of honor, or local custom. The number of judges who graduated from law school continued to increase. Access to legal codes and statutes increased, but their limited availability continued to hinder some judges and prosecutors. UNAMA found during an April to July survey that judges did not have sufficient copies of the new Penal Code.

[...] Section 4. Corruption and Lack of Transparency in Government

According to prisoners and local NGOs, corruption was widespread across the justice system, particularly in connection with the prosecution of criminal cases and in arranging release from prison. For example, there were multiple reports that judges would not release prisoners who had served their sentences without payment from family members. There were also reports that officials received unauthorized payments in exchange for reducing prison sentences, halting investigations, or dismissing charges outright.

National-level survey data offered a mixed picture of corruption in the justice sector. The World Justice Project's 2017 *Rule of Law* survey found moderate improvements in perceptions of government accountability. Nonetheless, experts polled for the report cited corrupt prosecutors as the biggest problem in criminal investigative services and corruption as the largest problem in criminal courts. [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.4 Judicial process

The judicial system is characterised by arbitrariness. Judges have insufficient expertise. Corruption and lack of capacity undermine the judicial system in Afghanistan. Judges and lawyers are also threatened or bribed by local leaders or armed groups.³¹⁹ Freedom House indicates that there are a number of shortcomings in prosecutions and court proceedings, such as a lack of adequate representation, excessive reliance on unconfirmed witness statements, lack of reliable forensic evidence, arbitrary decision-making and the non-publication of court judgments. The police are usually occupied with military duties and mainly focused on the defence of administrative centres against attacks by AGEs. Police corruption is widespread. Police officers are also involved in organised crime, especially in connection with the main smuggling routes.³²⁰ The UN Committee against Torture, which monitors implementation of the *Convention against torture and other cruel, inhuman or degrading treatment or punishment*, has expressed its concern about the overall climate and culture of impunity in Afghanistan as evidenced by the large number of alleged human rights violations in which senior government officials have been involved.³²¹ [...]

319 Freedom House, *Freedom in the world 2018. Afghanistan profile*, p. 14, 2018.

320 Freedom House, *Freedom in the world 2018. Afghanistan profile*, p. 15, 2018.

321 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan [sic]*, CAT/C/AFG/GO/2, p. 2, 12 June 2017; Freedom House, *Freedom in the world 2018. Afghanistan profile*, p. 15, 2018. Various senior government officials, such as Atta Mohamed Noor, former governor of Balkh province, and Vice-President Dostum were accused of crimes in 2017 without being prosecuted.

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

[...] Afghan State authorities and their associates are accused of committing a wide range of human rights violations. There have been reports of illegal detention, ill-treatment and torture by the Afghan National Security Forces (ANSF), mainly by the National Directorate of Security (NDS) and some local

police forces, pro-government militias (PGMs) and powerful individuals. Often torture is used in order

to extract a confession. In this regard, targeting of civilians takes place, including based on family ties,

kinship and tribal association [Conflict targeting, 2.2; Key socio-economic indicators 2017, 3.3.3, 3.4.4.3]. There have also been reports of extrajudicial killings of civilians, suspected to be antigovernment elements (AGEs), committed by the ANSF [Conflict targeting, 2.1].

[...] Some Afghan Local Police (ALP) have been involved in extortion, threats and sexual abuse of civilians [Conflict targeting, 2.6].

Different State agents such as ministers, governors and ANSF personnel are reported to have acted beyond the scope of their legal authority. Moreover, police and judicial authorities are susceptible to the influence of powerful individuals [Conflict targeting, 2; Key socio-economic indicators 2017, 3.4.4.1, 3.5.3, 3.5.4].

Besides the ALP [Afghan Local Police], an unknown number of PGMs [pro-government militias] are fighting on the side of the government against insurgents. They have been accused of targeted killings and threatening, intimidating and harassing civilians. It is reported that such human rights abuses occur in an atmosphere of impunity due to their links to local or national powerbrokers [Conflict targeting, 2.6]. [p. 44]

[...] 5. Members of insurgent groups and civilians perceived as supporting them

[...] COI summary

Insurgent groups, as well as people suspected of supporting them, are reported to face the death penalty, extrajudicial killings, targeted attacks, torture, arbitrary arrests and illegal detention. There are also reports of incidents of extrajudicial killings and killings by ANSF abusing their position of power. Conflict-related detainees are often subjected to torture and ill-treatment. Convictions by Afghan courts are often based solely on confessions extracted through torture and ill-treatment, although the use of confessions extracted this way is strictly prohibited by the Criminal Procedure Code [Conflict targeting, 2.1, 2.2]. [...]

Article 15(b) QD [...]

- Arbitrary arrests, illegal detention and prison conditions: Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. Arbitrary arrests and illegal detention centres run by different of actors (linked to the State, to militias, to strongmen or to insurgent groups) are widespread in Afghanistan. In general, human rights are not respected in these illegal detention facilities and persons who face a real risk of being illegally detained by these actors may be in need of protection. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world. Furthermore, it can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where subjecting a person to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. It should also be stressed that in official and unofficial detention centres, torture often takes place.

See also the profile of Individuals accused of ordinary crimes.

Other profiles for which a real risk of serious harm under Article 15(b) QD may exist are, inter alia, children, individuals involved in land disputes and Afghans perceived as wealthy, etc.

12. Effective monitoring

[IWPR – Institute for War and Peace Reporting, Work of Afghan Human Rights Body Questioned \(5 January 2018\)](#)

[...] Officials and activists in Paktia have criticised the Afghanistan Independent Human Rights Commission (AIHRC) as ineffective and poorly managed.

Some argued that few Afghans in the eastern province were aware of the organisation's existence, let alone had benefitted from its work.

Other claimed that the flagship organisation had ignored fundamental rights issues.

"The work of the commission just isn't tangible to people here," said Paktia provincial council head Malik Zazi. "It's as though their aims are only symbolic; it doesn't appear to work to improve human rights at all. "They claim to represent all men, women and children but in effect they pick and choose who to fight for."

Shafiq Sahar, a member of Paktia's youth and parliamentary affairs committee, alleged that representatives had failed to carry out basic outreach or inspection work.

"People in Paktia aren't even aware of the existence of AIHRC," said Sahar. "We've not heard of them visiting prisons or engaging with the police, the army or the National Directorate of Security [Afghanistan's domestic intelligence agency]."

"Whilst there's no question that the culture and traditions of Afghanistan can hamper their work, this shouldn't be seen as an excuse." [...]

The AIHRC has previously come under fire for not having done enough to confront the legacy of war crimes committed in Afghanistan over more than three decades of conflict.

It has also been called on to do much more to support women's rights, particularly in more remote parts of the country [...]

Another issue the organisation has faced is being seen as an international import defending foreign values. [...]

But others defended the AIHRC, arguing that people had unrealistic expectations of what one human rights body could accomplish. [...]

[Institute for War and Peace Reporting, IWPR report brings change at Afghan prison \(22 January 2018\)](#)

[...] The Afghan authorities have taken steps to improve conditions at a prison in Badakhshan province after an IWPR report revealed serious failings at the institution

Not only was the building was at risk of collapse, with construction on a new site still incomplete after six years, but illness was rife amid severe overcrowding and little fuel or warm water.

In late December, shortly after the story was published, Afghanistan's council of ministers sent a high-ranking government delegation to Badakhshan.

[...] Zofanon Hasam Natiq, director of Badakhshan's women's affairs department, said that his office had been shocked to learn of the deplorable conditions at the prison.

Natiq said that his department was now provided clothing and fuel to female prisoners with help from German NGO KinderBerg, adding that his office would continue to regularly monitor conditions for female prisoners. [...]

[UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights', Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session: AFGHANISTAN \(July 2018\) \[p. 3\]](#)

[...] UNHCR commends Afghanistan on its accession to the OPCAT in April 2018. The OPCAT system of regular visits by national and international bodies to places where persons are or may be deprived

of liberty contributes to preventing torture and ill-treatment, and enhances the protection of persons under UNHCR's mandate while in detention. This is particularly important since UNHCR lacks access to judicial establishments, prisons or other detention centres. UNHCR stands ready to provide technical assistance to the GIRoA to ensure the protection of persons under UNHCR's mandate who are deprived of liberty. [...]

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

[...] Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers.¹³⁰ [...]

130 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 34. UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

[ICRC, Reuniting families in Afghanistan: After 2 years of disappearance, Naqibullah stuns family as he "comes alive" \(24 October 2018\)](#)

[...] Overwhelmed with sadness, Naqibullah's parents could not even grieve properly because their days were spent taking care of their seven other children. Having accepted its fate, this family in Dand-e-Ghori district of Baghlan province was stunned to learn one fine day that Naqibullah was alive.

Naqibullah was injured during the armed conflict two years ago. Badly wounded, he was brought home, where his mother gave him a bath. Soon after, unidentified men took him away on the pretext of getting him medical help. That was the last time the family saw Naqibullah. A mere farmer and with no resources at his disposal, Imam Nazar could not even carry out a proper search for his dear son.

In September 2016, the staff from the International Committee of the Red Cross (ICRC) met Naqibullah in prison. He had no information about his family's whereabouts. While the other detainees would get visitors, nobody ever came to meet Naqibullah, because for the world, he was no longer alive.

It took over a year for the ICRC team to track Naqibullah's family. There is a marketplace in Dand-e-Ghori where locals come to restock their kitchen supplies. With the hope that Naqibullah's family too would visit the bazaar, they left a message with the shopkeepers. To their relief, that day finally came and they received a phone call from Naqibullah's family.

The family rushed to the ICRC office in Kabul as soon as they could, following which their transportation to the detention facility was arranged. Impatient to meet their disappeared loved one, Naqibullah's parents along with his brother Hekamat and sister Zahra made their way to the prison.

[...] Like Naqibullah and his family, many others have benefitted from the ICRC's Restoring Family Links programme launched in 2008. As part of this programme, the ICRC transmits Red Cross messages between families separated by conflict and helps maintain links between detainees and their families by way of phone calls, visits and video conferences.

Since the beginning of 2018, the ICRC has helped over 6,500 families of detainees to reestablish and maintain contact with their relatives through phone calls, video teleconferences and family visits. [...]

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session, 21 January–1 February 2019, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Afghanistan \(13 November 2018\)](#)

[...] B. Rule of law and good governance²⁶

[...] Human rights of prisoners and detainees²⁸

61. The GoIRA [Government of the Islamic Republic of Afghanistan] works towards maintaining justice and preventing torture of prisoners and detainees. It took further measures to uphold human rights of prisoners by enacting the law on prisons and detention centers, regulation on detainees and detention centers and currently it works on 4 years Strategy (2018–2021) to standardize all confinement facilities.

62. To protect the rights of prisoners and detainees, GoIRA has established the High Council of Prisons on the Secretariat of MoI, Department of Monitoring of Prisons and Detention Center within AGO, and Office of Human Rights in all prisons in Kabul and provinces. In addition, MoWA established a commission for reviewing cases of imprisoned women.

63. The Department for monitoring detention centers at the AGO is currently working 24/7 and visiting detention centers without any pre-notice.

64. The Department of Human Rights, Women Affairs and Children at MoI is responsible for monitoring the situation at prisons, including female detention centers. The MoI is under legal obligation to monitor and report the situation of mistreatment and torture at detention centers. Based on this monitoring procedure, 9 police officers were punished in Nimroz and Herat in 2017. These institutions offer literacy and human rights classes for detainees.

65. AIHRC has an agreement with Afghan Security organs, based on which they are able to meet detainees on a regular basis. Each year they meet about 2000 detainees and receive information about their living condition. From 2014–2018 they have visited different detention centers all over Afghanistan more than 4000 times. Confinement facilities and Police Units are being further monitored by AIHRC to prevent torture. Police officers who are suspect in torture and ill treatment of prisoners and detainees, had been introduced to the AGO for further investigation. [...]

26 Recommendation 15, 39 and 89

28 Recommendation 49, 104 and 105.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] III. National human rights framework

7. The Committee against Torture remained concerned by the reports from the Afghanistan Independent Human Rights Commission that its monitoring staff members had limited access to custody and detention centres. 9 OHCHR/UNAMA noted that the Commission had maintained A status and was in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It had actively engaged with the United Nations human rights mechanisms, submitted various reports to the United Nations treaty bodies and to the universal periodic review and maintained constructive engagement with OHCHR/UNAMA. However, OHCHR/UNAMA noted the absence of an explicit, legally defined selection process, which had allowed the President to assume complete authority over the appointment of commissioners, without oversight or checks and balances of any sort.¹⁰ The Committee against Torture recommended that Afghanistan continue allocating additional and adequate budgetary resources to the Afghanistan Independent Human Rights Commission; enable it to make regular and unannounced visits to all places of detention, including those controlled by the

armed forces and international forces; and enable all personnel of the Commission to safely conduct their work without fear of reprisals.¹¹ [...]

11 CAT/C/AFG/CO/2, para. 32.

[ICRC, Afghanistan Facts and Figures \(January-December 2018\)](#)

[...] 59 visits in 19 detention centres (housing over 28,000 detainees).

[...] 680 detainees arrested in relation to the conflict, of whom 380 were visited for first time in order to ensure they are treated humanely and with dignity.

[...] 6,500 families visited their loved ones in the Prison and Detention Facility in Parwan. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] Prison and Detention Center Conditions

[...] Independent Monitoring: The AIHRC, UNAMA, and the ICRC monitored the NDS, Ministry of Interior, Ministry of Justice, and Ministry of Defense detention facilities. NATO Mission Resolute Support monitored the NDS, ANP, and Defense Ministry facilities. Security constraints and obstruction by authorities occasionally prevented visits to some places of detention. UNAMA and the AIHRC reported difficulty accessing NDS places of detention when they arrived unannounced. The AIHRC reported NDS officials usually required the AIHRC to submit a formal letter requesting access at least one to two days in advance of a visit. NDS officials continued to prohibit AIHRC and UNAMA monitors from bringing cameras, mobile phones, recording devices, or computers into NDS facilities, thereby preventing AIHRC monitors from properly documenting physical evidence of abuse, such as bruises, scars, and other injuries. The NDS assigned a colonel to monitor human rights conditions in its facilities.

[...] Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views. Human rights activists continued to express concern that human rights abusers remained in positions of power within the government.

Government authorities undertook efforts in 2017 to amend the penal code and criminal procedure code to facilitate national investigations and prosecutions of atrocity crimes. The new Penal Code incorporates crimes against humanity provisions from the Rome Statute.

Government Human Rights Bodies: The constitutionally mandated AIHRC continued to address human rights problems, but it received minimal government funding and relied almost exclusively on international donor funds. Three Wolesi Jirga committees deal with human rights: the Gender, Civil Society, and Human Rights Committee; the Counternarcotics, Intoxicating Items, and Ethical Abuse Committee; and the Judicial, Administrative Reform, and Anticorruption Committee. In the Meshrano Jirga, the Committee for Gender and Civil Society addresses human rights concerns. [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.3 Monitoring and legal protection

[...] 3.3.1 *The Afghan Independent Human Rights Commission (AIHRC)*

The AIHRC is an independent, constitutionally recognised organisation that investigates human rights violations, refers victims of violations to the relevant bodies and provides information about

human rights. It is internationally recognised and has been assessed for its independent nature by the *International Coordination Committee of the Human Rights Institutions*, which has given it its highest status (A status). The AIHRC has 14 offices in Afghanistan and is present in 29 provinces. The human rights situation is monitored from these offices. Due to the security situation, the AIHRC does not cover all provinces. As a result of their reporting activities, AIHRC employees experience pressure almost daily from local rulers and representatives of the authorities, as well as from the Taliban and ISKP.²⁸⁵ To date, the *conflict mapping report* prepared by the AIHRC in 2011 and presented to the then President Karzai has not been published by the government.²⁸⁶ [...]

285 Confidential source, 25 September 2018. The source mentioned as examples threatening phone calls and letters as well as a bomb attack in 2015 on an AIHRC car parked in front of the organisation's office in Jalalabad. Two staff members were killed and six were injured.

286 Country of origin report on Afghanistan, November 2016, still applicable.

UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law (April 2019)

[...] J. Observations

UNAMA also notes that on a number of occasions, detainees indicated that they or others had been kept hidden from officials, human rights observers or other visitors after experiencing torture or ill-treatment, or that authorities had delayed their referral to the prosecutor until their visible injuries had healed.

[...] 7. Monitoring, Investigations and Accountability

[...] A. National Directorate of Security

The NDS Directorate of Gender and Human Rights (NDS Department 13) maintains the internal responsibility to identify human rights violations and address complaints of detainees at NDS detention facilities. NDS human rights officers are permanently present in almost all NDS offices throughout the country. Among their activities are the systematic monitoring of NDS detention facilities, which includes conducting individual interviews with detainees, and carrying out investigations into allegations of torture and ill-treatment. They report directly to the General Director of NDS, which allows some level of independence, although its members remain within the chain of command of the NDS General Directorate, which could potentially lead to conflicts of interest.

UNAMA welcomes the initiatives reported by the NDS Directorate of Gender and Human Rights regarding training and education of their staff, indicating a genuine effort to improve awareness and knowledge on human rights, including the prohibition of torture. For instance, they developed a specific curriculum for NDS personnel on human rights and conducted training sessions throughout the country, including discussions on the Istanbul Protocol.⁸¹ UNAMA also observed positive signs, at provincial and national level, of increased capacity, cooperation, and acceptance of the monitoring and oversight activities of NDS human rights officers.

[...] B. Ministry of Interior

The Gender, Children's Rights and Human Rights Department of the Ministry of Interior is authorized to conduct monitoring in detention centres, to investigate allegations of human rights violations (including but not limited to allegations of torture or ill-treatment of detainees), and to refer appropriate cases to the relevant authorities for prosecution. At the subnational level, this monitoring and investigative function is carried out by human rights officers of the Ministry of Interior, who are deployed to provincial ANP Headquarters and to prisons administered by the Central Prisons Directorate of the Ministry of Interior.

[...] UNAMA welcomes the initiatives reported by the Ministry of Interior to raise awareness and train national police about its Code of Conduct and international treaty obligations. The Ministry of Interior has further acknowledged challenges in preventing and addressing human rights violations, including the lack of awareness of its personnel regarding relevant laws, policies and procedures

which is also linked to illiteracy. They also identified the lack of awareness of detainees about their rights; the lack of defence lawyers in some parts of the country; lengthy judicial processes; and the lack of separate and standard facilities in some provinces for women and children as challenges in preventing torture and ill-treatment.⁸⁷

[...] In response to UNAMA's follow-up request for additional information on the allegations of torture and ill-treatment, the Ministry of Interior reported that "in the last two years, no cases of torture and other types of mistreatments against prisoners kept in detention facilities under the authority of the Central Prison Directorate of the Ministry of Interior have been reported." While this statement is consistent with its findings described in the present and past reports, UNAMA continued to receive reports of credible and reliable allegations of torture and ill-treatment of conflict-related detainees held by ANP and ALP, which both fall under the authority of the Ministry of Interior. However, the Ministry did not offer any information on any such allegations received or any related investigations. UNAMA thus regrets to note that, based on the information provided, the Ministry of Interior does not appear to be taking any concrete steps to ensure that allegations of such treatment are effectively investigated and referred to prosecution.

[...] C. 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 responsible for coordinating human rights capacity-building and training. While not carrying out regular detention monitoring, its staff members visit ANA bases to conduct initial investigations into complaints of torture or ill-treatment. If they deem the allegations sufficiently credible, they can refer them to the Legal Department of the Ministry of Defence for further action. The Gender and Human Rights Department may then carry out follow-up visits to the detention facility concerned.

[...] E. Anti-Torture Commission

The Anti-Torture Commission was established under the Anti-Torture Law in April 2017.⁸⁹ It is chaired by the Afghanistan Independent Human Rights Commission (Human Rights Commission) and composed of representatives of key ministries, law enforcement agencies, forensic and medical experts, lawyers and civil society. The main responsibilities of the Anti-Torture Commission cover the monitoring of detention facilities, which includes: conducting visits; identifying and investigating allegations of torture, for which the Anti-Torture Commission can also assign specific Sub-Committees; designing and developing awareness programmes on the prohibition of torture; and proving policy advice on the implementation of the Anti-Torture Law.⁹⁰

The Human Rights Commission⁹¹ reported that the members of the Anti-Torture Commission conducted monitoring visits to detention facilities in several provinces with a view to detect cases of torture since its establishment in 2017. They also carried out promotion activities to raise public awareness about their work, including a video-clip broadcast nationwide via television stations. The members of the Anti-Torture Commission received external training on the investigation of torture cases in accordance with the Istanbul Protocol.

[...] F. National Preventive Mechanism

It has been recognized internationally that impartial and independent scrutiny of the treatment of those in detention plays a vital role to decrease acts of torture and ill-treatment. External monitoring should complement internal inspections, which are generally characterized by their dependence upon the authorities they are meant to supervise.

By acceding to the Optional Protocol to the Convention against Torture in April 2018, the Government of Afghanistan committed itself to establishing an independent National Preventive Mechanism for the prevention of torture within one year of accession. UNAMA welcomes this decision as a demonstration of Afghanistan's willingness to engage fully and constructively on the prevention of torture and ill-treatment. As of March 2019, UNAMA however was not aware of any concrete steps taken by the Government to practically establish the mechanism. [...]

81 NDS Letter No. 12855 of 06/09/1397, on file with UNAMA

87 Letter no. 16884 of 5 January 2019 of the Ministry of Interior, on file with UNAMA.

88 The internal Anti-Torture Committee established within the Office of the Attorney General is a separate entity from the Anti-Torture Commission established under the Anti-Torture Law, see sub-section E below.

89 See press conference of the Afghanistan Independent Human Rights Commission of 27 April 2017 on the establishment of the Anti-Torture Commission, see https://www.aihrc.org.af/home/press_release/6219 (last accessed 19 February 2019),

[AIHRC, Annual Report 1397 \(1398 – 2019\)](#) [pp. 32-34]

[...] Continued and result-based monitoring of prisons

Monitoring of detention centers is one of the AIHRC's major annual activities and it has produced effective results. During this reporting period, the AIHRC monitored detention centers 1214 times through 306 monitoring missions, interviewing 3840 prisoners (832 women, 3008 men). Consequently, the legal intervention of the AIHRC released 267 people (31 women and 236 men) who were illegally imprisoned. These prisoners' imprisonment term was ended, but the authority had not paid attention to the issue. During the monitoring process, the prisoners shared the issue with the AIHRC and the AIHRC, after investigating their cases, notified the authorities, and the prisoners were released according to the principles.

The AIHRC also writes down all failures and weaknesses during the monitoring and submits them to the authorities. During this period, of 270 recommendations regarding the improvement and equipment of rooms and toilets and the quality of food for inmates, about 39% of them were implemented. The details of the monitoring findings are reflected in the report on the situation of detention centers.

The AIHRC's monitoring of detention centers produced good results

Since detainees are more likely to be threatened and mistreated, monitoring of detention centers can help protect their human rights in these centers. Considering the importance of this, the AIHRC is continuously and effectively monitoring the defense and security agencies. During this reporting period, the detention centers and custodies were monitored 855 times, through 305 monitoring missions. As a result, 3392 inmates (317 women, 3075 men) were interviewed, and 318 inmates (64 women and 254 men) who were illegally detained, were released. During the monitoring, the AIHRC provided 120 recommendations, about 50% of which were considered. The monitoring of detention centers by the AIHRC has made the authorities more accountable and responsive to the situation of people deprived of their freedom. They can freely share their concerns with the AIHRC.

[...] Monitoring of children correction centers

The AIHRC monitored child care centers 814 times through its 302 monitoring missions, resulting in the release of 42 boys and 7 girls who were illegally resettled in the correction center. Approximately 57 recommendations were presented by the AIHRC to children's correction center officials during this monitoring, some of which were taken into account by the authorities. Child correction center monitoring shows that there are still insufficient facilities in correction centers for children. In most centers, there are no effective educational programs and there are no useful children's entertainment and recreational programs. There are only religious teachings in a number of centers. Despite the frequent advocacy to pay attention to the educational situation of children in detention centers, the AIHRC has not yet witnessed any attention from the authorities.

[...] Conduction of meetings with the Anti-Torture Committee

The AIHRC is a member of the Committee for Torture Prevention, which has held several meetings since its inception, and has made effective efforts to curb torture. During 1397, 6 meetings were held with the Committee for prohibition of torture discussing the work process, monitoring of detention centers, conducting trips and other related issues. During the meetings, participants shared all the information and discussed the issue related to reducing torture and reporting on the torture situation. [...]

[Amnesty International, Public Statement: Afghanistan: The Government Must Immediately Appoint the Commissioners of the AIHRC \(7 July 2019\)](#)

[...] Amnesty International calls on the Government of Afghanistan to appoint commissioners of the Afghanistan Independent Human Rights Commission (AIHRC) without any further delays and independent of any political considerations. The appointment of commissioners must be in line with international standards laid out in the Paris Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993.

The AIHRC plays a crucial role in holding government and other actors responsible in relation to human rights violations in Afghanistan. Ensuring its continuity and independence therefore is critical, and the AIHRC's mandate must be renewed in light of efforts to achieve peace and reconciliation in Afghanistan. Since its establishment, the AIHRC's has played a vital role in promotion and protection of human rights in Afghanistan. Notably, it has been continually monitoring and reporting on human rights violations in Afghanistan such as violence against women, children, and detainees. Now, out of nine commissioners, the AIHRC operates with few commissioners whose terms in office expired a year ago, June 2018. [...]

13. Investigations and accountability

UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law (April 2019)

[...] EXECUTIVE SUMMARY

The decline in use of torture or ill-treatment is not yet significant enough to indicate that the remedial measures taken are sufficient. In particular, the report emphasizes violations and challenges in the following areas:

- Legal limitations of the right of conflict-related detainees to judicial oversight, in contravention of international law.

[...] 7. Monitoring, Investigations and Accountability

[...] A. National Directorate of Security

[...] NDS informed UNAMA that between 1 January 2017 and 31 December 2018, it had received 184 allegations of human rights violations from detainees. Following investigation of these allegations, 13 of these cases were 'confirmed', involving 19 personnel of the central and provincial NDS facilities.

Fourteen out of the 19 personnel received disciplinary sanctions, which included transfer of jobs and loss of rank (three individuals); written commitments by the perpetrator to avoid 'such behaviour' in the future (two individuals); written advice with a record in the personal files (six individuals); and warning letters with a record in the personnel files (three individuals). The cases of five out of the 19 personnel were referred to judicial institutions.⁸⁴

The remaining 171 cases were dismissed due to lack of signs of torture, disproof of the assigned doctor, lack of evidence, contradictory statements by detainee, or lack of other relevant facts. Investigations by NDS also found that some of the allegations did not concern facts that occurred at the NDS detention centres but happened during the arrest and resulted from lawful use of force when suspects ignored warnings of the security forces, physically resisted or attempted to escape, and during armed clashes.⁸⁵

[...] Considering the information provided by NDS and in line with previous findings, UNAMA remains concerned that NDS mostly continues to 'resolve' allegations of torture or ill-treatment by internal investigation procedures, with the results usually not disclosed to the victim, or otherwise made public. The vast majority of the allegations – more than 90 per cent – appears to be dismissed on the ground that the investigation did not find sufficient evidence for torture or ill-treatment on different grounds.

The concerns are compounded by the lack of functional independence of the NDS Directorate of Gender and Human Rights, as well as minimal transparency and limited external oversight of the actual investigations into human rights violations by NDS.⁸⁶ Overall, these practices raise questions regarding the adequacy, impartiality, thoroughness and effectiveness of internal investigations by NDS.

[...] B. Ministry of Interior

[...] In response to UNAMA's follow-up request for additional information on the allegations of torture and ill-treatment, the Ministry of Interior reported that "in the last two years, no cases of torture and other types of mistreatments against prisoners kept in detention facilities under the authority of the Central Prison Directorate of the Ministry of Interior have been reported." While this statement is consistent with its findings described in the present and past reports, UNAMA continued to receive reports of credible and reliable allegations of torture and ill-treatment of conflict-related detainees held by ANP and ALP, which both fall under the authority of the Ministry of Interior. However, the Ministry did not offer any information on any such allegations received or any related investigations. UNAMA thus regrets to note that, based on the information provided, the Ministry of Interior does not appear to be taking any concrete steps to ensure that allegations of such treatment are effectively investigated and referred to prosecution.

[...] C. Ministry of Defence

[...] In response to UNAMA request, the Ministry of Defence reported that a total of 16 complaints of torture and ill-treatment were filed by detainees held in DFIP. Six of these complaints were dismissed due to lack of sufficient incriminating evidence; six related to aggressive behaviour towards the detainees by the security guards, with an official investigation resulting in disciplinary action (such as official advice and warnings); and four involved beatings, torture or ill-treatment of detainees, with an official investigation resulting in the perpetrators sentenced by a military court to six months of detention in the military unit.

The Ministry of Defence also provided UNAMA with a list of 26 cases, spanning the period from 2013 to 2018, where ANA staff members were convicted of a range of crimes, including killing of civilians, violence against women, and child abuse. It is however unclear from the details provided whether any of these cases fall within the definition of torture or ill-treatment of conflict-related detainees covered by the present report.

Considering the information provided, UNAMA notes that, while the Ministry of Defence is taking certain steps to ensure that ANA personnel found to have committed serious crimes are brought to justice, the disciplinary action and sentences described for acts of torture or ill-treatment appear to be lenient. In addition, the information on cases of torture or ill-treatment is limited to DFIP, while ANA has bases around the country and carries out arrests and detention in the context of their operations.

[...] D. Office of the Attorney General

In March 2017, the Office of Attorney General of the Islamic Republic of Afghanistan established an internal Anti-Torture Committee⁸⁸ under the chairmanship of its Internal Audit Prosecution Directorate. This Committee has the express mandate to ensure that allegations of torture and other forms of ill-treatment are properly investigated by the relevant prosecution departments.

In response to a letter from UNAMA, the Office of Attorney General stated it had received 176 cases of torture and ill-treatment between 1 January 2017 and 31 December 2018 in capital and provincial prosecution directorates. They however were not able to provide specific breakdown for allegations of torture or ill-treatment of conflict-related detainees, due to insufficient data. Out of the 176 cases, 10 cases were returned to law enforcement authorities for further investigation; 35 cases were archived due to lack of evidence; and 86 cases were under process with different departments of the Office of Attorney General. In addition, the Office of Attorney General had referred 45 cases to the court after completion of investigations. The competent courts issued judgements in 28 cases, as a result of which the accused persons in 20 cases were sentenced to suspended imprisonment. Three accused persons received cash fines and five were acquitted. Seventeen cases remained pending before the courts.

UNAMA welcomes the efforts of the Office of Attorney General in ensuring increased oversight of investigations into torture and ill-treatment. It however notes that only one of the cases in the list provided by the Office of Attorney General referred to an ANP officer being sentenced to 15 months of imprisonment and separation from duty pursuant to article 451 (1) of the Penal Code, which is the provision criminalizing torture.

While specific details of the case are lacking, UNAMA notes that the report indicates that mitigation measures were applied (based on article 215 of the Penal Code), lowering the sentence significantly below the minimum of three years of imprisonment.

The information provided by the Office of Attorney General does not allow for a detailed assessment of the cases. Despite specific requests, it is unclear whether any of the reported cases fall within the definition of torture or ill-treatment or concern conflict-related detainees covered by this report. The information mostly referred to charges of 'beating', without providing specifics on the circumstances or the relevant provisions of the law under which an individual was sentenced. In addition, while most cases did not specify the date of the decision, some did not fall within the time period covered by this report.

E. Anti-Torture Commission

[...] In terms of follow-up on allegations of torture, the Human Rights Commission reported that the Anti-Torture Commission had adopted Standard Operating Procedures which require all its members to fully address the torture cases according to their mandate. Generally, cases of torture are addressed by the Human Rights Commission but if they “require more scrutiny and coordination, they will be raised in the meetings of the [Anti-Torture] Commission, where its members will investigate the case and the related offices will take responsibility to address the cases and subsequently report on their activities regarding the cases [...] in the next meeting.”⁹² UNAMA did not receive any further information on the outcome of these investigations into torture cases when raised in meetings of the Commission.

The limited information provided to UNAMA on the activities of the Anti-Torture Commission to date does not enable it to assess the nature and outcome of its work.⁹³ UNAMA notes that the Commission lacks functional independence as it includes senior representatives from those organizations most likely to be the subject of investigations in relation to allegations of torture and ill-treatment, namely NDS, the Ministry of Interior and Ministry of Defence. While the set-up of the Commission makes it a high-level forum for policy discussion and an inter-agency coordination body, its lack of independence raises questions with regard to its monitoring and investigative functions and related protection concerns.

UNAMA notes that these concerns are mitigated to some extent by the presence of members who are not part of the executive branch, such as the Office of the Attorney General, the Human Rights Commission and civil society. These members can provide a level of accountability over the detaining authorities. On the other hand, the concerns are compounded by potential conflicts of interest and blurring of lines between the two distinct mandates of the Human Rights Commission and the Anti-Torture Commission. The Ombudsman’s Office within the Human Rights Commission – which was established as a monitoring mechanism with the aim to provide external oversight of ANDSF – and the Anti-Torture Commission for example share the same secretariat.⁹⁴ UNAMA emphasizes that it is indispensable for external oversight mechanisms to be functionally independent from Government offices to be able to effectively follow up on alleged cases of torture or ill-treatment while ensuring adequate protection of victims and witnesses.

[...] G. Observations

As described in this report, UNAMA noted a number of positive developments, in particular regarding the efforts of NDS to improve their internal monitoring and oversight, and of the Office of the Attorney General to put emphasis on the elimination of torture and ill-treatment. However, a number of challenges remain when it comes to ensuring accountability for perpetrators.

In summary, the processes by which these internal mechanisms review and then refer complaints of torture and ill-treatment to the competent judicial authorities remain opaque. UNAMA findings and the information provided to it suggest that credible allegations, including of the most egregious forms of abuse, are not, or not sufficiently, investigated by the authorities, not least because of gaps in recording and documentation and the common absence of other relevant safeguards, such as access to lawyers or contact with family members during the investigation phase, or regular and comprehensive medical check-ups. The information provided to UNAMA also suggests an overall lack of understanding of the definition of torture and ill-treatment by relevant authorities.

In addition, in determining whether torture or ill-treatment has taken place, the authorities and courts appear to continue to rely heavily on the presence of visible physical injuries. As mentioned above, the Anti-Torture Law also requires ‘observable signs of torture on the body of a person in freedom deprivation facilities’ for a reversal of the burden of proof.⁹⁵

Many physical methods of torture documented in this and previous reports (including beatings on the soles of the feet, suffocation, stress positions and other techniques) leave no lasting physical signs of harm and are unlikely to be verified by forensic medical examination. Even where ill-treatment or 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 most physical signs of ill-treatment would no longer be visible.

Furthermore, torture by definition includes the infliction of mental suffering. This type of torture does not leave any sign of physical injury and therefore these cases risk being automatically excluded.

UNAMA reiterates that only the credible prospect that those who commit torture or ill-treatment would be held to account can deter those who carry out or order such crimes. Addressing torture and ill-treatment requires high-quality training and clear directives to all authorities and personnel involved in detention, rigorous inspections to all places of detention, and effective accountability measures to stop and prevent its use. Without effective deterrents to use torture or ill-treatment, including inspection services endowed with the autonomy necessary to fulfill their mission and a robust, independent investigation process and criminal prosecutions, Afghan officials might have no incentive to stop such acts. [...]

83 UNAMA observes that in the previous reporting period covered by the 2017 UNAMA/OHCHR report, NDS indicated they had received 1,198 complaints from detainees alleging 'beating and ill-treatment' – a substantially higher figure while interviewing a similar number of detainees; see 2017 UNAMA/OHCHR Report, p. 52.

84 NDS did not provide information on the outcome of the referrals despite a request by UNAMA.

85 Letter no 16120 of 10/11/1397, on file with UNAMA.

86 While the Human Rights Commission, including through the Police, Defence and Security Forces Ombudsman's Office within its structure (for further information on the latter, see UNAMA/OHCHR 2017 report, p. 56-57), conducts external monitoring of NDS detention facilities, they do not participate in the investigations carried out by NDS.

90 Articles 11 and 12 of the Anti-Torture Law.

91 The Human Rights Commission also provides the secretariat to the Anti-Torture Commission.

92 Letter no 1734 of 12/10/1397, on file with UNAMA.

93 The Human Rights Commission however responded positively to the UNAMA request for additional information on the Standard Operating Procedures, pending approval of the members of the Anti-Torture Commission.

94 UNAMA meeting with the Head of the secretariat of the Anti-Torture Commission and the Coordinator of the Police, Defence and Security Forces Ombudsman's Office within the Human Rights Commission, on 19 December 2018.

95 Article 23 of the Anti-Torture Law.

[The situation in Afghanistan and its implications for international peace and security; Report of the Secretary-General A/73/902–S/2019/493 \(14 June 2019\)](#) [pp. 15-16]

[...] VIII. Observations

[...] 68. Ensuring the integrity and accountability of government institutions is essential to their performance and legitimacy. The Government has taken important steps to advance its subnational governance, public administration and anti-corruption agenda, including by strengthening mechanisms for corruption prosecutions. It remains critical that the institutional set-up of anti-corruption bodies be consolidated and that the new Anti-Corruption Commission operate independently and with adequate resources, in line with the requirements of article 6 of the United Nations Convention against Corruption. Strengthening the ability of the country's law enforcement entities to execute arrest warrants and summonses, and accelerating justice reforms, should be prioritized. Those actions are essential to meet widespread demands for more transparency as well as protection and equal treatment under the law.

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

[...] Some Afghan Local Police (ALP) have been involved in extortion, threats and sexual abuse of civilians [*Conflict targeting*, 2.6].

Different State agents such as ministers, governors and ANSF personnel are reported to have acted beyond the scope of their legal authority. Moreover, police and judicial authorities are susceptible to the influence of powerful individuals [*Conflict targeting*, 2; *Key socio-economic indicators 2017*, 3.4.4.1, 3.5.3, 3.5.4].

Besides the ALP [Afghan Local Police], an unknown number of PGMs [pro-government militias] are fighting on the side of the government against insurgents. They have been accused of targeted killings and threatening, intimidating and harassing civilians. It is reported that such human rights abuses occur in an atmosphere of impunity due to their links to local or national powerbrokers [*Conflict targeting*, 2.6]. [p. 44] [...]

14. Redress

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

[...] Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.¹²⁹

[...] 4. Civilians Suspected of Supporting Anti-Government Elements

Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.³⁵³ Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.³⁵⁴

Detainees reportedly lack access to remedial mechanisms, independent medical examination and care, as well as meaningful access to defence counsel, especially during the investigation and the prolonged pre-trial detention period, including in particular in remote detention facilities.³⁵⁷ [...]

129 UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 45-46, 50-53, 59; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 11, 17.

353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 9. “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.” UNAMA, Treatment of Conflict Related Detainees, April 2017, p. 6; see also *ibid.*, p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

355 UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 3. See also, UN General Assembly, The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 73.

356 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 11; see also, AAN, Torture as Prevalent as Ever: New UN Report Finds No End to Impunity for Afghan Torturers, 24 April 2017, <https://www.afghanistan-analysts.org/torture-as-prevalent-as-ever-new-un-report-finds-no-end-to-impunity-for-afghan-torturers/>; UNAMA/OHCHR, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html>, paras 52-54; AAN, Casting a Very Wide Net: Did Ghani Just Authorise Interning Afghans Without Trial?, 21 January 2016, <https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/>; HRW, Afghanistan: Reject Indefinite Detention Without Trial, 15 November 2015, <http://www.refworld.org/docid/564b4a124.html>.

357 UNAMA, Treatment of Conflict-Related Detainees, April 2017, pp. 12, 45-49, 58-59.

[SIDA, Fragile Future: The human cost of conflict in Afghanistan, Humanitarian Action at the Frontlines: Field Analysis Series \(December 2018\) \[p. 33\]](#)

[...] On the one hand, the adoption of a new Penal Code has demonstrated incremental steps toward improving human rights and providing accountability and redress measures for victims, with the inclusion of anti-torture legislation, child abuse protection (especially for boys), and protections for victims of sexual and gender-based violence (which were subsequently removed under the pressure of conservative opponents.¹⁰⁸ However, these adjustments have been seen as largely cosmetic and have not diminished cases of abuse, exploitation, or torture. [...]

108 See generally the Youth Health and Development Organization, www.yhdo.org

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

[...] • Lack of any meaningful possibility of obtaining an effective judicial or administrative remedy for the violations that detainees claim to have experienced.

[...] 8. Redress for Victims of Torture and Ill-treatment

The United Nations Convention against Torture provides that “a State must ensure in its legal system that the victim of acts of torture obtains redress and has an enforceable right to fair and adequate compensation.”⁹⁶ ‘Redress’ in this context encompasses the concepts of ‘effective remedy’ and ‘reparation’.⁹⁷

A. Effective remedies

Comprehensive legislation, a functioning complaints system, effective investigation bodies and accessible institutions including independent judicial bodies, capable of awarding redress for a victim of torture and ill-treatment, are prerequisites for ensuring the right to an effective remedy.⁹⁸

Of the 197 detainees who provided credible and reliable accounts to UNAMA of being tortured or ill-treated in ANDSF custody, 103 (52 per cent) stated that they had complained about their treatment to the authorities, including doctors, staff of the detention facility, NDS Human Rights Officers, prosecutors or judges. Nevertheless, with the exception of the occasional referral for medical treatment, only two of the detainees informed UNAMA that their cases were referred to ‘NDS headquarters in Kabul’. The allegation, however, related to treatment in an ANP facility prior to transfer to the NDS facility. None of the other detainees were aware that any action had been taken by the authorities as a result of their complaints. In addition, a number of detainees indicated they were afraid of reprisals and thus did not want to report on the treatment received in ANDSF custody. The 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 otherwise obtained in violation of existing laws) is inadmissible.⁹⁹

Given the difficulties faced by the Afghan authorities in effectively investigating allegations of torture and ill-treatment and consequently holding alleged perpetrators of torture to account – whether through prosecutions, or meaningful internal disciplinary procedures – the ability of victims of torture to claim their right to an effective judicial or administrative remedy remain limited.

B. Reparations

In addition to the obligation to ensure the provision of an effective remedy for victims of torture and ill-treatment, as a signatory to the Convention against Torture, Afghanistan is to ensure that victims obtain effective reparation. Reparation in this context is not limited to financial compensation; the full scope of measures required to redress violations also entails restitution, medical and psychological rehabilitation, satisfaction (the right to the truth) and the guarantees of non-repetition.¹⁰⁰ With the exception of the right to truth, the Anti-Torture Law broadly sets out these elements.

However, despite asking, UNAMA has not been informed by the Office of the Attorney General about any claim for financial compensation (or any other form of reparation) by victims of torture under the Anti-Torture Law.

The widespread inability of victims of torture or other forms of ill-treatment to access an effective judicial remedy, compounded by the lack of prompt, effective and impartial investigations, has also prevented them from obtaining reparation. [...]

96 Article 14 of the Convention against Torture.

97 See Committee against Torture, General Comment No. 3, paras. 1-2.

98 See Committee against Torture, General Comment No. 3, para. 5.

99 Articles 21 and 22 of the Criminal Procedure Code.

100 Committee against Torture, General Comment No. 3, para. 2.

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#) [p. 123]

[...] IV. Actors of protection

[...] The State

[...] Police presence is also stronger in the cities and police officers are required to follow guidelines such as the ANP Code of Conduct and Use of Force Policy. However, police response is characterised as unreliable and inconsistent, the police has a weak investigative capacity, lacking forensic training and technical knowledge. The police force is also accused of widespread corruption, patronage and abuse of power: individuals in the institutions may abuse their position of power and use extortion to supplement their low incomes. Arbitrary arrest and detention by the police continued to occur and torture is endemic in the police force. Inaction, incompetence, impunity and corruption result in underperformance: there is a reported rise in crime, including kidnappings, and widespread community violence, especially in the cities. An inability to prevent regular large-scale attacks with high casualty numbers, and targeted killings, is also observed [*Security situation 2018*, 1.1, 2.1.2, 2.5.2, 2.13.2; *Security situation 2019*, 1.3.3, 1.3.4, 1.4.2; *Key socio-economic indicators 2017*, 3.4]. [...]

15. Impunity for state human rights abuses

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] C. Human Rights Situation

[...] 1. Human Rights Abuses

[...] a) Human Rights Violations by State Actors

Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below).¹²⁶ Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.¹²⁷

[...] In June 2017, the UN Committee Against Torture expressed its deep concern about the general culture of impunity, with perpetrators of war crimes and gross human rights violations, including torture, still holding or having been nominated for official positions, including in government.¹³² The Committee expressed its concern that this in turn contributes to creating widespread acceptance and legitimization of torture in Afghan society.¹³³

[...] There are also concerns about continuing failures to ensure accountability for ALP officers for past and ongoing human rights violations, and about reports of ALP personnel being under the control of local power brokers.¹³⁹

[...] 4. Civilians Suspected of Supporting Anti-Government Elements

[...] Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.³⁵³ Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.³⁵⁴ [...]

126 International Criminal Court, Public Redacted Version of “Request for Authorisation of an Investigation Pursuant to Article 15”, 20 November 2017, ICC-02/17-7-Conf-Exp, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-7-Red>, pp. 78-86; UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

127 Freedom House, Freedom in the World in 2018: Afghanistan, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; International Criminal Court, Public Redacted Version of “Request for Authorisation of an Investigation Pursuant to Article 15”, 20 November 2017, ICC-02/17-7-Conf-Exp, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-7-Red>, pp. 7-8 <http://www.refworld.org/docid/5711040d4.html>. [...]

132 UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11, 15.

133 Ibid., para. 7. [...]

139 Freedom House, Freedom in the World in 2018: Afghanistan, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>;

UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 49-50; VOA News, Afghan Local Police: The Controversial Force That Fills a Security

Gap, 20 November 2017, <https://www.voanews.com/a/afghan-local-police-security/4126335.html>; AAN, Update on the Afghan Local Police:

Making Sure They Are Armed, Trained, Paid and Exist, 5 July 2017, <https://www.afghanistan-analysts.org/update-on-the-afghan-local-police-making-sure-they-are-armed-trained-paid-and-exist/>.

353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 9. “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.” UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 6; see also *ibid.*, p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session, 21 January-1 February 2019, Summary of Stakeholders’ submissions on Afghanistan* Report of the Office of the United Nations High Commissioner for Human Rights (6 November 2018)

[...] A. Implementation of international human rights obligations, taking into account applicable international humanitarian law

[...] 2. Civil and political rights

Right to life, liberty and security of person²⁶

[...] 21. HRW noted that Afghan special police have carried out forced disappearances and summary executions with impunity. It documented summary executions of civilians by NDS special police units in Nangarhar, Kabul and Kandahar. It received reports that other ANSF special forces, including the Khost Protection Force, have been responsible for extrajudicial executions of civilians. It noted that the government has continued to rely on militia forces, some of which have killed and assaulted civilians. It reported that the Afghan security forces have been complicit in the sexual exploitation and recruitment of children, and as with other kinds of abuse, and failed to hold perpetrators accountable. It recommended Afghanistan to promptly and thoroughly investigate all allegations of torture, enforced disappearances, and summary executions and appropriately prosecute all those found responsible for committing, ordering, or acquiescing in these crimes. HRW recommended enforcing the existing legal prohibitions on the use of coerced confessions in judicial proceedings and take appropriate disciplinary action against prosecutors and judges who permit their use; provide compensation for all victims of torture; promptly and thoroughly investigate all allegations of and appropriately prosecute all those found responsible for the recruitment and sexual exploitation of children.²⁸

Administration of justice, including impunity, and the rule of law²⁹

22. HRW was concerned that impunity remained the norm among the country’s security forces. They noted that despite establishing human rights units in the relevant agencies and reformed the law, but it has not prosecuted any ANP, ALP or NDS officials for torture. During its second UPR, Afghanistan accepted three recommendations focused on amending the government’s amnesty law and ending impunity, urging the government to prosecute officials implicated in unlawful violence and to put an end to impunity. They observed that the government has made no progress on any of the areas to allow for prosecutions of certain crimes; remedy past human rights violations and release the Human Rights Commission’s conflict mapping report. It recommended repealing the National Stability and Reconciliation Law and take action to end impunity for war crimes and crimes against humanity; impartially investigate and appropriately prosecute crimes against humanity and war crimes in Afghanistan’s national courts; publish the Conflict Mapping Report, and create an appropriate transitional justice mechanisms and ensure full cooperation with the ICC.³⁰ [...]

26 For relevant recommendations see A/HRC/26/4, paras. 136.49, 136.82-136.84, 136.118, 137.11 and 138.1-138.10.

28 HRW, p. 1-3. See recommendations A/HRC/26/4, paras. 137.31 (Denmark); 136.82 (Italy); and 137.17 (Germany).

29 For relevant recommendations see A/HRC/26/4, paras. 136.14-136.15, 136.17, 136.46-136.48, 136.85, 136.103, 136.105-136.106, 136.166-136.168 and 137.13-137.19

30 HRW, p. 5-6. See recommendations A/HRC/26/4, paras. 136.103 (Belgium); 137.15 (Sweden); 137.16 (Morocco); and 137.18 (Netherlands).

[...] B. Civil and political rights

2. Administration of justice, including impunity, and the rule of law⁴¹

21. The same Committee was deeply concerned about the various reports alleging that perpetrators of war crimes and gross human rights violations, including acts of torture, were still holding, or had been nominated for, official executive positions, some of them in government. It urged Afghanistan to ensure that no candidates for official executive positions had perpetrated any human rights violations and, if found responsible for past human rights violations, including torture, they were not nominated. It remained gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials. The Committee urged Afghanistan to repeal provisions from the National Reconciliation, General Amnesty, and National Stability Law preventing the prosecutions of perpetrators of gross human rights violations, and to prosecute all perpetrators of past gross human rights violations.⁴² OHCHR/UNAMA were also concerned about the 2008 Amnesty Law, which was intended to provide protection from prosecution for Afghan leaders suspected of involvement in human rights violations. They reported that the Chief Prosecutor of the International Criminal Court had submitted a formal request to the Pre-Trial Chamber for authorization to commence investigation of alleged war crimes and crimes against humanity committed since 1 May 2003, and the Government had pledged to cooperate with the Court.⁴³

22. The Committee against Torture remained concerned by the low rate of prosecutions in relation to complaints of torture and ill-treatment, and by allegations that those complaints had been dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination had been conducted or it had been conducted too late to document them.⁴⁴

23. The Committee recommended that Afghanistan adopt effective measures to ensure that coerced confessions were inadmissible in practice, to invite the judiciary to review all cases in which convictions had been based solely on confessions obtained through torture, and to take appropriate remedial measures.⁴⁵ [...]

41 For relevant recommendations, see A/HRC/26/4, paras. 136.14–136.15, 136.17, 136.46–136.48, 136.85, 136.103, 136.105–136.106, 136.166–136.168 and 137.13–137.19.

42 CAT/C/AFG/CO/2, paras. 7–8.

43 OHCHR/UNAMA submission, p. 8.

44 CAT/C/AFG/CO/2, para. 11.

45 Ibid., para. 28. See also CAT/C/AFG/CO/2/Add.1.

[Civil Society and Human Rights Network \(CSHRN\) and The World Organisation against Torture \(OMCT\), Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment \(UNCAT\) & Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan's Second Periodic Report \(16 November 2018\)](#)

[...] B. Recommendation 8 (C) Culture of impunity

26. In its concluding observations, the Committee expressed deep concern about the general climate and the culture of impunity regarding torture in Afghanistan and the involvement of senior State officials in a large number of cases of alleged human rights violations. The Committee recommended the government of Afghanistan:

(c) To ensure that all candidates for official executive positions have not perpetrated any human rights violations and, if found responsible for past human rights violations, including torture, are not nominated.

[...] 6. In the context of the culture of impunity for torture cases and the involvement of State officials, we would like to expose three emblematic cases which have taken place since the adoption of the Concluding Observations. The first case is the arrest of Nizamuddin Qaisari,² a district police chief, on 2 July 2018. He was arrested together with his bodyguards and allegedly tortured at the hands of security officials. As will be described, there are still question marks regarding possible implications of top executive officials in the case.

7. On 2 July 2018, Nizamuddin Qaisari was arrested together with his 29 bodyguards after allegedly threatening security officials during a security meeting.³ Mr. Qaisari and his 29 bodyguards were reportedly ill-treated and tortured and three of the bodyguards were killed.⁴ Mr. Qaisari was transferred to Kabul immediately after his arrest where his whereabouts remained unknown to his family, the AIHRC and civil society organisations for two weeks. During this time, Qaisari had no access to a defense lawyer and later Mr. Qaisari told the media that he was given electric shocks for three days while in custody.⁵

8. On 14 July 2018, a video emerged on social media showing Afghan security forces (army commandos and National Directorate of Security officers) using profane language, kicking blood-soaked detainees identified as bodyguards of Mr. Qaisari, and stepping on their heads while posing for the camera.⁶

9. On 15 July the President ordered an immediate probe into the alleged misconduct of the security forces following the release of the above-mentioned video.⁷ Mr. Qaisari claimed that Dr. Yasin Zia, the deputy of the National Security Council was behind his arrest.⁸ Mr. Qasari is from the Uzbek minority in Afghanistan. It is believed that President Ghani is in pursuit of sidelining other ethnicities, such as the Uzbek minority, to consolidate power.

10. On July 21, members of the Afghan Anti-torture Commission (appointed by the government) asked representatives of the Ministry of Defense and the National Directorate of Security – also members of the Anti-torture Commission – to follow-up on the case of Mr. Qasari, to identify and hold the perpetrators to account. This request was also communicated via an official letter. However, on 14 October 2018, during the last meeting of the Afghan Anti-torture Commission, representatives of the Ministry of Interior, the Ministry of Defense and the National Directorate of Security stated that no action had been taken so far regarding ensuring accountability in Mr. Qasari's case.

11. Afghan civil society organizations are concerned that the possible implications in this case of top executive officials will not be investigated and that focus will be put on lower ranking officers. There is a persistence of the sentiment that executive officials are untouchable for torture cases in Afghanistan.

12. The second emblematic case is the one of Mohammad Hussain Shujaie.⁹ At dawn on October 6, 2018, around 30 officers from Army Commandos, Intelligence and Police forces, reportedly stormed a house in Asad Abad village of Lal-o-Sarjungle district of Ghor province. The security officers were in pursuit of a local commander, Alipoor, nicknamed as Commander Shamsheer. Mr. Shujaie was the bodyguard of Mr. Alipoor and was present in the house in Asad Abad. Security forces accuse Mr. Alipoor of owning illegal arms and leading an illegal squad of armed people. Whereas Mr. Alipoor himself, a Shia Islam follower from Hazara ethnicity, as well as a great part of the citizens of the Ghor province, also Hazaras, claim that Mr. Alipoor forms part of the local resistance against the Taliban and ISIS insurgents.

13. Between 9:00 - 10:00 am on October 6, 2018, Mr. Alipoor, together with his men – including Mr. Hussain Shujaie – and with the support of local communities, disguised himself and broke the house siege and escaped on motorbikes. The security forces guarding the house became aware of the break out and chased the motorbikes. They fired on the escapees and the last motorbike carrying Mohammad Hussain Shujaie and a man from the local community were hit. During this incident eight civilians were killed including two women and a child; 18 others were injured. According to eye witnesses, the security forces were allegedly deliberately shooting towards civilians with excessive use of force.¹⁰

14. The security forces arrested Mr. Hussain Shujaie and they tied him to a rope fastened to a police vehicle. They towed him to the house from where he had escaped. Mr. Hussain Shujaie was towed approximately four hundred meters on unpaved roads, stones and bushes. Afterwards, the security officers untied him and threw him in a police vehicle and moved him to the capital of the Ghor province. Allegedly, Mr. Hussain Shujaie was tortured to death while in police custody. After two days his body was delivered to his family. While his family and local mourners were washing his body for burial there were signs of torture on his body; bruises; pebble stones rammed into his flesh due to being towed; and, deep wounds, mainly on his thighs.¹¹ It would be impossible for such a grave incident to occur without the knowledge and possible consent of higher officials.

15. The third emblematic case is the one of Mahdi Kazemi. On 6 August 2018, Mr. Kazemi, from Nowa- bad district of Saripul Province was arrested on charges of drug trafficking and kept in the police station for hours. During this time, he was allegedly tortured by the Office-in charge of the second police district of the Province, Mr. Maiwand. Reportedly, Mr. Kazemi was given electric shocks and was beaten up with a metal cable.¹² Zabihullah Amani the provincial governor's spokesperson confirmed the torture to media and affirmed that the perpetrator of the beatings, Mr. Maiwand, was under police investigation.

16. However, with later follow-up the Afghan anti-torture coalition found out that Mr. Maiwand was not under police investigation; on the contrary the victim, Mr. Kazemi, had to leave Saripul Province for Mazar-Sharif and eventually to Kabul, following threats from Mr. Maiwand.

17. Afghan civil society organisations are worried that the cases of Mr. Qaisari, Mr. Hussain Shujaie and Mr. Kazemi are only the tip of an ice berg and show that Afghan authorities and officials only pay lip service to fighting torture and addressing the possible involvement of high-level officials in such cases. Afghan civil society organisations are very concerned by the reported cases of torture and underline the absolute and unequivocal prohibition of torture and the obligation to bring the perpetrators to justice.

18. Given what has been stated above, Afghanistan cannot be considered having implemented follow-up recommendation number 8 (C) and should therefore be assessed with a C. [...]

2 Nizamuddin Qaisari is a close ally of General Dostum who also leads local resistance against Taliban and ISIS forces. General Dostum, current first Vice-president, and the leader of the Junbish Milli Islami was forced to leave Afghanistan after he was accused of abducting and sexually assaulting a political opponent Ahmad Eshchi the former governor of Jawzjan province. He left Afghanistan to receive medical treatment and lived in a self-imposed exile in Turkey for over a year. However, Mr. Dostum rejected the accusation calling it a made-up story against him. The Ghani-Dostum differences surfaced not too long after President Ghani took office. In several events, Dostum, publicly complained that despite his role in securing Ghani the presidency, he is not heard by the President.

3 <https://etilaatroz.com/62931/%D9%81%D8%B1%D9%87%D9%85%D9%86%D8%AF-%D9%86%DB%8C%D8%B1%D9%88%D9%87%D8%A7%DB%8C-%D8%A7%D9%85%D9%86%DB%8C%D8%AA%DB%8C-9-%D9%86%D9%81%D8%B1-%D8%A7%D8%B2-%D8%A7%D9%81%D8%B1%D8%A7%D8%AF-%D9%82%DB%8C/> accessed 2018-10-10.

4 <https://www.hushdar.com/1397/04/23/afghan-parliament-reaction-2/> accessed 2018-10-10.

5 <http://khabarnama.net/blog/2018/08/11/how-qaisari-was-arrested-and-tortured/> accessed 2018-10-10.

6 <https://www.khaama.com/ghani-orders-immediate-probe-into-alleged-misconduct-by-afghan-forces-05582/> accessed 2018-10-10.

7 Ibid.

8 Ibid.

9 <https://etilaatroz.com/66738/%D8%B9%D9%85%D9%84%DB%8C%D8%A7%D8%AA-%DA%A9%D9%88%D8%B1-%D8%AF%D8%B1-%D8%BA%D9%88%D8%B1%D8%9B-%DA%A9%D8%B4%D8%AA%D8%A7%D8%B1-%D8%BA%DB%8C%D8%B1%D9%86%D8%B8%D8%A7%D9%85%DB%8C%D8%A7%D9%86-%D9%88-%D8%A7/> accessed 2018-10-24.

10 Ibid.

11 Ibid. See also Annex A – photo of Mr. Shujaie published in various media outlets (Mr. Shujaie's family agreed to the publication of the photo).

12 <https://yash.news/?p=21707> accessed 2018-10-10.

[Human Rights Watch, World Report 2019 – Afghanistan \(17 January 2019\)](#)

[...] Although the Afghan government acceded to the United Nations Optional Protocol to the Convention against Torture in April 2018, it failed to hold police and National Directorate of Security (NDS) personnel accountable for systematic torture, extrajudicial executions, and enforced disappearances. Entrenched impunity for perpetrators of violence against women meant that girls and women still rarely saw justice in courts, as prosecutors and police pressured them to accept mediation rather than prosecution of their assailants. For the first time since 2002, the number of children in school fell; 60 percent of Afghan girls were not in school during the year.

[...] Torture

[...] A June 2018 report by the Afghanistan Independent Human Rights Commission noted that while Afghanistan had ratified the UN Optional Protocol on the Convention against Torture, enacted legislation criminalizing torture, and established a government commission on torture, the government had not significantly reduced torture since it assumed office in 2014, and did not prosecute any senior officials accused of torture.

On July 22, First Vice President Abdul Rashid Dostum returned to Afghanistan after more than a year abroad evading charges on the abduction, illegal imprisonment, and sexual assault of a rival Uzbek politician, Ahmad Ishchi. Although a Kabul criminal court, in 2017, convicted seven of Dostum's bodyguards in absentia of sexual assault and illegal imprisonment, and sentenced them to five years in prison, none had been imprisoned at time of writing. [...]

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were several reports that the government or its agents committed arbitrary or unlawful killings. From January 1 to September 30, UNAMA reported an overall increase in civilian deaths over the same period for 2017, from 2,666 to 2,798. The number of civilian deaths attributed to progovernment forces increased from 560 to 761. The total number of civilian casualties decreased from 8,084 to 8,050.

According to the annual report UNAMA released in February, Afghan Local Police (ALP) in Zurmat District, Paktiya Province, killed a civilian and injured two others during an attempted home invasion and robbery in September 2017. Although the government investigated and prosecuted some cases of extrajudicial killing, an overall lack of accountability for security force abuses remained a problem, particularly with the ALP.

[...] Role of the Police and Security Apparatus

There were reports of impunity and lack of accountability by security forces throughout the year. According to observers, ALP and ANP personnel were largely unaware of their responsibilities and defendants' rights under the law. Accountability of the NDS, ANP, and ALP officials for torture and abuse was weak, not transparent, and rarely enforced. Independent judicial or external oversight of the NDS, MCTF, ANP, and ALP in the investigation and prosecution of crimes or misconduct, including torture and abuse, was limited or nonexistent. [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[p. 49]

[...] 3. Human rights

[...]]The National Unity Government (NUG) of Afghanistan introduced a number of measures during this reporting period to improve the human rights situation; however, there was no sign of their implementation.

Most human rights violations in Afghanistan were committed by insurgents and not by the government: the Taliban and ISKP were guilty of attacking civilians and journalists, carrying out

extrajudicial executions, recruiting minors, closing schools and blocking access to humanitarian aid. However, government officials were also guilty of committing serious human rights violations with impunity, and the security forces used torture to force confessions from prisoners.

The main concerns with regard to human rights were violence against civilians, women's rights, children's rights, access to fair justice, torture and the death penalty.

[...] Those guilty of torture and ill-treatment in detention centres are also rarely prosecuted (see 3.4.6).²⁴¹ Judges and prosecutors, certainly outside the capital Kabul, have little knowledge of the content of the new Penal Code.²⁴² [...]

241 Confidential source, 11 June 2018.

242 Confidential source, 24 September 2018.

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law, April 2019](#)

[...] EXECUTIVE SUMMARY

[...] • Continued lack of accountability for perpetrators, with investigations into allegations of torture and ill-treatment remaining internal and opaque, with very limited referrals to prosecution. [...]

[EASO, Country Guidance: Afghanistan; Guidance note and common analysis \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

[...] Some Afghan Local Police (ALP) have been involved in extortion, threats and sexual abuse of civilians [*Conflict targeting*, 2.6].

Different State agents such as ministers, governors and ANSF personnel are reported to have acted beyond the scope of their legal authority. Moreover, police and judicial authorities are susceptible to the influence of powerful individuals [*Conflict targeting*, 2; *Key socio-economic indicators 2017*, 3.4.4.1, 3.5.3, 3.5.4].

Besides the ALP [Afghan Local Police], an unknown number of PGMs [pro-government militias] are fighting on the side of the government against insurgents. They have been accused of targeted killings and threatening, intimidating and harassing civilians. It is reported that such human rights abuses occur in an atmosphere of impunity due to their links to local or national powerbrokers [*Conflict targeting*, 2.6]. [p. 44] [...]

16. Death penalty, especially after unfair trials

[Document #2012982; FCO – UK Foreign and Commonwealth Office: Human Rights and Democracy: the 2018 Foreign and Commonwealth Office report](#)

[...] Chapter 5: human rights priority countries

Afghanistan

[...] The Afghan government has been able to reduce, but not eliminate, instances of torture and ill-treatment of people detained by the Afghan National Police and National Directorate of Security, since the publication of UNAMA's 2017 Treatment of Detainees report. The death penalty also remains a legal punishment in Afghanistan. The UK continues to express its strong opposition to the use of the death penalty, including with the EU on the World Day Against the Death Penalty and when Minister for Human Rights Lord (Tariq) Ahmad of Wimbledon met Afghanistan's Chief Executive, Abdullah Abdullah. [...]

[Situation of human rights in Afghanistan and technical assistance achievements in the field of human rights*: Report of the United Nations High Commissioner for Human Rights \(21 February 2018\) A/HRC/37/45 \[p. 8\]](#)

[...] VI. Death penalty

[...] 44. The new Penal Code significantly reduced the number of crimes for which the death penalty applies. On 29 November 2017, however, five men were executed at Pul-i-Charki prison, in Kabul, on charges of abduction and murder. They had been tried, found guilty and sentenced to death by the primary court of Herat on 18 October 2016; the sentence was upheld by the Court of Appeal on 29 November 2016, and by the Supreme Court on 17 June 2017. UNAMA/OHCHR continued to advocate for compliance with fair trial guarantees, in accordance with the Constitution, the Criminal Procedure Code and the International Covenant on Civil and Political Rights. At the time of reporting, 720 persons were still on death row. [...]

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018](#)

[...] I. Executive Summary

[...] 2. Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection

[...] Afghans who seek international protection in Member States of the European Union (EU) and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of EU Directive 2011/95/EU (Qualification Directive), if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.¹⁴ In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds that they would face a real risk of the relevant forms of serious harm (death penalty¹⁵ or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.¹⁶

14 Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, arts 2(f), 15.

15 Article 170 of Afghanistan's revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of hudood crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; hudood punishments include execution and stoning to death. See also, Hossein Gholami, Basics of Afghan Law and Criminal Justice, undated, http://www.auswaertigesamt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal_Manual.pdf; Cornell Law School, Death Penalty Database, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

16 It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

[...] 1. Right to life, liberty and security of person¹⁹

12. The Committee against Torture remained concerned by the high number of prisoners on death row (which currently amounted to 600), the tremendous delay in carrying out their sentences and the conditions of their detention. The Committee was also concerned by cases of executions of minors. It recommended that Afghanistan consider an immediate moratorium on executions and commute all existing death sentences for offenders who had committed the crime for which they had been sentenced while under the age of 18.²⁰ [...]

19 For relevant recommendations, see A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

20 CAT/C/AFG/CO/2, paras. 33–34. See also CAT/C/AFG/CO/2/Add.1.

[Civil Society and Human Rights Network \(CSHRN\) and The World Organisation against Torture \(OMCT\), Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment \(UNCAT\) & Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan's Second Periodic Report \(16 November 2018\)](#)

[...] D. Recommendation 34 (A) Death penalty

26. In its concluding observations, the Committee expressed concern about the high number of prisoners on death row and the persistence of capital punishment in Afghanistan, therefore the Committee recommended the government of Afghanistan to:

(a) Promptly consider taking measures for an immediate moratorium on executions and a commutation of sentences

27. In the new Penal Code, which came into force on May 15, 2017 the instances of death penalty have decreased which the Afghan civil society welcome. However, the death penalty is kept for extremely dangerous crimes (Article 170), which includes for instance crimes of terror. This is particularly worrisome since terrorist and rebel groups are operating in Afghanistan. Only in 2018, Afghanistan has suffered several terror and suicide attacks, and the number of death sentences and prisoners on death row will remain or even increase.

28. While welcoming the developments towards actions for decreasing death penalty, the reported extra-judicial killings of detainees and civilians by security forces of Afghanistan remains a big concern.¹⁷ It is very difficult for civil society to obtain information about the work of the monitoring committee mandated to commute death penalties to lighter sentences. The process seems opaque and more transparency would be very welcome.

29. Afghanistan is still far from declaring a moratorium on the death penalty and the work with commutating death sentences is slow, Afghanistan should therefore be considered having taken some initial steps towards implementation, but that further action is needed to implement recommendation number 34 (A) and should therefore be assessed with a B2. [...]

17 <https://www.hrw.org/news/2018/02/21/afghanistan-alleged-summary-executions-special-forces>; <https://www.independent.co.uk/news/world/middle-east/kabul-attack-latest-police-shoot-hundreds-protesters-calling-better-secu-1-10-19-18-10-24> and <https://etilaatroz.com/66738/rity-afghanistan-goverment-a7768856.html> accessed 2018-10-24.

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.9 *The death penalty*

In the new Penal Code, the death penalty has been replaced by a life sentence for some crimes.³⁷⁹

Article 170 of the new Penal Code states that the following crimes carry the death penalty:

genocide, crimes against humanity, war crimes, treason, terrorism and bomb explosions, kidnapping, hostages and theft leading to the death of a person or persons;

manslaughter/ murder;

acts and omissions (crimes) that lead to the absolute surrender of Afghan territory to a foreign power or that undermine national sovereignty, territorial integrity and independence;

gang rape of a woman; and

gang rape of a man leading to the death of the victim.³⁸⁰

The UN Committee against Torture stated in mid-2017 that about 600 people were awaiting the death penalty. The Committee drew attention to the enormously long period before the execution takes place and to the detention conditions of prisoners awaiting execution.³⁸¹ In mid-June 2018, the number of people awaiting execution in Afghanistan was estimated at around 700.³⁸²

Amnesty International reported that five executions took place at Pul-e-Charkhi prison in Kabul in November 2017. The Ministry of Justice announced that the five had been convicted of murder and kidnapping in 2016. They were executed despite the fact that an appeal procedure was still pending at three courts of appeal.³⁸³

Another source indicated that another execution took place at the end of 2017, after more than a year. Three men were also executed in January 2018. The Afghan government has stated its support for the death penalty. With the introduction of the new Penal Code, the number of crimes punishable by the death penalty has been greatly reduced.³⁸⁴ [...]

379 Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

380 Confidential source, p. 16, 7 November 2018.

381 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, p. 8, 12 June 2017.

382 Confidential source, 11 June 2018. Amnesty International, *Annual Report: Afghanistan 2017/2018*, 2018.

383 Confidential source, 11 June 2018.

[UN General Assembly, Report of the Working Group on the Universal Periodic Review* Afghanistan \(3 April 2019\), A/HRC/41/5](#)

[...] I. Summary of the proceedings of the review process

[...] A. Presentation by the State under review

[...] 6. The Government had enacted a new Penal Code, aimed to limit the use of the death penalty and to protect against arbitrary detentions, extrajudicial executions and honour killings. In addition, the annex to the Criminal Procedure Code on alternatives to imprisonment and detention was being enforced.

[...] 10. In collaboration with its international partners, Afghanistan had reached the point of zero child recruitment in its defence and security forces by implementing a policy aimed at protecting children in armed conflict and by creating child protection centres. Furthermore, the Penal Code prohibited the use of the death penalty for, and the imprisonment and punishment of, children. It had criminalized the practice of bacha bazi. Orphanage facilities had been reformed and child protection services provided for children at risk. Afghanistan had adopted a national child labour prevention strategy and action plan pursuant to its commitments to International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182). To strengthen a coordinated national response on child protection, a national child protection secretariat had been created under the Ministry of Labour and Social Affairs. [...]

[European Asylum Support Office, Country Guidance: Afghanistan \(June 2019\)](#)

[...] I. Actors of persecution or serious harm

[...] The Afghan State and pro-government elements

Afghan State authorities and their associates are accused of committing a wide range of human rights

violations. There have been reports of illegal detention, ill-treatment and torture by the Afghan National Security Forces (ANSF), mainly by the National Directorate of Security (NDS) and some local police forces, pro-government militias (PGMs) and powerful individuals. Often torture is used in order

to extract a confession. In this regard, targeting of civilians takes place, including based on family ties,

kinship and tribal association [Conflict targeting, 2.2; Key socio-economic indicators 2017, 3.3.3, 3.4.4.3]. There have also been reports of extrajudicial killings of civilians, suspected to be antigovernment elements (AGEs), committed by the ANSF [Conflict targeting, 2.1]. Some Afghan Local

Police (ALP) have been involved in extortion, threats and sexual abuse of civilians [Conflict targeting, 2.6].

[...] 5. Members of insurgent groups and civilians perceived as supporting them

[...] COI summary

Insurgent groups, as well as people suspected of supporting them, are reported to face the death penalty, extrajudicial killings, targeted attacks, torture, arbitrary arrests and illegal detention. There are also reports of incidents of extrajudicial killings and killings by ANSF abusing their position of power. Conflict-related detainees are often subjected to torture and ill-treatment. Convictions by Afghan courts are often based solely on confessions extracted through torture and ill-treatment, although the use of confessions extracted this way is strictly prohibited by the Criminal Procedure Code [Conflict targeting, 2.1, 2.2]. [...]

[...] III. Subsidiary protection

1. Article 15(a) QD: death penalty or execution

Death penalty is envisaged under both, the Afghan Penal Code and Islamic law.

In the areas under their control, insurgents impose punishments through parallel justice systems, based on a strict interpretation of Sharia. This includes capital punishments, and instances of public executions by stoning and shooting, which would fall under the scope of Article 15(a) QD.

In the cases of profiles listed above for which death penalty or execution may be a real risk, there would often be a nexus to a Convention ground (for example, *LGBT, individuals considered to have committed blasphemy and/or apostasy, members of insurgent groups and civilians perceived as supporting them*, etc.), and those individuals would qualify for refugee status. In cases where there is no nexus to a Convention ground (for example, in some cases of *individuals accused of ordinary crimes*), the need for subsidiary protection under Article 15(a) QD should be examined.

Please note that exclusion considerations could be relevant. [...]

[...] ASIA-PACIFIC

[...] NOTABLE COUNTRY DEVELOPMENTS

Three men were executed in Afghanistan on 28 January for the kidnapping and murder of a child.⁴⁰ In a communication to Amnesty International, the authorities referred to one execution only and further indicated that the Special Committee to Review Cases of Death Penalty established by the Attorney General had reviewed 44 cases of prisoners who had their death sentences finalized. Of these, 22 were recommended for commutation. A further 50 people had their death sentences set aside through pardons granted by the families of the crime victims, leaving at least 343 under sentence of death at the end of the year. The new Penal Code, which reduced the scope of the death penalty from 54 to 14 offences, came into force in February 2018.⁴¹ [...]

40 "Kidnappers and killers of the 12-year-old Abasin hanged in Kabul", Khaama Press News Agency, 28 January 2018, www.khaama.com/kidnappers-and-killers-of-the-12-year-old-abasin-hanged-in-kabul-04369/

41 Presidential Decree No. 256, Official Gazette No. 1260 of 15 May 2017

17. Access to legal representation

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] 4. Civilians Suspected of Supporting Anti-Government Elements

[...] Detainees reportedly lack access to remedial mechanisms, independent medical examination and care, as well as meaningful access to defence counsel, especially during the investigation and the prolonged pre-trial detention period, including in particular in remote detention facilities.³⁵⁷ [...]

357 UNAMA, Treatment of Conflict-Related Detainees, April 2017, pp. 12, 45-49, 58-59.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues [...]

3. Human rights and counter-terrorism¹⁷

11. The Committee against Torture recommended that Afghanistan ensure, in law and in practice, that all detainees, including detainees suspected of terrorism or other security- related offences, were afforded all fundamental legal safeguards. The Committee recommended penalizing any failure by officials to do so and ensuring that all detainees had the right to access legal counsel, to request and receive a medical examination, and to be held in custody in conformity with the time limits set out in the Criminal Procedure Code.¹⁸ [...]

17 For the relevant recommendation, see A/HRC/26/4, para. 136.81.

18 CAT/C/AFG/CO/2, para. 26.

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

It is not common for people to be detained indefinitely without due process, except in the case of people accused of involvement in the Taliban, Al Qaeda or ISKP.³³⁰

The United Nations Committee against Torture (CAT) indicated in 2017 that it was deeply concerned about the many allegations that prisoners, and in particular people held by the NDS or the national or local police for national security reasons, have no guaranteed access to a lawyer, legal aid and medical assistance from the point when they are taken into detention. While they are in custody, they usually do not know why they have been detained and have no permission to contact their family.

These people are often detained for longer than the law permits, and some are said to have been in custody for over a year.³³¹ [...]

330 Confidential source, p. 17, 7 November 2018.

331 UN. Convention against torture and other cruel, inhuman or degrading treatment or punishment. Committee against Torture, *Concluding observations on the second periodic report of Afghanistan*, CAT/C/AFG/GO/2, point 25, 12 June 2017.

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

- Limitations in implementing key procedural and other legal safeguards to prevent torture and ill-treatment, such as access to lawyers and contact with the family during investigation; medical screening; information provided to detainees on their rights; and reliance on forced confessions.
- Continued lack of accountability for perpetrators, with investigations into allegations of torture and ill-treatment remaining internal and opaque, with very limited referrals to prosecution.
- Lack of any meaningful possibility of obtaining an effective judicial or administrative remedy for the violations that detainees claim to have experienced.

[...] • Poor conditions of detention observed within the Afghan National Army-run Detention Facility in Parwan give rise to concern, including inadequate lighting, overcrowding, the use of solitary confinement as the sole disciplinary measure, and restrictions with regard to family visits and access to lawyers.

[...] G. Afghan National Detention Facility in Parwan

[...] UNAMA is however concerned about the conditions of detention observed within the facility, including, overcrowding, the use of solitary confinement as the sole disciplinary measure, restrictions with regard to family visits and access to lawyers, and inadequate lighting. In addition, during its interviews with detainees held in the facility, UNAMA received numerous reports that the poor conditions of detention and the lack of programmes and facilities for detainees contribute to widespread mental health problems among the prison population.

[...] 6. Legal and Other Procedural Safeguards to Prevent Torture and Ill Treatment

[...] A. Access to lawyers

The physical presence of lawyers during interrogations may not only ensure deterrence of acts of torture and ill-treatment; lawyers can also intervene at an early stage to detect such acts, initiate procedures for identifying and investigating officials who are allegedly involved in torture or ill-treatment, and ensure that forced confessions are not used as evidence in trial.

During the period covered by this report, while UNAMA observed improvements in several facilities, many detainees continued to report that they had no opportunity or faced difficulties in accessing a legal counsel, particularly during the investigation stage of the proceedings. Access to legal counsel overall improved when a detainee was brought to the detention facilities falling under the authority of the Central Prisons Department of the Ministry of Interior or the Ministry of Justice (Juvenile Rehabilitation Centres).

UNAMA also observed that detainees continued to lack a clear understanding of the benefits of having a legal counsel, or believed that requests for a lawyer would negatively impact their case during investigation. Many were also unaware of the availability of legal aid and had thus had not sought legal assistance. [...]

Although it is beyond the scope of this report to provide a comprehensive analysis of the legal aid system in Afghanistan, it should be noted that lawyers have on a number of occasions informed UNAMA about difficulties in accessing certain detention facilities, in particular those under the authority of NDS, ANP and ANA. On the other hand, detention authorities have pointed to a lack of availability of lawyers, and particularly legal aid providers, in many provinces, and their unwillingness in some instances to follow-up on conflict related cases or to visit detention facilities.

[...] E. Information about rights

In order to be able to assert one's rights, a necessary prerequisite is to be aware of them. While UNAMA notes increasing efforts by detaining authorities to provide information on rights to detainees, the majority of interviewees stated they had not received such information during their detention period. UNAMA also observed that even when detainees would receive a briefing on their rights, it was not necessarily comprehensive or lacked details on how to effectively exercise these rights.

Due to their closed nature, places of deprivation of liberty create an inherent power imbalance and limit the individuals' control over his/her ability to exercise fundamental freedoms. Detention

authorities thus need to make sure that detainees receive information about their rights and obligations upon being detained and in a language and format that they can understand. [...]

18. Separation of and situation for women detainees

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\]](#)

[...] Lack of prison for female in some provinces: According to the provisions of Article 12 of the Law on Prisons and Detention Centers, there should be a prison in each province and, according to Article 9 of this law, the prisons of women and men should be separate from each other. The absence of prison for women is a big problem in the prison of Panjshir Province. Although in the last visit that AIHRC's human rights monitors made to this province, there was no female prisoner, but a prison special for women should be built in that province.⁵ The new prison is under construction and this problem has to be considered in the new prison building. [...]

[...] Improvement of the situation of prisons as a result of monitoring and presentation of recommendation

Human Rights monitors of the Kabul Regional Office issued recommendations to relevant authorities in order to improve the human rights situation in the prisons, after conducting regular visits and monitoring to these centers, significant improvements were made in prisons by implementing these recommendations. In this part, some of the improvements are referred to as follows:

[...] o There was no night shift female doctor on duty in the Pul-e-Charkhi prison, which posed a serious health problem for female prisoners. As a result of the advocacy made by the Kabul Regional Office, a night shift doctor was assigned in the female's section of the Pul-e-Charkhi prison. [...]

5 The Law on Prisons and Detention Centers, Articles 9 and 12.

[Human Rights Watch, Afghanistan: Events of 2018](#)

[...] Torture

[...] A report by Integrity Watch Afghanistan in late 2017 documented inhumane conditions in Afghan prisons and detention centers, with severe overcrowding and insufficient toilets, potable water, mattresses, and other facilities. Through the first half of 2018, prisoners in Pul-e-Charkhi prison carried out a hunger strike to protest conditions. The situation remained particularly poor for female prisoners, many of whom have been imprisoned for so-called morality crimes and who are often imprisoned with their children, far from home. [...]

[Yousif Zarifi, Institute for War and Peace Reporting, Afghanistan: Female prisoners jailed far from home \(27 February 2018\)](#)

[...] The lack of a dedicated prison for female offenders in Kunar is continuing to create difficulties for relatives, inmates and officials alike.

Families of local women convicted of crimes complain they are forced to travel long distances to Nangahar each time they wanted to visit their loved ones, while lawyers say that it hampers their investigation of their cases.

Authorities in Nangahar also argue it is essential to build a women's prison in Kunar to relieve the burden of overcrowding at their own facilities.

Officials in Kunar say a dedicated prison building for women is planned, but construction has yet to begin.

Khushal Jawad, a legal expert and university lecturer, said prisoners had the right to be imprisoned at locations within their own provinces so as to be close to their families.

“Regardless of their crimes, inmates have the right to access healthcare, food, female police officers when needed and to meet with their own families while in prison,” he said.

Hashima Sharif, head of Kunar’s regional branch of the Afghanistan Independent Human Rights Commission (AIHRC), also said that transferring [sic] prisoners to Nangahar violated their rights.

“Being away from their homes, and not getting the opportunity to meet with their families is wrong,” she said. “This is a violation of the rights of female prisoners.”

IWPR spoke to a number of lawyers in Kunar who agreed that the lack of a female prison hindered their investigations, as travelling to and from Nangarhar to speak to clients was difficult. [...]

[UN High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan \(30 August 2018\)](#)

[...] I. Executive Summary

[...] 1. Refugee Status under the 1951 Convention

[...] UNHCR considers that individuals falling into one or more of the following risk profiles may be in need of international refugee protection, depending on the individual circumstances of the case:

[...] (7) Women with certain profiles or in specific circumstances;

(8) Women and men who are perceived as contravening social mores;

[...] (11) Survivors of trafficking or bonded labour and persons at risk of being trafficked or of bonded labour;

(12) Individuals of diverse sexual orientations and/or gender identities;

[...] 7. Women with Certain Profiles or in Specific Circumstances⁴²⁸

[...] a) Sexual and Gender-Based Violence

[...] As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death.⁴⁶²

[...] 8. Women and Men Who Are Perceived as Contravening Social Mores⁴⁸⁶

[...] A significant proportion of the girls and women detained in the country have been charged with “moral crimes”.⁵⁰⁰ Female prisoners are reportedly often subjected to physical violence as well as and sexual harassment and abuse.⁵⁰¹ Since accusations of adultery and other “moral crimes” may elicit violence or “honour killings”,⁵⁰² in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.⁵⁰³

[...] 11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour

[...] The Government also reportedly arrested, imprisoned or otherwise punished persons who had fallen victim to trafficking, penalizing such persons for crimes such as prostitution or “moral crimes”.⁵⁶³

[...] 12. Individuals of Diverse Sexual Orientations and/or Gender Identities

Consensual same-sex sexual acts are illegal in Afghanistan and are punishable by imprisonment of up to two years under the new Afghan Penal Code.⁵⁶⁵

[...] Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.⁵⁷⁰ Overall, “homophobic views and violence against LGBT groups in Afghanistan are pervasive”.⁵⁷¹ The police reportedly fail to provide protection to individuals of diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.⁵⁷² [...]

462 Pajhwok News reports that in 2017 “nearly 40 women were killed in the name of honor and other issues.” Pajhwok Afghan News, Nearly 40 Women Murdered in the East This Year: Officials, 10 December 2017, <https://www.pajhwok.com/en/2017/12/10/nearly-40-women-murderedeast-year-officials>. “Any misbehavior or sexual

improprieties (adultery, abduction, rape) by women are considered as serious violations of the Pashtunwali code, and can be killed by male relatives to preserve the honor of the family.” Austrian Country of Origin Information Department (Bundesamts für Fremdenwesen und Asyl (BFA)), AfPak: Principals of the Tribal & Clan Structure, 5 April 2017, https://coi.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf, p. 51. “So-called “honour killings” are not uncommon in conservative Afghanistan and relations between men and women outside marriage are strictly controlled under local and Islamic practices, with violations often punishable by death.” The Express Tribune, In ‘Honour Killing’, Mob Lynches Afghan Couple for Eloping, 12 February 2017, <https://tribune.com.pk/story/1324630/mob-lynches-afghan-couple-eloping-honourkilling/>. “Occurrences of honor killings are widespread, notably in the countryside and rural areas, and often go unreported or unsolved due to cultural factors and the silencing of victims.” Gender Concerns International, The Situation of Women in Afghanistan, undated, <http://www.genderconcerns.org/country-in-focus/afghanistan/the-situation-of-women-in-afghanistan>. See also, New York Minute Magazine, Afghanistan’s Honor Killings Must End, 17 July 2017, <http://www.newyorkminutemag.com/afghanistans-honor-killings-must-end/>; RFE/RL, Young Afghan Lovers Lynched By Armed Mob In Latest Horrific ‘Honor’ Killing, 16 February 2017, <https://www.rferl.org/a/afghanistan-honorkilling-fateha-lynched/28314022.html>. Article 398 of the Afghan Penal Code of 1976 exempted perpetrators of honour killings “from punishment for laceration and murder”, and instead imposed a term of imprisonment of no longer than two years. This article was however removed in the revised Penal Code of 2017. Afghanistan, Penal Code, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. An unofficial translation of the 2017 Penal Code is on record with UNHCR. See also IWPR, Afghanistan’s Domestic Violence Loophole, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>

500 In March 2017 there were reportedly “420 women serving prison sentences in Afghanistan, either for murder or for “moral crimes”, while a further 410 women had been charged and were under investigation. IWPR, Afghanistan: Female Detainees Face Sexual Abuse, 28 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-face-sexual-abuse>. “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’.” UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 6, note 10. “[A] large percentage of female prisoners are imprisoned for ‘moral crimes’, including running away from abusive relationships.” Australian Government: Department of Foreign Affairs and Trade, Country Information Report: Afghanistan, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, pp. 29-30. “The vast majority of women in prison are accused of moral crimes and were therefore forced to undergo virginity tests”. Civil Society and Human Rights Network, Shadow Report to the Committee Against Torture on the Occasion of the Examination of the Second Periodic Report of Afghanistan at its 60th Session, March 2017, https://www.ecoi.net/en/file/local/1400873/1930_1496217729_int-cat-cssafg-27015-e.pdf, p. 6. In May 2015, the Special Rapporteur on violence against women reported that 428 women, or 58 per cent of all women imprisoned across Afghanistan, were detained on “moral crimes” charges. UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 23.

501 IWPR, Afghanistan: Female Detainees Face Sexual Abuse, 18 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-facesexual-abuse>; Reuters, Most Afghan Women Serve Sentences in Elders’ Homes, Not Prisons, 11 October 2016, <https://www.reuters.com/article/us-afghanistan-women-prisons/most-afghan-women-serve-sentences-in-elders-homes-not-prisonsidUSKCN12A2KR>.

502 See for example RFE/RL, Mob Beats Afghan Woman for Alleged Affair, 2 February 2018, <https://www.rferl.org/a/afghanistan-womenbrutally-beaten-affair/29015213.html>; Tolo News, Father Kills Daughter and her Male Friend, 2 July 2017, <http://www.tolonews.com/afghanistan/father-kills-daughter-and-her-male-friend>; The Observers, The Place in Afghanistan Where It’s “Easy To Kill Women”, 13 April 2017, <http://observers.france24.com/en/20170413-place-afghanistan-where-it%E2%80%99%E2%80%9CEasykill-women%E2%80%9D>; RFE, Young Afghan Lovers Lynched by Armed Mob in Latest Horrific ‘Honor’ Killing, 16 February 2017, <https://www.rferl.org/a/afghanistan-honor-killing-fateha-lynched/28314022.html>. For more information about the prevalence of “honour killings” in Afghanistan, see Section III.A.7.

503 “When protection is offered to women, it is under a patriarchal guise. We see that scores of women are kept in ‘protective’ detention, where they are detained in order to ensure their protection from threats, such as honour crimes, but also to ensure that they will testify against the perpetrator in court. Such detention has been reported as continuing for up to 14 years.” Penal Reform International, Eliminating Violence Against Women in the Criminal Justice System, 21 November 2017, <https://www.penalreform.org/blog/eliminating-violence-women-criminaljustice-system>. See also, The Diplomat, The Women in Afghanistan’s Moral Prisons, 8 March 2017, <https://thediplomat.com/2017/03/thewomen-in-afghanistans-moral-prisons>

563 US Department of Labor, 2016 Findings on the Worst Forms of Child Labor: Afghanistan, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>; US Department of State, 2017 Trafficking in Persons Report: Afghanistan, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37; SIGAR, Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>, p. 19; IWPR, Boys Sold for Sex in Afghan Province, 2 March

2017, <http://www.refworld.org/docid/58bd641b4.html>; IWPR, Afghanistan: The High Price of Virginity, 11 January 2017, <http://www.refworld.org/docid/587783564.html>; HRW, Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>. See also Section III.A.7.a: "Women with Certain Profiles or in Specific Circumstances: Sexual and Gender-Based Violence"

565 Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 646 and 647. During the Universal Periodic Review for Afghanistan in 2014, Afghanistan did not accept a recommendation from Norway to "ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex." See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Afghanistan, 4 April 2014, <http://www.refworld.org/docid/539064f14.html>; UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum, 16 June 2014, <http://www.refworld.org/docid/5671934a4.html>. It should be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another man, the latter of which is considered a sin in Islam and punishable under Sharia law. See, for example, Afghanistan Human Terrain Team, Pashtun Sexuality: Research Update and Findings (Unclassified), 2009, <http://info.publicintelligence.net/HTTPashtunSexuality.pdf>; Shivananda Khan, Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan (London: Naz Foundation International), September 2008, http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf.pdf, pp. 22, 29; and S. Khan, Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan (London: Naz Foundation International), 30 March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf.pdf, pp. 17, 63. [...]

Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.⁵⁷⁰ Overall, "homophobic views and violence against LGBT groups in Afghanistan are pervasive".⁵⁷¹ The police reportedly fail to provide protection to individuals of diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.⁵⁷²

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

1. Right to life, liberty and security of person¹⁹

[...] 19. The Committee remained deeply concerned about the poor conditions of detention, including severe overcrowding, inadequate sanitation and access to water, food of a sufficient amount and quality and medical services. It was particularly concerned by the situation of women in prisons and recommended taking measures to alleviate overcrowding in detention facilities.³⁹ [...]

19 For relevant recommendations, see A/HRC/26/4, paras. 136.49, 136.82–136.84, 136.118, 137.11 and 138.1–138.10.

39 CAT/C/AFG/CO/2, paras. 29–30.

[USDOS – US Department of State, Country Report on Human Rights Practices 2018 – Afghanistan \(13 March 2019\)](#)

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] Prison and Detention Center Conditions

[...] Authorities generally lacked the facilities to separate pretrial and convicted inmates or to separate juveniles according to the seriousness of the charges against them. Local prisons and detention centers did not always have separate facilities for female prisoners. [...]

[The Hague, Ministerie van Buitenlandse Zaken, Country of Origin Report Afghanistan \(March 2019\)](#)

[...] 3. Human Rights

[...] 3.4.5 Arrests, custody and detentions

[...] *Women in detention*

As indicated, prison conditions in Afghanistan are poor; this also applies to women's prisons. Women detained for moral offences are often held together with women detained for serious crimes such as murder. Some of the women in detention centres are mothers who have given birth in detention or whose children have come to prison with them.³³⁷ Women in detention, both in custody and in prison, are at risk of sexual abuse by police officers and other staff. [...]

337 UK. Home office. *Country information and guidance. Afghanistan: prison conditions*. September 2015. Par. 5.4.; ; The Diplomat. *The Women in Afghanistan's Moral Prisons*. 8 March 2017. <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons/>; Reuters. *Most Afghan women serve sentences in elders' homes, not prisons*. 11 October 2016. <https://www.reuters.com/article/us-afghanistan-women-prisons-idUSKCN12A2KR>. In remote rural areas it is common for women convicted under traditional justice to be employed in the household of local leaders as a punishment.

19. Situation of detained children

[AIHRC Kabul Regional Office, Report on Human Rights Situation in Detention Centers \(In the areas covered by the Kabul Regional Office, FY 1396\) \[2017\] \[p. 23\]](#)

[...] Problems of Correction Centers: With regard to the ongoing monitoring of correction centers, the most important problems that have been observed are as follows:

- The lack of teaching curriculum in correction centers is one of the major problems of these centers. Usually a teacher is hired by the Ministry of Haj and Religious Affairs to teach religious subjects, but the Ministry of Education has not paid much attention to teaching school subjects for the children in the correction centers.
- The lack of a health clinic is still one of the issues faced by detainees in the provinces covered by the AIHRC. If children are sick or have a health problem, there is no doctor or nurse to treat them.
- Lack of access to an appropriate place for recreation and sports, which is one of the rights of children, emphasized upon in the Convention on the Rights of the Child. However, during ongoing monitoring made to child correction centers in Kabul and the province covered by the AIHRC, it became clear that children were deprived of this right.
- Some of the correction centers do not have standard building, for example the correction center in Kapisa and Parwan provinces are rented, and no attention has been made to make them standardized.
- Determining the age of the detainees: We all know that many childbirths in remote areas take place outside the health facilities by local midwives. There are a large number of children without an ID card, and the determination of age at the time of taking the ID card is done according to the appearance of the person, and the day and month of birth are not registered. In order to observe the rights of children in conflict with the law, the age of the child should be specified precisely including the day and month, and the minimum age specified by the forensic medicine department should be taken into account by the judiciary organs. [...]

[The Saratoga Falcon, Human rights abused as children are imprisoned along with a parent \(25 January 2018\)](#)

[...] The New York Times reported that there are at least 333 children in Afghanistan who are incarcerated along with a parent. Despite committing no crime, the children are treated like criminals, subject to poor conditions, including meager food rations and constant violence.

[...] Even though many nations have an age limit to incarcerating innocent minors along with their parents, these laws are not always strictly abided by. Afghanistan places this restriction at age 7, but Meena's position, as well several others reported by the [Afghanistan Analysts Network](#), reveal the faultiness of this policy.

While students from across the world, such as those in the Silicon Valley, are complaining about tests and homework, incarcerated children are receiving an education that is incapable of producing informed individuals. In the interview with AAN, another boy said that the pressure of prison left him illiterate even after completing third grade. [...]

[UNAMA, Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2018 \(10 October 2018\) \[p. 9\]](#)

[...] The mission reminds the Afghan authorities that detention of a child should only be used as a measure of last resort and for the shortest appropriate time and urges the authorities to transfer the

children currently being held in NDS adult detention facilities to the Juvenile Rehabilitation Centres as soon as possible, as set out in NDS Directive 0423. [...]

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session, 21 January–1 February 2019, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Afghanistan \(13 November 2018\)](#)

[...] B. Rule of law and good governance²⁶

[...] V. Specific groups⁴⁰ [...]

[...] a) Children

[...] Children and criminal acts⁵²

126. Section three of the Penal Code deals with Criminal Responsibilities of Children. Art. 94 Penal Code states that a child who has not reached the age of 12 is not criminally responsible. Art 95 deals with children between 12 and 16 years. Art. 96 with the children between 16 and 18 years. According to Art. 97, a child shall not be sentenced to death, imprisonment or fine.

127. Children cases are being investigated by a Special Juvenile Prosecution Department. They are only being arrested in case of existence of evidence regarding their felony or misdemeanor, if there is suspicion of fleeing, danger of elimination of documents and evidence and fear of repetition of the offence. At no circumstances children may be cuffed and they must be kept separate from adults.

128. The Central Department for Juvenile Education and Rehabilitation at MoJ is responsible to assist in the education and rehabilitation of children in conflict with the law. It provides general care for detained juvenile offenders, rehabilitates and educates detained juvenile offenders, and provides basic necessities, such as food, shelter, clothing, and health facilities, for detained juvenile offenders.

129. MoHRA sends scholars to juvenile rehabilitation centers to teach them religious principles and raise awareness on the risk of fundamentalism.

[...] Violence against children⁵⁴

133. The new Penal Codes deals with different crimes committed against children. Art 89 of the Draft Child Act clearly states, that no child shall receive torture or other cruel, inhuman or degrading treatment. Teachers, who punish their students physically, will face legal actions.

134. To decrease violence against children through law enforcement institutions, in particular police, a Department for Children Complaints has been established in each Police Headquarter in Kabul and provinces. Children arrested by the police enjoy legal support and can refer to this department in case of any complaint.

[...] 136. Several trainings for police forces as well as teachers took place to enhance their human rights knowledge and prevent corporal punishment and other violation of children rights. [...]

52 Recommendation 165.

54 Recommendation 16, 112, 158 and 159.

[UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review Thirty-second session 21 January–1 February 2019, Compilation on Afghanistan, Report of the Office of the United Nations High Commissioner for Human Rights \(15 November 2018\)](#)

[...] B. Civil and political rights

[...] 2. Administration of justice, including impunity, and the rule of law⁴¹

[...] 24. OHCHR/UNAMA were concerned about the lack of support staff, adequate security arrangements, access to legal defenders, psychosocial support, and health and educational services at juvenile rehabilitation centres, which might complicate the reintegration process following the release of detainees.⁴⁶

[...] 23. Rights of specific persons or groups [...]

[...] 1. Children⁸⁹

[...] 53. The Committee against Torture was deeply concerned by the numerous allegations that children in Parwan were detained with and under the same regime as adult detainees. The Committee urged Afghanistan to take immediate measures to ensure that they were transferred to juvenile detention centres and duly rehabilitated.⁹⁵ The Office of the Special Representative of the Secretary-General for Children and Armed Conflict also remained concerned about children detained on national security-related charges in adult prisons and called on the Government to adhere to national and international juvenile justice principles when dealing with those children. It encouraged the Government to develop alternatives to detention for children formerly associated with armed groups, focusing on reintegration and rehabilitation and using detention only as a last resort and for the shortest period of time.⁹⁶ [...]

41 For relevant recommendations, see A/HRC/26/4, paras. 136.14–136.15, 136.17, 136.46–136.48, 136.85, 136.103, 136.105–136.106, 136.166–136.168 and 137.13–137.19.

46 OHCHR/UNAMA submission, p. 3.

89 For relevant recommendations, see A/HRC/26/4, paras. 136.16, 136.21, 136.25, 136.27, 136.31, 136.37, 136.50, 136.57, 136.65, 136.67, 136.75–136.76, 136.95, 136.100, 136.102, 136.107–136.112, 136.114–136.117, 136.130, 136.155, 136.158–136.160, 136.165, 136.169, 137.2 and 137.32.

95 CAT/C/AFG/CO/2, paras. 17–18.

96 Office of the Special Representative of the Secretary-General for Children and Armed Conflict submission, p. 3.

UNICEF, Child Notice Afghanistan 2018

[...] 125. In April 2017, UNAMA reported on treatment of conflict-related detainees in Afghanistan that more than a third of the interviewees gave credible accounts of being subjected to torture or ill-treatment. Among other findings, 45 per cent of those interviewed who had been detained by police said they had been tortured or ill-treated - the highest level documented since UNAMA began its current monitoring programme in 2010. The report noted that 26 per cent of those interviewed by UNAMA who had been held in NDS custody reported being subjected to torture or ill-treatment. Of 85 child detainees interviewed, 38 gave credible accounts of being subjected to torture or ill-treatment while in the custody of the Afghan security forces.¹⁷⁸ [p. 48]

[...] 214. According to a 2013 report by War Child UK on alternative detentions, the number of children in JRCs in Afghanistan has more than doubled in the last five years from 455 in 2008 to 1,118 in 2013.³⁰⁸

The War Child UK report goes on to say that:

‘This is alarming not just because it reflects the accelerated growth of adult imprisonment which has increased three-fold since 2007, but because it is clear that many of these children could have been sentenced to an alternative to detention’.³⁰⁹ [p. 72]

[...] Reports on detention

219. While article 12 in the 2005 Juvenile Code mandates the existence of appropriate health, social and educational services for detained children, assessments on JRCs in Afghanistan report that these services do not exist in most cases. The Juvenile Code stresses confinement as a last resort and for the minimum duration possible. It also obliges detention authorities to provide educational, vocational, psychosocial, and health services for detained children. Yet, according to the Children in Crisis and Samuel Hall joint study on the state of the JRC in Kabul many children in the JRC have been confined for minor offenses, and service provision and needs often go neglected.³¹²

220. The 2012-2014 UNODC country program for Afghanistan also reported the lack of essential services such as medical, educational and vocational training, which would benefit children and facilitate their transition back to their families.³¹³

221. UNODC reported that:

‘If the juvenile girls come in with children of their own they also stay with them in the already overcrowded rooms at the JRC. In several of the JRCs small children under the age of 5 that were the responsibility of the juvenile girls were also living at the JRC’.³¹⁴

222. The 2017 US Human Rights Report on Afghanistan noted:

'Reports indicated children in juvenile rehabilitation centers across the country lacked access to adequate food, health care, and education. Detained children frequently did not receive the presumption of innocence, the right to know the charges against them, access to defense lawyers, and protection from self-incrimination. The law provides for the creation of special juvenile police, prosecution offices, and courts. Due to limited resources, special juvenile courts functioned in only six provinces (Kabul, Herat, Balkh, Kandahar, Nangarhar, and Kunduz). Elsewhere, children's cases went to ordinary courts. The law mandates authorities handle children's cases confidentially'.³¹⁵

223. The 2012-2014 UNODC Country programme report stated that children continue to be placed in detention at high rates for behaviours which, based on international standards, should not be considered criminal offences. A large proportion of girls are prosecuted and imprisoned for 'home escape' (running away from home) even though it is not a crime pursuant to the Juvenile Code.³¹⁶ (see 7.7 Domestic violence)

224. The 2008 UNODC report on alternatives to imprisonment stated that children are being held in prison charged with offences such as homosexuality, debauchery and running away from home and are being punished, although most are almost certainly victims themselves and are in need of care and protection.³¹⁷ The UNODC report also observed:

'AIHRC commissioners have said, for example, that many children were arrested by the police, having been apprehended while having sex with an adult, and that both the adult and the child were treated the same, the latter not being perceived as a victim. Additionally AIHRC has found that the worst risk of abuse of children is during the period of detention by the police'.³¹⁸

225. The 2017 US Human Rights Report also stated that some of the children in the criminal justice system were victims rather than perpetrators of crime. In the absence of sufficient shelters for boys, authorities detained abused boys and placed them in juvenile rehabilitation centers because they could not return to their families and shelter elsewhere was unavailable.³¹⁹

226. An UNAMA survey carried out in 2015 established that 336 children were accompanying the 727 female prisoners held at that time in Afghanistan's provincial prisons. UNAMA found that the high percentage (46 per cent) of children accompanying their mothers in prison presents significant concerns for the children's wellbeing and recommended that the concerns about the number of children accompanying their mothers in prison can best be addressed by increased reliance on alternative forms of punishment than incarceration for female prisoners.³²⁰ [...]

178 UNAMA/OHCHR Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture (April 2017) pp. 7-8, 21 available at https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf (Accessed December 2018).

308 War Child UK Implementing alternatives to detention (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed December 2018) p. 3.

309 War Child UK Implementing alternatives to detention (2013) available at <https://www.warchild.org.uk/sites/default/files/Alternatives-to-Detention-in-Afghanistan-June-2013.pdf> (Accessed 30 August 2015) p. 3.

312 Samuel Hall Hope behind bars: the boys of the Kabul JRC (2017) commissioned by Children in Crisis pp. 19-20 available at <http://samuelhall.org/site/wp-content/uploads/2017/08/Samuel-Hall-Hope-behind-bars-2017-for-Children-in-Crisis-.pdf> (Accessed 27 April 2018).

313 UNODC Country Program for Afghanistan 2012-2014 (2012) pp. 22-23.

314 UNODC Country Program for Afghanistan 2012-2014 (2012) pp. 22-23.

315 US Department of State Country Reports on Human Rights Practices for 2017: Afghanistan (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed August 2018) pp. 7-8.

316 UNODC Country Program for Afghanistan 2012-2014 (2012) pp. 22-23

317 UNODC Implementing alternatives to imprisonment (2008) p. 34.

318 UNODC Implementing alternatives to imprisonment (2008) p. 37.

319 US Department of State Country Reports on Human Rights Practices for 2017: Afghanistan (2017) available at <https://www.state.gov/documents/organization/277519.pdf> (Accessed December 2018) pp. 7-8.

320 UNAMA Rule of Law Unit Assessment of Afghanistan Prison Health Services (2016) p. 19 available at https://unama.unmissions.org/sites/default/files/assessment_of_afghanistan_prison_health_services_-_english.pdf (Accessed December 2018).

[...] Section 1. Respect for the Integrity of the Person, Including Freedom from:

[...] Prison and Detention Center Conditions

[...] Authorities generally lacked the facilities to separate pretrial and convicted inmates or to separate juveniles according to the seriousness of the charges against them. Local prisons and detention centers did not always have separate facilities for female prisoners.

According to NGOs and media reports, children younger than age 15 were imprisoned with their mothers, due in part to a lack of capacity among Children's Support Centers. These reports documented insufficient educational and medical facilities for these minors.

[...] Arrest Procedures and Treatment of Detainees

[...] According to the juvenile code, the arrest of a child "should be a matter of last resort and should last for the shortest possible period." Reports indicated children in juvenile rehabilitation centers across the country lacked access to adequate food, health care, and education. Detained children frequently did not receive the presumption of innocence, the right to know the charges against them, access to defense lawyers, and protection from self-incrimination. The law provides for the creation of special juvenile police, prosecution offices, and courts. Due to limited resources, special juvenile courts functioned in only six provinces (Kabul, Herat, Balkh, Kandahar, Nangarhar, and Kunduz). Elsewhere, children's cases went to ordinary courts. The law mandates authorities handle children's cases confidentially.

[...] Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

[...] Children

[...] Police reportedly beat and sexually abused children. [...] NGOs reported a predominantly punitive and retributive approach to juvenile justice throughout the country. [...]

[UNAMA and OHCHR, Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law \(April 2019\)](#)

[...] EXECUTIVE SUMMARY

[...] • Younger persons are at a higher risk of suffering from torture or ill-treatment in ANDSF custody.

[...] H. Juvenile detainees⁶⁸

[...] During the reporting period, UNAMA interviewed 82 juveniles⁶⁹ held in ANDSF custody. Of these, 36 (43.9 per cent) gave credible and reliable accounts of having been tortured or ill-treated. Similar to the overall trend, UNAMA notes a reduction in the prevalence of allegations of torture and ill-treatment of juveniles in 2018 (33.3 per cent, 14 out of 42 detainees) compared to 2017 (55 per cent, 22 out of 40 detainees). Nevertheless, UNAMA is concerned about these relatively higher percentage as compared to the overall figures, which appears to indicate that younger persons are at a higher risk of suffering from torture or ill-treatment in ANDSF custody.

[...] Legal and other procedural safeguards – The case of the children from Jawzjan province

UNAMA is concerned about consistent reports of violations of legal and other procedural safeguards established under international and domestic law by detaining authorities. For example, on 31 July 2018, a group of approximately 250 male individuals with alleged affiliation to the self-identified Daesh/ISKP surrendered to ANDSF in Jawzjan province and were subsequently detained by NDS in Jawzjan and NDS 501 in Kabul. Among them were 59 children, including four children found to be below the age of criminal responsibility (a person who has not completed the age of 12 according to the Juvenile Code). UNAMA notes that these children were unlawfully held in NDS detention for investigation – instead of the Juvenile Rehabilitation Centres, as required by the domestic law –for approximately 100 days, without access to necessary services, such as psychological support and education. Moreover, they had no access to defence counsel during the investigation phase; had no

or very limited contact with their families during their detention in NDS; and had not been brought before a judge for approximately six months. UNAMA emphasizes that criminal responsibility must be established individually for any accused person and that these children should not be treated as a group. [...]

68 A juvenile is a person who has completed the age of 12 and has not completed the age of 18, see article 4 of the Juvenile Code and articles 95 and 96 of the Penal Code

69 UNAMA notes that this figure includes seven individuals who stated to be below the age of 18. UNAMA did not obtain relevant information from the authorities on their assessment of the age of these individuals.

[UN General Assembly, Report of the Working Group on the Universal Periodic Review* Afghanistan \(3 April 2019\), A/HRC/41/5](#)

[...] I. Summary of the proceedings of the review process

[...] A. Presentation by the State under review

[...] 10. [...] Furthermore, the Penal Code prohibited the use of the death penalty for, and the imprisonment and punishment of, children. [...]

[Children and armed conflict; Report of the Secretary-General \[A/73/907-S/2019/509\] \(20 June 2019\)](#)

[...] III. Information on violations committed against children during armed conflict and progress made by parties on dialogue, action plans and other measures to halt and prevent violations against children

A. Situations on the agenda of the Security Council Afghanistan

Developments and concerns

28. I note the significant reduction in the recruitment and use of children by the Afghan Security Forces and commend the measures taken by the Government to better protect children affected by armed conflict, including through the child protection units in the Afghan National Police recruitment centres, which now cover all 34 provinces of Afghanistan, and the entry into force of the revised Penal Code, which explicitly criminalizes the recruitment and use of children, including *bacha bazi* and falsification of *tazkeras* (identity documents). I call for the full application of the revised Code. Notwithstanding those developments, the use of children, including *bacha bazi*, remains an issue of concern. I urge the Government to address remaining gaps, specifically the lack of screening mechanisms within the Afghan local police and the use of children at police checkpoints, and to ensure accountability for the perpetrators of grave violations against children.

29. I call on the Government to release children allegedly or currently associated with parties to conflict from detention facilities in accordance with the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles), which were endorsed by Afghanistan in 2017. In addition, children detained on national-security related charges need to be transferred to juvenile rehabilitation centres and have access to all services, in line with international juvenile justice standards.

[...] B. Listed parties that have put in place measures during the reporting period aimed at improving the protection of children

Parties in Afghanistan

State actors

Afghan National Police, including the Afghan Local Police ^{a,f} [...]

^a Party that recruits and uses children.

^f Party that has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005).

20. Discrimination including freedom to practice religion, special needs including treatment of disabled prisoners

No COI was found on this topic in the sources consulted that was published within the timeframe for this research.

Legal notes

The ambit of Article 3

There is a distinction between torture, inhuman treatment, and degrading treatment. "Torture" is "deliberate inhuman treatment causing very serious and cruel suffering." *Ireland v United Kingdom* (1978) 2 EHRR 25 at [168] <http://www.bailii.org/eu/cases/ECHR/1978/1.html>

Torture must also be inflicted for a purpose, such as, *inter alia*, obtaining information, inflicting punishment or intimidating: *Ilhan v Turkey* (2002) 34 EHRR 36 at [85] <http://www.bailii.org/eu/cases/ECHR/2000/354.html>

"Inhuman treatment" does not need to be intended to cause suffering, *Ireland v United Kingdom* *supra*, and there is no requirement that the suffering be inflicted for a purpose; in this regard see *Denizci v Cyprus* (23 May 2001, unreported) at [383]-[384] <http://www.bailii.org/eu/cases/ECHR/2001/351.html>.

Nonetheless, ill-treatment must attain a minimum level of severity to fall within Article 3. The Court defined "inhuman treatment" and "degrading treatment" in *Kudla v Poland* (2000) 35 EHRR 198: <http://www.bailii.org/eu/cases/ECHR/2000/512.html>

"91. However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, the *Raninen v. Finland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2821-22, § 55).

92. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, *mutatis mutandis*, the *Tyrer v. the United Kingdom* judgment of 25 April 1978, *Series A* no. 26, p. 15, § 30; the *Soering v. the United Kingdom* judgment of 7 July 1989, *Series A* no. 161, p. 39, § 100; and *V. v. the United Kingdom* cited above, § 71).

Prison conditions generally

In evaluating whether prison conditions violate Article 3, the key principles are set out in *Kudla v Poland*, *supra*:

"91. However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for

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93. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment.

94. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see, *mutatis mutandis*, the *Aerts v. Belgium* judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq.)."

See also *Kalashnikov v Russia* (2003) 36 EHRR

34 <http://www.bailii.org/eu/cases/ECHR/2002/596.html> a paradigm case of prison conditions which did violate Article 3.

As to when prison overcrowding will breach Article 3, the leading case is *Mursic v Croatia* (2017) 65 EHRR 165, which holds that there is a strong (but not irrebuttable) presumption of an Article 3 breach if a prisoner has less than three square metres of personal space:

<http://www.bailii.org/eu/cases/ECHR/2016/927.html>

136. In the light of the considerations set out above, the Court confirms the standard predominant in its case-law of 3 sq. m of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention.

137. When the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (see paragraphs 126-128 above).

138. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see paragraph 130 above);

(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 133 above);

(3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (see paragraph 134 above).

139. In cases where a prison cell - measuring in the range of 3 to 4 sq. m of personal space per inmate - is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see paragraph 106 above).

*140. The Court also stresses that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above (see paragraphs 48, 53, 55, 59 and 63-64 above) remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (see, for example, *Story and Others v. Malta*, nos. 56854/13, 57005/13 and 57043/13, §§ 112-113, 29 October 2015).*

141. Lastly, the Court would emphasise the importance of the CPT's preventive role in monitoring conditions of detention and of the standards which it develops in that connection. The Court reiterates that when deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States' observance of them (see paragraph 113 above).

Prison conditions for sick and disabled people

Many Article 3 cases involve inadequate medical care for mentally and/or physically ill people.

See *Keenan v United Kingdom* (2001) 33 EHRR

913: <http://www.bailii.org/eu/cases/ECHR/2001/242.html>

"111. It is relevant in the context of the present application to recall also that the authorities are under an obligation to protect the health of persons deprived of liberty (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII). In particular, the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Herczegfalvy*, cited above, pp. 25-26, § 82, and *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1966, § 66)."

Khudobin v Russia (2009) 48 EHRR 22 <http://www.bailii.org/eu/cases/ECHR/2006/898.html> is an example of a case where, at [96], the feelings of insecurity caused by lack of adequate medical care, combined with the applicant's physical sufferings, were found to breach Article 3.

See also *Price v United Kingdom* (2002) 34 EHRR

53 <http://www.bailii.org/eu/cases/ECHR/2001/458.html> in which the imprisonment of a severely disabled woman for four days was held to have violated Article 3, and *McGlinchey v United Kingdom* (2003) 37 EHRR 41 <http://www.bailii.org/eu/cases/ECHR/2003/211.html> where inadequate care for an imprisoned heroin addict in withdrawal was held to have violated Article 3.

Solitary confinement / segregation

In terms of segregation / solitary confinement, a key Strasbourg case is *Ilascu and others v Moldova and Russia* (2005) 40 EHRR 46 <http://www.bailii.org/eu/cases/ECHR/2004/318.html> in which the Court held:

"432. Prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment. On the other hand, complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (see, among other authorities, Messina v. Italy (dec.), no. 25498/94, ECHR 1999-V).

433. Moreover, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions and of specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II)."

On the facts of *Ilascu* an Article 3 breach was found. That was a particularly harsh case of solitary confinement for eight years which also included deprivation of food and medical treatment as a punishment.

Another key case is *Babar Ahmad v United Kingdom* (2013) 56 EHRR 1 <http://www.bailii.org/eu/cases/ECHR/2012/609.html> which summarises the principles helpfully:

1. *The circumstances in which the solitary confinement of prisoners will violate Article 3 are now well-established in the Court's case-law.*
2. *Complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (Van der Ven v. the Netherlands, no. 50901/99, § 51, ECHR 2003 II).*
3. *Other forms of solitary confinement which fall short of complete sensory isolation may also violate Article 3. Solitary confinement is one of the most serious measures which can be imposed within a prison (A.B. v. Russia, cited above, § 104) and, as the Committee for the Prevention of Torture has stated, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see Iorgov v. Bulgaria, no. 40653/98, § 83, 11 March 2004) Indeed, as the Committee's most recent report makes clear, the damaging effect of solitary confinement can be immediate and increases the longer the measure lasts and the more indeterminate it is (see the Committee's 21st General Report, summarised at paragraph 116 above).*

4. *At the same time, however, the Court has found that the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see Messina v. Italy (no. 2) (dec.), no. 25498/94, ECHR 1999-V, quoted with approval by the Grand Chamber in Ramirez Sanchez v. France, cited above, § 12; Öcalan v. Turkey [GC], no. 46221/99, § 191, ECHR 2005-IV). In many States Parties to the Convention more stringent security measures, which are intended to prevent the risk of escape, attack or disturbance of the prison community, exist for dangerous prisoners (see, Ramirez Sanchez v. France [GC], no. 59450/00, § 138, ECHR 2006-IX; and, as recent examples, Alboreo v. France, no. 51019/08, § 110, 20 October 2011 [not yet final] and Madonia v. Italy (dec.), no. 1273/06, 22 September 2009).*
5. *Thus, whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see Rohde v. Denmark, no. 69332/01, § 93, 21 July 2005).*
6. *In applying these criteria, the Court has never laid down precise rules governing the operation of solitary confinement. For example, it has never specified a period of time, beyond which solitary confinement will attain the minimum level of severity required for Article 3 (see Madonia, cited above). The Court has, however, emphasised that solitary confinement, even in cases entailing relative isolation, cannot be imposed on a prisoner indefinitely (see Ramirez Sanchez, cited above, §§ 136 and 145, where the applicant was held in solitary confinement for eight years and two months).*
7. *Equally, although it is not for the Court to specify which security measures may be applied to prisoners, it has been particularly attentive to restrictions which apply to prisoners who are not dangerous or disorderly (see, for example, A.B. v. Russia, cited above, § 105 and Csüllög v. Hungary, no. 30042/08, § 36, 7 June 2011); to restrictions which cannot be reasonably related to the purported objective of isolation (see Csüllög, cited above, § 34,); and to restrictions which remain in place after the applicant has been assessed as no longer posing a security risk (see, for example, Khider v. France, no. 39364/05, §§ 118 and 119, 9 July 2009).*
8. *Finally, in order to avoid any risk of arbitrariness resulting from a decision to place a prisoner in solitary confinement, the decision must be accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure. First, solitary confinement measures should be ordered only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules. Second, the decision imposing solitary confinement must be based on genuine grounds both ab initio as well as when its duration is extended. Third, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and must provide substantive reasons in their support. The statement of reasons should be increasingly detailed and compelling as time goes by. Fourth, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances (Onoufriou, cited above, § 70). Lastly, it is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement (Ramirez Sanchez v. France, cited above, § 145 above; A.B. v. Russia, cited above, § 111).*

Domestically, no breach was found in *Shahid v Scottish Ministers* [2013] UKSC 38 at [30]-[37] <http://www.bailii.org/uk/cases/UKSC/2015/58.html>

Physical abuse

Rape by a state agent has been found to constitute torture (*Aydin v Turkey* (1997) 25 EHRR 251 <http://www.bailii.org/eu/cases/ECHR/1997/75.html>) as has force feeding of a prisoner (*Nevmerzhitsky v Ukraine* (unreported, 25 April 2005) <http://www.bailii.org/eu/cases/ECHR/2005/929.html>).

As to when physical abuse will amount to inhuman treatment, the Court reviewed the authorities in *VC v Slovakia* (unreported, 8 November 2011) [https://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-107364\"\]}](https://hudoc.echr.coe.int/eng#{\)

"102. Treatment of a person by State agents has been considered to raise an issue under Article 3 when it resulted in bodily harm of a certain degree of severity, such as an injury to a person's leg which caused necrosis and subsequently led to the leg having to be amputated, a gunshot wound to a person's knee, a double fracture of the jaw and facial contusions or an injury to a person's face which required stitches, with three of the person's teeth being knocked out (see Sambor v. Poland, no. 15579/05, § 36, 1 February 2011; Necdet Bulut v. Turkey, no. 77092/01, § 24, 20 November 2007; Rehbock v. Slovenia, no. 29462/95, §§ 76-77, ECHR 2000-XII; and Mrozowski v. Poland, no. 9258/04, § 28, 12 May 2009). The Court has further considered the treatment of a person to be capable of raising an issue under Article 3 when, inter alia, it was such as to drive the victim to act against his or her will or conscience (see, for example, Keenan v. the United Kingdom, no. 27229/95, § 110, ECHR 2001-III)."

Prison conditions and international protection

The test is whether *"substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the [country of return],"* *Soering v United Kingdom* (1989) 11 EHRR 439 <http://www.bailii.org/eu/cases/ECHR/1989/14.html> at [91]. The Court has held that *"[i]t is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3... Where such evidence is adduced, it is for the Government to dispel any doubts about it,"* *Saadi v Italy* (2009) 49 EHRR 30 <http://www.bailii.org/eu/cases/ECHR/2008/179.html>

Sometimes assurances are sought from the requesting state. In that regard, see *Othman v United Kingdom* (2012) 55 EHRR 1 <http://www.bailii.org/eu/cases/ECHR/2012/56.html> where the Court gave guidance about this:

1. *Fourth, the Court accepts that, as the materials provided by the applicant and the third party interveners show, there is widespread concern within the international community as to the practice of seeking assurances to allow for the deportation of those considered to be a threat to national security (see paragraphs 141- 145 above and Ismoilov and Others, cited above, §§ 96-100). However, it not for this Court to rule upon the propriety of seeking assurances, or to assess the long term consequences of doing so; its only task is to examine whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment. Before turning to the facts of the applicant's case, it is therefore convenient to set out the approach the Court has taken to assurances in Article 3 expulsion cases.*
2. *In any examination of whether an applicant faces a real risk of ill-treatment in the country to which he is to be removed, the Court will consider both the general human rights situation in that country and the particular characteristics of the applicant. In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant*

factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Saadi*, cited above, § 148).

3. In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances (see, for instance, *Gaforov v. Russia*, no. 25404/09, § 138, 21 October 2010; *Sultanov v. Russia*, no. 15303/09, § 73, 4 November 2010; *Yuldashev v. Russia*, no. 1248/09, § 85, 8 July 2010; *Ismoilov and Others*, cited above, §127).
4. More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, *inter alia*, to the following factors:

(i) whether the terms of the assurances have been disclosed to the Court (*Ryabikin v. Russia*, no. 8320/04, § 119, 19 June 2008; *Muminov v. Russia*, no. 42502/06, § 97, 11 December 2008; see also *Pelit v. Azerbaijan*, cited above);

(ii) whether the assurances are specific or are general and vague (*Saadi*, cited above; *Klein v. Russia*, no. 24268/08, § 55, 1 April 2010; *Khaydarov v. Russia*, no. 21055/09, § 111, 20 May 2010);

(iii) who has given the assurances and whether that person can bind the receiving State (*Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 344, ECHR 2005-III; *Kordian v. Turkey* (dec.), no. 6575/06, 4 July 2006; *Abu Salem v. Portugal* (dec.), no. 26844/04, 9 May 2006; cf. *Ben Khemais v. Italy*, no. 246/07, § 59, ECHR 2009-... (extracts); *Garayev v. Azerbaijan*, no. 53688/08, § 74, 10 June 2010; *Baysakov and Others v. Ukraine*, no. 54131/08, § 51, 18 February 2010; *Soldatenko v. Ukraine*, no. 2440/07, § 73, 23 October 2008);

(iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them (*Chahal*, cited above, §§ 105-107);

(v) whether the assurances concerns treatment which is legal or illegal in the receiving State (*Cipriani v. Italy* (dec.), no. 221142/07, 30 March 2010; *Youb Saoudi v. Spain* (dec.), no. 22871/06, 18 September 2006; *Ismaili v. Germany*, no. 58128/00, 15 March 2001; *Nivette v. France* (dec.), no. 44190/98, ECHR 2001 VII; *Einhorn v. France* (dec.), no. 71555/01, ECHR 2001-XI; see also *Suresh and Lai Sing*, both cited above)

(vi) whether they have been given by a Contracting State (*Chentiev and Ibragimov v. Slovakia* (dec.), nos. 21022/08 and 51946/08, 14 September 2010; *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009);

(vii) the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances (*Babar Ahmad and Others*, cited above, §§ 107 and 108; *Al-Moayad v. Germany* (dec.), no. 35865/03, § 68, 20 February 2007);

(viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers (Chentiev and Ibragimov and Gasayev, both cited above; cf. Ben Khemais, § 61 and Ryabikin, § 119, both cited above; Kolesnik v. Russia, no. 26876/08, § 73, 17 June 2010; see also Agiza, Alzery and Pelit, cited above);

(ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible (Ben Khemais, §§ 59 and 60; Soldatenko, § 73, both cited above; Koktysh v. Ukraine, no. 43707/07, § 63, 10 December 2009);

(x) whether the applicant has previously been ill-treated in the receiving State (Koktysh, § 64, cited above); and

(xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (Gasayev; Babar Ahmad and Others, § 106; Al-Moayad, §§ 66-69).

International protection cases often require the Tribunal to assess prison conditions in the country of return. In the case of some countries the Upper Tribunal has accepted in a Country Guidance determination that the conditions of detention and imprisonment generally breach Article 3; see *VB (draft evaders and prison conditions) Ukraine CG* [2017] UKUT 79 (IAC) <http://www.bailii.org/uk/cases/UKUT/IAC/2017/79.html> for a recent example.