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Update on the Treatment of Conflict-Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129

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

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Kabul, Afghanistan

Contents

Glossary

Acronyms

AGO	Attorney General's Office
AIHRC	Afghanistan Independent Human Rights Commission
ALP	Afghan Local Police
ANA	Afghanistan National Army
ANBP	Afghanistan National Border Police
ANP	Afghanistan National Police
ANSF	Afghanistan National Security Forces
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (often shortened to Convention against Torture)
CID	Criminal Investigations Department (ANP)
CoP	Chief of Police (ANP)
CPD	Central Prisons Directorate
CRC	Convention on the Rights of the Child
CTU	ANP Counter-Terrorism Unit
HQ	Headquarters
CPC	Criminal Procedure Code
ICRC	International Committee of the Red Cross
IED	Improvised Explosive Device
ISAF	International Security Assistance Force
JCRC	Juvenile Corrections and Rehabilitation Centre
MoD	Ministry of Defence
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NDS	National Directorate of Security
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner for Human Rights
TCC	Troop Contributing Country
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme

Dari and Pashto Words

Hawza	Cadastral zone within a city

Jirga	Traditional, dispute-settling assembly of community leaders
Taliban	Armed opposition group fighting against the Government of Afghanistan and international military forces

UNAMA's Mandate

Since 2004, the United Nations Security Council has mandated the United Nations Assistance Mission in Afghanistan (UNAMA) to support the establishment of a fair and transparent justice system and to work towards strengthening the rule of law. UNAMA includes a Human Rights Unit with field staff across the country which receives technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR).

UN Security Council resolutions have mandated UNAMA to improve respect for human rights in the justice and prisons sectors. UN Security Council Resolutions 2096 (2013) and 2145 (2014)[1] drew specific attention to UNAMA's work and reports on detention and recognized the Government of Afghanistan's 2013 commission on detention:

> *38. Reiterates the importance of completing the National Priority Programme on Law and Justice for All, by all the relevant Afghan institutions and other actors in view of accelerating the establishment of a fair and transparent justice system, eliminating impunity and contributing to the affirmation of the rule of law throughout the country;*
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> *39. Stresses in this context the importance of further progress in the reconstruction and reform of the prison sector in Afghanistan, in order to improve the respect for the rule of law and human rights therein, emphasizes the importance of ensuring access for relevant organizations, as applicable, to all prisons and places of detention in Afghanistan, and calls for full respect for relevant international law including humanitarian law and human rights law,* ***noting the recommendations contained in the report of the Assistance Mission dated 20 January 2013, and the appointment by the Government of Afghanistan of a Commission to inquire into the findings of the report.***

I. Background

UNAMA has long observed the situation of detainees and prisoners in Afghan prisons and detention facilities. From 2006 to 2009, UNAMA conducted the Arbitrary Detention Verification Campaign that resulted in a two-volume publication on due process and treatment concerns regarding criminal detainees in Afghan facilities (published in 2009).

In October 2010, with the cooperation of the National Directorate of Security (NDS) and the Ministry of Interior (MoI), UNAMA began its current programme of observation of conflict-related detainees[2] in Afghan detention facilities. This programme focused

[1] UN Security Council Resolution 2096, S/Res/2096 (2013) adopted 29 March 2013 and S/Res/2145 (2014) adopted 17 March 2014.

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

primarily on NDS and Afghan National Police (ANP) facilities and resulted in two public reports, the first released in October 2011 and the second in January 2013.[3]

Treatment of Conflict-Related Detainees in Afghan Custody, 2011-2013

UNAMA's two earlier reports on detainee treatment found compelling evidence that many conflict-related detainees UNAMA interviewed had experienced torture and ill-treatment during arrest and interrogation in numerous detention facilities run by the NDS and ANP.

In its **October 2011 report** (for the period October 2010 to September 2011), UNAMA found that nearly half of 273 detainees interviewed who had been held in NDS detention facilities, and one third of 117 individuals interviewed who had been detained in ANP locations experienced interrogation techniques that met the international definition of torture or cruel, inhuman or degrading treatment. UNAMA found almost no accountability for torture or ill-treatment by NDS and ANP officials with their reported investigations into allegations of torture kept internal and prosecutions rarely pursued. Very limited independent, judicial or external oversight of NDS and ANP was also found. UNAMA made 25 recommendations to relevant Afghan authorities aimed at preventing and ending torture and arbitrary detention, and to concerned partners including international military forces.

In its **January 2013 report** (for the period October 2011 to October 2012), UNAMA found that despite significant efforts by the Government of Afghanistan and international partners to address torture and ill-treatment of conflict-related detainees, torture persisted and remained a serious concern in numerous Afghan detention facilities. While recognizing that torture was not a Government policy, UNAMA found that more than half of 635 conflict-related detainees interviewed experienced torture particularly in 34 ANP and NDS facilities. Systematic use of torture was found in two NDS facilities and seven ANP facilities.[4] Fourteen methods of torture and ill-treatment, used to obtain confessions or information, were described similar to practices UNAMA previously documented.

UNAMA's report concluded that torture could not be effectively prevented through inspections and training alone and required accountability for perpetrators and rejection by courts of confessions obtained through such methods. UNAMA made 64 recommendations to the Government and international partners including comprehensive measures to provide accountability for torture and promote compliance with due process protections required to prevent torture and ill-treatment in the future.

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the armed insurgency against the Government of Afghanistan, or being a member of an armed opposition group such as the Taliban.

[3] UNAMA and UN Office of the High Commissioner for Human Rights: *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011) and *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013), available at http://unama.unmissions.org/Default.aspx?tabid=12261&language=en-US.

[4] Systematic use of torture was found in NDS Department 124 in Kabul and the NDS provincial facility in Kandahar, ANP Kandahar provincial facility, ANP Kandahar city *Hawzas* 3, 8, 13, 15 and ANP facilities in the Panj Wayi and Spin Boldak districts of Kandahar province.

II. Methodology[5]

Access

The current report presents findings from UNAMA's observation of conflict-related detention for the period from 1 February 2013 to 31 December 2014. Government officials from the ANP, Afghan National Border Police (ANBP), NDS, MoI and other Government institutions cooperated with UNAMA, providing access to detainees at their facilities throughout Afghanistan. NDS and ANP officials in some locations were sometimes reluctant to provide UNAMA with access to specific detention facilities; however concerns were addressed by the NDS legal adviser, head of NDS' Human Rights Department in Kabul (NDS Department 47), local directors of the facilities in question or local chiefs of police.

Sample

Between 1 February 2013 and 31 December 2014, UNAMA randomly interviewed 790 pre-trial detainees and convicted prisoners detained by the NDS, ANP, ANBP, Afghan National Army (ANA), and Afghan Local Police (ALP). Detainees were interviewed at ANP provincial and district centres, at NDS provincial headquarters, at Central Prisons Directorate (CPD) prisons or at Juvenile Corrections and Rehabilitation Centres (JCRC). UNAMA visited 128 different facilities in 28 provinces across Afghanistan.[6] Map 1 provides an overview of detention facilities UNAMA visited over this period.

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[5] See Annex I for *Questions about UNAMA's Methodology and UNAMA's Response*.

[6] NDS provincial facilities UNAMA visited: Faizabad (Badakshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Mazar-i-Sharif (Balkh), Bamyan city (Bamyan), Nili (Daykundi), Farah city (Farah), Maimana (Faryab), Chaghcharan (Ghor), Lashkar Gah (Helmand), Herat city (Herat), Shiberghan (Jawzjan), Kabul city Departments 1,40 and 124 (Kabul), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz city (Kunduz), Mehtarlam (Laghman), Pul-e-Alam (Logar), Maydan Shahr (Maydan Wardak), Jalalabad (Nangarhar), Sharan (Paktika), Gardez (Paktya) and Taloqan (Takhar).
ANP provincial and district facilities UNAMA visited: ANP Faizabad and ANP detention facilities in Argo, Ishkashim, Sheghnan and Baharak districts (Badakshan), ANP Qala-e-Naw (Badghis), ANP Pul-e-Khumri and ANP detention facilities in Dushi and Khenjan districts (Baghlan), ANP Mazar-i-Sharif and ANP detention facilities in Khulm, Chimtal, Sholgareh and Dawlat Abad districts (Balkh), ANP Bamyan and ANP detention facility in Yakawlang district (Bamyan), ANP Nili (Daikundi), ANP Farah (Farah), ANP Maimana and ANP detention facilities in Khan-e-Chahar Bagh, Dawlat Abad, Pashtun Kot, Andkhoy, Shirintagab and Qaramqul districts (Faryab), ANP Lashkar Gah (Helmand), ANP Herat and ANP detention facilities in Adraskan, Injil, Karukh, Kohsan, Kushk, Ghoryan, Guzara, Zinda Jan districts (Herat), ANP Shiberghan and ANP detention facilities in Aqcha and Khwaja Du Koh districts (Jawzjan), ANP Kabul (Kabul), ANP Kandahar and ANP detention facility of Arghandab district (Kandahar), ANP Khost (Khost), ANP Asad Abad (Kunar), ANP Kunduz and ANP detention facilities in Imam Sahib and Ali Abad districts (Kunduz), ANP Mehtarlam (Laghman), ANP Jalalabad (Nangarhar), ANP Zaranj (Nimroz), ANP Sharan (Paktika), ANP Gardez (Paktya) and ANP Taloqan (Takhar).
CPD provincial prisons UNAMA visited: Faizabad (Badakshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Mazar-i-Sharif (Balkh), Bamyan city (Bamyan), Nili (Daikundi), Farah city (Farah), Maimana (Faryab), Cheghcheran (Ghor), Lashkar Gah (Helmand), Herat city (Herat), Shiberghan (Jawzjan), *Pul-i-Charkhi* (Kabul), *Sarpoza* (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz (Kunduz), Mehtarlam (Laghman), Pul-e-Alam (Logar), Maydan Shar (Maydan Wardak), Jalalabad (Nangarhar), Sharan (Paktika), Gardez (Paktya), Ayabak (Samangan) andTaloqan (Takhar).
JCRCs UNAMA visited: Faizabad (Badakshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Bamyan city (Bamyan), Nili (Daikundi), Farah city (Farah), Maimana (Faryab), Lashkar Gah (Helmand), Herat city (Herat), Shiberghan (Jawzjan), Kabul city (Kabul), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz (Kunduz), Mehtarlam (Laghman), Jalalabad (Nangarhar), Zaranj (Nimroz), Gardez (Paktya) and Taloqan (Takhar).

At these detention facilities, UNAMA met with detaining authorities and other relevant Government officials, visited parts of each detention facility and examined its register of detainees. Of the 790 detainees UNAMA interviewed, 755 were held on suspicion of or were convicted of offences related to the armed conflict, while the remaining 35 were held on suspicion of or were convicted of criminal offences.[7]

UNAMA's interviews with the 790 detainees focused on their treatment during their arrest, interrogation and investigation by NDS, ANP, ANBP, ANA, ALP or international military or other officials. Every detainee interviewed was asked about his treatment at arrest and during interrogations at each detention facility where he was held. The sample encompassed 221 detention facilities where the 790 detainees interviewed were held over the course of their detention.[8]

UNAMA also observed the Government's compliance in detainees' cases with its due process obligations under Afghan and international human rights law.

Of the 790 detainees, 611 had been held – at any one point during their detention – in NDS detention facilities or by NDS personnel, 302 had been held in ANP and/or ANBP facilities or by such personnel, 60 by ANA or in ANA detention facilities, 42 detainees had been held by ALP and 54 detainees had been held by international military forces or foreign government intelligence agencies either alone or with Afghan security forces and transferred to NDS, ANP or ANA custody. One hundred and sixty-seven detainees of the 790 interviewed had been held by both NDS and ANP/ANBP at different times.

Of the 790 detainees UNAMA interviewed, 399 individuals had been arrested by NDS; 207 by ANP/ANBP; 36 captured by ANA, and 99 by others (ALP or local security forces). Twelve detainees captured by Afghan National Security Forces (ANSF) were unable to specifically identify which Afghan forces captured them. Seventy-one were captured or arrested by international military forces (operating alone or jointly with ANSF or campaign forces). One of the 790 detainees was unable to reliably identify the capturing or arresting authority in his situation.

Of the 71 detainees initially arrested or captured by international military forces or foreign government intelligence agencies acting alone or jointly with Afghan forces, 34 were initially transferred to NDS custody, five were transferred to ANP, and 32 were transferred to ANA (24 of whom were transferred to the Afghan National Detention Facility in Parwan).

[7] During UNAMA's random selection of detainees to interview, it was not always possible to distinguish between criminal and conflict-related detainees prior to interviewing them. UNAMA selected detainees randomly and respected those detainees' wishes to inform UNAMA about their situation. On occasion, this resulted in UNAMA interviewing detainees whom the interview revealed were in custody for a common crime unrelated to the conflict in Afghanistan and non-political or non-ideological in nature. In addition, during its previous observation period, UNAMA found that in some locations, conflict-related detainees had been accused of common crimes or held in cells with criminal detainees allegedly to isolate them from other conflict-related detainees or to hide them from external observers seeking to interview conflict-related detainees. Of the 35 detainees UNAMA interviewed who were charged or accused of common crimes, four were found to have experienced torture.

[8] According to statistics from the Ministry of Interior Central Prisons Directorate, as at 22 October 2014, 7,555 individuals were in detention facilities or prisons detained or convicted for conflict-related crimes. The total prison population was reported as 15,638 in addition to 12, 221 detainees for a total detention facility/prison population of 27,859. UNAMA correspondence with the head of the General Directorate of Prisons and Detention Centres, Ministry of Interior, 30 November 2014.

UNAMA interviewed 105 child detainees who were under the age of 18 years at the time of their detention.[9] UNAMA did not find any female detainees held on conflict-related offences during the observation period.[10]

UNAMA also interviewed and met frequently with security and police officials, members of the judiciary, prosecutors, defence counsel, medical personnel, humanitarian and human rights organizations and other relevant interlocutors over the observation period.

Interview Safeguards and Modalities

UNAMA randomly selected detainees held on conflict-related offences and interviewed them in private in their mother tongue (Pashto or Dari) without the presence of detention facility staff, other Government officials or other detainees. All detainees interviewed provided their informed consent to be interviewed and for the information they provided to be used – anonymized – in a public report.

All UNAMA interviewers received standardized training on how to conduct interviews, assess credibility, protect confidentiality and corroborate and cross-check information on matters of detention, torture and ill-treatment with extensive supervision and oversight from experts and supervisors in UNAMA's Human Rights Unit. Interviewers avoided leading questions and asked each detainee to tell his story in an open-ended manner.[11] For each interview, UNAMA interviewers recorded a detailed verbatim

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[9] Under the *Convention on the Rights of the Child* (CRC), ratified by Afghanistan on 28 March 1994, the legal definition of a child is any person under the age of 18 years (0-17 years). According to article 5 of the Afghan *Juvenile Code* "*a person who has not completed the age of 12 is not criminally responsible."*

[10] According to the Ministry of Interior, as at 22 October 2014, 419 female prisoners and 359 female detainees (778 total) were in prisons and detention centres across Afghanistan. UNAMA correspondence with the head of General Directorate of Prisons and Detention Centres, Ministry of Interior, 30 November 2014. UNAMA highlights that the majority of the 778 women and girls detained or imprisoned in Afghan prisons have been charged or convicted of "moral crimes" such as "running away" and "attempted *zina* (adultery)." UNAMA has long asserted that such convictions are based on wrongful prosecutions not supported by applicable Afghan law and that Afghan authorities should take all necessary steps to end such practices, review all such cases and promptly release all women and girls wrongly imprisoned. See UNAMA/OHCHR *A Way to Go: Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan* (December 2013) at http://unama.unmissions.org/Default.aspx?tabid=12261&language=en-US.

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

transcript and note of the interview which was assessed for credibility and cross checked.

Where UNAMA was not satisfied about the credibility or veracity of a detainee's account, it was not included in the sample of sufficiently credible and reliable incidents of torture or ill-treatment.[12] UNAMA's sample of 790 detainees included detainees who did not allege torture or ill-treatment, or whose allegations UNAMA did not assess as credible or verified. Of the 790 detainees interviewed**,** UNAMA assessed as credible and reliable the accounts of torture and ill-treatment of 278 detainees.

Whenever possible, UNAMA obtained photographic and other evidence of torture and ill-treatment of detainees including medical evidence from a range of interlocutors and sources. In many facilities UNAMA visited, officials did not permit UNAMA interviewers to take mobile phones, cameras, video cameras, recording devices or computers into interviews with detainees.

UNAMA documented and recorded in a dedicated database all data from all interviews with detainees, findings and notes from meetings with third party witnesses and interlocutors and other documentary material obtained from sources and interlocutors.

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

For reasons of security and confidentiality, this report refers to detainees by number. In this context, to protect the identity of individual detainees, the term "detainee" refers to persons suspected, accused or convicted of offences.

Standard of Proof

Findings on Torture and Ill-Treatment

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

The standard of "sufficiently credible and reliable" information was used as the basis to determine whether consistent patterns of torture and ill-treatment as defined under international law had occurred within the detention system.[13] This report lists those

[12] For example, for the period between February and December 2014, 173 of 422 detainees UNAMA interviewed alleged torture or ill-treatment. UNAMA found the allegations of 44 of the 173 detainees not sufficiently credible and reliable and verified the accounts of torture and ill-treatment of 129 detainees.

[13] Article 29 of the *Constitution of Afghanistan* provides *"No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished."* The *Afghan Penal Code* criminalizes torture and article 275 prescribes that public officials (including all NDS, ANP and ANA officials) found to have tortured an accused for the purpose of obtaining a confession shall be sentenced to imprisonment in the range of five to 15 years. Both torture and ill-treatment are prohibited under international law by the *International Covenant on Civil and Political Rights* and the *Convention Against Torture* (both ratified by Afghanistan). Under Article1 (1) of the *Convention against Torture*, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a

facilities where "sufficiently credible and reliable" information was found in multiple cases indicating that torture was very likely used on conflict-related detainees.

In facilities identified as using torture or ill-treatment on a 'regular and prevalent' basis,[14] numerous detainees interviewed who had been held in the specific detention facility provided sufficiently credible and reliable information meeting the standard of proof above. This indicated that torture or ill-treatment was very highly likely used on approximately one-third of the total number of detainees interviewed who had been held in the particular facility. In facilities named as using 'systematic' torture, one-half or more (50 per cent or more of total detainees interviewed) who had been held in the specific detention facility provided sufficiently credible and reliable information regarding the use of torture that met the standard of proof.[15]

These two determinations used by UNAMA mean that facility directors and interrogators must have known, ordered or acquiesced to the use of torture. As such, it can be concluded that torture was an institutional policy or practice of that specific facility and was not used by a few individuals rarely or in isolated cases.

While all claims of torture must be investigated, UNAMA has chosen to use "sufficiently credible and reliable" as a standard of proof rather than a basic "reasonable suspicion" standard (which is regularly used to trigger investigations within the criminal justice system). Due to the gravity of torture and the vulnerability of victims of such gross human rights violations, the higher standard of proof is intended to ensure that UNAMA is in the best position possible to recommend well-founded and concrete actions to stop its use.

Comparison of Findings over UNAMA Observation Periods

In the current report, UNAMA makes a general comparison of its findings on the incidence of torture and ill-treatment among detainees interviewed in facilities in the sample over the 23-month observation period from February 2013 to December 2014 with UNAMA's findings from a previous 14-month observation period of October 2011 to December 2012. To determine the comparability of data over the two observation periods, the margins of error for detainee samples were calculated based on the

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third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Torture distinguishes itself from other cruel, inhuman and degrading treatment (ill-treatment) due to the severity of pain inflicted, the intentionality of the infliction of pain or the fact that severe pain is inflicted for a specific purpose, namely obtaining a confession, intimidation or coercion. The distinction between torture and ill-treatment also depends on other factors such as the sex, age, state of health of the victim, the duration and manner of treatment, the physical and psychological effects. For further details see Annex II.

[14] For purposes of this report, UNAMA uses the terms 'regular and prevalent' and 'systematic' to reflect the presence of a policy or practice within an individual facility. This report does not argue that the use of torture and ill-treatment was part of a systematic national or institutional Government policy.

[15] Only facilities where UNAMA interviewed a sufficiently high number of detainees were considered. For example, all detainees interviewed at NDS Daykundi, NDS Samangan and ANP Logar provided sufficiently credible and reliable information regarding the use of torture. These three facilities however were not flagged for practicing systematic torture since UNAMA interviewed two detainees in each of the NDS facilities and three detainees in ANP Logar.

duration of the observation period, approximate number of conflict-related detainees in the system per day (5,000), and total number of detainee-days.

For the 2013 report, 635 detainees were interviewed from 1 October 2011 to 31 September 2012. During that 365-day period, the estimated average number of detainees in the detention system per day was 5,000, representing a total of 1,825,000 detainee-days. The average length of detention per detainee during this period cannot be accurately estimated.

For the 2014 report, 790 detainees were interviewed from 1 February 2013 to 31 December 2014. During that 699-day period, the estimated average number of detainees in the detention system per day was also 5,000, representing a total of 3,495,000 detainee-days. The average length of detention per detainee during this period also cannot be accurately estimated but was estimated to be similar to the previous period.

To determine the comparability of the data, the margins of error for the two detainee samples may be calculated based on the total detainee-days during the two study periods with the average length of detention per detainee assumed to be the same. For the 2013 report, a sample of 635 in a total of 1,825,000 detainee-days provides overall data for the Afghan detention system with a margin of error of plus or minus 3.89 percent, 19 times out of 20 (95 per cent confidence level).

For the 2014 report, a sample of 790 in a total of 3,495,000 detainee-days provides overall data for the Afghan detention system with a margin of error of plus or minus 3.48 percent, 19 times out of 20 (95 per cent confidence level). The smaller margin of error for the 2014 report occurs because the larger sample size for the 2014 report has a greater impact on the margin of error than the longer study period and total number of detainee-days.

On this basis, UNAMA determined that the overall data for the Afghan detention system in the 2013 and 2014 reports are statistically comparable; that is, the system-wide findings may be compared head-to-head between the two study periods. UNAMA notes that the data for the 2014 report was gathered from a larger number of facilities, in order to provide enhanced national representativeness in the system-wide data.

Smaller facility-specific samples in the two study periods, however, make head-to-head comparison of facility-specific data between the two study periods less conclusive. In particular, caution must be used when comparing facility-specific data for Kabul and Kandahar. The margins of error for both facility-specific samples are much higher than for the system-wide data because these sub-samples are relatively small. For this reason, a conclusion that the incidence of torture of ill-treatment has significantly declined at this specific and other facilities is not necessarily supported by the available data.

National Capacity to Address Torture and Ill-Treatment, Accountability and Implementation of Presidential Decree 129

UNAMA used several methods to assess how the Government addressed concerns and allegations of torture and ill-treatment of conflict-related detainees, and widespread illegal and arbitrary detention. To this end, UNAMA mainly focused on the Government's implementation of Presidential Decree 129.

Following release of UNAMA's January 2013 report and the findings of torture and ill-treatment by a subsequent President's fact-finding delegation, President Karzai issued Presidential Decree 129 (16 February 2013)[16] comprised of 12 orders aimed at ending and preventing torture directed at relevant institutions. To observe the Decree's implementation, UNAMA conducted numerous interviews over many months with Government authorities, including the Supreme Court, the Deputy AGO, the AGO ANP/Military Prosecutor and his Deputy, the AGO Internal and External Security Prosecutor, the AGO Head of Oversight and Implementation of Orders, the Head of NDS Department 47, the MoI Head of Gender, Human Rights and Child Rights, authorities of the Police Academy and the MoI Inspector General.

UNAMA also met with members of ISAF, advisers of the European Union Police Mission in Afghanistan (EUPOL), the Head of the Afghanistan Independent Bar Association (AIBA), representatives of the Afghanistan Independent Human Rights Commission (AIHRC) and human rights/legal aid organizations.

At the provincial level, UNAMA interviewed and met frequently with members of the judiciary, prosecutors, and defence counsel and detention facility authorities over the observation period as well as ISAF regional officers.

UNAMA exchanged correspondence with the Chief Justice of the Supreme Court, the AGO, the Office of Administrative Affairs and Council of Ministers, Ministry of Justice (MoJ), MoI and NDS on the measures taken to implement Presidential Decree 129.

UNAMA also gathered and analyzed information from official documents, including the reports produced by the AGO delegations that examined allegations of torture in 2013. UNAMA had access to reports produced by the Herat and the Kandahar AGO delegations but not the report issued by the Kabul AGO delegation. UNAMA requested and obtained four progress reports submitted by NDS to the President's Office, three progress reports by the AGO and one progress report by the Ministry of Interior.[17] These reports outlined measures these institutions stated they had taken to comply with Presidential Decree 129.

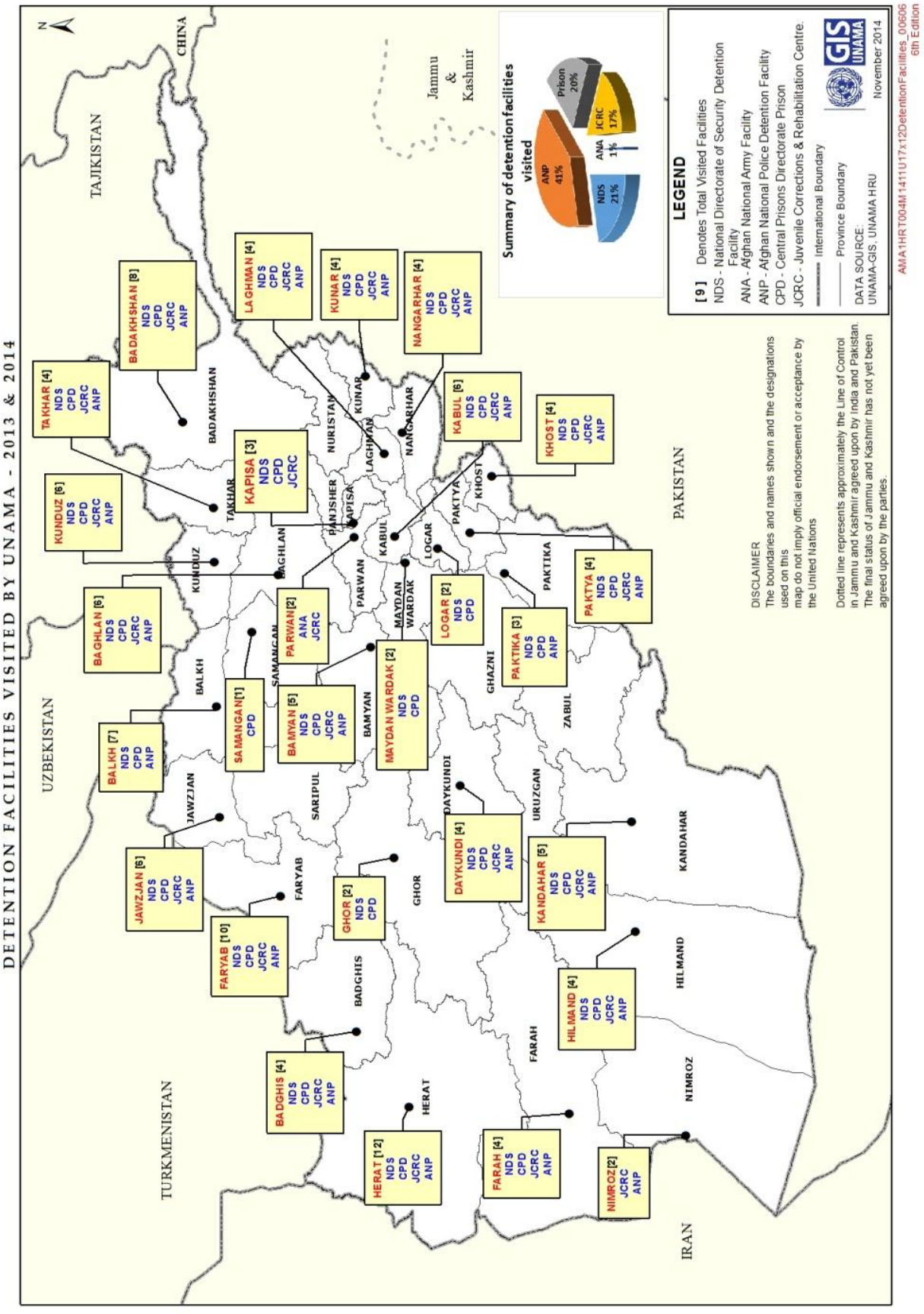
UNAMA also analyzed documents that the MoI, NDS and AGO issued and disseminated among their staff, in particular orders, instructions and policies regarding detainees' rights, that reiterated the prohibition of torture and imperative to respect due process guarantees.

Finally, UNAMA monitored, investigated and verified accountability efforts undertaken by the relevant institutions as well as the handling of allegations of torture by informal justice mechanisms.

[16] See Annex IV of this report for the text of *Presidential Decree 129 of the Islamic Republic of Afghanistan to implement the Afghan fact-finding delegation's suggestions on the presence of torture and ill-treatment in detention centres,* 16 February 2013.

[17] Presidential Decree 129 mandated the Government institutions to report to the President's Office every three months to provide an update on measures taken to comply with the relevant orders.

Map 1: 128 Detention Facilities Visited by UNAMA



III. Executive Summary

"Afghan National Police (ANP) arrested me and some of my relatives and friends. They took us to the Counter-Terrorism Unit and asked me if I had weapons. I told them I did not. An officer of the Counter-Terrorism Unit told me that I had committed terrorist acts. I told him this was not the case and that I was a simple worker. The more I said I was not involved, the angrier they got and beat me with cables on the soles of my feet. I was also given electric shocks. They put wires on my toes and they used a handle to increase the voltage. I could not breathe during the shocks, and afterwards I could not walk any more. The same group of people did this to me three times. Someone also pressed my throat with his hands, and this is why I feel pain. Among those who tortured me were some men in police uniforms and others in civilian clothes."

Detainee 330, ANP Herat, August 2014[18]

"As a National Directorate of Security (NDS) human rights officer I do not have the necessary conditions to carry out my work. There is a general spirit of impunity for human rights violations. The NDS Director is not cooperative and the other colleagues shrug their shoulders and advise me to 'just leave it.' Nobody at NDS actively stops me from doing my work but there is passive resistance, inaction and denial of logistical support. My reports, which I send to my supervisors in Kabul, are not acted on."

Provincial NDS Human Rights Officer, September 2014

Introduction

Since 2010, under annual mandates from the United Nations Security Council, the United Nations Assistance Mission in Afghanistan (UNAMA) has observed the treatment of conflict-related detainees in Afghan custody.[19] From October 2010 to December 2012, with cooperation from Afghanistan's National Directorate of Security (NDS) and the Ministry of Interior (MoI), UNAMA interviewed 1,014 detainees held in 89 detention facilities of the NDS and the Afghan National Police (ANP), and published two reports on its findings in October 2011 and January 2013.[20]

The 2011 and 2013 reports found sufficiently credible and reliable evidence that approximately half of the conflict-related detainees interviewed had experienced torture or ill-treatment during interrogation – mainly to obtain confessions or information – in detention facilities run by the NDS and ANP. UNAMA found that torture was used systematically within several NDS and ANP facilities and noted the Government of Afghanistan's position that torture and ill-treatment of detainees was not an institutional or Government policy. The reports noted measures taken by the International Security Assistance Force (ISAF) to address torture in Afghan custody including suspension of detainee transfers to ANP and NDS locations identified as

[18] All references to names and individuals (alleged perpetrators and detainees) that could lead to identification of sources have been omitted to preserve security and confidentiality of sources. All dates referenced in the accounts of detainees refer to the month in which the torture or ill-treatment occurred in a detention facility.

[19] See section in this report on *UNAMA's Mandate.*

[20] UNAMA and Office of the UN High Commissioner for Human Rights, *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011), and *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013) available at http://unama.unmissions.org/Default.aspx?tabid=12261&language=en-US.

practicing systematic torture and roll-out of a detention facility certification review process. UNAMA's two reports made 82 recommendations to relevant Government ministries and international partners.

The January 2013 report highlighted that despite significant efforts by the Government and international partners throughout 2012 to address torture, it continued to be used in numerous detention facilities.

In February 2013, Afghanistan's former President, Hamid Karzai appointed a fact-finding delegation of Afghan legal and security officials to investigate the findings in UNAMA's January 2013 report.[21] The delegation visited detention facilities in Kabul, Kandahar and Herat, interviewed 284 detainees and produced an 18-page report for former President Karzai with findings and 11 recommendations.[22] The delegation confirmed the existence of torture including beating, threats and ill-treatment of 136 of the 284 detainees it interviewed (47 per cent) in a number of NDS and ANP facilities. The delegation stated it did not find systematic torture in the Afghan detention facilities and prisons it visited. The delegation also found detainees' lacked access to medical treatment, including for injuries from torture, and to defence lawyers from the moment of arrest.

On 16 February 2013, in response to the delegation's recommendations, former President Karzai issued Presidential Decree 129 comprised of 12 orders directed at relevant institutions.[23] The Decree ordered the Attorney General's Office to prosecute perpetrators of torture and prevent torture, and directed police, justice and security officials to not torture detainees, to fully carry out their legal duties, facilitate detainees' access to defence lawyers and medical treatment, release illegally detained persons and video record all interrogations. The institutions were ordered to report on their implementation of the Decree to the President's Office every three months.

Following issuance of Decree 129, UNAMA continued to observe treatment and detention practices of conflict-related detainees in Afghan custody throughout Afghanistan. UNAMA's observation particularly focused on how Government institutions were implementing Decree 129, and whether measures ordered and aimed at preventing and prohibiting the use of torture were effective.

Current Report Findings

The current report presents findings from UNAMA's observation of conflict-related detention over the period 1 February 2013 to 31 December 2014. The report further provides a general comparison with findings for a previous period of UNAMA's detention observation (October 2011 to December 2012 detailed in UNAMA's January 2013 report).

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[21] The members of the former President's fact-finding delegation are listed in Presidential Decree 129 attached as Annex IV of this report.

[22] The Presidential delegation's methodology was not restricted to conflict-related detainees over a one-year timeframe (UNAMA's previous two reports covered treatment of conflict-related detainees over a one-year period). The delegation's report was not made public but may be available on request from the Government's Office of Administrative Affairs and is on file with UNAMA. See Annex II of this report for a transcript of the Presidential fact-finding delegation's press conference on 11 February 2013 announcing the conclusions of its investigative work.

[23] See Annex IV of this report for a copy of *Presidential Decree [No. 129] of the Islamic Republic of Afghanistan to implement the Afghan fact-finding delegation's suggestions on the presence of torture and ill-treatment in detention centres*, 16 February 2013.

UNAMA's current study also offers an assessment of how the Government addressed concerns about torture and ill-treatment of detainees in 2013-14 and provided accountability including through implementation of Presidential Decree 129. The current report makes updated recommendations to the Government and its international partners to strengthen efforts to end and prevent torture and ill-treatment.

Officials from the NDS and the MoI cooperated with UNAMA and provided access to detainees and facilities over the observation period. UNAMA met often with officials from both institutions in Kabul and provincial and district centres to discuss concerns and follow-up measures and share appropriate information.

UNAMA interviewed 790 pre-trial detainees and convicted prisoners including 105 children detained by the ANP, ANBP, ANA, ALP and NDS for crimes related to the armed conflict. Of these 790, 35 detainees interviewed were in custody for offences unrelated to the armed conflict.[24] UNAMA's observation encompassed 221 facilities[25] located in 28 provinces with interviews conducted between 1 February 2013 and 31 December 2014.

Using internationally accepted methodology, standards and best practices, UNAMA found sufficiently credible and reliable evidence that 278 of the 790 detainees interviewed (35 per cent) – one in three detainees interviewed – had experienced torture or ill-treatment on arrest or in certain facilities of the NDS, ANP, ANA and ALP over the 23-month period.[26] Of the 105 child detainees interviewed, 44 were subjected to torture or ill-treatment (42 per cent).

UNAMA observed that overall the number of detainees interviewed who experienced torture or ill-treatment was 14 per cent lower in the current period compared to the previous period.[27] While the current study found that 35 per cent (278 of 790 detainees

[24] See the *Methodology* section of this report for full details on the sample of detainees UNAMA interviewed over the observation period, including 35 detainees whose alleged or convicted offences were found to be unrelated to the conflict. The vast majority of detainees UNAMA interviewed were alleged to be members, supporters and foot soldiers of the Taliban or other anti-Government armed groups. Under the *Convention on the Rights of the Child* the legal definition of a child is any person under the age of 18 years (0-17 years). UNAMA made no assumptions or conclusions on the guilt or innocence of those detainees it interviewed for crimes of which they were suspected, accused or convicted.

[25] UNAMA visited numerous facilities several times over the observation period.

[26] Of the 790 detainees interviewed, approximately half (406 detainees) made allegations of torture or ill-treatment. Of these 406, UNAMA found the accounts of torture and ill-treatment of 278 detainees (almost 69 per cent) sufficiently credible and reliable. To address concerns about the likelihood of lying and false allegations of torture generally and as a form of anti-government propaganda, UNAMA analysed patterns of allegations of torture and ill-treatment in the aggregate and at specific facilities to corroborate allegations, to identify abusive practices at specific facilities and to detect and rule out fabricated accounts. In addition to interviews with detainees and a range of interlocutors and sources, UNAMA obtained or reviewed available documentary, photographic, medical and other evidence of torture and ill-treatment. Such material was appropriately shared with Government officials including at the highest levels. See the section of this report on *Methodology* and *Annex I: Questions about UNAMA's Methodology and UNAMA's Response*. This report uses the internationally-accepted definition of "torture" and "ill-treatment" found in article 1 of the *Convention against Torture* (CAT) detailed in this report in *Annex II: Applicable Law.*

[27] It is important to note that the change in the incidence of torture and ill-treatment was observed solely within the samples of detainees UNAMA interviewed and locations visited on specific dates included in the samples over the observation periods. As such, UNAMA cannot make observations about the wider use and incidence of torture and ill-treatment in facilities UNAMA did not visit or where UNAMA had no access. The 14 per cent change among the detainees interviewed in the specific facilities at specific times

interviewed) experienced torture or ill-treatment, UNAMA's previous report determined that 49 per cent (314 of 635 detainees interviewed) were tortured or ill-treated. [28]

When torture occurred, similar to UNAMA's previous findings, it generally took the form of interrogation techniques in which NDS, ANP, ALP or ANA officials deliberately inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information. Such practices amounting to torture are among the most serious human rights violations and crimes – including war crimes and crimes against humanity – under international law.[29] Torture and ill-treatment are prohibited in the *Constitution of Afghanistan* which also grants victims a right to compensation, under Afghan law,[30] and are incompatible with the fundamental principles of Islam and Sharia law.[31]

Sixteen different methods of torture were described by detainees. Torture was experienced in the form of prolonged and severe beating with cables, pipes, hoses or wooden sticks (including on the soles of the feet), punching, hitting and kicking all over the body including jumping on the detainee's body, twisting of genitals including with a

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by UNAMA could alternatively be explained by torture possibly increasingly occurring in facilities where UNAMA had no access.

[28] See the section in this report on *Methodology*. UNAMA estimated a change of 14 per cent in the incidence of torture and ill-treatment among detainees interviewed based on a statistical conclusion that the two samples of detainees UNAMA interviewed over the two observation periods were generally comparable. UNAMA notes that data for the current report was gathered from a larger number of facilities, to provide enhanced national representativeness in the system-wide data.

[29] See Annex II of this report on *Applicable Law* for the definition of the war crime of torture in a non-international armed conflict under the *Rome Statute of the International Criminal Court* ratified by Afghanistan in 2003.

[30] The Government of Afghanistan ratified the *Convention against Torture* in June 1987. Article 29 of the *Constitution of Afghanistan* provides *"No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished."* Article 51 of the *Constitution* states *"[a]ny person suffering undue harm by Government action is entitled to compensation, which he can claim by appealing to court."* The *Afghan Penal Code* criminalizes torture and article 275 prescribes that public officials (including all Government officials) found to have tortured an accused for the purpose of obtaining a confession shall be sentenced to imprisonment in the range of five to 15 years.

[31] In consultation with several Islamic scholars in Afghanistan, UNAMA observed that under Sharia law, the prohibitions on torture are intended to protect all human beings, including those who may be viewed as enemies, infidels or others. UNAMA noted that Islamic Sharia is general with regard to torture; it does not make any distinction between Muslims and non-Muslims. The Quran mentions positive obligations for Muslims to treat all individuals, including detested individuals and prisoners of war, with righteousness and piety. The justification for equal application of the law to care for such individuals is prescribed in two *ayas* (verses) of the Quran. A similar prohibition is found in the *Hadith* (Islamic canonical authority) as follows: Quran (Al-Insan, 76:8) *"And they feed, for the love of Allah, the indigent, the orphan, and the captive, (Saying): 'We feed you for the sake of Allah alone: no reward do we desire from you, nor thanks;'"* Quran (Al-Maidah, 5:8) *"O you who believe! Be upholders and standard-bearers of right for God's sake, being witnesses for (the establishment of) absolute justice. And by no means let your detestation for a people (or their detestation for you) move you to (commit the sin of) deviating from justice. Be just: this is nearer and more suited to righteousness and piety. Seek righteousness and piety, and always act in reverence for God. Surely God is fully aware of all that you do." Hadith* (Alshebani, Alseerulkabeer, 591/2, pertaining to how to treat hostages/captives/prisoners of war). A well-known *Hadith* regarding the application of Islam to international humanitarian law is: *"Do not force them to gather under the heat of the sun nor under the heat of (the reflection of) iron weapons. Allow them to rest and drink (water), until they feel refreshed."*

wrench-like device, and threats of execution and/or sexual assault. Other forms reported were suspension, electric shock, stress positions, forced prolonged standing including in extremely hot or cold conditions, forced standing and sitting down or squatting repeatedly, forced drinking of excessive amounts of water and denial of food, water and prayer time.

Several incidents of removal of finger and toenails and stuffing cloth or plastic bags in a detainee's month, holding his nose and choking him causing the detainee to start to asphyxiate and also lose consciousness described as "waterboarding without the water" were reported. Detainees interviewed reported that different forms of torture were often used on them with increasing levels of pain particularly when they refused to confess to the crime they were accused of or failed to provide or confirm the requested or suggested information. Most detainees reported that torture stopped once they made a forced confession including sometimes in front of a video camera or when they thumb printed a paper that documented a confession.[32]

UNAMA again[33] received reports of the existence of several alternative or unofficial ANP and NDS detention sites.[34] Such claims raised concerns that alternative locations may have been used to interrogate and torture conflict-related detainees that were inaccessible to organizations conducting observation visits to official detention facilities and to superiors.

UNAMA also observed the Government's efforts to address torture and ill-treatment over the 23-month period including implementation of Presidential Decree 129. UNAMA's observation is that these efforts, while significant, have had mixed results. An encouraging sign was the finding that the overall percentage of detainees interviewed who experienced torture was 14 per cent lower among the 790 detainees UNAMA interviewed compared to UNAMA's previous observation sample.[35] The change may partly have resulted from new policies and directives banning torture, increased inspection visits to detention facilities from external organizations, focused training on alternative interrogation techniques and other measures by national and international actors.

The Government's efforts, however, have not embraced accountability for torture and ill-treatment. Similar to previous findings, UNAMA observed a persistent lack of accountability for perpetrators of torture with flawed investigations of allegations of torture by prosecutors and very few prosecutions, loss of jobs or disciplinary sanctions for those responsible for torture. NDS and Ministry of Interior internal accountability and oversight mechanisms including their human rights and inspections' departments

[32] Many of the detainees UNAMA interviewed for this and previous reports are illiterate. Thumb printing a document is routinely used as a form of consent and signature in such cases.

[33] For previous reports regarding unofficial detention sites, see *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013), p. 12.

[34] For example, several Government officials and other sources (names kept confidential for security reasons) informed UNAMA they knew of at least four unofficial NDS detention facilities in Kandahar city and specified the city districts where three of the facilities were located. UNAMA interviews, August and October 2014.

[35] See footnote 27.

remained deeply inadequate lacking independence, authority, transparency and capacity.

This continuing impunity enabled torture to continue as reflected in this report which found that while the incidence of torture decreased among detainees interviewed compared to the previous period, Afghan authorities were still using torture on one-third of the 790 detainees interviewed (35 per cent).

UNAMA also observed that torture continued because NDS and ANP officials still consider it the best way to get a confession to convict individuals they believe have committed or supported conflict-related crimes and remove them from the battlefield. A further factor enabling torture is that Afghanistan's criminal justice system continues to rely almost entirely on confessions as the primary basis to prove a case and justify a conviction.[36]

The *Constitution of Afghanistan* and the new 2014 *Criminal Procedure Code*[37] include due process guarantees that protect detainees from the use of torture. Many of these provisions, however, continued not to be implemented, such as time limits for holding detainees in police or NDS custody and for prosecutor's investigations and filing of indictments. The legal prohibition against using evidence gained through torture as the basis for prosecution or conviction at trial and a detainee's right to mandatory access to defence counsel were found to be routinely violated by judges and prosecutors.

The Government of Afghanistan has shown it is serious about addressing torture and ill-treatment through Presidential Decree 129 and other measures. Further efforts are needed to fully end and prevent its use, reinforce the prohibition of torture and improve accountability.

Such efforts – outlined in the recommendations' section of this report – could include creating a national preventive mechanism on torture in line with the Optional Protocol to the *Convention against Torture*, strengthening criminal investigations through improved enforcement of due process obligations, creating and enforcing effective protocols for documentation of evidence of torture including independently provided medical evidence and appropriate forensic expertise, and ensuring that judicial and institutional processes hold perpetrators accountable.

Continuing Torture and Ill-Treatment of Detainees in Afghan Custody

National Directorate of Security

Between February 2013 and December 2014, UNAMA found that 161 of 611 detainees interviewed (26 per cent) who had been held in numerous NDS facilities or by NDS personnel experienced torture or ill-treatment.[38]

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[36] See the section on "Due Process and the Criminal Justice System's Response to Torture" in UNAMA's report *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013) available at http://unama.unmissions.org/Default.aspx?tabid=12261&language=en-US; and updated information and analysis detailed in later sections of this report.

[37] The *Criminal Procedure Code* was published on 5 May 2014 and entered into force on 5 June 2014, replacing the previous *Interim Criminal Procedure Code.*

[38] In UNAMA's 2013 report, 178 of 514 detainees interviewed (35 per cent) who had been held in NDS facilities were found to have been tortured. UNAMA notes that smaller facility-specific samples in UNAMA's two observation periods make comparison of the facility-specific data between the two periods less conclusive. UNAMA particularly notes caution when comparing facility-specific data for Kabul and Kandahar due to the high margins of error for both facility-specific samples because these sub-samples

Detainees were subjected to severe beatings, electric shocks, suspension, stress positions and threats of sexual assault.

UNAMA continued to document sufficiently credible and reliable evidence of the regular and prevalent use of torture by NDS in facilities in three provinces: Kabul, Kandahar, and Takhar.[39]

In Kabul, of the 112 detainees interviewed who had been held at one or more of three facilities, namely NDS Department 124, 40 and the NDS Kabul provincial facility, 36 detainees (32 per cent) experienced torture or ill-treatment with most incidents occurring in Department 124.[40] Fewer incidents of torture were observed at NDS Department 40[41] although of the 73 detainees interviewed, 29 were found to have experienced torture or ill-treatment in other NDS facilities prior to their transfer to Department 40. At the NDS Kabul provincial facility, nine of 33 detainees interviewed (27 per cent) were subjected to torture or ill-treatment.

In Kandahar, UNAMA continued to document incidents of torture at the provincial NDS facility in Kandahar city. However, the majority of incidents of torture or ill-treatment were found to have occurred when detainees were arrested and interrogated in a district detention facility prior to their transfer to the provincial facility. For example, eight of 12 detainees interviewed who had been held at the NDS district facility in Spin Boldak were found to have been tortured. [42]

In Takhar province, UNAMA found that ten of 28 detainees interviewed (36 per cent) were subjected to torture or ill-treatment.

UNAMA recorded the systematic use of torture by NDS in Farah province, 20 of 39 NDS detainees interviewed (51 per cent) provided detailed accounts of interrogation methods amounting to torture or ill-treatment.

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are relatively small. For this reason, a conclusion that the incidence of torture or ill-treatment has significantly declined at these specific facilities is not necessarily supported by the available data. In addition, in 2013, UNAMA interviewed more detainees in *Pul-i-Charkhi* prison and the JCRC in Kabul who had been held in NDS Departments 124 and 40 and transferred to prison documenting significant levels of torture of those detainees while they were in NDS Departments 124 and 40. These detainees who had been held in NDS Departments 124 and 40 were generally out of reach and separated from officials who had tortured them in those two facilities after their transfer to prison and therefore more likely to report torture without fear of reprisal when in prison. For most of 2014, UNAMA interviewed more detainees while they were detained at NDS Departments 124 and 40 prior to their transfer to prison and received fewer allegations of torture from these detainees suggesting that NDS officials may have warned and threatened detainees not to raise allegations of torture with UNAMA coupled with a very high risk of reprisal as these detainees were still held in the same facility where torture may have been used on them or others.

[39] See the *Methodology* section of this report for a definition of 'regular and prevalent' and 'systematic' use of torture and ill-treatment in a specific detention facility. This report does not argue that the use of torture and ill-treatment was part of a systematic national or institutional Government policy.

[40] UNAMA determined that 26 of 75 detainees (35 per cent) who had been held in NDS 124 provided sufficiently credible and reliable accounts of interrogation methods amounting to torture over the observation period.

[41] From 1 January to 31 December 2014, UNAMA documented four cases of torture or ill-treatment among the 74 detainees who had been held in NDS 40 compared to 19 of 40 detainees in 2013.

[42] UNAMA interviewed 30 detainees who had been held at NDS Kandahar provincial facility. Among these, four provided sufficiently reliable and credible accounts of torture at NDS Kandahar. Of the 26 detainees who did not report torture or ill-treatment at NDS Kandahar provincial facility, 13 detainees (50 per cent) were found to have been tortured or ill-treated at an NDS district facility or ANP or ANA facility prior to their transfer to NDS Kandahar.

UNAMA further documented 71 incidents of torture and ill-treatment in NDS facilities at the provincial and district level in 19 other provinces.[43]

Twenty-five of the 161 NDS detainees (16 per cent) who were found to have experienced torture or ill-treatment by the NDS were children under the age of 18 years.

Afghan National Police

For the period February 2013 to December 2014, UNAMA found sufficiently credible and reliable evidence that 93 of 302 detainees interviewed (31 per cent) who had been arrested and held in various ANP or ANBP facilities or by ANP/ANBP personnel, had been tortured or ill-treated.[44]

Recurrent forms of torture used by ANP included beatings on the soles of the feet, legs, shoulders, back and chest; suspension; electric shocks; forced prolonged standing; stress positions – such as standing and sitting down repeatedly and standing outside in cold weather conditions for long periods – and threats of sexual assault.

Forty-four, or almost half, of the documented cases of torture or ill-treatment by ANP/ANBP occurred in Kandahar, Baghlan and Herat provinces.[45]

In Kandahar province, UNAMA documented 19 incidents of torture among 33 detainees interviewed (58 per cent). Detainees reported first being interrogated and tortured at *Hawzas* and district level facilities, in particular Zheray district (where eight of 11 detainees were tortured), before being transferred to the provincial facility.

UNAMA also received credible reports of the alleged enforced disappearance[46] of more than 26 individuals who had been taken into ANP custody in Kandahar province over the observation period and whose status remains unknown. Further credible allegations of a number of extrajudicial executions by ANP in Kandahar were documented.

In Baghlan province, UNAMA recorded 12 incidents of torture or ill-treatment among 23 detainees interviewed (52 per cent). In Herat province, 13 of 19 detainees (68 per cent) interviewed were subjected to torture or ill-treatment. UNAMA had not previously documented high levels of torture and ill-treatment by ANP in these two locations.

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[43] See Map 2.

[44] In its 2013 report, UNAMA documented 125 incidents of torture among the 286 detainees interviewed (44 per cent) held in ANP/ANBP facilities.

[45] See Map 2.

[46] The *International Convention for the Protection of All Persons from Enforced Disappearance* defines "enforced disappearance" in article 2 as *"the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."* While Afghanistan has not signed or ratified this convention, enforced disappearance is listed as a prohibited act that may constitute a crime against humanity under the *Rome Statute of the International Criminal Court* (which Afghanistan has ratified) and is prohibited under general human rights law. It is also listed by the ICRC Customary Law Study as prohibited in both international and non-international armed conflicts (Rule 98). Multiple sources shared concerns with UNAMA that following arrest, some detainees may have been killed while in police custody. UNAMA received similar credible reports of the alleged disappearance of 81 individuals while in ANP custody documented in UNAMA's January 2013 report.

UNAMA documented 49 other cases of torture and ill-treatment by ANP/ANBP in 18 other provinces.

UNAMA observed that the increase in torture at ANP district facilities over the current observation period may indicate that torture was "outsourced" and decentralized to smaller facilities where access by UNAMA and other organizations was minimal mainly due to insecurity.

Afghan Local Police and Afghan National Army

From February 2013 to December 2014, UNAMA interviewed 42 detainees who had been held by the ALP and documented 22 sufficiently credible and reliable accounts of torture or ill-treatment particularly in Baghlan, Daykundi, Kunduz and Paktika provinces, where 12 of the incidents took place.[47] UNAMA also documented four extrajudicial executions of detainees by ALP members in Farah and Herat provinces over the observation period.[48] UNAMA received credible reports of the extrajudicial execution of two detainees under 18 years old by ALP members in Arghandab district of Kandahar province.[49]

UNAMA determined that 20 of 60 detainees interviewed (33 per cent) held in ANA facilities or by ANA soldiers were found to have been tortured or ill-treated. Of the 60 detainees, 33 had been held in ANA facilities outside of Kabul where all but one of the 20 cases of torture and ill-treatment occurred (58 per cent).[50]

Transfer of Detainees to NDS, ANP and ANA by International Military Forces and ISAF's Detention Monitoring Programme

Following UNAMA's January 2013 report, ISAF revised its detention certification and inspection programme to reduce the number of Afghan facilities into which international military forces could transfer detainees.[51] Such action was taken pursuant to States' legal obligations prohibiting them from transferring detainees to another State's custody where a substantial risk of torture exists.[52]

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[47] In its 2013 report, UNAMA found that ten of 12 detainees interviewed who had been held by ALP were subjected to torture or ill-treatment. The ALP are permitted to hold individuals temporarily as part of their mandate to *"conduct security missions in villages"* but they have no role in or powers of law enforcement and lack the authority to arrest and detain. Their inferred power to hold suspects temporarily is not defined in scope or timeframe. See *Afghan Local Police Establishment Procedure* adopted August 2010 and adjusted 13 March 2014.

[48] UNAMA investigations, November 2013 to May 2014, Farah and Herat provinces.

[49] UNAMA investigations, spring 2014.

[50] UNAMA's 2013 report documented 13 cases of torture or ill-treatment among the 34 detainees interviewed (38 per cent) who had been held in ANA facilities. In the current study, 25 of the 60 detainees held in ANA custody were interviewed in the Detention Facility at Parwan (DFIP) all of whom reported no torture or ill-treatment at DFIP.

[51] In September 2011, ISAF suspended detainee transfers to 16 NDS and ANP locations which UNAMA had identified as practicing systematic torture. ISAF also designed and rolled out a six-phase detention facility monitoring programme to support Afghan authorities in reforming their interrogation and detainee treatment practices prior to resumption of international transfers. The programme required regular inspections of facilities and interviews with detention centre personnel and detainees as the primary means of identifying abusive detention practices by NDS and ANP. Inspections were accompanied by training seminars for detention facility managers and investigative staff focused on humane treatment of detainees, including non-coercive interview techniques.

[52] Article 3 of the *Convention against Torture* on *non-refoulement* obliges States not to remove *"a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."* Further, *"[i]f a person is to be transferred or sent to the custody or control of an*

The new process was designed to restrict ISAF detainee transfers only to those Afghan facilities essential to meet operational military requirements, as nominated by regional ISAF commanders. Proposed facilities were required to undergo an inspection and certification review process through which the Commander of ISAF had to be sufficiently convinced that torture was not occurring before any detainee transfers were authorized. As part of its certification process, ISAF regularly consulted national and international human rights and legal defence organizations on allegations of torture at specific Afghan facilities.[53]

UNAMA's current detention observation included interviews with 71 detainees who reported the involvement of international military forces or other foreign government agencies in their capture, arrest, detention or transfer to NDS, ANA or ANP custody.

Thirty-six of the 71 detainees reported capture by international forces alone or leading a joint operation with Afghan forces. Two of the 36 provided sufficiently credible and reliable accounts of torture in a US facility in Maydan Wardak in September 2013 and a US Special Forces facility at Baghlan in April 2013. Relevant authorities advised UNAMA the allegations were investigated.[54]

Of the 36 detainees, two others provided sufficiently credible and reliable accounts of torture by NDS officials in Farah following their transfer by international forces in September and October 2013. NDS Farah was not part of ISAF's certification programme at the time of the transfers.

The remaining 35 detainees stated they had been arrested by Afghan forces during operations that had international military support: international forces were either present at the moment of arrest, detainees had been temporarily held at an international military facility, international forces had interrogated detainees and or had processed the detainee's biometric identification.

Of these 35 detainees transferred, UNAMA found sufficiently credible and reliable evidence that 16 (46 per cent), were subjected to torture or ill-treatment when in NDS, ANP, ANA or ALP custody. Some of the facilities where ISAF transferred detainees had been certified or cleared for transfer while others had not. Most incidents occurred in 2013 with a few incidents documented in 2014.

UNAMA observed that ISAF's programme contributed to efforts to prevent most international forces from transferring detainees to Afghan facilities where they faced a risk of torture. The programme also improved awareness among NDS and ANP of the

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individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture." See Committee against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), para. 19. ISAF rules also stipulated that consistent with international law, individuals should not be transferred under any circumstances where there is a risk they will be tortured or ill-treated. To remediate concerns about transfer to a risk of torture international military forces should conduct rigorous oversight and monitoring of all transfers of detainees to Afghan custody, suspend transfers to facilities with credible reports and risks of torture consistent with legal obligations and refer allegations of torture to appropriate authorities for investigation.

[53] UNAMA and national and international human rights organizations participated in ISAF's Extended Detention Working Group bi-monthly and quarterly meetings throughout 2013 and the group's one meeting in early 2014.

[54] UNAMA meeting with officials of NATO Resolute Support mission, 22 February 2015, Kabul.

prohibition of torture with fewer incidents of transfer to facilities where torture was used.

ISAF's programme pursued accountability for allegations of torture and detainee abuse in Afghan custody that ISAF forces received through letters from the Commander of ISAF to relevant Afghan ministers providing detailed information about such allegations and requesting investigation by Afghan authorities. ISAF informed UNAMA that it received few reports of measures taken by Afghan authorities to follow up on the allegations of torture and detainee abuse.

UNAMA notes that the *Status of Forces Agreement* (SOFA)[55] for ISAF/NATO's follow-on mission *Resolute Support* that started on 1 January 2015 includes good governance and adherence to rule of law as a key principle.[56] ISAF officials informed UNAMA the new *Resolute Support* mission does not have a specific detention monitoring component as under the SOFA foreign forces no longer have the right to inspect Afghan detention facilities. ISAF also informed UNAMA that international (non-Afghan) Special Forces' advisors would continue to operate bilaterally with Afghan counter-terrorism forces.[57]

UNAMA highlights that international law[58] requires all international forces – even if they only train, advise and assist – to monitor the treatment of detainees in operations which they accompany for the duration of the accompanied operation, and to include efforts to prevent the use of torture and ill-treatment in their training, advisory and assistance tasks.

National Capacity to Address Torture and Ill-Treatment, Accountability and the Government's Implementation of Presidential Decree 129

UNAMA observed the Government's efforts to implement Presidential Decree 129 (16 February 2013) which ordered key institutions to take specific measures as part of a Government-wide effort to address torture and ill-treatment. How the institutions implemented the Decree is both representative and instructive of the Government's overall willingness and ability to prevent and end torture and informs future efforts and needed reforms.

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[55] Status of Forces Agreement (*"Agreement between the North Atlantic Treaty Organization and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-led Activities in Afghanistan"*) signed by NATO and the President of Afghanistan on 30 September 2014 and ratified by the Afghan Parliament on 27 November 2014. Also on 30 September 2014, the United States' Ambassador to Afghanistan and the National Security Advisor to the President of Afghanistan signed the Bilateral Security Agreement (*"Security and Defense Cooperation Agreement between the Islamic Republic of Afghanistan and the United States of America"*) which was ratified by the Afghan Parliament on 27 November 2014.

[56] *Essential Function 3: Civilian Governance of the Afghan security institutions (ANSF as servants of the people)*: *Resolute Support, A Strategic Partnership*, ISAF Public Affairs Office, 16 October 2014.

[57] UNAMA meeting with ISAF representatives, 30 November 2014, Kabul.

[58] As agents of the State, military forces are duty-bearers obliged to respect human rights and international humanitarian law, whether customary international law or specific treaties their country is a party to. For example, in the 2011 *Al-Skeini* case the European Court of Human Rights affirmed the applicability of the *European Convention of Human Rights* outside European territory, namely in a part of Iraq where British forces were the occupying power at the time. As in domestic criminal law, unlawfulness does not require an active act, but may also be brought about by omission, thereby obliging duty-bearers to prevent human rights violations actively or preemptively. Similar obligations apply to UN peacekeeping forces and to international organizations (e.g. NATO). For a detailed discussion see Gabriele Porretto and Sylvain Vité, *The Application of International Humanitarian Law and Human Rights Law to International Organisations* (University Centre for International Humanitarian Law Research Paper No. 1/2006).

UNAMA highlights that Presidential Decree 129 potentially reflected a major step forward in the Government's efforts to address the use of torture. The 12 orders in the Decree were inter-related, indicating awareness that several steps by various institutions were necessary to deter the use of torture including through accountability, prevention, legal safeguards, access to legal and medical services, greater transparency and access to detention facilities for external independent organizations and oversight mechanisms.

As such, UNAMA assessed the Government's capacity to address torture – particularly efforts to provide accountability and prevention through the framework of key orders in Presidential Decree 129 – since the Decree was aimed at providing a full response to findings of torture and related issues.[59] Using basic indicators to determine whether Government actions supported implementation of the Decree's key orders, UNAMA's overall observation is that the results of Government efforts to address torture over the 23-month period have been mixed.

A positive observation is the finding that overall the percentage of detainees interviewed who experienced torture or ill-treatment was 14 per cent lower among the 790 detainees UNAMA interviewed who had been held by personnel or in facilities of NDS, ANP, ANA and ALP compared to findings from UNAMA's previous observation period. The change may partly be attributed to efforts by NDS and ANP to address concerns about torture and ill-treatment throughout 2013 and 2014. These included issuance of new policies and directives on the prohibition of torture, more frequent observation and inspection visits to detention facilities from external organizations, measures taken by ISAF and international partners including more focused training on alternative interrogation techniques, and installation of closed circuit television cameras in some facilities (NDS Department 40 in Kabul).[60]

Other encouraging signs observed through regular discussions with investigators and detention facility managers and personnel were increased awareness among these officials of what acts constituted torture and, more generally, of human rights standards.[61] UNAMA also observed that detention facilities, particularly in urban areas, were inspected more frequently by independent organizations and NDS and ANP officials had increased interactions with and access to external observers.

[59] See Annex IV of this report for a copy of *Presidential Decree [No. 129] of the Islamic Republic of Afghanistan to implement the Afghan fact-finding delegation's suggestions on the presence of torture and ill-treatment in detention centres*, 16 February 2013. The orders in the Decree UNAMA focused on were: Order 1 (Prosecutions, Internal Oversight Mechanisms and Complaints), Order 3 (Prohibition of Torture, Preventative Measures and Capacity Building), Orders 4 and 5 (Access to Defence Lawyers and Legal Aid Providers and Increase of Legal Aid to Detainees by the MoJ respectively), and Order 6 (Provision of Medical Treatment for Detainees).

[60] UNAMA notes that the 14 per cent change among the detainees interviewed in the specific facilities at specific times by UNAMA could alternatively be explained by torture possibly increasingly occurring in facilities where UNAMA had no access.

[61] Several prosecutors and judges reported difficulties in acting on allegations of torture stating that the Afghan *Penal Code* and other laws do not provide a clear working definition of the elements of the crime of torture. Although torture is prohibited, the law does not explicitly define the crime. The international definition of torture in the *Convention against Torture* has not been transposed into Afghan law or policy. Regardless, it is a general principle of international law that a State is not absolved of its international legal obligations by a gap in its domestic law.

Lack of Accountability of NDS and ANP Officials for Torture and Ill-Treatment

Much less encouraging was the continuing almost total lack of accountability – in particular prompt, impartial, independent and thorough investigations into allegations of torture with few prosecutions or disciplinary actions – by NDS, ANP and the ANA. The current study observed no progress on accountability for alleged torture and ill-treatment by NDS, ANP and ANA officials.

Over the 23-month observation period, UNAMA documented a prosecution in only one case of two NDS officials found guilty of torture of detainees in Uruzgan. It resulted in two convictions with sentences of eight months each.[62] NDS informed UNAMA of three other incidents in which NDS officials were reportedly investigated through internal NDS procedures for beating detainees and who admitted ill-treatment but were not prosecuted.[63]

No ANP officials were found to have been investigated or prosecuted on allegations of torture and ill-treatment of detainees or subjected to disciplinary proceedings.

This lack of accountability persisted despite numerous verified incidents of torture found in NDS and ANP detention facilities and appropriately raised with responsible officials over the 23-month period. UNAMA compiled a list of key NDS and ANP officials employed in facilities where torture and ill-treatment were documented (provincial NDS directors, detention facility directors, chief interrogators, provincial chiefs of police, detention facility directors, chiefs of counter-terrorism units) spanning 2011 to 2014 that generally showed continuing employment of these officials in these facilities over this period.[64]

UNAMA's indicators used to assess accountability – consistent with Order 1 of Presidential Decree 129 – included the results of time-limited AGO delegations that investigated allegations of torture further to the former President's January 2013 fact-finding delegation's report which led to issuance of Decree 129.[65] Other indicators used were number and results of other internal NDS and ANP investigations into allegations

[62] In the spring of 2013, two ISAF officers reportedly witnessed two NDS officers torturing a detainee in the main NDS detention facility in Tirin Kot district, Uruzgan province. The case was referred for prosecution and reached trial in mid-April 2014. The internal and external security prosecutor informed UNAMA that the primary court in Uruzgan sentenced the two NDS officers to eight months in prison. The case was then reportedly referred to the military court in Kandahar as the prosecutor appealed what he stated were lenient sentences. UNAMA interview with internal and external security prosecutor, 19 May 2014, Uruzgan. At the time of writing UNAMA had not been able to independently verify this information.

[63] According to the report, two detention facility staff who ill-treated detainees were reassigned to other functions. A third perpetrator was required to give assurances that he would not commit human rights violations again. *NDS Progress Report on Implementation of Presidential Decree 129,* 24 November 2014 (on file with UNAMA).

[64] On file with UNAMA is a detailed list of employed NDS and ANP public officials from 2011 to 2014 involved in facilities where torture and ill-treatment occurred. UNAMA does not assert that the named ANP and NDS public officials committed torture and ill-treatment of detainees but that torture and ill-treatment occurred in a detention facility where they were employed, or which they managed or oversaw.

[65] The former President's fact-finding delegation (February 2013), documented 284 allegations of torture in a number of detention facilities in Kabul, Kandahar and Herat and considered 136 cases to be credible allegations of torture. The delegation's report was not made public but is on file with UNAMA. See Annex III of this report for a transcript of the President's fact-finding delegation's press conference on 11 February 2013 announcing the conclusions of its investigative work. The subsequent AGO delegations re-examined and reviewed 133 of the 136 credible allegations of torture found by the former President's delegation.

of torture which NDS and ANP claimed they carried out that resulted in criminal or disciplinary proceedings, and activities of NDS and ANP complaints mechanisms.[66]

AGO Delegations (2013)

UNAMA tracked allegations of torture reviewed by the three AGO-appointed delegations in 2013. In UNAMA's view, how these delegations dealt with the allegations is relevant as representative of the overall continuing inadequate response of the criminal justice system to torture and ill-treatment, and, as such, useful for targeting further reforms and resources.

UNAMA found that of the original 133 cases reviewed by the three AGO delegations, 78 were immediately closed and provincial prosecutors closed the remaining 55 cases that reached the investigative stage with none reaching indictment and trial.[67] UNAMA observed that the AGO delegations' work was flawed: delegations were not impartial and independent, with members having conflicts of interest and no standardized methodology was used to investigate and document allegations of torture. There were also apparent failures to comply with Afghan law – including wrong application of the legal standard or burden of proof on the detainee to prove torture – and delegations neither followed-up on credible reports of threats and reprisals against detainees who alleged torture nor investigated reasons why some detainees withdrew their allegations during the investigation process.

The AGO delegations also relied solely on visible physical marks/injuries as proof of torture. This problem was compounded by detainees' lack of access to medical services, provincial medical departments' absence of criteria to evaluate claims of torture on medical grounds through examinations of alleged victims, and lack of independent medical staff in those NDS and ANP detention facilities with medical services.

UNAMA found that the highest percentage – 27 per cent of the total 133 allegations of torture dismissed by the AGO delegations – were on the grounds of *"non-torture related injuries – not considered torture."*[68] The delegations provided no information on how they arrived at their conclusions. NDS officials UNAMA interviewed often justified and explained physical abuse of detainees as having been caused by detainees' resisting arrest denying that ill-treatment and torture (and any physical injuries) occurred during interrogations.

Inadequate NDS and Ministry of Interior Internal Mechanisms

NDS and Ministry of Interior officials maintained that their personnel should first be investigated for alleged torture or misconduct through their institution's internal

[66] UNAMA used basic indicators drawn from the United Nations Rule of Law Indicators endorsed by the UN Department of Peacekeeping Operations and the UN Office of the High Commissioner for Human Rights in 2011, available at www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf. Also see a detailed overview of the indicators and results later in this report.

[67] The former President's fact-finding delegation found 136 credible allegations of torture and or ill-treatment. Of the 136 cases, the three AGO delegations (March-April 2013) examined 133, dismissing 78 and referring 55 for further investigation. The AGO Kandahar delegation recommended further investigation in only one case, which the prosecutor closed. The AGO Herat delegation referred two cases for further investigation, which the prosecutor later closed. In Kabul, 39 cases were referred to the internal and external security prosecutor and 13 to the ANP/military prosecutor. The AGO reported it closed these 52 cases. As such, all 55 cases the AGO delegations referred for further investigation were subsequently closed.

[68] See the section on *AGO Delegations* later in this report for full details of their work and results.

mechanisms. In previous reports, UNAMA highlighted the lack of transparency and independent oversight of NDS including of its internal discipline procedures, and weaknesses in several overlapping unclear internal investigation and oversight mechanisms in the Ministry of Interior. UNAMA's current report did not observe significant improvements in either institution's handling of allegations of torture through internal procedures.

Further to requests from UNAMA to elaborate on allegations of torture that had been investigated, disciplined or prosecuted, the Ministry of Interior provided minimal and sometimes inaccurate information on external actions – criminal investigations and proceedings – taken and on any internal disciplinary procedures pursued. For example, Ministry officials stated no torture had occurred in ANP facilities as documented by the Afghanistan Independent Human Rights Commission and other fact-finding delegations when in fact findings of torture had been verified and reported by these organizations. UNAMA observed no accountability for any allegation of torture or ill-treatment by ANP over the 23-month reporting period.

Similarly, UNAMA observed that MoI's complaint mechanisms remained weak, duplicative due to the existence of parallel internal MoI mechanisms, and largely ineffective lacking independence, confidentiality and credibility. Where complaint mechanisms were available (complaints boxes) detainees did not use them mainly due to a warranted fear of reprisals and lack of access.

Starting in 2011, NDS established a cadre of human rights officers, who initially worked only in Kabul with additional officers deployed to provincial NDS facilities. They are mandated to monitor NDS detention facilities, report allegations of torture to the head of human rights in NDS Department 47, conduct preliminary investigations and attend to detainees' needs. In 2014, NDS officials told UNAMA that no allegations of torture had been received or occurred in facilities where human rights officers were deployed. UNAMA found otherwise, documenting 56 sufficiently credible and reliable incidents of torture in 10 facilities where NDS human rights officers were deployed.

These findings indicate that to date the placement of NDS human rights officers in NDS facilities has not stopped or prevented torture in all situations. The key problem is that NDS human rights officers are not independent, lack authority within the NDS system and report to higher level officials in the NDS.

Overall internal accountability and prevention mechanisms such as mandated monitoring of ANP detention facilities by staff from the MoI Inspector General and the MoI Gender and Human Rights Department and deployment of NDS human rights officers in NDS detention facilities has had limited impact on deterring torture. Detainees were generally found to be fearful of reporting to NDS and ANP staff about torture and ill-treatment due to concerns about reprisals, threats and further violence.

NDS and ANP human rights officers were also found to be reluctant to report on alleged torture and ill-treatment committed by colleagues or received no support or follow up action from superiors when they reported torture and ill-treatment of detainees.

Denial of Detainees' Access to Medical Treatment and Defence Counsel

UNAMA also observed the Government's implementation of orders in Presidential Decree 129 aimed at improving due process safeguards by aiding authorities in identifying torture through detainees' access to medical examination and care, and detainees' access to legal counsel.

Presidential Decree 129 recognized the essential role that medical professionals have in identifying and verifying whether torture has been used on a detainee. In its previous reports and the current report, UNAMA noted that in many locations, detainees who had experienced torture were either denied access to medical facilities after being tortured or were allowed to access medical services only after physical marks from torture and ill-treatment had faded. This situation hampered efforts to address torture in the Afghanistan context of police and judicial officials relying solely on physical marks of torture as proof of torture.

UNAMA also found that medical personnel at NDS facilities were not functionally independent to document and report incidents of torture as they reported to the NDS head of facility. As such, they could not be relied on to bring instances of torture and ill-treatment to the attention of appropriate authorities.

International best practice on investigation and prevention of torture requires that medical staff and forensic doctors be independent of law enforcement, security agencies and the prison sector as they may have a conflict of interest between their employer and their professional obligation to report torture. They may also be concerned about jeopardizing their employment or reprisals.

In addition, as highlighted by the UN Special Rapporteur on Torture, often torture methods are designed to be as painful as possible without leaving physical marks (such as stress positions, some forms of beating, waterboarding, forms of torture that cause a detainee to lose consciousness) or are psychological in nature, such as sexual humiliation and threats to kill the detainee or kill and harm the detainee's family. As such, the Government is legally required to put in place an effective process of speedy evidence collection examining all forms of torture.

It is also important to highlight that diagnoses of torture do not generally require high-tech costly procedures and equipment but are grounded in appropriate training and commitment by authorities to ensure effective investigation into allegations of torture.[69]

In Afghanistan, where often medical services are placed within the ANP and NDS structures with no independent oversight, allegations of torture should be promptly referred for an independent assessment, external to the police or NDS medical services.[70] Improved training and reporting on minimum international standards for clinical forensic assessment of victims to doctors, police and judicial officials would also contribute to an improved Government response to prevention of torture.

UNAMA observed that access of detainees to defence lawyers on arrest and during initial detention did not improve significantly since Presidential Decree 129 was issued. Limited funding for legal aid, a low number of licensed defence counsel throughout the country and specific denial of access of defence lawyers to conflict-related detainees remained serious concerns.

In conclusion, though improvements in Government efforts to address torture and ill-treatment were observed since Presidential Decree 129, UNAMA found a continued persistent lack of accountability for perpetrators of torture. This failure to provide accountability often meant that torture persisted in numerous NDS, ANP and other Afghan facilities. Despite numerous torture allegations brought to the attention of AGO

[69] See October 2014 Report of the *UN Special Rapporteur on Torture,* Juan E. Mendez at www.un.org/en/ga/third/69/documentslist.shtml.
[70] Ibid.

delegations, police, prosecutors, judges, and internal NDS and ANP structures, UNAMA observed only one prosecution and a few alleged job losses for those responsible.

UNAMA again highlights that addressing torture requires not only high-quality training, rigorous inspections and clear directives, but also sound accountability measures to stop and prevent its use. Without effective deterrents and disincentives to use torture, including a robust, independent investigation process and criminal prosecutions, Afghan officials have no incentive to stop torture. Full implementation of Presidential Decree 129 and key recommendations in this and previous UNAMA reports provide the way forward – an action plan – for improved Government efforts to end and prevent torture in line with national and international obligations.

Incident of Torture by ANP in Herat and Government Response[71]

On 2 April 2014, ANP in Herat arrested a man on suspicion of involvement in the killing of a judge and an ANP officer that had occurred two weeks earlier. ANP initially took the man to a district police station in the city and transferred him the same day to the ANP Counter-Terrorism Unit (CTU).

UNAMA found sufficiently credible and reliable evidence that the detainee was subjected to practices amounting to torture, including beatings, electric shocks and pulling-off fingernails and toenails, both at the ANP district station and the ANP CTU facility. The detainee was then forced to video-record a confession and to confirm in writing that no coercion had been applied.

On 19 May 2014, the Public Security Division of Herat's Primary Court sentenced the detainee to death. The primary court judge was reported to have denied applications by the detainee's lawyer for examination of the detainee by a forensic team and for his confession to be invalidated due to allegations of torture. The judge decided against an investigation into allegations of torture on the following grounds: the detainee had volunteered a confession during trial; a registry official present during the police confession testified the detainee appeared in good health; and, the CTU police chief denied any wrongdoing. The judge asserted he had ordered a medical examination of the detainee six weeks after his arrest but the judge did not provide the results or a report of this medical examination.

UNAMA was informed that the primary military prosecutor (ANP prosecutor) had written to the NDS prosecutor asking him to share the findings of his investigation into the detainee's allegations of torture but received no response. In the absence of a referral from the NDS prosecutor and a medical report, the ANP prosecutor advised he could not pursue the case.

The NDS prosecutor did not open an investigation or refer the case to the ANP prosecutor alleging lack of evidence. He also told the detainee's lawyer that he would be prosecuted if he made a complaint about the allegation of torture.

On 18 November 2014, the Public Security Division of the Appeal Court reportedly upheld the judgment of the Primary Court. The Appeal Court reportedly also gave no consideration to the allegations of torture in its written judgment. The judgment was not provided to UNAMA, but the Appeal Court's chief judge reportedly claimed

[71] UNAMA documented the case over many months and interviewed more than a dozen people including the detainee and his relatives, defence lawyers, judges, local human rights organization, ANP and NDS prosecutors, and detention facility administrators in Herat between August and December 2014.

measures had been taken to investigate the allegations of torture and remedy deficiencies at the primary court level. Before the trial the Appeal Court's chief judge had told UNAMA he believed the detainee had injured himself to deceive the court. The head of the Herat Appeal Court's State Security Crimes Section informed UNAMA that the file from the Herat Primary Court did not include a medical report so a medical examination had been ordered (some seven months after the torture and ill-treatment had occurred).

A human rights organization which documented the case was unable to continue advocating for accountability following threats and intimidation while health practitioners were unwilling to share any information with UNAMA.

Way Forward

UNAMA reinforces its proposal to the Government to consider establishing a national preventive mechanism to address torture and ill-treatment. Monitoring and inspections of places where persons are deprived of their liberty by independent monitors are an essential element in providing accountability for torture and related human rights violations, and promoting humane treatment of detainees. International human rights standards and best practices offer a framework for such mechanisms, particularly the *Optional Protocol to the International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* which requires member states to designate or establish "National Preventive Mechanisms (NPM)."

These expert investigative bodies are necessarily national in character, independent of Government, and coordinated by a national human rights institution. The mechanism should have a mandate ensuring free and open access to all places of detention codified by law with Government funding and a budget safeguarded from political interference.[72]

Afghanistan is a State party to the *Convention against Torture* but has not signed its *Optional Protocol (OPCAT).* As a first step, the Government and international donors could explore and prepare for the creation of a national preventive mechanism to strengthen monitoring and inspection of detention facilities together with other efforts to prevent torture outlined in the recommendations section of this report.

A national preventive mechanism could be created under the auspices of the Afghanistan Independent Human Rights Commission (AIHRC) which could take a coordination role or, if properly resourced, assume the role of the mechanism possibly integrating the existing AIHRC Police Ombudsman. NPMs in line with OPCAT have been established successfully within national human rights institutions in other countries. The AIHRC's existing capacity would need to be strengthened as a platform for such a dedicated detention monitoring unit. International donor support could be solicited to start up the platform and provide appropriate personnel, training, inspectors and other support.

UNAMA and civil society could also provide support to a national preventive mechanism by seconding existing Afghan experts (of diverse background and focus such as investigation, medical and forensic personnel) in its initial stages to facilitate its operation. These inspectors would need to be empowered to conduct full inspections

[72] Examples of countries that have ratified the *Optional Protocol* and established a national preventive mechanism on torture include Albania, Croatia, Mali, Nicaragua, Serbia, Slovenia, Macedonia, Tunisia and Turkey.

and to engage regularly with the Government providing recommendations on how to improve treatment, conditions and where to refer allegations about torture and ill-treatment to ensure and encourage accountability.

Observations

UNAMA highlights the Government's serious response to torture and ill-treatment of conflict-related detainees in 2013-14. This response included efforts to implement Presidential Decree 129 aimed at addressing torture that may be reflected in the lower percentage of detainees interviewed who experienced torture or ill-treatment in the current study compared to UNAMA's previous study. The Government's response over the 23-month observation period stopped short of pursuing accountability: while the change is notable, torture continued to be used on one third of detainees interviewed indicating that measures taken to date have not worked. Greater efforts are needed to end the practice of torture through ending impunity for its use.

UNAMA has consistently observed that torture used mainly for purposes of obtaining confessions or information is a long-standing practice in Afghanistan. Changes in this practice continue to require a concerted effort by the Government with sustained support from international partners. Since 2011, the Government and international actors have focused on skills training, awareness-raising and inspection/monitoring mechanisms as the primary means to address torture and ill-treatment. This appears to have resulted in some improvements in preventing the use and prevalence of torture in some facilities, as documented in this report among the 790 detainees interviewed.

However, the continuing use of torture in Afghan detention facilities can only be fully addressed by retraining NDS and police officials, rejuvenating these forces with additional professionals and – critically - disciplining, prosecuting and dismissing officials who are found to have committed, condoned or ordered torture and ill-treatment of detainees – including through independent and civilian inspection and oversight mechanisms. Judges and prosecutors also have a central role as evaluators of evidence and enforcers of due process safeguards in the *Constitution of Afghanistan* and the *Criminal Procedure Code*. As such, they must be held accountable when they violate legal obligations to dismiss evidence and confessions gained through torture.

Torture constitutes a serious crime under Afghan and international law, and in certain circumstances is a war crime. UNAMA again notes that many NDS and ANP officials interviewed do not accept that torture is illegal, ineffective, and counter-productive as a tool to obtain strategically valuable and actionable intelligence to fight terrorism and conflict-related activities. Nor do they accept that torture is not necessary to protect Afghan lives and can have significant negative consequences for national security.

In this regard, UNAMA highlights the 9 December 2014 United States Senate Select Committee on Intelligence's extensive study on the United States Central Intelligence Agency's detention and interrogation programme put in place after 11 September 2001. The study found that the CIA's use of "enhanced interrogation techniques" (forms of torture) were not an effective means of acquiring intelligence or gaining cooperation from detainees. It also determined that multiple detainees subjected to such treatment fabricated information, resulting in faulty intelligence.[73] The report observed there was no evidence that torture was effective and that it often produced false information with

[73] The summary report released on 9 December 2014 is found on the United States Senate Select Committee on Intelligence website at www.intelligence.senate.gov/study2014.html.

some detainees reporting they said whatever they thought their interrogators wanted to hear to make the pain stop. This finding reflect observations in UNAMA's report of many detainees interviewed stating they confessed to whatever crime they were accused of, or agreed with whatever information was put to them by interrogators to end the torture.[74]

United Nations mechanisms and standards also emphasize that effective counter-terrorism measures require compliance with human rights obligations and that torture and ill-treatment by State officials serve to undermine rather than promote national security.[75]

Torture, ill-treatment and arbitrary detention of conflict-related detainees by Afghan authorities are not only serious human rights violations and crimes but obstacles to peace and reconciliation processes. Such violations arguably contribute to an entrenched lack of confidence in Government institutions and in some cases radicalization of former detainees and communities.[76]

United Nations torture prevention mechanisms and experts have further stressed the clear connection between torture, ill-treatment and corruption. Effective torture prevention must also tackle corruption. These bodies have found that in countries with higher levels of corruption there is often high likelihood of torture and ill-treatment with minimal incidents discovered or prosecuted.[77] Pervasive corruption in Afghanistan including in the justice sector is widely documented and recognized including by the country's new President, Ashraf Ghani, who has pledged to address it.[78]

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[74] Following the release of the Senate Select Committee's report summary, seasoned interrogators were reported to have come forward to say that information gained during torture is not reliable, detainees will say anything to make the torture stop, and that the use of torture makes a country less – not more – safe. See Human Rights First, *Key Takaways from the CIA Torture Report* at www.humanrightsfirst.org/sites/default/files/SSCI-torture-report-background.pdf.

[75] See *the UN Global Counter-Terrorism Strategy and Plan of Action* and work of the *UN Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*. Available at www.un.org/terrorism/terrorism-hr.shml.

[76] The Taliban and other armed opposition groups in Afghanistan cite torture of detainees and widespread arbitrary detention as blocking negotiations on peace. For example, see Taliban statement of 28 January 2013, *"As now once again this issue has been raised by the United Nations and other Human Rights Organizations; it is support worthy as a preliminary step. But a more serious and quick response is needed to stop this untoward conduct. Playing with the fate of prisoners by the offices involved in corruption and the brutal, keeping them in jails for a long period of time without trial for fallacious allegations and martyring them is not only a mortification to humanity but also a clear violation of the Geneva Convention and the Anti-torture convention of the United Nations. It is an ignominy to the international human values and a great impediment in the way of peace,"* available at http://shahamat-english.com/index.php/comments/28767-for-how-long-untoward-conduct-with-the-prisoners.

[77] See 21 October 2014 *Report of the Subcommittee on the Prevention of Torture*, available at www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx.

[78] President Ashraf Ghani in his inaugural speech on 29 September 2014 (available at http://president.gov.af/Content/Media/Documents/PresidentAshrafGhaniAhmadzai11102014114022134553325325.doc) recognized and pledged to address the issue, stressing how corruption erodes human security, rule of law and governance: *"Corruption in the judicial branch paves grounds for insecurity. […] If we want the rule of law and if we want corrupt officials to be punished, our judiciary should be corruption-free so that it can become trustworthy. […] Another core responsibility of the government is to create effective state and good governance. Having an effective state and good governance is the birth right of each and every single Afghan […] Our people cannot tolerate corruption anymore. I and all my government officials would start to fight against corruption from our own selves. […] Corruption among our security*

UNAMA emphasizes the Government's obligations under Afghan and international law to effectively, independently, and impartially investigate all cases of unlawful killing, torture or other ill-treatment, arbitrary detention or enforced disappearance; and to appropriately prosecute and sanction the perpetrators, including persons in positions of command. Providing compensation to victims and preventing further acts of torture are also required.

The Government's obligations under the *Convention against Torture* are non-derogable, meaning that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency can be invoked to justify torture. In the words of UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, "The *Convention* lets no one off the hook – neither the torturers themselves, nor the policy-makers, nor the public officials who define the policy or give the orders."[79]

UNAMA again calls on the Government of Afghanistan to take all necessary measures to end and prevent torture and provide accountability for all acts of torture.

Response of the Government of Afghanistan to Current Report Findings

In response to the findings in the UNAMA February 2015 report, the Government of Afghanistan, through the Office of the National Security Council, prepared a detailed written response dated 12 February 2015, attached as Annex VI to this report.[80] The Government response is divided into four sections (preamble; response to the report including responses of the NDS, Ministry of Interior, Ministry of Defence; proposed national action plan on elimination of torture; conclusion).

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forces and misuse of government resources is one of the reasons for insecurity. Malfeasance is a crime, and the criminal should face legal action." A number of think tanks (see March 2014 report of the Afghanistan Research and Evaluation Unit, *Governance in Afghanistan: An Introduction* and July 2007 paper *Cops or Robbers? The Struggle to Reform the Afghan National Police*), anti-corruption organizations (Integrity Watch Afghanistan, Independent Joint Anti-Corruption Monitoring and Evaluation Committee and Transparency International, which ranks Afghanistan as the fourth most corrupt country of 175 surveyed in its 2014 Corruptions Perceptions Index), foreign government institutions, (in particular SIGAR, the Office of the Special Inspector General for Afghanistan Reconstruction, an institution created by the US Congress that mainly scrutinizes US-funded reconstruction projects in Afghanistan that includes human rights and rule of law activities), and intergovernmental organizations (UNODC, *Corruption in Afghanistan: Recent Patterns and Trends - Summary Findings*, December 2012) have documented the widespread and destructive effects of corruption in Afghanistan. These and other organizations have also highlighted how corruption and human rights violations are mutually reinforcing (see for example *Human Rights and Corruption*, Transparency International Working Paper #5/2008) and the clear connections between torture and corruption (see Section V of the *Seventh Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 20 March 2014, CAT/C/52/2, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f52%2f2&Lang=en).

[79] Office of the United Nations High Commissioner for Human Rights 10 December 2014 press release highlighting the need to eradicate torture on 30th anniversary of *Convention against Torture* at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15405&LangID=E.

[80] Response of the Government of the Islamic Republic of Afghanistan to the United Nations Assistance Mission in Afghanistan (UNAMA) Report on Treatment of Conflict Detainees in Afghan custody, human rights violations and accountability (Office of the National Security Council, Ministry of Interior, National Directorate of Security, Ministry of Defence) dated 12 February 2015. The Government provided its response to UNAMA in the Dari language which UNAMA translated into English as agreed and approved by the Office of the National Security Council. *See* Annex VI to this report.

The Government response states it is committed to observing and respecting its citizens' human rights and meeting its obligations under the Constitution, international treaties it is a party to, and from Islamic values, principles and the culture of the Afghan people. The Government response notes it is a strong and reliable partner working with national and international entities to promote human rights and prevent human rights violations against detainees.

The response indicates the Government "accepts some of the allegations and concerns" in the UNAMA report "but does not agree in many cases with the contents of the report."[81] The Government response outlines its view of alleged deficiencies in the UNAMA February 2015 report particularly on the report's methodology. UNAMA highlights that the Government including the NDS and Ministry of Interior have repeatedly made such comments since 2010 which UNAMA has rejected and fully addressed in the current and previous reports and in numerous meetings with Government officials. UNAMA re-asserts that the report's methodology is based on international standards and best practices using rigorous verification and review methods.

The Government response further states "it is not the official policy of the Government of Afghanistan to use torture and ill-treat detainees to obtain information and confessions in detention facilities under its control." It notes "some of the incidents in UNAMA's report are not correct while some could be due to individual violations by officials and personnel of the judicial and security institutions. Acknowledging some problems in this regard, the Government of Afghanistan is committed to eliminating torture and ill-treatment and to develop a plan at a senior level and with the cooperation of relevant organs, for a specific program to prevent reoccurrence of such acts, which are against human rights values, in the Government's detention facilities."[82]

The Government's response outlines elements of its proposed national plan on elimination of torture to include: legislative reforms to the Afghan Penal and Criminal Code, ratification of the Optional Protocol to the Convention against Torture, implementation of Presidential Decree 129, remedy for victims of torture, education and capacity building programmes, discrediting torture in public culture, preventive measures and continuous observation of implementation of the proposed national plan.

UNAMA welcomes the Government's stated commitment to address torture and ill-treatment of detainees through implementing a proposed national action plan. UNAMA reinforces its observation that accountability – particularly prosecution of responsible officials and perpetrators of torture – is the key way to end and prevent torture, sending the message that the Government of Afghanistan is politically committed at the highest levels to eliminate the use of torture by its officials.

UNAMA urges the Government to focus and prioritize its efforts on accountability and the preventive measures it has outlined in its proposed national plan. The UNAMA reports have consistently found that lack of accountability and impunity on the part of Afghan officials is the principal cause of continued incidents of torture and ill-treatment. There are still no consequences for the use of torture: perpetrators are not prosecuted and disciplinary actions are rarely taken. A focus on training, inspections, directives and

[81] Ibid.
[82] Ibid.

awareness-raising programmes alone cannot end and prevent torture – such efforts must be accompanied by sound accountability measures to fully eliminate torture.

Key Recommendations

Of UNAMA's 82 recommendations made in its previous two reports to the Government of Afghanistan, the Parliament, Attorney General's office, Ministry of Interior, NDS, Afghan National Army, Supreme Court, donor countries, troop contributing countries and ISAF, nine recommendations have been fully implemented, 28 partially implemented, and 41 not implemented.[83]

Annex V to this report is an update of the Government's implementation of UNAMA's recommendations from its October 2011 and January 2013 reports. UNAMA again calls on the Government to act on the 69 partially and unimplemented recommendations to Government institutions which provide an action plan for addressing torture and ill-treatment in Afghan detention facilities.

UNAMA further reinforces the following key recommendations to assist Afghan authorities in preventing and ending the use of torture and ill-treatment in Afghan detention facilities.

To the Government of Afghanistan

- Establish an independent oversight and accountability mechanism modeled on the national preventive mechanism (NPM) in the Optional Protocol to the *Convention Against Torture* (OPCAT) with the power to conduct regular unannounced visits to all places where persons are deprived of their liberty, authorize independent forensic medical examinations to confirm allegations of torture, conduct impartial and transparent investigations into alleged torture in NDS and Afghan National Security Forces' facilities (in accordance with best practices outlined in the Istanbul Protocol), and make recommendations to detaining authorities and other institutions on effective ways to address torture and ill-treatment in places of detention, including referral of cases to the Attorney General's Office or other authorities for independent investigation and compensation.
- Take all necessary steps to sign and ratify the Optional Protocol to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).
- Identify, cease the use of, and close all unofficial places of detention.

To the Supreme Court

- Issue instructions requiring primary and appeal court judges to investigate all allegations of torture and coerced confessions and strictly enforce prohibitions on the use of evidence obtained through torture as required by the *Constitution of Afghanistan* and the *Criminal Procedure Code*.

To the Attorney General's Office

- Conduct prompt, impartial, independent and thorough investigations into allegations of torture and ill-treatment of detainees by Afghan officials at all NDS

[83] The implementation status of four recommendations to Afghanistan's Supreme Court could not be assessed due to lack of information from the Court in spite of repeated written and verbal requests.

and ANP facilities identified in this report as using torture and ill-treatment, and in all facilities where allegations have been made.

To the National Directorate of Security

- Investigate all reports of torture and ill-treatment at provincial NDS facilities in Kabul, Kandahar, Farah and Takhar and all facilities where allegations of torture and ill-treatment have been made. Such investigations should be prompt, impartial, independent and thorough and focus on alleged criminal conduct of NDS officials.
- Remove, discipline and punish, including referral to NDS/internal and external security prosecutors or other appropriate authorities, those officials and their superiors found responsible for committing, ordering or condoning torture or ill-treatment of detainees, including suspension and loss of pension and other benefits.

To the Ministry of Interior and Afghan National Police

- Investigate all reports of torture and ill-treatment by ANP and ALP in Kandahar, Baghlan, Herat, Kunduz and Paktika provinces and all locations where allegations of torture and ill-treatment have been made. Such investigations should be prompt, impartial, independent and thorough.
- Remove, discipline and punish, including referral to ANP/military prosecutors or other appropriate authorities, all ANP and ALP officers and their superiors found responsible for committing, ordering or condoning such practices, including suspension and loss of pension and other benefits.

To the Afghan National Army

- Investigate all reports of torture and ill-treatment by the ANA in Kandahar, Paktya, Farah, Herat, Khost, Badghis, Balkh, Helmand and Kabul provinces and in all other locations where allegations of torture and ill-treatment have been made. Such investigations should be prompt, impartial, independent and thorough.
- Remove, discipline and punish, including referral to the ANA Judge Advocate and military prosecutor, all ANA officers and their superiors found responsible for committing, ordering or condoning such practices, including suspension and loss of pension and other benefits.

To the Ministry of Interior and National Directorate of Security

- Fully enforce guidelines and policies in place that mandate NDS and ANP personnel to respect, protect and realize detainees' rights including the prohibition of torture.
- Incorporate the right to be free from torture and the right of people deprived of their liberty to be treated with humanity and dignity of the person (article 7 and article 10 of the International Covenant on Civil and Political Rights, respectively) into the current text of the Ministry of Interior Policy on Prisoners and Detainees' Rights.
- Provide political support for the effective functioning of the Office of the Police Ombudsman and sign the terms of reference that establish its responsibilities.
- Conduct and facilitate an independent expert review of existing complaints mechanisms at the Ministry of Interior and NDS, and put in place mechanisms

that are consistent with international human rights standards that ensure independence from facility directors, confidentiality, protection against potential reprisals and channel complaints to the Central Prison Administration, judicial authority and/or other appropriate independent authorities.
- Institute a mandatory standardized training that addresses the specific investigative needs of Afghan National Security Forces and NDS in the context of their work, in particular components that insist on the link between non-coercive interrogation techniques, the prohibition of torture and ill-treatment, criminal and/or disciplinary sanction for using torture and ill-treatment and judges' obligations to invalidate confessions gained from torture.

To the Attorney General's Office, Supreme Court, Ministry of Interior and NDS

- Implement an effective standardized referral system that ensures defence lawyers and legal aid providers are informed and contacted promptly when a new detainee is arrested and brought to a detention facility, and that interrogations take place in the presence of defence lawyers.

To the Ministry of Public Health, Ministry of Interior and NDS

- Revise the current reporting arrangements for medical personnel attached to detention facilities so they are functionally independent and can make an unbiased and secure assessment of a patient's health interests and act accordingly.
- Strengthen the capacity of forensic practitioners to detect and document torture cases and to conduct psychological evaluations to facilitate findings of torture in cases of non-visible injuries.
- Require that all detainees receive a full medical examination upon arrival at each detention facility they are held in.

To Troop Contributing Countries and Concerned Donor States

- Ensure that torture and ill-treatment of detainees by the NDS, Ministry of Interior/Afghan National Police and Afghan National Army and implementation of effective remedial measures including legal obligations to hold perpetrators of torture accountable, are considered as key progress and conditionality indicators in making determinations on funding and overall provision of technical support, advice, assistance and training to implicated Afghan institutions and ministries.[84]

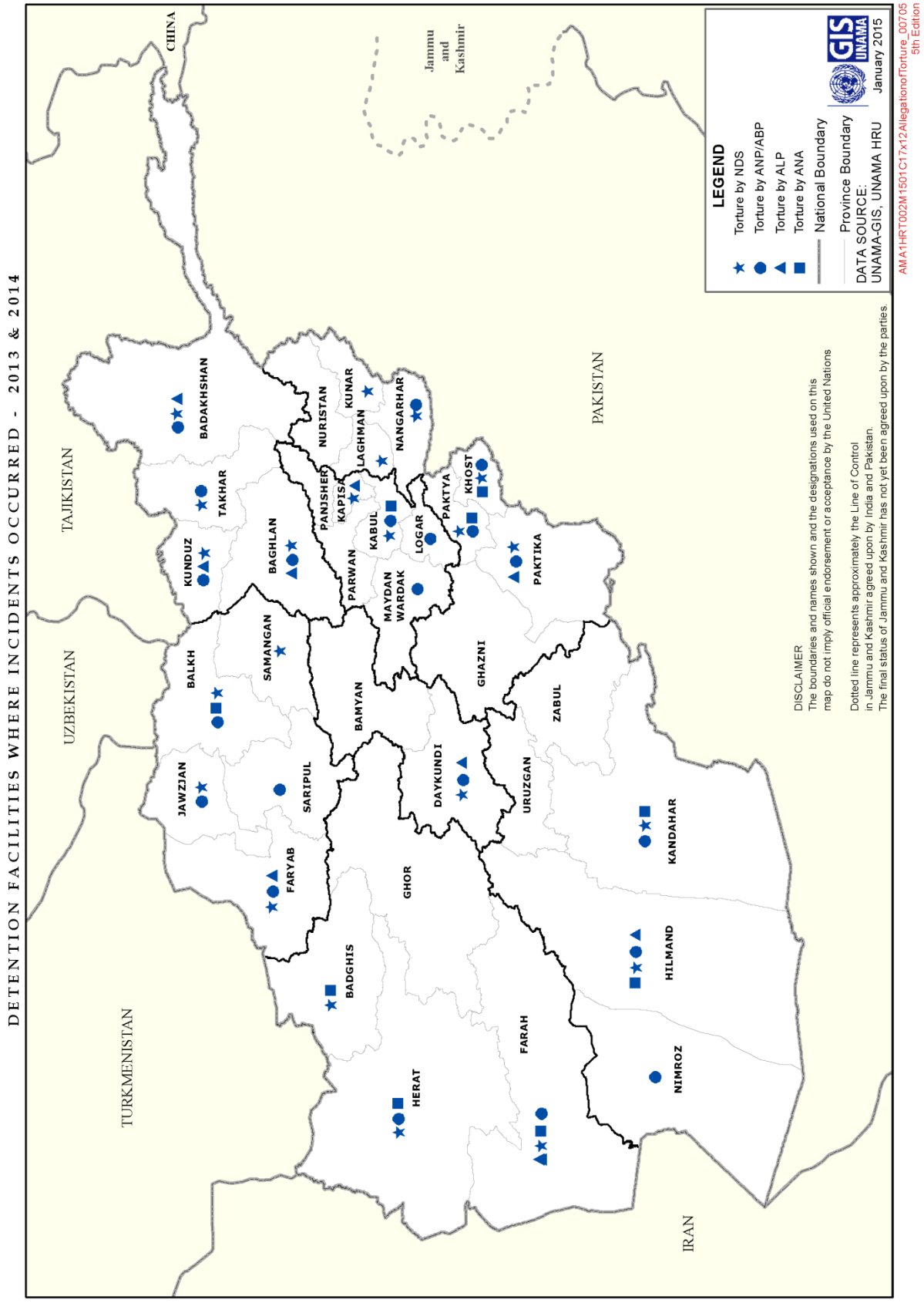
[84] For example, the provisions of the US *Leahy Law* (discreet sections in the *Foreign Operations Appropriations Act*, Section 563 of P.L. 106-429 (2001) and the *Defence Appropriations Act*, Section 8092 of P.L. 106-259 (2001) prohibit the US from providing funding, weapons or training to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross human rights violations, unless the Secretary of State determines that the concerned government is taking effective remedial measures including bringing responsible members of security forces' units to justice. UNAMA notes that a new determination under the *Leahy Law* may be required in view of consistent, recent reports and credible evidence (including the findings in this report) of the persistent use of torture with impunity by numerous NDS, ANP and ANA officials and units which receive funding, training and other support from US entities. Between 2002 and 30 September 2014, cumulative US funding for relief and reconstruction in Afghanistan had reached USD 104.08 billion of which more than 60 billion had been allocated to the category "security" (other categories were governance/development, relief and civilian operations). The allocation for security included the Afghan Security Forces Fund (ASFF), which by 30 September 2014 had disbursed more than USD 48.94 billion to equip, supply, service, train and fund Afghan security forces. Of the ASFF's money, more than USD 32.40 billion had been disbursed for the ANA and more than USD 16.17 billion for the ANP. As of 30 September

- Put in place a policy of incentives and disincentives for all forms of financial and technical assistance to the Ministry of Interior/Afghan National Police including through United Nations Funds, Agencies and Programmes, in particular the Law and Order Trust Fund (LOTFA),[85] based on evidence of concrete and measurable improvements in oversight and accountability in the Ministry of Interior/Afghan National Police including in preventing, prohibiting and punishing the use of torture and ill-treatment.

2014, USD 14.5 billion of appropriated relief and reconstruction funds remained for possible disbursement. Funding for 2015 cannot be determined before US Congress passes an appropriations bill. *See* Special Inspector General for Afghan Reconstruction, Quarterly Report to the United States Congress, 30 October 2014, at www.sigar.mil/pdf/quarterlyreports/2014-10-30qr.pdf.

[85] Since 2002, UNDP has managed the billion dollar Law and Order Trust Fund for Afghanistan (LOTFA), the main mechanism that mobilizes international donor funding to strengthen Afghanistan's law enforcement. Funds (USD 3.6 billion since 2002) are used to pay police officers' and Central Prison Department guards' salaries, build infrastructure and train police officers. Main donors to LOTFA between 2011 and 2014 were the governments of the United States, Japan, Republic of Korea, Germany, the United Kingdom, Norway, the Netherlands, Australia and the European Union. The 2011 UN Secretary-General's Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP) sets out principles and measures to mainstream human rights in support provided by United Nations entities to non-UN security forces to ensure that such support is consistent with UN obligations to respect, promote and encourage respect for international humanitarian, human rights and refugee law. Consistent with these obligations, UN support cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe a recipient of UN support is committing grave violations of international humanitarian, human rights or refugee law, the UN entity providing this support must intercede with the relevant authorities with a view to bringing those violations to an end.

Map 2: Detention Facilities where Incidents Occurred



IV. Treatment of Detainees by the National Directorate of Security

Deriving its mandate from the *National Security Law* governing its functions, the NDS' duties and responsibilities, include *"ensuring national security"* and *"fighting against terrorism."*[86] Headed by a National Security Director, who reports directly to the President of Afghanistan, NDS is responsible for all intelligence and information gathering including foreign intelligence, counter-espionage, counter-terrorism and all other issues relating to national security. NDS is permitted by law to detain suspects for up to 72 hours after which time NDS is legally required to transfer detainees to a facility managed by the Central Prisons Directorate operating under the Ministry of Interior.[87]

From February 2013 through December 2014, UNAMA interviewed 611 persons held by the NDS in 57 detention facilities in 28 provinces.[88]

One hundred and thirty-four detainees had been held in two NDS detention facilities at different times, 19 had been held in three NDS detention facilities at different times and four detainees were held in four NDS detention facilities at different times totaling 795 instances of NDS detention in the sample.

Fifty-six detainees were first held at a NDS district level detention before transfer to a NDS provincial facility. One hundred and sixty-one of the 611 detainees had also been in ANP or ANBP custody.

Highlights of UNAMA's Findings:

- One hundred and sixty-one of the 611 detainees interviewed who had been held by NDS (26 percent), based on sufficiently credible and reliable evidence, were found to have experienced torture or ill-treatment while in NDS custody. [89]
- Forms of torture included severe beatings, electric shocks, suspension, stress positions and threats of sexual assault.
- UNAMA found among the detainees interviewed sufficiently credible and reliable evidence of the systematic or regular and prevalent use of torture[90] by NDS in facilities in four provinces: Farah, Kabul, Kandahar and Takhar. Eighty-four of the 161 detainees (52 percent) who UNAMA found had experienced torture had been subjected to such treatment at one or more NDS facilities in these provinces, including district-level NDS facilities.
- In Farah, of the 39 persons interviewed, UNAMA found 20 (51 percent) credible and reliable accounts of torture and ill-treatment indicating the systematic use of torture in that location. In Kabul, 36 of the total 112 detainees interviewed (32 percent) provided sufficiently credible and reliable accounts of the regular and prevalent use of torture and ill-treatment at an NDS facility. In Kandahar, of the 30 detainees interviewed, UNAMA found that 12 detainees (40 percent) had

[86] Issued by an unpublished Presidential decree on 4 November 2001 (Decree no. 89), article 6.
[87] See Annex II of this report on applicable law.
[88] The provinces visited were Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Daykundi, Farah, Faryab, Ghazni, Ghor, Helmand, Herat, Jawzjan, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Maydan Wardak, Nangarhar, Paktika, Paktya, Samangan, Sari Pul and Takhar. The 57 detention facilities include all facilities in which detainees reported being held at the district, provincial and central levels. Numerous detainees reported being held in more than one detention facility over the course of their detention.
[89] See Map 3 for an overview of sufficiently credible and reliable incidents of torture by NDS.
[90] See the section of this report on *Methodology* for a definition of 'regular and prevalent' and 'systematic' use of torture.

been subjected to torture and or ill-treatment. In Takhar, UNAMA found sufficiently credible and reliable evidence that ten of 28 detainees interviewed (36 per cent) experienced torture or ill-treatment.

- Twenty-eight detainees of 56 (50 per cent) who reported being detained at a NDS district facility experienced torture or ill-treatment at that initial facility before their transfer to a provincial facility. Of these, 21 detainees did not report torture at the provincial facility, while three detainees provided a credible account of torture at the provincial level facility.[91]
- Seventy-one detainees were found to have been tortured and ill-treated in NDS facilities in 19 other provinces namely Badakshan, Badghis, Baghlan, Balkh, Daykundi, Faryab, Herat, Helmand, Jawzjan, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Paktika, Paktya and Samangan.
- Twenty-five of the 161 detainees (16 per cent) who were found to have experienced torture by the NDS were children under the age of 18.[92]

Torture to Obtain Confessions

"The NDS punched me in the stomach and hit me with a cable on my back as I was sitting on the floor. One of the two also grabbed my hair and slapped me on the face twice. It was terrible. Then, I was told to sit outside near a wall in the semi-dark. I do not know how long I was out there, but I was called to go in the same room again. I was terrified and completely lost. At one point, they made me lie on my back and raise my feet up with one of them holding them firmly and the other hitting on the sole of my feet. I was screaming. Then, I had to give a confession and say that I am an IED planter and was involved in the IED explosion. Only then they stopped beating me. They showed me a paper and forced me to thumbprint it twice."

Detainee 24, NDS Shindand district, Herat province, January 2014

As in its previous reports, UNAMA found that the purpose of torture and ill-treatment was almost always to obtain a confession during interrogations. When used, torture and ill-treatment generally occurred early in the interrogation process and generally stopped once the detainee confessed to the crime he was accused of. Torture and ill-treatment were also used to obtain information or for punishment.

Of the 161 detainees who were found to have experienced torture or ill-treatment at the hands of NDS officials, 102 stated they had made a confession during their interrogation to stop the torture. With the exception of three detainees, who provided credible accounts of torture at both district and provincial level facilities they were held in, all other detainees reported that torture at the first facility ceased as soon as they confessed to the crime the interrogators accused them of.

[91] Detainee 391 (2013) and detainees 204 and 278 (2014).

[92] Twenty-five child detainees provided consistent and credible accounts of 29 instances of torture at the following NDS facilities: Laghman, six children (detainees 17 and 22 (2013) and detainees 74, 278, 351, 352 (2014)); Kabul Department 124, five children (detainees 18, 23, 24, 25, 26 (2013)), Kabul Department 40, two children (detainees 25, 26 (2013)); Herat, one child (detainee 24 (2014)), Paktya, two children (detainees 39, 359 (2013)); Farah, two children (detainees 134, 252 (2014)); Badakhshan one child (detainee 147 (2013)); Kapisa, one child (detainee 301 (2014)); Kandahar, one child (detainee 250 (2013)); Kunduz, three children (detainees 342, 343, 344 (2014)); Logar, two children (detainees 362 and 364 (2014)); Nangarhar, two children (detainee 333 (2013) and detainee 278 (2014)); and Takhar, one child (detainee 204 (2014)).

Increased Use of Torture at NDS District Facilities

UNAMA observed an increased use of NDS district facilities to conduct preliminary investigations with a rise in the numbers of alleged cases of torture in such facilities.

UNAMA interviewed 56 detainees who reported being initially detained at a NDS district facility. Based on credible and reliable accounts, 28 detainees (50 per cent) were found to have experienced torture or ill-treatment (24 accounts of torture and four accounts of ill-treatment) at the district facility.[93] Of these 28 detainees, 24 did not report torture at the provincial facility they were subsequently transferred to, while four detainees provided credible accounts of torture at the provincial facility.[94]

UNAMA noted that due to security and movement restrictions in conflict-affected areas very few organizations had access to district-level NDS facilities including those where detainees UNAMA interviewed reported being held prior to their transfer to a provincial facility. This raises the possibility that NDS officials were deliberately holding detainees in district-level facilities for longer periods and conducting interrogations there to avoid external observation by a range of organizations more likely to occur at more accessible provincial facilities.

Systematic Use of Torture by NDS

NDS Farah

"NDS people took me directly to the NDS Farah city branch. There I was beaten with a cable for half an hour and they accused me of being a Talib and being involved in a murder case. They beat my body cruelly and told me to confess. During the interrogation they also had two electric wires which they used on my body until I became unconscious. I forcibly confessed that I was involved in the person's killing. Then I was transferred to the NDS provincial facility, they again slapped me and one of them choked me four times. They wanted me to confess my membership of the Taliban but I denied this. They threatened me to death if I did not confess and so I did." **Detainee 252, NDS Farah, June 2014**

UNAMA interviewed 39 people who had been detained at NDS Farah between February 2013 and December 2014.[95] NDS had arrested 26, ANP had arrested six others, ANA had taken three suspects into custody, ALP had arrested one, American military forces had arrested two detainees and one detainee reported arrest by ANA or ANP with support of international military forces. Detainees were held at NDS Farah for an average of 19 days, well beyond the 72-hour legal limit.[96]

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[93] Eight detainees in Kandahar, three in Paktika, two in Herat, and one in Farah, Badakhshan and Paktya respectively (2013); two detainees each in Logar, Nangarhar, Samangan and Kunduz, one detainee in Herat, Kandahar, Paktya and Takhar, respectively (2014).

[94] Detainee 391 (2013) and detainees 278, 294 and 362 (2014).

[95] Detainees 80, 81, 82, 83, 215, 223, 224, 225, 226, 227, 232, 233, 234, 235, 236, 237, 238, 244, 245, 246, 252, 253, 254, 255, 256, 257, 258 (2013) and detainees 41, 101, 102, 132, 133, 134, 252, 253, 254, 350, 381, 382 (2014).

[96] Article 87 of the 2014 *Criminal Procedure Code* states that NDS can hold a suspect in custody for up to 72 hours after which time they are required to transfer detainees to the relevant prosecutor's office and to a facility managed by the Central Prisons Directorate. Previously, article 25 of the *Afghan Police Law* (2005) had imposed an identical time limit and the 2004 *Interim Criminal Procedure Code* specified a two-phase time limit of first 24 hours (article 31), then an additional 48 hours (article 34), also resulting in 72 hours overall. The Human Rights Committee in its General Comment no. 35 offers the guidance "forty-eight hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any

Of the 39 persons interviewed, 20 detainees (51 per cent)[97] provided detailed accounts of NDS officials using interrogation methods amounting to torture which UNAMA determined were sufficiently credible and reliable. Thirteen of the 20 detainees who experienced torture eventually confessed at which point the torture stopped.[98]

Detainees provided details of NDS personnel in Farah subjecting them to beatings, in particular with cables on the soles of their feet. Detainees also reported that NDS used electric shocks and sleep deprivation as a means of torture.

Seven of the 39 persons interviewed were children[99] under the age of 18 years and two were found to have been tortured during interrogation.[100]

UNAMA is concerned with this negative trend in Farah NDS: in previous reports systematic use of torture had not been documented at that facility.

Regular and Prevalent Use of Torture by NDS

"On Saturday three people came to my cell and one of them told me: 'Tell us the full truth and do not force us to beat you up.' They took me from my cell to the upper floor, to a small office. There were three persons. When I entered the room, before even questioning me, one person hit me with a plastic pipe on my legs, back and my hands. My nails turned black [from the beatings]. With some pauses, the beating continued for three hours. They demanded that I confess being a Taliban member, and I did because I couldn't take it anymore. Then they asked me to tell them who else was with me. I gave them the name of my cousin. After that they left me. On the second day, nobody interrogated me. On the third day in the morning at 9 o'clock they came and hung me on a wall near the bathroom of the cell block for two hours. I had already confessed, but they still hung me."

Detainee 376, NDS Department 124, December 2014

NDS Kabul – Overview

In its two previous reports, UNAMA noted concerns with the systematic use of torture and ill-treatment at the national-level detention facility run by the NDS Counter-Terrorism Department 124 (former Department 90) in Kabul. UNAMA's January 2013 report also detailed concerns about sufficiently credible and reliable incidents of torture at NDS Department 40 (former Department 17) in Kabul.

In the current report, for the period February 2013 through December 2014, UNAMA interviewed 112 detainees who had been held at NDS Departments 124, 40 and/or NDS Department 1 in Kabul. Fifty-seven detainees had been held in two of these facilities and 11 had been held in the three facilities, amounting to 191 incidents of detention. Conflict-related detainees interviewed reported being taken first to NDS 124 or NDS Department 1 for interrogation before being transferred to NDS Department 40.

Thirty-six (32 per cent) of the total 112 detainees interviewed who had been held in these Kabul facilities provided sufficiently reliable and credible accounts of torture and

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delay longer than forty-eight hours must remain absolutely exceptional" (para. 33). See also Annex II of this report.

[97] Detainees 80, 81, 83, 215, 223, 225, 227, 233, 235, 236, 245, 252, 253, 255, 256, 257 (2013) and detainees 41, 102, 252, 382 (2014).

[98] Detainees 80, 81, 83, 236, 245, 252, 253, 255, 256, 257 (2013) and detainees 102, 252, 382 (2014).

[99] Detainees 80, 82, 226 (2013) and detainees 134, 252, 253, 381 (2014).

[100] Detainees 134 and 252 (2014).

ill-treatment in at least one of the three facilities. One fifth (seven) of the 36 detainees who were found to have experienced torture were children.

These detainees were found to have experienced torture primarily during interrogations in Department 124 or NDS Department 1 prior to being sent to NDS Department 40.

While instances of torture and ill-treatment during UNAMA's observation appeared to decrease among the detainees interviewed who had been held in Department 40,[101] UNAMA observed continued incidents of torture during interrogations in NDS Departments 124 and 1 in Kabul.

UNAMA noted that the majority of credible and reliable incidents of torture or ill-treatment by NDS in the three Kabul facilities were recorded in 2013 with numerous incidents recorded in the period February to December 2014.[102] This situation may be explained by the different locations where UNAMA interviewed detainees who had been held in Kabul detention facilities in 2013 and 2014.[103] UNAMA notes that other organizations documented significant levels of torture in NDS Department 124 in 2014.[104]

NDS Department 40

UNAMA received reports of torture and ill-treatment in Department 40 that had occurred early in 2013. Reported incidents of torture at Department 40 documented as part of UNAMA's observation decreased later in 2013[105] and UNAMA did not record incidents of torture in NDS 40 in its 2014 observation period. UNAMA observed that this decrease in findings of torture among detainees interviewed in 2013 may be due in part to implementation of measures related to Presidential Decree 129 in NDS Department 40. These included the installation of CCTV cameras in all interrogation rooms in Department 40 and training courses, particularly on interview techniques and forensic evidence, to facility staff by the United Kingdom, the AHIRC and the MoJ together with NDS Department 47 (Human Rights).

UNAMA interviewed 73 detainees who had been held in NDS Department 40. Among these, UNAMA found that four had been tortured or subjected to ill-treatment while in

[101] In its 2013 report, UNAMA found that 19 of 71 conflict-related detainees in NDS Department 40 had been subjected to interrogation techniques that met the international definition of torture. UNAMA Human Rights/UN OHCHR, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On,* (January, 2013), p. 45.

[102] Detainee 223 (2014).

[103] In 2013, UNAMA interviewed more detainees in Pul-i-Charkhi prison and the Juvenile Corrections and Rehabilitation Centre in Kabul who had been held in NDS Departments 124 and 40 and transferred to prison documenting significant levels of torture of those detainees while they were in NDS Departments 124 and 40. Those detainees interviewed in the prison who had been held in NDS Departments 124 and 40 were generally out of reach and separated from officials who had tortured them in those two facilities after their transfer to prison and therefore more likely to report torture without fear of reprisal when in the prison. In 2014, UNAMA interviewed more detainees while they were detained at NDS Departments 124 and 40 prior to their transfer to prison and received fewer allegations of torture from these detainees suggesting that NDS officials may have warned and threatened detainees not to raise allegations of torture with UNAMA coupled with a very high risk of reprisal as these detainees were still held in the same facility where torture may have been used on them or others.

[104] UNAMA interviews with organizations kept confidential for security reasons, June and December 2014, Kabul.

[105] The last incident of torture in NDS Department 40 documented by UNAMA occurred in March 2013.

that facility.[106] Thirty detainees were found to have experienced torture or ill-treatment in other NDS facilities in Kabul before being transferred to NDS Department 40, with 22 found to have experienced torture in NDS Department 124, seven at NDS Department 1 while one detainee was unable to name the NDS facility in Kabul where he had been held and ill-treated.[107]

UNAMA notes that these moves of detainees among NDS detention facilities in Kabul may indicate ad hoc efforts to address the use of torture on a facility-by-facility basis and not a system-wide effort by NDS to address torture. The findings could alternatively indicate that NDS moved detainees to several locations for interrogation, making it more difficult for observers to detect trends or identify the use of torture in individual instances and facilities: NDS continued to use abusive interrogation techniques in facilities with comparatively lower levels of scrutiny or inspections, particularly from human rights organizations or other outside observers. This may explain why torture and ill-treatment was not often documented at NDS Department 40 where external observation visits were more frequent with greater efforts to implement safeguards compared to higher levels of torture documented in NDS Departments 124 and 1 in Kabul.[108]

NDS Department 124

"I was taken to NDS Department 124. They started beating me. They kicked me with their boots and they punched me on the first day. On the second day, they also beat me but this time with a water pipe for about two hours. On the third day, they used a machine on my sexual organs. It was like a clip or pliers and they used it to squeeze my sexual parts till I cried. After this, I made a confession I was a Talib. I was scared because they threatened they would destroy my sexual organs. I just said anything and they wrote it down and I put my thumb prints on the papers. I thought I might die if they destroyed my sexual organs."

Detainee 161, NDS Department 124, July 2013

UNAMA interviewed 74 persons who had been detained at NDS Department 124. Sixty-eight of those interviewed said they had been arrested by NDS with three detainees stating they had been captured by ANA,[109] two by ANP,[110] and one detainee[111] not able to identify his captors. Detainees interviewed were found to have been held in NDS Department 124 for an average of six and half days which is well over the 72-hour maximum time allowed by law for the arresting authority to detain suspects.

[106] Detainees 25, 26, 31 and 127 (2013).
[107] Two detainees reported being tortured in both NDS Kabul provincial facility and Department 124 corresponding to 30 incidents of torture among 30 detainees.
[108] NDS Department 40 received considerable assistance from international donors in 2013 and 2014 particularly from the UK Government to build a new, modern detention facility, train Department 40 investigators on how to detect and verify the use of torture, and to install closed circuit video cameras in all interrogation rooms (NDS claims their cameras do not record sound) as part of a stated effort to deter the use of torture. UNAMA interviews with UK Embassy detention specialists, April and May 2014, Kabul and UNAMA monitoring visit to NDS Department 40, 24 February 2014, Kabul.
[109] Detainees 144 and 167 (2013) and detainee 227 (2014).
[110] Detainees 52 and 95 (2014).
[111] Detainee 155 (2013).

Out of the 74 persons interviewed who had been held in NDS Department 124,[112] 27 detainees (36 per cent) provided detailed accounts of interrogation methods amounting to torture that UNAMA determined were sufficiently reliable and credible.[113]

Among a sub-group of eight detainees[114] who had been held by NDS Department 124, but were no longer in the custody of that institution when UNAMA interviewed them in the second half of 2014, seven reported torture or ill-treatment at NDS Department 124. The one detainee not tortured said he was threatened with beatings by NDS Department 124 should he not sign a document transferred with him from a provincial NDS facility where he had previously been detained.

UNAMA found that NDS officials in Department 124 used the same methods of torture documented in UNAMA's January 2013 and October 2011 reports. These included putting detainees in stress positions, suspension, electric shocks, sleep deprivation, sexual assault, threats of sexual assault and beatings, including on the soles of the feet with plastic pipes.

Seven of the 74 individuals interviewed who had been detained by NDS Department 124 were children under the age of 18 years, five of whom were found to have experienced torture during investigations.[115]

NDS Department 1

"The NDS took me to a room in the basement, laid me down with my back against the floor and two persons were holding my feet up. Then one of the NDS personnel, even without asking any questions, began hitting on the soles of my feet with a pipe. They were saying that I was a Taliban and I must confess. I denied. The beating lasted for about 15 minutes. The next day, they took me back to the same room. One of the investigators put his feet on my genitals and pressed very hard. It was very painful. He strongly slapped me on my face five times, kicked and punched me a number of times all over my body (head, back, legs). He also threatened to give me electric shocks if I did not confess I was a suicide attacker. I denied it but he wrote it down in my statement and forced me to sign it. After that they did not interrogate me anymore." **Detainee 260, NDS Department 1, November 2013**

UNAMA interviewed 33 detainees[116] who had been held by NDS Department 1 in Kabul province. All of them reported arrest by NDS except one who reported arrest by ALP. Detainees were held for an average of three and half days, thus almost within the 72-hour legal limit.

Nine detainees (27 per cent) were found to have been subjected to torture and or ill-treatment at NDS Department 1. Six of the 33 detainees[117] provided sufficiently credible and reliable accounts of torture with three additional detainees reporting ill-

[112] Detainees 14, 15, 18, 20, 21, 23, 24, 25, 26, 28, 29, 30, 31, 125, 127, 129, 143, 144, 145, 153, 154, 155, 156, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 197, 198, 199, 201, 259, 261, 262, 264, 375, 377 and detainees 1, 6, 7, 8, 52, 53, 80, 81, 82, 87, 95, 221, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 287, 369, 370, 372, 373, 374, 376, 377, 380 (2014).
[113] Detainees 18, 20, 21, 23, 24, 25, 26, 28, 30, 31, 127, 129, 144, 153, 155, 161, 162, 201, 259, 261 (2013) and detainees 369, 370, 372, 373, 374, 376, 380 (2014).
[114] Detainees 369, 370, 372, 373, 374, 376, 377, 380 (2014).
[115] Detainees 18, 23, 24, 25, 26 (2013).
[116] Detainees 15, 17, 27, 30, 31, 88, 129, 157, 158, 159, 160, 166, 197, 198, 200, 202, 259, 260 (2013) and detainees 1, 2, 4, 7, 13, 74, 135, 223, 226, 230, 233, 235, 276, 277, 286 (2014).
[117] Detainees 30, 31, 88, 259, 260 (2013) and detainee 223 (2014).

treatment.[118] Detainees described severe beatings and electric shocks by NDS officials during interrogations; of the nine detainees, six made a confession.

NDS Kandahar

In its 2011 and 2013 reports, UNAMA identified the Kandahar NDS provincial headquarters as a location where torture was used systematically. In these reports, UNAMA found compelling evidence that half of the numerous detainees interviewed had been subjected to beatings, suspension, stress positions and other methods to force confessions.[119]

NDS Kandahar was one of the three locations visited by the President's fact-finding delegation in January 2013 and a delegation of the Attorney General's Office in March 2013.

From February 2013 through December 2014, UNAMA interviewed 30 detainees who had been held in the provincial NDS headquarters in Kandahar.[120] Four of the 30 detainees (13 per cent), provided sufficiently reliable and credible accounts of interrogation methods that amounted to torture.[121] Detainees were held for an average of 14 days, a reduction from the 21 days recorded previously but still well beyond the 72-hour legal limit.

In its previous reports, UNAMA documented somewhat higher levels of torture among detainees interviewed who had been held in NDS Kandahar.[122]

UNAMA notes that similar to the situation with NDS in Kabul, several of these 30 conflict-related detainees reported having been interrogated prior to their arrival in the NDS Kandahar provincial facility. Of the 26 detainees who did not report torture or ill-treatment in NDS Kandahar, 12 detainees (46 per cent) reported being tortured or ill-treated in a previous detention facility. Eight detainees were found to have experienced torture during interrogations in NDS Spin Boldak; one detainee reported having been tortured while in ANP custody, one detainee while in ANA custody, one was unable to identify his place of detention and another detainee reported torture in a location referred to as 'Mullah Omar's House' prior to transfer to NDS Kandahar.[123]

The findings may suggest that NDS continued to use abusive interrogation techniques including torture in district or other facilities which received lower levels of external scrutiny or inspections before transferring detainees to facilities more accessible to outside observation.

[118] Detainees 197, 198 and 202 (2013).
[119] UNAMA *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011) and *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013) available at http://unama.unmissions.org/Default.aspx?tabid=12261&language=en-US.
[120] Detainees 4, 7, 8, 9, 10, 11, 12, 13, 248, 249, 250, 251, 390, 391, 393, 394, 413, 414, 415, 416, 417, 418 (2013) and detainees 91, 92, 128, 129, 130, 131, 135, 294 (2014).
[121] Detainees 12, 250, 391 (2013) and detainee 92 (2014).
[122] In its 2011 report, UNAMA found that 25 of the 35 detainees interviewed who had been held by NDS Kandahar provided reliable accounts of torture. In its 2013 report, UNAMA found that 19 of the 48 detainees interviewed were subjected to torture in NDS Kandahar. UNAMA *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011), p. 25 and *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013.), p. 40.
[123] Detainees 4 and 11 (2013) and detainees 91 and 130 (2014).

NDS District Facility Spin Boldak, Kandahar

"I was arrested by NDS Spin Boldak and was slapped repeatedly while in the NDS vehicle. I was taken to NDS Takhtapul (halfway between Spin Boldak and Kandahar) and there three NDS used a cable to beat me on my back, waist and feet. They also tried to choke me by forcing a piece of cloth in my mouth and at the same time clasping my neck. They wanted me to confess I was a Talib and after this I did confess, verbally, to whatever they wanted." **Detainee 394, NDS Spin Boldak, December 2013**

UNAMA interviewed 12 detainees[124] who were held in the NDS district facility in Spin Boldak in Kandahar. Detainees were held for an average of 2.7 days, before their transfer to NDS Kandahar.

Of the 12 detainees interviewed eight (67 per cent) provided detailed accounts of interrogation methods amounting to torture that UNAMA determined were sufficiently credible and reliable.[125] Some detainees described being beaten so severely with hands, feet and cables on their bodies and soles of the feet that they lost consciousness several times during interrogations. Two detainees' accounts included the use of electric shocks during interrogation.

Six of the eight detainees eventually confessed during their interrogations, after which the torture stopped. All eight detainees were transferred to NDS Kandahar and reported no torture at that facility.

NDS Takhar

"I was arrested and taken to NDS HQ detention facility in Taloqan city. I was there for 12 days. I was interrogated four times. I told the interrogator everything but he didn't agree with me. Due to that, he started beating me with several electric cables which were about one meter long and about one inch thick. Three times the interrogator who was a tall man together with two other hooded me and laid me down. Two of them held my arms and the third one started beating me on my feet. The interrogator told me if I didn't confess that I learned making IEDs in Pakistan, was involved in terrorist activities and planting IEDs especially in the election sites, he would beat me more and give me electric shocks. I was scared and agreed and he stopped beating me." **Detainee 202, NDS Takhar, April 2014**

In NDS Takhar, UNAMA found sufficiently credible and reliable evidence that ten of the 28 detainees interviewed (36 per cent) experienced torture or ill-treatment.[126] Detainees provided detailed accounts of severe and prolonged beatings, including with a stick or cable on their feet, and threats of electric shocks. Detainees were held for an average of 12 days, well beyond the 72-hour legal limit.

UNAMA notes with concern an increase in the documented use of torture by NDS Takhar compared to the previous reporting period.[127]

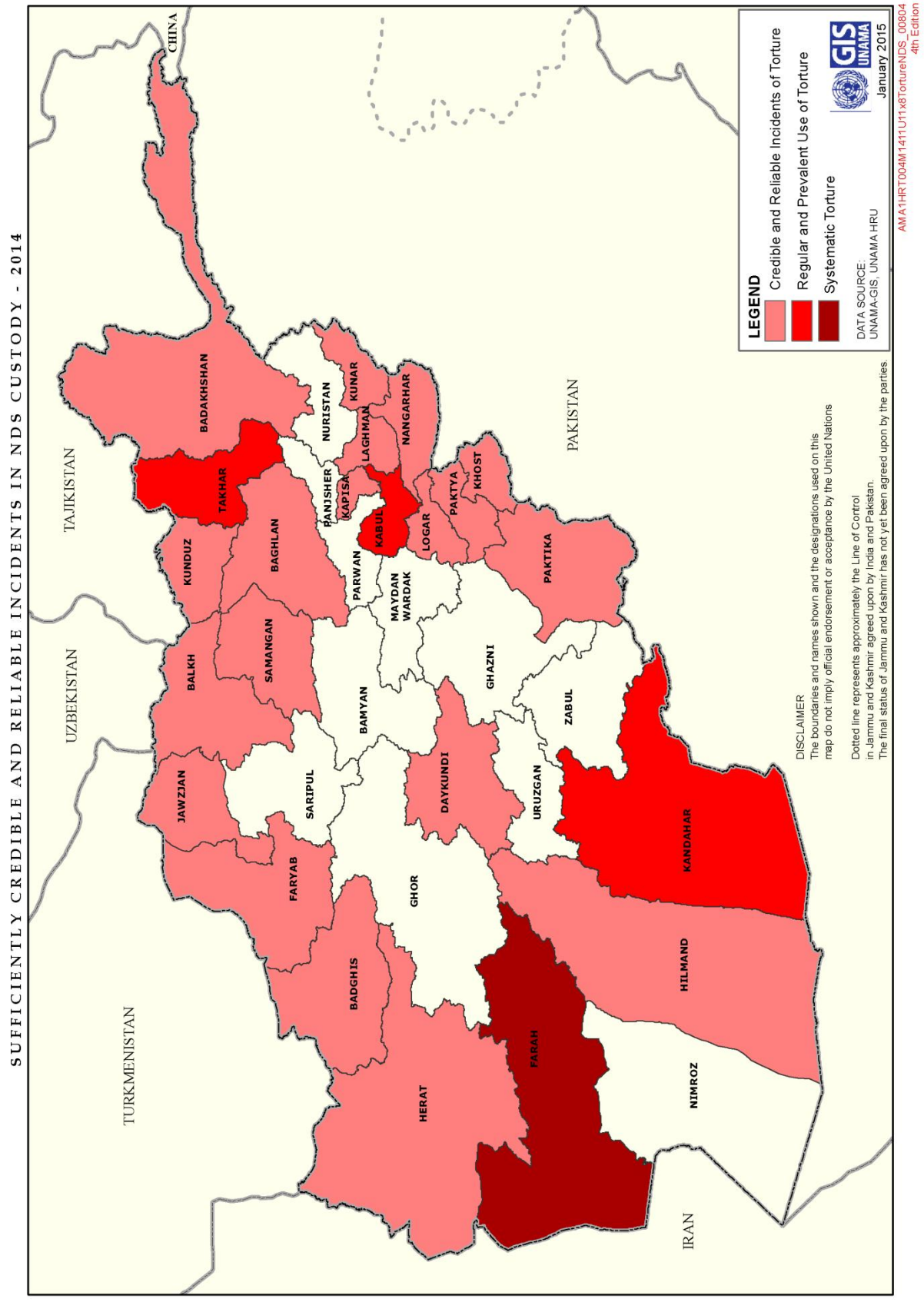
[124] Detainees 7, 8, 9, 10, 13, 393, 394, 413, 415, 418 (2013) and detainees 129 and 294 (2014).
[125] Detainees 7, 8, 9, 10, 13, 393 and 394 (2013) and detainee 294 (2014).
[126] Detainees 71, 107, 181, 182, 324, 338 (2013) and detainees 37, 202, 203, 204 (2014).
[127] In its 2013 report UNAMA, recorded 12 cases of torture and ill-treatment out of 48 detainees (25 per cent) at NDS Takhar. In its 2011 report UNAMA had recorded five cases of torture and ill-treatment of nine detainees (56 per cent).

Sufficiently Credible and Reliable Incidents of Torture by NDS in 19 Other Provinces

UNAMA interviewed 71 detainees who were found to have experienced torture or ill-treatment by NDS in 19 additional provinces, either at district or provincial level facilities: Badakshan, Badghis, Baghlan, Balkh, Daykundi, Faryab, Herat, Helmand, Jawzjan, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Paktika, Paktya, and Samangan.

NDS facility	Detainees interviewed	Detainees found to have been tortured and/or ill-treated
Badakshan	50	1
Badghis	4	1
Baghlan	28	3
Balkh	2	1
Daykundi	2	2
Faryab	10	1
Herat	34	6
Helmand	10	2
Jawzjan	31	2
Kapisa	1	1
Khost	38	4
Kunar	9	2
Kunduz	52	13
Laghman	14	6
Logar	6	3
Nangarhar	57	9
Paktika	33	5
Paktya	29	7
Samangan	2	2
Total	**410**	**71**

Map 3: Sufficiently Credible and Reliable Incidents in NDS Custody



V. Treatment of Detainees by the Afghan National Police and Afghan National Border Police

"We are committed to respecting the human rights of detainees. But as ANP our task is to investigate crimes and obtain information. We will soon use biometric equipment to check all visitors entering police headquarters, but we do not use forensic science to collect evidence from crime scenes. All suspects have the right to remain silent. That presents an obstacle to our police work. What can we do if they don't speak? We have to find out what happened; we need to use certain methods to find out what really happened."

Col. XX, provincial chief of ANP Criminal Investigation Department in XX province, December 2013

Torture and Ill-Treatment in ANP and ANBP Detention Facilities

The Afghan National Police is the principal law enforcement authority in the country, vested with the powers of arrest and detection of crime. Through these powers, the ANP has the authority to investigate and interrogate individuals suspected of committing crimes under the *Penal Code*, including crimes committed in relation to the armed conflict. The Afghan National Border Police (ANBP) is another leading law enforcement entity, charged with policing the territorial borders of Afghanistan, including entrance and exit from the country.[128]

Under the 2014 *Criminal Procedure Code*, police are obligated to officially send *"the registry of performance along with collected documents, evidence and grounds to the prosecutor's office and also hand over suspects to the relevant prosecutor's office"* (meaning transfer of the detainee to a prison managed by the Central Prisons Directorate under the Ministry of Interior) within 72 hours of arrest.[129]

From February 2013 to December 2014, UNAMA interviewed 302 conflict-related detainees who had been held in police custody in 82 facilities covering 25 provinces.[130] One hundred and eight detainees had been held in two different ANP detention facilities at different times, 23 detainees passed through three different ANP detention facilities at different times, and one detainee had been held in four ANP detention facilities at different times, totaling 443 instances of ANP detention in the sample.

UNAMA's findings highlight:

- Ninety-three[131] of the 302 detainees interviewed (31 per cent) had been subjected to interrogation methods amounting to torture or ill-treatment by the ANP or ANBP, sometimes in more than one detention facility.[132]

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[128] According to Afghanistan's 2005 Police Law, ANBP's responsibility is to *"control persons in the incoming and outgoing checkpoints on borders and take appropriate and necessary measures during the occurrence of any movements on borders which are against national sovereignty."*

[129] 2014 *Criminal Procedure Code*, article 87.

[130] The provinces included Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Daykundi, Farah, Faryab, Ghor, Helmand, Herat, Jawzjan, Laghman, Logar, Kabul, Kandahar, Kapisa, Khost, Kunduz, Nangarhar, Nimroz, Paktika, Paktya, Sari Pul and Takhar. The 82 detention facilities include all facilities in which detainees reported being held at the district, provincial and central levels. Numerous detainees reported being held in more than one detention facility over the course of their detention.

[131] Detainees 1, 2, 3, 4, 63, 76, 92, 139, 140, 162, 173, 179, 180, 212, 239, 240, 241, 274, 275, 296, 298, 300, 308, 311, 315, 318, 331, 339, 347, 348, 350, 357, 363, 395, 396, 397, 400 (2013) and detainees 45, 46, 47, 48, 49, 52, 55, 61, 62, 75, 85, 93, 94, 122, 176, 178, 180, 181, 182, 210, 212, 237, 238, 239, 241, 244, 248, 255, 260, 261, 262, 263, 266, 268, 269, 270, 272, 299, 300, 303, 314, 319, 322, 329, 330, 331, 338, 350, 361, 363, 365, 366, 375, 383, 384, 390 (2014).

- UNAMA found systematic use of torture by ANP or ANBP in three provinces – Kandahar, Herat and Baghlan – where 44, or almost half of all the detainees interviewed were tortured or ill-treated.
- In Kandahar, 19 of 33 detainees (58 per cent) who had been held by ANP experienced torture or ill-treatment. In Herat, 13 of 19 detainees (68 per cent) were tortured or ill-treated and in Baghlan, 12 of 23 detainees (52 per cent) provided credible and reliable accounts of torture and or ill-treatment.
- UNAMA documented 49 cases of torture and ill-treatment in 18 other provinces: Badakshan, Balkh, Daykundi, Farah, Faryab, Helmand, Jawzjan, Kabul, Khost, Kunduz, Logar, Maydan Wardak, Nangarhar, Nimroz, Paktika, Paktya, Saripul and Takhar.
- Of the 92 documented cases of torture, 16 (17 per cent) involved the torture of children,[133] one third of them in Kandahar ANP.

Torture to Obtain Confessions by the ANP and Methods of Torture and Ill-Treatment

As documented in its two earlier reports, UNAMA recorded incidents of torture by police mainly to obtain confessions. Recurrent forms of torture used by the ANP in several facilities included beatings, suspension, electric shocks, stress positions – such as standing and sitting down repeatedly and standing outside in cold weather conditions for long periods – and threats of sexual assault.

One detainee reported ANP officers stuffed cloth in his mouth, held his nose and choked him by squeezing his neck with their hands causing him to asphyxiate and pass out, a method described as "waterboarding without the water."

Torture and Ill-Treatment of Children by ANP

Of the 93 sufficiently credible and reliable incidents of torture found to have been used by the ANP and ANBP, 16 cases involved children (17 per cent): five were documented in Kandahar,[134] three in Herat,[135] two in Baghlan,[136] two in Logar[137] and one each in Helmand, Jawzjan, Kunduz and Paktya provinces.[138]

Systematic Use of Torture by ANP

ANP Kandahar

"I was arrested by ALP because they accused my brother of being a Talib. They took me to the ANP station in a district in Kandahar province. During my first night there the ANP village commander and 15 other ANP men beat me with cables. They pulled and squeezed my testicles until my urine had blood. They kicked me in the stomach. Then they gave me pen and paper and ordered me to testify against my brother. About ten days later I was given electric shocks on my feet three times, using power from a wall socket. Altogether I spent three weeks in ANP detention in this district. When I was transferred to the

[132] See Map 4 for an overview of sufficiently credible and reliable incidents of torture by ANP/ANBP.
[133] Detainees 1, 2, 3, 4, 63, 76, 180, 348, 363 (2013) and detainees 75, 255, 268, 299, 319, 363, 366 (2014).
[134] Detainees 1, 2, 3, 4 (2013) and 268 (2014).
[135] Detainees 348 (2013) and 255 (2014).
[136] Detainees 180 (2013) and 319 (2014).
[137] Detainees 363 and 366 (2014).
[138] Detainees 63, 76, 363 (2013) and detainee 299 (2014).

detention facility at ANP headquarters in Kandahar torture marks were still visible on my body, yet the detention authorities only gave me medicine but took no other action."

Detainee 269, ANP Kandahar, May 2014

Detention facilities run by the Afghan National Police in Kandahar province have been identified in previous UNAMA reports as locations where torture and ill-treatment were used systematically to obtain confessions. Both ANP and ANBP had been found to use torture, cruel, inhuman and degrading treatment at the time of arrest and during interrogations at check points and precincts (*Hawzas*[139]) within Kandahar city and in several districts of the province.

Consistent with its previously published findings, UNAMA continued to find sufficiently credible and reliable evidence of torture and ill-treatment by ANP in some facilities in Kandahar province.[140] Following interviews with 33 conflict-related detainees who had been held by the ANP between February 2013 and December 2014 in several locations in Kandahar province, including at the ANP provincial detention facility, ANP Kandahar *Hawzas* and ANP district facilities, UNAMA documented 19 sufficiently credible and reliable incidents of torture.[141] ANP Kandahar held detainees for an average of nine days, well beyond the 72-hour legal limit.

Confirming previously documented practices, UNAMA gathered credible and reliable evidence regarding methods of torture used by the ANP in Kandahar, including in Kandahar city precincts (*Hawzas* 2, 4, 6, 8, 9 and 13) and in Zheray district.[142] Forms of torture and ill-treatment most commonly reported included beating detainees with wooden sticks, electric cables, and rubber hose pipes on the soles of the feet, legs, shoulders, back, chest, head and sexual organs; electric shocks, suspension of detainees for prolonged periods and stress positions. One detainee reported sexual assault.[143]

Six detainees were found to have experienced torture at the ANP provincial headquarters,[144] ten at the ANP stations in *Hawzas* 2, 4, 6, 8, 9 and 13[145] and eight detainees were tortured by ANP at the district facility in Zheray.[146] Four detainees experienced torture in at least two ANP facilities.[147]

UNAMA observed that 15 detainees who were held by ANP HQ in Kandahar and did not report torture or ill-treatment at this facility reported torture or ill-treatment at another ANP facility either before or after arriving at ANP HQ in Kandahar.[148] For example, one detainee reported being arrested by the local ANP Criminal Investigation Department (CID) and detained at ANP HQ for three nights before being sent to ANP *Hawza* 8, where

[139] *Hawza* is a Dari word indicating a cadastral zone within a city. Each *Hawza* has an ANP station.
[140] Due to security constraints and restrictions of movement, UNAMA had less access to detention facilities in Kandahar compared to observation periods covered in its two previous reports. As a result, UNAMA interviewed fewer detainees held by ANP between February 2013 and December 2014 than in previous reporting periods.
[141] Detainees 1, 2, 3, 4, 274, 275, 395, 396 397, 400 (2013) and detainees 93, 94, 237, 238, 239, 266, 268, 269, 272 (2014).
[142] Detainees 2, 396, 400 (2013) and detainees 237, 238, 239, 266, 269 (2014).
[143] Detainee 3 (2013).
[144] Detainees 1, 4, 395 (2013) and detainees 93, 94, 272 (2014).
[145] Detainees 1, 3, 4, 274, 275, 397 (2013) and detainees 93, 94, 268, 272 (2014).
[146] Detainees 2, 396, 400 (2013) and detainees 237, 238, 239, 266 and 269 (2014).
[147] Detainees 1, 2, 4, 396 (2013).
[148] Detainees 274, 275, 397, 400 (2013) and detainees 93, 94, 237, 238, 239, 266, 267, 268, 269, 272, 297 (2014).

he experienced beatings and threats of sexual assault. Of the 14 detainees interviewed in Kandahar in 2014, only four were found not to have experienced torture or ill-treatment.[149]

Frequent incidents of torture occurring at district facilities were not recorded in previous UNAMA reports. UNAMA observed that increases in torture at district facilities seen over the current observation period may indicate that torture was "outsourced" and decentralized to smaller facilities where UNAMA and other organizations monitoring human rights of detainees did not have access. For example, UNAMA notes there is no apparent reason for the ANP Criminal Investigation Department (CID) to transfer detainees to a *Hawza* facility, in particular to a *Hawza* facility that is located far away from where the detainee resided or was arrested.[150] The former and usual practice was for ANP CID to conduct its investigations on site and directly transfer detainees to a MoI prison facility after handing the case to a prosecutor in the Attorney General's Office.

Incident of Detainee's Death in ANP Kandahar Facility (May 2014)

In a case documented by UNAMA, the ANP arrested a 23-year-old man[151] in District 10 of Kandahar city on 7 May 2014 for a minor offence – a brawl with a neighbor – and detained him in a cell in *Hawza* 10. On the morning of 10 May during a guard shift change the detained man was found strangled and dead in his cell. No cable, rope or wire was found next to the man. In the evening police officers summoned the man's father to the police station and told him the detainee's death was not their fault. After the detainee's body was released to his family, they carried it to Kandahar police headquarters in a public protest, demanding that the killer be brought to justice. The demonstration was reported in Afghan and international media.[152]

After initial claims by the *Hawza* 10 police force that the man had committed suicide or died of an illness, an autopsy[153] and the ANP Criminal Investigation Department determined that the detainee had been killed by another person. On 13 May 2014, the Minister of Interior Omar Daudzai stated he was *"very much concerned that what happened in Kandahar may have been a direct violation of Afghan law and police practice."*[154]

An investigation followed and as of early November 2014, the military court had returned the file to the prosecution for additional investigations. Three low-ranking police members, who had been arrested several months earlier, were in pre-trial detention, suspected of involvement in the killing.[155] Two senior officials were

[149] Detainees 90, 267, 295, 297 (2014).
[150] For example Detainee 274 (2013) was transferred from the ANP provincial detention facility to a *Hawza,* where he was tortured, and then returned to the same detention facility.
[151] Police officials and relatives identified the dead man as Hazrat Ali. UNAMA interview with the dead man's relatives, June 2014, Kandahar.
[152] See www.nytimes.com/2014/05/13/world/asia/a-death-draws-attention-to-afghan-police-methods.html?_r=0.
[153] Death certificate with diagnosis of "circular ecchymosis," copy on file with UNAMA, and UNAMA interviews with credible confidential source stating *"the bruise suggest[ed] that the person was killed by another individual who strangle[d] him with a cable of some sort (small diameter), probably from behind."* June 2014, Kandahar.
[154] Statement of then Minister of Interior Omar Daudzai, available at http://moi.gov.af/en/news/a-death-draws-attention-to-afghan-police-methods.
[155] Sources kept confidential for security reasons.

identified for questioning and investigation, but were not arrested.[156] UNAMA received repeated allegations from credible sources that the police members in custody were low-ranking "scapegoats" and that the perpetrators with superior or command responsibility remained free.[157]

Alleged Extrajudicial Executions in Kandahar

Between September 2013 and August 2014, UNAMA received credible reports of a number of alleged extrajudicial executions of individuals who had been taken into custody by members of the ANP and ANBP in Kandahar.

In addition, the United Nations Department of Safety and Security (UNDSS) reported the discovery of unidentified bodies in and around Kandahar, often with gunshot wounds, usually discovered by local persons, retrieved by ANP patrols and taken to the morgue at Kandahar's Mirwais Hospital: for example, on 29 September 2013 the hospital received ten bodies (all male) with gunshot and knife wounds. Several had injuries suggesting they had been tortured before being killed. UNAMA was informed that this number of such victims in one day had not occurred since 2011.[158]

Local, national and foreign media have reported on Kandahar's "mysterious killings."[159] The Afghanistan Independent Human Rights Commission has also expressed concern about several recurrent, unexplained incidents.[160] International sources familiar with the activities of ANP in Kandahar[161] alleged that ANP members regularly committed serious human rights violations including torture, enforced disappearances and extrajudicial executions.

UNAMA documented an incident of alleged extra-judicial executions in August 2014 in the Spin Boldak area of Kandahar province. Eight men travelling in a vehicle towards the town of Spin Boldak from the area of Qazi on 9 August 2014 following a nighttime meeting between pro- and anti-government participants were questioned at an ANBP checkpoint then stopped again at a second checkpoint, where four of the men were arrested and detained for one night.[162] One man was separated from the other three and reportedly tortured (beaten until he lost consciousness) until he disclosed the names of two individuals in Wesh,[163] who were then arrested by ANBP. When local elders called on the ANBP to release the detainees they were verbally insulted.

The detainee who had been tortured was reportedly shot and killed by ANBP in Landai village and the two men from Wesh killed by ANBP in the Mullah Wali Waleh area of

[156] The senior officials were identified as the ANP commander of Kandahar *Hawza* 10 and his deputy. This commander has since been reassigned to command ANP *Hawza* 8, previously led by ANP commander Abdul Wadood Sarhadi "Jajo" who was killed by a suicide attacker on 24 May 2014. ANP deputy commander Jajo was reportedly responsible for the illegal detention, torture and extrajudicial killings of numerous individuals and detainees in Kandahar city from 2012 to the time of his death.
[157] Sources kept confidential for security reasons.
[158] UNDSS meeting with UNAMA, October 2013, Kandahar.
[159] *Tolo TV*, 17 October 2013 and Anand Gopal, "Kandahar's Mystery Executions," *Harper's Magazine*, September 2014.
[160] Afghanistan Independent Human Rights Commission spokesperson Sahebzada Nalan's interview with *Tolo TV*, 17 October 2013.
[161] UNAMA interview with international military personnel, Kandahar, 16 January 2014.
[162] UNAMA interviews with residents of Spin Boldak, 7 September 2014. Names of interviewee, ANBP checkpoint commanders, detainees and dead men kept confidential for security reasons.
[163] An Afghan border village located directly at the Afghan-Pakistani border.

Spin Boldak district.[164] The body of one of the men from Wesh was reportedly tied to a car and dragged through the streets by ANBP. All killings were reportedly witnessed by local residents, who notified the men's families. When relatives arrived to collect the three bodies they found notes pinned to them prohibiting any removal for 20 days. Following complaints to ANBP and district authorities the bodies were released after one and two days, respectively. As of 7 September 2014, the three other men arrested at the ANBP checkpoint remained in ANBP custody, with their relatives denied access to them.

Alleged Killing of Detainees by ANP Kandahar (October 2013)

UNAMA received credible information about an incident in late September 2013 of at least four men[165] aged between 19 and 40 years reportedly arrested in *Hawzas* 2 and 8 of Kandahar city, shortly after a Taliban assault on an ANP checkpoint in *Hawza* 2, in which three police officers had been killed.[166] UNAMA was informed that three of the men were taken away in an ANP Humvee and that a local police officer confirmed their arrest to local elders at Kandahar's *Hawza* 6 police station a day after the arrest. A senior officer then promptly denied the arrests. ANP from *Hawza* 8 arrested the fourth man and took him to the *Hawza* 8 facility in Kandahar city.

On 1 and 2 October 2013, local residents found the bodies of all four men with gunshot injuries to their heads and other injuries, in two separate locations in District 6 and 7 on the western outskirts of Kandahar. UNAMA was shown several photos of three of the bodies which had signs of massive injuries. UNAMA could not independently verify the origin or accuracy of these photos. Police sources[167] stated to UNAMA the dead bodies were Taliban insurgents who security forces had shot during search operations and that the men had never been in police custody. A person[168] making enquiries about the victims told UNAMA that a senior police official threatened him with death[169] should he continue his enquiries. Similarly, a local person[170] who had spoken to the media[171] about police abuse informed UNAMA he had received threats from pro-government individuals to stop looking into arrests, killings and enforced disappearances by the Kandahar police.

Alleged Extra-Judicial Executions in Zheray District (August 2014)

In August 2014, UNAMA received credible allegations of mass arbitrary detentions and extrajudicial executions of suspected Taliban members in Zheray district (Kandahar province). At the time the district was being infiltrated by large numbers of Taliban insurgents, some of whom had overrun several ANP checkpoints in Zheray. Afghan National Police conducted a large-scale counter-insurgency operation together with

[164] The area of Mullah Wali Waleh is located some 25 km north-east of Spin Boldak on the road towards eastern Arghistan district. The area of Qazi lies in the same general direction and is reportedly located approximately 20 km from Spin Boldak town.
[165] Victims' names kept confidential for security reasons.
[166] UNDSS Southern Region Daily Incident Report, 30 September 2013.
[167] UNAMA interviews with ANP commanders of *Hawza* 6 and *Hawza* 8, Kandahar city, 21 October 2013.
[168] Interviews with individual kept confidential for security reasons, Kandahar city, October 2013 and February 2014.
[169] UNAMA interviews with local individuals kept confidential for security reasons, Kandahar city, October and November 2013.
[170] UNAMA interview with local individuals kept confidential for security reasons, Kandahar city, 11 February 2014.
[171] See for example, *Shamshad TV*, Kabul, January 2014.

ANA, ALP and NDS personnel. Bus passengers travelling on the Herat-Kandahar road, which crosses Zheray, reported they saw *"scores of bodies piled beside the road."*[172]

UNAMA received reports that in a two-week period in late July and early August 2014, 55 dead bodies had been collected along the road (which may have included fighters, civilians, persons *hors de combat* and persons detained by ANSF before their death). Workers taking the bodies away reported that three of the bodies had their hands tied and gunshot wounds to their heads. [173]

In addition, UNAMA received credible allegations that in one specific incident over this period, ten men who were travelling from Shah Wali Kot district to Zheray to visit a local mullah were stopped, beaten and shot dead by ANA soldiers. One of the victims survived by pretending to be dead and alerted a local resident[174] who reprimanded the soldiers for their conduct, only to be beaten and briefly detained himself. According to the resident, the soldiers then killed the one survivor of the previous alleged mass execution.[175]

UNAMA notes that Zheray district is where Kandahar's provincial chief of police General Raziq had told journalists during the same period (on 7 August 2014) that he was *"extremely grateful to [...] all security forces for identifying and targeting [insurgents] on the spot," an act that avoided "giving a chance to [corrupt] judges or prosecutors to take money from them and release them [for a bribe]."*[176] In late January 2015, a media broadcast made a renewed reference to General Raziq's speech. These and similar statements ordering and approving of executions of captured alleged insurgents made by other military and police officials in August 2014 may amount to the war crime of "declaring no quarter." This raises serious concerns about the possibility of extra-judicial or summary executions of alleged insurgents and others following ANSF operations.

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[172] See www.thenational.ae/world/central-asia/20140907/fears-of-taliban-backlash-as-forces-rule-kandahar-with-an-iron-fist.

[173] UNAMA interview with local workers, Kandahar city, August 2014.

[174] Sources kept confidential for security reasons.

[175] Sources kept confidential for security reasons.

[176] Between August and in October 2014, at least six ANSF commanders and one district governor made public statements stating they had ordered security forces to kill all enemy fighters rather than capture and detain them to prevent the fighters' future release by the Afghan judiciary which they described as corrupt. In addition to General Abdul Raziq the following officials made public statements that could be interpreted as declaring "no quarter:" on 13 August, General Aminullah Amarkhil, Baghlan provincial chief of police, stated he had ordered his officers to "*kill captured Taliban to prevent their release by the justice system*"; on 13 August, Abdul Khaliq Maroof, district governor of Hesarak district (Nangarhar province), publicly urged police commanders "*not to show any mercy towards Taliban fighters*"; on 23 August, General Morad Ali Morad, Chief of ANA Infantry Forces, Ministry of Defense, stated to the press in Herat that the Ministry of Defence had "*ordered all ANA forces to use any means to kill and eliminate those insurgents who are fighting against ANSF in the field*"; on 24 August, Mir Hashim, ANA Officer, Paktya province, spoke to journalists and said "*Taliban militants should be killed in battle or executed in case of capture*"; and on 18 October, General Aminullah Azad, deputy provincial chief of police of Herat province, speaking to media said "*Taliban should not be shown mercy and should be killed on the battlefield.*" These statements may amount to the war crime of "declaring no quarter" prohibited under article 8 (2) (b) (xii) of the *Rome Statute of the International Criminal Court* and *Article 3 Common to the Geneva Conventions applicable to Non-International Armed Conflicts,* and contrary to customary international law. All relevant media reports, transcripts, audio and video recordings on file with UNAMA.

Alleged Enforced Disappearances by ANP in Kandahar

An organization[177] told UNAMA that between 19 March 2012 and 7 September 2014 it received numerous sufficiently detailed complaints and opened case files in 25 separate instances of alleged enforced disappearances of individuals by ANP in Kandahar. [178] UNAMA also received credible allegations from a range of sources of several other enforced disappearances by ANP officials.

ANP Herat

"ANP arrested me and took me to a police station in Herat city. I was blindfolded and taken to a room where they kicked me and forced me to lie down. They put wires on my toes and gave me electric shocks. I felt pain in my chest and in other parts of my body, as if someone was beating me with a stick. Later I was taken to the Counter-Terrorism Unit at ANP headquarters. At around 10 pm I was again blindfolded and taken to a room where they again made me lie down. I was given electric shocks. They stuffed something in my mouth so that I could not speak, and they beat me. A second group beat me with electric wire and pipes on the soles of my feet. This lasted until 7 a.m. Once, the chief of the Counter-Terrorism Unit took out his pistol and told me: 'Confess or I'll beat you!' On the morning of the third day they pulled off one of the nails of my left hand and two toe nails. I told them that I would confess anything they wanted and my confession was video-recorded." **Detainee 329, ANP Herat, April 2014**

UNAMA interviewed 19 people who had been detained at ANP Herat between February 2013 and December 2014.[179] ANP had arrested 18 men and NDS one. Detainees were held by ANP Herat for an average of 19 days, well beyond the 72-hour legal limit.

Of the 19 persons interviewed, 13 detainees (68 per cent) provided detailed accounts of ANP officials subjecting them to interrogation methods amounting to torture or ill-treatment which UNAMA determined to be sufficiently credible and reliable. [180] Torture was mainly used to extract confessions – six of the 11 detainees who experienced torture eventually confessed – but also for extracting information and punishment.[181]

Detainees provided details of ANP personnel in Herat subjecting them to beatings on their bodies and the soles of their feet, and electric shocks.

Three of the 19 persons detained were children under the age of 18 years and all were found to have been tortured or ill-treated during interrogation.[182]

UNAMA noted a significant increase in the use of torture and ill-treatment by ANP Herat in the current period. In 2013, four of the nine detainees interviewed (44 per cent) who had been held by ANP Herat were found to have been tortured or ill-treated. In 2014, nine of the ten detainees interviewed (90 per cent) were found to have been subjected to such practices.

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[177] Name of organization kept confidential for security reasons.
[178] UNAMA documented in its January 2013 report 81 similar reports and allegations of enforced disappearances of individuals taken into custody by the ANP in Kandahar between September 2011 and October 2012. See report of UNAMA Human Rights/UN OHCHR, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013).
[179] Detainees 210, 212, 311, 312, 348, 350, 351, 355, 357 (2013) and detainees 45, 75, 138, 255, 260, 329, 330, 331, 383, 384 (2014).
[180] Detainees 212, 348, 350, 357 (2013) and detainees 45, 75, 255, 260, 329, 330, 331, 383, 384 (2014).
[181] Detainees 45, 255, 329, 331, 383, 384 (2014)
[182] Detainee 348 (2013) and detainees 75 and 255 (2014).

ANP Baghlan

"I was arrested by ANP and taken to the district headquarters. On the first night an ANP interrogator asked me about being a Talib and when I rejected that he punched me with his fist on the back of my head and slapped me once on my left ear. Then he beat me with a stick six or seven times on my back, neck and sides. I was screaming loudly, so the chief of police told the interrogator to stop and they took me to a cell. In ANP Pul-e-Khumri I was taken to the office of the Counter-Terrorism Unit at around 7 p.m. One police forced me to lie down; another bound my feet with his scarf and started beating on the soles of my feet with a stick to make me confess. I don't remember how many times I was beaten, but they beat me so hard they broke three sticks. I screamed and shouted loudly, but no one was there to help me. Initially I could feel the pain, but later I did not feel anything anymore and eventually I passed out. When I regained consciousness the officers took me to an underground room in the same building, where there were around ten people, all in civilian clothes. The officers who had beaten me ordered me to confess. I again told them that I was not a Talib. I was then beaten with a cable and plastic pipe but still I did not confess. However, when one of the officers called on others to take off my trousers I announced that I would confess." **Detainee 182, ANP Baghlan, March 2014**

UNAMA interviewed 23 people who had been detained at ANP Baghlan between February 2013 and December 2014.[183] ANP had arrested 18, ALP three and ANA two. Detainees were held by ANP Baghlan for an average of seven days, more than double the 72-hour legal limit.

Of the 23 persons interviewed, 12 detainees (or 52 per cent) provided detailed accounts of ANP officials subjecting them to interrogation methods amounting to torture or ill-treatment which UNAMA determined to be sufficiently credible and reliable. [184] Torture was used to extract confessions and six of the 12 detainees who experienced torture, eventually confessed.[185]

Detainees provided details of ANP personnel in Baghlan subjecting them to beatings on their bodies and also on the soles of their feet, as well as electric shocks and stress positions.

Four of the 23 persons detained were children under the age of 18 years and two were found to have been tortured or ill-treated during interrogation.[186]

Similar to Herat, UNAMA also noted a significant increase in the use torture and ill-treatment by the ANP in Baghlan in the current period among the detainees interviewed. In 2013, four of the ten detainees interviewed (40 per cent) who had been held by ANP Baghlan had been tortured or ill-treated. In 2014, eight of the 13 detainees interviewed (62 per cent) had been found to be subjected to such practices.

Sufficiently Credible and Reliable Incidents of Torture by ANP in 18 Other Provinces

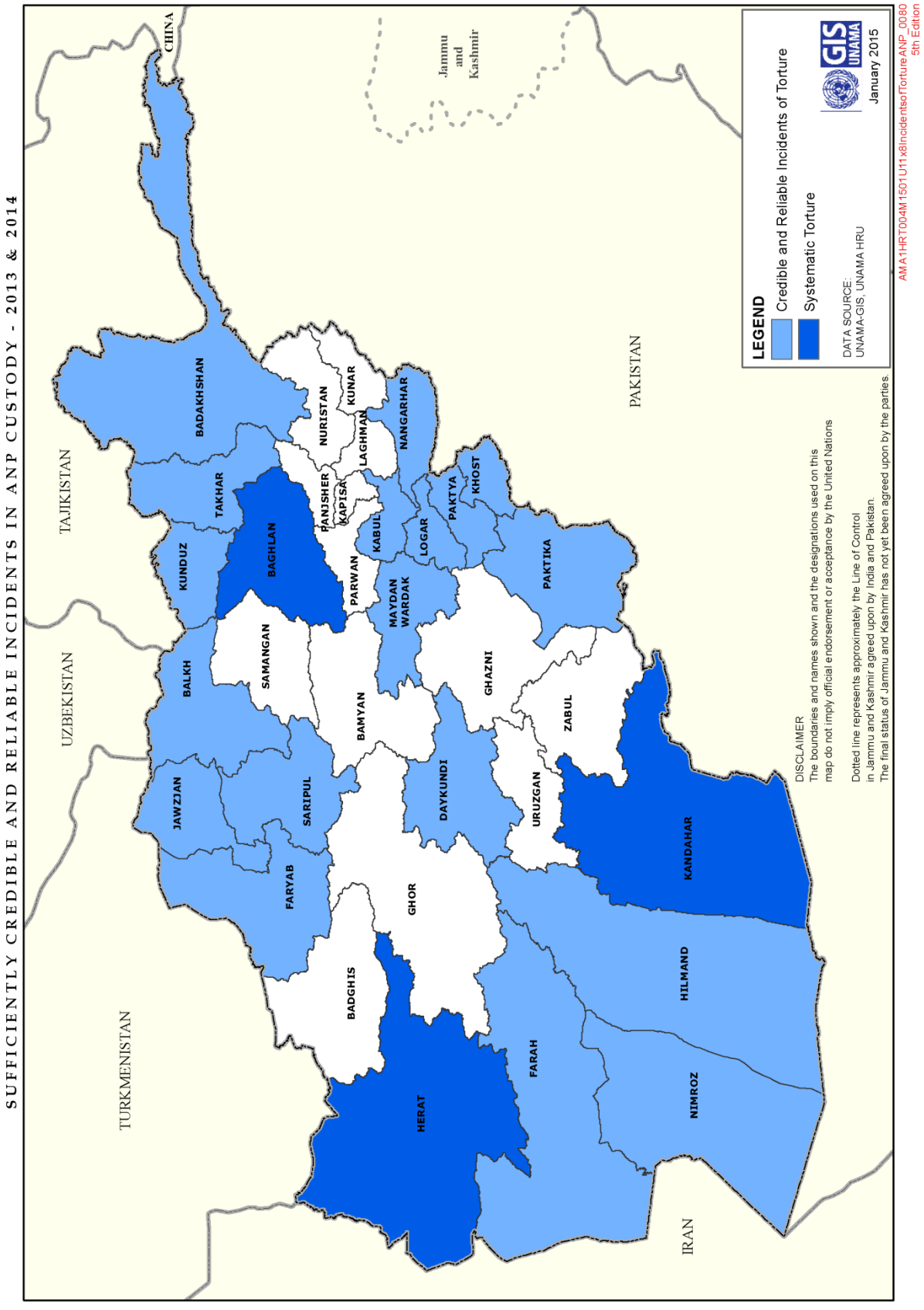
In addition to documenting the regular and prevalent use of torture in the provinces of Herat, Kandahar and Baghlan, UNAMA documented 49 sufficiently credible and reliable

[183] Detainees 101, 106, 178, 179, 180, 203, 204, 205, 284, 331 (2013) and detainees 49, 61, 62, 181, 182, 200, 242, 243, 244, 245, 270, 271, 319 (2014).
[184] Detainees 178, 179, 180, 331 (2013) and detainees 49, 61, 62, 181, 182, 244, 270, 319 (2014).
[185] Detainees 49, 62, 181, 182, 244, and 270 (2014)
[186] Detainee 180 (2013) and detainee 319 (2014).

incidents of torture by the ANP in 18 additional provinces: Badakshan, Balkh, Daykundi, Farah, Faryab, Helmand, Jawzjan, Kabul, Khost, Kunduz, Logar, Maydan Wardak, Nangarhar, Nimroz, Paktika, Paktya, Saripul and Takhar (see attached chart). Incidents of torture and ill-treatment were found to have occurred both at ANP provincial headquarters, ANP district facilities and in ANP *Hawza* facilities. Detainees described methods of torture that included beatings with cables and/or wooden sticks on the feet, beating with rifle butts and electric shocks.

Province of ANP/ANBP facility	Detainees interviewed	Detainees found to have been tortured and/or ill-treated
Badakhshan	26	1
Balkh	10	3
Daykundi	3	2
Farah	1	1
Faryab	13	1
Helmand	10	3
Jawzjan	11	2
Kabul	9	3
Khost	6	4
Kunduz	56	10
Logar	3	3
Maydan Wardak	1	1
Nangarhar	18	3
Nimroz	2	1
Paktika	19	3
Paktya	13	6
Saripul	3	1
Takhar	1	1
Total	**205**	**49**

Map 4: Sufficiently Credible and Reliable Incidents in ANP/ANBP Custody



VI. Treatment of Detainees by the Afghan Local Police

"I was arrested by ALP in Nad-e-Ali district while travelling on my motorbike and taken to the nearby ALP base where I spent three nights before being taken to the district capital, where I spent eight nights at ANP. During the first three days the ALP commander and three other ALPs beat me with plastic pipes on my back. Once the commander put a cloth around my neck and tried to choke me by forcing me to drink excessive amounts of water. They kept on accusing me of being a Talib. I said I am not, but write down whatever you want and I will fingerprint it." **Detainee 303, ALP Helmand, June 2014**

The Afghan Local Police (ALP)[187] are locally recruited militias operating under the authority of the Ministry of Interior involved in counter-insurgency activities in districts throughout Afghanistan. Although ALP may "hold" individuals temporarily as part of their mandate to *"conduct security missions in villages,"* ALP lack the legal authority to arrest and detain individuals and are required to promptly hand over any individual captured to ANP or NDS.[188]

Torture by Afghan Local Police

Between February 2013 and December 2014, UNAMA interviewed 42 detainees who had been held by ALP in 11 provinces, namely Badakhshan, Baghlan, Daykundi, Farah, Faryab, Helmand, Kapisa, Kunduz, Logar, Nangarhar and Paktika. Despite the lack of mandate to detain, the ALP kept detainees for an average of one day.

Of the 42 detainees held by ALP, UNAMA documented sufficiently credible and reliable evidence of torture and ill-treatment by ALP members of 18 detainees (43 per cent).[189] Of the 18 detainees, five detainees reported torture by ALP in Paktika, three each in Baghlan and Kunduz, two in Daykundi, and one each in Badakhshan, Farah, Faryab, Kapisa and Helmand provinces.

Detainees stated that ALP's main form of torture was severe beatings with pipes or cables on different parts of their bodies.

In addition, between February and December 2014, of 42 individuals who had been arrested by ALP, UNAMA documented 23 cases (55 per cent), of credible and reliable incidents of torture or ill-treatment at the moment of arrest.

The ALP Monitoring and Investigations Section within the MoI is the main oversight mechanism for the ALP.[190] According to the ALP Directorate, the section investigated more than 100 allegations of human rights violations and crimes by ALP members

[187] In August 2010, the Government of Afghanistan launched the Afghan Local Police (ALP) programme as a Ministry of Interior-led rural security initiative to protect communities from anti-Government elements through recruitment of local individuals into an armed force with limited security functions. At the district level, the ALP report to the district chief of police. Special Forces from the United States have had a mentoring role to ALP units, without any official supervisory role, by providing training and working with the ALP units for a limited duration before handing over responsibilities to conventional Afghan forces for further mentoring. See UNAMA *Protection of Civilians in Armed Conflict Mid-Year* and *Annual Reports*, 2010 to 2014 available at:
http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US.

[188] *Afghan Local Police Establishment Procedure* adopted August 2010 and adjusted 13 March 2014.

[189] Detainees 99, 109, 137, 180, 196, 254, 339, 345 (2013) and detainees 46, 47, 177, 196, 199, 284, 303, 318, 335, 336 (2014).

[190] See UNAMA's 2011-2013 Annual and Mid-Year *Reports on Protection of Civilians in Armed Conflict* for background on the ALP programme and human rights concerns with the programme at
http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US.

during 2013, referring 59 cases to military prosecutors at the provincial level.[191] The ALP Monitoring and Investigations Section did not track the progress of the cases referred to prosecutors in 2013 and could not provide statistics on associated convictions and/or suspensions. Lacking a permanent provincial-level presence, the Directorate relies on Ministry of Interior field missions to investigate serious violations which depend on provincial chiefs and the ANP's cooperation and goodwill to conduct their work.[192]

In 2014, the ALP Monitoring and Investigations Section investigated 68 allegations of crimes and human rights violations committed by ALP members, referring 64 to military prosecutors. Four ALP members were reportedly convicted and sentenced to prison terms with none for human rights violations and crimes committed against detainees.[193]

Torture and Extrajudicial Executions by ALP in Bala Buluk District, Farah Province

On 19 October 2013, in Bala Buluk district, Farah province, ALP detained five men accused of planting an IED that had killed three ALP members including the ALP commander. The ALP reportedly tortured the men to obtain confessions and then executed four of them. Those killed were between 17 and 18 years old. The only survivor was arrested and transferred to Farah provincial prison while the families of the victims fled the area fearing reprisals. Provincial authorities were unwilling or unable to take action and investigate the incident stating they did not want to destabilize local power arrangements and "start another conflict."[194]

Between November 2013 and May 2014, UNAMA met with the Farah ANP chief of police, primary ANP/military prosecutor in Farah, ANP appeals prosecutor in Herat, Farah provincial governor, the civil affairs team attached to the United States Special Forces operating in the western region in Herat, and the ALP/MoI directorate in Kabul. None provided information on any measures taken to investigate the case. Local authorities told UNAMA there was a widespread unwillingness to scrutinize ALP elements in the area given their role as local power brokers.[195]

In another example, UNAMA shared information with the Ministry of Interior regarding an ALP commander in Chahar Darah district, Kunduz province widely accused of beating and torturing several detainees – including a child – in his unofficial prison.[196]

In 2013, an investigation team from the ALP Directorate confirmed the allegations and handed the investigation report to the Kunduz provincial chief of police, who did not share the report with the local prosecutor. Only UNAMA's written report of the incident

[191] UNAMA meetings with ALP Directorate, 9 January 2014 and 4 August 2014, Ministry of Interior, Kabul.
[192] See UNAMA's *2013 Annual Report Protection of Civilians in Armed Conflict, available* at http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US.
[193] The crimes for which the ALP members were convicted included murder (of other ALP members and unspecified civilians), grievous bodily harm, robbery, theft and extortion. UNAMA meeting with ALP Directorate, 8 January 2015, Ministry of Interior, Kabul.
[194] UNAMA meetings with community representatives and provincial authorities, November 2013 through May 2014, Farah and Herat.
[195] Ibid.
[196] In a previous incident documented by UNAMA in 2012, the ALP commander of Chahar Darah had ordered an ALP subordinate to bite off part of a detainee's ear.

reached the Kunduz ANP/military prosecutor, who claimed security reasons prevented him from sending an investigative team to the area. Eventually, the commander was tried on a lesser charge of "abuse of authority" in 2013 and early 2014, and acquitted at both trial and appeal. He remains on active duty in Chahar Darah district.

Although UNAMA confirmed several cases of torture and ill-treatment of detainees and four extrajudicial executions by ALP – and raised the allegations with the Government, MoI and AGO authorities – UNAMA is not aware of any incidents of killings, torture or ill-treatment in which ALP members have been held fully accountable for their actions. Rather, authorities often justified inaction for not investigating ALP due to local power structures and lack of resources to conduct investigations.

VII. Treatment of Detainees by the Afghan National Army

"I was arrested from my home located in Mazar city by the Afghan National Army and directly taken to the 209 Shahin Army corps where I was held for 14 or 15 days. I was punched, and kicked. I was also made to stand without shoes four times in the snow each time for 10-15 minutes. They interrogated me and told me to confess that I am Taliban. I was given electric shocks two times. A string was tied on my toe and I got shocked. I was again asked whether I was a Taliban. Twice they twisted my genitals. I told them that I am not Taliban but they continued to torture me insisting that I am Taliban."

Detainee 188, ANA Mazar-i-Sharif, Balkh province, May 2014

UNAMA interviewed 58 detainees who had been detained by the Afghan National Army (ANA) prior to being transferred to NDS or ANP. Thirteen detainees were held in two ANA detention facilities at different times and two detainees in three ANA facilities. Detainees were held for an average of 35 days, far in excess of the 72-hour legal limit. Detainees were held in the Detention Facility in Parwan (DFIP) for an average of 75 days, while detainees in other ANA facilities were held for an average of five days.

UNAMA found sufficiently credible and reliable evidence of torture and or ill-treatment of 18 of the 58 detainees interviewed (31 per cent).[197]

Among the detainees held by the ANA, UNAMA interviewed 25 men who were held at the ANA-run DFIP which receives detainees captured by international military forces and transferred to Afghan authorities. None of these detainees reported torture or ill-treatment by the ANA.

Of the 33 detainees, 18 detainees (55 per cent) gave sufficiently credible and reliable evidence of torture or ill-treatment while detained in provincial and district ANA facilities. This may suggest possible regular and prevalent use of torture by the ANA at district and provincial facilities which requires follow-up and further investigation.

Four detainees interviewed who reported torture and or ill-treatment by the ANA were in detention facilities in Paktya province, three each in Farah and Kandahar, two each in Herat and Khost, and one each in Badghis, Balkh, Helmand and Kabul. Methods of torture reported included beatings with pipes and cables, suspension and punching.

UNAMA notes that allegations of torture or ill-treatment of detainees by the ANA should be referred to the ANA's Judge Advocate who is required to examine the detainee's claim. If the claim has cause, the case should be referred to a military prosecutor for further investigation and possible trial of the accused ANA officer.[198]

UNAMA is not aware of and has not been informed of any case where criminal or disciplinary actions were taken for allegations of torture by ANA personnel.[199] This lack of accountability was observed despite incidents of torture occurring in some ANA facilities; it constitutes a violation of the Government's legal obligations to investigate all allegations of torture *ex officio* and bring perpetrators to justice.

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[197] Detainees 11, 33, 39, 78, 85, 226, 232, 247, 266 305 (2013) and detainees 79, 88, 91, 92, 188, 222, 308, 327 (2014).

[198] *Military Criminal Procedure Code*, Official Gazette, 10 May 2012 (No. 1020). Military primary courts are located in all eight regional ANA headquarters of Afghanistan as well as ANA detention centres for ANA officers. The military appeal court and the Supreme Court both sit and hear cases in Kabul.

[199] The only information available to UNAMA on the prosecution of an ANA officer for beating a detainee dates from 2011.

VIII. Involvement of International Military Forces in the Capture, Arrest, Detention and Transfer of Detainees to Afghan Custody

"I was at home when I was arrested by Afghan Special Forces during a big search operation. I was blindfolded and taken to what I think it was a place called Mullah Omar's House. On the night of my arrest a US soldier took my biometric data. I was forced to stand outside for six or seven hours. The next day I was transferred to NDS. In my first interrogation I was beaten with a pipe on my back and neck. In my second and third interrogations I was not beaten but they threatened to rape, and kill me and then make my body disappear. I was afraid and agreed to confess I am a Taliban supporter."

Detainee 92, ANA and NDS Kandahar province, April 2014

ISAF's Detention Facility Certification Review Process

In October 2011, ISAF developed a six-phase plan to support the Afghan authorities in reforming their interrogation and detainee treatment practices.[200] The ISAF Commander at that time, General John R. Allen, had suspended transfer of detainees captured by international military forces, including all US 'campaign forces' serving in Afghanistan, to certain NDS and ANP facilities where reports of a consistent practice of torture of detainees had been identified. The plan involved frequent inspections of detention facilities, training of NDS and ANP detention facility personnel, including facility managers, investigators and detention area guards and follow up monitoring of facilities and interviews of detainees.[201]

ISAF's command structures also addressed allegations of torture or ill-treatment directly with the NDS Director and Minister of Interior.[202] UNAMA observed in its January 2013 report that in spite of significant efforts to address torture, incidents of torture and ill-treatment continued to occur across the country including in some facilities that ISAF had cleared for transfer.[203]

To address the persistence of torture in some NDS and ANP detention facilities, in January 2013, ISAF introduced a new detention facility certification review process through which ISAF detainees would only be transferred to facilities certified by the Commander of ISAF. In addition, ISAF stated it would take all reasonable measures to

[200] The international military presence in Afghanistan up to the end of 2014 was composed of ISAF/NATO forces, which operated under a UN Chapter VII peace enforcement mandate, and the US Forces Afghanistan (USFOR-A) command structure for Operation Enduring Freedom (OEF). Both chains of command were controlled by the same dual-hatted individual - COMISAF/ Commander, USFOR-A. *Journal of Military and Strategic Studies*, vol. 14, issues 3 & 4, 2012, available at www.jmss.org/jmss/index.php/jmss/article/viewFile/493/490.

[201] The suspension of transfer of detainees was ordered pursuant to a FRAGO (fragmentary order used by the US military to send timely changes of existing orders to subordinate and supporting commanders while providing notification to higher and adjacent commands) dated 12 July 2011. *UNAMA: Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011), p. 6.

[202] Letter of Commander ISAF General John R. Allen to UNAMA SRSG Jan Kubis dated 11 January 2013 attached as Annex V to UNAMA's report *Treatment of Conflict Related Detainees in Afghan Custody: One Year On* (January 2013).

[203] For details, see UNAMA's report *Treatment of Conflict Related Detainees in Afghan Custody: One Year On* (January 2013), pp. 83-88.

ensure Afghan detainees captured from joint operations were transferred to facilities certified by the Commander of ISAF.[204]

As part of the new process, ISAF established a quarterly detention facility certification review process of three phases. Phase 1 involved regional ISAF commanders nominating facilities for certification or extension of certification. Regional commands submitted evidence demonstrating measures they had taken – including facility inspections and interviews with detainees – that reasonably assured them detainees would not be tortured or abused in the Afghan detention facility nominated.

In Phase 2, a 'primary' working group,[205] involving representatives from ISAF and focal points from troop contributing countries, reviewed quarterly nominations from regional commands and evaluated the data provided to justify their nomination.[206] Following that review, a second working group with extended membership – including human rights organizations and UNAMA – reviewed the data from regional commanders and information provided and conclusions reached of the 'Primary Detentions Working Group.'[207]

At the end of these review processes, the final recommendations and relevant information were reviewed, compiled and forwarded to the Commander of ISAF for a final decision. Should new information concerning the alleged use of torture in a certified facility come to light, the Commander of ISAF could review or revoke a certification decision at any time. In the absence of such information, a regular review of the certification process, including the opportunity for ISAF regional commanders to nominate new facilities was envisioned initially to occur within 90 days of the certification decision. ISAF later extended the regular review period to 180 days.[208] This process came to an end as ISAF neared completion of its mission and transition began to

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[204] Fragmentary Order (FRAGO) 009-2013 (2013) paragraph (6) (a) i: *"ISAF forces will take all reasonable measures to ensure that Afghan detainees captured during combined operations are transferred to, and maintained in, detention facilities certified by COMISAF."*

[205] The Primary Detentions Working Group (PDWG) included international representatives of ISAF and allied stakeholder detention monitoring teams to jointly review certification on requests and to compare those requests to information that can be classified up to NATO/ISAF SECRET. To ISAF this joint review was stated to facilitate timely sharing of information and observations on facilities to ensure that all measures have been taken to develop reasonable assurance that detainees transferred to these facilities were not subject to abuse. After recommendations are reviewed, the PDWG would either concur, request additional information or non-concur with these recommendations. The PDWG comprised Provost Marshals, planners and legal advisors from ISAF, ISAF Joint Command (IJC) and NATO Special Operations Component Command (NSOCC-A), Headquarters US Forces for Afghanistan (HQ USFOR-A) and Combined Joint Interagency Task Force-435 (TF-435). Embassies with active detention monitoring teams were asked to participate (United States, United Kingdom, Canada, Australia, New Zealand and Denmark).

[206] Regional commanders were required to provide information that detailed the basis for their nomination and their conclusion that torture and ill-treatment did not occur in the facility in question.

[207] The Extended Detentions Working Group (EDWG) was an information-sharing forum to allow international organizations, human rights institutions and representatives of oversight offices within the ANSF to exchange data on detention facilities nominated for certification. ISAF also shared non-classified information discussed during deliberations of the Primary Detentions Working Group. Any information considered relevant to the final certification decision for a nominated detention facility was summarized or included within materials forwarded to the Commander of ISAF. All members of the Primary Detentions Working Group were invited to participate in the extended working group as well as representatives from the Afghanistan Independent Human Rights Commission, UNAMA, NDS and MoI.

[208] In December 2013, based on its decreased operational reach, ISAF Commander at the time, General Joseph F. Dunford, signed off on a change in the duration of certification for an ISAF approved and certified facility from 90 to 180 days. EDWG meeting, 23 December 2013, Kabul.

the post-2014 NATO assistance, training and advisory mission *Resolute Support* which as of 1 January 2015 no longer gives international military forces the right to inspect Afghan detention facilities.[209]

Under its detention facility review certification process, ISAF made significant efforts to improve and focus its detention facility inspection review. UNAMA observed that ISAF's process was largely effective at preventing transfers of detainees to Afghan facilities where torture was a concern together with other training and inspection measures. However, in 2013 UNAMA continued to document some incidents of torture of detainees ISAF had transferred to facilities it had not certified or which were not part of the certification process and some incidents of torture in certified facilities. In 2014, UNAMA did not document incidents of detainees experiencing torture after their transfer to Afghan custody.

Between February 2013 and December 2014, UNAMA interviewed 71 detainees who had been captured by international military forces or other (foreign) government agencies acting alone or together with Afghan security forces and transferred to NDS, ANA or ANP custody, or by Afghan forces in operations that had some international military involvement.[210]

Thirty-six[211] of the 71 detainees reported being captured by international forces alone or by international forces leading a joint operation with Afghan forces. Of these 36 detainees, 33 identified the foreign forces involved as US and three as British.[212]

Another 35 of the 71 detainees stated they had been arrested by Afghan forces during operations which had international military support (e.g. air transport), or that international military was involved at some stage during their detention, for example to collect biometric data or interrogate them.

Treatment of Detainees by International Military Forces

Of the 36 detainees captured by international forces acting alone or leading a joint operation, 31 reported they were initially detained at an international military facility at the provincial level (detention periods ranging from a few hours to several days), three reported being taken directly to a provincial NDS facility and two detainees could not identify their initial place of detention.

Of the 31 detainees initially detained at an international military facility, 15 reported being subsequently transferred to the US-run Detention Facility in Parwan (DFIP)[213]

[209] The most recent detention facility ISAF certified was ANA Shorabak in Helmand province in August/September 2014. UNAMA meeting with ISAF, 30 November 2014, Kabul.

[210] Detainees 32, 33, 85, 99, 101, 106, 109, 112, 137, 144, 151, 189, 190, 191, 206, 207, 216, 217, 218, 219, 227, 236, 242, 243, 246, 256, 291, 292, 299, 301, 371, 400, 416 (2013) and detainees 12, 13, 15, 17, 56, 92, 97, 98, 99, 130, 131, 139, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 171, 174, 196, 209, 222, 234, 236, 275, 279, 280, 282, 343, 371, 372 (2014).

[211] Detainees 32, 33, 85, 99, 101, 106, 109, 112, 137, 144, 151, 189, 190, 191, 206, 207, 216, 217, 218, 219, 227, 236, 242, 243, 246 (2013) and detainees 56, 97, 98, 99, 139, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 209 (2014).

[212] UNAMA's interviewers were satisfied with the accuracy of the detainees' descriptions, identities and accounts of the party/armed force that had arrested and detained them.

[213] The Detention Facility in Parwan (DFIP) comprises two separate detention facilities, one run by the US (known locally as "*Toor* Jail" or "Black Jail") and the other administered by the ANA. On 9 March 2012, the Governments of the United States and Afghanistan signed a Memorandum of Understanding reaffirming the transfer of Afghan nationals detained at US-run Detention Facility in Parwan to Afghan control. On 23 February 2014, former President Karzai issued Presidential Decree No. 139 reiterating that no foreign

(known among detainees as '*Toor* Jail' or 'Black Jail'), eight reported being subsequently transferred to a provincial NDS facility, five detainees reported being transferred to the ANA-run DFIP; two detainees were transferred to ANP, and one detainee reported being transferred to a second international military facility at the provincial level (Helmand). The two detainees who were unable to specify their initial place of detention identified the US-run DFIP as their second place of detention.

Of the 31 detainees initially detained at an international military facility, UNAMA found sufficiently credible and reliable evidence of two[214] detainees experiencing torture and seven[215] being subjected to ill-treatment while in international forces' custody and prior to being handed over to Afghan forces. Three of these detainees were children under 18 years old at the time of arrest.[216]

Of the two detainees who provided credible and reliable accounts of torture, one was captured and interrogated in Maydan Wardak province in September 2013, while the other was captured and detained in Baghlan province in October 2013. The described forms of torture included repeated beatings and threats to kill during interrogation with detainees accused of being Taliban members.

Of the seven detainees who were subjected to ill-treatment, two detainees reported being subjected to sleep deprivation in the US-run DFIP, with one detainee claiming he received no food and only water for days.[217] Of the three detainees arrested and detained in Logar, one described being beaten at arrest and two were put in stress positions while detained at the US Sheng Camp in Logar; two detainees stated being ill-treated at the moment of arrest, one by an Afghan interpreter and the other by ANA members in the presence of international military forces. The described forms of ill-treatment included multiple slaps and kicks.

According to the Resolute Support mission, the allegations of torture and ill-treatment have been the subject of several joint and national inquiries and investigations by ISAF, the Government and US authorities, and no evidence to link the allegations with international military forces was found.[218]

UNAMA also found that five detainees who had been arrested by the Khost Protection Forces (KPF) together with international military forces and detained at the US military base in Khost (CIA Base Camp Chapman) were subjected to ill-treatment by the US-created and funded local security force.[219]

Treatment of Detainees in Afghan Custody after Transfer by International Military Forces

Of the 36 detainees captured by international forces acting alone or leading a joint operation, 22 were transferred to Afghan facilities certified by ISAF at the time of transfer; four detainees were transferred to Afghan facilities that had not been certified at the time of transfer (NDS Khost, March 2013, and DFIP, June and July 2013); and ten

country has the right to arrest or detain in Afghanistan. Decree No. 139 further stipulated the transfer of DFIP from the Afghan National Army to the Ministry of Interior but without specifying a clear timeframe and deadline.

[214] Detainees 112 and 206 (2013)

[215] Detainees 97, 98, 151, 155, 158, 162, 209 (2014).

[216] Detainee 112 (2013) and detainees 97, 151 (2014).

[217] Detainee 151 (2014).

[218] UNAMA meeting with Resolute Support officials, 22 February 2015, Kabul.

[219] Detainee 291, 292, 299 (2013) and detainees 275 and 282 (2014).

detainees were transferred to Afghan facilities that were not part of ISAF's certification process (NDS Baghlan, NDS Maydan Wardak, NDS Farah and ANP Logar).[220]

UNAMA found sufficiently credible and reliable evidence that two of the 36 detainees captured by international forces and directly transferred to Afghan custody, were subjected to torture at NDS Farah in September and October 2013.[221]

In 2014 UNAMA continued to interview detainees who had been arrested with the involvement of international forces and did not document incidents of torture or ill-treatment of detainees in Afghan custody following their arrest and transfer by international forces.

Treatment of Detainees Arrested by Afghan Forces in Operations with Support of International Military Forces

Thirty-five detainees stated they had been arrested by Afghan forces during operations that had international military support: international forces were either present at the moment of arrest, detainees had been temporarily held at an international military facility, international military forces had interrogated detainees and/or international military forces had processed the detainee's biometric identification.

Of these 35 detainees UNAMA found sufficiently credible and reliable evidence that 16 (46 percent), were subjected to torture and or ill-treatment by Afghan forces.[222]

UNAMA found that following an Afghan forces' operation that had international military support, nine detainees experienced torture or ill-treatment by NDS: one in NDS Department 124[223], two in NDS Khost[224], one in NDS Kunar[225], one in NDS Farah[226], one in NDS Kandahar[227], one in NDS Kunduz[228], and two by unidentified NDS personnel or in an unspecified NDS facility in Kabul.[229]

NDS Department 124[230], NDS Kandahar[231] and NDS Kunduz[232] were not certified facilities meaning that international forces were not authorized to transfer detainees to those facilities. The incidents of torture found at NDS Khost and NDS Kunar occurred after these facilities had been certified on 22 May 2013 which should have triggered a

[220] At those times, NDS Baghlan (March, April and December 2013), NDS Maydan Wardak (September 2013), NDS Farah (September and October 2013) and ANP Logar (April 2014) were not suspended locations under the previous ISAF detention inspection programme.
[221] Detainees 236 and 256 (2013).
[222] Detainees 33, 85, 99, 109, 137, 144, 227, 371, 400, 416 (2013) and detainees 92, 196, 222, 343, 371, 372 (2014).
[223] Detainee 144, May 2013.
[224] Detainee 299 (November 2013) and detainee 282 (June 2014).
[225] Detainee 371, December 2013.
[226] Detainee 227, September 2013.
[227] Detainee 92, April 2014.
[228] Detainee 343, September 2014.
[229] Detainees 371 and 372 (December 2014).
[230] ISAF suspended transfer of detainees to NDS Department 124 on 3 February 2013 and after its review process granted it certification on 5 May 2013. Detainee 144 was subjected to torture in NDS Department 124 on 3 and 4 May 2013. On 22 May 2013, ISAF de-certified NDS 124 and once again suspended transfers to this facility.
[231] ISAF suspended transfer of detainees to NDS Kandahar in July 2011 and re-iterated this suspension on 3 February 2013. Detainee 92 was subjected to torture in NDS Kandahar in April 2014.
[232] Transfers to NDS Kunduz were suspended on 3 February 2013; this facility had not been part of a previous certification process.

review of certification for transfer of detainees. NDS Farah was not part of the certification process.

Seven detainees were found to have been tortured and or ill-treated by ANA (one each in Herat, Kabul, Khost, Kunduz and Logar, and two in Kandahar[233]), four detainees by ALP (two each in Baghlan and Paktika[234]), one detainee by ANP in Zheray district of Kandahar[235], and one detainee experienced torture by ANA or ANP in Farah without being able to identify the security force.[236] Six detainees reported being tortured by two Afghan security forces at different periods of their detention.[237]

NDS Kunar (Asadabad), NDS Nangarhar (Jalalabad), NDS Khost, NDS Helmand (Lashkar Gah), Helmand Central Prison, ANDF Parwan and ANA Shorabak (Helmand) were facilities certified for transfers by ISAF in 2013 and 2014. Under the 180-day certification review rule all certifications except for ANA Shorabak would have expired by mid-2014.

ISAF's combat operations ended on 31 December 2014 with the end of the current ISAF/NATO mandate. ISAF/NATO's follow-on mission *Resolute Support* of training, assistance and advice to Afghan forces does not envision a specific role for international forces in monitoring detainees captured in Afghan security forces' operations. According to ISAF, the only international forces which will be directly involved in operations as advisors will be Special Forces' operating on a bilateral basis outside the *Resolute Support* mandate. UNAMA highlights that international law requires all international and foreign intelligence forces – even if they only train and advise – to monitor the treatment of detainees in operations which they accompany, and to include efforts to prevent the use of torture and ill-treatment in their training, advisory and assistance tasks.

[233] Detainees 33, 85, 416 (2013) and detainees 92, 222, 343, 371 (2014).
[234] Detainees 99, 109, 137 (2013) and detainee 196 (2014).
[235] Detainee 400 (2013).
[236] Detainee 227 (2013).
[237] Detainees 227 and 299 (2013) and detainees 92, 282, 343, 371 (2014).

IX. Assessment of National Capacity to Address Torture and Ill-Treatment, Accountability and Implementation of Presidential Decree 129

"I was arrested by the Afghan National Army because I was in possession of a radio. They accused me of affiliation with the Taliban. After some time at an ANA base I was at NDS in [the provincial capital] for six weeks. For three nights, ANA soldiers applied electric shocks to my knees. They also set a dog on me and it bit me. At NDS I was tortured for five consecutive nights, about three hours each night: NDS officers choked me, forced me to drink excessive amounts of water and beat me with a cable on my back, waist and feet. Three NDS officers were involved, including the two interrogators XX and YY. The primary court sentenced me to six years in prison. I told the judge that I was tortured, but the judge ignored me, as he ignored my lawyer, who was present during the trial."

Detainee 308, NDS, May and June 2014

Overview

This section presents a comprehensive analysis of the Government's efforts to address torture and ill-treatment of conflict-related detainees in MoI and NDS detention facilities.

Following a Presidential fact-finding delegation established in January 2013 which documented 136 cases of torture and ill-treatment among the 284 detainees interviewed, former President Karzai issued Presidential Decree129 to address torture.[238] The Decree encompassed 12 orders to Government agencies and ministries to take specific measures to address torture, ill-treatment and arbitrary detention and availability of medical treatment and legal defence or legal aid services for detainees.

UNAMA's study focused on five key orders, namely Order 1 (accountability for the use of torture); Order 3 (capacity-building); Orders 4 and 5 (access to legal aid); and Order 6 (provision of medical treatment).

UNAMA's main findings are:

Lack of will or capacity by the AGO to conduct meaningful prosecutions:

- Three AGO delegations in 2013 reviewed 133 allegations of torture in Herat, Kabul and Kandahar. Of these, 78 were dismissed and 55 referred for investigation to the appropriate NDS/internal and external security prosecutor or ANP/military prosecutor. Following preliminary investigations all cases were closed and none referred for trial.
- Investigations were not prompt, impartial, independent and thorough, contributing to an overall lack of accountability for incidents of torture.
- AGO delegations lacked independence and impartiality, with prosecutors tasked to investigate allegations of torture in cases where they were the prosecutor of record in the detainee's alleged conflict-related offence with a clear conflict of interest.
- Investigations lacked clear methodology and standards of proof, relied exclusively on visible physical marks as proof of torture and placed the burden of proof of torture on the accused.

[238] See Annex IV for a copy of Decree 129.

Inadequate and ineffective MoI and NDS internal investigations and oversight mechanisms:

- MoI internal investigations were few and inadequate, with cases of torture solved informally sometimes through local *Jirgas*.
- Overlap in mandates and activities of the MoI's Human Rights Department and Inspectorate General, with inefficient recording, referral and follow-up mechanisms on allegations of torture.
- Minimal accountability and transparency of NDS internal investigations, with only one known case of two NDS officers in Uruzgan sentenced to eight months imprisonment for using torture.
- NDS human rights officers were unable to prevent and address torture in all situations due to lack of authority to refer cases for investigation, lack of capacity and lack of independence (reporting lines to senior NDS officials).

Preventive measures and capacity building were insufficient to effectively enforce the prohibition of torture:

- Issuance of policy directives, guidelines and instructions although welcome were not uniformly distributed, explained and enforced.
- Training, inspections and directives were not enough to end and prevent torture. For example, ISAF carried out and supported such activities but rarely received responses from the Government of Afghanistan on accountability of perpetrators.
- Training efforts compartmentalized human rights instead of mainstreaming them and developing practical police skills that fully integrated national and international human rights and legal obligations in all police activities.
- Monitoring of detention facilities by internal AGO, MoI and NDS staff was ineffective as detainees were reluctant to raise allegations of torture for fear of reprisals and staff was unwilling to report against colleagues.

Limited access of detainees to defence lawyers primarily during the initial phase of pre-trial detention and during investigation:

- Detainees' access to defence layers immediately after arrest and during initial detention and investigations did not improve. Defence lawyers continued to have restricted access to detention facilities and conflict-related detainees, in particular during interrogation and investigation.
- Sustainable funding for legal aid remained an issue with limited availability of licensed defence counsel particularly in remote and insecure provinces.

Insufficient provision of medical treatment for detainees:

- Despite efforts by the Government to improve access to medical care in detention facilities, UNAMA found that 205 (one fourth) of the 790 detainees interviewed did not have access to medical treatment, including at least 16 who had sustained injuries from torture.
- Medical personnel at detention facilities were not functionally independent and therefore could not be relied on to document and report incidents of torture.
- Continuing lack of standard operating procedures to conduct mandatory medical checks of detainees when taken into custody and before and after interrogation.

Regarding the important monitoring function of the Office of the Police Ombudsman of the Afghanistan Independent Human Rights Commission, UNAMA noted significant weaknesses in the recording of cases of torture as well as weak referral and follow-up of investigations and prosecutions of cases of torture with the MoI and the AGO. Difficulties in accessing ANP facilities and fear of reprisals against detainees who alleged torture also negatively impacted the independence of the Ombudsman's work.

Background and Context: Presidential Decree 129 and President's Fact-Finding Delegation on Torture (January to February 2013)

Following the release of UNAMA's report *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* in January 2013, former President Karzai issued Decree no. 6672 on 22 January 2013, which established a fact-finding delegation to investigate the existence of torture, ill-treatment and other serious human rights violations against detainees in MoI and NDS detention facilities and to identify alleged perpetrators.[239] Former President Karzai appointed a delegation of Afghan legal experts to conduct visits and interviews in detention facilities in Herat, Kabul and Kandahar in January and February 2013.

In a press conference on 11 February 2013, the delegation issued a statement confirming that 136 of 284 detainees they interviewed in Kabul, Kandahar and Herat had experienced torture and ill-treatment either at the time of their arrest and/or during their interrogation. The delegation stated that it did not find systematic torture, secret detention places or sexual abuse as a form of torture.[240] The delegation highlighted that detainees were frequently held in arbitrary detention, because they were held beyond the legal time limit or had completed their sentences and were not released. The delegation made 11 recommendations to address ill-treatment and torture in detention facilities.[241]

Former President Karzai, after receiving the delegation's report, issued Presidential Decree 129 on 16 February 2013.[242] The decree was based on the 11 targeted

[239] On 13 March 2013, President Karzai, at the inauguration ceremony of the opening of Parliament, referred to UNAMA's January 2013 detention report and the President's fact-finding delegation: *"When the UN published a report about torture in Afghanistan's prisons, I did not believe it. I did not believe it because I have been in touch with the responsible bodies on a daily basis in this respect and have given directions to them. I rejected it. I then thought about it and said what if it is true. We tasked the vice-chairman of the Commission for Oversight and Implementation of the Constitution, Mr. Adalatkhwa and Gul Rahman Qazi, to go with a delegation from all bodies of the Afghan Government and investigate the issue. They investigated it. The result of the investigation does not back up what the UN said. However the investigation showed that people are harassed by foreign forces and their colleagues, who are our forces, when they are arrested. There is an explicit order that this should be ended and cameras should be installed in interrogation areas to prevent insult and harassment. I hope the Afghan State and Government have taken serious actions in this respect in accordance with what I have said in my decree and will submit a detailed report to myself and the National Assembly."* Extract from President Karzai's speech, 13 March 2013, translated from National Afghanistan TV, Kabul, in Dari and Pashto.

[240] A Government official informed UNAMA he knew of at least four unofficial NDS detention facilities in Kandahar city and specified the city districts where three of the facilities were located. UNAMA interviewed several former detainees who said they were detained on the orders of the provincial police chief for several months in a secret ANP detention facility in Kandahar city. The location was described, its commander named and the *Hawza* identified. UNAMA interviews with sources kept confidential for security reasons, October and November 2014, Kandahar.

[241] See Annex III for an extract from the President's fact-finding delegation's press conference on 11 February 2013, translation by UNAMA.

[242] See Annex IV of this report for a copy of Decree 129.

recommendations in the delegation's report and ordered Government agencies and ministries, namely the NDS, MoI, AGO, Supreme Court of Afghanistan, MoJ and the Ministry of Public Health (MoPH), to take specific measures to address torture, ill-treatment and arbitrary detention in Afghan detention facilities, and to ensure availability of proper medical treatment and legal services for detainees.

Key Orders of Presidential Decree 129 and UNAMA Indicators of Implementation

From February 2013 to December 2014, UNAMA observed the Government's implementation of key orders to address torture and other deterrents to its future use mandated in the Decree. UNAMA's study focused on the accountability and prevention framework outlined in five of the orders: order 1 (*Prosecutions, Internal Oversight Mechanisms and Complaints*), in order 3 (*Prohibition of Torture, Preventative Measures and Capacity Building*), in orders 4 and 5 (*Access to Defence Lawyers and Legal Aid Providers* and *Increase of Legal Aid to Detainees by the MoJ* respectively) and in order 6 (*Provision of Medical Treatment for Detainees*).

UNAMA used indicators to assist in defining necessary actions and interventions needed to make meaningful progress in addressing issues of accountability, prevention and transparency to prevent torture.[243] These indicators were applied as the basis for UNAMA's assessment of the Government's implementation of orders in the decree.

These indicators are also intended to be instructive and aspirational based on international best practice to assist the Government and its partners in measuring progress in addressing torture and ill-treatment.

Based on information received from NDS and ANP and UNAMA's observation over the 23-month period, NDS and ANP actions assessed in line with the indicators, showed minimal accountability for reported torture and limited efforts to prevent torture and ill-treatment in the future pursuant to Order 1 of Presidential Decree 129. Some measures were taken to implement Order 3 related to capacity building and preventive efforts and Orders 4, 5 and 6 on detainees' access to defence counsel and medical treatment. The attached chart provides details on actions taken measured against the indicators.

UNAMA's Indicators of Implementation of Presidential Decree 129	
Indicators	Results[244]
Order 1 "Prosecutions, Internal Oversight Mechanisms, Complaints, Prevention"	
Number of sufficiently reliable and credible cases of torture by ANP, ALP, ABP, ANA and NDS.	Of the 790 detainees interviewed, UNAMA found sufficiently credible and reliable evidence that 278 detainees, or 35 percent, had been tortured and or ill-treated in Afghan custody, down 14 percent from the previous

[243] UNAMA used basic indicators drawn from the United Nations Rule of Law Indicators endorsed by the UN Department of Peacekeeping Operations and the UN Office of the High Commissioner for Human Rights in 2011, available at www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf.

[244] UNAMA observed implementation of Presidential Decree 129 between February 2013 and December 2014 through UNAMA's extensive field monitoring, multiple meetings with Government authorities and other stakeholders, and through analysis of Government progress reports and response letters to UNAMA's requests for information. See *Methodology* section of this report.

	period.
Number of investigations of alleged perpetrators of torture conducted by the AGO, compared to the number of torture allegations made.	The AGO delegations reviewed 133 allegations of torture. Of the 133 allegations, 78 were dismissed or closed and 55 were referred for investigation and prosecution none of which were referred for indictment and trial.
Number of prosecutions for torture that resulted in convictions, compared to the number of torture allegations made.	One prosecution of two NDS officers in Uruzgan province.[245]
Instructions issued to prosecutors to conduct regular monitoring to identify cases of torture and ill-treatment.	None to UNAMA's knowledge.
Number of formal investigations of alleged torture or ill-treatment by staff resulting in disciplinary action by ANP and NDS.	None to UNAMA's knowledge.
Number of dismissals/suspensions of alleged perpetrators of torture and ill-treatment following internal disciplinary processes.	None to UNAMA's knowledge.
Strengthened independence, coherence and coordination of internal oversight mechanisms that promptly respond and investigate to incidents of torture.	UNAMA has not observed increased independence, coherence and coordination of internal oversight mechanisms.
Independent and confidential complaints mechanisms for detainees that ensure protection from reprisals.	Initiatives to establish an external, independent oversight and investigative body to receive complaints about the Afghan National Police have made little progress.
Number of deaths in custody referred for criminal investigation.	One case in ANP Kandahar.[246]
Number of allegations of torture or ill-treatment filed by detainees.	UNAMA recorded 11 complaints filed by detainees: four with the prosecutor, four with the staff of the detention facility, two with the judge and one with a doctor. No action by authorities was documented except in one case where the detainee received medical treatment.
Order 3 "Prohibition of Torture, Preventive Measures and Capacity Building"	
MoI and NDS issuance of written orders outlining the absolute prohibition of torture and distribution to directors of detention facilities and police investigation units/NDS staff at all levels (national, provincial and district.	Mixed – information provided to UNAMA indicated that while a number of orders were issued, distribution across the ANP and NDS was uneven.

[245] As noted previously, this case was not part of the 133 cases reviewed by the AGO delegations.
[246] On 10 May 2014, a 23-year old man was found dead while in custody of ANP Kandahar *Hawza* 10. On 8 September 2014, UNAMA was informed that three police officers had been arrested and were in pre-trial detention. On 8 November 2014, according to information provided to UNAMA, the military court had sent the case back to the ANP/military prosecutor for additional investigations.

Adequate standard operating procedures to record detainees' chain of custody, including during interrogation, are developed, disseminated and implemented.	UNAMA has not observed changes to standard operating procedures relating to the management of detainees in custody.
Access to conduct visits to detention facilities granted to human rights organizations.	UNAMA observed some improvements except in Kandahar facilities where access was limited.
Type, quantity and quality of training sessions on torture and interrogation topics that resulted in increased awareness of ANP/NDS officers on the absolute prohibition of torture at all times.	Information provided to UNAMA indicates that dozens of trainings were conducted for NDS and ANP officers. UNAMA could not obtain detailed information on the type and quality of training, but noted an increased awareness of the prohibition of torture among these officials.
Orders 4 and 5 "Access to Defence Lawyers and Legal Aid Providers and Increase of Legal Aid to Detainees"	
Existence of a standardized mechanism for contacting defence lawyers immediately after arrest to assist during interrogation of detainees and throughout criminal investigations.	No standardized mechanism has been created.
Improved access of defence lawyers to detention facilities.	UNAMA observed some improvements, except in Kandahar.
Number of detainees with increased awareness on benefits of legal representation.	UNAMA did not observe an increase in awareness by detainees of their right or need for legal representation.
Increased percentage of detainees legally represented by defence lawyers of their choice or legal aid professionals during interrogation, including in volatile and remote provinces.	In August 2013, the Ministry of Justice signed a MoU with UNDP and the AIBA to provide free defence counsel services to detainees, including women and children. The Legal Aid Grant Facility started taking up cases in March 2014.
Increased number of defence lawyers able to represent detainees during interrogation in volatile and remote provinces.	UNAMA observed that in many remote and volatile provinces there were no defence lawyers available to detainees, e.g. in Khost, Nuristan, Paktika, Zabul and Uruzgan.
Number of torture cases brought for investigation and prosecution by defence lawyers.	One in Herat and one in Helmand, both dismissed by the presiding judges.[247]
Order 6 "Provision of Medical Treatment for Detainees"	
Availability and access to medical treatment by detainees upon request.	UNAMA noted efforts by the Government to improve access to medical care in detention facilities.[248]

[247] On 19 May 2014, a defence lawyer asked the Herat Primary Court to have a forensic team examine a detainee who had alleged tortured while in Herat ANP custody between 2 and 5 April 2014, and challenged the legality of the allegedly coerced confession. The court dismissed the requests and no investigation was initiated.

Medical documentation of injuries/conditions linked to ill-treatment and torture in use.	With exception of one case in Paktya province in May 2014, UNAMA did not observe an increase in documentation of torture related-injuries by medical professionals.
Systematic use of medical services to document the physical and mental condition of detainees upon arrest and transfer to detention centres.	UNAMA did not observe systematic documentation by medical services of the condition of detainees on arrest or transfer.
Increased use of standardized forms and procedures for provision of medical treatment, including a space assigned to document torture completed truthfully and securely maintained.	UNAMA observed that medical services were often not provided in an independent manner that respected patient-doctor confidentiality. No increase in the use of standardized forms was noted.
Medical practitioners increasingly able to refer torture cases/deaths in custody for investigation.	UNAMA did not observe an increase in medical practitioners' ability to refer alleged cases of torture or ill-treatment for criminal investigation.

The following sections provide in-depth observation and analysis of the Government's implementation of the five key orders of Presidential Decree 129.

ORDER 1: Accountability for the Use of Torture

"*The Attorney General of the Government is in charge of prosecuting the violators of Article 51 of the Law on Prisons and Detention Centers in light of the findings of the delegation's report which has reported torture and mistreatment of the detainees and prisoners, and to prevent any torture, mistreatment and conviction of any innocent detainee in the future.*"[249]

"The NDS arrested six people and held them at the NDS district facility. Three of them were beaten until they confessed. Afterwards two of the three were executed. The NDS provincial prosecutor's office sent letters to the provincial NDS Director and to the AGO in Kabul to investigate the case but the provincial NDS Director did not support the initiative and there has been no reply from Kabul. The primary court sentenced two defendants to prison and acquitted one. The fourth suspect is awaiting trial. The primary court ordered an investigation into the death of the two individuals but no action has been taken. The case is now in the appeal court and if the judge again requests an investigation we (the NDS provincial prosecutor's office) will evaluate whether the new provincial NDS Director will allow it to proceed. I will continue to follow this case. Two people were killed illegally. It is not only us, but the local people and 90 percent of the NDS want these people to be stopped." **Internal and External Security/NDS Prosecutor, XX province, 2014**[250]

[248] For example, between February and December 2014 of the 56 detainees interviewed by UNAMA who had injuries resulting from torture or ill-treatment almost half (25 detainees) reported having had access to medical treatment.

[249] Order 1 of Presidential Decree 129.

[250] All details have been kept confidential and anonymous for security reasons. Internal and external security/NDS prosecutor (often shortened to "NDS Prosecutor") is the commonly used term for AGO prosecutors responsible for investigating and prosecuting violations of the *Law on the Internal and External Security of Afghanistan*, the core basis of the NDS mandate.

Overview

Order 1 of Presidential Decree 129 appeared to be aimed at creating a deterrent to the use of torture. It explicitly restates the AGO's obligation to prosecute perpetrators of torture and to prevent the use of torture in the future. The Decree tasked the AGO with preparing regular (every three months) progress reports on measures taken to implement relevant orders in the Decree.[251]

To assess implementation of Order 1, UNAMA observed whether measures taken by authorities, particularly the AGO, the courts and internal oversight and complaints mechanisms within NDS and the MoI resulted in investigations into allegations of torture by NDS or ANP officials. UNAMA documented whether torture was treated as a serious crime and prosecuted as such under Afghan law, and whether internal administration disciplined officers who were found to have used torture and punished them through suspension from duty or loss of job.

In summary, UNAMA observed three elements of accountability and prevention of torture encompassed in Order 1: work and results of specific AGO delegations mandated to investigate allegations of torture in 2013; efforts and results of MoI and NDS internal investigation and oversight bodies; and, use and results of MoI and NDS mechanisms for detainees' to allege torture and ill-treatment.

AGO Delegations in 2013

To implement Order 1, the Attorney General initially established three delegations of prosecutors working in provincial prosecutors' offices in Kabul, Herat, and Kandahar – mirroring the locations where the President's fact-finding delegation received allegations of torture during its investigations.[252] Each AGO delegation was tasked to review the same detainees' allegations of torture or ill-treatment in the local facilities previously visited by the President's fact-finding delegation, and to report their results to the Attorney General for further action (i.e. referral for further investigation, prosecution or dismissal).

The reports from the three AGO delegations were to include preliminary assessments of available evidence (interviews with complainants, detaining authorities and reference to the assessment of forensic practitioners accompanying the delegation) and their conclusion as to the credibility of the allegations and follow up recommendations.

[251] UNAMA requested and reviewed these progress reports to assess the relevant actions taken to provide accountability. UNAMA also met with AGO staff to obtain information on conclusions reached by the AGO delegations. UNAMA met with the AGO Head of the Oversight Implementation of Orders Department, Mr. Habib Yousafzai, on 12 January 2014; with the Head of Prosecution Appeals for Internal and External Security, Mr. Syed Noorullah Sadat, on 19 January 2014; with the Deputy AGO Investigations Department, Mr. Noor Habib Jalal, on 22 January 2014; and with the Deputy Military AGO, Mr. Abdul Fatah Khan, on 26 January 2014.

[252] The AGO delegations were created through a decision of the Attorney General's Supreme Council on 18 February 2013. Kabul's delegation was comprised of three representatives of the AGO Monitoring and Order Section, based in Kabul. Herat's delegation included the chief prosecutor for crimes against internal and external security in Herat, a member of the ANP/military prosecution in Herat and the head of the oversight investigation's unit. Kandahar's delegation included the Kandahar head of prosecution, Kandahar's head of internal and external security/NDS prosecutor and the Kandahar head ANP/military prosecutor. The delegation for Kabul was established on 15 February 2013; the delegation for Kandahar on 18 February 2013 and the delegation for Herat on 20 February 2013.

Subsequently, the AGO delegations forwarded these reported findings to provincial prosecutors for further action.[253]

Results of AGO's Review of Allegations of Torture by NDS and ANP Officials

According to AGO officials, the AGO delegations reviewed and documented 133 allegations of torture (over an unspecified time frame) against NDS and ANP officials in Kabul, Kandahar and Herat. Of the 133 allegations, 78 were dismissed or closed and 55 were referred for investigation and prosecution. Of the 55, 52 cases, all from Kabul jurisdiction, were referred for a second investigation phase.[254] All the cases were closed following investigations and none referred for trial.[255]

The chart below summarizes the work of the three AGO delegations pursuant to Order 1 of Presidential Decree 129.[256]

AGO Delegation	No. of cases reviewed	No. of cases recommended for dismissal	No. of cases referred for criminal investigation
AGO Kabul	52	0	41 to NDS and 11 to military prosecutor
AGO Kandahar	27	26	1
AGO Herat	54	52	2
Total	133	78	55

Following the delegation's referral of cases for criminal investigation, the assigned prosecutor in Kandahar dismissed the only case the AGO delegation considered credible and referred for investigation on the grounds that the detainee reportedly did not wish to proceed.[257] In Herat, the ANP/military prosecutor closed the two cases referred, one due to the detainee reportedly withdrawing his allegations and the other for lack of physical marks of torture.[258]

In Kabul, the AGO delegation referred 41 cases to the internal and external security/NDS prosecutor and 11 to the ANP/military prosecutor. Of the 41 cases referred to the internal and external security/NDS prosecutor, two cases were referred to the ANP/military prosecutor as they involved police officers; 19 cases were closed

[253] UNAMA requested copies of reports of the Attorney General's delegations. At the time of writing, three of the reports had been made available. The Attorney General's Office, in accordance with Presidential Decree 129, was required to send regular progress reports on measures taken to implement the President's orders. UNAMA used the three reports received to assess the actions taken to increase accountability. UNAMA also met AGO staff to obtain information on the conclusions reached by the various AGO delegations.

[254] In January 2014 eight cases were under investigation by NDS Department 34 in Kabul; 12 still with no identified suspects were currently being investigated by the NDS Corruption and Violation of Duty Department; seven cases were being investigated by the Kabul ANP/military prosecutor and one by Kabul ANP CID. UNAMA meeting with the AGO, 12 January 2014, Kabul.

[255] NDS letter to UNAMA dated 26 June 2014 and AGO progress report dated 6 July 2014.

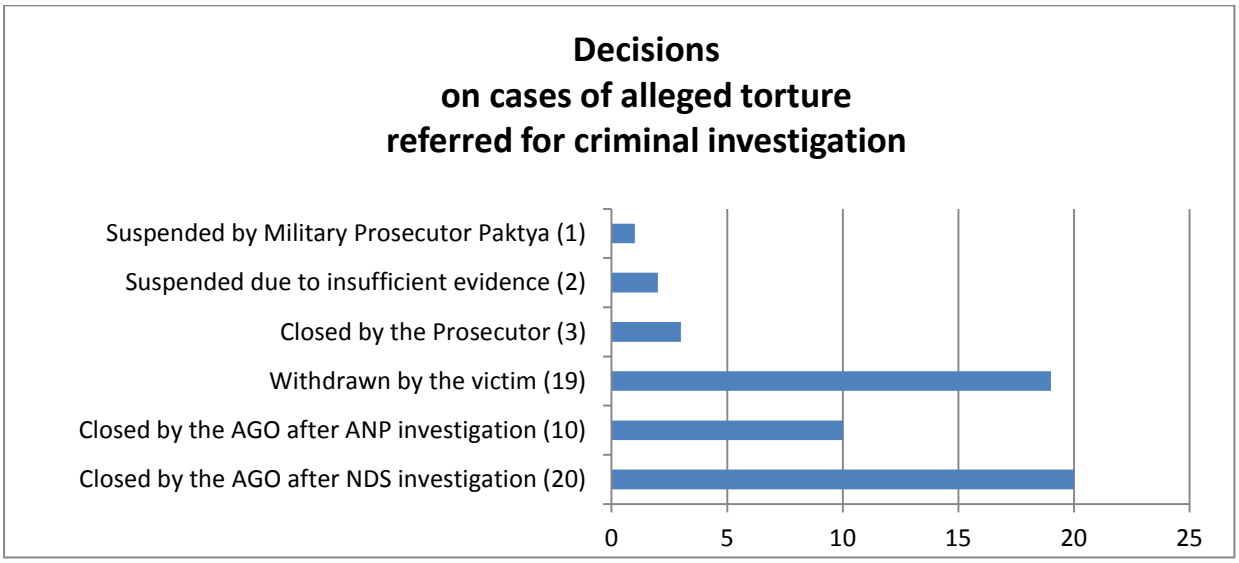
[256] Only one case of torture involving two defendants from the NDS has reached trial and sentencing in Uruzgan. This case was not one reviewed by the AGO Kandahar delegation and as such, it does not form part of the original 133 cases reviewed by the AGO delegations.

[257] This case concerns the alleged rape of a juvenile while in the custody of Kandahar ANP *Hawza* 9.

[258] UNAMA meeting with ANP/military prosecutor, 12 January 2014, Herat.

due to the detainees having withdrawn their testimonies; 12 cases involving unidentified perpetrators and eight cases involving interrogators from NDS Departments 40, 124 and 1 were referred to NDS Department 34[259] for further investigation.[260] The AGO closed these 20 cases on the basis that some were too old and there was lack of evidence to proceed with the remaining cases.[261]

Of the 13 cases forwarded to the ANP/military prosecutor in Kabul, seven cases were investigated by the ANP/military prosecutor, one case was investigated by the ANP Criminal Investigations Department (CID), two cases were suspended by the CID due to insufficient evidence, one case was suspended by the Paktya military corruption prosecution, and there was no information on the two cases referred by the internal and external Security/NDS prosecutor.[262] All the 13 cases were finally closed by the AGO.[263]



Concerns with the AGO Delegation's Review of Alleged Torture by NDS and ANP Officials

Lack of Independent and Impartial Delegation Members

UNAMA observed that reports filed by the AGO delegations raised concerns whether their investigations were conducted appropriately and in accordance with Afghan and international law. UNAMA found that institutional independence and impartiality were lacking in the AGO delegations, as prosecutors assigned to investigate allegations of torture were under the authority of the same institution whose alleged misconduct they were investigating or were the prosecutor of record in the detainee's alleged national security case.

[259] NDS Department 34 is responsible for investigations of misconduct and other violations of duty committed by NDS officers.
[260] NDS Progress Report on Implementation of Presidential Decree 129, 2 February 2014 (on file with UNAMA).
[261] AGO report to the Ministry of Foreign Affairs in the framework of the Afghan report to the Committee Against Torture, 9 April 2014 (on file with UNAMA).
[262] UNAMA meeting with deputy military prosecutor, 26 January 2014, Kabul.
[263] AGO report to the Ministry of Foreign Affairs in the framework of Afghanistan's State report to the UN Committee Against Torture, 9 April 2014 (on file with UNAMA).

In other instances, prosecutors were tasked to investigate allegations of torture in cases where they were the prosecutor of record in the detainee's alleged conflict-related crime. [264] Given these relationships between prosecutors and suspected perpetrators of torture, the appearance of bias or actual bias indicated a clear lack of impartiality (i.e. independence from the interested parties) of assessments made by these delegations.

In addition, the AGO reports used language that raised questions about delegation members' objectivity and impartiality in reviewing evidence and information available to them. For example, the Kandahar delegation determined *"allegations of torture and ill-treatment by detainees are lies […] some of the detainees exaggerate their claims due to being emotional."*[265] UNAMA notes that such subjective statements of emotional state are not evidence and provide no insight into the standard of proof used by the prosecutor to evaluate a claim of torture.

International standards and best practice on investigations into allegations of torture recommend that investigators must be independent of alleged perpetrators and the agency they serve, and should be competent and impartial.[266] Article 4 of the *Law on the Structure and Authority of the Attorney General's Offi*ce provides that the prosecution shall be a part of the executive branch, independent in its performance and shall comply with the law.[267] Afghan law obliges prosecutors to remove themselves from cases in which they have a real or perceived conflict of interest, which could create an appearance of bias or lack of independence.[268]

UNAMA's view is that with the AGO delegations for Herat and Kandahar, prosecutors who were assigned to the initial case had a conflict of interest when reviewing cases and should have removed themselves. This conflict of interest negatively impacted on the investigation of allegations of torture of detainees.

Unclear Standard of Proof, no Investigation into Threats/Reprisals against Detainees who Alleged Torture, Sole Reliance on Visible Physical Marks as Proof of Torture, Burden of Proof on Detainees

In their reports, the AGO delegations neither made reference to nor appeared to adhere to a standardized methodology when deciding how to investigate allegations of torture, refer such cases for further investigation or to dismiss the cases. For example, the Kandahar and Herat delegations dismissed cases when detainees withdrew their complaints or changed elements of their allegations without examining the reasons for the withdrawals including possible reprisals or threats from security officials. UNAMA

[264] The Kandahar delegation included an internal and external security/NDS prosecutor, head of the AGO department of judicial disputes and director of the ANP/military prosecution office in Kandahar. Similarly, the Herat and Kabul delegations included members of the AGO from the same location where the allegations originated.

[265] AGO delegation for Kandahar report, p. 4. English translation from the original in Dari (on file with UNAMA).

[266] See *Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, commonly known as the Istanbul Protocol, p. 17. The Istanbul Protocol is a set of international guidelines for documentation of torture and its consequences. It became an official United Nations document in 1999. Available at www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

[267] This law was published in the Official Gazette, No. 1117, on 7 October 2013.

[268] Articles 5, 7 and 8 of the Afghan *Code of Conduct on Behavior and Professional Standards for Prosecutors*, issued by the Attorney General's Office, explicitly note the requirement for prosecutors to conduct themselves in an impartial manner. Article 11 states that when a prosecutor sees a conflict of interest in the prosecution of a case, he or she can ask the supervisor to be withdrawn from the case.

received information that many detainees withdrew their testimonies out of fear of reprisals and/or threats made against their own safety and/or against their families.[269]

When making decisions whether to refer cases for further investigation, the delegations also considered lack of physical marks or inability to identify perpetrators of torture as the primary if not only means to corroborate detainees' allegations as grounds for dismissal of cases, disregarding complementary investigative measures.

In some instances, decisions to close cases were taken before exhausting available investigative measures or other courses of action. For example, the Kandahar delegation dropped their investigation into allegations made by 16 detainees claiming they were unable to track detainees' current location.[270]

Delegations' reports also indicated that the burden of proof was almost always placed on the victim of torture to prove that he was tortured. In at least one case in Herat, the AGO panel wrote that a detainee "*has no evidence to prove his allegation,"* including visible physical marks. According to the applicable law at the time of these investigations the burden of proof in criminal cases rests with the prosecutor or entity responsible for the investigation of crimes[271] and not the victim rendering some AGO investigations inadequate and in violation of applicable law.

As UNAMA has repeatedly noted, Afghanistan's criminal justice system relies almost exclusively on physical visible marks on a victim's body when investigating allegations and determining whether those marks are clearly indicative of torture.[272] Such reliance is not consistent with international best practice and obligations under the international and national law.[273]

As reflected in the AGO delegations' reports, however, provincial medical departments often lacked clear criteria on how they evaluated claims of torture on medical grounds through examinations of alleged victims.[274] From UNAMA's reading of the AGO delegations' reports, it is not clear what criteria the AGO delegations used to dismiss allegations of torture on the ground of *"non-torture related injuries."* This is a serious concern as 27 per cent of the alleged cases of torture were resolved using this term.

The following chart outlines the grounds that AGO delegations used to dismiss allegations of torture:[275]

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[269] Almost all detainees UNAMA interviewed reported concerns and fear of threats and reprisals from security officials to themselves or their families which they said prevented them from pursuing accountability for their complaints of torture and ill-treatment. UNAMA documented a number of cases of reprisals and threats against detainees who alleged torture.

[270] Report issued by the AGO Kandahar Delegation, p. 2 and 3 of English translation from Dari original, on file with UNAMA.

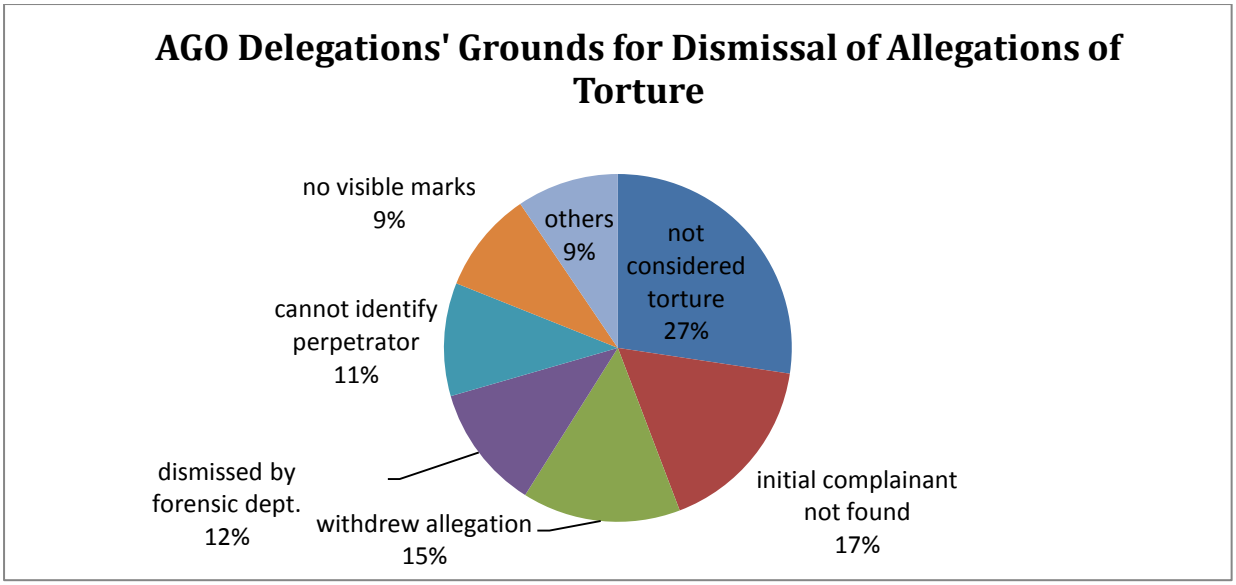
[271] Article 134 of the *Constitution of Afghanistan*, articles 23 and 37 of the *Interim Criminal Procedure Code* (applicable at the time) and article 80 of the new (2014) *Criminal Procedure Code*.

[272] UNAMA's report *Treatment of Conflict-related Detainees in Afghan Custody, One Year On* (January 2013) found (p. 73): *"It appears that NDS, ANP, prosecutors and the courts require that a defendant be able to show visible physical injuries as the only means to prove that he was subjected to torture and ill-treatment."*

[273] See October 2014 Report of the UN Special Rapporteur on torture, Juan E. Mendez at www.un.org/en/ga/third/69/documentslist.shtml.

[274] AGO Delegation for Herat report, p. 8 of English translation from the Dari original. Reference to prisoner 161, on file with UNAMA.

[275] Chart and labels (descriptions of categories) provided by the AGO and not UNAMA terms.



Regarding the 41 cases the AGO Kabul delegations referred to NDS for further investigation, NDS informed UNAMA that it had assigned a *"high level delegation from its different departments"* to investigate these allegations of torture against NDS officials. This NDS delegation referred two cases to the ANP/military prosecutor and recommended the other 39 be closed, which the AGO accepted.[276]

As highlighted earlier in this section, UNAMA's observation is that the work and efforts of the AGO delegations in 2013 to address torture were significantly flawed and failed to comply with certain provisions of Afghan law resulting in a lack of accountability for torture and poor implementation of Order 1 of Presidential Decree 129.

International Best Practice on the Investigation of Torture and Ill-Treatment[277]

One of the major challenges in fighting impunity for torture is for authorities to carry out effective, independent, thorough and comprehensive investigations. **The Istanbul Protocol** also known as the manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment is the authoritative international guidance on good practices to investigate and document torture. The protocol contains broadly accepted principles and standards on the effective investigation and documentation of torture.

In some cases, it can be a major challenge to obtain sufficient evidence that a person has been tortured. Adequately assessing allegations of ill-treatment is often far from straightforward. Certain types of ill-treatment (such as asphyxiation or electric shocks) do not leave obvious marks, or will not, if carried out with a degree of proficiency. Similarly, making persons stand, kneel or crouch in an uncomfortable position for hours on end, or depriving them of sleep, is unlikely to leave clearly identifiable traces. Even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. It is important to realize that torturers may attempt to conceal their acts.

[276] The NDS delegation findings' reported that two cases were committed by ANP and not NDS, 20 detainees withdrew their complaints after the delegation interviewed them, eight detainees had been released, medical examinations of eight detainees did not corroborate the torture claims and no information was provided regarding three other detainees. NDS correspondence with UNAMA dated 25 June 2014, on file with UNAMA.

[277] Istanbul Protocol available at www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

Consequently, when allegations of such forms of ill-treatment come to the notice of prosecutorial or judicial authorities, they should be particularly careful not to accord undue importance to the absence of physical marks.

The same applies when the ill-treatment alleged is predominantly of a psychological nature (sexual humiliation, threats to the life or physical integrity of the person detained and/or his family, etc.). Adequately assessing the veracity of allegations of ill-treatment may well require taking evidence from all persons concerned and arranging for timely on-site inspections and/or specialist medical examinations.

Forensic investigations have an important role in combating impunity by providing an evidentiary basis on which prosecutions can successfully be brought against persons responsible for grave human rights violations, including torture and ill-treatment.

Ministry of Interior and NDS Internal Investigations and Oversight Mechanisms

Although the Constitution of Afghanistan prescribes that investigation of criminal conduct by police, armed forces, and national intelligence officials shall be regulated by a 'special law,' the legal basis for the internal accountability framework of NDS is unknown and not public. While the bulk of the NDS mandate is covered under the National Security Law, oversight and accountability measures are not set out in this law.

The internal accountability mechanisms of the MoI are more numerous and developed however they lack cohesion and coordination. The ANP has both internal and external accountability mechanisms, with the vast majority of cases reportedly addressed internally. There is limited independent or external oversight of cases of police abuse or criminal conduct. Crimes committed by ANP officials are supposed to be referred to the Directorate of Military Affairs within the Attorney General's Office for investigation and possible criminal trial by an ANP/military prosecutor. Private citizens can also report ANP breaches of conduct or law through a special office established in the Office of the MoI (Central Office 119). The ALP Monitoring and Investigations section within the MoI in Kabul is the main oversight mechanism for the ALP with most units operating under ANP command.

Both NDS and MoI stated that their officials should first be investigated for alleged torture or misconduct through their institution's internal mechanisms. UNAMA has previously emphasized the lack of independent oversight of NDS including of its internal discipline procedures, and weaknesses in vague or overlapping internal investigation and oversight mechanisms in the Ministry of Interior.[278]

UNAMA also observed that various NDS and ANP officials often explained a lack of action on allegations of torture and ill-treatment by stating that responsibility rested with another individual or part of the institution, or that while they had made efforts to address such allegations, superiors and/or peers did not cooperate.

For example, UNAMA documented that on 14 September 2013 a conflict-related detainee died in NDS custody in Qala-e-Kah district, Farah province. Reportedly, ANP had initially arrested the man on suspicion of planting an IED and transferred him to NDS. Farah's ANP/military prosecutor and internal and external security/NDS prosecutor informed UNAMA that the detainee had died as a result of torture or ill-treatment while in ANP or NDS custody. Both prosecutors claimed they were unable to

[278] UNAMA's report *Treatment of Conflict-related Detainees in Afghan Custody, One Year On* (January 2013), pp. 15-16.

get cooperation from the provincial NDS director or the ANP chief of police to pursue an investigation into the detainee's death in police or NDS custody.[279]

NDS and Ministry of Interior Complaint Mechanisms Available to Detainees: Not Independent, Confidential, Effective or Accessible to Detainees

NDS reported that since the issuance of Presidential Decree 129, many NDS facilities began to establish their own internal complaint and monitoring mechanisms to address allegations of torture and ill-treatment, including directors of facilities having conversations with detainees to hear their complaints.[280] After the appointment and deployment of human rights officers at NDS detention facilities in 2013, existing complaint mechanisms ceased and human rights officers became the focal point for detainees' issues at NDS detention facilities and were tasked to handle all complaints and allegations of torture and ill-treatment.[281] As noted earlier in this report, torture continued to occur in many of these facilities where NDS human rights officers were deployed.

NDS informed UNAMA that following the issuance of Presidential Decree 129 to the end of January 2014 it had received 30 complaints from detainees of beatings, but considered most complaints not credible.[282] NDS reported that ten cases of alleged torture were referred by medical personnel at NDS 40 in Kabul. After interviewing these detainees referred by medical staff, NDS concluded: *"[A] number of the injuries had been inflicted at the time of arrest due to resistance to security forces."*[283]

In January and November 2014, NDS also informed UNAMA that *"individual complaints were received and actions were taken accordingly."* NDS officials did not provide any details or further elaborate on the precise nature of how NDS followed up individual complaints. Instead, in at least three reported cases of NDS personnel violating the prohibition against torture and ill-treatment, one perpetrator was required to give assurances that he would not commit human rights violations again and two were reassigned to other functions.[284]

UNAMA observed that the Ministry of Interior's complaint mechanisms continued to be weak, duplicative and largely ineffective. Where complaint mechanisms were available and in place, they were not used because detainees had a warranted fear of reprisals. UNAMA observed that as a result, torture by ANP officials continued to remain largely unreported and unpunished.

The MoI's Gender, Human Rights and Children Rights Department informed UNAMA that the principal complaint mechanism at MoI-run detention centres is boxes at locations in a detention facility for detainees to submit their complaints.[285] MoI officials

[279] UNAMA meetings with the Farah provincial ANP/military and internal and external security/NDS prosecutors, October through December 2013, Farah.
[280] UNAMA meetings with Heads of NDS facilities in Kunduz, Kandahar, Herat, Jalalabad, Paktya, Mazar-i-Sharif throughout 2013.
[281] UNAMA meeting with NDS officials, 8 January 2014, Kabul.
[282] NDS letter to UNAMA, 22 January 2014, p.1 (on file with UNAMA).
[283] Ibid.
[284] NDS letter to UNAMA, 22 January 2014 and *NDS Progress Report on Implementation of Presidential Decree 129*, 24 November 2014 (both documents on file with UNAMA).
[285] UNAMA received information that there are no complaint boxes at ANP lock ups at Ghor and Herat. At Badghis, despite the order of the MoI to install complaint boxes at the Badghis Provincial Prison, the ANP lock up in Qala-e-naw and district lock ups, funds have not yet been allocated to set them in place. At

reported that these complaints were collected weekly, reviewed and referred to the Office of the Minister. According to the Ministry of Interior, no complaints of torture were received via the complaints box system in 2013 and 2014 to date.[286]

Ministry of Interior Internal Investigations: Few and Inadequate

UNAMA continued to observe that accountability of ANP officials for alleged torture was weak, not transparent and rarely enforced. UNAMA previously reported that alleged cases of ANP criminal conduct should be addressed initially through the Ministry of Interior and then referred to the Directorate of Military Affairs in the Attorney General's Office for investigation and criminal trial by an ANP/military prosecutor.[287] In practice, this has rarely occurred and UNAMA observed no accountability for any allegation of torture by ANP over the 23-month reporting period.

Further to requests from UNAMA to elaborate on alleged perpetrators who have been investigated, disciplined or prosecuted, the MoI provided minimal and sometimes inaccurate information on external actions taken and any internal disciplinary procedures pursued.[288] With one exception,[289] the MoI Gender, Human Rights and Children's Rights Department responded by letter to requests for information by denying any findings of torture regarding ANP officers either by external investigations or internal oversight mechanisms, adding for example *"in the 52-page report of the Afghanistan Independent Human Rights Commission, there is no torture reported."* A review of the AIHRC's report however indicates it found the use of torture in some ANP facilities.

The MoI letter goes on stating *"the fact-finding delegation created by the President of the Islamic Republic of Afghanistan, found no torture."* [290] Similarly, the Inspector General's Office stated *"since the decree was issued, no complaints of torture were received. As a result, no investigations were initiated."*[291]

Sarpoza prison, Kandahar, there is no complaint box available and complaints are delivered verbally or in writing.

[286] UNAMA meeting with MoI officials, 6 January 2014 and 24 June 2014, Kabul.

[287] For details on the Ministry of Interior's internal complaints and accountability mechanisms see UNAMA *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011), pp. 49-50.

[288] Letter to UNAMA from the MoI Gender, Human Rights and Children's Rights Department, 2 February 2014 (on file with UNAMA).

[289] In a letter to UNAMA dated 2 February 2014, the MoI indicated that an ANP major in Herat was under investigation for the beating of five persons. UNAMA subsequently determined that the ANP/military prosecutor had not received a letter from the MoI about this concrete allegation, but rather an accusation that the officer had beaten a junior ANP police officer. The alleged victim later retracted the accusation.

[290] MoI internal oversight functions are to be performed by two separate entities: the Inspector General's Office and the Department of Gender, Human Rights and Children's Rights. Both are mandated to investigate misconduct and human rights violations committed by MoI personnel. The Inspector General's main task is the investigation of human rights violations. Since responsibilities between the two bodies are not clearly delineated, there is overlap and little coordination in their activities. UNAMA meetings with MoI Inspector General's Office and with the MoI Gender, Human Rights and Children's Rights Department, January and June 2014, Kabul.

[291] UNAMA meeting with the MoI Inspector General's Office, Head of Investigations, 5 February 2014, Kabul.

UNAMA notes that such statements are not consistent with the published reports and statements of the President's fact-finding delegation, AIHRC's reports[292] and the public statements of former President Karzai following his receipt of the delegation's report.[293]

MoI Inspector General's 2013 Review

Following the President's fact-finding delegation in February 2013, the MoI Inspector General's Office appointed another delegation to visit detention centres in Herat, Badghis, Kapisa and Bamyan to investigate torture and ill-treatment.[294] This delegation carried out its investigative tasks interviewing detainees in police lock-ups and detention centres from 2 to 24 March 2013.[295]

The Inspector General told UNAMA that these delegations did not receive any complaints of torture or other ill-treatment. When UNAMA presented credible allegations previously documented by the Presidential Fact-Finding delegation in Herat and asked about the reasons for not conducting internal investigations, the Inspector General's Office stated: *"I don't know, it is difficult to say. I do not deny that there are abuses by the police but we have not received any complaints."*[296]

Examples of Lack of Accountability by the ANP

"I have evidence of ANP personnel visiting a prison, selecting a specific detainee and torturing him. Human rights defenders alerted me to this case. I interviewed the victim myself. However, I know from previous experience that the ANP personnel allegedly involved in this type of human rights violation will simply ignore my summons to testify and assist in my investigation." **ANP/military prosecutor in XX province, March 2014**

In Kandahar, a case of a juvenile detainee allegedly raped by ANP members at *Hawza* 9 in February 2013 was referred for investigation to the same authorities who were the alleged perpetrators. The President's fact-finding delegation, the AGO delegation to Kandahar, UNAMA and medical personnel at Kandahar hospital confirmed the incident. On 4 March 2013, the AGO delegation to Kandahar referred the case to the Kandahar chief of police who *"agreed with the delegation's request regarding further investigation."*[297]

On January 2014, the ANP/military prosecutor in Kandahar informed UNAMA that once the ANP investigation had started, the detainee denied the previous claim and refused to identify the ANP officer who he had previously named as the perpetrator. As a result *"the case remained open and no arrest had been made in this regard."*[298] However, the

[292] AIHRC report 1391 (March 2012-2013), p. 40: *"During the continued and effective monitoring by the AIHRC […] 28 cases of torture at NSD and ANP detention centres, […] were identified and registered by the AIHRC' staff."*

[293] In a press conference held on 11 February 2013, the President's fact-finding delegation highlighted that torture existed in Afghanistan inflicted mostly at arrest and during interrogation by Afghan security forces (see Annex III). In his speech at the inaugural ceremony of the Afghan Parliament on 6 March 2013, former President Karzai referred to UNAMA's detention report issued in January 2013 acknowledging occurrences of torture in Afghanistan and the need to eradicate it.

[294] UNAMA meeting with MoI Inspector General's Office, Head of Investigations, 5 February 2014, Kabul.

[295] UNAMA was informed that the delegation was composed of two to three persons from the IG's office. UNAMA meeting with MoI Inspector General's Office, Head of Investigations, 5 February 2014, Kabul, and Inspector General's Office response letter to UNAMA, 24 June 2014.

[296] Ibid.

[297] Report of the AGO delegation to Kandahar, 1 March 2013, on file with UNAMA.

[298] UNAMA interview with Kandahar ANP/military prosecutor, 29 January 2014.

detainee later reaffirmed the rape claim and stated that ANP and NDS officials had warned him against persisting with his claim.[299]

In another example, the MoI's progress report on implementation of Presidential Decree 129, submitted to the President's Office on 13 October 2013, stated that two police officers in Khost were punished for committing unspecified human rights violations and five police officers in Kandahar had been punished for torture-related incidents. UNAMA could not verify the existence of these incidents. [300]

In addition, in February 2014, the MoI Gender, Human Rights and Children Rights Department provided information to UNAMA about examples of cases that either preceded the issuance of the Presidential Decree 129 or cases which UNAMA could not verify. For example, in July 2014, the Department informed UNAMA it had asked the ANBP to identify police officer(s) involved in one alleged case of torture by ANBP in Khost province on 17 February 2014 and refer the case for prosecution.[301] No further information on the status of the case was made available in spite of requests and UNAMA could not verify the case.

UNAMA documented another case of torture by ANP in Paktya province where local authorities were unwilling to prosecute police officials and instead referred the case for resolution by an informal *Jirga*. UNAMA observed that although the victims complained to the highest-level provincial authorities with *prima facie* evidence of torture available (visible injuries and multiple witnesses), authorities did not take prosecutorial or disciplinary action against the perpetrators. ANP officials accepted a local forgiveness arrangement rather than investigate and refer for prosecution serious cases of arbitrary detention and torture by ANP officials. Such arrangements ignore that torture is a crime that must be prosecuted *ex officio*, even if a victim retracts the initial complaint.[302]

Torture by ANP Addressed through Mediation by a Local *Jirga*
Jani Khel District, Paktya Province

On 20 October 2013, Paktya province, Jani Khel district, after finding an improvised explosive device (IED), ANP gathered 14 individuals from agricultural fields and surrounding houses and accused them of planting the IED. The ANP arrested the 14 people, detained them for several hours in a container and beat each of them repeatedly with cables. On their release, the ANP warned that if other IEDs were found in the area, the individuals would be shot with machine guns.[303]

[299] UNAMA interview, Kandahar city, 6 February 2014.
[300] UNAMA could not corroborate the existence of cases involving police officers in Khost and Kandahar, referenced by the MoI. The MoI also mentioned the "Tawoos" case: this incident and trial took place in 2011, two years prior to Presidential Decree 129. UNAMA requested further information on these cases the MoI referenced with relevant local authorities but the ANP/military prosecutor, chief military prosecutor, chief military judge in Khost and the ANP/military prosecutor in Kandahar all denied there had been any cases involving police officers suspected of torture, ill-treatment or other related accusations. UNAMA interviews in Kandahar and Khost, January and February 2014.
[301] MoI letter to UNAMA, 1 July 2014 (on file with UNAMA).
[302] This is particularly important as victims of torture are frequently in a vulnerable situation. Relying on them to sustain their allegations for criminal proceedings may further contribute to impunity of perpetrators.
[303] UNAMA meetings with community representatives, tribal elders and victims, October 2013, Gardez. UNAMA interviewed several victims and photo-documented injuries consistent with torture, October 2013.

On 23 October 2013, a delegation of tribal elders and victims met the provincial governor and provincial police chief and submitted a written petition following which the case was referred to the local ANP/military prosecutor. On 4 November 2013, the ANP/military prosecutor reported that an investigation had been initiated into allegations of torture by the ANP. On 6 November 2013, Paktya's provincial chief of police tasked his legal advisor to follow up. During the investigation, the three alleged ANP perpetrators continued performing their policing functions.[304]

On 7 December 2013, the provincial chief of police received a letter from the acting district chief of police (one of the alleged perpetrators) stating that community representatives and victims had forgiven the perpetrators through a local *Jirga* and that the perpetrators agreed not to repeat acts of torture. Paktya's ANP legal advisor informed that the case was considered closed.[305]

No Reference to Prohibition of Torture in Ministry of Interior's National Police Strategy 2014-2018

UNAMA notes with concern that torture and ill-treatment of detainees by ANP members were not identified as "Existing Problems within Afghan National Police" in the Ministry of Interior's National Police Strategy for 2014-2018. The strategy outlined 13 strategic goals including *"observance of human rights by the ANP and improvement of human rights conditions in prisons and detention centers."*[306] The strategy does not specifically mention or outline measures to end and prevent the use of torture or ill-treatment by ANP members.

The Ministry of Interior has a two-year plan identifying specific tasks, action steps, the primary responsible party and timeline for implementation of the national strategy. Among the 16 tasks to improve ANP members' respect for human rights are: training and workshops in human rights; creation of a plan to ensure observance of human rights and reasonable behavior with suspects and prisoners; strengthened coordination with other Government and international agencies for improvement of human rights awareness, and implementation of human rights policies in police "pillars" and exchange of information (combined meetings, awareness workshops, combined reports).[307]

As part of efforts to improve the ANP's observance of human rights through the 16 tasks, UNAMA urged the Ministry to include as part of *"ensuring observance of human rights and reasonable behavior with suspects and prisoners"* specific actions aimed at ending and preventing torture including mandatory investigation and prosecution or disciplinary action for all allegations of torture by ANP members. This has not been included.

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[304] UNAMA meetings with ANP/military prosecutor, Paktya chief of police, Paktya ANP legal advisor, October and December 2013, Gardez.

[305] *"The issue of ill-treatment and torture was solved successfully by mediation of the district chief, tribal elders, NDS and other organs based in Jani Khel district, and the case is finalized and the attached forgiveness letter stamp printed by both parties is sent to you for further process."* Letter of acting district chief of police (also perpetrator of torture) to the Paktya provincial chief of police, sent on 7 December 2013. Copy on file with UNAMA.

[306] Ministry of Interior National Police Strategy, 2014-2018, available at http://moi.gov.af/en/page/5076.

[307] Ministry of Interior Afghan National Police Plan, 2014-2015, available at http://moi.gov.af/en/page/5077. The plan provides operational guidance to implement the National Police Strategy.

National Police Strategy goal 10 – strengthened coordination with justice, judicial and other governmental organization – in particular the Attorney General's Office, only mentions coordination through joint meetings, training programmes, combined reports and joint awareness education for police officers and prosecutors. This has not been extended to specifically improve the working relationship between prosecutors and ANP investigators during investigations including for allegations of torture.

UNAMA emphasizes that torture should be addressed by training and awareness raising on human rights together with meaningful accountability measures though which alleged cases of torture are independently and transparently investigated and prosecuted.

NDS Internal Investigations: Minimal Accountability and Transparency

In its letters and progress reports NDS claimed having taken action to address allegations of torture by NDS officials, including investigations and disciplinary actions through its internal oversight procedure or to have submitted cases for criminal investigation and prosecution.[308]

UNAMA is unaware through its own investigations and, in addition, has not been informed by NDS about any disciplinary measures or sanctions for alleged serious misconduct or criminal conduct including torture for any NDS official. NDS reported to UNAMA it had dismissed credible allegations of NDS officers beating detainees because these occurred *"at the time of arrest and not in detention centres."*[309] Reportedly, the only case that was under investigation was the alleged beating by a NDS staff member of a driver employed by the AIHRC.[310]

NDS Human Rights Department and Reports of Torture

The NDS Human Rights Department was created in October 2011 with a mandate to monitor NDS detention facilities. In January 2012 it was named the "Human Rights Monitoring Sub-Directorate" with a plan to have a permanent presence in 16 provinces with officers responsible for training NDS officials on human rights, monitoring human rights violations and investigating any complaints by detainees.[311]

In 2013 NDS merged the Human Rights Monitoring Sub-Directorate with other NDS 'policy-related' units into its Department 47 responsible for Foreign Affairs, Protocol, Human Rights, Gender and Women Affairs.[312]

In July 2013, NDS deployed human rights officers to 15 of its provincial offices: Badakhshan, Balkh, Farah, Faryab, Helmand, Herat, Kandahar, Khost, Kunar, Kunduz, Nangarhar, Paktika, Paktya, Takhar and Uruzgan.[313] By November 2014 that number had reportedly increased to 23 provincial offices, plus human rights officers at NDS Departments 40 and 124 in Kabul.[314]

[308] UNAMA meetings with NDS, 27 March 2013, 13 May 2013, 8 January 2014, 30 April 2014 and 24 June 2014, Kabul, and NDS correspondence with UNAMA, 22 January 2014 and 25 June 2014.
[309] NDS correspondence with UNAMA, 22 January 2014.
[310] Ibid.
[311] UNAMA meeting with Head of NDS Human Rights Department, 9 May 2012, Kabul.
[312] UNAMA meeting with Director of NDS Department 47, 8 January 2014, Kabul.
[313] NDS letter to UNAMA, 22 January 2014.
[314] NDS Progress Report on Implementation of Presidential Decree 129, 24 November 2014 (on file with UNAMA).

In January 2014, NDS informed UNAMA that it had no reports of torture in those NDS facilities where human rights officers were deployed.[315]

UNAMA, however, documented 26 incidents of torture between June 2013 and January 2014, in several NDS facilities where its human rights officers were deployed at the time the alleged incidents occurred. UNAMA recorded 12 incidents of torture in NDS Farah between September and October 2013;[316] four in NDS Nangarhar in November 2013;[317] three in NDS Kunduz between September and December 2013;[318] two incidents of torture in NDS Herat between August and October 2013;[319] one case of torture in NDS Paktya in November 2013;[320] one case of torture in NDS Khost in November 2013;[321] one case of torture in NDS Takhar in December 2013;[322] and one case of torture in NDS Badakhshan in October 2013.[323]

These findings indicate that to date the placement of NDS human rights officers in NDS facilities has not stopped or prevented torture in all situations. NDS should review all procedures, guidelines and activities of their human rights officers in an effort to address any deficiencies in their ability to receive, document and investigate allegations of torture from detainees.

One Example of Accountability in Paktya (June 2014)

UNAMA observed one situation involving NDS officials and prosecutors to address an incident of torture. On 18 June 2014, NDS Paktya received two detainees with visible signs of torture whom the ANBP had arrested on 15 June 2014 in Jaji district, Paktya province. NDS officials immediately referred the detainees to Gardez hospital to have their injuries documented with a full medical report. A doctor who examined the detainees reported they had been *"badly beaten but had no fracture or internal wound."*[324]

The internal and external security/NDS prosecutor documented the case and wrote a report to the ANBP's legal adviser urging him to take the necessary action. The prosecutor's report included the medical exam with photographic evidence, and references to Presidential Decree 129, Afghan law and international standards prohibiting torture and ill-treatment. The NDS human rights officer also submitted a report to NDS Department 47 in Kabul.[325] The case remains pending with the legal advisor of the Afghan National Border Police almost six months after referral to his office.

While NDS officials' prompt action on this case is encouraging UNAMA noted the NDS officials' lack of will or capacity to protect detainees in such circumstances. NDS officials initially refused to receive the detainees and insisted on returning them to the ANBP –

[315] Ibid.
[316] Detainees 223, 225, 227, 233, 235, 236, 245, 252, 253, 255, 256 and 257 (2013).
[317] Detainees 360, 365, 367 and 379 (2013).
[318] Detainees 332, 334 and 335 (2013).
[319] Detainees 349 and 358 (2013).
[320] Detainee 359 (2013).
[321] Detainee 299 (2013).
[322] Detainee 324 (2013).
[323] Detainee 330 (2013).
[324] UNAMA interview with medical doctor, 18 June 2014, Gardez.
[325] UNAMA meeting with Paktya NDS officials, 18 June 2014, Gardez.

the same security force that had tortured them. Following ANBP's refusal to take the detainees back, the detainees remained in NDS custody for further investigations.

International Human Rights Standards and Best Practice on Complaint Mechanisms for Detainees and Prisoners

Principle 33 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and Rule 36 of the *Standard Minimum Rules for the Treatment of Prisoners* contain the international legal standards in relation to complaint mechanisms for detainees and prisoners.[326]

The process of registering a complaint should be straightforward and, initially, confidential. The existence of complaint mechanisms should be widely publicized and detainees encouraged to report all acts of torture or other forms of ill-treatment. It should be possible to pass complaints to the body in a sealed envelope so that they cannot be read by custodial staff that comes into contact with the complainant. The complaints body should acknowledge receipt of the complaint promptly. Where the case is current, and an individual is at risk, it should be acted upon immediately. In all cases there should be tight time-limits or targets for investigating and answering complaints. Victims and their legal representatives should have access to information relevant to the investigation.

Victims and witnesses should also be protected during and after investigations. Those implicated by the investigation should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation. Unless the allegation is manifestly ill-founded, public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. In cases where current inmates are at risk, they should be transferred to another detention facility where special measures for their security can be taken. All detainees should have access to an independent complaints body and should be able to access such a body without fear of reprisals.

Office of the Police Ombudsman within the Afghanistan Independent Human Rights Commission (AIHRC)

Established in December 2011, the Office of the Police Ombudsman, within the AIHRC, has four regional offices – Kabul, Herat, Jalalabad and Mazar-i-Sharif – and conducts visits to ANP facilities and investigates complaints of ANP misconduct, including allegations of torture, in Kabul, Herat, Nangarhar, Balkh and neighboring provinces.

Since its inception, the Office of the Police Ombudsman has recorded incidents of torture by ANP officers in Kandahar, Zabul, Uruzgan, and Daykundi provinces, involving 25 victims and seven alleged perpetrators of torture.[327] Most recently, on 23 and 25 September 2014, it received two allegations of torture of conflict-related detainees by ANP in Uruzgan province. On 12 October 2014, the Ombudsman referred one of the cases to the MoI, with copy to the AGO, for investigation and eventual prosecution. The

[326]See www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx, www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx and University of Essex Human Rights Centre, *Combating Torture – A Manual for Judges and Prosecutors* (2003).
[327] Meeting with EUPOL advisor, 22 June 2014, Kabul.

second case was not referred for investigation for fear of reprisal against the victim. The Ombudsman had not received any information on the status of the cases referred.[328]

In addition, Ombudsman personnel have sometimes experienced difficulties in accessing certain ANP facilities as well as lack of cooperation from ANP officials. This has contributed to insecurity among Ombudsman staff and negatively impacts the efficiency and even independence of their work because the Ombudsman's staff may be seen as susceptible to pressure from ANP officials.[329]

To address this situation, the MoI and AIHRC, with the support of the European Union Police Mission in Afghanistan (EUPOL) – the primary sponsor of the Police Ombudsman – initiated drafting of terms of reference for the Office of the Police Ombudsman to clarify its mandate and scope of action to facilitate cooperation between the two institutions.[330]

No clear legal framework for the Ombudsman exists: a draft of the Ombudsman's terms of reference was sent to the MoI Heads of Departments in September 2013 for consideration and approval.[331] As of November 2014, the Ministry of Interior had not approved these terms of reference.[332]

ORDER 3: Prohibition of Torture: Education and Capacity Building, Guidelines and Policies, Monitoring and Prevention

"*According to Article 29 of the Constitution, the torture of human beings is prohibited. All the discovery and investigation departments of the Ministry of Interior, NDS and Attorney General's Office are ordered not to torture or mistreat any suspect or detainee during detention and interrogation*."[333]

Overview

Order 3 of Presidential Decree 129 is aimed at preventing the future use of torture through training and capacity building measures that reinforce and raise awareness about the prohibition of torture. As a result of the Decree, NDS and MoI put in place policy reforms designed to strengthen respect for and understanding of the human rights of detainees and, to a more limited extent, the prohibition of torture.

Such policy directives, guidelines and instructions have appeared to produce some positive results as reflected in the lower percentage of incidents of torture found among detainees interviewed in the current study in some facilities compared to UNAMA's previous study.

However such internal policies and guidelines have not been uniformly distributed, explained, and enforced.[334] UNAMA observed, based on hundreds of visits to detention facilities and meetings with officials and defence lawyers, that implementation and enforcement of such policies has been limited.

[328] UNAMA meeting with AIHRC Office of the Police Ombudsman, 5 November 2014, Kabul.
[329] UNAMA meeting with EUPOL advisor, 22 June 2014, Kabul.
[330] UNAMA meetings with EUPOL Rule of Law and MoI advisers, 16 January and 22 June 2014, Kabul.
[331] Ibid.
[332] UNAMA communication with AIHRC Police Ombudsman, 24 November 2014.
[333] Order 3 of Presidential Decree 129 (see Annex IV).
[334] Observations by UNAMA from its monitoring of detention facilities work throughout 2013.

Since February 2013, NDS and MoI, with international support, conducted numerous trainings and engaged in capacity building efforts to improve officials' understanding of human rights in general and respect for detainees' rights in particular.

UNAMA observed that training efforts have focused almost exclusively on basic and general human rights training, rather than on practical skills development, such as non-coercive interview techniques or forensic investigation skills development.[335]

In addition, UNAMA observed – as noted earlier – that the lack of independent oversight and accountability, to reinforce the prevention of torture and consequences for its use, i.e. prosecution or disciplinary action, including removal from functions, has limited the effectiveness of training and policy measures taken to implement Order 3.

Other internal prevention mechanisms, including some improved case management, mandated monitoring of detention facilities by prosecutors, staff from the MoI Inspector General and the MoI Gender and Human Rights Department as well as the deployment of NDS human rights officers, has had limited deterrent effect on torture. Detainees were generally found to be reluctant to complain to NDS and ANP staff about torture and ill-treatment due to serious and warranted concerns about reprisals, threats and further violence. NDS and ANP human rights officers were also found to be reluctant to report on alleged torture and ill-treatment committed by colleagues.[336]

ANP Policies to Prevent the Use of Torture

The Ministry of Interior's efforts to implement Order 3 have centered on the issuance of policy guidelines, instructions to police and corrections officers on detainees' rights and the prohibition against torture. These cover the rights of detainees more broadly. Ministry of Interior Order 169[337] and Order 0112[338] encompass due process guarantees that police are required to observe to safeguard against the use of torture, including the prohibition of arbitrary or illegal arrest and detention, use of violence and torture against detainees to obtain confessions or any other evidence, right of detainees to be presumed innocent and to be informed of their rights during criminal investigations.

The Ministry of Interior's "Policy on Prisoners and Detainees' Rights" refers to the prohibition against torture, but does not provide further definition or explanation of the absolute ban on torture or a detainee's right to be treated humanely.[339]

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[335] Information from the Progress Report submitted by NDS to the Office of Administrative Affairs, dated 27 November 2013 (on file with UNAMA).

[336] As reported to UNAMA by NDS in a meeting on 8 January 2014, an NDS human rights officer had been deployed in NDS Farah in July 2013. In September 2013, a detainee reportedly died from torture in the facility.

[337] Order 169 further instructs police not to illegally arrest and detain, not to torture or use violence against detainees to obtain confessions or any other evidence, to be mindful of the presumption of innocence and to inform detainees of their rights during criminal investigations. Order 169 also mandates the MoI's Department of Gender and Human Rights and the Department of Prisons and Detention Centres to open complaint boxes inside and outside all prisons and detention centres and collect complaints on a weekly basis. Translation from original Dari received with Letter from Minister of Interior dated 13 October 2013 (on file with UNAMA).

[338] Order 0112 outlines the responsibility of MoI's Gender and Human Rights Department to conduct monitoring in detention centres, investigate cases of human rights violations and refer them for prosecution. Translation from original Dari received with Letter from Minister of Interior, dated 13 October 2013 (on file with UNAMA).

[339] This policy encompasses the right to livelihood, health, right to food, right to physical exercise, right to religious practices, right to necessary arrangements in special circumstances (i.e. serious illness or death),

A complicating factor is the applicable Afghan criminal law which does not adequately transpose the definition torture in article 1 of *Convention against Torture*. Rather than codifying what precise conduct constitutes the crime of torture under the *Constitution of Afghan* or within the *Penal Code*, references to torture and ill-treatment in the MoI policy mention *"prisoners' rights who shall not be obliged to suffer from torture and punishments as a consequence of bad conditions in prison."* The MoI's policy does not define what specific type of conduct on the part of an investigator or police officer would constitute torture under applicable international standards.

The Ministry of Interior has stated it is jointly working on a draft standard operating procedure on the rights of detainees with the Afghanistan Independent Bar Association (AIBA) and EUPOL. This standard operating procedure would presumably regulate police procedure and conduct to ensure that basic rights are protected, in particular, during the critical first 72 hours after arrest.[340]

With the entry into force of the new *Criminal Procedure Code* on 5 June 2014, the MoI's priority, as reported to UNAMA, is to review and update the MoI-AGO draft *Standard Operating Procedure for Police and Prosecutors* with a focus on alternatives to imprisonment and guidelines of interpretation on provisions with no focus on legal obligations prohibiting torture and detainees rights.[341]

ANP Capacity-Building Initiatives to Prevent the Use of Torture

The National Police Academy teaches new recruits the principles of international law, international human rights conventions, criminal law and the prohibition of torture and ill-treatment. UNAMA noted that the prohibition of torture is neither addressed in depth nor taught in the context of instruction on non-coercive interrogation techniques.[342]

The MoI shared a copy of its *Humanitarian Training Policy of the ANP*, designed to raise awareness of police officers on issues related to international humanitarian law and human rights. UNAMA observed however that practical training in how to implement this policy in the daily work of police officers and evaluation of real time implementation of training guidance and directives in practice has been limited.

International Efforts to Support ANP Capacity-Building to Prevent Torture

In 2013-14, the MoI reported that its personnel received training from the US funded Justice Sector Support Programme (JSSP), trainers from EUPOL, UNAMA and UNDP-LOTFA[343] on subjects ranging from human rights, prevention of torture, international

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right to education, right to contact outside prisons, right to vocational training, right to visitation, right to send and receive letters and telephone conversations, right to contact with attorneys, right to submit complaints, right to recreational, limited and privileged leave, right to visit close relatives who are ill and take part in their funeral, right to a timely trial. Detainees, understood as not yet sentenced, are deemed innocent and should be treated as such, kept separately from those who have been convicted, women separate from men, they should have a different uniform than prisoners and they have the right to a defence counsel in confidentiality. Office of Deputy Minister for Policy and Strategy, issued in July/August 2013, translated from the original in Dari, on file with UNAMA.

[340] UNAMA meeting with EUPOL advisers, 16 January 2014, Kabul. As of November 2014, UNAMA had received no updated information on the status of the Standard Operating Procedure despite requests. UNAMA communication with EUPOL advisors, 11 November 2014.

[341] UNAMA meeting with EUPOL adviser, 23 June 2014, Kabul.

[342] UNAMA meeting with the Head of Human Rights of the National Police Academy, 9 January 2014, Kabul.

[343] The Law and Order Trust Fund for Afghanistan (LOTFA) is a mechanism established in 2002 by UNDP to mobilize international donor funding to strengthen Afghanistan's law enforcement. Funds (some USD

humanitarian law, good governance and corruption.[344] Personnel from the ANP CID also received training on rights of detainees, torture and good governance conducted by national and international organizations with the support of the AIHRC.[345]

In 2014, the National Police Academy continued to receive support from international partners through the provision of direct training and printing of teaching and reference materials. In particular, EUPOL provided training on coordination between the police and the prosecution; the German Federal Enterprise for International Cooperation (GIZ) supported training on human rights, legal issues and criminal procedure; Terre des Hommes and UNFPA focused on the protection of children and women; and the International Development Law Organization (IDLO) provided training on the coordination between the police, the prosecution and the courts. ANP trainers told UNAMA that the Academy would benefit from more training of trainers, audio-visual materials to complement the written material and internet access to reference material.[346]

NDS Policies and Measures to Prevent the Use of Torture

NDS has focused on awareness-raising through issuing orders prohibiting torture and the deployment of human rights officers to NDS detention facilities.

On 28 March 2013, the Director of NDS issued an order to all NDS personnel in district, provincial and national NDS detention facilities reminding them of detainees' rights, in particular the prohibition of torture.

UNAMA found, however, that this order was not uniformly distributed, as not all NDS facilities appeared to have received the order; nor had they taken the necessary

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3.6 billion since 2002) are used to pay police officers' and Central Prison Department guards' salaries, build infrastructure and train police officers. The UN Secretary-General Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP) sets out principles and measures to mainstream human rights in support provided by United Nations entities to non-UN security forces, to ensure that such support is consistent with UN obligations to respect, promote and encourage respect for international humanitarian, human rights and refugee law. Consistent with these obligations, the policy mandates that UN support cannot be provided where there are substantial grounds for believing there is a real risk of receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe that a recipient of UN support is committing grave violations of international humanitarian, human rights or refugee law, the UN entity providing this support must intercede with relevant authorities with a view to ending those violations.

[344] The provisions of the US *Leahy Law* (discreet sections in the *Foreign Operations Appropriations Act*, Section 563 of P.L. 106-429 (2001) and the *Defence Appropriations Act*, Section 8092 of P.L. 106-259 (2001)) prohibit the US from providing funding, weapons or training to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross human rights violations, unless the Secretary of State determines that the concerned government is taking effective remedial measures. UNAMA notes that US government entities are required to assess whether adequate remedial measures are being taken to effectively address torture and ill-treatment by foreign security forces receiving such US funding and support. In Afghanistan this would include ANP and arguably NDS and determining what actions those institutions have taken to bring responsible members of security forces units' to justice for gross human rights violations including torture to continue providing funding, training and other support to the security forces' unit.

[345] Ministry of Interior letter to UNAMA, dated 13 October 2013 (on file with UNAMA).

[346] UNAMA meeting with Head of Human Rights, National Police Academy, 10 November 2014, Kabul.

measures to ensure that NDS officials were aware of the order and their obligations listed in the order.[347]

Following a change in the NDS leadership in August 2013, the new National Director of Security, Rahmatullah Nabil, issued Order 0493 on 17 September 2013 to all NDS departments reminding them of the constitutional prohibition of torture.[348]

Despite requests from UNAMA, NDS has not clarified what steps they have taken to ensure implementation of the new order on the prohibition of torture.

NDS Human Rights Officers

NDS enhanced its internal human rights oversight mechanism by appointing, training and deploying human rights officers to detention facilities in numerous provinces. [349] The Director of NDS has designated a number of new recruits as focal points on human rights. Their obligations include monitoring NDS detention facilities, immediately reporting allegations of torture to the head of human rights within Department 47, conduct preliminary investigations and "*attending to the needs of detainees.*"[350] NDS stated it has deployed human rights officers to all provinces.[351]

As outlined earlier in this report, UNAMA observed that torture continued at several NDS facilities, including locations where NDS human rights officers had been deployed for months.[352] These findings indicate that the placement of NDS human rights officers in NDS facilities has not stopped or prevented torture in all situations. The key problem is that NDS human rights officers are not independent and lack capacity as well as authority within the NDS system.

While initially, the NDS Human Rights Department was created to monitor the treatment of detainees and to report instances of torture directly to NDS' national director, NDS recently changed the reporting lines and structure of this entity. In 2013 NDS merged the Human Rights Sub-Directorate, along with other NDS 'policy-related' units into its Department 47 responsible for Foreign Affairs, Protocol, Human Rights, Gender and Women Affairs.[353]

This means, effectively, that NDS human rights personnel no longer have a direct reporting line to the national director of NDS and report through the director of a

[347] For example, at NDS Kunduz, NDS personnel had not received a copy of the order or Presidential Decree 129. UNAMA interview with internal and external security/NDS prosecutor, 18 April 2013, Kunduz.

[348] UNAMA meeting with Head of NDS Human Rights Department, 26 September 2013, Kabul.

[349] During 2013 NDS human rights officers were deployed to 12 provinces: Badakshan, Balkh, Farah, Helmand, Herat, Kandahar, Khost, Kunduz, Nangarhar, Paktika, Paktya, and Takhar, NDS progress report dated 26 November 2013. In 2014, NDS reported having deployed Human Rights Officers to 12 further provinces: Baghlan, Ghazni, Logar, Jawzjan, Kabul, Kapisa, Kunar, Maydan Wardak, Nimroz, Parwan, Samangan, Zabul. NDS progress report to the Office of the President, dated 18 June 2014 (on file with UNAMA).

[350] UNAMA meeting with Head of NDS Department 47, 8 January 2014, Kabul.

[351] On 30 April 2014 the Director of NDS Department 47 told UNAMA that the department had 69 dedicated human rights personnel in the provinces and at NDS HQ in Kabul.

[352] UNAMA documented 12 cases of torture in NDS Farah between September and October 2013; four cases of torture in NDS Nangarhar in November 2013; three cases of torture in NDS Kunduz between September and December 2013; two cases of torture in NDS Herat between August and October 2013; one case of torture in NDS Paktya in November 2013; one case of torture in NDS Khost in November 2013; one case of torture in NDS Takhar in December 2013; and one case of torture in NDS Badakshan in October 2013.

[353] The director of NDS 47 reports directly to the national NDS Director.

department whose primary duty is to maintain contacts with international organizations, civil society groups and embassies. UNAMA is concerned that this new structure does not serve to strengthen the oversight and monitoring role of NDS human rights personnel and that placing this function within Department 47 weakens its credibility and profile within NDS.

Access to NDS Facilities

Access to NDS detention facilities to enable independent monitoring by human rights and other organizations has generally improved over the reporting period, with the exception of NDS Kandahar. The NDS Director issued an order to all directors of NDS facilities on 25 April 2013 instructing them to facilitate and provide full access to UNAMA, AIHRC, ICRC and ISAF to interview detainees. This instruction improved access to NDS facilities, including Department 124, which had previously been closed to UNAMA and other organizations. Problems with access arose several times but UNAMA observed that reference to the order coupled with timely interventions of the NDS Department 47 were helpful in resolving incidents in which access was initially denied.

UNAMA notes however that delays in entering numerous NDS facilities were often lengthy raising concerns whether denial of access was a result of genuine confusion or a delaying tactic to allow time for evidence of torture and ill-treatment to be hidden.[354] On one occasion, UNAMA was prevented from conducting detention monitoring by the NDS provincial director in Farah.[355] In Kandahar, UNAMA was required to obtain authorization from NDS before conducting its monitoring visits, in contravention of the NDS Director's order of 25 April 2013.

NDS Capacity-Building Initiatives to Prevent the Use of Torture

NDS has long provided training and capacity building for its personnel through the NDS Academy in Kabul. This institution has developed, over time, an enhanced curriculum that includes topics related to human rights, including the prohibition of torture. NDS personnel, including NDS investigators, detention facilities' officers, administrators and other officials, have received briefings and practical workshops on issues related to appropriate use of force during interrogations and interview techniques.[356]

Outside the NDS Academy, some directors of NDS departments or provincial directors started organizing and conducting internal training workshops.[357] In some cases these trainings have focused on human rights or skills related to the prevention of torture, including non-coercive interrogation techniques. For example, NDS Department 40 organized an intensive workshop for a core group of investigators in March 2013, on

[354] UNAMA experienced delays in access to NDS facilities on 27 October and 11 December 2013 at NDS Kandahar, on 12 January 2014 at NDS Department 124 in Kabul, on 22 January 2014 at NDS Khost, on 11 March at NDS Paktya, on 31 March and 5 May 2014 at NDS Herat.

[355] On 3 November 2013, UNAMA was prevented from accessing the NDS detention facility in Farah.

[356] *Progress Report on implementation of Presidential Decree 129*, submitted by NDS to the Office of Administrative Affairs, dated 27 November 2013 (on file with UNAMA).

[357] For example, the internal and external security/NDS prosecutor in Paktya was invited to conduct a training workshop for NDS staff on investigation techniques, and in NDS Kandahar and NDS Herat training for all NDS interrogators on human rights was provided on a weekly basis. In NDS Kunduz internal workshops have been held on detainees' treatment and rights, children rights and interrogation techniques. NDS Daykundi organized training on investigation techniques on a weekly basis.

how to identify the use of torture and methodologies to verify allegations of torture and identify perpetrators.[358]

International Efforts to Support Capacity-Building in the NDS

Based on the information received, international organizations have increased efforts to support capacity building of the NDS since February 2013. The United Nations Development Programme (UNDP) through the Ministry of Justice Human Rights Support Unit, which conducts training on Afghanistan's international treaty obligations and implementation of recommendations by United Nations treaty bodies and the United Nations Human Rights Council's Universal Periodic Review, has expanded its current training to NDS.

ISAF has been providing training to NDS at the provincial level in continuation of its detention facility certification programme designed to support the Government in preventing the use of torture in facilities where torture has been documented

At various times during the first half of 2013, the U.K. Government provided mentors and advisory support to different departments of the NDS, including professional trainers to the NDS Academy.

UNAMA received reports that the US Central Intelligence Agency and other organizations within the US military and intelligence system have provided capacity building support and other technical assistance to the NDS for several years – including in 2013 to further support NDS' human rights department.[359]

ORDERS 4 and 5: Measures to Increase Legal Aid for Detainees and Increase Access to Defence Lawyers

"*The Ministry of Justice is instructed to regularly organize meetings of the Legal Aid Board in cooperation with the Faculty of Sharia and Law of Kabul University to monitor the lack of access of the detainees and prisoners to legal assistance and defence lawyers, and to discuss methods and possibilities of offering legal assistance in a widespread manner to all detainees and prisoners as per Article 31 of the Constitution. The Ministry of Justice is obliged to revise the current structure of the Legal Aid Department, so that it provides for the actual numbers of detainees and prisoners.*"[360]

"*The Ministry of Interior and NDS are duty bound to facilitate access of the detainees and prisoners by legal aid providers and defence lawyers in the supervision and detention centres and prisons since their arrest.*"[361]

Overview

Order 5 of Presidential Decree129 appears to be aimed at increasing detainees' access to defence counsel, as a safeguard against torture. The *Constitution of Afghanistan*, applicable criminal procedures and international standards provide for detainees to have access to defence counsel upon arrest and during prosecution.[362] Defence counsel

[358] UNAMA was invited to facilitate a session on its detainee interviewing and verification methodology as part of a training for investigators of NDS Department 40 supported by the UK Embassy.
[359] UNAMA interviews with confidential sources, June and November 2013.
[360] Order 4 of Presidential Decree 129 (see Annex IV).
[361] Order 5 of Presidential Decree 129 (see Annex IV).
[362] *Constitution of Afghanistan*, article 31; *Criminal Procedure Code*, articles 9 and 152; Principle 3.20 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.*

can assist detainees in bringing timely complaints of torture and are critical to ensuring: (i) the legal system can detect and stop torture at early stages, (ii) support procedures for investigation and identifying officials who use torture and (iii) ensure forced confessions are excluded as evidence at trial. Often the physical presence of defence counsel during an interrogation makes it far more difficult for investigators to use force, threats or coercion against detainees.

UNAMA observed that access to defence lawyers on arrest and during initial detention has not improved significantly since Decree 129 was issued. Sustainable funding for legal aid, availability of licensed defence counsel throughout the country and full access of defence lawyers to conflict-related detainees remained very challenging, leaving a key element of due process safeguards for prevention and identification of torture not fulfilled.

Other major challenges observed appeared to be detainees' general lack of knowledge and awareness of their rights, including their right to defence counsel and lack of understanding regarding the role of a defence lawyer in the criminal justice process.[363] Detainees interviewed by UNAMA sometimes described how officials asked them if they wanted a defence lawyer or wished to defend themselves, but did not inform detainees about the role of defence lawyers, which may have contributed to detainees' foregoing their basic right to defence counsel. Many detainees interviewed by UNAMA voiced concerns about the cost-benefit ratio of hiring a lawyer, stating that lawyers were too expensive and would likely be ineffective, possibly even biased or corrupt.

UNAMA also observed that neither NDS nor ANP have a uniform approach to informing detainees of their legal rights during the criminal investigation and detention process. As noted in UNAMA's 2011 and 2013 reports, detainees were often first informed of their rights only when they first appeared before a judge at trial several months after their detention began.[364]

Defence Lawyers' Limited Access to ANP Facilities

UNAMA observed that defence counsel generally were able to access most provincial ANP detention facilities; however, they were rarely allowed to speak to detainees in private prior to interrogations or to be present during interviews. Kandahar remained an exception, where lawyers experienced persistent problems accessing ANP detention facilities and in conducting confidential interviews with their clients even when ANP permitted access.[365]

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[363] This practice was also confirmed by defence lawyers in Laghman province who spoke to UNAMA on 18 April 2013.

[364] UNAMA meetings with appeal court judge in Laghman in April 2013. UNAMA meetings with primary court judges in Badakhshan and Takhar, April 2013.

[365] In early 2014 defence lawyers and legal aid NGOs in Kandahar met with the ANP Chief of Police and the Chief of the Criminal Investigation Department (CID), to address their lack of access to ANP detention facilities and to request private communications with clients. The ANP CID chief told the lawyers they should phone him in advance of any visit and he would give instructions to guards at the gate of ANP HQ. He also promised to alert the lawyers if any detainee needed legal services. In November 2014, UNAMA was informed that the arrangement made in February 2014 had never been effective. Lawyers informed the Chief CID of their planned visits as agreed, but their access continued to be obstructed, with lawyers' visits to clients in ANP custody delayed by intrusive and aggressive searches, and questioning. Due to continued obstruction, lawyers effectively stopped communicating with the ANP CID Chief and waited until their clients were transferred from ANP custody to a prison before meeting their clients. UNAMA was informed that this restricted access of detainees to defence counsel in ANP detention facilities in

Defence Lawyers' Lack of Access to NDS Facilities

UNAMA found that NDS did not permit detainees access to defence lawyers within the first 72 hours after their arrest and detention, as a matter of policy.[366] In most NDS facilities, defence lawyers were only able to gain access to detainees against whom an investigation had been concluded.[367] In many instances, conflict-related detainees were granted access to defence counsel just before their trial.

Limited Availability of Legal Aid to Detainees

Difficulties experienced by detainees in accessing lawyers were exacerbated by the limitations in the general availability of legal aid. Many legal aid organizations rely on international funding to retain a roster of lawyers able to represent clients. The Ministry of Justice also has a duty to make legal representation, especially for indigent defendants, available upon request.[368] Demand for lawyers greatly exceeds supply while the two co-existing legal aid delivery systems have left gaps in capacity, resources and salaries of defence attorneys. In this context, the strengthening of the capacity and resources of the Ministry of Justice to provide access to quality defence lawyers should be a priority of national and international efforts to improve access to justice and address torture.

UNAMA and other organizations, including the AIHRC and the International Development Law Organization (IDLO), have noted in their public reports that the MoJ Legal Aid Department lacks sustainable financial resources, technical capacity and personnel needed to deliver legal representation uniformly throughout the country. With a prisoner and detainee population of an estimated 27,859 inmates and only 1,960 registered lawyers, the Ministry of Justice informed UNAMA it has been seeking assistance from academic institutions such as Kabul University law faculty and increased financial support from international donors to increase the number of defence lawyers and availability of legal aid services.[369]

The Ministry of Justice pledged to recruit 17 additional defence lawyers by March 2014 and this goal had been achieved in November 2014.[370] At the provincial level, however, many departments of justice, which are responsible for managing the provision of legal aid support in local courts, have not been able to recruit sufficient numbers of defence counsel, particularly in remote and insecure areas.

Kandahar was unlikely to change while the current Kandahar chief of police, General Abdul Raziq remained in office. UNAMA meetings with defence lawyers, 12 February and 9 November 2014, Kandahar.

[366] NDS Letter to UNAMA signed by NDS Director General Rahmatullah Nabil dated 22 January 2014 (on file with UNAMA) and NDS Progress Report on Implementation of Presidential Decree 129, 24 November 2014 (on file with UNAMA).

[367] UNAMA's observation country-wide highlighted differences in access to defence lawyers by different NDS facilities. For example, at NDS Bamyan, Daykundi, Farah, Laghman, Nangarhar, Badakhshan and NDS Department 24 access to defence lawyers was denied; at NDS 40, Baghlan, Takhar, Balkh and Herat access was permitted after the investigation concluded; at NDS Jawzjan, Khost and Ghor access was allowed after the first 72 hours in detention elapsed.

[368] Articles 9 and 10 of the 2014 *Criminal Procedure Code*.

[369] UNAMA meeting with officials of the Afghanistan Independent Bar Association, 6 January 2014, Kabul. For prison/detention population statistics see UNAMA correspondence with the head of General Directorate of Prisons and Detention Centres, Ministry of Interior, 30 November 2014.

[370] Nangarhar had four positions filled; Kandahar three, Daykundi two; and one each in Nuristan, Kunar, Nimroz, Khost, Laghman, Zabul, Uruzgan, Logar provinces. UNAMA meeting with the MoJ Legal Aid Department on 18 February 2014, Kabul and follow-up communication on 23 November 2014.

This deficiency is particularly acute in insecure areas and provinces, such as Nuristan, Paktika, Zabul and Uruzgan, which have no MoJ provided defence lawyers or other civil society supported legal aid services. Efforts have been made to recruit lawyers but with the current demand and supply and low salaries offered by the MoJ defence lawyers can choose to work in Kabul and regional centres and avoid remote or insecure provinces.

On 20 August 2013, the Ministry of Justice signed a Memorandum of Understanding (MoU) with UNDP and the Afghanistan Independent Bar Association for the implementation of a legal aid grant facility to provide free defence counsel services to detainees, including women and children. The Legal Aid Grant Facility started taking up cases in March 2014.[371]

As donor funding for the justice sector reduces in line with the overall reduction in international presence and assistance to Afghanistan, the need for a sustainable legal aid strategy that does not rely mainly on donor-funded initiatives to provide the bulk of the services has become more acute.[372]

In the National Priority Program 5 (NPP) "Law and Justice for all" the Government recognizes that improving the quality of legal aid should be prioritized through increasing the number of legal aid lawyers. NPP 5 highlights the importance of taking measures to increase quality and quantity of legal aid delivery, including competent legal aid providers across the country.[373]

ORDER 6: Access to Medical Treatment in Detention

"The MoI and Ministry of Public Health are duty bound to provide as soon as possible medical treatment and cure to the detainees who are suffering from illness and those who have been complaining from illnesses arising from beating during the interrogation process as stated in Article 27 of the Law on Prisons and Detention Centres." [374]

Overview

Order 6 of Presidential Decree 129 recognized the essential role that medical professionals have in identifying and verifying that torture has been used on a detainee.

In its previous reports, UNAMA observed that medical personnel at NDS and ANP are neither functionally independent to document and report incidents of torture nor can they be relied on to bring instances of torture and ill-treatment to the attention of appropriate authorities. Detainees who complained of torture were also frequently

[371] The legal aid grant facility funded by UNDP and administered by the MoJ is projected to support the AIBA to provide legal representation in criminal and civil cases before all courts in Herat, Balkh, Nangarhar and Helmand provinces.
[372] UNAMA's view is that a debate on the viability of Afghanistan's current legal aid delivery model is necessary. Legal aid models for Afghanistan have been discussed among national and international stakeholders and outlined in several reports including *Models & Options for Legal Aid Delivery in Afghanistan* by the International Development Law Organization (IDLO) (November 2007). Other options include an independent State-funded legal aid authority that directly pays salaries to defence lawyers or a mixed model where both a State legal aid authority and NGOs provide legal aid.
[373] National Priority Program 5 "Law and Justice for All" was endorsed by the Government of Afghanistan on 29 June 2013. The National Priority Programs are development plans prioritized by the Government and are the official mechanism for delivery on the development goals, as agreed at the London and Kabul conferences.
[374] Order 6 of Presidential Decree 129 (see Annex IV).

referred to medical centres only when physical marks from torture and ill-treatment had faded or healed. [375]

Given that NDS, ANP, prosecutors and courts rely primarily on the appearance of physical marks to confirm or rule out the use of torture against a detainee, implementation of this order could be a key element in preventing the use of torture and increasing accountability for perpetrators of torture.

Medical Personnel's Fear of Reprisals for Reporting and Confirming Torture and Denial of Detainees' Access to Medical Treatment

Following the issuance of Presidential Decree 129, the Minister of Public Health (MoPH) sent a letter to provincial Departments of Public Health ordering them to record incidents of torture and refer those incidents to the national level.[376] Over the 23-month observation period, UNAMA noted an encouraging increase in the availability of medical services overall to detainees. However, a number of detainees who were found to have been tortured were found to have been denied access to medical services until after physical marks had faded.[377] In addition, several Ministry of Public Health officials UNAMA met acknowledged torture in ANP and NDS detention facilities and stated that many medical officers refused to report or confirm instances of torture for fear of reprisals against them by security officials.[378]

Although most detention facilities UNAMA visited offered some medical treatment, UNAMA found that 205 of the 790 detainees interviewed did not have access to medical treatment, including two who specifically reported being denied access to a doctor when requested and 16 who had sustained injuries from torture.

Lack of Independent Medical Treatment and Standard Medical Procedures and Checks in NDS and ANP Facilities

UNAMA observed that medical services available to detainees often were not provided in an independent manner that respected patient-doctor confidentiality, did not provide an objective assessment of detainee injuries, or did not ensure protection of medical staff against possible retaliation by ANP or NDS officers.

UNAMA also noted a lack of standard operating procedures in both NDS and ANP facilities to provide detainees with medical checks on being taken into custody, before interrogation, and after interrogation. UNAMA observed that many detention facilities did not require detainees to undergo medical exams upon their arrival or during each stage of the investigation process. In some NDS facilities, detainees reported they underwent a mandatory medical examination after every interrogation.[379]

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[375] UNAMA and Office of the United Nations High Commissioner for Human Rights: *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* (January 2013), p. 79.

[376] Ministry of Public Health letter to Provincial Departments of Public Health, dated 31 December 2013 (on file with UNAMA).

[377] UNAMA documentation and findings during the February 2013 to December 2014 observation period, visits to detention facilities and hundreds of interviews with detainees.

[378] UNAMA meetings with Ministry of Public Health officials, 10 April 2013 and June 2014, Kabul.

[379] NDS stated that in its facilities, a doctor would medically exam each detainee upon check-in, after the end of an investigation, and before transfer to another facility, and that medical reports would be included in the detainee's file. UNAMA has not yet been able to verify this new development. NDS Progress Report on Implementation of Presidential Decree 129, 24 November 2014 (on file with UNAMA).

UNAMA's view, based on international best practice, is that such standard operating procedures are essential to provide a record of a detainee's condition, individuals and institutions which have had access to detainees, and how detainees were treated during each phase of their custody.

In the NDS and ANP facilities UNAMA visited, it was observed that most had resources to offer some form of basic medical services for detainees. In some facilities, UNAMA observed either a small clinic or that a physician was available to provide care inside the facility. In those locations where no medical facilities existed, detainees were usually referred to the district or provincial public hospitals or clinics.[380]

NDS and ANP maintained their own medical staff in many locations which created problems due to the organizational hierarchy of the facilities. Medical personnel who were employed at NDS and ANP detention facilities worked within a structure that made it extremely difficult to report complaints of torture and ill-treatment because they reported directly to the heads of the NDS and ANP provincial facilities. For example, medical personnel in some NDS detention facilities reported directly to the chief criminal investigator.[381]

Doctors within detention facilities have been observed as unlikely to report torture when there are no systems in place to ensure confidentiality, independence and protection (both of the detainee and the doctor). Medical personnel also indicated to UNAMA that the NDS medical examination forms provide no space to record that a detainee or prisoner experienced ill-treatment or torture.[382]

On at least two occasions NDS medical personnel acknowledged to the President's fact-finding delegation in 2013 that they refused to document torture-related injuries.[383] An official in the Department of Public Health told the delegation that by the time most detainees were allowed to seek medical attention for injuries from torture and ill-treatment, physical marks had faded or healed.[384]

UNAMA observed that the Government's early efforts in 2013 to improve access to medical care in detention facilities pursuant to Presidential Decree 129 led to some improved availability of medical care for detainees. However, these efforts did not address concerns about the lack of independence and risk of reprisals that medical practitioners routinely face with allegations of torture and in interactions with ANP and NDS officials. This gap has meant that improvements in detainees' access to medical care did not prevent torture in all cases or significantly improve accountability of those security officials who used torture.

Courts and Prosecutors' Legal Obligations to Reject Evidence Gained through Torture and Enforce Due Process Protections

Under the *Constitution of Afghanistan* and applicable criminal procedure, evidence gained through torture shall not be used as the basis to convict a criminal suspect.[385]

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[380] Ibid.

[381] UNAMA meetings with medical officials in NDS detention facilities and Badakshan province (27 March 2013, Faizabad) and Kandahar city (25 April 2013).

[382] Ibid.

[383] Information from the report of the President's fact-finding delegation, 22 January 2013 (on file with UNAMA).

[384] UNAMA interview with Department of Public Health official, 10 April 2013, Kabul.

[385] *Criminal Procedure Code*, article 22. The previous *Interim Criminal Procedure Code* contained a similar exclusion in article 7, stating that evidence collected unlawfully is inadmissible in court.

Consistent with its two previous reports, UNAMA continued to observe a widespread practice of judicial authorities' almost exclusive reliance on confessions from defendants as the basis for a prosecution in court. Charges, indictments and convictions for conflict-related crimes are often grounded on confessions obtained through torture, and reliance on such evidence is rarely questioned in court.

As illustrated by the AGO delegations' work detailed earlier in this report, the current system places the burden of alleging and proving that torture occurred on the defendant/detainee. In practice, prosecutors and courts require that a defendant be able to show visible physical injuries as the only means to prove he was subjected to torture and ill-treatment. Still, in some cases, even when the detainee has visible physical marks of injuries that may have been caused through torture, prosecutors and judges were observed to be unwilling to order an investigation and/or invalidate the confession. [386] Such practices violate international human rights law, which makes torture a crime that must be investigated *ex officio*, as well as Afghan law, which stipulates that non-compliance with the *Criminal Procedure Code* renders all affected proceedings null and void.[387]

UNAMA acknowledges the challenging conditions in which prosecutors and judges operate, including legitimate concerns regarding their personal security which may partly explain their reluctance to investigate and prosecute ANP and NDS officials. Such concerns, however, highlight the challenges to judicial independence in Afghanistan, and should be addressed with the Attorney General and the highest levels of Government.

Afghanistan's previous and new *Criminal Procedure Code* specifically require the presence of defence lawyers throughout prosecution in cases of serious crimes where long-term imprisonment constitutes the minimum sentence, and orders the nullification of proceedings in case of non-compliance with the right to an attorney.[388] The new *Criminal Procedure Code* grants prosecutors extended periods of detention[389] and is coupled with the courts' additional responsibility to strictly enforce the new right to *habeas corpus*.[390]

UNAMA welcomes these important legal safeguards to strengthen due process protections for defendants and urges full implementation by courts and prosecutors. UNAMA suggests the Attorney General and Supreme Court issue standardized instructions to all officials to promptly implement the new provisions and ensure appropriate training and monitoring of implementation. UNAMA further suggests that such directives be made public to enable independent oversight and monitoring bodies, and Afghan right-holders to assess the impact of these new provisions on prevention of torture and respect for detainees' due process rights.

[386] For example detainee 329 (2014).
[387] *Criminal Procedure Code*, article 289. See also Annex II of this report.
[388] *Criminal Procedure Code*, articles 9 (4), 152 and 289.
[389] Article 100 of the 2014 Afghan *Criminal Procedure Code* grants a prosecutor the right to detain a felony suspect for up to 15 days and seek up to two 30-day extensions of detention from the primary court.
[390] *Criminal Procedure Code*, article 7 (13). *Habeas Corpus* – a Latin term, literally *"to have the body"* – consists of a legal action that enables a detainee to petition a competent court to review the legality of any detention. This legal action is aimed at protecting a person from illegal detention.

Conclusion

The Government of Afghanistan has shown it is serious about addressing torture. UNAMA notes the 14 per cent lower percentage of torture and ill-treatment documented over the current period among the detainees interviewed compared to the previous period. However, the continuing use of torture is significant and does not comply with the Government's obligation to enforce a total prohibition of torture. While encouraging, the decline in the use of torture is insufficient to show that remedial measures taken to date have been effective.

UNAMA observed that lack of accountability and impunity on the part of Afghan officials was the principal cause of continued incidents of torture and ill-treatment documented over the 23 months following the issuance of Presidential Decree 129. Existing accountability mechanisms have been shown to be inadequate and ineffective at permitting allegations to come forward and providing appropriate investigations and sanctions. Impunity continues because there are still no consequences for the use of torture: perpetrators are not prosecuted and no disciplinary sanctions such as removal from duty or functions have been taken.

This situation mirrors pervasive impunity in Afghanistan for human rights violations, crimes and corruption that is caused, encouraged and sustained by weak State institutions, insecurity and lack of rule of law facilitated by decades of conflict. Such conditions not only shield perpetrators from justified prosecution, but also weaken, discourage and potentially endanger those who advocate for accountability and speak out against injustice, human rights abuses and warlordism.

In these conditions, current Government efforts to address the use of torture have focused on improved training, institutional policies and increased frequency of inspection to facilities with very limited focus on creating more robust and active deterrents to its use, e.g. independent and empowered anti-torture watchdogs, strict adherence to laws obliging courts to dismiss forced confessions and an end to impunity for perpetrators of torture. UNAMA re-emphasizes that policies and guidelines that prohibit torture should be accompanied by effective accountability mechanisms, including internal oversight mechanisms that are impartial and promptly and thoroughly investigate, document and refer cases of torture for prosecution.

Such improved accountability mechanisms together with a range of preventive actions and reforms to the criminal justice system can go a long way toward ending and preventing torture and ill-treatment. These actions could include establishing a national preventive mechanism, enhancing the quality of criminal investigations through effective protocols for documenting evidence of torture, appropriate training and forensic expertise, and judicial actions that do not rely on forced confessions and provide redress to victims.

X. UNAMA Recommendations

Annex V to this report is an update of the Government's implementation of UNAMA's recommendations from its October 2011 and January 2013 reports. Of the 82 recommendations to the Government of Afghanistan, the Parliament, Attorney General's Office, Ministry of Interior, NDS, ANA, Supreme Court, donor countries, troop contributing countries and ISAF, nine recommendations were assessed as fully implemented, 28 partially implemented, and 41 not implemented.[391]

UNAMA again calls on the Government of Afghanistan to act on the 69 partially implemented and unimplemented recommendations that were addressed to the Government. They provide an action plan for addressing torture and ill-treatment in Afghan detention facilities.

UNAMA further offers the following key recommendations to assist Afghan authorities and international partners in preventing and ending the use of torture and ill-treatment in Afghan detention facilities.

To the Government of Afghanistan

- Establish an independent oversight and accountability mechanism modeled on the national preventive mechanisms (NPM) in the Optional Protocol to the *Convention Against Torture* (OPCAT) with the power to conduct regular unannounced visits to all places where persons are deprived of their liberty, authorize independent forensic medical examinations to confirm allegations of torture, conduct impartial and transparent investigations into alleged torture in NDS and Afghan National Security Forces' facilities (in accordance with best practices outlined in the Istanbul Protocol), and make recommendations to detaining authorities and other institutions on effective ways to provide redress for victims of torture and ill-treatment in places of detention, in particular conflict-related detainees, including referral of cases to the Attorney General's Office for investigation and compensation.[392]
- Take the necessary steps to sign and ratify the Optional Protocol to the *Convention Against Torture* (OPCAT).
- Identify, cease the use of, and close all unofficial places of detention.

To the Supreme Court

- Issue instructions requiring primary and appeal court judges to investigate routinely all allegations of torture and coerced confessions and strictly enforce the prohibitions on the use of evidence obtained through torture as required in the *Constitution of Afghanistan* and the *Criminal Procedure Code*.[393]

To the Attorney General's Office

- Conduct prompt, impartial, independent and thorough investigations into allegations of torture and ill-treatment of detainees by Afghan officials at all NDS

[391] Despite repeated requests UNAMA was unable to meet Supreme Court officials and did not obtain information to assess implementation of four recommendations to the Supreme Court.
[392] Aligned with Order 1 of Presidential Decree 129: Accountability for the Use of Torture.
[393] Aligned with Order 1 of Presidential Decree 129: Accountability for the Use of Torture.

and ANP facilities identified in this report as using torture and ill-treatment, and all other facilities where allegations have been made.[394]

To the National Directorate of Security

- Investigate all reports of torture and ill-treatment at provincial NDS facilities in Kabul, Kandahar, Farah and Takhar and all other facilities where such allegations have been made. Such investigations should be prompt, impartial, independent and thorough and focus on alleged criminal conduct of NDS officials.[395]
- Remove, discipline and punish, including referral to internal and external security prosecutors, those officials and their superiors found responsible for committing, ordering or condoning torture or ill-treatment of detainees, including suspension and loss of pension and other benefits.[396]

To the Ministry of Interior and Afghan National Police

- Investigate all reports of torture and ill-treatment by ANP and ALP in Kandahar, Baghlan, Herat, Kunduz and Paktika provinces, and all other facilities where such allegations have been made. Such investigations should be prompt, impartial, independent and thorough.[397]
- Remove, discipline and punish, including referral to ANP/military prosecutors, all ANP and ALP officers and their superiors found responsible for committing, ordering or condoning such practices, including suspension and loss of pension and other benefits.[398]

To the Afghan National Army

- Investigate all reports of torture and ill-treatment by ANA members in Kandahar, Paktya, Farah, Herat, Khost, Badghis, Balkh, Helmand and Kabul provinces, and all other locations where such allegations have been made. Such investigations should be prompt, impartial, independent and thorough.[399]
- Remove, discipline and punish, including referral to the ANA Judge Advocate and military prosecutor, all ANA officers and their superiors found responsible for committing, ordering or condoning such practices, including suspension and loss of pension and other benefits.[400]

To the Ministry of Interior and National Directorate of Security

- Fully enforce guidelines and policies in place that mandate NDS and ANP personnel to respect, protect and realize detainees' rights including the prohibition of torture.[401]
- Incorporate the right to be free from torture and the right of people deprived of their liberty to be treated with humanity and dignity of the person (article 7 and

[394] Aligned with Order 1 of Presidential Decree 129: Accountability for the Use of Torture.
[395] Aligned with Order 1 of Presidential Decree 129: Accountability for the Use of Torture.
[396] Ibid.
[397] Ibid.
[398] Ibid.
[399] Ibid.
[400] Ibid.
[401] Aligned with Order 3 of Presidential Decree 129: Education and Capacity Building, Guidelines and Policies, Monitoring and Fact Finding to Prevent Torture.

article 10 ICCPR, respectively) into the current text of the Ministry of Interior Policy on Prisoners and Detainees' Rights.[402]

- Provide political support for the effective functioning of the Office of the Police Ombudsman and sign the terms of reference that establish its responsibilities.[403]
- Conduct an independent and expert review of existing complaints mechanisms at Ministry of Interior and NDS detention facilities, and put in place mechanisms that are consistent with international human rights standards that ensure independence from facility directors, confidentiality, protection against potential reprisals and channel complaints to the Central Prison Administration, the judicial authority or other independent authorities.[404]
- Institute a mandatory standardized training that addresses the specific investigative needs of ANP and NDS in the context of their work, in particular components that insist on the link between non-coercive interrogation techniques, the prohibition of torture and ill-treatment, criminal and/or disciplinary sanctions for using torture and ill-treatment, and judges' obligations to invalidate confessions gained from torture.[405]

To the Attorney General's Office, Supreme Court, Ministry of Interior and NDS

- Implement an effective standardized referral system that ensures defence lawyers and legal aid providers are informed and contacted promptly when a new detainee is arrested and brought to a detention facility, and that interrogations take place in the presence of defence lawyers.[406]

To the Ministry of Public Health, Ministry of Interior and NDS

- Revise the current reporting arrangements for medical personnel attached to detention facilities so they are functionally independent and can make an unbiased and secure assessment of a patient's health interests and act accordingly.[407]
- Strengthen the capacity of forensic practitioners to detect and document torture cases and to conduct psychological evaluations to facilitate any findings of torture in cases of non-visible injuries.[408]
- Require that all detainees receive a full medical examination on arrival at each detention facility they are held in.[409]

To Troop Contributing Countries and Concerned Donor States

- Ensure that torture and ill-treatment of detainees by the NDS, Ministry of Interior/ANP and ANA and implementation of effective remedial measures including legal obligations to hold perpetrators of torture accountable, are considered as key progress and conditionality indicators in making

[402] Ibid.
[403] Ibid.
[404] Ibid.
[405] Ibid.
[406] Aligned with Orders 4 and 5 of Presidential Decree 129: Measures to Increase Legal Aid for Detainees and Increase Access to Defence Lawyers.
[407] Aligned with Order 6 of Presidential Decree 129: Measures to Increase Access to Health for Detainees.
[408] Ibid.
[409] Aligned with Order 1 and Order 6 of Presidential Decree 129: Measures to Increase Access to Health for Detainees.

determinations on funding and overall provision of technical support, advice, assistance and training to implicated Afghan institutions and ministries.[410]

- Put in place a policy of incentives and disincentives for all forms of financial and technical assistance, including through United Nations Funds, Agencies and Programmes in particular the Law and Order Trust Fund (LOTFA),[411] to the Ministry of Interior/Afghan National Police based on production and evidence of concrete and measurable improvements in oversight and accountability including in preventing, prohibiting and punishing the use of torture and ill-treatment.

[410] For example, the provisions of the US *Leahy Law* (discreet sections in the *Foreign Operations Appropriations Act*, Section 563 of P.L. 106-429 (2001) and the *Defence Appropriations Act*, Section 8092 of P.L. 106-259 (2001)) prohibit the US from providing funding, weapons or training to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross human rights violations, unless the Secretary of State determines that the concerned government is taking effective remedial measures. The US is required to assess whether adequate remedial measures by the Government of Afghanistan have been taken to effectively address torture and ill-treatment by NDS, ANP and ANA including bringing responsible members of security forces' units to justice to continue funding, training and other support. UNAMA suggests that a new determination under the *Leahy Law* may be required in view of consistent and recent documented reports (including the findings in this report) of the persistent use of torture with impunity by NDS, ANP and ANA which receive funding and training from US entities.

[411] Since 2002, UNDP has managed the billion dollar Law and Order Trust Fund for Afghanistan (LOTFA), the main mechanism to mobilize international donor funding to strengthen Afghanistan's law enforcement. Funds are used to pay police officers' and Central Prison Department guards' salaries, build infrastructure and train police officers. The 2011 UN Secretary-General Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP) sets out principles and measures to mainstream human rights in support provided by United Nations entities to non-UN security forces to ensure that such support is consistent with UN obligations to respect, promote and encourage respect for international humanitarian, human rights and refugee law. Consistent with these obligations, UN support cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe a recipient of UN support is committing grave violations of international humanitarian, human rights or refugee law, the UN entity providing this support must intercede with the relevant authorities with a view to bringing those violations to an end.

ANNEX I: Questions about UNAMA's Methodology and UNAMA's Response

NDS and ANP officials and international interlocutors have raised questions and comments about the methodology UNAMA used in making its findings on torture and ill-treatment. UNAMA has addressed these questions about methodology by clearly articulating the elements of its methodology which are based on well-established international best practices and standards. UNAMA analyzed patterns of allegations of torture in the aggregate and at specific facilities across Afghanistan in dozens of facilities which permitted conclusions to be drawn about abusive practices at specific facilities and suggested fabricated accounts were uncommon as summarized below.

Questions/Comments of Afghan authorities:

(1) *There is a high likelihood of lying or false allegations of torture from detainees highlighting the training some insurgents receive in making false allegations of ill-treatment as a form of anti-Government propaganda.*

(2) *The Taliban provide members with instructions or a code of conduct that instructs members detained by Afghan authorities to offer a bribe to be released and/or to allege torture when seen by foreigners during detention.*

UNAMA's response:

- The nation-wide pattern of allegations from the large sample size is inconsistent with a substantial proportion of detainees interviewed having been trained prior to their capture and detention in what lies to tell about their treatment if detained. First, the nature of the torture and ill-treatment reported was generally distinctive and specific to the facility at which it was alleged to have occurred. It is improbable that training would be so well tailored to specific facilities. Second, the same forms of torture and ill-treatment at the same facilities were reported by different detainees interviewed at different times and often months apart. Interviewees also belonged to a variety of networks, such as local criminal gangs and a range of insurgent groups. Training is unlikely to have been provided consistently across this diverse range of groups, and the pattern of allegations of torture and ill-treatment did not correspond with any identifiable ideological agenda.
- The Taliban's most recent Code of Conduct or *Lahya* of 30 May 2010 does not include a directive instructing members to bribe Afghan detaining authorities and allege torture to foreign observers.
- UNAMA received a copy of an alleged Taliban manual on detentions and investigations (undated in Pashto and English). Independent expert analysis of the document indicates that it is unlikely the document is an authentic Taliban text. In addition, while the document discusses members paying money to NDS to get detainees released it does not appear to directly instruct members to allege or lie about being tortured to foreign observers.
- At facilities visited and observed, UNAMA ruled out the possibility of collective fabrication – where a group of detainees would share stories of real or rumored ill-treatment and, either spontaneously or by design, arrive at and deliver a common account. When a significant portion of interviews regarding a facility was conducted at that facility, knowledge of that facility's practices for segregating detainees made it possible for UNAMA to ascertain that specific

detainees who provided highly similar accounts had not had any opportunity to communicate since arriving at the facility.

- UNAMA conducted numerous interviews with detainees at various locations and facilities who had previously been detained at the same NDS facility over periods of time before transfer to different locations. It is highly unlikely these detainees collectively or individually fabricated similar accounts of their treatment at the same facility during their different detention periods.
- At facilities where UNAMA interviewed substantial numbers of detainees without receiving any allegations of torture or ill-treatment, no detainees within these groups alleged physical ill-treatment. This finding further suggests that detainees generally gave truthful accounts, free from collusion, sharing of stories and collective fabrication.
- Even if some portion of detainees were trained to lie about being tortured, UNAMA's methodology, guidance and training to interviewers is designed to detect and weed out fabrication as explained above. UNAMA assessed as not credible about one quarter of the allegations of torture and ill-treatment by detainees for the current report.

(3) UNAMA did not share evidence with NDS of torture allegations made by detainees at the time when the allegations were made. NDS did not therefore have an opportunity to verify and follow up on specific allegations of torture or ill-treatment received.

- Throughout UNAMA's detention observation periods, UNAMA regularly requested meetings and provided relevant information about allegations of torture and ill-treatment to NDS and ANP interlocutors permitting them to act as they determined appropriate. In some instances, NDS advised UNAMA that it had undertaken investigations into specific allegations/cases or to specific facilities including those referred by UNAMA and reported that it had found no torture or ill-treatment in all such instances.
- As noted in the 11 January 2013 letter of Commander ISAF to UNAMA,[412] in 2012 ISAF reported 80 detailed allegations of detainee abuse to Afghan authorities requesting action and offering assistance to support investigations with Afghan officials acting on only one case as of 11 January 2013.

(4) UNAMA did not produce evidence of methods of specific acts of torture by NDS, in particular electric shocks, sexual threats and beatings to sexual organs e.g. pulling of testicles.

- In most detention facilities UNAMA visited, NDS and ANP officials did not permit UNAMA to take cameras or cell phones into interviews with detainees. This made it difficult for UNAMA to obtain direct first hand photographic evidence of fresh electric shocks to detainees' bodies or other evidence of beatings to sexual organs. In some cases, detainees were not able to receive medical treatment for injuries sustained during interrogation and medical providers were reluctant to provide UNAMA with information or records regarding such injuries, often for security reasons.

[412] See Annex V to UNAMA's January 2013 report: *Letter of Commander ISAF to UNAMA dated 11 January.*

- UNAMA verified forms of torture that do not leave, or are designed not to leave, physical marks and produce other signs that a basic medical examination might not necessarily detect.
- UNAMA interviewed numerous detainees who said that after experiencing torture that produced visible injuries, detention facility authorities kept them hidden from officials, lawyers, medical doctors, human rights observers or other visitors, or delayed their transfer to another detention facility, their admission to a clinic or release until their injuries had healed.
- In numerous cases, UNAMA interviewers were able to obtain photographic and other evidence including medical records indicating electric shocks or other injuries to detainees' bodies.

ANNEX II: Applicable Law

Prohibitions of Torture and Cruel, Inhuman or Degrading Treatment

Obligations under International Law

Several international treaties to which Afghanistan is a party prohibit torture. These include the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *International Covenant on Civil and Political Rights* (ICCPR), the *Geneva Conventions of 1949*, the *Rome Statute of the International Criminal Court* and the *Convention on the Rights of the Child* (CRC).[413] The absolute prohibition against torture is also considered a peremptory norm (*jus cogens*) of international law.

The State obligation to respect the prohibition against torture is non-derogable meaning that it is never justified to suspend or to fail to observe the ban on its use. *"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."*[414] In addition, under article 4 (2) of the ICCPR, States cannot derogate from the prohibition of torture and cruel, inhuman or degrading treatment prescribed in article 7 of the ICCPR.

Obligations under National Law

Afghan law explicitly prohibits torture with the *Constitution of Afghanistan* providing that *"[n]o one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished."*[415] Article 51 of the *Constitution* provides victims of torture and ill-treatment with a right to redress and reparations as follows, "[*a]ny person suffering undue harm by government action is entitled to compensation, which he can claim by appealing to court*."

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[413] The Government of Afghanistan ratified the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* in June 1987, the ICCPR in April 1983, *the Geneva Conventions* in September 1956 (with the exception of the two additional protocols) and the CRC in 1994. *The Rome Statute of the International Criminal Court* ratified by Afghanistan in February 2003 states that torture constitutes a war crime in a non-international armed conflict as follows: *"[i]n the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed* hors de combat *by sickness, wounds, detention or any other cause: [...] torture [...]"* (Article 8 (2) (c) (i)). The elements of the war crime of torture in a non-international armed conflict are that the perpetrator inflicted severe physical or mental pain or suffering upon a person; that the perpetrator inflicted it for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; that the person subjected to torture was either *hors de combat*, a civilian, medical personnel or religious personnel taking no active part in the hostilities; that the perpetrator was aware of the factual circumstances that established this status; that the conduct took place in the context of and was associated with an armed conflict not of an international character; and that the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

[414] *Convention against Torture,* article 2 (2). See also Committee against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), para. 1 (available at http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en) and Human Rights Committee, General Comment No. 24, para. 10 (available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.6&Lang=en)

[415] *Constitution of Afghanistan*, article 29.

The *Juvenile Code* 2005 prohibits harsh punishment against children.[416] The *Penal Code* also criminalizes torture and article 275 states that if a public official "tortures [an] accused for the purpose of obtaining a confession," they shall be sentenced to long-term imprisonment in the range of five to 15 years.

The new *Criminal Procedure Code*, which entered into force on 5 June 2014, includes several provisions aimed at preventing and addressing the use of torture, namely article 7 (13), which introduces the legal principle of *habeas corpus*, and articles 9 (4) and 152 making the presence of a defence lawyer mandatory during prosecution proceedings.[417] In addition, investigating prosecutors have an obligation to report if *"the police and national security operative have committed legal violations in dealing with a case"* (article 91).

The Afghan *Penal Code* and other laws do not provide a working definition of the elements of the crime of torture. While "torture" is prohibited, the law does not explicitly define the crime. To date, the international definition of torture has not been transposed into Afghan law or policy. However, irrespective of whether the prohibition of torture is a self-executing right or not, or what process of incorporation Afghanistan follows to give effect to international treaties in its domestic law, it is a general principle of international law that a State is not absolved from its international legal obligations by a gap in its domestic law.

Definition of Torture and Ill-Treatment under International Law

The definition of torture under the *Convention against Torture* (CAT) is the most cited and authoritative definition and is considered binding under customary international law:

"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."[418]

This definition includes four elements: (1) the act of inflicting severe pain or suffering, (2) the act is intentional, (3) the act is for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or discrimination, and (4) the perpetrator is a public official or other person acting in an official capacity. The *"elements of intent and purpose […] do not involve a subjective inquiry into the*

[416] *Juvenile Code* 2005, article 7.
[417] The new Afghan *Criminal Procedure Code* was published on 5 May 2014 and entered into force on 5 June 2014. The previous *Interim Criminal Procedure Code* of 2004 prohibited torture and ill-treatment in article 5 (4) (*"The suspect and the accused shall not undergo intimidations or any form of physical or psychological pressure."*) and article 5 (5) (*"Their statements shall be made in a condition of absolute moral freedom."*)
[418] *Convention against Torture*, article 1.

motivations of the perpetrators, but rather must be objective determinations under the circumstances."[419]

Article 1 (2) of the CAT expressly declares that its definition is *"without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."* For example, the ICCPR, in article 7, does not make a particular requirement of "purpose" or "official capacity." This means that non-State actors can also commit torture.

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

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

- *Criminalization.* To *"ensure that all acts of torture are offences under its criminal law"* including *"act[s] by any person which constitutes complicity or participation in torture"* and the offences shall be *"punishable by appropriate penalties which take into account their grave nature."*
- *Investigations and victims' complaints.* To conduct a "prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed" and to ensure the right of *"any individual who alleges he has been subjected to torture […] has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities"* and to protect the complainant and witnesses against ill-treatment or intimidation.
- *Training.* To include *"education and information regarding the prohibition against torture […] in the training"* of all persons *"who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."*
- *Rules, directives, procedures.* To include the prohibition of torture in *"the rules or instructions"* issued to persons involved in the custody, interrogation or treatment of detainees and to *"keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of [detainees] with a view to preventing any cases of torture."*
- *Redress and rehabilitation.* To ensure *"that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."*
- *Exclusionary rule.* To *"ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings."*
- *Non-refoulement.* Not to transfer *"a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."*[420] Further, *"[i]f a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials*

[419] Committee against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), para 9.
[420] *Convention against Torture*, articles 2-4 and 10-14.

subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture…"[421]

Ill-Treatment

C*ruel treatment*, and *inhuman* or *degrading treatment* or *punishment* are also legal terms which refer to ill-treatment causing varying *degrees of suffering* less severe than in the case of torture. In addition, the distinction between torture and cruel, inhuman or degrading treatment or punishment depends on other circumstances of the case, including the sex, age, state of health of the victim, the duration and manner of treatment, the physical and psychological effects, etc. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose. The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Exposure to significant mental or physical pain or suffering
- By or with the consent or acquiescence of State authorities[422]

The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.[423]

Legal Prohibitions of Unlawful or Arbitrary Detention

Obligations under International Law

The ICCPR to which Afghanistan is a State party states in article 9 (1): *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."*

Deprivations of liberty must not be arbitrary, and must be carried out with respect for the rule of law. The second sentence of article 9 (1) prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e. deprivation of liberty that is not on such grounds and in accordance with such procedure as are established by law.[424] The notion of "arbitrariness" must be interpreted more broadly than "against the law", to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity and proportionality.[425]

In addition to the legality of the detention and the minimum conditions of the detention, international law also lays out basic procedural rights of persons deprived of their liberty:[426] anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be informed promptly of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or

[421] Committee against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), para. 19.
[422] Giffard, Camille, *The Torture Reporting Handbook,* Human Rights Centre, University of Essex, 2000.
[423] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Comment No. 2.
[424] Human Rights Committee, General Comment no. 35, para. 11.
[425] Human Rights Committee, General Comment no. 35, para. 12.
[426] E.g. ICCPR, article 14 (right to a fair trial).

other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

The ICCPR also provides that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, for the court to decide without delay on the lawfulness of detention and order release where the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.[427]

The CRC guarantees rights for children detained including that detention should be used as last resort for the shortest possible time, the right to family visits and have contact with family while in detention, the right to legal assistance, the right to be presumed innocent, the right to be informed promptly and directly of charges, right to have the matter determined without delay, and the right not to self-incriminate and be compelled to give testimony.[428]

Obligations under National Law

The *Constitution of Afghanistan* clearly prohibits arbitrary detention. This reflects the general principles outlined in article 9 (1) of the ICCPR. Articles 23 (1) and (3) of the Constitution state that liberty *"is the natural right of human beings"* which the State must *"respect and protect."* The Constitution stipulates that a person's liberty can be restricted if his or her liberty is "affecting others' freedoms as well as the public interest" and only when *"regulated by law."* In addition, the Constitution states that no one can be detained *"without due process of law."*[429]

Other national laws of Afghanistan reflect these constitutional guarantees and define the grounds and procedures for legal detention. The *Penal Code (1976)* and the new *Criminal Procedure Code* provide the grounds and general procedural framework for legal detention. According to article 8 the police at the time of arrest, a prosecutor prior to commencing an investigation and a judge before starting a trial are obliged to inform suspects and accused of their rights enshrined in article 7.

The *Criminal Procedure Code* also sets various deadlines to prevent arbitrary detention and guarantee due process rights: police or NDS must notify the competent prosecutor no later than 24 hours after *"detection of the crime"*[430] (article 80) and police must hand over a detainee and his/her case file within 72 hours to the prosecutor (article 87).[431] This article does not identify or include the NDS as being required to hand over a detainee and his or her file within 72 hours. A suspect can be kept in detention for up to 15 days while a prosecutor investigates a detainee for a suspected felony (article 100).

Notwithstanding many improvements in the new *Criminal Procedure Code*, the specific time limit allowing up to 15 days[432] of pre-trial detention without detainees being

[427] ICCPR, article 9 (1)-(5).
[428] CRC, articles 37 (b)-(c) and 40 (2) (b).
[429] Afghanistan Constitution, articles 24 (1) and 27(1) (2).
[430] Article 80 (3) states that this activity may include arresting a suspect.
[431] The previous *Interim Criminal Procedure Code* of 2004 included an identical 72-hour limit, divided into a first phase of 24 hours (article 31) and a second phase of 48 hours (article 34).
[432] Throughout the *Criminal Procedure Code*, a "day" is defined as a working day, not a 24-hour period or calendar day (Article 281).

brought before a judge is inconsistent with article 9 (3) of the ICCPR.[433] If investigations so require, the detention period may be extended twice, first to 30 days, then to 60 days, by the competent primary court (article 100). Once a case has been referred to court, the court may authorize an additional 30 days of detention each for the primary and appeal court stage, and 60 days while a case is pending at the Supreme Court (article 101). Article 289 stipulates that non-compliance with the *Criminal Procedure Code* renders all affected proceedings null and void and obliges the court to issue an order *ex officio* to that effect even if none of the parties applies for nullification.

The *Police Law* details the standards for police conduct and practice.[434] The *Law on Detention Centres and Prisons* details the procedure to monitor the legality and conditions of detention.[435] The *Constitution of Afghanistan* guarantees the right to a defence lawyer immediately upon arrest.[436] This right is expanded in the *Advocates Law*.[437]

The *Juvenile Code* provides the legal framework for the detention of children which requires the State to take special measures to protect the rights and interests of children. A child is defined as one who has not completed the age of 18 years. It states that children should be confined for the minimum duration. It guarantees the right to legal representation and requires that police are duty bound to notify a legal representative of the charges. In addition, it recognizes that children should be treated differently from adults and prescribes shorter time limits for detention. Police have 24 hours to submit the information to the prosecutor who is required to complete the investigation within one week and prepare the indictment. This period of detention can only be extended for three weeks while the prosecutor completes the investigation.[438]

The *Law on Prison and Detention Centres* states that children and adults should be detained separately.[439] Article 2 of the *Law on Juvenile Rehabilitation and Correction Centres* provides that children should be detained only in juvenile rehabilitation and correction centres.[440]

[433] General Comment no. 35, para. 33: *"In the view of the Committee, forty-eight hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than forty-eight hours must remain absolutely exceptional and be justified under the circumstances."* Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

[434] Official Gazette No. 862 (2005).

[435] Official Gazette No. 852 (2005).

[436] The *Constitution of Afghanistan*, article 31.

[437] Official Gazette No. 934 (2007).

[438] *Juvenile Code*, articles 4, 8, 11, 13-15, 22 and 30.

[439] *Law on Prisons and Detention Centres* 2005, article 9 (4).

[440] Official Gazette No. 969 (14/01/2009).

ANNEX III: Press Conference by the President's fact-finding delegation announcing the conclusions of its investigative work, 11 February 2013

[UNAMA summary of press conference]

Background:

The Delegation was created by Presidential Decree to look into the findings of UNAMA's report on *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On* published in January 2013. Members of the delegation had two weeks to do their investigation and submitted their findings to the President on 10 February 2013.

The Delegation's report has two parts:

- One section described its interactions with UNAMA: UNAMA's decision not to provide requested documents (identifying victims and perpetrators) and to serve on the delegation because of UN policies, privileges, immunities and confidentiality (the delegation claimed UNAMA's only contribution was to send two representatives to one meeting);
- Section two described its own investigations, based on a questionnaire it had prepared as a basis to interview detainees.

Investigation:

The Delegation interviewed 284 detainees, including many women and child detainees.

- Visits to three provinces: Kabul (NDS Department 124, Department 40, *Pul-i-Charkhi*, Women's detention facility, and JCRC), Kandahar (NDS HQ, *Sarpoza* prison, Women's detention centre, and JCRC) Herat (Central Prison, Women's prison, NDS HQ, and JCRC).

Kabul:

1. Women's prison: ten detainees interviewed; two of ten claimed torture; eight of ten had received legal counsel (no detainee claimed to have been subjected to sexual abuse).
2. JCRC: nine detainees interviewed; all nine alleged police and NDS harassment and ill-treatment; six of nine had access to legal counsel.
3. NDS Department 124: 23 detainees interviewed; two of 23 alleged torture.
4. NDS Department 40: 34 detainees interviewed; 11 of 34 alleged torture.
5. *Pul-i-Charkhi* Detention Centre: 59 detainees interviewed; 30 of 59 alleged torture. Some raised issues of medical care being delayed by a week, some said they were kept without sunlight for three months, some claim ill-treatment by US forces – taken to DFIP – forced out of helicopter roughly, not given Halal food, treated like animals, etc.

Kandahar:

1. Sarpoza prison: 28 detainees interviewed; 13 of 28 alleged torture; four of 28 had been given access to legal counsel.
2. Women's prison: five detainees interviewed; three of five alleged torture; four had been given access to defence counsel.

3. JCRC: seven interviewed; four of seven had been tortured; two of seven had been given lawyers.
4. NDS HQ: 19 interviewed; eight of 19 had been tortured.

Herat:

1. Central prison: 65 detainees interviewed; 43 of 65 alleged torture; 30 of 65 had been given access to legal counsel.
2. Women's prison: eight detainees interviewed; four of eight alleged torture; seven had been given access to defence counsel.
3. JCRC: seven interviewed; four of seven had been tortured; six of seven had been given lawyers; ("One child claimed to have been badly beaten in NDS custody and then refused medical care; he had since given up a drug addiction while in detention so he was happy…").
4. NDS HQ: seven interviewed; three of seven had been tortured.
5. Other NDS: three detainees interviewed; no complaints.

The Delegation's findings included:

- Torture exists (in nearly 48 percent of cases) 148 of 284 allegations (12 of 148 allegations were found to be unreliable) 136 verified cases of torture.
- Torture and ill-treatment occur at time of arrest and during interrogation.
- Suspension, beatings, and other methods were among the recognized forms of torture.

The Delegation rejected:

- Existence of "private prisons".
- Use of systematic torture.
- Use of sexual abuse as a form of torture.

The Delegation put heavy emphasis on arbitrary detention as a contributing factor in torture and ill-treatment:

- Noted 66 percent of detainees interviewed did not have defence counsel.
- Many cases of individuals who were held beyond legal time limits.
- Acquittals and not released.
- Completed sentences and not released.

The Delegation made 11 recommendations to Attorney General's Office, Ministry of Justice, Supreme Court, Ministry of Interior and NDS among others:

1. Attorney General's Office should be ordered by the President to investigate all allegations of torture and punish perpetrators.
2. Police and prosecutors should not interfere in the roles of one another and should stick to their role in law enforcement, investigation for indictment and prosecution and trial.
3. The Ministry of Justice should organize a legal aid affairs board and ensure that it meets regularly to ensure provision of inclusive access to legal aid services from time of arrest.
4. NDS and Ministry of Interior should ensure that detainees have access to legal aid upon arrest. NDS and Ministry of Interior should ensure that, under the Prison Law, detainees have full and unimpeded access to medical treatment.

5. Ensure the release of all detainees held beyond the limits of their sentence or upon acquittal.
6. The Supreme Court should ensure that detainees who have not yet been indicted after the 10 month time limit for pre-trial detention are released immediately.
7. NDS, Attorney General's Office and Ministry of Interior should increase the capacity of their staff through trainings on prevention of torture and arbitrary detention.
8. All interrogations should be video recorded and proper modern equipment installed in detention facilities.
9. Modern detention facilities are needed in order for detention centre personnel to do a proper job and investigation.
10. In 10 districts of Kandahar there are no judicial organs at all – this needs to be corrected immediately.
11. Follow-up on petitions from detainees given to the delegation especially the release of a 96-year old man who had been given three consecutive 20-year sentences – request for presidential pardon.

All findings and recommendations were delivered to and accepted by the President on 10 February 2013. The President then called for a special meeting of judicial officials to be held on Wednesday, 13 February 2013.

ANNEX IV: Presidential Decree 129

Decree [No. 129] of the President of the Islamic Republic of Afghanistan to implement the Afghan fact-finding delegation's suggestions on the presence of torture and ill-treatment in detention centres (28/11/1391 – 16 February 2013)

To avoid mistreatment and torture in detention centres and prisons of the country and considering the human rights of suspects and accused ones during investigations/interrogation in the process of prosecution as reported in the truth finding delegation's report, authorized through order number 6673 dated 22 January 2013. The delegation was led by Abdulqader Adaltkhwah, Deputy of the Constitution's Observation Commission and its members, Dean of the Law and Political Science Faculty, a representative of the President's Legal Advisory Board, Legal Advisors of the Ministry of Interior and NDS who had interviewed 284 prisoners in the prisons of Kabul, Kandahar, and Herat provinces and reported to the Judicial Committee of the Islamic Republic of Afghanistan. In the light of their report, the President of the Government of Afghanistan issued the following orders:

1. The Attorney General of the Government of Afghanistan is in charge of prosecuting the violators of article 51 of the *Law on Prisons and Detention Centres* in light of the findings of the delegation's report which has reported torture and mistreatment of detainees and prisoners, and to prevent any torture, mistreatment and conviction of any innocent detainee in the future.

2. According to the *Constitution of Afghanistan*, the discovery of crime is the responsibility of the police, investigation and prosecution are the responsibility of the Attorney General's Office, despite the fact that there are [other] security and discovery organizations that detain detainees for more than 72 hours and do the work instead of the crime investigation agencies. Accordingly all organizations are obliged to do their duties as conferred according to the applicable laws of the country and prevent interference in others' duties and should send cases to responsible prosecution offices within the timeframe prescribed by law.

3. According to article 29 of the Constitution, the torture of human beings is prohibited. All the discovery and investigation departments of the Ministry of Interior, NDS and Attorney General's Office are ordered not to torture or mistreat any suspect or detainee during detention and interrogation.

4. The Ministry of Justice is instructed to regularly organize meetings of the Legal Aid Board in cooperation with the Faculty of Sharia and Law of Kabul University to monitor the lack of access of detainees and prisoners to legal assistance and defence lawyers, and to discuss methods and possibilities of offering legal assistance in a widespread manner to all detainees and prisoners as per Article 31 of the Constitution. The Ministry of Justice is obliged to revise the current structure of the Legal Aid Department, so that it provides for the actual numbers of detainees and prisoners.

5. The Ministry of Interior and NDS are duty bound to facilitate access of the detainees and prisoners by legal aid providers and defence lawyers in the supervision and detention centres and prisons since their arrest.

6. The Ministry of Interior and Ministry of Public Health are duty bound to provide as soon as possible medical treatment and cure to the detainees who are suffering from illness and those who have been complaining from illnesses arising from beating during

the interrogation process as stated in article 27 of the *Law on Prisons and Detention Centres.*

7. The Office of the Attorney General of the Islamic Republic of Afghanistan in coordination with the General Directorate for Prisons and Detention Centres of the Ministry of Interior are obliged to assess the cases of those prisoners and detainees who are acquitted by the court, and those who completed their period of imprisonment, but are still in prison. The responsible bodies (Attorney General and General Directorate for Prisons and Detention Centres) in light of article 50 of the *Law on Prisons and Detention Centres* should take legal steps for their release after assessment, within two months.

8. The Supreme Court is instructed to assess the cases of those detainees/prisoners who spent a long time in detention and for which the courts have not issued any timely decision/s on their cases and for whom procedural timeframes are over; the Supreme Court shall appoint expert judges to assess and issue decisions as soon as possible on the aforementioned cases. Otherwise, the officials in charge of liberty deprivation centres (detention centres/prisons) have the authority, in accordance with Section 4 of article 20 of *Law on Prisons and Detention Centres*, to release such prisoners; in case of failure to do so, detention/prison officials shall be prosecuted by the relevant prosecutorial office for the commission of negligence within the course of duty in relation to such cases.

9. The Supreme Court, the Ministry of Justice and the AGO are responsible, within the limits of what is possible to the Government, for establishing courts, prosecution offices and *Huqooq* offices and with preference to the super-scale, CBR and other privileges, in districts where these institutions do not exist in order to prevent the human rights violations of citizens and to pave the way for the sustainability and development of the system based on the rule of law.

10. The Ministry of Interior, Attorney General's Office and NDS are instructed – for professional capacity building purposes – to conduct training courses for their employees working in law enforcement, protection of the law and conduct of investigation, for learning human rights and other relevant professional and job-related subjects in order to increase their capacity to discover, investigate and collect evidence of crimes.

11. The responsible institutions are instructed to equip/mobilize their investigation and interrogation administrations with modern instruments – used in the proof of crime –, the investigation proceeding should be video-recorded to avoid any complaints from other persons. The criminal police and judicial police are ordered to collect material sources of crime, including the scientific and technical criminal pictures of the criminals on the spot. Once the documents have been collected within the legally prescribed period of time, the cases should be referred to the relevant prosecution office for further judicial process. The responsible organs must seriously avoid any arrest without proof, evidence and documents.

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

Hamid Karzai, President of the Islamic Republic of Afghanistan

ANNEX V: Status of Implementation of UNAMA's Recommendations from October 2011 and January 2013 Reports

Of the 82 recommendations to the Government of Afghanistan, the Parliament, Attorney General's Office, Ministry of Interior, NDS, ANA, Supreme Court, donor countries, troop contributing countries and ISAF, nine recommendations were assessed as fully implemented, 28 partially implemented, and 41 not implemented. Despite repeated requests UNAMA was unable to meet Supreme Court officials and did not obtain information to assess implementation of four recommendations to the Supreme Court.

RESPONSIBLE AUTHORITY / STAKEHOLDER	RECOMMENDATIONS	PROGRESS ON IMPLEMENTATION	UNAMA REPORT
NDS	Take immediate steps to end and prevent torture and ill-treatment at all NDS facilities and particularly at facilities where such practices have been used as a method of interrogation In particular: • Investigate all reports of torture and ill-treatment at provincial NDS facilities in Faryab, Herat, Jawzjan, Kandahar, Khost, Kunduz, Laghman Nangarhar, Paktika, Takhar, NDS Department 124 and NDS Department 40. • Such investigations should be credible, effective and impartial and focus on alleged criminal conduct of NDS officials. • Remove, prosecute, discipline and punish those officials found responsible. • Permit independent oversight of these investigations and publicly report on findings and remedial actions.	Partial implementation Partial implementation No implementation No implementation No implementation	2011 and 2013
NDS	Review the working methods of the NDS oversight/detention monitoring commission, identify why it has not uncovered torture at facilities visited, and adopt methods that ensure future monitoring missions.	Partial implementation	2011
NDS	Implement an external accountability mechanism that allows independent and transparent investigations into alleged torture within NDS facilities.	No implementation	2011

NDS	Ensure all NDS interrogators and their superiors receive mandatory training in lawful and effective interrogation methods, alternative investigative approaches (such as forensics), and legal obligations under Afghan and international law that prohibit torture and ill-treatment, in coordination with international partners.	Partial implementation	2011
NDS	Change policies and practices on access of defence lawyers to detainees. Permit defence lawyers to visit all detention facilities and offer their services to any detainee at all stages of the process as required by Afghan law.	No implementation	2011
NDS	Change policies and practices on access of family members. Immediately notify a detainee's family of the detainee's location and within 18 hours if NDS has a well-founded reason not to notify family immediately. Permit family members to visit detainees.	No implementation	2011
NDS	Identify, cease the use and close all unofficial places of detention.	No implementation	2013
NDS	Remove, discipline and punish, including referral to ANP/Military Prosecutors, those officials found responsible for torture or ill-treatment of detainees including suspension and loss of pension and other benefits.	No implementation	2013
NDS	Permit full, regular and unhindered access of independent monitors (including AIHRC, UNAMA and others) to all NDS facilities (including NDS Department 124).	Partial implementation	2013
NDS	Require that all interrogations are audio or video recorded (where CCTV is available) and be made available to prosecutors, judges or any independent oversight and complaints mechanisms that requests access.	Partial implementation	2013
NDS	Establish a centralized register of all detainees held in NDS custody and ensure that it is openly accessible to independent monitors (including AIHRC, UNAMA and others), is updated regularly and in a transparent manner.	No implementation	2013
NDS	Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of age – are given legally required considerations and protections while they go through criminal	No implementation	2013

	investigation, processing, and transfer to appropriate juvenile facilities. Ensure that child detainees are held in wholly separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.	 No implementation	
ANP	Take immediate steps to stop and prevent torture and ill-treatment by ANP and ALP particularly at facilities and locations where such practices have been used as a method of interrogation. Investigate all reports of torture and ill-treatment by ANP and ALP at the provincial ANP detention facilities, in particular, in Baghlan, Helmand, Herat, Kandahar, Paktika, Takhar and Zabul and in districts where ALP are deployed in Faryab, Kunduz, Kandahar and Uruzgan, and remove, prosecute, discipline and punish all police officers and their superiors found responsible for committing or condoning such practices.	Partial implementation Partial implementation	2011 and 2013
MoI and ANP	Investigate all reports of torture and ill-treatment.	Partial implementation	2013
ANP	Permit independent oversight of these investigations and publicly report on findings and remedial actions	No implementation	2011
ANP	Issue and implement regulations instructing police that puts in place a limited number of designated officials with the Criminal Investigation Department, Counter-Terrorism Unit, and similar units who conduct interrogations. Issue and train these officials on a standard operating procedure on lawful and effective interrogation and legal obligations on the prohibition of torture and ill-treatment.	Full implementation	2011
MoI and ANP	Identify, cease the use and close all unofficial places of detention.	No implementation	2013
MoI and ANP	Remove, discipline and punish, including referral of to ANP/military prosecutors, all ANP and ALP officers and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.	No implementation	2013
MoI and ANP	Permit independent oversight of these investigations and publicly report on findings	No implementation	2013

	and remedial actions.		
MoI and ANP	Permit full, regular and unhindered access of independent monitors to all ANP and Ministry of Interior CPD prisons including the AIHRC, UNAMA, and others.	Full implementation	2013
MoI and ANP	Issue transparent and legally-binding guidelines regulating ALP powers to detain and ensure that ALP units receive full training on such guidelines.	No implementation	2013
MoI and ANP	Require that all interrogations are audio or video recorded (where CCTV is available) and to be made available to prosecutors, judges, or any independent oversight and complaints mechanisms that request access.	Partial implementation	2013
MoI and ANP	Change policies and practices on access of defence lawyers to detainees. Permit defence lawyers to visit all detention facilities and offer their services to any detainee from the point of arrest and at all stages of the process (including during interrogation) as required by Afghan law.	Partial implementation	2013
MoI and ANP	Ensure that all ANP investigators/ interrogators participate in mandatory training in lawful and alternative interrogation and interview techniques.	Partial implementation	2013
MoI and ANP	Establish a centralized register of all detainees held in ANP custody and ensure it is openly accessible to independent monitors (including AIHRC, UNAMA and others), is updated regularly and kept in a transparent manner.	No implementation	2013
MoI and ANP	Establish a commission consisting of senior representatives within the Ministry of Interior and from key international partners (including ISAF, UNAMA, and key international agencies and donors) to review implementation of measures - including the recommendations in this report - aimed at eradicating the use of torture within ANP and ALP.	No implementation	2013
MoI and ANP	Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of age – are given legally required considerations and protections while they go through criminal investigation, processing, and transfer to appropriate juvenile facilities.	Partial implementation	2013
MoI and ANP	Ensure that child detainees are held in wholly	Full	2013

	separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.	implementation	
ANA	Take steps to stop and prevent torture and ill-treatment at all places where ANA holds detainees, particularly those locations where such practices have been used during interrogation.	No implementation	2013
ANA	Investigate all reports of interrogators using torture and ill-treatment in Farah, Herat, Badghis, Kabul (Surobi), Laghman and Kandahar.	No implementation	2013
ANA	Discipline, court-martial and punish all ANA personnel and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.	No implementation	2013
ANA	Permit independent oversight of these investigations and publicly report on findings and remedial actions.	No implementation	2013
ANA	Permit full, regular and unhindered access of independent monitors to all ANA places where conflict-related detainees are held, including the AIHRC, UNAMA, and others.	Partial implementation	2013
Government of Afghanistan	Make the legal framework and procedures regulating NDS public and transparent, and ensure legal procedures provide for the external investigation and prosecution of allegations of serious criminal conduct, including torture and ill-treatment of detainees by NDS officials, in the civilian criminal justice system.	No implementation	2011 and 2013
Government of Afghanistan	Ensure access of any independent and non-government monitoring body and human rights organizations, including the Afghanistan Independent Human Rights Commission (AIHRC), the International Committee of the Red Cross (ICRC) and UNAMA, to detention facilities and prisons.	Partial implementation	2011
Government of Afghanistan	Ensure that an adequate number of qualified defence lawyers are available in all provinces. Ensure that sufficient legal aid is available in all provinces, including independent legal aid providers, and that their access to conflict-related detainees held in NDS and ANP facilities is ensured within the constitutionally-	Partial implementation	2011 and 2013

	mandated timeframes.		
Government of Afghanistan	Establish an effective and accessible reparation and compensation mechanism for victims of torture and other ill-treatment.	No implementation	2011
Government of Afghanistan	Sign and ratify the Optional Protocol to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). Establish an independent oversight and accountability mechanism modelled on the national preventive mechanism (NPM) in the *Optional Protocol to the Convention against Torture* (OPCAT) – possibly within the Afghanistan Independent Human Rights Commission – with the power to (1) conduct regular unannounced visits to detention facilities (2) authorize independent forensic medical examinations to confirm allegations of torture (3) conduct impartial and transparent investigations into alleged torture in NDS and ANP facilities, and (4) make recommendations to detaining authorities and other institutions on the best means to redress torture and ill-treatment in detention facilities, including referral of cases to the Attorney General's Office for investigation – possibly by anti-corruption prosecutors.	No implementation No implementation	2011 and 2013 2013
Government of Afghanistan	Require all medical personnel and detention facility managers to disclose medical evidence of torture to the external, independent oversight and accountability mechanism and that appropriate professional penalties and financial sanctions are in place – administered by the oversight and accountability mechanism – to enforce these obligations.	No implementation	2013
Government of Afghanistan	Require that all conflict-related detainees receive a full medical examination upon arrival at NDS and ANP facilities.	Partial implementation	2013
Government of Afghanistan	Invite the UN Special Rapporteur on Torture to visit Afghanistan.	No implementation	2013
Government of Afghanistan	Complete and file the initial State report of Afghanistan with the expert UN Committee against Torture on the Afghanistan's implementation of the *Convention against Torture.*	Partial implementation	2013
Government of Afghanistan	Revoke the MoU between NDS and the AGO to ensure that prosecutors retain their investigative authority and can interview	No implementation	2013

	detainees still in NDS detention before their transfer to a CPD prison.		
Supreme Court	Issue instructions requiring primary and appeal court judges to investigate routinely all allegations of torture and coerced confessions and enforce strictly the prohibitions on the use of evidence obtained through torture as required by the *Constitution of Afghanistan* and *Interim Criminal Procedure Code*.	Despite repeated requests UNAMA was not able to meet with the Supreme Court and does not have relevant information to assess implementation of these recommendations.	2011 and 2013
Supreme Court	Direct judges to reject confessions obtained through torture as permissible evidence.[441]		2013
Supreme Court	Develop detailed guidance to primary and appeal court judges defining the crime of torture to include all elements of the international definition of torture within CAT.		2013
Supreme Court	Remove and/or dismiss judges who continue to accept confessions obtained through torture or coercion as admissible evidence of guilt at trial in court.		2013
Supreme Court, MoJ, MoI and Parliament	Revise the *Interim Criminal Procedure Code* to guarantee the right of detainees to be brought promptly before a judge for an initial and periodic review of the lawfulness of pre-trial detention, and the right of detainees to challenge the legality of their detention with a speedy court decision. Revise Afghan legislation to guarantee the right of detainees to challenge the legality of their arrest and detention in Afghan courts.	Full implementation	2011 and 2013
Parliament	Ensure that the crime of torture is properly defined, including all elements of the international definition of torture within CAT, in the draft revisions of the Criminal Procedure Code and the Penal Code currently in process.	No implementation	2013
Parliament	Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.	No implementation	2013
AGO	Issue mandatory instructions to all	No implementation	2013

[441] The new *Criminal Procedure Code* adopted in June 2014 contains specific references to obligations to reject the use of torture as a basis of evidence in criminal cases, including article 22 on the prohibition of use of evidence obtained through coercion and torture. It is also notable that article 4 (35) provides a definition of "confession" as a voluntary admission *"and in a sound state of mind without duress before an authorized court".*

	prosecutors to reject confessions obtained through torture as permissible evidence upon which to base an indictment or a prosecution at trial.		
AGO	Ensure that any Supreme Court instruction to judges regarding the definition of torture and the elements of the crime of torture are transmitted to prosecutors at all levels.	No implementation	2013
AGO	Remove and/or dismiss prosecutors who fail in their duties to impartially and fully investigate allegations brought to their knowledge of torture and ill-treatment of detainees by Afghan officials of the NDS, ANP and ALP.	No implementation	2013
AGO	Conduct independent, impartial investigations into allegations of torture and ill-treatment of detainees by Afghan officials of NDS, ANP and ALP. Consider assigning anti-corruption prosecutors from the High Office of Oversight and Anti-Corruption to conduct such investigations and prosecutions.	Partial implementation No implementation	2013
AGO	Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.	No implementation	2013
Troop contributing countries (TCC) and concerned States	Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment. Review monitoring practices at each NDS facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture.	Full implementation	2011
TCC and concerned States	Review policies on transferring detainees to ANP and NDS custody to ensure adequate safeguards and use participation in joint operations, funding arrangements, the transition process, intelligence liaison relationships and other means to stop the use of torture and promote reforms by NDS and ANP.	Full implementation	2011
TCC and concerned	Build the capacity of NDS and ANP facilities and personnel including through mentoring and training on the legal and human rights of	Partial implementation	2011

States	detainees and detention practices in line with international human rights standards.		
TCC and concerned States	Increase efforts to support training to all NDS and ANP interrogators and their supervisors in lawful and effective interrogation methods, and alternative investigative approaches (such as forensics).	Partial implementation	2011
ISAF	Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment.	Full implementation	2013
ISAF	Review monitoring practices at each NDS and ANP facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture.	Full implementation	2013
ISAF	Review and strengthen the effectiveness, where appropriate, of ISAF's detention facility monitoring programme and implementation of its six-phase plan particularly the communication and accountability components.	Full implementation	2013
ISAF	Monitor measures to stop and prevent torture and ill-treatment by ALP particularly in those locations where such practices have been used as a method of interrogation or ill-treatment including in Faryab, Kunduz, Kandahar and Uruzgan.	No implementation	2013
ISAF	Ensure that ALP units are properly trained in the prohibitions against torture and in the legal guidelines governing their powers to detain suspects.	Partial implementation	2013
ISAF	Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite regular inspections and monitoring by international organizations and national human rights institutions.	Partial implementation	2013
ISAF	Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in	No implementation	2013

	their detention facilities.		
ISAF	Follow up with Afghan authorities to ensure that any child detainees transferred by international military forces into Afghan custody are held separately from adult detainees, investigated in compliance with the legal protections afforded to children, and transferred to appropriate juvenile facilities in locations close to their families to enable access to family visits and support.	No implementation	2013
TCC and Donor States	Establish or reinforce currently existing or planned detainee monitoring schemes for tracking treatment of detainees transferred by national contingents to Afghan facilities.	Partial implementation	2013
TCC and Donor States	Ensure the use of torture is considered when making determinations on funding of projects or providing overall support or assistance to implicated Afghan institutions or ministries.	Partial implementation	2013
TCC and Donor States	Include, as a matter of urgency, the need to hold perpetrators of torture accountable as a key progress and conditionality indicator under Area 2 of the Tokyo Mutual Accountability Framework on Governance, Rule of Law and Human Rights.	No implementation	2013
TCC and Donor States	Continue or increase funding for legal aid providers and related legal defence counsel support projects as a means of assisting the observance of due process guarantees and safeguards against torture and inadmissibility of evidence gained through its use.	Partial implementation	2013
TCC and Donor States	Ensure that all training schemes and projects supporting the NDS, the NDS Academy, Ministry of Interior and the ANP target investigative officers and their staff and include mandatory practical skills training on non-coercive interview and interrogation techniques and on human rights, particularly practical examples of how the prohibition of torture has been enforced.	Partial implementation	2013
TCC and Donor States	Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite regular inspections and monitoring by international organizations and national human rights institutions.	Partial implementation	2013

TCC and Donor States	Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in detention facilities.	No implementation	2013

ANNEX VI: Response of the Government of Afghanistan dated 12 February 2015 to the UNAMA/OHCHR 2015 Report

12 February 2015

The Islamic Republic of Afghanistan

Office of the National Security Council

Response of the Government of the Islamic Republic of Afghanistan to the United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United Nations High Commissioner for Human Rights Annual Report on Treatment of Conflict-Related Detainees in Afghan Custody, Human Rights Violations and Accountability

Part One
Preamble

The Islamic Republic of Afghanistan is committed to observing and respecting the human rights of its citizens, and meeting its obligations which arise from the Constitution of Afghanistan, international treaties to which Afghanistan is a party, and from Islamic values, principles and the culture of the Afghan people. Therefore, information relating to human rights violations is taken seriously by the Government of Afghanistan which is committed to looking into allegations and seeks to eliminate all violations. As a responsible and accountable office, the Government of Afghanistan will be a strong and reliable partner, working with national and international entities to promote human rights and prevent human right violations against those individuals who are detained and imprisoned.

Taking into consideration the above, it is important to note that during recent decades Afghanistan has been undergoing political and structural transitions which have changed the culture and work of government departments and their personnel. In particular, these significant changes have affected the understanding of, and attitude towards, human and constitutional rights. Therefore, the Government of Afghanistan accepts some of the allegations and concerns of the joint 2014 Annual Report of UNAMA/OHCHR on the Treatment of Conflict-Related Detainees in Afghan Custody, but does not agree in many cases with the contents of the report.

The Government of Afghanistan always takes the UNAMA/OHCHR reports seriously and upon receiving their contents and claims, assigns a delegation to review and investigate the allegations. This year, as in previous years, the Office of the National Security Council, in order to review and verify the allegations, requested and received written responses from relevant institutions, and after careful review of their responses, prepared and presented the final Government response entitled "Official Reaction of the Government of the Islamic Republic of Afghanistan to the UNAMA/OHCHR 2014 Annual Report on Treatment of Detainees in Afghan Custody and Accountability for Human Rights Violations."

The Government of Afghanistan intends to develop a national plan for elimination of torture, under the leadership of the National Security Council in cooperation with the security, law enforcement and judicial organizations, and the participation of national and international human rights organizations and civil society. It will achieve its aims through legislative reform, ensuring correct treatment of detainees, decreasing incidents of human rights violations in detention facilities and prisons, increasing the capacity of officials of the security, law enforcement and judicial organizations, creating effective observation mechanisms, and ensuring accountability for perpetrators. A summary of the plan is included in this response.

Before presenting the main elements of the reaction of the Government of Afghanistan, it is worth mentioning some general points as follows:

- The draft report of the UNAMA Human Rights Unit on Treatment of Conflict Detainees in Afghan Custody has been read and studied carefully.

- Our response to the report has been prepared based on the official comments and reliable findings of the relevant institutions of the Islamic Republic of Afghanistan.
- Presenting this response does not mean denying all allegations contained within UNAMA's report, rather it is focused on issues of clarification and the need to present a complete picture. The Government of Afghanistan thanks UNAMA for granting an extension in order for us to prepare this response.

Part Two
Response to the Report

1. Deficiencies of the Report: There are some shortcomings in this report that due to the importance of the subject should be highlighted.

1.1 Lack of Observation of Statistical Principles

There are frequent referrals to the usage of statistical principles in the report to demonstrate its credibility. For example, the report mentions that the margin of error in the report is 3.5 per cent and the confidence level of the accuracy of the report is 95 per cent. However, there is no reference in any part of the report to the methods used by the researchers for arriving at this level of confidence and margin of error. The issue was discussed in the meeting of the office of the National Security Council with the UNAMA experts involved in preparation of the report, but the UNAMA experts were not able to provide a satisfactory answer. Considering the sample size, reliance on margin of error and level of confidence in this report it is not correct from the point of view of statistics and is generally misleading.

1.2 Lack of Clarity on Underlying Hypotheses

In general, reports which are prepared based on individual statements rely on some major underlying hypotheses. The UNAMA report does not identify the underlying hypotheses used in the preparation of the report which affects its reliability. The major underlying hypotheses used but not made explicit in the report are as follows:

(A) Identification and reliability of the detainees: The UNAMA report mentions that detainees interviewed by UN professionals were arrested in the "armed conflict", but does not provide further details. Recognition of the real nature of the detainees, which reflects their true personalities, is important for the credibility of the report. It is worth mentioning that the majority of the detainees interviewed by UNAMA are terrorists who were arrested because of their involvement in different stages of terrorist activities, including suicide attacks and planting improvised explosive devices (IEDs). Their intentions are, at all times, to defeat the Afghan people and their democratic system. Therefore, the main intention of the terrorist is to defeat and defame the institutions of the Islamic Republic of Afghanistan, and by ignoring this issue, the report's underlying hypothesis is that the interviewed detainees, who are the most determined terrorists and enemies of humanity, are telling the truth and have no incentive to lie and defame the institutions of the Government of Afghanistan.

(B) Prior coordination among detainees: Since most of detainees are not ordinary people, rather they are dangerous terrorists and criminals, they receive training before arrest to allege torture and ill-treatment during interviews with national and international organizations to gain both reduced sentences and to damage the reputation of the Afghan security institutions. Given this, most of the allegations turn out to be false upon inspection and investigation by security organs, particularly by the National Directorate of Security (NDS). For example, after investigation by NDS several detainees withdrew their allegations mentioned in the UNAMA report and some of them denied making any allegation. Also, forensic examinations and relevant evidence show that it is inaccurate that the visible marks mentioned in the report are due to torture.

(C) Lack of further explanation of circumstances of torture: The UN highlighted that a significant proportion of the detainees alleged torture. Unfortunately, the report does not provide an adequate explanation in this regard. The reality is that all detainees interviewed are terrorists, mostly arrested during war and/or engagement in various terrorist activities, such as suicide attacks. Arrests of these people are not similar to those of ordinary criminals; the officials that arrest them face serious risks and the majority of these terrorists, even when detained, attempt to inflict the greatest possible harm on the Afghan security forces. Thus, the proportional use of force is essential when they are arrested, in order to prevent possible incidents, especially detonation of explosives. Also, the majority of these terrorists are determined to try to resist arrest and/or attempt to run away. Hence, the use of the least amount of force required for their arrest is essential. Using the least of amount of force required to effect an arrest is required by Afghan law and is an approach practiced by security forces all over the world, and it does not constitute torture. Unfortunately, the UNAMA report does not provide a full explanation of this point and fails to separate treatment during arrest from torture.

(D) Lack of professionalism and access to detainees: As mentioned above, Afghanistan is at war and most of the people in detention are not ordinary criminals, rather they are dangerous and professional terrorists. They know that just as law enforcement and judicial organs of the Government lack effective control over remote areas and lack necessary operational capabilities, officials, observers and volunteers of national and international human rights organisations also lack the capability to operate effectively and accurately. Unfortunately, it has been seen that in most cases the officials and observers of human rights organizations do not visit the remote areas of provinces, and have no direct access to released detainees. Questionnaires and interviews were conducted through representatives and sometimes via phone calls. For example, regarding allegations of torture in Daykundi and Kunar provinces, NDS findings show that no interview was made with the detainee in Daykundi province and the last visit conducted to Kunar was dated 2 Qaws 1392 (23 November 2013). Our assessments show that when interviews are actually conducted face-to-face with released or detained victims, they are conducted so emotionally and unprofessionally that even though they had not been tortured detainees claim, “Yes, we have been tortured.” This sets a bad example and can profoundly affect the accuracy and professionalism of the report.

2. Reaction of the Relevant Institutions of the Government of Afghanistan

The NDS, Ministry of Interior Affairs and Ministry of Defence of the Islamic Republic of Afghanistan have provided their detailed responses to the UNAMA/OHCHR report which include their activities, achievements, human rights observation mechanisms and procedures for holding violators accountable. In order to aid understanding only issues relevant to the allegations of the UNAMA/OHCHR draft report are raised.

2.1 Response of NDS

(A) How it operates:

(1) The NDS is one of the most effective and powerful organs amongst the security forces of Afghanistan in combatting internal and external security threats: it is responsible for pursuing, investigating and referring perpetrators so that they can be brought to justice. NDS, as a security and intelligence organ, acts to defend national and individual freedoms and security and, in light of the Constitution of Afghanistan and other applicable laws of the country, carries out operations, arrests suspects and holds them for a specified legal period in its detention facilities.

(2) For transparency, respect for human dignity and rights and freedom of individuals, the NDS provided access to detainees and detention centres to a number of international and national organizations, including UNAMA, International Committee of the Red Cross (ICRC), Afghanistan Independent Human Rights Commission (AIHRC), Committees of the Meshrano Jirga and Wolesi Jirga, Inspection Delegation of the Attorney General's Office, and defence lawyers. In addition, the NDS has an office overseeing the management and observation of the human rights of detainees which acts as an independent body and has a reporting line on logistical issues to one of the central departments of NDS.

(3) Initial investigations of arrested suspects are conducted according to the provisions of the applicable laws, consistent with international human rights treaties, respect for human dignity and protection of individual privacy, in accordance with Presidential Decree 129 dated 28/11/1391 of the Islamic Republic of Afghanistan and NDS directives, available publicly, and in accordance to the values of Islam and humanity; the whole interrogation process is conducted in accordance with articles 29, 30 and 31 of the Constitution of Afghanistan. Also, the NDS as a responsible organ of the Government of Afghanistan is required to implement provisions of the Constitution of Afghanistan, laws, declarations and international human rights treaties.

(B) Criticism of UNAMA/OHCHR Report:

Following a close reading of the UNAMA/OHCHR report on the treatment of detainees in detention centres of NDS, it is found that the report did not consider the provisions of the Constitution of Afghanistan and the three principles of report writing (accuracy, balance and impartiality). The report alleges that detainees experienced torture and ill-treatment inside detention facilities of NDS. UNAMA says that its report is prepared as a result of interviews with more than 700 detainees, which include 611 detainees held in NDS detention facilities. UNAMA prepared its report based on interviews of detainees

which were conducted without the presence of third parties and without collecting evidence with which to prove its allegations. Some major aspects of the report can be criticized as follows:

(1) It is clear that most of the detainees are terrorists, fighting against the Islamic Republic of Afghanistan and its people, and their main goal is always to defame and even to overthrow the Islamic Republic of Afghanistan. Therefore, there is no guarantee that detainees in their interviews did not fabricate claims in order to discredit NDS.

(2) During the interviews researchers took statements from detainees, which are then collected and form the basis of the UNAMA/OHCHR report. Basically, incidents of torture should have visible marks, and determination requires specialist knowledge and should be conducted by forensic experts rather than by a researcher or report writer. According to the standards required of a fact-finding report, allegations must be reviewed and assessed, and after receiving comments from two parties conclusions can be made.

(3) Some marks which are presented as evidence of mistreatment to the observers were as a result of other incidents prior to detention. For example, a detainee in Baghlan province alleged that the injury to his leg was due to torture, but when he was referred to Baghlan hospital for examination in order to verify the allegation, it was found that his leg had been injured over a year before he was arrested, and was due to a traffic incident and medical documents relating to this are registered with Baghlan hospital.

(4) The report alleges that torture exists in NDS Kunar, however UN researchers have not visited NDS Kunar since 2/9/1392 (23 November 2013).

(5) The report alleges torture in NDS Daykundai province. However, during 2013 and 2014 only one suspect was arrested by this department and UNAMA did not conduct an interview with that detainee.

(6) A suspect told NDS human rights observers that he had been tortured causing injury to his sexual organ, but when he was referred for forensic examination it became apparent that around two years ago he had undergone a medical operation on his sexual organ. The investigation file is held in the central system of NDS.

(7) The terms torture and ill-treatment are used together, while these two terms have different legal definitions.

(C) Findings of NDS Human Rights Officers:

Following 18 months of research and monitoring of the treatment of detainees by NDS human rights officers in the country, it was found that there was only a one per cent rate of violation. To strengthen respect for the rule of law and human rights values, the perpetrators of violations identified by NDS human rights officers were referred to face prosecution and disciplinary measures. For example:

(1) Serious notices have been sent to NDS Herat, Badghis and Nangarhar to prevent their officials from human rights committing violations.

(2) An interrogator and an officer working at the detention facility, who had ill-treated detainees, were relocated.
(3) Based on the UNAMA report of 11 Sawr 1393 (1 May 2014) that 41 prisoners alleged they had been beaten by NDS officials, NDS assigned a fact-finding delegation from different departments of NDS to assess the allegations.

The result of the investigation was:

(1) Twenty detainees withdrew their allegations during the investigation.
(2) Nine prisoners had completed the term of their sentences and had been released from prison according to court decisions.
(3) Eight prisoners were examined by forensic experts, and their complaints remained dubious. The prison's medical department advised that no torture or beating had taken place.
(4) One person was not able to identify who arrested him.
(5) One person reiterated his complaint.
(6) The allegations related to incidents that had happened two to six years previously. Most prisoners stated they had made allegations to try and get their sentences reduced. The complete three-page report was sent to the UNAMA central office.

(D) NDS Comments on Allegations Contained in the Report:

It is important to note that allegations based on confidential interviews with detainees need to be comprehensively checked and reviewed. NDS supports comprehensive investigations of allegations in order to determine the truth.
(1) NDS totally rejects allegations contained in the UNAMA/OHCHR report of the pulling off of toe nails, electric shocks, sexual violence and stuffing of cloth or plastic in the mouth of detainees by NDS personnel.
(2) In this report it is alleged that detainees in NDS detention facilities in Kabul and the provinces experienced torture and ill-treatment, and torture is used as a means of obtaining confessions – NDS rejects UNAMA's allegations.
(3) Regarding one of the central NDS facilities in Kabul, UNAMA mentions that incidents of torture have reduced. This claim is not accurate as there has been no torture and ill-treatment taking place at this detention facility as high standards of monitoring systems are in place.
(4) NDS accepts that due to detainees resisting arrest slight injuries to detainees may have been inflicted. Also, there may be some sporadic and unsystematic ill-treatment in remote facilities which are taken seriously and will be investigated with the perpetrators being held accountable.

Programmes of NDS Focusing on Protection of Detainees' Human Rights:

To prevent torture and ill-treatment, NDS is implementing the following procedures and methods: awareness raising, continuous monitoring and addressing complaints.

(1) Awareness raising:
- Provision of 20 days of lectures on appropriate standards, for the investigation staff of NDS by the Human Rights Department of the NDS Academy.

- Presentations on rule of law and human rights delivered at NDS facilities in Kabul and provincial centers as well as to the military units of NDS.
- Provision of a one-hour training on human rights by NDS human rights officers, every 15 days, to be delivered to all NDS staff in Kabul and the provinces.
- Holding capacity building workshops for NDS human rights officers five times a year to increase their knowledge of national and international human rights standards and their practical implementation.

(2) Monitoring: NDS human rights monitoring units are active throughout the country and are required to document the human rights situation using tailored notebooks and send daily reports to NDS Headquarters. It is very difficult for investigators and other staff to commit abuses without the NDS human rights officers becoming aware.

(3) Addressing complaints: complaints about possible acts of torture or ill-treatment during the pursuit, arrest and investigation by NDS staff of suspects are received regularly and continually by the NDS human rights officers. When the complaint is substantiated the perpetrators and responsible persons are investigated and punished according to the severity of the violation.

Activities of Human Rights Department of NDS:

Three years ago NDS created the "Department of Human Rights" within the NDS structure in order to monitor and review the human rights situation within NDS. This department was established to support human rights, the rule of law and the rights of suspects and the accused. As a result, the monitoring of human rights within NDS facilities is currently the strongest it has ever been.

(1) Achievements of the Human Rights Department:

- Significant reduction in human rights violations, now around one per cent, in NDS detention facilities in Kabul and the provinces;
- Increase in the standing of NDS in public opinion and with its national and international partners, including as regards transparency, professional treatment of detainees, and observation of human rights, the rule of law and religious and moral values;
- Expansion of the number of human rights units, with units now present in 25 provinces, as well as three units in Kabul in addition to the presence at NDS Headquarters;
- Increase in the awareness of NDS officers and staff of human rights standards through the holding of workshops and provision of lectures at NDS educational facilities. For example in 2014, NDS held 18 training workshops;
- Increase in the level of cooperation with national and international organizations active in the area of human rights, especially UNAMA, and addressing of human rights violations at the central level.

(2) Future Programmes:

- Strengthening, supporting and expanding the activities of the NDS Human Rights Department;

- Expansion of human rights education to all NDS departments with the intention of preventing human rights abuses and violations;
- Tougher action against those who violate human rights regulations and orders within NDS facilities;
- Increase in the resources, staffing and expertise of the Human Rights Department of NDS.

NDS once again emphasizes that it cooperates with UNAMA in all areas, including human rights, and expresses its appreciation for this ongoing cooperation.

2.2 Response of Ministry of Interior:

Since the issue of torture and the allegations made by UNAMA in its report are important, the Ministry of Interior has focused its response on several issues which deal with the main points and claims of the report:

On Human Rights Violations:

1) According to the applicable laws, the discovery of crimes is the responsibility of the police; they put the suspects under surveillance for up to 72 hours, and after preparing documents indicating that a crime has taken place, the suspects are arrested and sent to detention facilities.
2) The Ministry of Interior rejects claims by individuals of torture and ill-treatment during surveillance, investigation, interrogation and detention as torture and ill-treatment do not play any role in the work of the police.
3) The Department of Prisons and Detention Centers of the Ministry of Interior is only responsible for keeping prisoners and detainees in the central and provincial detention facilities and not to investigate them, as such there is no reason to torture them.
4) All prisons and detention facilities are under the direct management and supervision of the Department of Prisons and Detention Centers of the Ministry of Interior and this ministry categorically rejects the claim by UNAMA within its report regarding the existence of unofficial detention facilities.
5) During the last year, the Department of Prisons and Detention Centers of the Ministry of Interior facilitated visits by observers from different national and international organizations to prisons and detention centers in the capital and the provinces, and there was not a single registered complaint or allegation of torture and ill-treatment in these facilities.

Human Rights Activities

The Ministry of Interior is dedicated to observing and protecting human rights and this is reflected in the policies of this ministry. The Sub-Directorate of Human Rights of the Ministry of the Interior has carried out the following activities to promote human rights and to improve the professional standards of police personnel:

1) Issuance of five directives by the Interior Minister to all police personnel relating to the prevention of torture and inhumane and degrading treatment, prevention

of recruitment of under-18s into the police force, as well as on the importance of protecting and observing human rights.

2) Conducting 36 sessions, workshops and educational seminars in Kabul and the provinces to promote awareness and observance of the human rights of detainees, primarily for police officers but also for detainees themselves.

3) Publication and distribution in Kabul and the provinces of more than 200,000 pamphlets on human rights, women's rights and child rights, with a focus on preventing torture and human rights violations.

4) Codification and distribution of the policy on the rights of prisoners and detainees (currently applicable), policy on international humanitarian law, prevention of recruitment of under-18s into the police, and regulations on the management of detention facilities.

5) Establishment of human rights sub-directorates in 34 prisons throughout the country, in 17 police zones in Kabul city, and in independent police units.

6) Establishment of the human rights department in the Police Academy and incorporating human rights into the educational curriculum for trainee police officers to learn about human rights principles and standards.

7) Continuation of the observation of male and female prisons and detention facilities in Kabul and the provinces by officers from the Sub-Directorate of Human Rights, in order to receive complaints and to investigate possible human rights violations. If the violation has a criminal aspect, the officers refer the perpetrator to the appropriate prosecuting authority and if there is no criminal aspect they refer the perpetrator to the relevant authorities for disciplinary action.

Problems:

Observation of human rights standards and values is important in strengthening the foundations of government and gaining the support of the Afghan people for the work of the Afghan police. The Ministry of Interior has always tried to meet the standards required of it and there has never been a policy within the Ministry of Interior and Afghan police that allowed non-compliance with human rights standards. Despite this, unfortunately, sometimes complaints of ill-treatment and inappropriate treatment by police of prisoners and detainees, and even of members of the general public, are received. This is mainly due to a lack of awareness of police personnel of the appropriate standards, a lack of welfare facilities in prisons and detention facilities, and the erosion of administrative and judicial systems in the country during the war. The Ministry of Interior faces many problems in achieving the full realization and observation of human rights in prisons and detention facilities, including the following:

(1) Lack of effective control of police in remote areas of Afghanistan.

(2) Damage to the administrative and judicial systems of the country during the prolonged wars in the previous decades that have ongoing effects that are difficult to overcome.

(3) Infrastructure problems in prisons and detention facilities as unfortunately in many provinces there is a lack of suitable residential and health facilities for prisoners and detainees.

(4) Lack of human rights observers and activists in districts.

(5) Lack of on-time and correct response to detainees' cases by justice and judiciary.

As a general rule, the Ministry of Interior is obliged to respect human rights and will try to improve the situation in prisons and treatment of detainees. The Ministry of Interior expresses its appreciation for UNAMA's cooperation and its report.

2.3. Response of Ministry of Defence:

The Ministry of Defence stated the following in response to the UNAMA/OHCHR report:

1) The duty of the Ministry of Defence is defending the territorial integrity and independence of the country; the detention and investigation of suspects is not the duty of the Ministry of Defence. As such it totally rejects reports of ill-treatment and torture of detainees.
2) Ministry of Defence forces may arrest persons directly involved in the armed conflict during military operations, but their detention and investigation are the responsibility of the police and the courts.
3) The UNAMA report on ill-treatment and torture of detainees by the Afghan National Army is not specific, as it is not clear who the perpetrators are, where they violations place and which units of the Ministry of Defence were involved in torture and ill-treatment.
4) The identified signs of torture and ill-treatment on the bodies of detainees are not conclusive as it is possible that the marks and slight injuries are caused during arrest on the battlefield, rather than in the detention facilities of the Afghan National Security Forces.

The Ministry of Defence emphasizes its adherence to Afghan laws and observation of human rights standards. The Ministry of Defence appreciates both UNAMA and civil society's cooperation and their attention on the issue of treatment of detainees and prisoners.

Part Three
National Plan on Elimination of Torture

1. Introduction

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

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

2. Legislative Measures:

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

2.1 Amendments to the Penal Code:

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

2.2 Amendments to the Criminal Procedure Code:

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

2.3 Withdrawal of Afghanistan's Reservation to the Convention against Torture:

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

2.4 Ratification of Optional Protocol to the Convention against Torture:

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

2.5 Implementation of Presidential Decree 129 on Elimination of Torture:

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

2.6 Remedy for Victims of Torture:

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

3. Educational and Capacity Building Programmes:

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

3.1 Human Rights and Torture Awareness Programmes:

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

3.2 Discrediting Torture in Public Culture:

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

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

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

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

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

4. Preventive Measures

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

5. Continuous Observation of Implementation of this Plan

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

the implementation of this plan will be drawn up by the office of National Security Council and the Afghanistan Independent Human Rights Commission.

Part Four
Conclusion

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

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

ANNEX VII: Letter of General John F Campbell, U.S. Army Commanding, Resolute Support to UNAMA SRSG Nicholas Haysom dated 22 February 2015

HEADQUARTERS
Resolute Support
Kabul, Afghanistan
APO AE 09356

22 February 2015

Mr. Nicholas Haysom
Special Representative of the Secretary General for Afghanistan
Head of the United Nations Assistance Mission in Afghanistan

Dear Mr. Haysom,

UPDATE ON THE TREATMENT OF CONFLICT-RELATED DETAINEES IN AFGHAN CUSTODY: ACCOUNTABILITY AND IMPLEMENTATION OF PRESIDENTIAL DECREE NO. 129 – FEBRUARY 2015

Thank you for the opportunity to provide comment on the *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree no.129* (the report). I would like to begin by reiterating the unwavering commitment of the Resolute Support (RS) Mission and United States Forces – Afghanistan (USFOR-A) to maintaining the highest standards of respect for the human rights and dignity of all people in Afghanistan, including detainees. As Commander of RS and USFOR-A, I regard compliance with our obligations under International Humanitarian Law as a matter of the utmost importance.

Where there have been allegations that members of international military forces have failed, either through their actions or complicity in the actions of others, to maintain the standards expected of them under International Humanitarian Law, these allegations have been the subject of thorough and transparent investigation. It has been, and remains, the firm policy of RS and USFOR-A to hold any individual involved in the abuse of detainees personally accountable. As described in the report, it also remains the policy of RS and USFOR-A to drive continual improvement in the standard of compliance with International Humanitarian Law demonstrated by the Afghan National Security Force (ANSF) and Government of the Islamic Republic of Afghanistan (GIRoA) organizations and ministries with whom we partner. This is accomplished by extensive training, advice and assistance (TAA) in detainee handling and human rights obligations provided by RS and USFOR-A personnel and, where necessary, by direct action to report suspected abuses to the appropriate level of government.

As you are aware, the International Security Assistance Force (ISAF) mission ended on 31 December 2014 and was replaced by RS. The RS mission operates under a fundamentally different legal paradigm to ISAF and this has a significant impact on the ability of international military forces to directly monitor or influence the detention practices of GIRoA. International military forces no longer have a combat mission in Afghanistan and instead provide TAA to partnered Afghan forces. As

such, international military forces are no longer directly engaged in detaining people in Afghanistan or transferring persons into GIRoA custody. The RS Mission also differs from ISAF in that it does not operate under a United Nations Security Council (UNSC) Mandate and is instead present in Afghanistan purely by the consent of GIRoA. This means that RS and USFOR-A no longer have the ability or right to inspect Afghan detention facilities. Notwithstanding these restrictions, I remain committed to improving the treatment of detainees in GIRoA custody through the TAA of partnered forces and departments, efforts to improve the operation of the Afghan justice system and, where necessary, by direct liaison with GIRoA leadership and the ability to redirect International support away from organisations of concern. I am confident that President Ghani and GIRoA share my commitment in this regard.

Together with UNAMA, the International Committee of the Red Cross and other concerned members of the International Community, we can collectively ensure that all persons in the custody of GIRoA enjoy the rights and privileges afforded them by Afghan and International Humanitarian Law.

Very Respectfully,

John F. Campbell
General, U.S. Army
Commanding