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Treatment of Conflict-Related Detainees in Afghanistan:

Preventing Torture and Ill-treatment under the Anti-Torture Law



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

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EXECUTIVE SUMMARY

This report was prepared by the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). It is the fifth periodic report on this subject issued since 2010, and provides reliable and credible information on the prevalence of torture and other forms of cruel, inhuman and degrading treatment and punishment (hereinafter ‘ill-treatment’) of conflict-related detainees in Afghanistan.

The findings presented in this report are primarily based on interviews conducted by UNAMA human rights officers with 618 conflict-related detainees (including four women) held in 77 facilities in 28 provinces across Afghanistan. The report covers the period from 1 January 2017 to 31 December 2018.

The report acknowledges the concrete progress made by the Government during the reporting period in implementing Afghanistan’s National Plan on the Elimination of Torture. In particular, UNAMA/OHCHR welcome:

- The entry into force, in February 2018, of the revised Penal Code, which contains a definition of torture broadly in line with the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter Convention against Torture);
- Afghanistan’s accession to the Optional Protocol to the Convention against Torture, in April 2018;
- The enactment of the Anti-Torture Law at the end of October 2018.

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

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

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

- Younger persons are at a higher risk of suffering from torture or ill-treatment in ANDSF custody.
- The treatment of conflict-related detainees in some NDS facilities remains of concern, particularly those located in Kabul, Khost and Samangan provinces, as well as NDS 241 (counter-terrorism department). The report also highlights accounts of torture or ill-treatment, as well as unlawful and arbitrary detention, including following mass arrests, by different NDS Special Forces, in particular NDS 03 in Kandahar, and the Khost Protection Force.

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

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

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

UNAMA strongly encourages the Government of Afghanistan to pursue its efforts to eradicate torture. In particular, the Government should:

- Ensure that all detainees, including suspects, accused or convicts of conflict-related crimes, be afforded the necessary legal rights and guarantees in line with international human rights law.
- Ensure that all relevant entities responsible for law enforcement and deprivation of liberty effectively act within the boundaries of the law.
- Ensure that the legal and other procedural safeguards be effectively upheld by all national authorities from the outset of the deprivation of liberty.
- Ensure that prompt, impartial, independent, transparent and thorough investigations be systematically conducted into all allegations of torture or ill-treatment, with a view to holding to account any official found responsible for committing, ordering or acquiescing to such acts.
- Ensure that victims of torture have effective access to justice and receive adequate, effective and prompt reparation for harm suffered, as envisaged under the Anti-Torture Law.
- With the assistance of the international community, continue to enhance the technical capacity and awareness of human rights of any person who may be involved in the custody, interrogation or treatment of individuals deprived of their liberty.

1. Background

This report is prepared pursuant to past and current Security Council resolutions mandating UNAMA to improve respect for human rights in the justice and prisons sectors. Security Council resolution 2405 (2018) mandates UNAMA to *“monitor places of detention, to promote accountability, and to assist in the full implementation of the fundamental freedoms and human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a State party.”*¹

In October 2010, with the cooperation of the National Directorate of Security (NDS) and the Ministry of Interior, UNAMA began its programme of monitoring the treatment of conflict-related detainees in Afghan custody.² Since then, UNAMA/OHCHR have been providing reliable and credible information on the prevalence of torture and other forms of cruel, inhuman and degrading treatment and punishment (hereinafter ‘ill-treatment’) of conflict-related detainees throughout Afghanistan. The purpose is to support the Government’s ongoing efforts in implementing its commitments to prohibit and prevent torture and ill-treatment, to carry out impartial, independent and credible investigations where such treatment is alleged, and to put in place appropriate means of redress for victims.³

This report, which covers the period from 1 January 2017 to 31 December 2018, is the fifth periodic report issued by UNAMA and OHCHR on the treatment of conflict-related detainees.⁴

In its previous report issued in April 2017 (covering the period of 1 January 2015 - 31 December 2016), UNAMA found that 39 per cent of the detainees it had interviewed (181 out of 469) gave credible and reliable accounts of having experienced torture or other forms of inhuman or degrading treatment whilst in custody of the Afghan National Defence and Security Forces (ANDSF). UNAMA also found there was almost no accountability for torture or ill-treatment by NDS and Afghan National Police (ANP) officials, with reported investigations into allegations of torture kept internal and prosecutions rarely pursued. There was very limited independent, judicial or external oversight of NDS and ANP. These findings were consistent with those identified in earlier UNAMA reports.

¹ The resolution also: *“reiterates the importance of accelerating the establishment of a fair and transparent justice system, eliminating impunity and strengthening the rule of law throughout the country, (...) to improve the respect for the rule of law and human rights therein, emphasizes the importance of ensuring access for relevant organizations, as applicable, to all prisons and places of detention in Afghanistan, welcomes the National Plan on the Elimination of Torture as well as the revised Penal Code and efforts of the Government of Afghanistan at taking steps to ensure consistency with Afghanistan’s international obligations and commitments, emphasizes the need for full implementation of such efforts, (...)”*

² Detainees suspected of offences related to the armed conflict are generally accused of terrorist crimes, genocide crimes, crimes against humanity, war crimes, crimes against the State, and certain crimes against internal and external security as set forth in the Penal Code (see article 1 of Annex 1 to the Criminal Procedure Code). In this report, the term “detainee” refers to persons suspected, accused or convicted of such offences. For further details, see the section on methodology.

³ UNAMA uses the legal term “victims” without prejudice to other terms, such as “survivors”, which may be preferable in specific contexts, see also United Nations Committee against Torture, General Comment No. 3 (Implementation of article 14 by States parties), CAT/C/GC/3, 19 November 2012, para. 3.

⁴ UNAMA/OHCHR issued the first public report addressing this topic in October 2011 and further reports have been published every second year since then. Please see: UNAMA/OHCHR, Treatment of Conflict-Related Detainees in Afghan Custody, October 2011; UNAMA/OHCHR, Treatment of Conflict-Related Detainees in Afghan Custody: One Year On, January 2013; UNAMA/OHCHR, Update on the Treatment of Conflict-Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, February 2015; UNAMA/OHCHR, Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture, April 2017. All reports are available at: <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody> (last visited 2 April 2019).

A. Government's response to previous UNAMA reports

Since 2010, whilst disputing some of the findings of the UNAMA/OHCHR reports on torture and ill-treatment of conflict-related detainees, the Government has nevertheless engaged constructively with UNAMA, by facilitating its continued monitoring of places of detention and by taking steps to implement some of the key recommendations set out in those reports.

Further to the UNAMA/OHCHR report issued in 2015, the Government set out the “National Plan on the Elimination of Torture”, whereby it committed to bringing forward a number of legislative, capacity-building and other preventive measures designed to eliminate torture and to ensure more effective implementation of Afghanistan’s commitments under the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The 2017 UNAMA/OHCHR report on the *Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture* (2017 UNAMA/OHCHR report) contained a detailed assessment on the steps taken by the Government to implement the National Plan on the Elimination of Torture. The current report outlines and welcomes further progress made by the Government in that respect, such as the enactment of the *Anti-Torture Law* in October 2018.⁵

⁵ For further details, see the section on “Implementation of the National Plan on the Elimination of Torture” below.

2. Methodology

UNAMA follows a preventive monitoring approach. Preventive visits of places of detention aim at identifying risk factors for torture and ill-treatment and systemic deficiencies which could lead to violations of human rights rather than investigating or responding to individual cases. UNAMA considers that consistent and regular information collected through interviews is indicative of a pattern or trend. Further details on the methodology used are outlined below.

A. Detention monitoring visits and interviews

UNAMA conducted structured and confidential interviews with 618 conflict-related detainees⁶ held in 77 detention facilities in 28 provinces across Afghanistan during the period of 1 January 2017 and 31 December 2018.⁷ Of the 618 detainees interviewed, 536 were adult (including one woman)⁸ and 82 were juveniles (including three girls).⁹ Many of the detainees had been held and interrogated in multiple locations before being interviewed by UNAMA, which was therefore able to use these interviews to document over 1,444 instances of detention over the observation period. The term “detainee” in this report refers to persons suspected, accused or convicted of offences.

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

Interviews were conducted at ANP provincial and district headquarters, NDS provincial headquarters, Central Prison Directorate prisons and detention centres, Juvenile Rehabilitation Centres, as well as at national facilities such as the ANA-administered Afghan National Detention Facility in Parwan and NDS 241 and NDS 501 (national counter-terrorism and investigation departments).

At each detention facility, UNAMA met with detaining authorities and other relevant Government officials, visited parts of each detention facility and examined its register of detainees. During the course of its interviews with detainees, UNAMA collected information on the treatment at the time of the arrest and at each place of detention under the authority of the Afghan National Defence and Security Forces. UNAMA also documented the extent to which detainees were afforded procedural guarantees under Afghan and international human rights law.

⁶ Detainees suspected of offences related to the armed conflict are generally accused of terrorist crimes, genocide crimes, crimes against humanity, war crimes, crimes against the state and certain crimes against internal and external security as set forth in the Penal Code (see article 1 of Annex 1 to the Criminal Procedure Code). UNAMA interviewed many detainees who were not aware or informed of the specific offence they were accused of, and which they generally described as involvement in or support for the armed insurgency against the Government of Afghanistan, or being a member of an armed opposition group such as the Taliban. In selecting detainees for interview, UNAMA used the premise that all those held in NDS custody were being investigated for conflict-related offences. However, NDS is also responsible for investigating certain common crimes which may not be directly conflict-related, including kidnapping/abduction and trafficking. Detainees who were detained on suspicion of committing such offences and were held in NDS custody during the investigation were also included in the UNAMA monitoring sample.

⁷ See Annex III listing the detention facilities visited by UNAMA. UNAMA also conducted interviews in January and February 2019 but this report only covers persons arrested or detained during 2017 and 2018.

⁸ This report deals exclusively with the treatment of conflict-related detainees. Generally, women and girls are not arrested or detained for conflict-related offences. The majority of women and girls in Afghan prisons are detained for or have been convicted of violations of customary or *Shari'a* law or ‘moral’ crimes.

⁹ A juvenile is a person who has completed the age of 12 and has not completed the age of 18, see article 4 of the Juvenile Code and articles 95 and 96 of the Penal Code.

B. Other methods of collecting information

In addition to visiting places of detention, UNAMA frequently met with members of the judiciary, prosecutors, defence counsels, detention facility authorities and internal inspection mechanisms, and gathered and analyzed information from laws and other official documents and reports.

UNAMA also exchanged correspondence with NDS, the Ministry of Interior, the Ministry of Defence, the Office of the Attorney General and the Afghanistan Independent Human Rights Commission (as chair and secretariat of the Anti-Torture Commission) on investigations of allegations of torture or other forms of ill-treatment and accountability for alleged perpetrators.

C. Interview Safeguards and Modalities: Ensuring Credibility and Accuracy

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

At each detention facility, UNAMA human rights officers randomly selected detainees held on conflict-related offences and interviewed them in private without the presence of detention facility staff, other Government officials or other detainees. UNAMA human rights officers displayed their United Nations identification cards and identified themselves as United Nations human rights officers before beginning the interview. Interviews were conducted by UNAMA human rights officers in the detainees' mother tongue (Pashto or Dari), which included the use of UNAMA national human rights staff members as interpreters. Before each interview, the UNAMA human rights officers explained their mandate and function to the detainees, and the interview only proceeded if the detainee provided free and informed consent.

All UNAMA interviewers received standardized guidance and training on how to conduct interviews, assess credibility of the information collected, protect confidentiality and corroborate and cross-check information on matters of detention, torture and ill-treatment, with extensive supervision and oversight from experts and supervisors in the UNAMA Human Rights Service and OHCHR. Interviewers avoided leading questions and asked detainees to tell their story in an open-ended manner.¹⁰ For each interview, UNAMA human rights officers recorded a detailed description of the interview, which was assessed for credibility and cross checked. For reasons of security and confidentiality, individual detainees are not identified.

¹⁰ In obtaining and verifying detainees' accounts of treatment in detention, expert practitioners 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 statement of the alleged incident in the detainee's 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 detainees' 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 report, 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 statement. 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 the account. For further information see OHCHR Training Manual on Human Rights Monitoring, available at www.ohchr.org/documents/publications/training7introen.pdf.

D. Threshold of “Sufficiently Credible and Reliable”: Standard of Proof

While all allegations of torture should be investigated, UNAMA has chosen to use the threshold of “sufficiently credible and reliable” to determine whether a detainee’s account should be considered as part of this report.¹¹

This formulation has been used for many years by a large number of international human rights and humanitarian fact-finding missions worldwide, and reflects the fact that the high standard of proof necessary in criminal trials (“beyond reasonable doubt”) to establish individual criminal responsibility is not appropriate for those carrying out human rights monitoring. UNAMA human rights officers work within a restricted mandate, are not law enforcement officers, have no powers to subpoena witnesses, and are not in a position to apply the same standard of verification to their findings than would be expected of formal judicial processes.¹²

UNAMA weighed all available information (including a thorough assessment of the individual accounts and related corroborating evidence) to determine whether information obtained regarding each allegation of torture or ill-treatment was sufficiently credible and reliable to permit it to make findings, raise concerns about specific facilities, and recommend criminal investigations and other measures. Criteria of assessment include the level of detail of statements, consistency of information, the existence of patterns and other corroborating information and evidence.

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

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

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

E. Findings on Torture and Ill-Treatment: Criteria of Assessment

The above-outlined standard of “sufficiently credible and reliable” information was used as a basis to determine whether consistent patterns of torture and ill-treatment as defined under international law had occurred within the detention system.¹³ Only facilities or provinces where UNAMA interviewed a sufficiently high number of detainees were considered.¹⁴

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

¹¹ Thus, UNAMA applies a “balance of probabilities” as its starting point, i.e. more evidence supports the finding than contradicts it.

¹² See also Stephen Wilkinson, *Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions* (2012), Geneva Academy of International Humanitarian Law and Human Rights.

¹³ For more information on the international law in relation to the prohibition of torture and ill-treatment, see annex II.

¹⁴ While access to detention facilities for UNAMA is generally facilitated by the Government of Afghanistan, it may be hindered by other factors, in particular, insecurity or conflict in certain areas or locations.

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

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

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

However, UNAMA does not argue that the use of torture or ill-treatment is part of a systematic national or institutional Government policy.¹⁵ According to its analysis, torture may in fact be of a regular and prevalent or systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has a difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation at the local level.

F. Legal determination

The definition of torture and other forms of cruel, inhuman or degrading treatment or punishment under national and international law encompasses a range of acts involving the infliction of mental or physical suffering by, or with the acquiescence of, those acting on behalf of the State.

This report makes no distinction between acts amounting to torture and other acts of cruel inhuman or degrading treatment or punishment as defined under international law.¹⁶ Both categories of acts are prohibited under the Convention against Torture, as well as under other international human rights law and international humanitarian law treaties to which Afghanistan is a party. Moreover, “[i]n 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.”¹⁷

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

¹⁵ This position derives from the definition used by the United Nations Committee against Torture when assessing whether torture is systematically practiced by a State party to the Convention against Torture; see article 20 under which the Committee against Torture is empowered to conduct confidential enquiries into “well-founded indications that torture is being practiced systematically in a State party”. In this context, the Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate; see A/48/44 Add.1, para. 39 and A/56/44, p. 63.

¹⁶ See also Annex II for further information on the definition of torture and ill-treatment.

¹⁷ Committee against Torture, General Comment No. 2, para. 3.

3. Implementation of the National Plan on the Elimination of Torture

UNAMA welcomes the concerted efforts of the Government of Afghanistan and takes note of progress made in the implementation of Afghanistan's National Plan on the Elimination of Torture following the 2017 UNAMA/OHCHR report on the Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture.

In particular, UNAMA welcomes the following:

- The entry into force of the revised Penal Code, in February 2018, which contains a definition of 'torture' broadly in line with the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and which, *inter alia*, reduces significantly the number of crimes for which the death penalty is applicable;
- Afghanistan's accession to the Optional Protocol to the Convention against Torture, in April 2018;
- Withdrawal of Afghanistan's reservation to the Convention against Torture, in April 2018, thereby recognizing the authority of the Committee against Torture to conduct confidential inquiries into allegations of torture, as foreseen by Article 20 of the Convention;
- Enactment of the Anti-Torture Law through publication in the official gazette, at the end of October 2018, which *inter alia* sets out provisions on the prevention of torture, protection of victims, witnesses and personnel responsible for the investigation of allegations of torture, as well as redress for victims, and establishes an Anti-Torture Commission to support the implementation of the law; and
- Submission, in June 2018, of the follow-up report to the Committee against Torture's Concluding Observations on the Second Periodic Review of Afghanistan.

All these measures indicate a clear commitment at the highest levels of Government to uphold Afghanistan's international obligations to prohibit and prevent torture, and to put in place the mechanisms necessary to facilitate constructive engagement with the relevant United Nations mechanisms on the prevention of torture.

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

The legal framework in relation to the prohibition of torture and ill-treatment in Afghanistan is now quite comprehensive, with the Anti-Torture Law providing a framework for the prevention and elimination of such acts. This section introduces some core substantive and procedural aspects of the prohibition of torture and ill-treatment as regulated by the Afghan laws, highlighting many provisions that are in line with international law and outlining some remaining challenges.

A. Explicit and absolute prohibition of torture

Afghan law explicitly prohibits torture, with the Constitution providing that “[n]o one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished.”¹⁸ The Anti-Torture Law reinforces the absolute prohibition of torture.¹⁹

B. Criminalization of torture

The revised Penal Code incorporates the criminal provisions relating to acts of torture, making it a crime under Afghan law. Article 450 defines torture as follows:

“[...] an act committed by a public official or any other official authority or by his/her order, agreement, satisfaction or silence resulting in severe physical or mental pain to suspect, accused, convict or any other person for the purpose of obtaining a confession; obtaining information about a suspect, accused, convict or any other person; disciplining the person for the act committed by him/her or another person; coercing or intimidating the person to perform or refrain from an action; discriminating against the perpetrator.” (unofficial translation)

The Penal Code also establishes criminal liability for ‘attempt’ to commit torture, ‘complicity’ and other forms of ‘participation’ and envisages dismissal from duty of the perpetrator in addition to the punishment.²⁰

UNAMA/OHCHR welcome the explicit criminalization of the act of torture in the Penal Code, using a definition of the crime of torture broadly in line with the elements set out in the United Nations Convention against Torture.

Nevertheless, UNAMA/OHCHR note that unless torture leads to the aggravated results of mutilation, permanent physical or mental disability²¹ or death, the act of torture constitutes a misdemeanour crime,²² with penalties of three to five years of imprisonment.²³ The United Nations Committee against Torture deems these penalties lenient.²⁴ By contrast, if the victim is killed as a result of an act of torture, the punishment for intentional murder applies, which may involve the death penalty.²⁵ Under the Convention against Torture,

¹⁸ Article 29 of the Constitution of the Islamic Republic of Afghanistan.

¹⁹ See articles 6 and 7 of the Anti-Torture Law.

²⁰ Article 451 of the Penal Code.

²¹ The punishment increases to long-term imprisonment if the act of torture results in mutilation or permanent physical and mental disability. Long-term sentences range from five to 16 years of imprisonment; see article 147 of the Penal Code.

²² Crimes are considered ‘misdemeanour’ if the maximum applicable penalty is medium imprisonment (article 30 of the Penal Code), which ranges between one and five years (article 147 of the Penal Code).

²³ Article 451 of the Penal Code requires a sentence of ‘medium imprisonment’ of more than three years for the crime of torture. If the act results in serious physical injury or if the victim is a child, a woman or a disabled person, the maximum punishment of five years must be applied.

²⁴ Cf. Committee against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, CAT/C/AFG/CO/2 (1535th and 1537th meetings, held on 9 and 10 May 2017), para. 23.

²⁵ Article 547 of the Penal Code.

States are under the obligation to ensure that penalties for torture are commensurate with the gravity of the crime. They must also ensure that all penalties for crimes are applied in line with international and domestic law, in particular with fair trial guarantees.

C. Prevention of torture and ill-treatment

With the new Anti-Torture Law being published in the official gazette on 31 October 2018, the Government has enacted a national framework aimed at the prevention of torture and ill-treatment. Based on the same definition of torture as contained in the Penal Code (see above), the Anti-Torture Law, for example, sets forth an obligation for authorities to protect complainants, witnesses and investigators, and requires them to adopt necessary measures to prevent torture, including monitoring places of detention and ensuring accountability. The Law also establishes a high-level Anti-Torture Commission, led by the Afghanistan Independent Human Rights Commission and composed of relevant State authorities and civil society representatives.²⁶

D. Redress for victims of torture and ill-treatment

Article 51 of the Constitution provides that “[a]ny person suffering undue harm by government action is entitled to compensation, which he can claim by appealing to court.” The Anti-Torture Law includes a chapter on redress, specifically for victims of torture, and establishes that the victim’s claim for compensation is not dependent on the conclusion of a criminal proceeding.²⁷

UNAMA/OHCHR welcome the new provisions on redress for victims of torture. Nonetheless, they observe that the Anti-Torture Law appears to require a high burden of proof (‘beyond reasonable doubt’) for compensation to be assigned. This requirement is linked with a narrow provision on the reversal of burden of proof, which only applies if signs of torture can be observed on the body of a person deprived of his or her liberty.²⁸ To fully guarantee the rights of victims of torture and ill-treatment, States have the obligation to ensure that the right to redress is effectively implemented. Evidential burdens and procedural requirements that interfere with the determination of the right to redress may be obstacles to such effective implementation.²⁹

E. Legal and other procedural safeguards against torture and ill-treatment

In line with international law, the domestic legal framework incorporates safeguards, which aim to prevent and address the use of torture and ill-treatment. The Criminal Procedure Code sets out a broad range of rights, for instance, the right to *habeas corpus*, under which detainees can challenge the legality of their detention, and the right to have family members informed of the arrest.³⁰ Articles 9 (4) and 152 of the Criminal Procedure Code make the presence of a defence lawyer mandatory during all stages of prosecution proceedings. Furthermore, the Criminal Procedure Code excludes the use in judicial proceedings of evidence obtained through torture or other forms of coercion and imposes a positive obligation on both the prosecutor and the courts to ensure that any evidence obtained in violation of domestic law is inadmissible.³¹

²⁶ See articles 8 - 12 of the Anti-Torture Law. For more information on the Anti-Torture Commission, please see the relevant part in section 6 on monitoring, investigations and accountability.

²⁷ Article 20 of the Anti-Torture Law; Committee against Torture, General Comment No. 3, para. 26.

²⁸ See Articles 22 and 23 of the Anti-Torture Law.

²⁹ Committee against Torture, General Comment No. 3, para. 38.

³⁰ Article 7 (13) and (4) of the Criminal Procedure Code.

³¹ Articles 21 and 22 of the Criminal Procedure Code.

Legal safeguards and other rights of detainees, such as the right to access to health care and medical check-ups upon entry of a facility, are also laid out in some detail in the Prison and Detention Centre Law and the Regulation on Management of the Affairs of Custody Centres.³²

F. Special provisions and procedures for conflict-related crimes

While legal and other procedural safeguards are well grounded in Afghan law, Annex 1 to the Criminal Procedure Code allows for certain exceptions for conflict-related crimes. In this context, UNAMA welcomes that the repeal of, or amendment to, several provisions in Annex 1 of the Criminal Procedure Code which were not in line with international standard. In particular, it welcomes that the use of administrative detention was abolished and the law clarifies that juveniles detained in relation to the armed conflict are to be kept in the Juvenile Rehabilitation Centers (JRCs).³³

Annex 1 however allows security personnel to hold suspects for up to 10 days, in order to complete proceedings and gather incriminating evidence. It also allows prosecutors, if there is sufficient incriminating evidence, to issue an order authorizing extending the detention of an arrested person for a period of up to 60 days to enable a formal investigation, depending on the nature of the offence.³⁴ A suspect may thus spend 70 days in detention without judicial oversight.

The requirement for an arrested person to be brought promptly before an impartial judge is one of the principal safeguards against arbitrary deprivation of liberty and allows the accused to challenge the basis of their detention. It also gives the judge the opportunity to enquire into the treatment the detainee received in custody. While the exact meaning of ‘promptly’ may vary depending on objective circumstances, international law requires that delays should not exceed a few days from the time of arrest.³⁵ Also, a public prosecutor cannot replace judicial oversight.³⁶ The period of up to 70 days of detention without judicial oversight permitted under Annex 1 of the Criminal Procedure Code significantly exceeds the timeframe that the United Nations Human Rights Committee has assessed as reasonable under international law.³⁷

The timeline for the detection and investigation of conflict-related crimes under Annex 1 of the Criminal Procedure Code as outlined above is also connected to the place of detention. The Afghan law distinguishes three types of places of deprivation of liberty: custody centres, detention centres and prisons. Custody centres are used for temporary custody of suspects at the crime detection phase and may be administered by the Ministry of Interior (ANP), the Ministry of Defence (ANA), NDS and the Ministry of Justice (JRCs).³⁸

The Law on Prisons and Detention Centres regulates detention centres, where accused individuals awaiting their trial are to be held, and prisons, where individuals are to be detained after the final decision of a court.³⁹ The Law only refers to the Central Prisons Directorate of the Ministry of Interior, rather than NDS-, ANP- or Afghan National Army (ANA)-run facilities. UNAMA considers that suspects, once detained under an order from the prosecutor and transferred from ANDSF custody to a detention facility administered by the Central

³² See for instance articles 27 and 29 of the Law on Prison and Detention Centre, and articles 8 and 16 of the Regulation on Management of the Affairs of Custody Centres.

³³ See Official Gazette No. 1222 of 6 September 2016, No. 1286 of 16 March 2018, and No. 1318 of 21 October 2018.

³⁴ See articles 5 and 6 of Annex 1 to the Criminal Procedure Code. A prosecutor may authorize further extension of detention of 30 days for misdemeanour and 60 days for felony crimes.

³⁵ Articles 7 of the Constitution provides that the State observes international treaties, and article 3 requires that “[i]mmediately upon arrest, the accused shall . . . appear before the court within the time specified by law.”

³⁶ Article 9 (3) of the International Covenant on Civil and Political Rights; Human Rights Committee, General Comment No. 35 [‘Article 9 (Liberty and security of person)’], CPR/C/GC/35 of 16 December 2014, paras 32-34.

³⁷ For example, in *Jijón v. Ecuador*, the Human Rights Committee considered that five days (120 hours) was too long.

³⁸ Article 3 of the Regulation on Management of the Affairs of Custody Centres.

³⁹ Article 7 of the Law on Prisons and Detention Centres.

Prisons Directorate or by the Ministry of Justice (JRCs), would be at less risk of being subjected to torture or ill-treatment.

During its monitoring, UNAMA repeatedly observed detainees who had been held in ANP and NDS custody for well in excess of the 10-day time limit permitted under Annex 1 of the Criminal Procedure Code. In some cases, the detainees had been held in NDS custody for more than 70 days. UNAMA did not attempt to determine in each individual case the procedural basis by which these detainees were being held for extended periods in ANP or NDS custody, and whether such detention was authorized by the prosecutor. However, based on UNAMA's understanding of the applicable domestic law, detention in ANP or NDS custody beyond the 10-day period provided for in Annex 1 of the Criminal Procedure Code is unlawful under the relevant provisions of the Law on Prisons and Detention Centres.

5. Findings on Torture and Ill-treatment

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

A. Overall findings

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

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

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

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

The section below provides a more detailed overview of the UNAMA/OHCHR findings on the treatment of detainees held in custody by the National Directorate of Security, Afghan National Police, Afghan National Army and the Afghan Local Police. The numbers presented for individual entities reflect the fact that each detainee may have been held (and in some cases tortured or ill-treated) in more than one location or by different entities.⁴¹

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

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

B. National Directorate of Security

They severely tortured me. I had to kneel, and they put a device between my legs. Some persons were holding my shoulders, then that device gave me electric shocks. After that, my feet stopped working for some time. I was also banged on my feet from the ceiling. They were using chains. My fingers could barely reach the ground. It would continue for about two hours. When I was getting unconscious, they took me down. I could recover for a few minutes but then they put me back up again. In addition to that, I was beaten every day. They were beating me on my stomach with a black rubber pipe filled with something.

Detainee, NDS, Kabul

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

Similar to the overall figures, a year-by-year breakdown of the information gathered by UNAMA during the period covered by this report shows a more nuanced picture. From 1 January to 31 December 2017, 31.4 per cent of detainees interviewed by UNAMA (76 out of 242), who had been held in NDS custody, gave credible accounts of having experienced torture and other forms of ill-treatment, which compares to similarly high levels documented in the 2017 UNAMA/OHCHR report.⁴²

From 1 January to 31 December 2018, UNAMA documented a significant decrease in the prevalence of torture, with 19.4 per cent (52 out of 268) of those interviewed giving credible reports of being subjected to torture or other forms of ill-treatment in NDS custody.

UNAMA welcomes this substantial reduction in the overall prevalence of torture among those interviewed in NDS facilities during 2018 and encourages NDS to continue their efforts, including by focusing on strengthening the implementation of procedural safeguards aimed at the prevention of torture and ill-treatment.

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

Kabul

During the reporting period, UNAMA interviewed 27 detainees held in different NDS detention facilities in Kabul. With the exception of NDS 241 and 501 (national counter-terrorism and investigation departments) for which separate figures are presented, all other NDS detention facilities located within Kabul (NDS provincial facility Kabul, NDS district facilities and NDS Special Forces) are included.⁴³

Eleven out of the 27 detainees interviewed (40.7 per cent) in these facilities provided credible and reliable accounts of torture or ill-treatment, indicating a regular and prevalent use of torture or ill-treatment. The detainees mentioned beatings, threats, sleep deprivation and stress positions as the main forms of torture or ill-treatment.

NDS 241 Kabul (counter-terrorism department)

UNAMA interviewed 31 individuals who had been held in NDS 241 facility in Kabul between 1 January 2017 and 31 December 2018. Of these, 12 (39 per cent) gave credible and reliable reports of torture or ill-treatment.

⁴² The 2017 UNAMA/OHCHR report had found that 29 per cent of detainees held in NDS custody gave credible and reliable accounts of having been tortured or ill-treated during the reporting period from 1 January 2015 to 31 December 2017.

⁴³ The figures for Kabul also comprise accounts from detainees who were not aware of or clear on which NDS facility they had been held in whilst in detention in Kabul.

The main techniques described comprised beating (including with a pipe and on feet), threats and stress positions. UNAMA however notes that nine of these allegations referred to the year 2017.⁴⁴ In 2018, out of 16 interviewees, three (18.75 per cent) gave credible and reliable reports of torture or ill-treatment, involving beatings and threats.

In line with the general trend observed by UNAMA, while the overall numbers for the period under review indicate a regular and prevalent use of torture or ill-treatment, the breakdown of the findings show improvements in NDS 241 Kabul during 2018.

In addition, UNAMA notes that detainees who were held in NDS 241 Kabul increasingly reported having received information on their right to legal representation. However, as in the past, lawyers did not appear to be present during interrogations of detainees whilst held in this facility.⁴⁵

Kandahar

UNAMA interviewed 68 individuals detained in Kandahar NDS provincial facility during the reporting period. Five of them (7.4 per cent) gave credible and reliable accounts of torture or ill-treatment. Four out of the five reported incidents, which occurred in 2017, describing threats and stress positions as the main techniques of torture and ill-treatment. As previous UNAMA/OHCHR reports found a systematic use of torture or ill-treatment in this facility, UNAMA/OHCHR welcome this positive trend.

UNAMA/OHCHR are however concerned that all seven detainees interviewed who reported having been held in district facilities in Daman, Shah Wali Kot and Spin Boldak district before their transfer to the provincial NDS facility provided credible and reliable claims of torture and ill-treatment. In addition, 16 interviewees indicated they had reported about ill-treatment they had experienced in different facilities, in particular NDS 03 and NDS district facilities, to staff members of the NDS provincial detention facility, NDS prosecutors, NDS human rights officers or doctors, but they were not aware of any action taken.

Khost

UNAMA interviewed 38 individuals detained in the Khost NDS provincial facility between 1 January 2017 and 31 December 2018. Seven of them (18.4 per cent) gave credible and reliable accounts of torture or ill-treatment, referring to beating, suspension from ceiling and threats as the main techniques.

UNAMA notes with concern that all seven allegations of torture or ill-treatment occurred in 2018, with a notable spike in allegations in the first half of the year.⁴⁶ In addition, four detainees provided credible and reliable accounts of torture or ill-treatment in NDS district facilities in Khost, in particular in Sabari and Jaji Maidan districts, prior to their transfer to the provincial NDS facility, in 2018.⁴⁷

Samangan

During the period covered by this report, UNAMA interviewed 27 detainees in the Samangan NDS provincial facility. Nine of them (33.3 per cent) gave credible and reliable accounts of having been subjected to torture and ill-treatment, indicating a regular and prevalent use of torture and ill-treatment in this facility. The main method of torture and ill-treatment described involved beatings, including with sticks, pipes and iron rods. UNAMA notes that the majority of these allegations (seven) relates to the year 2017.⁴⁸

⁴⁴ UNAMA interviewed 15 detainees held in NDS 241 in 2017.

⁴⁵ For general information on access to lawyers, see the section on 'Procedural and other legal safeguards against torture and ill-treatment' below.

⁴⁶ UNAMA interviewed 26 detainees held by NDS Khost in 2018.

⁴⁷ Two of them reported having been tortured or ill-treated in two separate NDS facilities.

⁴⁸ UNAMA interviewed 19 detainees held in NDS Samangan in 2017.

Other facilities

UNAMA has not received any claims of torture or ill-treatment in the provincial NDS facilities of Badakhshan, Bamyan, Ghor, Jawzjan and Paktya.⁴⁹ Its findings also point to a noteworthy reduction in the percentage of detainees held in the provincial NDS facility in Herat province who gave credible accounts of being subjected to torture or ill-treatment (down to 8.3 per cent of detainees – three out of 36 individuals - from 48 per cent in the 2017 UNAMA/OHCHR Report).

In relation to the NDS provincial facilities of Baghlan, Balkh, Kunar, Kunduz, Nangarhar and Paktika provinces and NDS 501 (investigation department) Kabul, UNAMA received three to five credible and reliable reports of torture and ill-treatment during the reporting period.⁵⁰ While the analysis does not show a pattern of torture or ill-treatment in these facilities, UNAMA/OHCHR consider that these findings still raise concern. UNAMA/OHCHR encourage the relevant NDS authorities to continue striving for the eradication of torture and ill-treatment, including by focusing on the practical implementation of procedural safeguards aimed at preventing such treatment in these facilities.

In addition, UNAMA is concerned over the high percentage of detainees held by NDS in Farah, Faryab, Helmand, Parwan and Saripul provinces who raised concerns over their treatment.⁵¹ UNAMA however notes that the sample size of those interviewed was too small to make any meaningful findings on patterns of treatment of detainees.

A table outlining the NDS provincial breakdown is included in annex V.

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

Two men came to me and tied my hands tightly behind my back. They put a plastic bag over my head and pushed me on the floor. There was some thick blanket. They rolled me in that blanket and started beating and kicking me everywhere. It was painful, and I was suffocating – I was gasping, not able to take a breath. Then they stopped and asked me, “Do you have something to say now?” I responded that I do not know anything. So they repeated the same thing again. I have no idea how much it lasted, but it felt like it was long.

Detainee, NDS 03, Kandahar

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

⁴⁹ UNAMA conducted the following numbers of interviews with detainees held in the respective NDS provincial facilities during the two-year reporting period: Badakhshan (19); Bamyan (five); Ghor (six); Jawzjan (16 – although UNAMA notes that most of the interviews relate to detainees held in NDS Jawzjan following the surrender of a group of approximately 250 alleged self-identified *Daesh*/ISKP members); and Paktya (20). Given the relatively small sample size for Bamyan and Ghor, the findings do not allow UNAMA to draw firm conclusions on the situation in the NDS facilities in these two provinces.

⁵⁰ In Baghlan, four out of 37 detainees gave credible and reliable accounts of torture or ill-treatment; in Balkh, Four out of 36 (all allegations relating to 2017); in NDS, 501: Five out of 61 (four of the allegations relating to 2017); in Kunar, Three out of 14; in Kunduz, three out of 29; in Nangarhar, Five out of 23; and in Paktika, three out of 15 .

⁵¹ In Farah, four out of eight detainees gave credible and reliable accounts of torture or ill-treatment (this figure however only refers to 2017; in 2018, access to Farah province was limited due to security reasons); in Faryab, three out of seven; in Helmand, five out of five; in Parwan, five out of six detainees; and in Saripul, five out of eight detainees.

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

NDS Special Forces and KPF are both supported by international military forces. UNAMA considers KPF to be a pro-Government armed group.⁵³ According to information received from NDS, none of the NDS operational and special units have detention centres of their own. Upon arrest, NDS special units refer suspects and accused persons to NDS detention centres in the capital and provinces for initial investigations.⁵⁴

*NDS 03*⁵⁵

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

Khost Protection Force

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

D. Afghan National Police⁵⁸

The commander started the interrogation. He accused me of being a Talib, I told him I wasn't. He also named some individuals, asking if I knew them. I told him I didn't. Then he ordered me to lay down on the floor. They removed the blindfold. One man tied my feet and sat on my legs, the other one sat on my stomach. They choked me a bit and then they started pouring water into my mouth. That lasted for about 10-15 minutes. The commander said, if you do not confess, we will repeat. So, they repeated this seven times.

Detainee, ANP facility, Kandahar

UNAMA interviewed 179 detainees who had been held in at least one Afghan National Police (ANP) facility (including district and provincial facilities) during the period covered by this report. Fifty-four of them (31.2 per cent) gave credible and reliable accounts of having been subjected to torture or other forms of ill-treatment whilst in ANP custody. Fifteen reported they had experienced torture or other forms of ill-treatment in more than one ANP facility.

Contrary to the overall figures presented above, a year-by-year breakdown of the information gathered by UNAMA does not indicate any decline in percentage in credible reports of torture or other forms of ill-

⁵³ Pro-Government armed groups are organized non-State armed actors engaged in conflict against armed opposition groups. These groups are distinct from Government Forces and lack legal basis under the laws of Afghanistan. For further information, see the UNAMA/OHCHR *Afghanistan Protection of Civilians in Armed Conflict*, 2018 Annual Report, available at <https://unama.unmissions.org/protection-of-civilians-reports>.

⁵⁴ Letter #12855 of 06/09/1397, on file with UNAMA.

⁵⁵ NDS 03 covers the Southern region.

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

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

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

treatment documented in 2018 (23 out of 74 – 31 per cent) when compared to 2017 (31 out of 105 – 29.5 per cent).

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

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

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

Kandahar province

In previous reports, UNAMA identified the systematic use of torture or ill-treatment of conflict-related detainees by ANP Kandahar. The assessment of the situation remains unchanged.

UNAMA interviewed 22 detainees held in ANP custody in district and provincial facilities in Kandahar province during the reporting period. Seventeen of them (77 per cent) gave credible and reliable accounts of having experienced torture or ill-treatment at the hands of ANP, with nine reporting torture or ill-treatment in two or more ANP facilities in the province.

In addition to systematic and multiple beatings, including with cables and plastic pipes, on feet and other parts of the body, the forms of torture and ill-treatment most commonly reported by detainees held in ANP custody in Kandahar included suffocation (with water or plastic bags); electric shocks; suspension from ceilings; various types of stress positions during extended period of times; and pulling of genitals. Detainees also reported threats of death and of sexual violence.

Whilst the majority of allegations of torture and ill-treatment referred to district police check-posts or lock-ups, in particular in Dand, Zhari, Maiwand and Kandahar districts, UNAMA is further concerned about reports that detainees were threatened at the ANP provincial headquarters to again be subjected to torture if they did not sign a confession. Detainees also consistently indicated they had reported on the treatment they had experienced to investigators, prosecutors and doctors at ANP provincial headquarters, but were not aware of any action taken to address their complaints.

As in the past reporting periods, UNAMA received allegations of enforced disappearances⁵⁹ and extrajudicial killings, which occurred in Kandahar during the reporting period. In particular, 34 sources provided credible and reliable information on enforced disappearances of their relatives.⁶⁰ UNAMA remains unaware of any concrete action taken by the authorities to investigate the widespread and, in some cases public allegations, that ANP has been complicit in acts of enforced disappearances.

⁵⁹ International human rights law defines an ‘enforced disappearance’ as ‘the arrest, detention or any other form of deprivation of liberty by agents of the state...followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the whereabouts of the disappeared person, which places such a person outside the law’ (International Convention for the Protection of All Persons from Enforced Disappearance). The United Nations Working Group on Enforced Disappearance has affirmed that an enforced disappearance constitutes torture or other prohibited ill-treatment in and of itself, stating that ‘the very fact of being detained as a disappeared person, isolated from ones family for a long period is certainly a violation of right to humane conditions of detention and has been represented to the Group as torture’ (E/CN.4/1983/14, para 131).

⁶⁰ While these accounts were collected in 2017, UNAMA notes that reports continued to suggest similar allegations, in some cases publicly made, in 2018.

Nangarhar province

UNAMA interviewed 18 detainees held in ANP facilities in Nangarhar, at district and provincial level, between 1 January 2017 and 31 December 2018. Out of these, six (33.3 per cent) provided credible and reliable accounts of torture or ill-treatment, with beating (including with pipes) and threats described as the main techniques. The main district facility named is located in Deh Bala district.

While the 2017 UNAMA/OHCHR report indicated a systematic use of torture or ill-treatment by ANP in Nangarhar, the overall findings of the current report show a regular and prevalent use of such treatment. However, UNAMA notes that five of the six allegations related to 2017,⁶¹ indicating some improvement in 2018.

Other provinces

UNAMA has not received any credible and reliable claims of torture or ill-treatment in ANP district or provincial facilities of Bamyan, Ghor and Parwan provinces. However, given the relatively small sample size, the findings do not allow UNAMA to draw firm conclusions on a pattern or trend in these provinces.⁶²

In relation to the ANP facilities of Baghlan and Kunduz provinces,⁶³ UNAMA respectively received three and four credible and reliable accounts of torture and ill-treatment during the reporting period. While the analysis does not show a pattern of torture or ill-treatment in these provinces, UNAMA considers that these findings still raise concern. UNAMA/OHCHR encourages the relevant ANP authorities to continue striving for the eradication of torture and ill-treatment, including by focusing on the practical implementation of procedural safeguards aimed at preventing such treatment in these facilities.

UNAMA is concerned over the high percentage of detainees held by ANP who raised concerns over their treatment in Herat, Laghman, Paktika and Paktya provinces (40 per cent or more)⁶⁴; yet, the sample of those interviewed was too small for UNAMA to make any meaningful findings on patterns of treatment of detainees.

A table outlining the ANP provincial breakdown is included in annex VI.

E. Afghan Local Police

The ALP came to my house. They told me that they were arresting me in connection with the killing of an ALP soldier. I mentioned to them that I was not aware about the issue, but they took me to their base. Their commander asked me several questions. I answered that I was innocent, but he did not pay any attention. Instead, he started kicking me on my abdomen and my whole body for about one hour. Then we were sent to the district ANP detention facility.

Detainee. ALP base. Parwan

The Afghan Local Police (ALP) are locally recruited and operating under the authority of the Ministry of Interior.⁶⁵ Between 1 January 2017 and 31 December 2018, UNAMA interviewed nine detainees who were initially held by ALP before being handed over to the competent legal authorities. Six of them (66.6 per cent) gave credible and reliable reports of having been subjected to torture or other forms of ill-treatment, indicating

⁶¹ Five out of eight detainees (62 per cent) interviewed in 2017 gave credible and reliable accounts of torture or ill-treatment.

⁶² UNAMA conducted the following numbers of interviews with detainees in the NDS provincial facilities during the two-year reporting period: Nine in Bamyan; 10 in Ghor; and five in Parwan.

⁶³ In Baghlan, three out of 16 detainees gave credible and reliable accounts of torture or ill-treatment, and four out of 13 in Kunduz.

⁶⁴ In Herat, four out of 10 detainees gave credible and reliable accounts of torture or ill-treatment; in Laghman, three out of six; in Paktika, three out of four; and in Paktya, four out of six.

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

severe beatings as the main technique. These incidents took place in five provinces: Badakhshan, Balkh, Faryab, Kandahar, Jawzjan and Parwan. The detainees described they had been held by ALP for between one to six days. ALP are required to promptly hand over any suspected insurgents to ANP or NDS.

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

F. Afghan National Army

Then the ANA soldiers took me to some tent inside the base. They were angry with me. They tortured me by hitting the bottom of my legs with a pipe made of plastic and my shoulder and chest with a gun. They also threatened me by saying they would make me dance in front of people.

Detainee, ANA base, Nangarhar

Between 1 January 2017 and 31 December 2018, UNAMA interviewed 33 detainees who had been held by the Afghan National Army (ANA) before being transferred to ANP or NDS. Twelve of them (36.4 per cent) gave credible and reliable reports of having been subjected to torture or other forms of ill-treatment whilst in detention, indicating severe beatings as main technique. These incidents took place in nine provinces: Balkh, Herat, Helmand, Kabul, Kandahar, Kunduz, Laghman, Logar and Nangarhar.

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

G. Afghan National Detention Facility in Parwan

The situation in Bagram is very bad. The place was not meant to be a prison. The light, colour of the wall, the set-up, it is affecting the mental health of the detainees. Most of them have mental problems. I know of 32 or 33 suicides or attempted suicides in the last four years. I beat myself many times, I also even tried to kill myself.

Detainee, Detention Facility in Parwan

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

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

⁶⁶ Whilst the Ministry of Interior, through its Central Prisons Directorate, is responsible for the administration of prisons (article 17 of the Law on Prisons and Detention Centres), on 9 March 2012, the Government of Afghanistan signed a Memorandum of Understanding with the United States of America providing for the transfer of the US-run Detention Facility in Parwan to Afghan jurisdiction and control. The document stipulated that the facility was to be managed by an ANA General under the authority of the Ministry of Defence.

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

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

H. Juvenile detainees⁶⁸

There were two individuals, one interrogator, and one guy who was standing beside me. The second guy beat, kicked and punched me. I started crying. Then the interrogator hit me. I fell down. The other guy kicked me in the face and told me not to cry. I confessed at that time to membership with the Taliban and the interrogation stopped.

Juvenile detainee, NDS, Samangan

During the reporting period, UNAMA interviewed 82 juveniles⁶⁹ held in ANDSF custody. Of these, 36 (43.9 per cent) gave credible and reliable accounts of having been tortured or ill-treated. Similar to the overall trend, UNAMA notes a reduction in the prevalence of allegations of torture and ill-treatment of juveniles in 2018 (33.3 per cent, 14 out of 42 detainees) compared to 2017 (55 per cent, 22 out of 40 detainees). Nevertheless, UNAMA is concerned about these relatively higher percentage as compared to the overall figures, which appears to indicate that younger persons are at a higher risk of suffering from torture or ill-treatment in ANDSF custody.

In addition, UNAMA interviewed 16 detainees who claimed to be juveniles but were assessed by the authorities as adults and held under adult regimes.⁷⁰ While UNAMA has no means of evaluating the quality and rigour of age assessment procedures, a number of juvenile detainees reported that it solely consisted of an estimation based on the individual's appearance. UNAMA emphasizes the inherent margin of error of such a procedure.

Of the 128 individuals who gave credible and reliable accounts of being tortured or ill-treated in NDS custody,⁷¹ 22 (17.2 per cent) were juveniles, describing severe beatings and threats as the main techniques used. UNAMA documented these incidents in provincial NDS facilities in: Faryab, Helmand, Herat, Kabul (including NDS 241 and 501), Khost, Kunar, Kunduz, Laghman, Nangarhar, Parwan, Samangan and Saripul.

Of the 55 individuals who gave credible and reliable accounts of being tortured or ill-treated in ANP custody,⁷² 14 (25.5 per cent) were juveniles, again describing severe beatings and threats as the main techniques. UNAMA documented such incidents in ANP district and provincial facilities in: Baghlan, Herat, Kunar, Kunduz, Laghman, Nangarhar, Paktika, Paktya and Zabul.

⁶⁷ All incidents mentioned referred to 2017.

⁶⁸ A juvenile is a person who has completed the age of 12 and has not completed the age of 18, see article 4 of the Juvenile Code and articles 95 and 96 of the Penal Code.

⁶⁹ UNAMA notes that this figure includes seven individuals who stated to be below the age of 18. UNAMA did not obtain relevant information from the authorities on their assessment of the age of these individuals.

⁷⁰ These cases have been omitted from the figures presented on juvenile detainees.

⁷¹ The figures presented for NDS reflect the fact that each individual detainee may have been held (and some cases tortured or ill-treated) in multiple locations. UNAMA interviewed 58 juvenile detainees held by NDS during the reporting period.

⁷² The figures presented for ANP reflect the fact that each individual detainee may have been held (and some cases tortured or ill-treated) in multiple locations. UNAMA interviewed 38 juvenile detainees held by ANP during the reporting period.

I. Facilities administered by the Central Prisons Directorate of the Ministry of Interior and the Ministry of Justice (Juvenile Rehabilitation Centres)

During the period covered by this report, and consistent with its previous findings, UNAMA did not document any credible reports that conflict-related detainees experienced torture or other forms of ill-treatment in facilities administered by the Central Prisons Directorate of the Ministry of the Interior and the Ministry of Justice (Juvenile Rehabilitation Centres).

J. Observations

UNAMA notes that the nature of the torture and ill-treatment reported was generally distinctive and specific to facilities at which it was alleged to have occurred. Similar allegations were made by different detainees, who are often alleged members of different groups, interviewed at different times, often months apart. In addition, UNAMA interviewed a substantial number of detainees without receiving any allegations of torture or ill-treatment. Therefore, UNAMA considers the possibility of collective fabrication unlikely when a significant portion of interviews were conducted indicating a trend of pattern regarding a certain facility or province.

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

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

Genuine implementation of legal and other procedural safeguards in detention is generally considered among the most effective measures in preventing torture and ill-treatment and constitutes an integral part of any protective framework.

UNAMA notes that the details on the implementation of the legal and other procedural safeguards outlined below differ among facilities, responsible authorities and provinces. In the present report, UNAMA provides overall findings based on the information collected during the interviews, observations of its human rights officers and discussions with relevant authorities. Due to the combined method of collection of information, UNAMA is not in a position to provide precise numerical data. However, it considers that the issues highlighted below are of concern.

A. Access to lawyers

The physical presence of lawyers during interrogations may not only ensure deterrence of acts of torture and ill-treatment; lawyers can also intervene at an early stage to detect such acts, initiate procedures for identifying and investigating officials who are allegedly involved in torture or ill-treatment, and ensure that forced confessions are not used as evidence in trial.

During the period covered by this report, while UNAMA observed improvements in several facilities, many detainees continued to report that they had no opportunity or faced difficulties in accessing a legal counsel, particularly during the investigation stage of the proceedings. Access to legal counsel overall improved when a detainee was brought to the detention facilities falling under the authority of the Central Prisons Department of the Ministry of Interior or the Ministry of Justice (Juvenile Rehabilitation Centres).

UNAMA also observed that detainees continued to lack a clear understanding of the benefits of having a legal counsel, or believed that requests for a lawyer would negatively impact their case during investigation. Many were also unaware of the availability of legal aid and had thus had not sought legal assistance.

The right of a detainee to have access to legal counsel must be ensured ‘promptly’, i.e. from the time of arrest. Detention authorities are responsible for and must play an active role in “providing detainees with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter.”⁷³

Although it is beyond the scope of this report to provide a comprehensive analysis of the legal aid system in Afghanistan, it should be noted that lawyers have on a number of occasions informed UNAMA about difficulties in accessing certain detention facilities, in particular those under the authority of NDS, ANP and ANA. On the other hand, detention authorities have pointed to a lack of availability of lawyers, and particularly legal aid providers, in many provinces, and their unwillingness in some instances to follow-up on conflict-related cases or to visit detention facilities.

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

Incommunicado detention is a main risk factor of torture and ill-treatment. Thus, information on the whereabouts of a detained person and contact with the outside world are another crucial safeguard against such treatment

⁷³ United Nations Minimum Standard Minimum Rules for the Treatment of Prisoners (‘the Nelson Mandela Rules’), A/RES/70/175, rule 61.

besides serving to reassure families and detainees. It may facilitate reporting and possible action on treatment or other complaints.

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

Restrictions on visits and/or communication, in particular for the purpose of protecting an ongoing criminal investigation, are not necessarily in violation of relevant standards. However, they need to be based on an individual assessment of the risk and cannot be applied indiscriminately.⁷⁴

C. Medical examinations

Health care staff working in detention centers play a crucial role in the prevention of cases of torture and ill-treatment. In addition to medically treating detainees, they have an obligation to document any instance of torture or other form of ill-treatment that they become aware of during initial medical screenings or subsequent medical examinations. The documentation of injuries in a timely manner provides important evidence for investigation into allegations of such treatment. In addition, health care staff should report cases of torture and ill-treatment to the competent medical, administrative or judicial authority.⁷⁵

However, due to the specificity of the detention environment (i.e. the possible tension between loyalties and reporting lines to the detaining authority and the duty of care and the requirement of informed consent of detainees) health care staff may be faced with dilemmas. It is important to emphasize that in all cases when health care staff document and report torture or ill-treatment, proper procedural safeguards, which must include respect for privacy and confidentiality, shall be followed in order not to expose a detainee or associated persons to foreseeable risk of harm. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)⁷⁶ includes guidelines on professional ethical obligations for health care staff in relation to documenting torture and ill-treatment.

Generally, among those facilities visited by UNAMA, most have the capacity to at least provide basic medical check-ups and treatment which is accessible for all detainees. UNAMA has no means of assessing the quality of medical services provided and of the medical examinations carried out. Nevertheless, it observed that the practice of initial medical screening of detainees upon admission, while undertaken in a number of facilities, is not a standard practice countrywide. Interviewees regularly reported that the procedure consisted solely of questions and self-reporting rather than an actual physical examination. UNAMA also received reports of delays in or denial of access to doctors by the detaining authorities despite requests from detainees, in particular during the early stages of the investigation.

⁷⁴ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights and Penal Reform International, Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, 2018, p. 125, available at: <https://www.osce.org/odihr/389912?download=true> (last visited 23 March 2019).

⁷⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), A/RES/70/175, rule 34.

⁷⁶ Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OHCHR, Professional Training Series No. 8/Rev.1, 2004, see in particular paras. 56 and 65 regarding ethical dilemmas for medical personnel.

A number of detainees also indicated that they had reported to doctors about the ill-treatment they had experienced. While, in some instances, they received medical treatment, none of the detainees was aware of any other follow-up action taken by the medical personnel.⁷⁷

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

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

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

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

E. Information about rights

In order to be able to assert one's rights, a necessary prerequisite is to be aware of them. While UNAMA notes increasing efforts by detaining authorities to provide information on rights to detainees, the majority of interviewees stated they had not received such information during their detention period. UNAMA also observed that even when detainees would receive a briefing on their rights, it was not necessarily comprehensive or lacked details on how to effectively exercise these rights.

Due to their closed nature, places of deprivation of liberty create an inherent power imbalance and limit the individuals' control over his/her ability to exercise fundamental freedoms. Detention authorities thus need to make sure that detainees receive information about their rights and obligations upon being detained and in a language and format that they can understand.

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

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

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

Legal and other procedural safeguards – The case of the children from Jawzjan province

UNAMA is concerned about consistent reports of violations of legal and other procedural safeguards established under international and domestic law by detaining authorities. For example, on 31 July 2018, a group of approximately 250 male individuals with alleged affiliation to the self-identified *Daesh*/ISKP surrendered to ANDSF in Jawzjan province and were subsequently detained by NDS in Jawzjan and NDS 501 in Kabul. Among them were 59 children, including four children found to be below the age of criminal responsibility (a person who has not completed the age of 12 according to the Juvenile Code).

UNAMA notes that these children were unlawfully held in NDS detention for investigation – instead of the Juvenile Rehabilitation Centres, as required by the domestic law –for approximately 100 days, without access to necessary services, such as psychological support and education. Moreover, they had no access to defence counsel during the investigation phase; had no or very limited contact with their families during their detention in NDS; and had not been brought before a judge for approximately six months.

UNAMA emphasizes that criminal responsibility must be established individually for any accused person and that these children should not be treated as a group.

7. Monitoring, Investigations and Accountability

The documentation, investigation, prosecution and, if applicable, sanction of the perpetrators of acts of torture or other forms of ill-treatment, contribute to the prevention or deterrence of such acts and aim at avoiding their recurrence.

International human rights law requires that allegations of torture and ill-treatment be promptly, impartially and effectively investigated, even in the absence of a formal complaint, and, if applicable, prosecuted regardless of position or rank of those who committed, authorized or ordered the act. In accordance with the jurisprudence of the United Nations Committee against Torture, “the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved.”⁸⁰

This section analyzes the mechanisms established by NDS, the Ministry of Interior, the Ministry of Defence and the Office of the Attorney General, as well as the role of the Anti-Torture Commission with regard to monitoring and oversight of places of detention, investigations into allegations of torture and ill-treatment, and accountability for perpetrators. In order to facilitate this analysis, UNAMA requested these institutions to provide information on the number of allegations of torture and ill-treatment of conflict-related detainees detained in facilities under their respective responsibilities, and the outcome of any investigations.

A. National Directorate of Security

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

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

In a letter dated 27 November 2018, NDS reported to UNAMA that between 1 January 2017 and 15 October 2018, its human rights officers had interviewed a total of 15,721 suspects and accused, individually and in a confidential manner, in NDS central and provincial detention centres.⁸² While NDS did not provide any updates on the number of interviews conducted by its human rights officers during the remainder of the period covered by this report (until 31 December 2018), UNAMA considers that this number will have further increased.

In a follow-up letter dated 30 January 2019, NDS informed UNAMA that between 1 January 2017 and 31 December 2018, it had received 184 allegations of human rights violations from detainees. Following

⁸⁰ See Committee against Torture, *Blanco Abad v. Spain*, Communication 59/1996, 14 May 1998, para. 8.8.

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

⁸² NDS Letter No. 12855 of 06/09/1397, on file with UNAMA.

investigation of these allegations, 13 of these cases were ‘confirmed’, involving 19 personnel of the central and provincial NDS facilities.⁸³

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

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

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

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

Even if a case is ‘confirmed’ following an internal investigation, the details provided by NDS indicate that perpetrators are mostly subjected to minor internal disciplinary sanctions, such as warning letters. Very few cases are subsequently referred for prosecution by the judicial authorities, thus contributing to limited judicial accountability. Further to several requests to elaborate on allegations of torture and ill-treatment, NDS provided UNAMA with minimal information on the nature and gravity of these offences or the outcome of referrals for prosecution by judicial institutions.

UNAMA also remains concerned that some NDS human rights officers may not be clearly identifying themselves as NDS personnel. UNAMA received regular reports from detainees indicating they were interviewed by a “human rights officer” without being able to point to a specific institution. Even if NDS human rights officers are not deliberately misrepresenting themselves, ethical and professional principles, such as informed consent, require a clear identification of affiliation.

B. Ministry of Interior

The Gender, Children’s Rights and Human Rights Department of the Ministry of Interior is authorized to conduct monitoring in detention centres, to investigate allegations of human rights violations (including but not limited to allegations of torture or ill-treatment of detainees), and to refer appropriate cases to the relevant authorities for prosecution. At the subnational level, this monitoring and investigative function is carried out

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

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

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

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

by human rights officers of the Ministry of Interior, who are deployed to provincial ANP Headquarters and to prisons administered by the Central Prisons Directorate of the Ministry of Interior.

UNAMA welcomes the initiatives reported by the Ministry of Interior to raise awareness and train national police about its Code of Conduct and international treaty obligations. The Ministry of Interior has further acknowledged challenges in preventing and addressing human rights violations, including the lack of awareness of its personnel regarding relevant laws, policies and procedures which is also linked to illiteracy. They also identified the lack of awareness of detainees about their rights; the lack of defence lawyers in some parts of the country; lengthy judicial processes; and the lack of separate and standard facilities in some provinces for women and children as challenges in preventing torture and ill-treatment.⁸⁷

With regard to follow-up on allegations of torture and ill-treatment, the Ministry of Interior initially provided to UNAMA a list of 110 cases that covered a range of crimes, including killings, beatings, other bodily harm or sexual crimes. However, with one exception – which referred to beating of an individual in ANP custody but did not provide any details on the status of proceedings – UNAMA notes it is unclear from the information provided whether these cases fall within the definition of torture and ill-treatment of conflict-related detainees covered by the present report.

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

C. Ministry of Defence

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

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

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

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

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

D. Office of the Attorney General

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

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

UNAMA welcomes the efforts of the Office of Attorney General in ensuring increased oversight of investigations into torture and ill-treatment. It however notes that only one of the cases in the list provided by the Office of Attorney General referred to an ANP officer being sentenced to 15 months of imprisonment and separation from duty pursuant to article 451 (1) of the Penal Code, which is the provision criminalizing torture. While specific details of the case are lacking, UNAMA notes that the report indicates that mitigation measures were applied (based on article 215 of the Penal Code), lowering the sentence significantly below the minimum of three years of imprisonment.

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

E. Anti-Torture Commission

The Anti-Torture Commission was established under the Anti-Torture Law in April 2017.⁸⁹ It is chaired by the Afghanistan Independent Human Rights Commission (Human Rights Commission) and composed of representatives of key ministries, law enforcement agencies, forensic and medical experts, lawyers and civil society. The main responsibilities of the Anti-Torture Commission cover the monitoring of detention facilities, which includes: conducting visits; identifying and investigating allegations of torture, for which the Anti-Torture

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

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

Commission can also assign specific Sub-Committees; designing and developing awareness programmes on the prohibition of torture; and providing policy advice on the implementation of the Anti-Torture Law.⁹⁰

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

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

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

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

F. National Preventive Mechanism

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

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

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

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

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

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

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

UNAMA emphasizes that compliance with the Optional Protocol to the Convention against Torture includes the establishment of a National Preventive Mechanism as well as ensuring its effective functioning and functional independence. Such a mechanism should be empowered to regularly examine the treatment of individuals deprived of their liberty, which should involve the possibility to conduct unannounced visits to places of detention; to make recommendations to the Government with the aim of improving the treatment and conditions of all persons deprived of liberty; and to submit proposals and observations on existing and draft legislation. To that end, the mechanism will have to be equipped with a strong legislative mandate and the necessary human and financial resources. In carrying out its mandate, the National Preventive Mechanism will be supported by the United Nations Sub-Committee on the Prevention of Torture which, under the Optional Protocol to the Convention against Torture, would also have the authority to conduct visits to places of detention in Afghanistan.

G. Observations

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

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

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

Many physical methods of torture documented in this and previous reports (including beatings on the soles of the feet, suffocation, stress positions and other techniques) leave no lasting physical signs of harm and are unlikely to be verified by forensic medical examination. Even where ill-treatment or torture does result in visible physical injuries, detainees are often unable (and in some cases unwilling) to raise concerns for several months after the injuries were sustained, by which time most physical signs of ill-treatment would no longer be visible. Furthermore, torture by definition includes the infliction of mental suffering. This type of torture does not leave any sign of physical injury and therefore these cases risk being automatically excluded.

UNAMA reiterates that only the credible prospect that those who commit torture or ill-treatment would be held to account can deter those who carry out or order such crimes. Addressing torture and ill-treatment

⁹⁵ Article 23 of the Anti-Torture Law.

requires high-quality training and clear directives to all authorities and personnel involved in detention, rigorous inspections to all places of detention, and effective accountability measures to stop and prevent its use. Without effective deterrents to use torture or ill-treatment, including inspection services endowed with the autonomy necessary to fulfill their mission and a robust, independent investigation process and criminal prosecutions, Afghan officials might have no incentive to stop such acts.

8. Redress for Victims of Torture and Ill-treatment

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

A. Effective remedies

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

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

The lack of responsiveness on the part of the authorities to complaints of torture is of particular concern given that, under the terms of the Criminal Procedure Code, both the prosecutor and the court are obliged to take active steps to ensure that all evidence obtained through coercion (or otherwise obtained in violation of existing laws) is inadmissible.⁹⁹

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

B. Reparations

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

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

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

⁹⁶ Article 14 of the Convention against Torture.

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

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

⁹⁹ Articles 21 and 22 of the Criminal Procedure Code.

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

9. Recommendations

UNAMA welcomes the steps taken by the Government of Afghanistan to prevent and address torture and ill-treatment of conflict-related detainees since the release of the 2017 UNAMA/OHCHR report. However, the continuing use of torture and ill-treatment remains significant and runs against the Government's obligation to enforce an absolute prohibition of such treatment. UNAMA therefore strongly encourages the Government of Afghanistan to continue its efforts to eradicate torture and, in particular, to implement the following recommendations:

A. Legal framework

The Government must ensure that all detainees, including suspects, accused or convicts of conflict-related crimes, are afforded with the necessary legal rights and guarantees in line with international human rights law.

- Amend Annex 1 of the Criminal Procedure Code to bring it fully in line with international human rights law, in particular allowing for prompt judicial oversight of persons deprived of their liberty.
- Ensure that penalties for torture are commensurate with the gravity of the crime.
- Consider taking measures for an immediate moratorium on executions and a commutation of sentences.
- Remove from the Anti-Torture Law any obstacles for victims of torture to obtain redress, such as excessive evidential burdens.
- Consider accession to the International Convention for the Protection of All Persons from Enforced Disappearance.

B. Compliance

The Government must ensure that all relevant entities responsible for law enforcement and deprivation of liberty effectively act within the boundaries of the law.

- Identify, cease the use of, and close all unofficial or unlawful places of detention.
- Identify and release all persons detained arbitrarily or without legal grounds.
- Penalize any failure to document, report or investigate allegations of torture or ill-treatment or to uphold legal and other procedural safeguards.
- Ensure that timelines for pre-trial detention and judicial proceedings are respected, and detainees are held in the facilities foreseen in domestic law.
- Ensure the full application of the Juvenile Code for all cases involving juveniles charged with conflict-related crimes, including jurisdiction of provincial courts.
- In light of the planned expansion of the Detention Facility in Parwan, ensure adequate conditions of detention in this facility in line with international standards.

C. Legal and other procedural safeguards

The Government must ensure that the legal and other procedural safeguards are effectively upheld by all national authorities from the outset of the deprivation of liberty.

- Implement an effective standardized referral system so that all detainees have prompt access to lawyers or legal aid providers and ensure that interrogations take place in the presence of the defence counsel.
- Allocate the necessary human and financial resources to the legal aid system.

- Provide health care staff with full professional independence to make unbiased assessments of a patient's health interests and act accordingly; strengthen their capacity to document signs of torture and ill-treatment and conduct psychological evaluations in line with the Istanbul Protocol; and require that all detainees receive a full medical examination on arrival at each detention facility.
- Ensure that Standard Operating Procedures for the investigation of conflict-related crimes are fully compliant with human rights standards; include guidelines on non-coercive interviewing techniques and other measures that limit reliance on confessions; are disseminated among all law enforcement officials and regularly updated and their compliance is monitored by supervisors.
- Issue clear instructions to judges to ensure that coerced or other unlawfully obtained confessions are not admitted as evidence in court proceedings; and ensure that any such allegations are fully investigated and those responsible are held to account;
- Set up practical arrangements to ensure that persons deprived of their liberty can contact a person of their choosing to inform them about their detention and whereabouts and to facilitate family visits;
- Require law enforcement personnel to promptly notify a suspect about the reasons of the arrest and to provide information to detainees on their rights in each detention facility they are held in.
- Ensure that all persons deprived of their liberty are effectively able to exercise their right to challenge, at any time during the period of detention, the legality or necessity of the detention before a judge.
- Ensure that all detention facilities keep standardized records for each detainee in line with rules 7 and 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

D. Monitoring, investigation and accountability

The Government must conduct prompt, impartial, independent, transparent and thorough investigations into allegations of torture or ill-treatment with a view to holding any official found responsible for committing, ordering or acquiescing to such acts to account.

- Continue to increase the capacity of the relevant internal oversight mechanisms within NDS, the Ministry of Interior and the Ministry of Defence, as well as the Office of the Attorney General to monitor the treatment of detainees and to conduct investigations into all allegations of torture or ill-treatment.
- Establish and disseminate clear procedures for relevant judicial, law enforcement and medical personnel to follow when allegations of torture or ill-treatment are raised; and provide safe and independent reporting arrangements for them.
- Ensure that internal administrative sanctions never preclude an effective investigation into and prosecution of complaints of torture and ill-treatment.
- Clearly separate the mandates of the Afghanistan Independent Human Rights Commission (and the Ombudsman Office under its authority) and the Anti-Torture Commission.
- Prioritize the establishment of a National Preventive Mechanism, in consultation with the United Nations Subcommittee on the prevention of torture and in full conformity with all requirements of the Optional Protocol to the Convention against Torture, including its functional independence.

E. Redress for victims of torture or ill-treatment

The Government must practically ensure that victims of torture have effective access to justice and receive adequate, effective and prompt reparation for harm suffered as envisaged under the Anti-Torture Law.

- Establish effective complaint mechanisms for victims to report on torture and ill-treatment without fear of intimidation or reprisals from authorities.

F. Capacity-building and awareness-raising

With assistance of the international community, the Government must continue to strengthen training of any person who may be involved in the custody, interrogation or treatment of individuals deprived of their liberty.

- Continue to strengthen capacity-building across the justice sector to provide law enforcement and justice officials with the resources and technical skills to carry out the detection, investigation and prosecution of conflict-related crimes, including non-coercive interviewing techniques, in full compliance with international human rights standards.
- Provide training on legal requirements, including details on safeguards to prevent torture and ill-treatment, to law enforcement officials.
- Ensure that all relevant officials in all detention facilities, including medical personnel, are trained to identify and document cases of torture and ill-treatment, in accordance with the Istanbul Protocol.
- Raise awareness about the obligation to document and report allegations of torture and ill-treatment among staff of detention facilities, including medical personnel.

Annex I: Glossary of terms and acronyms

Human Rights Commission: Afghanistan Independent Human Rights Commission

ANA: Afghan National Army

ANDSF: Afghanistan National Defence and Security Forces

ANP: Afghan National Police

Daesh: The word *Daesh* is an acronym from Islamic State of Iraq and the Levant (*al-Dawla al-Islamiya al-Iraq al-Sham*).

DFiP: Detention Facility in Parwan

ISKP: The Islamic State in Iraq and Levant – Khorasan Province

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

JRC: Juvenile Rehabilitation Centre

KPF: Khost Protection Force

NDS: National Directorate of Security, Afghanistan's State intelligence service

NPM: National Preventive Mechanisms

OHCHR: The Office of the United Nations High Commissioner for Human Rights

Taliban: Armed opposition group fighting against the Government of Afghanistan and international military forces.

UNAMA: United Nations Assistance Mission in Afghanistan.

Annex II: The prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment under international law

Several international treaties to which Afghanistan is a party prohibit torture and other cruel inhuman or degrading treatment or punishment. These include the Convention against Torture, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949, the Rome Statute of the International Criminal Court and the Convention on the Rights of the Child.¹⁰¹ The State obligation to respect the prohibition of such practices is non-derogable, meaning that it is never justified to suspend or to fail to observe the ban on its use.¹⁰²

A. The definition of torture and other forms of ill-treatment

The definition of torture under the Convention against Torture is the most cited and authoritative definition in current practice:

“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.”¹⁰³

This definition includes four elements:

- (1) infliction of severe pain or suffering;
- (2) intention;
- (3) purpose (such as obtaining information or a confession, punishment, intimidation; coercion or discrimination);¹⁰⁴ and
- (4) involvement of a public official or other person acting in an official capacity.

¹⁰¹ The Government of Afghanistan ratified the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment in June 1987, the International Covenant on Civil and Political Rights in April 1993, the Geneva Conventions in September 1956 (with the exception of the two additional protocols), and the Convention on the Rights of the Child in 1994. The Rome Statute of the International Criminal Court, ratified by Afghanistan in February 2003, states that torture constitutes a war crime in a non-international armed conflict as follows: “[i]n the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: [...] torture [...]” (Article 8 (2) (c) (i)). The elements of the war crime of torture in a non-international armed conflict are that the perpetrator inflicted severe physical or mental pain or suffering upon a person; that the perpetrator inflicted it for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; that the person subjected to torture was either hors de combat, a civilian, medical personnel or religious personnel taking no active part in the hostilities; that the perpetrator was aware of the factual circumstances that established this status; that the conduct took place in the context of and was associated with an armed conflict not of an international character; and that the perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

¹⁰² Article 4 (2) of the International Covenant on Civil and Political Rights; article 2 (2) of the Convention against Torture.

¹⁰³ Article 1 of the Convention against Torture.

¹⁰⁴ The Committee against Torture elaborated that the “elements of intent and purpose [...] do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances”; Committee against Torture, General Comment No. 2 (‘Implementation of article 2 by States parties’), CAT/C/GC/2 of 24 January 2008, para 9.

Cruel, inhuman or degrading treatment or punishment (“ill-treatment”) are also legal terms which refer to treatment causing varying degrees of suffering that does not have to be inflicted for a specific purpose.¹⁰⁵ The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore relevant measures must be applied to prevent any such treatment.¹⁰⁶

B. State obligations to prevent torture and ill-treatment under international law

The absolute prohibition of torture and ill-treatment requires States to take positive measures – legislative, administrative, judicial and other actions – to ensure that such conduct and any recurrences thereof are effectively prevented.¹⁰⁷ The Convention against Torture expressly requires several measures, including:

- *Criminalization.* To ensure that all acts of torture are offences under its criminal law which should 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; to ensure that any individual has the right to complain to competent authorities; and to protect the complainant and witnesses against reprisals or intimidation.
- *Training.* To educate and inform regarding the prohibition of torture in the training of all persons who may be involved in the custody, interrogation or treatment of any individual detainee.
- *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 relevant rules under systematic review.
- *Redress.* 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.

In addition, international human rights law sets out legal and other procedural safeguards for persons deprived of their liberty which are considered an integral part of any protective framework to prevent torture and ill-treatment. These safeguards include the rights to:

- have family members or a third party informed of their whereabouts following their arrest;¹⁰⁸
- promptly receive independent legal assistance and adequate time and facilities for the preparation of their defence;¹⁰⁹

¹⁰⁵ Tepina, Polona, *The Torture Reporting Handbook*, second edition, Human Rights Centre, University of Essex, 2015, p. 23.

¹⁰⁶ Committee against Torture, General Comment No. 2, para 9.

¹⁰⁷ Articles 2 and 16 of the Convention against Torture.

¹⁰⁸ See United Nations Minimum Standard Minimum Rules for the Treatment of Prisoners (“the Nelson Mandela Rules”), A/RES/70/175, rule 68.

¹⁰⁹ Article 14 (3) International Covenant on Civil and Political Rights; see also Human Rights Committee, General Comment No. 32 (‘Article 14: Right to Equality before Courts and Tribunals and to Fair Trial’), CCPR/C/GC/32 of 23 August 2007.

- have prompt and regular access to a medical doctor, possibly of own choosing;¹¹⁰
- be informed of the reasons for arrest and any criminal charges;¹¹¹
- be presumed innocent until proved guilty according to law and not to be compelled to testify against himself or to confess guilt;¹¹²
- be brought before a magistrate or judge within a reasonable period of time;¹¹³
- challenge the legality of their detention and treatment (*habeas corpus*);¹¹⁴
- not to be subjected to arbitrary or unlawful arrest or detention;¹¹⁵ and
- be informed of these rights in language that is understandable to them.¹¹⁶

Other key measures that contribute to the prevention of torture and ill-treatment, *inter alia*, are impartial mechanisms for inspecting and visiting places of detention; reporting mechanisms without fear of reprisals; and the maintenance of registers.¹¹⁷

¹¹⁰ United Nations Minimum Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), A/RES/70/175, rules 30; 34; 118; see in general rules 24 et seq on health care service.

¹¹¹ See articles 9 (2) and 14 (3) of the International Covenant on Civil and Political Rights.

¹¹² See article 14 (2) and (3) of the International Covenant on Civil and Political Rights.

¹¹³ See article 9 (3) of the International Covenant on Civil and Political Rights.

¹¹⁴ See article 9 (4) of the International Covenant on Civil and Political Rights.

¹¹⁵ See article 9 (1) of the International Covenant on Civil and Political Rights.

¹¹⁶ United Nations Minimum Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), A/RES/70/175, rules 53-55.

¹¹⁷ United Nations Minimum Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), A/RES/70/175, see relevant rules on prisoner files management; information to and complaints by prisoners; and internal and external inspections.

¹¹⁸ The list includes detention facilities visited by UNAMA but no interviews for the current report were conducted.



Annex IV: Credible and reliable reports of torture and ill-treatment by the National Directorate of Security: Provincial breakdown¹¹⁹

NDS provincial facility	Detainees interviewed	Detainees who reported being tortured and/or ill-treated
Badakhshan	19	0
Badghis	8	1
Baghlan	30	4
Balkh	36	4
Bamyan	5	0
Daikundi	4	0
Farah	8	4
Faryab	7	3
Ghazni	1	1
Ghor	6	0
Herat	36	3
Helmand	5	5
Jawzjan	16	0
Kabul	27	11
Kabul NDS 241	31	12
Kabul NDS 501	60	5
Kandahar	68	5
NDS 03 Kandahar	45	17
Khost	38	7
Khost Protection Force ¹²⁰	23	4
Kunar	14	3
Kunduz	29	3
Laghman	16	2
Logar	7	2
Maidan Wardak	1	0
Nangarhar	23	5
Paktika	15	3
Paktya	20	0
Parwan	6	5
NDS 241 DFIP	12	1
NDS 501 DFIP	33	2
Samangan	27	9
Saripul	8	5
Takhar	10	1
Zabul	6	2

¹¹⁹ Please read this table in connection with the relevant section in the main part of the report. The figures in this table relate to NDS provincial facilities only and reflect the fact that each individual detainee interviewed may have been held (and in some cases tortured or ill-treated) in separate NDS facilities.

¹²⁰ For information on KPF, please see the information provided in the section on ‘findings on torture/ill-treatment’ above. UNAMA currently routes requests for information on allegations of human rights abuses attributable to this Unit through NDS.

Annex V: Credible and reliable reports of torture and ill-treatment by Afghan National Police: Provincial breakdown¹²¹

ANP provincial and district facilities (combined)	Detainees interviewed	Detainees who reported being tortured and/or ill-treated
Badakhshan	11	1
Badghis	3	1
Baghlan	16	3
Balkh	3	1
Bamyan	9	0
Daikundi	9	0
Farah	1	0
Faryab	5	1
Ghor	10	0
Herat	10	4
Kabul	4	1
Kandahar	22	17
Khost	5	1
Kunar	10	1
Kunduz	13	4
Laghman	6	3
Logar	4	1
Maidan Wardak	1	0
Nangarhar	18	6
Nuristan	1	0
Paktika	4	3
Paktya	6	4
Parwan	5	0
Samangan	5	1
Takhar	2	0
Zabul	2	1

¹²¹ Please read this table in connection with the relevant section in the main part of the report. The figures in this table relate to ANP provincial and district facilities and reflect the fact that each individual detainee interviewed may have been held (and in some cases tortured or ill-treated) in separate ANP facilities.

Annex VI: Response by the Government of the Islamic Republic of Afghanistan to the UNAMA/OHCHR Report¹²²

The Directorate of Human Rights and Women's International Affairs of the Ministry of Foreign Affairs, after receiving the annual report on the treatment of detainees and implementation of the national action plan for the prevention of torture, immediately convened an official meeting chaired by Mr. Idrees Zaman, the Deputy Foreign Minister for Political Affairs and attended by Deputy Ministers of Defence, Interior, NDS, Justice and the Afghanistan Independent Human Rights Commission in the Ministry of Foreign Affairs.

The meeting deeply discussed the above issue, considered the report as an opportunity for identifying the gaps and proposing further and better steps in this regard. Members of the meeting recommended to carefully go through the report and decided that after studying the report and sharing it with relevant offices, they will attend the next meeting of the Anti-Torture Secretariat in the Afghanistan Independent Human Rights Commission and will share the steps taken by their respective offices.

The next meeting was held at the Anti-Torture Secretariat which was headed by chairperson of the Afghanistan Independent Human Right Commission and attended by representatives of relevant organs including UNAMA.

Further, letters have been received from certain security organs the summary of which are provided below:

Ministry of Defence:

Firstly, we appreciate the efforts of UNMA in publishing its annual report and findings and hope this report will lead to reforms in the manner of treatment of detainees in prisons and detention centers of Afghanistan's National Defence and Security Forces. For the purpose of improvements, the Ministry of Defence will further strengthen the positive points stated in UNAMA's report pertaining to Detention Facility in Parwan (DFiP) and will address the negatives.

As the findings of the report indicate, detainees of DFiP, fortunately, have not experienced any torture or violence. As the report provides, UNAMA interviewed 46 detainees in DFiP none of whom experienced torture and ill-treatment. This reflects the commitment of leadership of Ministry of Defence towards the prevention of torture and ill-treatment of detainees, and the implementation of the national torture prevention plan and anti-torture convention. The report has also appreciated the measures taken by Ministry of Defence for not keeping juveniles in DFiP.

Whenever detainees are tortured or ill-treated, Ministry of Defence is committed to identifying all those involved and referring them to justice organs. In this regard, UNAMA's report appreciated and welcomed the steps of the Government of Afghanistan and leadership of the Ministry on the implementation of national the torture prevention plan and emphasized on further measures.

In respect with the conditions of facilities, findings of UNAMA report indicated that the conditions for detainees in DFiP are poor and the report further added that detainees interviewed by UNAMA complained about inappropriate conditions, lack of access to defense attorneys and problems related to visiting family members.

Please note that some of these problems such as lack of access to defense attorney are not related to Ministry of Defence and should be referred to justice and judicial organs. Ministry of Defence is tasked with keeping detainees in an appropriate condition in accordance with the international standards.

¹²² This is an unofficial translation. For the authentic response of the Government of Afghanistan (received per e-mail from the Ministry of Foreign Affairs on 15 April 2019) to the UNAMA/OHCHR report, please see the Dari version of this report.

The leadership of the Ministry of Defence has always endeavored to standardize the condition of DFiP and provide facilities for detainees and is determined to bring all possible reforms in improvement of DFiP condition.

According to the report, detainees in Balkh, Herat, Kandahar, Kabul, Laghman, Logar and Nangrahar provinces have been ill-treated. It is worth mentioning that Ministry of Defence does not have any prison or detention facility in the above-mentioned provinces except a temporary facility in the corps for keeping accused persons who are supposed to be referred to the capital. If further information is provided by UNAMA, Human Rights Department of Ministry of Defence is ready to assess the matter.

For the purpose of providing the facility for visiting detainees, [the Ministry] has had necessary discussions with international organizations such as ICRC and has always endeavored to provide required facilities for detainees in terms of visiting their families as per the provisions of the law.

Ministry of Defence has fully respected all human rights principles and will prosecute any negligence and inattention. All concerns in the report pertaining to poor condition of detention facilities will be fully assessed and in case any gaps are identified, necessary corrective measures will be put in place.

National Directorate of Security:

NDS, as a detective and intelligence organ for the protection of the constitution of the Islamic Republic of Afghanistan and defending [the rights of] Afghan citizens, has arrested those who are suspect of committing crimes against internal and external security and, according to provisions of the law, keeps them in its custody centers for preliminary investigations. Pursuant to the constitution of Islamic Republic of Afghanistan, international conventions, Islamic values and human rights, the National Directorate of Security is committed to observing, protecting and respecting human dignity, human and basic rights of citizens at all times.

The respected UNAMA often publishes its two-year findings on the treatment of suspects and accused persons in detention facilities of various security organs including NDS on bi-annual basis. The report is mainly based on interviews with those suspected and accused of committing different crimes against internal and external security and are detained. While appreciating the repeated and continued visits of UNAMA representatives from NDS custody centers and interviewing a number of detainees, NDS has repeatedly asked UNAMA to share with them the results of their visits and interviews in order to timely address the possible gaps and find out the reality of the allegations made by suspects as well as identify the clear proceedings. Due to certain reasons, the respected UNAMA office has not timely shared their findings with NDS.

Monitoring and Preventive Mechanism

NDS, within its organizational structure, has established independent units namely the Human Rights Unit in the vast majority of NDS departments to conduct continued monitoring, transparent and fair evaluation and timely address complaints about human rights violations. All human rights observers of NDS in the capital and provinces have been trained by domestic and international justice and human rights organizations including UNAMA Human Rights Unit and they perform independently in accordance with the Istanbul Process. In addition to continuous internal monitoring within NDS, the Afghanistan Independent Human Rights Commission, National Anti-Torture Committee and other international human rights organizations visit NDS custody centers in the capital and provinces.

Methodology for Monitoring and Prevention

NDS human rights observers regularly and systematically monitor all NDS custody centers and interview suspects individually, privately and independently. As for evaluation of complaints of suspects about potential ill-treatment or torture, the procedure is that first the complaint of the suspect is collected and then other proving sources (security cameras, body of the complainant, medical check form, arrest report, views of forensic medicine, statements of eye-witnesses, statements of relevant authorities and individuals against whom ill-treatment claim has been filed) are carefully and comprehensively assessed. In some cases, representatives of

different NDS departments comprise an impartial committee and assess a complaint because while assessing human rights violations, NDS defends the basis and human rights of complainant, witnesses and those assessing cases of human rights violations as well as individuals against whom complaints have been made.

Figures for Conducted Assessments

As of 1 January 2017, through 15 October 2018, NDS human rights observers interviewed a total number of 15721 suspects and accused persons individually and privately in NDS custody centers in the capital and provinces. During these interviews, around 166 allegations of human rights violations were registered and assessed and all the allegations which were confirmed after careful, impartial and comprehensive assessment through provision of sufficient evidences and documents, they have been adequately addressed given the basic and human rights of the parties and based on the provisions of enforced laws of the country. During assessment of the allegations, 17 NDS personnel from different levels in the capital and provinces and in military units who were accused of human rights violations, were punished taking into account mitigating and aggravating factors (referred to justice organs, transferred from duty station, written notice and warning recorder in personnel file) as per the enforced laws of the country and NDS human rights policy.

Training, Awareness and Capacity Building

NDS assures that there exists no systematic torture and ill-treatment of suspects in any NDS units and in order to prevent human rights violations in lower levels which might happen due to lack of awareness of NDS personnel about the enforced laws of the country, human rights values and Afghanistan's international commitments, the Directorate has added human rights as a special subject in the curriculum of training for its personnel to make sure that every NDS employee, from the first day of employment, performs his/her duties with due consideration of and attention to human rights values.

NDS Human Rights Department, from 1 January 2017 through October 2018, has organized 71 human rights training seminars for NDS personnel particularly employees of operations and custody centers in the capital and provinces. In these seminars, in addition to explaining the policy of Government of Afghanistan and NDS, all human rights principles have been described to participants based on Islamic and cultural values and Istanbul Protocol. Further, around 20 training workshops were conducted for observers of the Directorate of Human Rights in which lecturers from international human rights organizations including UNAMA attended; also 33 human rights observers of NDS attended training workshops organized by national and international organizations to take technical human rights courses outside of the NDS.

NDS Concerns Regarding the UNAMA Report

UNAMA report pointed to improvement of human rights conditions and 12 percent decrease in human rights violations in NDS. While NDS appreciates UNAMA's positive comments about the decrease in human rights violations within the NDS Directorate, it has certain serious concerns regarding contents of the report which are as follows:

1. On page 10 of the report,¹²³ UNAMA indicated that NDS, as per the enforced laws, has the authority to keep suspects in its custody for up to 10 days while some suspects have been kept in their custody for up to 17 days. According to the law, NDS has the authority to keep in custody suspects for 10 days however, in some cases, due to sensitivities and non-completion of investigations, the Directorate requests AGO to extend the custody period which is a normal act according to Afghanistan's Criminal Procedure Code.
2. On page 13 of the report, an interviewed suspect has alleged that he was severely tortured and ill-treated in an NDS office in Kabul. The above claim is rejected for the following reasons:

¹²³ UNAMA notes that the page numbers referred to in this section were changed from the original input received to match with updates in the report since it was shared with the Government.

- One NDS human rights observer has been stationed in Kabul NDS who monitors the human rights condition and interviews suspects on a daily basis. During this period, the observer visited different parts of the custody center and met with suspects.
 - All parts of NDS custody center in Kabul particularly interrogation rooms are equipped with security cameras. With security cameras installed, there is no room for ill-treatment of suspects.
 - Beside continuous monitoring by NDS human rights, observers from national and international organizations including AIHRC, ICRC and the National Anti-Torture Commission constantly visit custody centers in the capital and provinces without prior notice and conduct individual and private interviews with suspects and accused persons. These observers have not confirmed such human rights violations in their reports.
 - On page 14 of the report, it has been mentioned that suspects in Khost and Samangan provincial NDS offices alleged that they have been tortured and ill-treated. To address UNAMA's concern, NDS has recently conducted an assessment aimed at identifying potential gaps within its anti-torture and ill-treatment mechanism in all NDS department across the country. In order to remove any concern pertaining to human rights violations in Khost NDS, four personnel of the department including its leadership have been removed from their duties.
3. The report stated that around 25 percent of all those interviewed by UNAMA observers in the capital, provinces and districts alleged that they have experienced torture and ill-treatment in a way. The above claims are of concerns to NDS for the following reasons:
 - The allegations made by the suspects are baseless and if they are seriously and comprehensively evaluated and documented, most of the claims will be proved wrong and far from reality.
 - In UNAMA's report, human rights violations have been mentioned in general and no information has been provided on details in order to verify the violations.
 - Some suspects refer to minor scars and marks on their bodies and claim to have been tortured and ill-treated in NDS custody centers. However, findings of NDS investigations indicate that most of such scars and marks on the suspects' bodies are not from torture and ill-treatment in custody centers but are as a result of refusing to surrender, armed clash [with security personnel], escaping from scene and lack of attention to warnings of security forces during arrest. In such situations, security personnel bear no responsibility based on articles 117 and 131 of the Penal Code and article 83, 84 and 85 of the Criminal Procedure Code. During investigations, NDS identified cases where suspects and accused persons inflict harms to themselves to defame security forces and be treated with leniency by courts. In other cases, after consultation with each other, suspects make reliable and seducing scenarios the verification of which require in-dept assessment and evaluation.
 4. To document and verify allegations of torture and ill-treatment made by suspects and accused persons, it is required to carefully, impartially and fully collect footage of security cameras in custody centers, medical forms, arrest reports, views of forensic medicine, statements of eye-witnesses and relevant authorities, report of physical assessment of the complainant. The above issues could not be considered in UNAMA's assessment of torture allegations attributed to NDS so that accurate and transparent result is achieved.
 5. In respect with allegations of torture and ill-treatment in military units of NDS, it has to be noted that such military units do not possess custody centers and suspects, after arrest, are referred to NDS office of respective province. Similarly, the whole processes of operation are carried with the presence of an AGO representative and video recorded by a professional staff.