

Shadow Report to the Committee against Torture on the Occasion of the Examination of the Second Periodic Report of Afghanistan at its 60th Session

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ABBREVIATIONS

AFSO	Afghanistan Forensic Science Organization
AGO	Afghanistan Attorney General's Office
AIBA	Afghanistan Independent Bar Association
AIHRC	Afghanistan Independent Human Rights Commission
AISS	Afghan Institute for Strategic Studies
ALP	Afghan Local Police
ANA	Afghanistan National Army
ANBP	Afghanistan National Border Police
ANP	Afghanistan National Police
ANSF	Afghanistan National Security Forces
ANSDF	Afghanistan National and Defence Forces
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CID	Criminal Investigations Department (MoI)
CoP	Chief of Police (ANP)
CPC	Criminal Procedure Code
CPD	Central Prison Directorate
CRC	Convention on the Rights of Child
CSHRN	Civil Society and Human Rights Network
CSO	Central Statistic Organization (Governmental Institution)
CTU	ANP Anti-Terrorism Unit
EVAW Law	Elimination of Violence Against Women Law
HRW	Human Rights Watch
ILF-A	International Legal Foundation-Afghanistan (Advocacy Department)

ISAF	International Security Assistance Force
JCRC	Juvenile Corrections and Rehabilitation Centre
MoD	Ministry of Defense
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoWA	Ministry of Women Affairs
MP	Member of Parliament
NATO	North Atlantic Treaty Organizations
NDS	National Directorate of Security
NPM	National Preventive Mechanism
OMCT	World Organization against Torture
OSF	Open Society Foundation
PC	Provincial Council
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programmes
UNICEF	United Nations Office for Children
UNODC	United Nations Office on Drugs and Crime
VAW	Violence Against Women

GLOSSARY

Bachabazi	Keeping Children (mostly boys) for the purpose of sexual exploitation and other forms of sexual harassments.
BAD	Giving a woman as restitution for murder, rape or another crime to achieve peace and harmony between families, tribes or clans.
Badal	Exchange marriages, usually involving the exchange of daughters or sisters as brides.
Zina	Sexual intercourse outside marriage.

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1. EXECUTIVE SUMMARY

More than 20 years after its initial report, Afghanistan submitted its second periodic report to the Committee against Torture (CAT) in 2016. While highlighting political and legal challenges as well as relevant legislation, the state report falls short in addressing the most pressing issues when it comes to the absolute prohibition of torture and other ill-treatment. In order for the CAT to gain a better picture about the problems and challenges in the fight against torture, a number of Afghan civil society organizations, upon the initiative of the Civil Society and Human Rights Network (CSHRN), formed an Anti-torture coalition to draft and submit the first civil society shadow report to the CAT Committee.

This report sets out the key challenges in the fight against torture in an ongoing decade long conflict that caused a weak rule of law and governance as well as poor judicial institutions. It further offers key areas where reforms are necessary in order to prevent torture fight impunity and provide victims with redress.

As of today, Afghan laws only prohibit torture and cruel, inhuman, or degrading treatment if inflicted for a confession (Article 29 of the Constitution, Article 275 of the Penal Code, and Article 22 of the Criminal Procedure Code). The government has therefore tabled a new draft Elimination of Torture Law that not only defines torture in accordance with the Convention against Torture (Convention) but also closes other protection gaps such as redress and rehabilitation for victims. If passed, the law's proper implementation will pose a major challenge, as this is already the case for the existing provisions and laws prohibiting torture.

The implementation of relevant provisions and legal safeguards is especially weak when it comes to the protection of detainees and in particular conflict-related detainees. The assessment of 104 torture cases that our coalition collected reveals that detainees are beaten with rubber hoses, metal sticks, electric cables, wires, and wooden clubs and as a result suffer from life-long bodily injuries, psychological disorder and loss of livelihood for themselves and their families. Torture seems especially prevalent for those accused of terrorism and national security related crimes

and who are thus in detention centers of ANSDF. This has also been confirmed in several reports of the United Nations Assistance Mission in Afghanistan (UNAMA).¹

Torture is not only perpetrated by government authorities but by also non-state actors such as the Taliban, Hezeb-e-Islami, and the Haqani Network. Perpetrators are rarely held accountable because the government lacks a unified and comprehensive strategy. Several top governmental official directly or indirectly support those non-state actors, because they share the same ethnic or socio-cultural identity, which severely hinders attempts to fight impunity.

Torture by non-state actors particularly affects women and girls who are subjected to violence, rape, honor killing, forced and early marriage that typically go unpunished. While there have been some positive legislative changes, in particular the 2009 Elimination of Violence against Women Law (EVAW Law), there are several laws that subject women to torture and ill-treatment. Both, adultery and fornication as well as attempts thereof are criminalized resulting in sentencing of women who run away from abusive homes or forced marriages. In order to proof adultery or fornication, so called virginity tests are performed by medical personnel. The vast majority of women in prison are accused of moral crimes and were therefore forced to undergo virginity tests.

Harmful traditions also affect children. Our report highlights the practice of Bachabazi, also called “dancing boys”, who dress as women and perform at private parties. These boys are often kept in slave-like situations and tend to be sexually abused by their masters or others at parties where they perform. Because powerful people, including government officials, participate in this form of child abuse, the relevant provisions in the Criminal Code are poorly implemented.

Poor implementation is also observed in the fight against terrorism. Laws designed to tackle money laundering and funding of terrorism as well as regulate and limit the use of firearms and ammunition remain paper tigers. In addition, the government is unable to adopt a strategic approach towards terrorism and extremism since members of government are among the supporters of terrorist or extremist groups.

¹ See eg. UNAMA, Update on the Treatment of Conflict- Related Detainees in Afghan Custody, Accountability and Implementation of Presidential Decree 129, Kabul, Afghanistan, 2015, p 21.

This report further highlights some of the key challenges for victims who complain about torture which include (i) weak judicial institutions beyond urban centers and thus turning to alternative dispute resolutions by community elders or Taliban, (ii) burden of proof bore by the victim, (iii) lack of access to a defence lawyer, and (iv) lack of independent complaint mechanism in particular for NDS detainees. There is a real climate of impunity. Generally, prosecution and punishment for torture are rare. In serious cases perpetrators only get a warning, job transfer or are occasionally dismissed from duty.

Finally, our report draws attention to the lack of redress and compensation for torture victims. In absence of a specific law, victims can only bring civil claims for compensations against perpetrators. Other means of redress, notably rehabilitation, are not available. The new draft Elimination of Torture Law partly addresses this as it requires the state to compensate torture victims and provides for a right to rehabilitation.

2. POLITICAL AND SECURITY CONTEXT OF AFGHANISTAN

Afghanistan has been encountering deadly conflicts since 1980s. This conflict has seen the engagement of various actors. The invasion by the Soviet Union, intermittent war between mujahidin groups, the emergence of the Taliban and the US-led NATO intervention in the aftermath of the 9/11 attacks have left a legacy of violence and destruction². Hundreds of thousands of Afghans lost their life, millions were forced to migrate outside the country and a considerable number suffered from violation of their rights.

The establishment of democratic political structure in 2001 revived hope for ending such a catastrophic era. Yet, such hope rapidly diminished a few years later with reemergence of terrorist and rebel groups in the country. After the reemergence of the Taliban few years after the establishment of the new government, the situation in Afghanistan has been deteriorating³. Concurrently with this descent into political

² BBC, Afghanistan Profile – Timeline, 8 March 2017, <http://www.bbc.com/news/world-south-asia-12024253>.

³ The New York Times, Taliban Threat Is Said to Grow in Afghan South, 3 May 2006, <http://www.nytimes.com/2006/05/03/world/asia/03afghan.html>.

fragmentation since 2006, there has been an increase in incidents of torture and worsening of the human rights situation in the country. Despite the decade and a half long presence of the international community in Afghanistan and generous support offered to Afghanistan's political and economic reconstruction, the rule of law remains a major challenge in the country. Afghan citizens continue to be denied of basic rights and their fundamental rights and suffer at the hands of Taliban, the Khorasan section of the so called Islamic State⁴, miscellaneous radical Islamic groups and illegal militias in major parts of the country. Atrocities by these non-state actors are happening every day but the government has not done enough to protect its people⁵; quite the contrary it has used the attacks by terrorists to justify the use of torture and ill-treatment, extra-judicial proceedings, and arbitrary detention of political opponents.

During the rule of the Taliban in particular, Afghanistan witnessed a steady radicalization of its institutions. Though the Taliban was overthrown in 2001, radical Islamic politics and attitudes remain a challenge. The Taliban reemerged and began their deadly campaign against the people, the government and the International coalition⁶. Likewise, new radical groups have emerged during this period and old radical alliances have reinvented themselves in a new garb. Imam Ghazali Association, Hezb-ul-Tahrir, Hizb-e Islami (Gulbudin Hekmatyar) and Jamiat-e-Islah have expanded their presence in the country. They have curbed human rights through their radical interpretation of Islam and created an atmosphere of impunity⁷. The situation has been further exacerbated by the Afghan government's weak record in matters pertaining to the protection of human rights and provision of human security. Central institutions have been for the most part inaccessible and weak, judicial institutions are blighted by widespread corruption, and deteriorating security around the country has

⁴ Washington Post, Islamic State claims bombing in Afghanistan that kills dozens, 18 April 2015, https://www.washingtonpost.com/world/dozens-killed-in-suicide-bomber-attack-outside-an-afghanistan-bank/2015/04/18/3849f572-e59f-11e4-b510-962fcfab310_story.html?utm_term=.f56f7b5c3a7b.

⁵ UNAMA, UN Chief in Afghanistan: Do More Now to Protect Civilians - UNAMA Releases Civilian Casualty Data for the First Quarter of 2016, 17 April 2016, <https://unama.unmissions.org/un-chief-afghanistan-do-more-now-protect-civilians-unama-releases-civilian-casualty-data-first>.

⁶ Washington Post, Reemergence of Taliban in Kandahar Presents Challenges for U.S., NATO, 14 September 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/13/AR2009091302950.html>.

⁷ Human Rights Watch, "Just Don't Call It a Militia", Impunity, Militias, and the "Afghan Local Police", 2001, <https://www.hrw.org/sites/default/files/reports/afghanistan0911webwcover.pdf>.

hurt the government's legitimacy and created a trust deficit. Stories of rampant corruption within the police force have circulated widely⁸. Media outlets and numerous survey studies have recently reported on the police's mistreatment of detainees and their involvement in the drug trade inside prisons⁹. Police and security agencies have allegedly also engaged in the blatant use of torture thereby further hurting the perception of the government in the eyes of the common people¹⁰. Considering these challenges, positive developments with regard to human rights and the prohibition of torture are unlikely in the near future.

3. METHODOLOGY

This report aims to reveal widespread torture practices in police custody, detention centers, and National Directorate of Security (NDS) facilities. It relies on both secondary and primary data. The secondary information has been collected from already existing literature on this subject. Research studies, and annual reports of national and international human rights organizations carry anecdotal evidence of torture practices of Afghan security forces. Primary information 104 covers individual cases that the "Anti-torture coalition members" have collected during the course of their field work across the country. The majority of the cases were provided by the Anti-torture coalition members. The coalition members shared cases of torture that their staff had recorded during visits to prisons and meetings with victims in recent months. Names of victims and perpetrators have been omitted unless their names and cases have already been reported publicly.

⁸ BBC, Afghan police accused of corruption and child abuse, 25 February 2013, <http://www.bbc.com/news/world-us-canada-21547542>.

⁹ UNDOC, 210 Prison Drug Use Survey: A national survey of drug use and associated high-risk behaviour across the prison population in Afghanistan, 2011, p.3, https://www.unodc.org/documents/afghanistan/Criminal_Justice_Sector/Prison_Drug_Use_Survey_report_FINAL_REPORT.pdf.

¹⁰ The Guardian, Afghanistan officials 'systematically torture' detainees, says UN report, 10 October 2011, <https://www.theguardian.com/world/2011/oct/10/afghanistan-torture>.

4. DEFINITION AND CRIMINALIZATION OF TORTURE

Article 29 of the Constitution states that no one shall be allowed to torment. This provision also obliges security agencies to abstain from tormenting any person under investigation, or anyone detained or convicted for punishment. In Afghanistan constitutional terminology the word “torture” has not been mentioned, yet the Article 29 offers ample ground for ordinary laws to criminalize torture. In addition, several laws such as the Penal Code, the Criminal Procedure Code, or the Elimination of Violence against Women Law (EVAW Law) and more specifically the new drafted and cabinet approved Elimination of Torture Law criminalize torture and provide for firm and clear preventive measures.

Article 275 of the Penal Code requires long-term imprisonment for an official of the public services if he or she tortures an accused person or orders torture to obtain a confession. Article 22 of the Criminal Procedure Code states that Judicial Officials, Attorney General and clerks at courts are not allowed in any case to force a suspect or accused to confess through abuse, either through the use of drugs, compulsion, torture, magnetic sleep, threats, intimidation or promise of benefit by their own or through another person. Para 2 of Article 22 indicates that any testimony or statement which has been taken through use of any of aforementioned methods would not be valid or permissible in a court of law. Article 7 of the Juvenile Code which underpins the rights of children in accordance with Afghanistan’s international human rights obligations, forbids harsh and contemptuous punishment of a child even if it is aimed toward achieving correction and rehabilitation.

Also, the Law against Terrorism-related Crimes prevents torture, particularly the use of excessive force and threats against those in detention (Article 12). It states that any law enforcement official who is found guilty of torture shall be sentenced to long-term imprisonment. Additionally, it states that in the case of underage offenders, the police are obliged to inform the legal guardians of the child and social service organizations within 24 hours of the arrest. If the police fail to inform the aforementioned entities about the arrest within that time, it is bound to provide a written report to a prosecutor, citing reasons for delay. In case the police fail to do so, they are liable to be prosecuted.

Contrary to the state report, the current legal system does not provide sufficient protection against torture. In particular, torture inflicted in prison by prison guards, as opposed to torture by the police during investigation, is not covered by the relevant laws. A defence lawyer reported about a case in which a client was severely tortured by a police officer causing visible physical marks on his body. After having raised it during the client's court hearing, the judge ordered an investigation. The police officer reached an out of court settlement with the torture victim with the effect that the victim reported in his next hearing that it was not the police officer who had tortured him during investigations but a prison guard. The judge thus dropped the torture claim since it could not have been inflicted to extract a confession as the prison guard in question was not involved in the investigation.

In order to address the current deficiencies, a new Elimination of Torture Law is expected to be enforced soon by Presidential decree. The law defines and criminalizes torture and provides firm safeguards against torture. Article 3 of the law defines torture as follows:

“The action or practice of inflicting severe pain or physical and psychological torment on suspected, accused and convicted persons or others by public officials or their direct order and indirect consent or intentional silence for the purpose of:

- a. Obtaining confession against his/herself or third person,
- b. Obtaining information about the suspected, accused or convicted persons,
- c. Discrimination of any kinds or punishment for the committed crimes.
- d. Threatening to punishment”

Article 4 of the Elimination of Torture Law states that victims who have been tortured during prosecution have the right to a defense lawyer and can refer to AHCT¹¹, and other relevant agencies. The law further foresees the establishment of a High Commission against Torture, whose structure is defined in Article 11. Article 5 of the law further emphasizes the right to redress and Article 18 states that if a perpetrator is unable to compensate the victim, the agency he or she works for shall step in to provide relief. Moreover, Article 17 provides punishment for the perpetrators of

¹¹ According to article 11 of Elimination of Torture Law, the high commission against torture which includes 15 independent commissions and line ministries representatives is to prevent and follow up torture related cases.

torture. According to Paragraph 1 of Article 17, a perpetrator shall be sentenced to medium term of imprisonment which should not be less than 3 years. Paragraph 2 of Article 17 states that if women or children are victims of torture, the perpetrator shall be sentenced to maximum punishment. Furthermore, Paragraph 3 of Article 17 stipulates that if the accused person dies due to torture, the perpetrator shall be sentenced for intentional murder.

Unfortunately, there are several legal challenges that make the police's use of torture subject to interpretation. Article 20 of the Police Law for instance provides various justification for misuse of institutional authority and individual gains. The police justify the use of physical force, water cannons, handcuffs, police dogs, a variety of weapons for beating and lacerating, as well as fire arms and explosives in particular situations. In encounters with terrorists and unlawful armed groups, Article 20 of the Police Law is an incentive for the police to ignore legal provisions and commitments made towards the preservation of human rights.

The biggest challenge, however, remains the implementation of existing laws. Several reports by the United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights Watch (HRW), Open Society Foundation (OSF), Amnesty International and the Afghanistan Independent Human Rights Commission (AIHRC) found that torture is widespread and systematic. A UNAMA report revealed that 35 percent of the detainees interviewed (one in three) have experienced torture in detention over the 23 months period from 1st February 2013 to 31st December 2014.¹² Likewise, a joint study conducted by the AIHRC and OSF found that Afghan security forces routinely used beatings, electric shocks, threats, sexual abuse, and other forms of mental and physical abuse to obtain confessions or information.¹³ Human Rights Watch has also documented cases of torture in its annual report¹⁴. Reports of torture declined somewhat in some provinces in 2014, but increased once again in 2015¹⁵.

¹² UNAMA, Update on the Treatment of Conflict- Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, Afghanistan, February 2015, p 17.

¹³ AIHRC & OSF, Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan, Kabul, Afghanistan, Feb 2015, p 2.

¹⁴ For more information visit the link: <https://www.hrw.org/world-report/2016/country-chapters/afghanistan>.

¹⁵ UNAMA, Update on the Treatment of Conflict- Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, Afghanistan, February, 2015.

Recommendations:

- Facilitate approval of both the ERAW Law and the Elimination of torture Law in parliament and bring them into forces accordingly;
- Review and amend ordinary laws to make them comply with the Convention against torture;
- Ratify the Optional Protocol to the Convention against Torture (OPCAT);
- Build capacity and awareness on the existing laws for related law enforcement and judiciary personnel.

5. TORTURE AND ILL-TREATMENT IN CUSTODY

Starting from 2001, numerous organizations in Afghanistan have conducted assessments of the prevalence of torture in detention centers and prisons. Their findings suggest that Afghan law enforcement agencies ill-treat and torture detainees. For instance, the United Nations Assistance Mission in Afghanistan (UNAMA), in a 2011 report, stated that 46% of the 273 people held in NDS detention facilities in 24 provinces they had interviewed had experienced various kinds of torture.¹⁶

The United Nations Office on Drugs and Crime (UNODC) had conducted an assessment of women prisoners' conditions.¹⁷ They interviewed 56 women in prisons and detention centers located in Kabul and elsewhere. According to them, 14% of the prisoners reported to have been tortured or physically and sexually abused by law enforcement officials. The UNAMA conducted a similar assessment in 2015. They documented cases of torture and the degrading behavior of officials with pre-trial child detainees. Out of the 105 instances of minors detained by the ANP, ANBP and NDS studied, the report found that law enforcement officials had used torture in 44 cases.¹⁸ A report published by AIHRC in late-2015 revealed that women had been forced to take virginity tests in detention centers and women shelters. These women are accused of moral crimes. 48 out of the 53 respondents interviewed in 12 provinces

¹⁶ UNAMA, Treatment of Conflict Related Detainees in Afghan Custody, Afghanistan, October 2011, p. 16.

¹⁷ UNODC, Afghanistan: Female prisoners and their social reintegration, 2007, p. 42.

¹⁸ UNAMA, Update on the Treatment of Conflict- Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129. 2015, p. 18.

reported to have been sent to gynecological centers and 29 had been forced to take a virginity test.¹⁹

The Anti-torture coalition assessed a total of 104 torture cases. This data reveals the following patterns and trends with regards to a) modes of torture, b) physical mental and economic effects of torture, c. reasons for detention, d). torture perpetrators, and e. conditions of detentions.

a. Modes of Torture

Victims reported to have been subjected to various kinds of torture. Some of the common practices included beating with rubber hoses, metal sticks, electric cables, wires, and wooden clubs. Verbal abuse, suspending from ceilings of prison or detention cells, and punching or kicking were also reported widely.

These claims were corroborated by interviews conducted by members of the anti-torture coalition. One such illustrative case originated in an arrest of a man in Herat in 2014 by the Afghan National Police. He was accused of having killed someone. During arrest and primary questioning in police custody, he experienced different types of torture and physical violence. The police first punched and kicked him and then started beating him with a cable and an electric stick.²⁰ Another case involved a 17-year old boy and his friend who were arrested by the Afghan National Police on charges of sodomy. Both were taken to a detention center located in the provincial police headquarter. There, the ANP illegally imprisoned them and beat them with cable, wooden sticks and electric wire. Signs of torture are evident on their bodies.²¹

b. Physical Mental and Economic Effects of Torture on Victims

In more than half of the assessed cases, victims possessed documents from reporting agencies suggesting a lasting negative impact of their experiences. Effects included bodily injuries, depression and an increased affinity for causing self-harm. Other effects of torture included chronic sickness and disruption of livelihood. Bodily injury was the most frequently reported effect and chronic illness the second most prevalent. In two cases each, victims lost their limbs and died from torture. The traditional family

¹⁹ AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, October 2015, Afghanistan, p. 12.

²⁰ Interview with torture victim on 18 September 2014 by members of Anti-torture Coalition.

²¹ Interview with torture victim on 15 March 2014 by members of Anti-torture Coalition.

structure prevalent in Afghanistan means that one person (usually male) in a household is typically in charge of securing livelihood and other members are dependent on him. In such cases, any disruption to the income of the main breadwinner on account of detention can put the entire family at risk. An overwhelming number of prisoners reported that their imprisonment had endangered their families.

c. Reason for Detention

An assessment of the cases reveals that the most common allegations against torture victims were membership of the Taliban, fomenting attacks on Afghan security forces, and murder. They constitute 34, 18 and 13% respectively of all cases analyzed. Almost all cases involving alleged membership of the Taliban were recorded in Kandahar. Other notable charges included theft, kidnapping, sodomy and drug trafficking.

d. Torture Perpetrators

The main perpetrators of the collected torture cases were the Afghan Police and Security Forces including the NDS, Arbakai or Local Police. Furthermore, criminal investigation agencies and the Afghan National Army (ANA) were responsible for torturing prisoners.

Unfortunately, in most cases the organizations and representatives were not aware of whether the perpetrators had been prosecuted. However, some cases had been directed to prosecution and some perpetrators had been convicted or received another type of punishment.

e. Conditions of Detention

Harsh conditions in prisons and detention centers have been a major area of concern. A significant number of the detainees complained that after being put in prison, they have suffered from chronic sickness and failed to receive health services or medicines. Defence lawyers further reported that detainees do not have access to an independent doctor, but only to the medical facilities in prison. Those are often not staffed with a doctor but nurse only.

In most cases, the detainees also complained about the lack of access to a defense lawyer to help them negotiate the process. Other prison or custody-related challenges included lack of hygiene, proper food, and space and high levels of addiction among

prisoners. Media outlets have recently reported on the security forces' involvement in the drug trade inside prisons²². In addition, law enforcement officials in Kandahar appear to have discriminated prisoners based on their social background.

In its Afghanistan 2014 Human Rights Report, the U.S. State Department observed that notable number of detention centers had appalling hygiene, poor sanitation and suffered from a shortage of food and potable water.²³

According to the data released by the Afghan Central Statistics Organization (CSO) the number of women prisoners had increased in recent years.²⁴ The government has tried to respond to the increase of women detainees. The number of women shelters was increased from 14 in 2011 to 18 in 2013. But this has not been complemented with increased professional capacity or human resources. New shelters have also proven to be unsustainable, since they were mostly funded by international donors that have cut funding since 2014.²⁵

Articles 31, 34 and 36 of the Afghan Interim Criminal Procedure Code regulates that the police can detain individuals for up to 72 hours within which they are required to file charges and forward them to primary prosecution offices. UNAMA's 2011 report²⁶ shows that NDS and ANP officials were routinely guilty of violating this timeline and holding detainees in custody much longer. 63% of all respondents contacted by UNAMA had remained in detention for an average of 20 days before being transferred to general detention centers managed by the Ministry of Justice (MoJ).²⁷

²² Tolo News, Drug Addiction In Pul-e-Charkhi Prison, 10 March 2017, <http://www.tolonews.com/630-report/630-report-drug-addiction-pul-e-charkhi-prison>.

²³ US State Department, Afghanistan 2014, Human Rights Report, 2014, p 7, <https://www.state.gov/documents/organization/236844.pdf>.

²⁴ Afghanistan Central Statistics Organization (CSO), Women and Men in Afghanistan 2014, Afghanistan, 2014, p 9, <http://cso.gov.af/Content/files/Final%20English%20Sent%20for%20printing.pdf>.

²⁵ A Human Rights Watch report from 2016 demonstrated shelters and detention centers might face with further challenges if international community cut funding of these institutions. See: <https://www.hrw.org/news/2013/05/21/afghanistan-surge-women-jailed-moral-crimes>.

²⁶ UNAMA, Treatment of Conflict Related Detainees in Afghan Custody, Kabul, Afghanistan, Oct 2011, p. 7.

²⁷ Ibid.

6. TORTURE AND ILL-TREATMENT OF CONFLICT RELATED DETAINEES

Since Taliban and other terrorist groups are fighting the government and terrorizing citizens with the most brutal methods such as beheading, they are more likely to be tortured when in custody than regular detainees. In recent years, several local and international organizations conducted monitoring programs assessing the condition of detentions centers and the prevalence of torture.

AIHRC, for instance, found that many conflict related detainees have been tortured by Afghan officials. They conducted 661 missions in 32 provinces and interviewed 993 prisoners. They found that out of those 993 prisoners, 782 had experienced torture in 2014. Most of the tortured victims were accused of crimes against national and international security forces and were tortured during investigation and prosecution procedures.²⁸ A 2012 report which was jointly prepared by AIHRC and Open Society Foundation found evidences of torture in NDS and ANP facilities. The report was prepared based on interviews with 100 conflict-related detainees and confirmed that a considerable number of interviewees experienced different types of torture.²⁹

In 2015 the UNAMA reported that between February 2013 and December 2014, 161 of the 611 interviewed detainees (26%) held in NDS facilities or by NDS personnel experienced torture or ill-treatment. Detainees experienced severe beatings, electric shocks, suspension, stress positions and threats of sexual assault.³⁰

The 104 cases collected by Anit-torture coalition revealed that the majority of the conflict-related detainees were tortured during arrest, interrogation or further investigations. Corroding to the interviewed detainees, the types of torture they experienced included beating with rubber hoses, metal sticks, electric cables, wires, and wooden clubs. Verbal abuse, suspending from ceilings of prison or detention cells, and punching or kicking were also reported widely. For instance a man interviewed reported that he was falsely accused of having kidnapped one of his relatives. The NDS

²⁸ AIHRC, Torture and Ill-treatments in Detention Centers in Afghanistan Kabul, Afghanistan, 2015, p. 7.

²⁹ AIHRC and Open Society Foundations, Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan, 2012.

³⁰ UNAMA, Update on the Treatment of Conflict - Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, Kabul, Afghanistan, 2015, p 21.

thus summoned him. When he reported to the NDS, he was arrested. Four NDS personnel that tortured him, spoke in Pashto to each other. Two of them handcuffed him, a third held him while the fourth kicked and beat him with cables and electric wires. They also dunked his head in water. Six months after the interview, the signs of torture are still visible on his body.³¹

Moreover, interviewed defence lawyers reported that the torture method of the NDS had changed from physical abuse to psychological ill-treatment in recent years. Thus, the methods employed do not leave visible marks that a defence lawyer or court could identify. Methods reported included interrogations for hours in the hot sun close to a heater, not letting detainees use toilets for hours, putting detainees in a dark cellar and piling heavy warm blankets on them, or not providing water but only a bottle of wine to strongly religious suspects.

Recommendations:

- Provide new and modern facilities and hire professional technicians to improve the condition of detention centers, custodies and prisons;
- Collect data and transparently document torture related cases;
- Provide access to advocators, defense lawyers, family members, independent doctors, and authorized human rights organizations;
- Inform detainees about their rights and obligations in accordance with relevant laws and codes of Afghanistan as well as international conventions that the Afghan government has ratified;
- Investigate all complaints and allegations of torture and other serious human rights violations;
- Develop functional human rights units in prisons, detention centers and custodies that are able to professionally operate;
- Increase capacity and infrastructure of women protection houses and shelters, and children rehabilitation centers.
- Build awareness and sensitization of security personal on human rights obligations.

³¹ Interview with torture victim on 5 April 2015 by member of Anti-torture Coalition.

7. TORTURE BY NON-STATE ACTORS

Poor quality governance, political instability and conflicts led to emergence of many non-state actors. The Taliban, Hezeb-e-Islami, Haqani Network and other active terrorist groups are the most notorious, active and prevailing armed non-state actors in Afghanistan that have an excessive share in torture, kidnapping, civil casualties and other mistreatments of people.³² For instance, according to a UNAMA report, Taliban and other anti-government groups are responsible for more than 61% of civilian casualties in recent years³³. Local armed groups, who are said to be affiliated to ISIS, are other notable perpetrators of organized torture and killing of innocent people. Besides, several informal power holders, warlords and various informal militias groups stated to have been responsible for punishing, imprisoning, torturing and murdering people in Afghanistan.

In addition to taking part in hostilities, non-state actors play a catalyst role for torture and public sufferings. They disseminate radical and extremist interpretation of religion which mobilizes, motivates and justifies torture. The Taliban and the majority of other armed groups claim to defend Islamic values.

Torture victims of non-state actors are mostly ordinary people who have not connection to the conflict parties³⁴. Typically, people are stopped on highways and interrogated. Sometimes this leads to kidnapping, killing or torture.³⁵ Unfortunately, a weak government and the growing power of armed groups leave civilians without protection.

Moreover, the current political situation and governmental structure gives little hope that the government will be able to effectively deal with the Taliban that is considered

³² See eg. Aljazeera, Afghan Taliban hang university student in public, 3 December 2016, <http://www.aljazeera.com/news/2016/12/afghan-taliban-hang-university-student-public-161203141239122.html>.

³³ UNAMA, Afghanistan: Protection of Civilians in Armed Conflict, Annual Report 2016, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_march_2016_final.pdf.

³⁴ Amnesty International, Afghanistan: Harrowing accounts emerge of the Taliban's reign of terror in Kunduz, 1 October 2015, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>.

³⁵ New York Times, Taliban Cut Off Afghan Highway Linking in Kabul to Northern Gateways, 14 May 2016, <https://www.nytimes.com/2016/05/15/world/asia/taliban-cut-off-afghan-highway-linking-kabul-to-northern-gateways.html>.

to be the biggest offender of torture and human rights violations. Social group-centric tendencies in the top governmental decision-making circle hinders the government in taking decisive and unified actions against the group. In other words, some key political officials within the Afghan government seem to have a sympathetic approach towards non-state perpetrators of torture, because they share the same ethnic or socio-cultural identity. The former Afghan President's (Hamid Karzai) approach towards the Taliban – calling them his “disgruntled brothers”– is a vivid example of the issue.³⁶

So far, the Afghan government failed to adopt a comprehensive strategy. It is advisable that it treats armed groups differently than the non-armed actors. With regard to armed groups, the government, in addition to peaceful and diplomatic means, should use its military power to secure areas where non-state actors torture citizens. With regards to non-armed groups the government should increase its social and cultural programs. In this context, it would be important that the government increases its control and monitoring of all educational institutions including those religious intuitions which are suspected to propagate extremist ideologies among youths in Afghanistan. Currently, the government has little control over unregistered religious schools, some of which have been disseminating radical Islamic ideas and promoted the use of violence.³⁷

Recommendation:

- Investigate, prosecute and punishment all torture perpetrators, including non-state actors.

8. VIOLENCE AGAINST WOMEN AND MORAL CRIMES

Despite some positive legislative developments on the protection of women in recent years, little has changed in practice. A combination of patriarchal social order, extremist religious ideologies, illiteracy, armed conflict, and the absence of formal legal institutions in many parts of the country make Afghanistan one of the most

³⁶ CBC News, Karzai on Taliban: “I’m still calling them brothers”, 3 April 2013, <http://www.cbcnews.com/news/karzai-on-taliban-im-still-calling-them-brothers/>,

³⁷ For detailed information about the role of these institutions, see Afghan Institute for Strategic Studies, Trends of radicalization Across Afghan Unregistered Madrasas, 2015.

dangerous places for women and girls.³⁸ The Ministry of Women Affairs reported in 2015 that it had registered 4541 cases of violence against women.³⁹ Considering that only a very small number of women are aware of their rights or have access to relevant governmental and non-governmental institutions, actual numbers of violence against women must be much higher.⁴⁰

In 2009 a Presidential Decree introduced the Elimination of Violence against Women Law (EVAW Law). It criminalizes, among others, sexual assault, underage marriage, forced marriage, abuse, harassment, rape, and forced isolation.⁴¹ The law further requires the police to register complaints and to protect victims, and requires prosecutors and courts to prioritize violence against women cases. The EVAW Law further specifies the punishment for perpetrators.

Unfortunately, the law's impact remains limited. In its 2016 follow-up report to the UN Committee on the Elimination of Violence against Women, the Afghan government reported that the conviction rate based on the EVAW Law is low and its implementation inadequate.⁴² The government is of the view that corruption, culture of impunity, informal justice mechanisms and low awareness about the EVAW Law are contributing

³⁸ According to the UN Gender Inequality Index, Afghanistan is ranked Nr. 171 of 188 countries. See United Nations Development Programme, Human Development Reports, <http://hdr.undp.org/en/composite/GII>. See also, Open Society Foundation, Sexual Harassment in the "World's Most Dangerous Country for Women", <https://www.opensocietyfoundations.org/voices/sexual-harassment-world-s-most-dangerous-country-women>; AIHRC, Violence against Women in Afghanistan, Biennial Report 2012, pp. 11–12, http://www.aihrc.org.af/media/files/VAW_Final%20Draft-20.12.pdf.

³⁹ The maximum number has been registered in Kabul province with 1323 cases (29%) followed by Herat with 370 cases (8%), Balkh with 319 cases (7%), Takhar with 272 cases (6%) and Nangarhar with 222 cases (5%). These five provinces account for 55% of all VAW cases registered, see Ministry of Women's Affairs, Third report on the Implementation of Elimination of Violence against Women (EVAW) Law in Afghanistan during Afghan solar year 1393, November 2015.

⁴⁰ Ibid, p. 13. The report reasons that the low number of cases in some provinces is based on socio-cultural norms, access to institutions, and unawareness about rights.

⁴¹ Presidential Decree on Endorsement of Law on Elimination of Violence against Women Law (EVAW), No. 91, 20 July 2009, Art. 5.

⁴² Convention on the Elimination of Discrimination against Women, Information provided by Afghanistan in follow-up to the concluding observations, UN Doc. CEDAW/C/AFG/CO/1-2/add.1, 1 June 2016, para. 4.

factors to the high prevalence of violence against women.⁴³ Reports about child marriage, forced marriage, *Baad*,⁴⁴ honor killing, and rape are thus still frequent.⁴⁵

In addition, several harmful practices are still enacted in Afghanistan's laws. Adultery or fornication, also referred to as *Zina*, are still crimes that merit prison sentences.⁴⁶ Often, running away from one's home is considered attempted adultery or *Zina* and thus also a severe crime⁴⁷ even though most girls and women flee from abusive homes or forced marriages.⁴⁸

Another common practice amounting to ill-treatment and rape are virginity tests. Despite the lack of scientific validity, examinations of whether the hymen is intact are intended to establish evidence for cases of adultery or *Zina*.⁴⁹ Ordered by the police, prosecutor or court, virginity tests are performed by both female and male doctors and often in the presence of multiple people.⁵⁰ Moreover, inconclusive findings often lead to repeated tests. It is estimated that 80% of all women imprisoned underwent virginity tests.

Several cases collected by the anti-torture coalition illustrate well how most women's and girls' life is marked by a series of violations starting when they are children. In one such case a high school student at the time, was married against her will when she was only 17 years old. After experiencing abuse and violence she ran away to a near town in 2016. Since she did not have any money, she tried to sell her finger ring to a

⁴³ Ibid.

⁴⁴ Marrying a woman for the purpose of reconciliation among families or communities. See Art. 3 of the EAW Law.

⁴⁵ See eg. The Daily Mail, Girl, six, is forced to marry 55-year-old man in exchange for a GOAT being given to her father in Afghanistan, 5 August 2016, <http://www.dailymail.co.uk/news/article-3725846/Girl-six-forced-marry-55-year-old-man-exchange-GOAT-given-father-Afghanistan.html>; Amnesty International, Annual Report on Afghanistan 2015–16, <https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/report-afghanistan/>; United States Department of States, Afghanistan: Country Report on Human Rights Practice for 2015, 2015, p. 14.

⁴⁶ Adultery: Art. 427 Criminal Code; zina is prohibited under Islamic law.

⁴⁷ Fatma Boggio-Cosadia, An analysis on the use of the Elimination of Violence against Women Law (EAW Law) in Medica Afghanistan legal aid cases, Medica Afghanistan, Cologne, Germany, November 2014, pp. 8–10, <http://www.medicafghanistan.org/Files/Annual%20and%20other%20reports/EAW%20Report-English%20Version.pdf>.

⁴⁸ AIHRC, Forced Gynecological Exams as Sexual Harassment and Human Rights Violation, 2015, p. 3, <http://www.aihrc.org.af/media/files/Forced%20Gynecological%20Exams%20Egnlish.pdf>.

⁴⁹ Ibid.

⁵⁰ Ibid. p. 12.

jeweler. As she could not present the receipt for the ring, the jeweler accused her of stealing the ring, upon which she confided her story to him. He offered that she could spend the night with his family since she did not have anywhere to go. However, the jeweler did not bring her to his home but to a construction site where he raped her. After he had brought her back to town, she called her mother to tell her what had happened. Her mother reported that the police was looking for her and that her father had been arrested because she had run away. Knowing now where she was, the police arrested her too. On the police station, the police officer threatened to accuse her of adultery if she did not have sex with him. Because she refused, the police officer drew up an incriminating statement and forced her to sign it. In addition, she had to undergo a virginity test. Although acquitted from adultery with the jeweler, the juvenile court made her reveal her history of sexual activities upon which she reported having been raped before her marriage and having had an intimate relationship with a third man. For this latter relationship, the court sentenced her to one-year imprisonment. A criminal court also sentenced the jeweler as well as the man with whom she had had a relationship to one-year imprisonment. However, the court found the allegations against the police officers unsubstantiated.

Another case concerned a mother with a young child who travelled to another town for a relative's funeral. She intended to stay at her sister's apartment in the same town. Since not knowing where her sister's place was, her sister sent their cousin to pick her up and bring her to the apartment. A police patrol stopped their car and accused them of adultery. She was immediately sent to the hospital for tests which were carried out without her consent. Since no sperms were found, the test was negative. The Court therefore acquitted her. Despite the acquittal, her husband abandoned her, upon which she had to go to a shelter home. In addition, her husband abducted their child. Her defense lawyer also submitted a motion to the criminal court alleging misconduct of the police officer and the doctor. The court issued a warning to the doctor and police officer.

A third case originated in the death of a sixteen year old girl in 2012 whose corpse was found in the house shared with a member of a provincial council, who was present at that time along with his wife, cousin and nephew. The police and forensic investigations revealed that the girl was raped before being killed, contrary to the parliamentarian's claim that the girl had committed suicide. Civil society and women

activists reported that the parliamentarian had forced her to get an abortion to prevent her from bringing shame to his family. Since he is influential, the provincial authorities accepted his interpretation of the incident. However, thanks to media coverage, protests and social media activism, the court of appeal eventually sentenced him in 2017 for twenty years in prison. The case can still be appealed.

Recommendations:

- Prohibit virginity tests in all circumstances irrelevant of whether the victim consents to it;
- Increase public awareness about existing laws on violence against women;
- Mobilize public opinion on the social and economic equality of women;
- Train law enforcement, judicial, and medical personnel on laws related to violence against women;
- De-criminalize adultery and *Zina*.

9. VIOLENCE AGAINST CHILDREN – “BACHABAZI”

Bachabazi, also referred to as “dancing boys” or “boys play”, is a serious form of child abuse that has rapidly increased over the last 15 years. Bachas, who are typically boys between 10 and 18 years old are bought or kidnapped from their impoverished families by powerful warlords, politicians, commanders, or other influential members of the elite in rural areas. These boys, who are often kept in slave-like situations, dress as women and perform as dancers at private parties. They are usually sexually abused by their masters or others at parties where they perform.⁵¹

In northern parts of the county *Bachabazi* is culturally widely accepted; it is not understood as homosexual behaviour. There is a common saying that „women are for child-reading, boys are for pleasure“.⁵²

⁵¹ Global Voices, How to Reintegrate the Afgahn Boys used As Sex toys of powerful Men?, 1 February 2017, <https://globalvoices.org/2017/02/01/how-to-reintegrate-the-afghan-boys-used-as-sex-toys-of-powerful-men/>.

⁵² Times Live, Bacha bazi: Afghan practice of child sex slavery”, 22 February 2017, <http://www.timeslive.co.za/world/2017/02/22/Bacha-bazi-Afghan-practice-of-child-sex-slavery1>.

Pederasty is prohibited in Article 427 of the Criminal Code.⁵³ Unfortunately, this provision is poorly implemented as many of the perpetrators are connected to the security organs or use their power to get exempted from punishment. In addition, numerous reports even found government officials, most notably the police, being implicated in the abuse.⁵⁴

A thorough study by the Afghan Independent Human Rights Commission in 2014 revealed that impunity of powerful people and the lack of law enforcement was one of the major factors for the abuse.⁵⁵

The new Penal Code currently under consideration by the Parliament, contains a whole chapter on *Bachabazi*. New provisions punish perpetrators for up to seven years in prison while the victims cannot be prosecuted.⁵⁶ Undoubtedly a positive piece of legislation, the implementation of the new provisions will be a key challenge.

Recommendations:

- Amend the Penal Code and criminalize *Bachabazi*;
- Strictly enforce the existing Article 427 of the Criminal Code that prohibits pederasty;
- Strictly enforce the new Penal Code once enacted;
- Mobilize public opinion on *Bachabazi* as child abuse and paedophile;
- Provide integration and rehabilitation to victims and their families.

10. ANTI-TERRORISM LEGISLATION

There are a number of legislative documents to combat acts of terror, ban membership in terrorist groups, and outlaw violent acts committed against the state, state structures and military forces. The laws include 1) Crimes against the Internal and External Security of the State (1987), the Law to Combat Against Terrorist Offenses (2008), and the Law of Firearms, Ammunition, Explosives (2005), Law against

⁵³ Penal Code, 7 October 1976, Issue No. 13, Serial No. 347.

⁵⁴ AIHRC, Causes and Consequences of Bachabazi in Afghanistan”, 2014, p.9.

⁵⁵ Ibid. pp. 68-79.

⁵⁶ 1TV Afghanistan, Perpetrators of bacha bazi could face jail, death penalty in Afghanistan, 22 February 2017, <http://1tvnews.af/en/news/afghanistan/28003-perpetrators-of-bacha-bazi-could-face-jail-death-penalty-in-afghanistan>.

Terrorism Crimes (2008), Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism (2010), Regulation on Management of Procedures Relating to Prevention of Funding Terrorism (2015), Law on Money Laundering and Crime Proceeds (2014).

Although relevant laws have been enacted, Afghans still suffer from the horror of terrorism. The government's counter-terrorism strategy has exclusively failed. The government has not properly implemented its counter-terrorism laws and policies. It is important to add, that it is widely discussed in the media that elements within the government actively support or have even created terrorist groups.⁵⁷

In terms of legislation the Presidential Decree 76 entitled "Annex Number One (1) to the Criminal Procedure Code on Terrorist Crimes and Crimes against Internal and External Security" is important to mention. Although the problematic Article 10⁵⁸ has been suspended after pressure from civil society organizations and the AIHRC, there is a risk that this Article 10 of the Decree could be reinstated with increasing incidents of terrorism. Article 10 of the Decree is in contrast to Afghan Constitution, domestic laws and international human rights law because it allows the Afghan security forces to detain, without trial, people who are strongly suspected of having committed a crime. The NDS is further allowed to keep sentenced persons after they served their terms it thinks they *may* commit (again) acts of terrorism, or 'crimes against internal and

⁵⁷ Tolo News, Afghan Government Supports Taliban, National Front Says, 12 October 2012, <http://www.tolonews.com/afghanistan/afghan-government-supports-taliban-national-front-says>.

⁵⁸ Article 10 of the Decree reads as follows:

(1) Precautionary measures shall be taken in the following circumstances

The person is suspected of committing terrorist crimes or crimes committed against internal and external security but gathering of incriminating evidences is not possible and as a result of detective activities, based on strong indications or reliable information, there is a strong probability that he/she will commit a crime if released.

The person has been sentenced to imprisonment for commission of terrorist crimes or crimes against internal and external security and has served his/her sentence term and based on strong indications and reliable information, there is a strong probability that he/she will again commit crimes if released.

(2) National Directorate of Security shall propose to the Supreme Court detention of the suspect or the convict stated in paragraph (1) of this article after obtaining the agreement of the relevant prosecution office and confirmation of the Attorney General's Office.

(3) The period for exercising of security measures shall be one year and in case the situation set forth in paragraph (1) of this article continues, it may be extended consecutively.

(4) Persons mentioned in paragraph (1) of this article shall be kept in a special place under the supervision of the prosecutor, separate from the detention center and prison."

external security' in the future after their release. According to paragraph 3 of Article 10 of the Decree, detention can be ordered for an indefinite period of time.

Apart from the above-mentioned legislation, the government lacks a comprehensive strategy on countering violent extremism in Afghanistan. It has done little to stop activities of groups that propagate extremism and violent Islam such as Jamiat-e Islah and Hizbu-Tahrir. At some educational institutions, including the Sharia Faculty of Kabul University, extremism is even openly promoted. In addition, there are many Madrasas (religious schools) with little or no control of the government. In many of these Madrasas, violent extremism is taught. Out of 120,000 mosques – some mosques have attached Madrasas – only 3200 mosques are registered with the Ministry of Haj and Religious Affairs.⁵⁹ The government has not properly enforced mandatory laws obliging mosques and Madrasas to register, which results in lack of control over these places.

Recommendations:

- Fully and properly implement all laws and policies related to anti-terrorism activities;
- While fighting terrorism the government of Afghanistan and international forces should adhere to the international humanitarian law and human rights regime. The AGO should investigate and prosecute police, military and intelligence officers regardless of their rank, found responsible for human rights abuses.
- The MoI, NDS and MoD should fully enforce guidelines and policies that mandate these institutions to respect and realize the rights of detainee including their freedom from torture.
- Provide political support for the effective functioning of the Office of the Police Ombudsman;
- Enforce laws requiring mosques and Madrasas to register;
- Ensure that all anti-terrorism measures are in line with the Convention against Torture and other human rights instruments.

⁵⁹ Time, Missed Opportunity in Afghanistan: We Forgot to Pay the Preachers, 27 February 2013, <http://world.time.com/2013/02/27/missed-opportunity-in-afghanistan-we-forgot-to-pay-the-preachers/>.

11. COMPLAINT PROCEDURES

On paper, the Afghan laws, in particular the Constitution, provide strong support to redress of grievances, complaints, transparency, and accountability. However, existing mechanisms are poorly implemented and rarely utilized at provincial and district levels. The rule of law remains even weaker beyond urban centers. In addition, lack of knowledge about rights and institutions at the local level is another major obstacle for citizens to complain and seek redress, even where mechanisms exist.

According to an interviewed defence lawyer, in places where judicial institutions are generally functioning, torture complaints are usually raised before court during criminal procedures. The lawyer typically raises the issue of torture or ill-treatment in defense of his or her client. Thereby, the burden of proof lies upon the victim to substantiate his or her torture claim. If medical records are missing a torture claim does not stand a real chance. Furthermore, victims who are detained do not have access to an independent doctor, but only the medical personnel at the detention center.

In cases in which there is sufficient proof of torture, the victim could be acquitted from criminal charges because his statement was made under torture. Depending on the gravity of allegations, the court typically issues a warning or orders administrative sanctions such as fines or dismissal from duty. Criminal proceedings are a rare exception. Furthermore, defence lawyers reported that judges do not order investigations into torture allegations *ex officio*. This is even the case when victims bear visible signs of torture.

Complaint procedures for conflict-related detainees are even more problematic. The NDS, following the Presidential Decree 129, established its own internal complaint mechanism to address allegations of torture and ill-treatment. There are Human Rights Officers who are appointed by the NDS and deployed at NDS detention facilities since 2013. These Human Rights Officers are mandated to monitor detention facilities, to receive complaints, to conduct preliminary investigations and to respond to needs of detainees.⁶⁰ This mechanism is far from an independent and impartial complaint

⁶⁰ UNAMA, Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, February 2015, p. 29, https://unama.unmissions.org/sites/default/files/unama_detention_report_2015_revised.pdf.

mechanism. It is thus not surprising that the UNAMA reported that “torture continued to occur in many of these facilities where NDS human rights officers were deployed”.⁶¹

Recommendations:

- Establish and promote an effective mechanism for receiving complaints of torture and ill-treatment, including in custodial facilities;
- Ensure that information about the possibility and procedure for filing a complaint against the police is made available and widely publicized, including by being prominently displayed in all detention facilities;
- Guarantee full protection for complainants and witnesses in cases of torture and ill-treatment.

12. IMPUNITY FOR TORTURE

The cycle of human rights violation and impunity has been a longstanding challenge in the country. Thereby, not only persons accused of petty crimes enjoy impunity, but also war criminals and alleged human rights perpetrators go free. Even some top government authorities allegedly committed war crimes and other serious human rights violations which have never been investigated. There appears to be a real climate of impunity for offenders.

There are recurrent allegations of a widespread practice of torture and ill-treatment of detainees in detention facilities run by the security forces of the government of Afghanistan including forces affiliated to state officials and war lords allied to the government.⁶² However, such allegations are seldom investigated and perpetrators are hardly ever prosecuted.

In its state report to the CAT, the government reports that it had arrested five law enforcement officers in Kandahar and two in Khost, and that the Attorney General had

⁶¹ Ibid.

⁶² Afghanistan Analysts Network, *Torture, Illegal Armed Groups: Signs of Possible Afghan Government Action?*, 22 February 2013, <https://www.afghanistan-analysts.org/torture-illegal-armed-groups-signs-of-possible-afghan-government-action/>.

investigated 52 cases between 2013 and 2015 for alleged torture.⁶³ The undersigned organizations are only aware of one police officer who was ultimately tried in court. Criminal convictions of torture perpetrators remain a rare exception. If a victim has enough proof to substantiate a torture claim, the only sanction a judge issues seems a warning or in serious cases dismissal from duty.

Criminal lawsuits are hardly ever successful against a law enforcement officer or a public employee for any crime committed while carrying out his or her duty because the government and courts are generally unwilling to investigate and prosecute torture cases.

While the rule of law and the independence of the judiciary is an issue throughout the country, in rural areas courts are fairly corrupt and members of the Taliban sit as judges. In addition, the government has no control over some territories meaning that the executive power and judiciary is almost entirely in the hands of non-state actors. In many areas of the country, the Taliban have set up their own 'shadow courts'.⁶⁴ A slow and corrupt judiciary lets many people turn to Taliban courts that do not rule on the basis of human rights but rather informal tribal and Islamic law.⁶⁵

There is not only a lack of accountability for crimes committed by law enforcement personnel, but also the armed forces and non-governmental armed groups. For instance, in June 2015, Afghan security forces along militias killed and injured a number of civilians in the Faryab province. According to the UNAMA mid-year report, pro-Government armed groups conducted operations in at least four villages which left several people dead or injured. There have also been reports that during the same operation, the pro-Government armed groups looted and burned civilian homes in the Shordarya area".⁶⁶ Although the Afghan President ordered an investigation into the incident no-one has been detained or brought to justice.

⁶³ Second Periodic Report of Afghanistan to the Committee against Torture, UN Doc. CAT/C/AFG/2, 13 May 2016, para. 17.

⁶⁴ BBC, Why many Afghans opt for Taliban justice, 2 December 2013, <http://www.bbc.com/news/world-asia-24628136>.

⁶⁵ See for instance, The New York Times, Taliban Justice Gains Favor as Official Afghan Courts Fail, 31 January 2015, <https://www.nytimes.com/2015/02/01/world/asia/taliban-justice-gains-favor-as-official-afghan-courts-fail.html>.

⁶⁶ UNAMA, Midyear report 2016, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2016_final.pdf.

Many power holders like former Mujahedeen leaders, commanders, warlords, Members of Parliament, tribal elders, politicians, and other high profile government officials easily escape justice while impunity reigns. They abuse power and have the power to abuse.

Recommendations:

- Immediately remove torture perpetrators from office;
- Apply all laws equally to all citizens without discrimination and ensure that no one is above the law;
- Instruct heads of all security forces to punish and discipline all officials regardless of their rank, found responsible for committing or condoning torture and ill-treatment;
- Identify and close all illegal places of detention;
- Take all appropriate measures to ensure that all allegations of torture and ill-treatment are investigated promptly and thoroughly by independent bodies and take all measures to ensure that impunity does not prevail

13. REDRESS FOR TORTURE VICTIMS

In Afghanistan's legal system, there is no separate and specified law to provide rehabilitation, compensation or reprisal for victims of torture. As the government report points out, victims of torture need to claim civil damages,⁶⁷ which can only provide for financial compensation but is not able to provide full redress to victims. In addition, a tort lawsuit also means that torture victims are unable to get compensation within the framework of criminal proceedings but need to initiate separate proceedings. This is another major obstacle for torture victims right to remedy. This is confirmed by the data collected; in none of the 104 cases did the victim report having been compensated.

In the new drafted Elimination of Torture Law there are several provisions for redress of torture victims. Article 5 states that the victims of torture are entitled to receive compensation in return of being victimized. The second paragraph of Article 18

⁶⁷ Second Periodic Report of Afghanistan to the Committee against Torture, UN Doc. CAT/C/AFG/2, 13 May 2016, para. 129.

specifies that if the perpetrator cannot compensate the victim, it is the administrative unit to which the perpetrator belongs that has to award the compensation to the victim. Unfortunately, the Elimination of Torture Law only contains compensation but does not provide for other means of redress such as restitution or rehabilitation.

Recommendations:

- Amend legislation to include explicit provisions on the right of victims of torture and ill treatment to redress, including fair and adequate compensation and rehabilitation in accordance with article 14 of the Convention and General Comment No. 2;
- Allocate the necessary resources for the effective implementation of rehabilitation

14. ABOUT THE COALITION

International Legal Foundation–Afghanistan– Advocacy Department (ILF–A)

Operating in Afghanistan since 2003, ILF–Afghanistan is a country–wide public defender office that provides criminal defense services free of charge to indigent Afghan men, women, and children. Established by the International Legal Foundation (ILF), an international non–governmental organization based in the United States, ILF–Afghanistan is non–governmental and Non–profit organization registered with the Ministry of Economy of Afghanistan.

Afghanistan Independent Bar Association(AIBA)

AIBA was established in 2008 with aim to improve people access to fair trials, increase confidence in the legal profession among the public and mend cooperation between stakeholders in the judiciary. AIBA also works to promote new generations of legal professionals, fight against administrative corruption and protect and promote the rule of law, social justice in Afghanistan. AIBA help Afghan citizens to through providing well– qualified defense attorneys for those who are in need.

Afghanistan Forensic Science Organization (AFSO)

FSO is an independent, non–governmental and non–profit organization founded in 2011 to promote the use of forensic science in Afghanistan.

Civil Society and Human Rights Network (CSHRN)

The Civil Society and Human Rights network consists of 58 Afghan organizations which are active in the promotion of human rights. The member organizations have so far all their main offices in Kabul but have representatives also in other regions of Afghanistan. Besides its member organizations, CSHRN works together with over one hundred partner organizations in different regions of Afghanistan. The Civil Society and Human Rights Network (CSHRN) aims to contribute to a society based on democracy and the rule of law in accordance with human rights, where all people are aware of their rights and dare to claim them through the rule of law.

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