

**HRW Submission to the Committee against Torture: Afghanistan
March 2017**

This memorandum, submitted to the United Nations Committee against Torture (“the Committee”), ahead of its upcoming review of Afghanistan, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the compliance of the government of Afghanistan (“the government”) with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). It contains information on persistent violations by the Afghan authorities and those empowered by them that violate the government’s obligations under the Convention, and it proposes specific recommendations that we hope to see the Committee formulate for the Afghan government. Human Rights Watch looks to the Committee’s upcoming review to address these problems in depth.

We consider this review to be a key opportunity to bring the international attention and engagement we believe are crucial to ensure that detainees are protected from torture and ill-treatment and those responsible for abuses are held to account.

Acts of torture and other cruel, inhuman and degrading treatment in Afghanistan (Articles 2, 11, 16)

Human Rights Watch has closely monitored human rights in Afghanistan for over three decades. Torture and ill-treatment have been persistent problems in Afghanistan, and have been perpetrated with near impunity. In the first year after the National Unity Government took office in September 2014, when President Ashraf Ghani announced a “zero-tolerance” approach toward torture and launched a national action plan to end it, human rights activists in Afghanistan reported a slight decrease in the incidence of torture. Aware that they were now under scrutiny, police and intelligence officials appeared to put their forces on notice, with the result that in many places, abuses somewhat declined. However, by mid-2015, as fighting with the Taliban intensified, human rights activists reported that torture had resumed to previous levels or had increased in many places. Since then, Human Rights Watch has continued to receive reports of torture in National Directorate of Security and police facilities.

Afghan and international human rights organizations have documented the systematic and widespread use of torture in Afghan detention facilities. While Human Rights Watch does not have access to detention facilities in Afghanistan, lawyers representing defendants have told Human Rights Watch that their clients are too afraid of retaliation from the police to speak with a human rights organization. Many detainees do not have lawyers, particularly those accused of links to the insurgency.

Fear of retaliation is particularly acute in Kandahar, where reports of torture have been consistently high for at least a decade, and where reports of deaths in custody and enforced disappearances increased after Gen. Abdul Raziq assumed the position of Kandahar chief of police in 2011. When Human Rights Watch visited Kandahar city in July 2016, they were cautioned not to try to meet with

families of persons who had been tortured or who had “disappeared,” out of concern that the police might retaliate against them.

The UN and the media have nonetheless documented torture and ill-treatment by the Afghan National Police in Kandahar for many years. In its 2015 report, the UN Assistance Mission in Afghanistan (UNAMA) noted that 58 percent of detainees interviewed in Kandahar had been tortured.¹ Since then, reports of torture continue to be reported. On March 29, 2016, the body of a young journalist, blogger and Kabul University student, Bashir Ahmed Reyan, was discovered in Spin Boldak, Kandahar, an area under the control of Kandahar Police Chief Raziq. According to his brother, after Reyan went missing in January 2016, the police originally told the family that Reyan was in their custody, and then later denied it, making it a case of enforced disappearance. When found, Reyan’s body bore the marks of torture, including electric shock.²

Police and intelligence officials responsible for torture benefit from the general climate of impunity. When an individual case has received media attention, government authorities have occasionally acknowledged the need for an investigation. However, the results of such investigations have not been made public. For example, when an incident of police torture in Kandahar, captured on video, circulated on social media in March 2016,³ officials first promised to investigate. They then stated that the video depicted an incident that had occurred in 2014, and that the policemen responsible had been prosecuted and were serving prison sentences. They provided no details about the dates, charges or prison sentences.

Use of confessions where allegations were obtained through torture (Article 15)

In many reported cases, the authorities used torture and ill-treatment to extract a confession. Although introducing confessions extracted under torture is prohibited, judges frequently base convictions solely on these statements, even in the absence of any corroborating evidence.

A September 2015 amendment to the Criminal Procedure Code represents an additional concern. Imposed by presidential decree, the amendment allows Afghan authorities to detain for a renewable one-year period anyone suspected of “crimes against internal or external security,” or believed “likely to commit such a crime.” The detention period is for one year, which can be renewed indefinitely upon the approval of the Supreme Court. The decree does not specify whether the detainee will have access to family members, the right to legal counsel, the right to examine the evidence, or the right to challenge that evidence in a fair proceeding. Detainees are to be “kept in a special place under the supervision of the prosecutor, separate from detention centers and prisons.” Segregation of these suspects from the regular criminal justice system, without any provision for their access to counsel, raises an additional risk of torture and ill-treatment.⁴

In a January 7, 2015 letter to Human Rights Watch, President Ghani pledged “the Afghan government will not tolerate torture.” He added that his government’s “commitment to human rights and rule of

¹ UNAMA, “Update on the Treatment of Conflict-Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129,” February 2015.

² Human Rights Watch interview with journalists and Reyan’s colleagues. Some of these details are included in media articles, including Ali Latifi and Shashank Bengali, “Another mysterious death in Kandahar, and allegations of official torture,” *Los Angeles Times*, April 7, 2016.

³ Erin Cunningham, “Viral video appears to show Afghan police dragging man behind truck,” *Washington Post*, March 9, 2016.

⁴ Human Rights Watch, “Afghanistan: Reject Indefinite Detention Without Trial, Presidential Order Puts Detainees at Risk for Abuse.” November 15, 2015.

law is strong and we are serious in addressing the allegations of torture in our security sector.”⁵ Although President Ghani followed up on that pledge by launching a national action plan to eliminate torture, progress on finalizing an anti-torture policy has stalled. While the enactment of provisions in the new penal code to criminalize torture is critical for ending the practice, the failure thus far to hold senior officials accountable has meant that Afghan security forces continue to engage in torture systematically. And despite the public commitments that President Ghani has made since June 2015, the government has yet to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations

Human Rights Watch encourages the Committee to use the upcoming review to ask the Afghan government to:

- Explain what steps it has taken to investigate credible and well-documented allegations of torture and ill-treatment by the National Directorate of Security and the Afghan National Police, the status of investigations, if any, and the findings.
- Describe the status of the national action plan on ending torture, including provisions for investigating cases documented by UNAMA and the Afghan Independent Human Rights Commission.
- Invite the UN Special Rapporteur on Torture to conduct a fact-finding mission to examine the use of torture in Afghan detention facilities.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ Letter from H.E. Mr. Mohammad Ashraf Ghani, President of the Islamic Republic of Afghanistan, to Human Rights Watch, January 7, 2015. Available in the annex to Human Rights Watch, “‘Today We Shall All Die’: Afghanistan’s Strongmen and the Legacy of Impunity,” March 2015.