

# **Treatment of Conflict-Related Detainees in Afghan Custody**

## **One Year On**



**United Nations Assistance Mission in Afghanistan**

**United Nations Office of the High Commissioner for Human Rights**

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## Glossary

### Acronyms

|       |  |
|-------|--|
| AIHRC | Afghanistan Independent Human Rights Commission  |
| ALP   | Afghan Local Police                              |
| ANA   | Afghanistan National Army                        |
| ANBP  | Afghanistan National Border Police               |
| ANP   | Afghanistan National Police                      |
| ANSF  | Afghanistan National Security Forces             |
| CID   | Criminal Investigations Department               |
| CoP   | Chief of Police                                  |
| CPD   | Central Prisons Directorate                      |
| CRC   | Convention on the Rights of the Child            |
| HQ    | Headquarters                                     |
| ICPC  | Interim Criminal Procedure Code                  |
| ICRC  | International Committee of the Red Cross         |
| ISAF  | International Security Assistance Force          |
| JRC   | Juvenile Rehabilitation Centre                   |
| MoI   | Ministry of Interior                             |
| MoJ   | Ministry of Justice                              |
| MoU   | Memorandum of Understanding                      |
| NDS   | National Directorate of Security                 |
| NPMs  | National Preventive Mechanisms                   |
| OHCHR | Office of the High Commissioner for Human Rights |
| UNAMA | United Nations Assistance Mission in Afghanistan |
| UNDP  | United Nations Development Programme             |

### Arabic, Dari and Pashto words

|         |   |
|---------|---|
| Hawza   | Cadastral zone within a city  |
| Shura   | Consultation or council of community elders   |
| Taliban | Armed opposition group fighting against the Government of Afghanistan and International Military Forces |
| Taqnin  | MoJ Department of Legislative Drafting  |

## UNAMA's Mandate

Since 2004, the United Nations Security Council has mandated the United Nations Assistance Mission in Afghanistan (UNAMA) to support the establishment of a fair and transparent justice system, including the reconstruction and reform of the prison sector, and to work towards strengthening the rule of law. UNAMA includes a Human Rights Unit with field staff across the country, supported technically by the UN Office of the High Commissioner for Human Rights (OHCHR).

UN Security Council Resolution 2041 (2012)<sup>1</sup> mandates UNAMA to improve respect for human rights in the justice and prisons sectors as follows:

37. *Reiterates* the importance of the full, sequenced, timely and coordinated implementation of the National Priority Programme on Law and Justice for All, by all the relevant Afghan institutions and other actors in view of accelerating the establishment of a fair and transparent justice system, eliminating impunity and contributing to the affirmation of the rule of law throughout the country;

38. *Stresses* in this context the importance of further progress in the reconstruction and reform of the prison sector in Afghanistan, in order to improve the respect for the rule of law and human rights therein, *emphasizes* the importance of ensuring access for relevant organizations, as applicable, to all prisons and places of detention in Afghanistan, **and calls for full respect for relevant international law including humanitarian law and human rights law, noting the recommendations contained in the report of the Assistance Mission dated 10 October 2011.**

## OHCHR in Afghanistan

The UN Human Rights Council in decision 2/113 of 27 November 2006 mandates OHCHR to address the human rights situation in Afghanistan, and urges its continued cooperation as follows:

The Council requests the High Commissioner to continue, in cooperation with the United Nations Assistance Mission in Afghanistan, to monitor the human rights situation in Afghanistan, provide and expand advisory services and technical cooperation in the field of human rights and the rule of law, and report regularly to the Council on the situation of human rights in Afghanistan.<sup>2</sup>

## Access and Methodology

From October 2010 to August 2011, in response to repeated concerns and reports about torture and ill-treatment of conflict-related detainees from communities across Afghanistan and in consultation with the Government of Afghanistan, UNAMA conducted an intensive programme of observation of conflict-related detainees throughout Afghanistan. UNAMA produced a public report on its findings with 25 recommendations to relevant authorities entitled *Treatment of Conflict-Related*

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<sup>1</sup> UN Security Council Resolution 2041, S/RES/2041 (2012) was adopted on 22 March 2012.

<sup>2</sup> *Report of the Human Rights Council to the 62<sup>nd</sup> Session of the General Assembly, Supplement No. 53, A/62/53, Decision 2/113, 28 November 2006.*

*Detainees in Afghan Custody* released in October 2011.<sup>3</sup> See Annex 1 of this report for a summary of the findings and Annex II for information on the status of implementation of recommendations from UNAMA's October 2011 report.

### **Current Report**

This report presents findings from UNAMA's observation of conflict-related detention for the period October 2011 to October 2012. Government officials from the ANP, Afghan National Border Police, NDS, Ministry of Interior (MoI) and other departments cooperated with UNAMA during the period of detention observation.

From October 2011 to October 2012, NDS provided access to detainees at NDS facilities throughout Afghanistan, except the national detention facility of NDS Counter-Terrorism Department 124 (formerly known as Department 90) in Kabul to which UNAMA has not been permitted access.

The Ministry of Interior provided access to all ANP and ANBP lock-ups and detention facilities. The transfer of responsibility for prisons through the Central Prisons Directorate (CPD) from the Ministry of Justice to the Ministry of Interior on 10 January 2012 caused some obstacles for UNAMA in accessing several CPD prisons and in interviewing detainees.<sup>4</sup>

### **Sample of Detainees**

Between October 2011-2012, UNAMA interviewed 635 pre-trial detainees and convicted prisoners detained by the ANP, ANBP, Afghan National Army (ANA), Afghan Local Police (ALP) and/or by NDS. Detainees were interviewed at ANP or ANBP lock-ups or ANP provincial centers or at NDS provincial headquarters, a Central Prisons Directorate (CPD) prison or a juvenile rehabilitation centre (JRC). UNAMA's interviews covered treatment of detainees interviewed in 89 facilities in 30 provinces across Afghanistan (detainees held in Wardak and Nimroz were interviewed following transfer to Kabul and Farah respectively).<sup>5</sup> Map 1 provides an overview of detention facilities visited by UNAMA between October 2011 and October 2012.

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<sup>3</sup>*Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, October 2011) available at [http://unama.unmissions.org/Portals/UNAMA/Documents/October10 %202011 UNAMA Detention Full-Report ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10%202011%20UNAMA%20Detention%20Full-Report%20ENG.pdf).

<sup>4</sup> Directors of some provincial CPD prisons informed UNAMA they had received instructions from the Ministry of Interior to seek authorization from the provincial chief of police prior to permitting any visits. This occurred in Kandahar when UNAMA sought to visit *Sarpoza Prison* in December 2011 and January 2012 when authority for CPD facilities was initially transferred from the Ministry of Justice to the Ministry of Interior (MoI). UNAMA resolved the issue by referring the matter to the Head of CPD in Kabul, General Jamshed who intervened and authorized UNAMA's access. It remains unclear, however, whether the MoI or the CPD has overall authority to grant access to independent monitoring bodies/organizations to prisons. CPD directors have indicated that the chief prosecutor, the Head of NDS and the Chief of Police are the authorities that UNAMA should contact to authorize monitoring visits. UNAMA is concerned that this lack of clarity may jeopardize efforts to continue to observe and report on detainee treatment and compliance with due process obligations by Afghan authorities.

<sup>5</sup>NDS provincial facilities UNAMA visited: Faizabad (Badakhshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Mazar (Balkh), Bamyan city (Bamyan), Nili (Daikundi), Farah city (Farah), Maimana (Faryab), Herat city (Herat), Sherbergan (Jawzjan), Kabul (Departments 1 and 40), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz city (Kunduz), Mehtarlam (Laghman), Jalalabad (Nangarhar), Sharan (Paktika), Gardez city (Paktya), Chaharikar (Parwan), Sari Pul city (Sari Pul), Taloqan (Takhar), and Qalat (Zabul). ANP provincial facilities UNAMA visited: Faizabad (Badakhshan), Pul-e-Khumri (Baghlan), Mazar (Balkh), Bamyan city (Bamyan), Nili (Daikundi), Farah city

At almost all of these detention facilities, UNAMA met with detaining authorities and other relevant Government officials, visited parts of each detention facility and examined its registry. At some NDS facilities, UNAMA was denied access to the registry or logbook and/or access to all parts of the detention facility. When this occurred, the matter was first referred to the senior management of the facility concerned and then to the NDS human rights department at NDS headquarters in Kabul. After intervention by the NDS human rights department, UNAMA was granted access to logbooks in all NDS facilities visited.

Of 635 detainees UNAMA interviewed, 552 were held on suspicion of or were convicted of offences related to the armed conflict. UNAMA found that ANP counter terrorism units and/or NDS had detained another 78 detainees who were categorized as suspects for “common crimes.” Many had been arrested for kidnapping or abduction, classified as a common crime which NDS is responsible for investigating; many of these detainees were also suspected members of Anti-Government Elements (AGEs) or relatives of suspected AGEs. UNAMA included these detainees in the sample because NDS and ANP treated them as conflict-related detainees and held them with other conflict-related or political detainees.

UNAMA found that 330 out of 552 conflict-related detainees were alleged to be Taliban supporters and 57 were alleged to be members of other Anti-Government armed groups. Among the 552, 87 were alleged to have been in possession of explosives and other lethal devices, 18 were alleged to have committed murder or assault, 13 were alleged to have participated in failed suicide attacks, seven were alleged to have committed abduction, two were accused of forgery, two detainees were detained for being the relative of an accused suspect, one was accused of human trafficking and 16 were alleged to have committed other crimes. A further 19 detainees did not know the specific crime for which they were detained.

Of the 635 detainees, 514 were held or had been held in NDS detention facilities<sup>6</sup>, 286 were held or had been held in ANP facilities, nine were held or had been held by ANBP<sup>7</sup>, 34 had been held in ANA detention facilities<sup>8</sup>, 12 detainees were held or had been held

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(Farah), Maimana (Faryab), Herat city (Herat), Sherbergan (Jawzjan), Kabul city (Kabul), Mahmud-e-Raqi (Kapisa), Kandahar city (Kandahar), Khost city (Khost), Asad Abad (Kunar), Kunduz city (Kunduz city), Mehtarlam (Laghman), Jalalabad (Nangarhar), Sharan (Paktika), Gardez (Paktya), Chaharikar (Parwan), Taloqan (Takhar) and Qalat (Zabul). CPD provincial prisons that UNAMA visited: Faizabad (Badakhshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Mazar (Balkh), Bamyán city (Bamyán), Nili (Daikundi), Farah city (Farah), Maimana (Faryab), Chaghcharan (Ghor), Herat city (Herat), Sherbergan (Jawzjan), *Puli charkhi* (Kabul), *Sarpoza* (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Asad Abad (Kunar), Kunduz (Kunduz), Mehtarlam (Laghman), Jalalabad (Nangarhar), Chaharikar (Parwan), Sari Pul city (Sari Pul), Taloqan (Takhar) and Qalat (Zabul). JRCs that UNAMA visited: Faizabad (Badakhshan), Qala-e-Naw (Badghis), Pul-e-Khumri (Baghlan), Farah city (Farah), Lashkar Gah (Helmand) Herat city (Herat), Kabul city (Kabul), Kandahar city (Kandahar), Mahmud-e-Raqi (Kapisa), Khost city (Khost), Kunduz city (Kunduz), Mehtarlam (Laghman), Pul-e-Alam (Logar), Jalalabad (Nangarhar), Sharan (Paktika), Taloqan (Takhar) and Qalat (Zabul).

<sup>6</sup> Out of 514 detainees, 68 detainees were held in two NDS detention facilities at different times, 18 were held in three NDS detention facilities at different times and three detainees were held in four NDS detention facilities at different times totaling 601 instances of NDS detention in the sample.

<sup>7</sup> Out of 286 detainees, 61 detainees were held in two ANP detention facilities at different times and two detainees were held in three ANP detention facilities at different times totalling 347 instances of ANP detention in the sample.

<sup>8</sup> Out of 34 detainees, three detainees were held in two ANA detention facilities at different times in the sample.

by ALP and 79 detainees had been captured and/or held by international military forces or foreign government intelligence agencies either alone or with Afghan security forces and transferred to NDS or ANP custody. The number of detainees held by both NDS and ANP or ANBP at different times was 151. The total number of detainees appears higher than 635 because numerous detainees were detained by both NDS and ANP or ANBP and/or by ANA, Afghan Local Police and/or international military forces.

Of the 635 detainees UNAMA interviewed, 267 individuals were arrested by NDS (acting alone); 212 arrested by ANP and/or ANBP; 79 captured or arrested by international military forces (operating alone or jointly with ANSF or campaign forces); 31 captured by ANA (acting alone), 26 by others (Afghan Local Police, MoI Criminal Investigation Division or local commanders); and five detainees captured by ANSF (acting alone). Fifteen of the 635 detainees were unable to reliably identify the capturing or arresting authority in their case.

Of the 79 detainees initially arrested or captured by international military forces or foreign government intelligence agencies acting alone or jointly with Afghan forces, 52 were initially transferred to NDS custody, 20 were transferred to ANP, four were transferred to ANA, one was transferred to a MoI prison, one was transferred to a District Governor's office and one detainee was transferred to a Juvenile Rehabilitation Centre (JRC).

UNAMA interviewed three female detainees held on conflict-related offences. In general, Afghan authorities detain very few women for such offences. 105 child detainees were interviewed who were under the age of 18 years at the time of their detention.<sup>9</sup>

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

The focus of UNAMA's interviews with the 635 detainees was on their treatment by NDS and ANP or ANBP personnel, as well as ANA and ALP officials. Every detainee interviewed was asked about their treatment at each detention facility in which they were held. UNAMA also observed the Government's compliance in detainee's cases with its due process obligations under Afghan and international human rights law.<sup>10</sup>

### ***Interview Safeguards, Modalities and Standard of Proof***

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

UNAMA interviewers visited the same detention facilities on numerous occasions and at different times over the course of the 12-month observation period. A significant number of visits were conducted unannounced; however, visits to detention facilities in Kabul and Kandahar were conducted by a protocol arrangement with visits carried out by prior appointment.

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<sup>9</sup> Under the *Convention on the Rights of the Child* (CRC) the legal definition of a child is any person under the age of 18 years (0-17 years).

<sup>10</sup> UNAMA's Rule of Law and Child Protection Units provided expert research and analysis support to UNAMA's detention observation programme and preparation of this report.



UNAMA used internationally accepted best practices and standards in designing and carrying out its detention observation programme and interviews with detainees. UNAMA issued detailed guidance notes and instructions to all interviewers and translators.<sup>11</sup> These documents incorporated instructions from the UN Office of the High Commissioner for Human Rights (OHCHR) training manual on interviewing detainees and visiting detention facilities.<sup>12</sup>

All UNAMA interviewers received standardized training on how to conduct interviews, assess credibility, protect confidentiality and corroborate and cross-check information on matters of detention, torture and ill-treatment with extensive supervision and oversight from experts and supervisors in UNAMA's Human Rights Unit. Interviewers avoided leading questions and asked each detainee to tell his story in an open-ended manner (interviews ranged in length from 30 minutes to two and half hours with a number of detainees interviewed on multiple occasions).<sup>13</sup> For each interview, UNAMA interviewers recorded a detailed verbatim transcript and note of the interview which was assessed for credibility and cross checked.

Where UNAMA was not satisfied about the credibility or veracity of a detainee's account, it was not included in the sample of sufficiently credible and reliable cases of torture or ill-treatment. UNAMA's sample of 635 detainees included detainees who did not allege torture or ill-treatment and whose allegations of torture or ill treatment were not assessed as credible or verified. Of the 635 detainees interviewed, 377 detainees alleged they were subjected to torture or ill-treatment, while 258 did not allege torture or ill-treatment.<sup>14</sup> UNAMA did not find the accounts of 51 of the 377 detainees who alleged torture and ill-treatment to be sufficiently credible and reliable. UNAMA verified

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<sup>11</sup> See UN endorsed guidelines: <http://www1.umn.edu/humanrts/monitoring/chapter9.html#C1>.

<sup>12</sup> OHCHR Training Manual on Human Rights Monitoring (2011). Available at <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>.

<sup>13</sup> Expert practitioners in obtaining and verifying detainee accounts of treatment in detention have determined that the most reliable way to uncover false allegations is to obtain the "true version" of a detainee's statement and subject it to detailed analysis. The true version is a detainee's statement of the alleged incident in his or her own words without interruption, as opposed to a version provided in response to a series of questions. The true version better enables and supports expert analysis of whether the account is being provided through a real memory. With a falsified, embellished or enhanced account, the detainee will have memorized details and will be recalling them in response to questions. However, a true story will be described using the senses and displaying other characteristics associated with a real memory. Comparative analysis of detainee accounts has determined that real memories tend to reflect and include greater sensory detail (such as colours, size, shape and sound), greater mention of geographic detail, more mention of cognitive or other internal processing e.g. thoughts, emotions, reactions and fewer verbal qualifications or hedges. For this detention study, UNAMA interviewers asked questions that allowed detainees to tell their stories in their own words and at their own pace. Initial questions were open-ended providing the best possible means of assessing the veracity of a detainee's statements. Once a detainee had provided the basic information in response to these open-ended questions, interviewers followed up with closed-ended questions to elicit further details or clarify areas of a detainee's account. For further information, see Gudjonnsen (1992) and Schooler, Gerhard and Loftus (1986) referenced in OHCHR's Training Manual.

<sup>14</sup> UNAMA's sample of 635 detainees included 326 detainees who made allegations of torture or ill-treatment (125 by ANP or ANBP, 178 by NDS, 10 by ALP and 13 by ANA totaling 326) found to be sufficiently credible and reliable. UNAMA observed that six detainees were tortured or ill-treated by both ANP and NDS and one detainee was ill-treated by both ANA and ANP.

as sufficiently reliable and credible allegations of torture and ill-treatment of 326 of the 377 detainees who alleged torture.<sup>15</sup>

Interviewers exercised due diligence to corroborate information from detainees through various methods including interviews with relatives, community members, defence lawyers, local experts, humanitarian agencies, medical personnel and other national and international interlocutors directly involved in the detainee's case or the detention facility, and through inspections of physical evidence and review of other relevant material. UNAMA also obtained photographic and other evidence of torture and ill-treatment of detainees from a range of interlocutors and sources.<sup>16</sup>

UNAMA interviewers observed injuries, marks and scars on numerous detainees that appeared to be consistent with torture and ill-treatment and/or bandages and other evidence of medical treatment for such injuries.<sup>17</sup> 58 of the detainees interviewed reported they required medical treatment due to injuries sustained during their interrogation and detention.

### *Standard of Proof*

While UNAMA interviewed individual detainees and made determinations on the plausibility of allegations of torture, UNAMA does not purport to be an alternative to the criminal justice system. UNAMA's detention observation programme is designed to provide sufficiently credible and reliable information on the occurrence of torture that requires impartial, credible and independent criminal investigations by the Government of Afghanistan together with appropriate remedial actions.

UNAMA weighed all available information (including individual accounts and related corroborating evidence) to determine whether the information obtained was "sufficiently credible and reliable" to permit UNAMA to make findings, raise concerns about specific facilities and recommend criminal investigations and other measures.<sup>18</sup>

The standard of "sufficiently credible and reliable" information was also used as the basis to determine whether consistent patterns of torture and ill-treatment as defined under international law had occurred within the detention system.<sup>19</sup> This report

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<sup>15</sup> This sample of 51 detainee accounts included 31 from NDS: Detainees 130, 134, 135, 142, 195, 216, 254, 318, 371, 399, 406, 409, 412, 416, 430, 444, 453, 531, 536, 548, 551, 552, 583, 585, 591, 606, 612, 614, 635, 641, 661; Nine from ANP: Detainees 44, 168, 231, 339, 455, 496, 510, 617, 623; Five from ALP: Detainees 65, 197, 233, 568, 598; Five from ANA: Detainees 238, 372, 576, 599, 604 and one (detainee 220) who had been held by international military forces totaling 51.

<sup>16</sup> The Government of Afghanistan in its response to this report dated 14 January 2013 (attached as Annex IV) commented on the structure and methodology of this report and stated *UNAMA Human Rights Unit for purposes of establishing facts in preparing the report only used interviews with accused persons and suspects and some staff which is not sufficient to prove their claims*. UNAMA indicates as outlined above the range of sources it used to make its findings.

<sup>17</sup> Detainees 3, 24, 71, 74, 219, 270, 288, 306, 458, 485, 508, 511, 553, 578, 605, 610 and 627.

<sup>18</sup> 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, pp. 32.

<sup>19</sup> Under Article 1(1) of the *Convention against Torture*, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a 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

indicates those facilities where “sufficiently credible and reliable” information was found in multiple cases establishing that torture was very likely used on conflict-related detainees.

In facilities identified as using systematic torture,<sup>20</sup> numerous detainees interviewed who had been held in the specific detention facility provided sufficiently credible and reliable information meeting the standard of proof above. This indicated that numerous detainees in the particular facility were very highly likely subjected to torture meaning that facility directors and investigators must have known, ordered or acquiesced to the use of torture. As such, it can be concluded that torture was an institutional policy or practice of the specific facility and was not used by a few individuals in isolated cases or rarely.

While all claims of torture should be investigated, UNAMA has chosen to use “sufficiently credible and reliable” as a standard of proof rather than a basic “reasonable suspicion” standard (which is regularly used to trigger investigations within the criminal justice system).<sup>21</sup> Due to the gravity of torture and the vulnerability of victims of such gross human rights violations, the higher standard of proof is intended to ensure that UNAMA is in the best position possible to recommend well-founded and concrete actions to stop its use.

UNAMA did not take or use cameras, cell phones, video equipment or recording devices in interviews with detainees in compliance with NDS instructions.

Data from all interviews with detainees as well as findings from all meetings and interviews with third party witnesses and Afghan and international officials were documented and recorded in a dedicated database.

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

### ***Questions about UNAMA’s Methodology and UNAMA’s Response***

NDS and ANP officials and international interlocutors have raised questions and comments about UNAMA’s methodology outlined below. UNAMA addressed these questions about methodology by analyzing patterns of allegations in the aggregate and at specific facilities which permitted conclusions to be drawn about abusive practices at

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capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Torture distinguishes itself from other cruel, inhuman and degrading treatment (ill-treatment) due to the severity of pain inflicted, the intentionality of the infliction of pain and the fact that severe pain is inflicted for a specific purpose, namely obtaining a confession, intimidation or coercion. Both torture and ill-treatment are prohibited under international law, including by the International Covenant on Civil and Political Rights and the Convention against Torture (both ratified by Afghanistan).

<sup>20</sup> For purposes of this report, UNAMA uses the term “systematic” to reflect the presence of a policy or practice within an individual facility. This report does not argue that the use of torture and ill-treatment was part of a systematic national or institutional Government policy. In its comments to this report dated 14 January 2013 (attached as Annex IV), the Government of Afghanistan noted that UNAMA said in this report that *torture and harassment of detainees was part of the policy and procedure of Government legal and arresting bodies* and that UNAMA had not properly defined the purpose and use of the term systematic torture. UNAMA addresses these matters in this and the previous footnote.

<sup>21</sup> *Ibid*, pp. 49-52.

specific facilities and suggested fabricated accounts were uncommon as summarized below.

#### *Questions/Comments of Afghan authorities*

- (1) There is a high likelihood of lying or false allegations of torture from detainees highlighting the training some insurgents receive in making false allegations of ill-treatment as a form of anti-Government propaganda.<sup>22</sup>
- (2) The Taliban provide members with instructions or code of conduct that direct members detained by Afghan authorities to offer a bribe to be released and/or to allege torture when seen by foreigners during detention.

#### *UNAMA's Response*

- The nation-wide pattern of allegations from the large sample size (635 detainees at 89 facilities) is inconsistent with a substantial proportion of detainees interviewed having been trained prior to their capture and detention in what lies to tell about their treatment if detained. First, the nature of the ill-treatment reported was generally distinctive and specific to the facility at which it was alleged to have occurred. It is improbable that training would be so well tailored to specific facilities. Second, the same forms of ill-treatment at the same facilities were reported by different detainees interviewed at different times and often months apart. Interviewees also belonged to a variety of networks, such as local kidnapping gangs and a range of insurgent groups. Training is unlikely to have been provided consistently across this diverse range of groups, and the pattern of allegations of ill-treatment did not correspond with any identifiable ideological agenda.
- The Taliban's most recent Code of Conduct or *Lahya* of 30 May 2010 does not include a directive instructing members to bribe Afghan detaining authorities and allege torture to foreign observers.
- UNAMA received a copy of an alleged Taliban manual on detentions and investigations (undated in Pashto and English). Independent expert analysis of the document indicates that it is unlikely the document is an authentic Taliban text. In addition, while the document discusses members paying money to NDS to get detainees released it does not appear to directly instruct members to allege or lie about being tortured to foreign observers.
- At facilities visited and observed, UNAMA ruled out the possibility of collective fabrication – where a group of detainees would share stories of real or rumored ill-treatment and, either spontaneously or by design, arrive at and deliver a common account. When a significant portion of interviews regarding a facility was conducted at that facility, knowledge of that facility's practices for segregating detainees made it possible for UNAMA to ascertain that specific detainees who provided highly similar accounts had not had any opportunity to communicate since arriving at the facility.
- UNAMA conducted numerous interviews with detainees at various locations and facilities who had previously been detained at the same NDS facility over periods of time before transfer to different locations. It is highly unlikely these detainees

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<sup>22</sup> See Annex II to UNAMA's October 2011 report: *Comments of the Government of Afghanistan, the National Directorate of Security and the Ministry of Interior to UNAMA's report on Treatment of Conflict-Related Detainees in Afghan Custody* dated 6 October 2011.

collectively or individually fabricated similar accounts of their treatment at the same facility during their different detention periods.

- At facilities where UNAMA interviewed substantial numbers of detainees without receiving any allegations of ill-treatment, no detainees within these groups alleged physical ill-treatment. This finding further suggests that detainees generally gave truthful accounts, free from collusion, sharing of stories and collective fabrication.
- Even if some portion of detainees were trained to lie about being tortured, UNAMA's methodology, guidance and training to interviewers is designed to detect and weed out fabrication as explained above. UNAMA assessed as not credible 51 allegations of torture and ill-treatment by detainees.

*Question/Comment of Afghan authorities*

- (3) UNAMA did not share evidence with NDS of torture allegations made by detainees at the time when the allegations were made. NDS did not therefore have an opportunity to verify and follow up on specific allegations of torture or ill-treatment received.<sup>23</sup>

*UNAMA's Response*

- Throughout UNAMA's 12-month detention observation, UNAMA regularly requested meetings with provided relevant information about allegations of torture and ill-treatment to NDS and ANP interlocutors permitting them to act as they determined appropriate. In some instances, NDS advised UNAMA that it had undertaken investigations into specific allegations/cases or to specific facilities including those referred by UNAMA and reported that it had found no torture or ill-treatment in all such instances.
- As noted in the 11 January 2013 letter of Commander ISAF to UNAMA (attached as Annex V to this report), over the last 18 months, ISAF reported 80 allegations of detainee abuse to Afghan authorities requesting action and offering assistance to support investigations with Afghan officials acting on only one case to date.

*Question/Comment of Afghan authorities*

- (4) UNAMA did not produce evidence of methods of specific acts of torture by NDS, in particular electric shocks, sexual threats and beatings to sexual organs e.g. pulling of testicles.<sup>24</sup>

*UNAMA's Response*

- Since NDS and ANP did not permit UNAMA to take cameras into interviews it was often difficult for UNAMA to obtain direct first hand photographic evidence of electric shocks to detainees' bodies or other evidence of beatings to sexual organs. In some cases, detainees were not able to receive medical treatment for injuries sustained during interrogation and medical providers were reluctant to provide UNAMA with information or records regarding such injuries, often for security reasons.

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.



## Executive Summary

*“NDS has several secret places in which they detain and torture people. The office was located inside the NDS HQ compound in XXX<sup>25</sup> and I can tell you that all tortured detainees were taken out of their cells that are located in one building and they were transferred to another building inside the same compound to hide them....from any delegation visiting NDS HQ.”*

**(NDS Official, April 2012)<sup>26</sup>**

*“I was arrested 12 days ago at a checkpoint in Panjwayi district on the outskirts of Kandahar city by the ANP. I am accused of being a Talib. I was taken directly to Kandahar ANP HQ. I was interrogated on the first day of my arrival in the ANP counter-terrorism department. Four ANP officers beat me with a cable on my back and on my legs. The interrogation lasted two hours. The next day, I was given electric shocks on my arms and legs. Another time, they threatened me with a gun saying that they would kill me if I did not confess. I was forced to put my thumb print on a document and I was not interrogated again.”*

**(Detainee 509, ANP HQ Kandahar, September 2012)<sup>27</sup>**

Further to its mandate from the United Nations Security Council to assist the Government of Afghanistan to improve respect for the rule of law and human rights including in the prison sector, the United Nations Assistance Mission in Afghanistan (UNAMA) visited 89 detention facilities in 30 provinces between October 2011 and October 2012 to observe treatment of conflict-related detainees and the Government’s compliance with due process obligations under Afghan and international human rights law.<sup>28</sup> During these visits, UNAMA interviewed 635 pre-trial detainees and convicted prisoners including 105 children detained by the Afghan National Police, National Directorate of Security, Afghan National Army or Afghan Local Police for national security crimes or crimes related to the armed conflict.<sup>29</sup>

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<sup>25</sup> All references to names and individuals (alleged perpetrators and detainees) that could lead to identification of sources have been omitted to preserve security and confidentiality of sources.

<sup>26</sup> UNAMA interview with NDS official, April 2012, Kabul. The reference to the location of the NDS detention facility has been omitted for security reasons.

<sup>27</sup> All dates referenced in the accounts of detainees refer to the month of torture and not to the month of their interview(s) with UNAMA.

<sup>28</sup> UN Security Council Resolution 2041 (2012) paragraph 38: *Stresses in this context the importance of further progress in the reconstruction and reform of the prison sector in Afghanistan, in order to improve the respect for the rule of law and human rights therein, emphasizes the importance of ensuring access for relevant organizations, as applicable, to all prisons and places of detention in Afghanistan, and calls for full respect for relevant international law including humanitarian law and human rights law, noting the recommendations contained in the report of the Assistance Mission dated 10 October 2011. See the section of this report on UNAMA’s mandate. See Map 1 for overview of detention facilities visited by UNAMA between October 2011 and October 2012. UNAMA does not currently visit the Detention Facility in Parwan (DFIP) run by the United States Government or the Afghan National Detention Facility at Parwan so these facilities were not included in UNAMA’s sample and detention observation. The Afghanistan Independent Human Rights Commission and the International Committee of the Red Cross visit these facilities. On 9 March 2012, the Governments of the United States and Afghanistan signed a Memorandum of Understanding reaffirming the transfer of Afghan nationals detained at Detention Facility in Parwan (DFIP) to Afghan control with most transfers completed at the time of writing.*

<sup>29</sup> Of the 635 detainees UNAMA interviewed, 514 had been held in NDS custody in 32 detention facilities in 30 provinces. 286 of the 635 detainees had been held by ANP in one of 37 facilities in 24 different

The National Directorate of Security and the Ministry of Interior cooperated with UNAMA and provided access to almost all detention facilities and detainees. UNAMA regularly requested meetings with the National Directorate of Security and the Ministry of Interior/Afghan National Police and met numerous times with officials in Kabul and across the country over the 12-month observation period to share appropriate information, and discuss concerns and follow up measures.

The International Security Assistance Force (ISAF), other international military forces and foreign intelligence agencies continue to have a role in detention of individuals for conflict-related offences through involvement in the capture and transfer of detainees to Afghan custody. In September 2011, ISAF launched a six-phase detention facility monitoring programme that initially covered 16 NDS and ANP facilities. During UNAMA's 12-month observation period, UNAMA met with ISAF officials to discuss ISAF's detention programme and related matters.

Using internationally accepted methodology, standards and best practices, UNAMA's detention observation from October 2011 to October 2012 found that despite Government and international efforts to address torture and ill-treatment of conflict-related detainees, torture persists and remains a serious concern in numerous detention facilities across Afghanistan.<sup>30</sup>

UNAMA found sufficiently credible and reliable evidence that more than half of 635 detainees interviewed (326 detainees<sup>31</sup>) experienced torture and ill-treatment in

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provinces. Nine of the detainees interviewed had been held by Afghan National Border Police (ANBP), 34 had been detained in facilities operated by the ANA, 12 had been detained by the ALP and 79 detainees had been initially captured and held by either international military forces or other international government agencies acting alone or together with Afghan security forces and transferred to NDS or ANP custody. The total number of detainees as noted is higher than 635 because numerous detainees were detained by both NDS and ANP or ANBP and/or by ANA, Afghan Local Police and/or international military forces. The majority of detainees were alleged to be members, supporters and foot soldiers of the Taliban or other Anti-Government armed groups. See the *Access and Methodology* section of this report. Under the *Convention on the Rights of the Child* the legal definition of a child is any person under the age of 18 years (0-17 years). UNAMA made no assumptions or conclusions on the guilt or innocence of those detainees it interviewed for crimes of which they were suspected, accused or convicted.

<sup>30</sup> Other organisations also documented and reported on the use of torture and ill treatment in Afghan detention facilities during the observation period. For example, in March 2012, the Afghanistan Independent Human Rights Commission and Open Society Foundations released a report that found credible evidence of torture and ill-treatment at nine NDS and several ANP detention facilities, and widespread and deliberate violations of detainees' fundamental due process rights. The report also examined the transfer of detainees from international military and security forces to Afghan authorities and noted the lack of monitoring of transfer of detainees by US Special Forces outside ISAF's chain of command. See *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, Afghanistan Independent Human Rights Commission/Open Society Foundations, 17 March 2012. Available at <http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%20Final%2017-3-2012.pdf>.

<sup>31</sup> Of the 635 detainees interviewed, 377 made allegations of torture or ill-treatment. UNAMA found the accounts of torture and ill-treatment of 326 of the 377 detainees to be sufficiently credible and reliable. To address concerns about the likelihood of lying and false allegations of torture as a form of Anti-Government propaganda, UNAMA analysed patterns of allegations of torture and ill-treatment in the aggregate and at specific facilities to corroborate allegations, to identify abusive practices at specific facilities and to detect and rule out fabricated accounts. In addition to interviews with detainees and a range of interlocutors and sources, UNAMA obtained or reviewed documentary and photographic



numerous facilities of the Afghan National Police (ANP), National Directorate of Security (NDS), Afghan National Army (ANA) and Afghan Local Police (ALP) between October 2011 and October 2012.<sup>32</sup> This finding is similar to UNAMA's findings for October 2010-11 which determined that almost half of the detainees interviewed who had been held in NDS facilities and one third of detainees interviewed who had been held in ANP facilities experienced torture or ill-treatment at the hands of ANP or NDS officials.<sup>33</sup> (See Map 2).

UNAMA's new study noted that while the incidence of torture in ANP or ANBP facilities increased compared to the previous period, detainees interviewed in NDS custody experienced torture and ill-treatment at a rate that was slightly lower than the previous period. UNAMA observed that of the 105 child detainees interviewed, 80 children (76 percent) experienced torture or ill-treatment, an increase of 14 percent compared to UNAMA's previous findings.<sup>34</sup>

UNAMA also interviewed a small number of detainees who had been held by ALP or ANA forces and found sufficiently credible and reliable evidence that 10 of the 12 detainees held by the ALP experienced torture or ill-treatment. One third (13) of the 34 detainees interviewed who were held in ANA custody experienced torture or ill-treatment.

UNAMA found sufficiently credible and reliable evidence that 25 of the 79 (31 per cent) detainees interviewed who had been transferred by international military forces or foreign intelligence agencies to Afghan custody experienced torture by ANP, NDS or ANA officials. This represents an increase of seven percent compared to UNAMA's findings for the prior one-year period when 22 of 89 detainees (24 percent) transferred by international military forces experienced torture. This situation raises continuing

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evidence of torture and ill-treatment. Such material was appropriately shared with Government officials including at the highest levels. See the section of this report on *Access and Methodology*.

<sup>32</sup> This report uses the definition of torture in the *Convention against Torture (CAT) article 1*: 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. This definition includes four elements: (1) the act of inflicting severe pain or suffering (2) the act is intentional (3) the act is for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or discrimination and (4) the perpetrator is a public official or other person acting in an official capacity. The "elements of intent and purpose . . . do not involve a subjective inquiry into the 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 (24 January 2008), Para. 9.

<sup>33</sup> See UNAMA's October 2011 report *Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, 10 October 2011). Available at [http://unama.unmissions.org/Portals/UNAMA/Documents/October10 %202011 UNAMA Detention Full-Report ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10%202011%20UNAMA%20Detention%20Full-Report%20ENG.pdf). Also see Annex I of this report for a summary on *UNAMA's Detention Observation Programme 2010-12*.

<sup>34</sup> UNAMA observed that 33 child detainees experienced torture by NDS, 45 by ANP, one by ANA and one by ALP totalling 80 child detainees.

concerns about States' legal obligations prohibiting them from transferring detainees to another State's custody where a substantial risk of torture exists.<sup>35</sup>

ISAF rules also stipulate that consistent with international law, individuals should not be transferred under any circumstances where there is a risk they will be subjected to torture and ill-treatment. Addressing concerns about transfer to a risk of torture requires international military forces to conduct rigorous oversight and monitoring of all transfers of detainees to Afghan custody and to suspend transfers to facilities with credible reports and risks of torture in compliance with their legal obligations.

Where torture occurred, it generally took the form of abusive interrogation techniques in which NDS, ANP, ALP or ANA officials deliberately inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information. Such practices amounting to torture are among the most serious human rights violations under international law and are crimes under Afghan law.<sup>36</sup>

Described methods of torture and ill-treatment were similar to practices previously documented by UNAMA. Fourteen different methods of torture were described. Detainees said they experienced torture in the form of suspension (hanging from the ceiling by the wrists or from chains attached to the wall, iron bars or other fixtures so that the victim's toes barely touch the ground or he is completely suspended in the air with his body weight on his wrists for lengthy periods), prolonged and severe beating with cables, pipes, hoses or wooden sticks (including on the soles of the feet), punching and kicking all over the body, twisting of genitals, and threats against the detainee of execution and/or sexual violence.

Other forms of torture and ill-treatment reported included increased incidents of electric shock, stress positions, prolonged standing, standing and sitting down or squatting repeatedly and forced standing outside in cold weather conditions for long periods. Many detainees interviewed reported they had been subjected to several methods of torture often inflicted with escalating levels of pain particularly when they refused to confess to the crime they were accused of or failed to provide or confirm information.

UNAMA found that multiple credible and reliable incidents of torture and ill-treatment had occurred particularly in 34 facilities of the ANP, ANBP and NDS. UNAMA found sufficiently credible and reliable evidence that NDS officials at two facilities

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<sup>35</sup> Article 3 of the *Convention against Torture on non-refoulement* obliges States not to transfer "a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Further, "If a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture." See Committee against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), Para. 19.

<sup>36</sup>The Government of Afghanistan ratified the *Convention against Torture* in June 1987. Article 29 of the *Constitution of Afghanistan* provides "No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished." The *Afghan Penal Code* criminalizes torture and article 275 prescribes that public officials (including all NDS and ANP officials) found to have tortured an accused for the purpose of obtaining a confession shall be sentenced to imprisonment in the range of five to 15 years."

systematically tortured detainees mainly to obtain confessions and information.<sup>37</sup> Multiple credible and reliable cases of torture and ill-treatment were documented in ten other NDS facilities. The systematic use of torture was found in six ANP facilities and one ANBP location. In 15 other ANP provincial headquarters and district police stations, UNAMA found numerous credible and reliable cases of torture or ill-treatment.<sup>38</sup>

UNAMA observed more conflict-related detainees detained and interrogated by the ANP in several regions with an increase in reports of torture by ANP. UNAMA also received sufficiently reliable and credible information that in some NDS facilities, officials hid detainees from international observers and held them in underground or other locations. Multiple credible reports were received about the existence of unofficial detention facilities in a few locations. Similar to previous findings, UNAMA observed that credible and reliable evidence of torture was most prevalent in NDS and ANP facilities in Kandahar.

UNAMA also received credible reports of the alleged disappearance<sup>39</sup> of 81 individuals who reportedly had been taken into ANP custody in Kandahar province from September 2011 to October 2012 and whose status remains unknown.

Over the one-year period, UNAMA observed early improvement in some NDS facilities with a decrease in allegations of torture. This reduction corresponded with a decrease in transfers by international military forces and increased monitoring including by ISAF. However, after ISAF resumed transfers to these facilities and reduced its monitoring, UNAMA observed an increase and resumption in incidents of torture.

#### *Government Measures to Address Torture and Ill-Treatment*

From October 2011 to October 2012 and in response to UNAMA's October 2011 report, the Government of Afghanistan instituted a range of measures aimed at addressing torture and ill-treatment in Afghan detention facilities.<sup>40</sup> The NDS and the Ministry of Interior continued to provide UNAMA and international and national organizations with access to most facilities, stating they investigated allegations of torture and ill-

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<sup>37</sup> See the section in this report on *Access and Methodology* for the definition used in this report of a systematic practice or pattern of the use of torture within specific detention facilities.

<sup>38</sup> See Map 3 for a sample of detainees' accounts of torture by location.

<sup>39</sup> *International Convention for the Protection of All Persons from Enforced Disappearance* defines "enforced disappearance" under article 2: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Afghanistan has not signed or ratified the convention. Multiple sources shared concerns with UNAMA that following arrest, some detainees may have been killed while in police custody.

<sup>40</sup> In October 2011, UNAMA released a report entitled *Treatment of Conflict-Related Detainees in Afghan Custody*. Based on in depth interviews from October 2010 to August 2011 of 379 detainees at 47 facilities in 22 provinces, the report found the use of interrogation practices by ANP and NDS officials that constituted torture and ill-treatment under international law and crimes under Afghan law. The report also found compelling evidence that a number of detainees whom international military forces had transferred to NDS or ANP custody had been tortured by NDS or ANP officials. The report made 25 recommendations to the NDS, Ministry of Interior, the Government of Afghanistan and Afghan judicial institutions, troop contributing countries and ISAF. Annex II of the report is the Government's comments to UNAMA's October 2011 report available at [http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf).

treatment, implemented training programmes on prevention of detainee ill-treatment and issued policy directives to their officials throughout Afghanistan which stated that torture of detainees is a violation of Afghan law.<sup>41</sup>

In 2012, NDS also created a sub-directorate of human rights charged with investigating allegations of torture and ill-treatment that reports directly to the Director of NDS.<sup>42</sup> Former NDS Director Rahmatullah Nabil informed UNAMA that he participated directly in several internal investigations into human rights violations in NDS facilities.<sup>43</sup> In some instances, NDS advised UNAMA that it had investigated specific allegations and reports of torture and ill-treatment or investigated specific facilities including those referred by UNAMA. NDS informed UNAMA that in all such instances it found no torture or ill-treatment. NDS officials also told UNAMA that it had reassigned several provincial NDS chiefs although the reasons for reassignment were not made clear.<sup>44</sup>

While NDS and ANP acknowledged problems in their facilities, they stopped short of recognizing that their officials were responsible for torture.<sup>45</sup> To UNAMA's knowledge, these internal investigations have not resulted in the prosecution or loss of jobs of NDS officials for involvement in torturing detainees or for having failed to prevent the use of torture. UNAMA is not aware of any instance in which an ANP officer has been prosecuted in recent months for abusing detainees.

On 17 September 2012, the NDS issued a statement<sup>46</sup> indicating that NDS welcomed and supported all organizations interested in observing and scrutinizing conditions of detainees and detention facilities. The NDS statement noted that NDS was working on a new mechanism to create a timetable for human rights organizations to visit NDS detention facilities and detainees and that NDS was planning training programmes on human rights for NDS employees throughout Afghanistan. The statement asked all national and international institutions to help and support NDS in this regard and reiterated NDS's commitment to protecting the rights of detainees.

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<sup>41</sup> UNAMA meetings with Ministry of Interior Gender, Human Rights and Child Rights Department, 9 May 2012, Kabul, and UNAMA meeting with NDS Human Rights Department, 14 May 2012, Kabul. Copies of the orders of the Ministry of Interior and NDS are on file with UNAMA.

<sup>42</sup> Letter from NDS Human Rights Department to UNAMA dated 2 January 2012.

<sup>43</sup> See Annex II: Comments of the Government of Afghanistan, the NDS and the Ministry of Interior to UNAMA's October 2011 report *Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, 10 October 2011). Available at

[http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf). Asadullah Khalid was appointed Director of NDS on 3 September 2012 and Rahmatullah Nabil was appointed deputy advisor of the National Security Council of Afghanistan.

<sup>44</sup> As a result of some of these investigations, the Ministry of Interior and NDS improved hygiene in several facilities. UNAMA noted that physical conditions, including cleanliness, availability of basic medical care, and quality of nutrition improved in some detention facilities. While these humanitarian issues were not the focus of UNAMA's detention observation, such improvements are welcome.

<sup>45</sup> See Annex II: Comments of the Government of Afghanistan, the NDS and the Ministry of Interior to UNAMA's October 2011 report on the *Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, October 2011). Available at [http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf).

<sup>46</sup> Press Statement by NDS dated 27/06/1391 (17 September 2012). On 7 December 2012, a deputy director of NDS, Hisamuddin Hisam was named as acting director of NDS following an attack on NDS Director Assadullah Khalid requiring a period of medical treatment.

### *Government of Afghanistan Response to Findings of this Report*

In response to this report's findings, the Government of Afghanistan, the NDS and the Ministry of Interior prepared a detailed written response and comments dated 14 January 2013 attached as Annex IV to this report.<sup>47</sup> The response notes that while the Government "does not completely rule out abuse and ill-treatment by detention center staff due to lack of capacity and sound training in these institutions, the level of alleged torture reflected in this report is exaggerated." The Afghan authorities outline numerous measures they have undertaken to address allegations of ill-treatment to date including expanded training, investigations into a range of human rights concerns, issuance of orders and policy directives, and inspections.<sup>48</sup>

Both the Ministry of Interior and NDS stated they reject the existence of systematic torture in their facilities and NDS noted that it rejects reports of hidden and alternate detention centers. The Government together with NDS and the Ministry of Interior stated they are ready to consider all recommendations for the consolidation of law and order in detention centers, ensuring rights of detainees and the realization of justice.

### *International Security Assistance Force (ISAF) Measures to Address Torture and Ill-Treatment*

In September 2011, ISAF suspended detainee transfers to 16 NDS and ANP locations which UNAMA had identified as practicing systematic torture.<sup>49</sup> As noted above, ISAF also designed and rolled out a six-phase detention facility monitoring programme to support Afghan authorities in reforming their interrogation and detainee treatment practices prior to resumption of international transfers. The programme required regular inspections of facilities and interviews with detention center personnel and detainees as the primary means of identifying abusive detention practices by NDS and ANP. Inspections were accompanied by training seminars for detention facility managers and investigative staff focused on humane treatment of detainees, including non-coercive interview techniques.

Following training and a second round of unannounced facility inspections, NDS and ANP facilities were considered for certification that permits international military

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<sup>47</sup> Response of the Islamic Republic of Afghanistan on Draft Annual Report of Human Rights Section of Human Rights of UNAMA (Office of National Security Council, Ministry of Interior and National Directorate of Security), 14 January 2013 attached as Annex IV to this report. The Government provided its response to UNAMA in the Dari language which UNAMA's translation unit translated into English.

<sup>48</sup> In their 14 January 2013 response to this report, the Ministry of Interior and NDS stated they have taken measures to identify perpetrators of human rights violations and punish them, but reject that incidents of torture and ill-treatment were discovered in their investigations. The Ministry of Interior stated "In line with its legal obligations, the Ministry of Interior of the Islamic Republic of Afghanistan has taken legal actions against dozens of national police personnel who violated their legal terms of reference and, in some cases, dismissed the violators and referred them to prosecutors' offices." NDS stated they do not "...claim perfection in our work...", but attributed "flaws and faults" because of a "...lack of adequate work experience of our officials in some regions, because of insecurity in some regions and due to their inability to access crime scenes and lack of technical equipment to prove material evidence of crimes...In such cases, the leadership of NDS has applied serious legal measures." UNAMA notes this information does not indicate what violations were committed particularly any torture and ill-treatment of detainees or the reasons NDS and the Ministry of Interior took the stated actions.

<sup>49</sup> ISAF suspended transfers on 4 September 2011 to NDS national counter-terrorism department 124 in Kabul, NDS provincial facilities in Laghman, Kapisa, Takhar, Herat, Khost and Kandahar District 2 NDS office, and ANP district facilities in Kandahar including Daman, Arghandab, District 9 and Zhari, ANP district facility in Dasht-e-Archi, Kunduz and ANP headquarters in Khost, Kunduz and Uruzgan.

forces to resume transfers of detainees to specific facilities. Once certified, international military personnel made regular monitoring visits to facilities where they transferred detainees to track their treatment through the pre-trial process. ISAF's position is that accountability of perpetrators of torture of detainees is the sole responsibility of Afghan authorities, and that ISAF's role is limited to sharing information from their inspections and monitoring with the relevant Afghan authority on its follow up action. According to ISAF, over the last 18 months, it reported 80 allegations of detainee abuse to Afghan authorities requesting action and offering assistance to support investigations with Afghan officials acting on one case to date.<sup>50</sup>

The Commander of ISAF began certifying facilities on 8 November 2011 and by 8 March 2012 ISAF announced that it had fully or conditionally certified 14 of the 16 detention facilities that UNAMA named as locations where torture had occurred permitting resumption of international transfers to the facilities.<sup>51</sup> To UNAMA's knowledge, ISAF certification was not an endorsement by the Commander of ISAF that a facility was "torture-free" or a guarantee that the personnel of such facilities had been thoroughly re-trained not to use abusive interrogation methods. Rather certification reflected that NDS or ANP facilities had completed the first three stages of ISAF's remediation programme and that ISAF was not aware of further torture or ill-treatment.

In response to new credible reports of torture at several NDS and ANP facilities including from UNAMA, on 24 October 2012, ISAF de-certified and suspended for a second time detainee transfers to NDS Department 124 in Kabul, NDS Laghman, NDS Khost, NDS Herat, ANP headquarters in Khost and ANP headquarters in Kunduz and for the first time suspended detainee transfers to NDS Department 40 in Kabul.<sup>52</sup> ISAF also informed UNAMA that it was reviewing its detention facility monitoring programme to strengthen monitoring and undertaking a new round of detention facility inspections and investigations including joint investigations of facilities with NDS and Ministry of Interior officials with representation from the Afghanistan Independent Human Rights Commission.<sup>53</sup>

#### *Further Measures Needed to Address Torture and Ill-Treatment*

The Government's efforts to address torture and those of ISAF, although significant, have not resulted in a marked improvement and reduction in the use of torture. This raises concerns at a time when the Government is taking over almost full responsibility for conflict-related detainees from international military forces.

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<sup>50</sup> Letter of Commander ISAF to UNAMA dated 11 January 2013 attached as Annex V to this report.

<sup>51</sup> UNAMA interviews with ISAF personnel, March 2012, Kabul. By 8 March 2012, ISAF had resumed transfers to 14 facilities: NDS national counter-terrorism department 124 in Kabul, NDS provincial facilities in Laghman Kapisa, Takhar, Herat, Khost and ANP district facilities in Kandahar including Daman, Arghandab, District 9 and Zhari, ANP district facility in Dasht-e-Archi, Kunduz and ANP headquarters in Khost, Kunduz and Uruzgan. ISAF resumed transfers to NDS Takhar in March 2012 but suspended transfers to the facility a second time on 6 August 2012 following multiple credible accounts of torture resulting from NDS Takhar's investigations of alleged poison attacks on girl's schools in May 2012. ISAF has not resumed transfers to NDS Department 2, NDS Headquarters and ANP Headquarters' detention facilities in Kandahar. Also note ISAF's suspension of detainee transfers to seven facilities on 24 October 2012 referenced in the text above.

<sup>52</sup> UNAMA meeting with ISAF personnel, 24 October 2012, Kabul.

<sup>53</sup> UNAMA meetings with ISAF HQ personnel, October - December 2012, Kabul. Also see the letter of Commander ISAF to UNAMA dated 11 January 2013 attached as Annex V to this report.

Similar to previous findings, UNAMA found a persistent lack of accountability for perpetrators of torture with few investigations and no prosecutions or loss of jobs for those responsible for torture or ill-treatment. The findings in this report highlight that torture cannot be addressed by training, inspections and directives alone but requires sound accountability measures to stop and prevent its use. Without effective deterrents and disincentives to use torture, including a robust, independent investigation process or criminal prosecutions, Afghan officials have no incentive to stop torture. A way forward is clear.

To bolster current measures underway to address torture, UNAMA recommends the creation of an independent preventive body, similar to the national preventive mechanism model prescribed in the *Optional Protocol to the Convention against Torture*. Such a mechanism could be considered possibly within the Afghanistan Independent Human Rights Commission with authority to inspect all detention facilities, conduct follow up investigations and make recommendations for action including prosecution of perpetrators of torture by criminal justice institutions or other bodies. Establishing such a mechanism requires concerted and sustained international support.<sup>54</sup>

This initiative could be reinforced through explicit instructions from the Attorney General's Office and Supreme Court to all judges and prosecutors requiring them in all cases to actively investigate and reject any confessions gained through torture or ill-treatment. Failure to do so should result in professional sanctions and/or criminal prosecutions of such officials. UNAMA stands ready to continue to work constructively with Afghan authorities, and international and national partners to end and prevent the use of torture in Afghan detention facilities.

### **Continuing Torture and Ill-treatment of Detainees by NDS, ANP, ALP and ANA (October 2011-October 2012)**

The 635 detainees UNAMA interviewed from October 2011 to October 2012 represent a 59 percent increase over the total sample of 379 detainees UNAMA interviewed in 2011. UNAMA increased the total number of detainees interviewed to improve the analytical and statistical validity of the overall data and the sub-samples.<sup>55</sup> The new study interviewed twice as many NDS detainees and two and a half times the number of detainees held in ANP facilities than the previous year.

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<sup>54</sup> A joint press statement issued by President Obama and President Karzai on strengthening the enduring US-Afghan partnership was issued on 11 January 2013, stating "Building upon significant progress in 2012 to transfer responsibility for detentions to the Afghan Government, the Presidents committed to placing Afghan detainees under the sovereignty and control of Afghanistan, while also ensuring that dangerous fighters remain off the battlefield. President Obama reaffirmed that the United States continues to provide assistance to the Afghan detention system. The two Presidents also reaffirmed their mutual commitment to the lawful and humane treatment of detainees, and their intention to ensure proper security arrangements for the protection of Afghan, U.S., and coalition forces." <http://president.gov.af/en/news/1645>.

<sup>55</sup> The margin of error for the 2012 total sample of 635 detainees is plus or minus 3.7 percent, while the margin of error for the 2011 total sample of 379 detainees was plus or minus 4.8 percent. The 2012 and 2011 studies are considered statistically comparable, taking into account the small difference in the margins of error. For the 2012 sub-sample of 514 NDS detainees, the margin of error is plus or minus 3.9 percent, and for the sub-sample of 286 ANP or ANBP detainees, the margin of error is plus or minus 5.3 percent. These margins of error are based on an estimated total detainee population of 5,000 and are subject to a 95 percent confidence rating, i.e. 19 times out of 20.

The new study found sufficiently reliable and credible evidence that 125 of a representative sample of 286 conflict-related detainees held in ANP or ANBP facilities, or 43 percent, had been tortured or ill-treated while in custody, compared with 35 percent in the previous 12-month period.

UNAMA determined that 178 out of 514 detainees held in NDS facilities, or 34 percent, experienced torture or ill-treatment, down 12 percent from the previous year, when 46 percent reported torture or ill-treatment in NDS custody.<sup>56</sup> This reduction may be partly explained by the lower number of detainees found in NDS facilities including several NDS facilities in ISAF's inspection programme namely NDS Laghman, NDS Takhar, NDS Kapisa and NDS Herat.

UNAMA found sufficiently credible and reliable evidence of torture by ALP in four provinces. 10 of the 12 detainees UNAMA interviewed who had been held by the ALP reported torture or ill-treatment: seven of the 10 were in Chahardara district in Kunduz province, while the remaining cases occurred in districts of Faryab, Kandahar and Uruzgan. Although ALP are allowed to hold individuals temporarily as part of their mandate to "conduct security missions in villages" they have no role in or powers of law enforcement and lack the authority to arrest and detain. The inferred power to hold suspects temporarily is not defined in scope or timeframe.<sup>57</sup>

Regarding ANA, UNAMA found sufficiently credible and reliable evidence that 13 of the 34 detainees interviewed who were held in ANA custody experienced torture or ill-treatment in seven provinces. Nine of the 13 incidents occurred in Chisht-e-Sharif ANA base, Shindand ANA base (Herat), Shiwan ANA base, Bala Buluk, Bekwa (Farah) and Bala Murghab (Badghis) in the western provinces (five in Farah, two in Herat and two in Badghis) with the remainder occurring in Kabul, Kapisa, Kandahar and Laghman.

Detainees interviewed in NDS, ANP, ALP and ANA detention reported that torture or ill-treatment took place during interrogation sessions, often in separate interrogation rooms, or in corridors and hallways of smaller facilities. During these sessions, interrogators, officers or prosecutors usually wanted detainees to confess to being members or supporters of the Taliban or other anti-government groups, confirm names of alleged Taliban or Anti-Government Elements, admit to planting or making improvised explosive devices, having weapons, being failed suicide attackers or otherwise assisting the Taliban. In most cases, the main reason for the use of torture was to obtain a confession or information and to intimidate detainees. As noted above, NDS, ANP, ALP and ANA officials used a range of torture methods including prolonged beatings often with cables, pipes or hoses, suspension and electric shocks.

The replication or pattern of torture methods consistently used on detainees suggests the use of torture was systematic at two NDS facilities.<sup>58</sup> These were the NDS headquarters in Kandahar city and NDS Counter-terrorism Department 124 in Kabul (formerly known as NDS Department 90).

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<sup>56</sup> The total number of detainees noted is higher than 635 because numerous detainees were detained by both NDS and ANP or ANBP and/or by ANA, Afghan Local Police and/or international military forces. See the *Access and Methodology* section of this report and footnote 29.

<sup>57</sup> Afghan Local Police Establishment Procedure adopted August 2010 and adjusted January 2012.

<sup>58</sup> See the *Access and Methodology* section of this report for a full definition of a systematic pattern, practice or use of torture within a detention facility.



UNAMA found sufficiently reliable and credible cases of torture at ten other NDS facilities - Herat, Khost, Laghman, Takhar, Faryab, Kunduz, Nangarhar, Paktika, NDS Department 40 in Kabul and NDS provincial headquarters in Sherbeghan (Jawzjan province).

UNAMA found the systematic use of torture in six ANP facilities including ANP provincial headquarters and *hawza* (district) police stations 3, 8, 13, 15 in Kandahar city, in ANP headquarters in Panjwayi district, and one ANBP location in Spin Boldak district in Kandahar province.

UNAMA documented numerous credible and reliable cases of torture at five ANP provincial headquarters in Pul-e-Khumri (Baghlan), Herat city (Herat), Kunduz city (Kunduz), Taloqan (Takhar) and Qalat (Zabul) and at 10 district ANP facilities in Ishkamesh, Kalafgham, Khwajaghar (Takhar), Chisht-e-Sharif, Pashtoon Zarghoon, Shindad, Gulran (Herat), Yosuf Khel (Paktika), Garamser and Nadi Ali (Helmand) in four provinces.

UNAMA found torture was most prevalent in NDS and ANP facilities in Kandahar. Half of the 79 detainees UNAMA interviewed in various Kandahar detention facilities provided detailed descriptions of torture by NDS, ANP or ANBP interrogators<sup>59</sup>. Detainees provided detailed and consistent accounts of the use of interrogation techniques that were similar to patterns and practices previously documented in Kandahar. One third of all credible and reliable cases of torture and ill-treatment involving ANP originated in facilities in Kandahar province.

Of most concern, were multiple reports of the alleged disappearance<sup>60</sup> of dozens of individuals whom ANP had taken into their custody in Kandahar province between September 2011 and October 2012. Multiple sources shared concerns that some detainees may have been killed in police custody following arrest.<sup>61</sup>

### ***Fewer Conflict-related Detainees in NDS and Increased Role of ANP in Interrogations of Conflict-related Detainees***

With the exception of Kandahar, UNAMA observed a marked decline in the number of conflict-related detainees held in NDS custody in several locations. This decrease was most notable in NDS facilities where UNAMA had previously documented the systematic or frequent use of torture, particularly in NDS Herat, NDS Laghman, NDS Takhar and NDS Kapisa. The reduction in the detainee population coincided with the international military's suspension of detainee transfers and the launch of ISAF's programme of detention facility inspections.

UNAMA recognized that cessation of international detainee transfers in many locations and the onset of a winter lull in fighting may have partly accounted for reduced

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<sup>59</sup> UNAMA interviewed 79 detainees in Kandahar. 37 had been held by NDS and 63 had been detained by ANP or ANBP. Twenty-one detainees had been held by both NDS and ANP or ANBP.

<sup>60</sup> *International Convention for the Protection of All Persons from Enforced Disappearance* defines "enforced disappearance" under article 2: "The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." Afghanistan has not signed or ratified the convention.

<sup>61</sup> UNAMA interviews with confidential sources, May 2012, Kandahar.

numbers of conflict-related detainees in NDS facilities. In spite of the lower number of transfers, however, NDS and ANP continued to arrest significant numbers of individuals on suspicion of conflict-related crimes. UNAMA also received multiple credible reports suggesting that in some NDS facilities, detainees were hidden from international observers and detained in underground or other locations.

UNAMA's monitoring found that ANP also took a greater role in arresting and interrogating suspects in conflict-related crimes particularly in Kandahar and Herat than observed in October 2010-11. In Herat, for example, while the NDS facilities maintained a very low detainee population, UNAMA observed a rise in the number of detainees suspected of conflict-related activities held in the provincial ANP headquarters in Herat.<sup>62</sup> This situation raised concerns that ANP and NDS possibly coordinated to ensure that conflict-related detainees were not held or interrogated in facilities where international and national organizations and ISAF were conducting regular visits.

### ***Unofficial Detention Facilities***

In some locations, particularly Kandahar, UNAMA received multiple reports of the use of alternative or unofficial sites where detainees were interrogated and tortured or ill-treated prior to their detention in the NDS or ANP headquarters.<sup>63</sup> One such location reported was inside the provincial governor's compound in Kandahar city. Several detainees described in detail being subjected to torture during their interrogations in this location by ANP and ANBP officials, including by a high-ranking ANBP commander in some instances, and held long-term in this location in extremely poor conditions.

Such cases raised concerns that alternative locations were used possibly to hide the interrogation and torture of conflict-related detainees from organizations conducting observation visits to official detention facilities.

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

UNAMA's detention observation included interviews with 79 detainees who reported the involvement of international military forces or foreign intelligence agencies either alone or with Afghan security forces in their capture and transfer to NDS, ANA or ANP custody.<sup>64</sup> UNAMA found sufficiently reliable and credible evidence that 25 of the 79 (31 per cent) detainees transferred by international forces experienced torture in NDS, ANP or ANA facilities.

Thirteen of the 25 detainees suffered torture in NDS facilities, 10 in ANP custody and two in ANA facilities. NDS locations<sup>65</sup> where the 13 detainees experienced torture included NDS headquarters in Kandahar, Panjwayi district, Khost, Baghlan, Balkh

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<sup>62</sup>UNAMA meeting with Herat NDS chief prosecutor, 6 March 2012, Herat.

<sup>63</sup> Detainees 14, 22, 23, 214, 262, 283, 284, 286, 287, 291, 292, 319, 321 and 544 and UNAMA meetings with confidential sources in May June 2012.

<sup>64</sup> Detainees 9, 13, 14, 17, 18, 20, 22, 23, 24, 43, 44, 45, 49, 64, 75, 111, 131, 132, 133, 134, 135, 137, 172, 173, 174, 175, 176, 177, 178, 182, 187, 208, 222, 230, 234, 239, 246, 247, 248, 249, 261, 266, 267, 270, 283, 284, 286, 287, 288, 289, , 301, 316, 318, 326, 384, 400, 403, 440, 446, 449, 484, 485, 486, 492, 493, 494, 524, 540, 575, 580, 585, 592, 615, 616, 630, 646, 650, 656 and 657. International military forces in this context includes ISAF, Special Forces associated with ISAF, Special Operations Forces associated with particular countries and foreign intelligence agencies in particular the US Central Intelligence Agency.

<sup>65</sup> Detainees 14, 17, 75, 111, 247, 284, 286, 287, 291, 440, 449, 484 and 646.

(Mazar-i-Sharif) and in NDS Department 124 in Kabul. UNAMA notes with concern that reports of torture in NDS Khost and NDS Department 124 occurred in September 2012 and July 2012 respectively after ISAF had resumed transfers to both detention facilities. UNAMA found that ten <sup>66</sup> of the 79 (12 per cent) detainees experienced torture by ANP in Kandahar provincial HQ, the ANP district facility in Panjwayi, ANP provincial HQ in Zabul and ANP provincial HQ in Paktika. Two<sup>67</sup> of these 25 detainees experienced torture or ill-treatment by ANA in Bala Murghab (Badghis).

ISAF's resumption of transfers to NDS provincial headquarters in Kandahar where UNAMA found systematic torture remains pending. ISAF also has not resumed transfers to ANP provincial headquarters in Kandahar where the Afghanistan Independent Human Rights Commission and Open Society Foundations also identified torture.<sup>68</sup>

As noted above, ISAF suspended for a second time transfers to seven facilities on 24 October 2012 following credible reports of torture, increased the frequency of visits of inspection teams to facilities, reinitiated human rights training and undertook engagement with key leaders at the NDS and the Ministry of Interior.<sup>69</sup>

Noting that some detainees who were transferred by international forces experienced torture after ISAF had certified a facility, resumed transfers and trained detention facility personnel raises serious concerns about the effectiveness of international assistance to the Government in ending and preventing torture in the longer term. UNAMA observed that ISAF's detention facility monitoring regime of targeted inspections, monitoring and assistance to NDS and ANP officials appeared to result in a decrease in allegations of torture in the 16 facilities in the programme. The use of torture, however, resumed in most of the facilities after ISAF had certified them, restarted transfers and reduced its monitoring.<sup>70</sup>

While ISAF's programme helped to improve awareness among NDS and ANP personnel of the prohibition of torture and appropriate treatment of detainees, the programme did not prevent the use of torture in all cases including for all transferred detainees. The limitations of ISAF's programme reinforces UNAMA's view that ending and preventing torture cannot be addressed by training, directives and inspections alone and requires effective accountability measures.

UNAMA also highlights that it is not ISAF's role to end the use of torture in Afghan-run facilities. Solutions to the problem of torture identified in a number of NDS, ANP and ANA facilities and by ALP require sustained and focused action by the Government

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<sup>66</sup> Detainees 18, 230, 270, 288, 289, 384, 486, 492, 493 and 494.

<sup>67</sup> Detainees 656 and 657.

<sup>68</sup> See *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan* AIHRC/Open Society Foundations, 17 March 2012. Available at: <http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%20Final%2017-3-2012.pdf>, and footnote 30.

<sup>69</sup> ISAF correspondence with UNAMA, 24 October 2012.

<sup>70</sup> Of the 16 detention facilities identified by UNAMA under ISAF's inspection programme, seven facilities were certified or conditionally certified by ISAF with NDS Kapisa, ANP Arghandab, ANP Daman, ANP Zharay, ANP Dast-e-Archi and ANP HQ Uruzgan certified and ANP District 9 conditionally certified. On 6 August 2012, ISAF revoked certification of NDS Takhar. On 24 October 2012, ISAF de-certified six detention facilities: NDS Department 124, NDS Herat, NDS Khost, NDS Laghman, ANPHQ Kunduz and ANP HQ Khost. Transfer of detainees to NDS HQ and NDS District 2 in Kandahar remained suspended.

including criminal prosecutions of responsible officials and, above all, the full commitment of the NDS, the Ministry of Interior and the courts to end such practices.

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

UNAMA observes that part of the reason why torture has persisted is inadequate oversight and lack of accountability of the institutions and officials concerned. Despite internal investigations into torture that NDS stated it has undertaken, to UNAMA's knowledge, no NDS officials, particularly investigators alleged responsible for using torture, have been prosecuted. NDS removed some directors but transferred the individuals to similar jobs in NDS facilities elsewhere. This included the transfer or reassignment of the directors and deputy directors of NDS Kandahar, Department 124, NDS Khost, NDS Laghman and NDS Kapisa.<sup>71</sup> It is unclear whether these directors were removed for alleged or proven use of torture or for some other reason. Independent, credible and impartial investigations of NDS officials alleged to have tortured or ill-treated detainees have not been undertaken to date.

NDS instituted its sub-directorate for human rights in 2012, but this mechanism is inadequately staffed. It is an internal mechanism that appears to lack the authority or independence to conduct rigorous investigations, ensure penalties are imposed for abusive conduct or to refer cases of torture for prosecution. UNAMA is not aware of any cases where the sub-directorate has found the use of torture. Instances have occurred in which NDS sub-directorate inspectors have reportedly threatened detainees against making complaints. In one instance, a member of the sub-directorate told a detainee who was providing information of ill-treatment, *"Be careful. I may be a human rights officer, but don't forget I am NDS first!"*<sup>72</sup> Such an example shows the limits of an entirely internal oversight mechanism.

Similarly, the Ministry of Interior reported it investigated the use of torture in ANP facilities throughout Afghanistan. According to the MoI Human Rights Department, few reports of torture and ill-treatment were received and there were no prosecutions of ANP police officers. UNAMA's October 2011 report noted several internal oversight offices within the MoI structure, but highlighted that these mechanisms were not coordinated or coherent in how they fulfilled their mandates. While these offices may provide a level of oversight, they have not proven an effective deterrent to police torture, ill-treatment and misconduct. MoI appears to have addressed this concern through the issuance of new directives and policies prohibiting torture within their existing structures. However it is unclear how or whether leadership of the Ministry of Interior has enforced these directives.

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<sup>71</sup> In NDS Kandahar, Director General Dr. Muhammad Naeem and the Deputy Director Col Abdul Wahab were temporarily replaced by Isa Muhammad and Muhammad Ishaq respectively on 27 September 2011. In January 2012, Director of NDS Kandahar General Momin became the NDS director for Saripul province who was replaced in Kandahar by Faiz Mohd Khan. In NDS Khost, Director Akhtar Mohammad Ibrahim was replaced by Deputy Director Mr. Abdul Qader (OIC) in August 2011. In Department 124, Director Dr. Zia was replaced by General Mohammad Halim in September 2011. In NDS Laghman, Director Noor Khayder was replaced by General Mohammad Qasim Ebadi in June 2011. In NDS Kapisa, Director General Jamuallah was replaced by Colonel Ahmad Gul Massoud in February 2011.

<sup>72</sup> Detainee 219.

Plans to create an independent police ombudsman's office, with the cooperation of the European Union Police Assistance Mission (EUPOL) and the Afghanistan Independent Human Rights Commission are underway. This mechanism was to be introduced over nine months ago, however the Ministry of Interior has delayed implementation creating concerns the office will not be established.

The absence of meaningful deterrents and disincentives to use torture means that its use will continue. Rigorous external (and internal) oversight mechanisms are not in place to monitor NDS, ANP or ANA personnel and ensure that allegations of torture are investigated, prosecuted and reported. The lack of a robust, independent investigation process or the real possibility of criminal prosecutions, leaves NDS and ANP officials with little incentive to stop torture. No accountability means that torture will persist.

### ***Lack of Due Process Protections and Widespread Arbitrary Detention***

Torture also continues to be used because NDS and ANP officials consider it the most effective way to obtain a confession to convict individuals for conflict-related crimes and in their view get them off the battlefield. Afghanistan's criminal justice system relies almost entirely on confessions as the primary basis to prove a case and justify a conviction.

Afghanistan's Constitution and Interim Criminal Procedure Code contain due process guarantees that protect detainees from the use of torture. Many of these provisions, however, are routinely ignored, such as the time limits for holding detainees in police or NDS custody, for prosecutor's investigations and filing of indictments, and the general prohibition against using evidence gained through torture as the basis for prosecution or conviction at trial.

UNAMA notes that confessions are rarely examined at trial or challenged by the judge or prosecutor as having been coerced.<sup>73</sup> This practice violates Afghan law and Afghanistan's obligations under international law, including the prohibition against using evidence gained through torture in *the Convention against Torture*.<sup>74</sup> In addition, the acceptance of forced confessions fails to consider the breadth of academic and expert research that shows information obtained through torture is manifestly unreliable and non-probative of an individual's guilt or innocence.<sup>75</sup> UNAMA was not

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<sup>73</sup> While UNAMA recognizes that prosecutors are unlikely to challenge the validity of a confession gained through torture at trial, prosecutors nevertheless do have an obligation not to move forward with an indictment in cases where they are aware or suspect that the information upon which an indictment is based was gained through torture. Many prosecutors noted to UNAMA that they are often not involved until the very latest stage of criminal investigations when they have ceded their investigatory authority to NDS under the MoU that exists between the Attorney General's Office and NDS. Additionally, many detainees stated that they never spoke to an NDS prosecutor prior to the beginning of their trial, thus making it extremely unlikely that a detainee could have alerted a prosecutor that their confession was made under duress or due to torture. This further raises the possibility that prosecutors, by prosecutors ceding their investigatory authority to NDS in many cases makes them complicit in torture that has occurred.

<sup>74</sup> Article 15 states "Each State party shall ensure that any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except if the statement is used against a person accused of torture as evidence that the statement was made."

<sup>75</sup> Report of the Special Rapporteur on Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, Juan E Mendez, to the UN Human Rights Council February 2011, and UNAMA's October 2011 report, *Treatment of Conflict-Related Detainees in Afghan Custody* at page 7. See generally recent (December 2012) statements of US Senator Feinstein, Chair of the US Senate Intelligence Committee on

able to gather information on the subsequent use by Afghan or international forces of any information obtained through torture or the reliability or result of having such information.

Although figures varied depending on the institution UNAMA found that the average time suspects undergoing preliminary investigations spent in the custody of all law enforcement authorities far exceeded the 72 hour legal time limit indicating widespread arbitrary detention.<sup>76</sup> For conflict-related detainees – in custody for preliminary investigations – the average length of detention observed was as follows:<sup>77</sup>

- Detainees in provincial NDS facilities were held for an average of 19.6 days.
- In NDS Department 124 – where “high value” suspects, including persons suspected of being Anti-Government commanders or involved in high-profile attacks – suspects were held for an average of 9.5 days, representing a decline of 5.5 days from the previous 12-month period.
- In NDS Department 40, which focuses on investigations, detainees were held for an average of 55 days, representing a steep decrease from the previous one-year period where UNAMA found detainees were held for an average of 126 days.
- In NDS Kandahar, detainees were held for an average of 21 days.
- Detainees were held in ANP facilities for an average of seven days.<sup>78</sup>
- Detainees were held by international military forces on average for 3.6 days.

Not complying with legal time limits for holding detainees also frustrates the role of courts in prohibiting torture. One judge told UNAMA that it was difficult to refer defendants who allege torture to medical examiners to verify claims a confession was coerced because NDS held the defendant beyond the legal limits for pre-trial detention. By the time the courts were able to refer a defendant to a medical doctor, all physical signs of torture or ill-treatment had faded. Most judges and prosecutors interviewed reported that in the absence of physical signs of torture on detainees, they had no way to provide evidence of torture or ill-treatment.

Some judges and prosecutors also highlighted the sensitive relationship between judicial personnel and the NDS, raising concerns of personal security and risk of retaliation in handling allegations of torture by NDS officials. Defence lawyers and medical staff voiced the same concerns when representing or examining alleged torture victims.

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the Committee’s Study of the US Central Intelligence Agency’s Detention and Interrogation and use of enhanced interrogation techniques and its negative consequences.

<http://www.feinstein.senate.gov/public/index.cfm/2012/12/feinstein-statement-on-cia-detention-interrogation-report>.

<sup>76</sup> NDS and ANP are allowed by law to detain suspects for up to 72 hours after which time they are legally required to transfer detainees to a facility managed by the Central Prisons Directorate now under the Ministry of Interior.

<sup>77</sup> These figures are based on official arrest and transfer dates gathered from detainees, registries, prosecutors, and judges and include information on the cases of 552 conflict-related detainees and 78 common crime detainees for whom UNAMA was able to gather information.

<sup>78</sup> In its 14 January 2013 response to this report attached as Annex IV, the Ministry of Interior stated that of 6,177 accused persons detained in police detention facilities “only 88 were kept in [police custody] longer than 72 hours.” MoI did not provide details on the timeframe or basis of their figures (i.e. whether the figure represented the number of persons presently detained or a total figure compiled over a given time period).

Afghan law gives detainees the right to access to defence counsel at the time of arrest, yet in practice UNAMA found that NDS almost never allowed counsel to visit clients until after completion of the initial investigation. Only two of the detainees interviewed reported they had access to defence counsel during interrogation.<sup>79</sup> UNAMA observed that in almost all NDS facilities it visited detainees were permitted to have family visits twice a week but only after NDS had completed its investigation.

A number of defence lawyers informed UNAMA they had received complaints of torture from clients who cited the NDS as a source of ill-treatment, stating that while complaints of torture by the ANP continued to be received, they had observed some improvement in access to detainees in some ANP facilities.<sup>80</sup> As torture in Afghanistan most often takes place during *incommunicado* detention,<sup>81</sup> access to a lawyer at all stages of criminal proceedings, including preliminary investigation, can serve as a deterrent to torture and ill-treatment.

A further concern is that although torture is a criminal offence under the Afghan Penal Code, it is not defined in the Penal Code or in any other Afghan legislation. While “torture” is prohibited, the law does not explicitly define the elements of the crime. Several judges and prosecutors told UNAMA that the lack of a full definition makes it difficult for them to prove or find torture. As yet, the international definition of torture does not appear to have been incorporated into Afghan law or policy.<sup>82</sup>

These routine violations of due process obligations by Afghan officials continue to frustrate the Constitutional prohibition against torture. The failure of the criminal justice system to dismiss forced confessions or to investigate and prosecute torture cases enables NDS, ANP, ANA and ALP officers to continue to use torture with impunity.

### **The Way Forward**

Monitoring and inspections of detention facilities by independent monitors are an essential element in creating a culture of accountability and humane treatment of detainees. International human rights standards and best practices provide a framework for such mechanisms, particularly the *Optional Protocol to the International Convention against Torture and Cruel, Inhuman and Degrading Treatment* which requires member states to create and fund “National Preventative Mechanisms (NPMs).” In most cases, these expert investigative bodies are necessarily national in character, independent of the Government, and coordinated by a national human rights

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<sup>79</sup> See the section in this report on *Due Process and the Criminal Justice System’s Response* for detailed findings on detainee’s access to defence counsel. Several UN bodies and standards reinforce a detainee’s right to family visits from an early stage of detention.

<sup>80</sup> A low number of defence lawyers are practicing in Afghanistan compared to the number of detainees requiring legal representation. According to the Afghanistan Independent Bar Association, 1,406 defence lawyers were registered in Afghanistan as of 4 September 2012. Defence lawyers are working in only 31 of 34 provinces in Afghanistan (Nuristan, Uruzgan and Zabul do not have any defence lawyers registered). According to Central Prisons Directorate (CPD) monthly statistics, approximately 24,027 detainees and prisoners were held in CPD prisons in Afghanistan as of October 2012. Ministry of Justice monthly statistics indicated 976 juvenile detainees and prisoners were held in JRCs in Afghanistan as of 20 October 2012.

<sup>81</sup> See Report of UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 17 December 2002: E/CN.4/2003/68, at § 26(g).

<sup>82</sup> Article 7.3 of the new draft Criminal Procedure Code, currently before parliament, includes some elements of a definition to the crime of torture including a distinction of physical and psychological forms of torture. These revisions, however, still fall short of the international definition of torture.

institution. The mechanism should have a mandate ensuring free and open access to all places of detention codified by law with funding from the Government and a budget safeguarded from political interference.<sup>83</sup>

Afghanistan is a State party to the *Convention against Torture* but has not yet become party to its *Optional Protocol (OPCAT)*. As a first step in this direction, the Government and international donors could explore and prepare for the creation of a national preventative mechanism (NPM) to strengthen monitoring and inspection of detention facilities together with other efforts to prevent torture. Such a mechanism could be created under the auspices of the Afghanistan Independent Human Rights Commission (AIHRC) which could take a coordination role or, if properly resourced, assume the role of the mechanism. NPMs in line with OPCAT have been established successfully in national human rights institutions in other countries. The AIHRC's existing capacity would need to be strengthened as a platform for such a dedicated detention monitoring unit. International donor support could be solicited to start up the platform and provide appropriate personnel, training, inspectors and other support.

UNAMA and civil society could also provide support to the mechanism by seconding existing Afghan experts (of diverse background and focus such as investigation, medical and forensic personnel) in its initial stages to facilitate its operation. These inspectors should be empowered to conduct full inspections and to engage regularly with the Government providing recommendations on how to improve treatment, conditions and where to refer complaints about torture and ill-treatment to ensure and encourage accountability.

### **Response of the Government of Afghanistan to Report Findings**

In response to this report's findings, the Government of Afghanistan, the NDS and the Ministry of Interior prepared a detailed written response and comments dated 14 January 2013 attached as Annex IV to this report.<sup>84</sup> Their response noted that while the Government does not completely rule out abuse and ill-treatment by detention center staff due to lack of capacity and sound training in these institutions, the level of alleged torture reflected in this report is exaggerated. Afghan authorities outlined a range of measures they stated they taken to address allegations of torture to date including expanded training, investigations into a range of human rights concerns, issuance of orders and policy directives, inspections and new or reinforced human rights units.

Both the Ministry of Interior and NDS stated they reject the existence of systematic torture in their facilities and NDS noted that it rejects reports of hidden and alternate detention centers. The Government together with NDS and the Ministry of Interior stated they are ready to consider recommendations for the consolidation of law and order in detention centers, ensuring rights of detainees and realization of justice.<sup>85</sup>

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<sup>83</sup> Examples of countries that have ratified the *Optional Protocol* and established a national preventive mechanism on torture include Albania, Azerbaijan, Croatia, Kazakhstan, Mali, Nicaragua, Serbia, Slovenia, Macedonia, Tunisia and Turkey.

<sup>84</sup> Response of the Islamic Republic of Afghanistan on Draft Annual Report of Human Rights Section of Human Rights of UNAMA (Office of National Security Council, Ministry of Interior and National Directorate of Security), 14 January 2013 attached as Annex IV to this report.

<sup>85</sup> In its response to this report dated 14 January 2013 attached as Annex IV, NDS states their "interest in improving their investigative affairs" and made assurances of its commitment to "ensure the rule of law in its detection and investigation processes." The Ministry of Interior stated it "believes that to completely



## Observations

The use of torture mainly for purposes of obtaining confessions or information is a long-established practice in Afghan detention facilities. Changes in this practice will require a concerted effort by the Government with sustained support from international partners. Since the release of UNAMA's October 2011 report, the Government and international actors have focused on skills training, awareness-raising and inspection/monitoring mechanisms as the primary means to root out torture and abusive detention practices. This has produced only marginal improvements in preventing the use and prevalence of torture.

UNAMA notes that a majority of NDS and ANP officials do not accept that torture is ineffective and counter-productive as a tool to obtain strategically valuable and actionable intelligence to fight terrorism and conflict-related activities, let alone a serious crime under Afghan and international law. This situation demonstrates the need for more focused training on modern and effective interrogation techniques, but also, more critically, rigorous monitoring and accountability measures.

Torture, ill-treatment and arbitrary detention of conflict-related detainees by Afghan authorities are not only serious human rights violations and crimes but can serve as obstacles to peace and reconciliation processes. Such abuses arguably contribute to an entrenched lack of confidence in Government institutions and in some cases radicalization of former detainees and communities.<sup>86</sup>

Torture will only stop once there are effective deterrents to its use. Without the risk of losing one's job or prosecution, it is likely that torture will continue in spite of efforts of NDS, ANP and ANA officials and international donors and agencies to address torture.

The culture of torture in Afghan detention facilities can only be addressed by taking several short-term and long term steps to ensure that police and NDS investigators are retrained, augmented by new professionals, and held accountable by independent and civilian inspection and oversight mechanisms. Judges and prosecutors have a central role as evaluators of evidence and enforcers of due process safeguards in the Afghan Constitution. As such, judges and prosecutors should also be held accountable for failing to dismiss evidence and confessions gained through torture.

It is critical to reinforce the Government's obligations under Afghan and international law to investigate promptly all acts of torture and other ill-treatment, prosecute those responsible, provide redress to victims and prevent further acts of torture. The Government's obligation is *non-derogable* – meaning that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency can be invoked to justify torture. United Nations mechanisms also emphasise that effective counter-terrorism measures require compliance with

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eliminate violations and ill-treatment of detainees, to improve their living conditions and to ensure full enforcement of legal provisions in prisons, more time is required.”

<sup>86</sup> See pages 9-10 of UNAMA's report *Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, 10 October 2011) available at [http://unama.unmissions.org/Portals/UNAMA/Documents/October10 %202011 UNAMA Detention Full-Report ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10%202011%20UNAMA%20Detention%20Full-Report%20ENG.pdf). A Taliban spokesperson, Zabihullah Mujahid, issued a statement on 12 October 2011 in response to UNAMA's October 2011 report which claimed “torture has been rife in detention facilities of the Kabul regime.” The Taliban called on the UN and human rights groups “to prevent and pay attention to this matter” and that such attention was long overdue.

human rights and that torture and ill-treatment by State officials undermine national security.<sup>87</sup>

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

## **Key Recommendations**

UNAMA made 25 recommendations to the Government of Afghanistan and international partners in its October 2011 report. Annex II sets out the current status of implementation of these recommendations. Two of 14 recommendations to Afghan authorities have been fully implemented over the last year (NDS changing its policy permitting access of detainees to family members and ANP issuing and implementing/training officials on legal obligations on the prohibition against torture) with eight partially implemented and four not implemented. All four recommendations to troop contributing countries and concerned States have been implemented.

UNAMA reinforces its existing recommendations and offers further recommendations to assist the Government and international partners to address torture and ill-treatment in detention facilities and arbitrary detention.

### **To the National Directorate of Security (NDS)**

- Take measures to stop and prevent torture and ill-treatment at all NDS facilities and particularly at facilities where such practices have been used as a method of interrogation.
- Investigate all reports of torture and ill-treatment at provincial NDS facilities in Faryab, Herat, Jawzjan, Kandahar, Khost, Kunduz, Laghman, Nangarhar, Paktika, Takhar and NDS Department 124 and NDS Department 40. Such investigations should be credible, effective and impartial and focus on alleged criminal conduct of NDS officials.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.
- Remove, discipline and punish, including referral of to military prosecutors, those officials found responsible for torture or ill-treatment of detainees including suspension and loss of pension and other benefits.
- Cease the use of and close all unofficial places of detention.
- Permit full, regular and unhindered access of independent monitors (including AIHRC, UNAMA and others) to all NDS facilities (including NDS Department 124);
- Require that all interrogations are audio or video recorded (where CCTV is available) and to be made available to prosecutors, judges or any independent oversight and complaints mechanisms that request access.
- Establish an electronic centralized register and record of all detainees held in NDS custody and ensure that it is openly accessible to independent monitors (including AIHRC, UNAMA and others) and is updated regularly and in a transparent manner.
- Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of

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<sup>87</sup> See the *UN Global Counter-Terrorism Strategy and Plan of Action* and work of the *UN Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*. Available at <http://www.un.org/terrorism/terrorism-hr.shtml>.

age – are given legally required considerations and protections while they undergo criminal investigation and processing, and transfer to juvenile facilities.

- Ensure that child detainees are held in wholly separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.

### **To the Ministry of Interior (MoI) and Afghan National Police (ANP)**

- Take steps to stop and prevent torture and ill-treatment by ANP and ALP particularly at facilities and locations where such practices have been used as a method of interrogation.
- Investigate all reports of torture and ill-treatment by ANP and ALP at the provincial ANP detention facilities in Baghlan, Helmand, Herat, Kandahar, Paktika, Takhar and Zabul and in districts where ALP are deployed in Faryab, Kunduz, Kandahar and Uruzgan.
- Cease the use and close all unofficial places of detention.
- Remove, discipline and punish, including referral of to military prosecutors, all ANP and ALP officers and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.
- Permit full, regular and unhindered access of independent monitors to all ANP and Ministry of Interior CPD prisons including the AIHRC, UNAMA, and others.
- Issue transparent and legally-binding guidelines regulating ALP powers to detain and ensure that ALP units receive full training on such guidelines.
- Require that all interrogations are audio or video recorded (where CCTV is available) and to be made available to prosecutors, judges, or any independent oversight and complaints mechanisms that request access.
- Change policies and practices on access of defence lawyers to detainees. Permit defence lawyers to visit all detention facilities and offer their services to any detainee from the point of arrest and at all stages of the process (including during interrogation) as required by Afghan law.
- Ensure that all ANP investigators/interrogators participate in mandatory training in lawful and alternative interrogation and interview techniques.
- Establish an electronic centralized register and record of all detainees held in ANP custody and ensure that it is openly accessible to independent monitors (including AIHRC, UNAMA and others) and is updated regularly and in a transparent manner.
- Establish a commission consisting of senior representatives within the Ministry of Interior and key international partners (including ISAF, UNAMA, and key international agencies and donors) to review implementation of measures - including the recommendations in this report - aimed at eradicating the use of torture in the ANP and ALP.
- Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of age – are given legally required considerations and protections while they go through criminal investigation, processing, and transfer to appropriate juvenile facilities.

- Ensure that child detainees are held in wholly separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.

### **To the Afghan National Army (ANA)**

- Take steps to stop and prevent torture and ill-treatment at all places where ANA holds detainees, particularly those locations where such practices have been used during interrogation.
- Investigate all reports of interrogators using torture and ill-treatment in Farah, Herat, Badghis, Kabul (Surobi), Laghman and Kandahar.
- Discipline, court-martial and punish all ANA personnel and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.
- Permit full, regular and unhindered access of independent monitors to all ANA places where conflict-related detainees are held, including the AIHRC, UNAMA, and others.

### **To the Government of Afghanistan**

- Establish an independent oversight and accountability mechanism modelled on the national preventive mechanism (NPM) in the Optional Protocol to the Convention against Torture (OPCAT) – possibly within the Afghanistan Independent Human Rights Commission – with the power (1) to conduct regular unannounced visits to detention facilities, (2) to authorize independent forensic medical examinations to confirm allegations of torture, (3) to conduct impartial and transparent investigations into alleged torture in NDS and ANP facilities, and (4) to make recommendations to detaining authorities and other institutions on the best means to redress torture and ill-treatment in detention facilities, including the referral of cases to the Attorney-General’s Office for investigation – possibly by anti-corruption prosecutors.
- Require all medical personnel and detention facility managers to disclose medical evidence of torture to the external, independent oversight and accountability mechanism and that appropriate professional penalties and financial sanctions are in place – administered by the oversight and accountability mechanism -- to enforce these obligations.
- Make the legal framework and procedures regulating NDS public and transparent, and ensure legal procedures provide for the external investigation and prosecution of allegations of serious criminal conduct, including torture and ill-treatment of detainees by NDS officials in the civilian criminal justice system.
- Ensure that sufficient legal aid is available in all provinces, including independent legal aid providers, and that their access to conflict-related detainees held in NDS and ANP facilities is ensured within the constitutionally-mandated timeframes.
- Require that all conflict-related detainees receive a full medical examination upon arrival at NDS and ANP facilities.
- Sign and ratify the Optional Protocol to the International Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).
- Invite the UN Special Rapporteur on Torture to visit Afghanistan.

- Complete and file the initial State report of Afghanistan with the expert UN Committee against Torture on Afghanistan's implementation of the Convention against Torture.
- Revoke the MoU between NDS and the AGO to ensure that prosecutors retain their investigative authority and can interview detainees still in NDS detention before transfer to a CPD prison.

### **To the Supreme Court**

- Issue instructions requiring primary and appeal court judges to investigate routinely all allegations of torture and coerced confessions and enforce strictly the prohibitions on the use of evidence obtained through torture as required by the Constitution of Afghanistan and Interim Criminal Procedure Code.
- Develop detailed guidance to primary and appeal court judges defining the crime of torture to include all elements of the international definition of torture within CAT.
- Direct judges to reject confessions obtained through torture as permissible evidence.<sup>88</sup>
- Remove and/or dismiss judges that continue to accept confessions obtained through torture or coercion as admissible evidence of guilt at trial in court.

### **To the Parliament**

- Ensure that the crime of torture is properly defined, including all elements of the international definition of torture within CAT, in the draft revisions of the Criminal Procedure Code and the Penal Code currently underway.
- Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.
- Revise Afghan legislation to guarantee the right of detainees to challenge the legality of their arrest and detention in Afghan courts.

### **To the Attorney General's Office**

- Issue mandatory instructions to all prosecutors to reject confessions obtained through torture as permissible evidence upon which to base an indictment or a prosecution at trial.
- Ensure that any Supreme Court instruction to judges regarding the definition of torture and the elements of that crime are transmitted to prosecutors at all levels.
- Remove and/or dismiss prosecutors which fail in their duties to impartially and fully investigate allegations brought to their knowledge of torture and ill-treatment of detainees by Afghan officials of the NDS, ANP and ALP.
- Conduct independent, impartial investigations into allegations of torture and ill-treatment of detainees by Afghan officials of NDS, ANP and ALP. Consider assigning anti-corruption prosecutors from the High Office of Oversight and Anti-Corruption to conduct such investigations and prosecutions.

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<sup>88</sup> It should be noted that the draft Criminal Procedure Code contains specific references to the obligations to reject the use of torture as a basis of evidence in criminal cases, including Article 22 on the prohibition of use of evidence obtained through coercion and torture; Articles 150-153 on coerced confessions). It is also notable that Article 4(36) provides definition of "confession" as a voluntary admission "and in a sound state of mind without duress before an authorized court".

- Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.

### **To the International Assistance Security Force (ISAF)**

- Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment in compliance with their obligations under international law and other national legal frameworks.
- Review monitoring practices at each NDS and ANP facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture.
- Review and strengthen the effectiveness, where appropriate, of its detention facility monitoring programme and implementation of its six-phase Programme, particularly the communication and accountability components.
- Monitor measures to stop and prevent torture and ill-treatment by ALP particularly in those locations where such practices have been used as a method of interrogation or abuse including in Faryab, Kunduz, Kandahar and Uruzgan.
- Ensure that ALP units are properly trained in the prohibitions against torture and in the transparent legal guidelines governing their powers to detain suspects.
- Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite regular inspections and monitoring by international organizations and national human rights institutions.
- Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police and Afghan Local Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in their detention facilities.

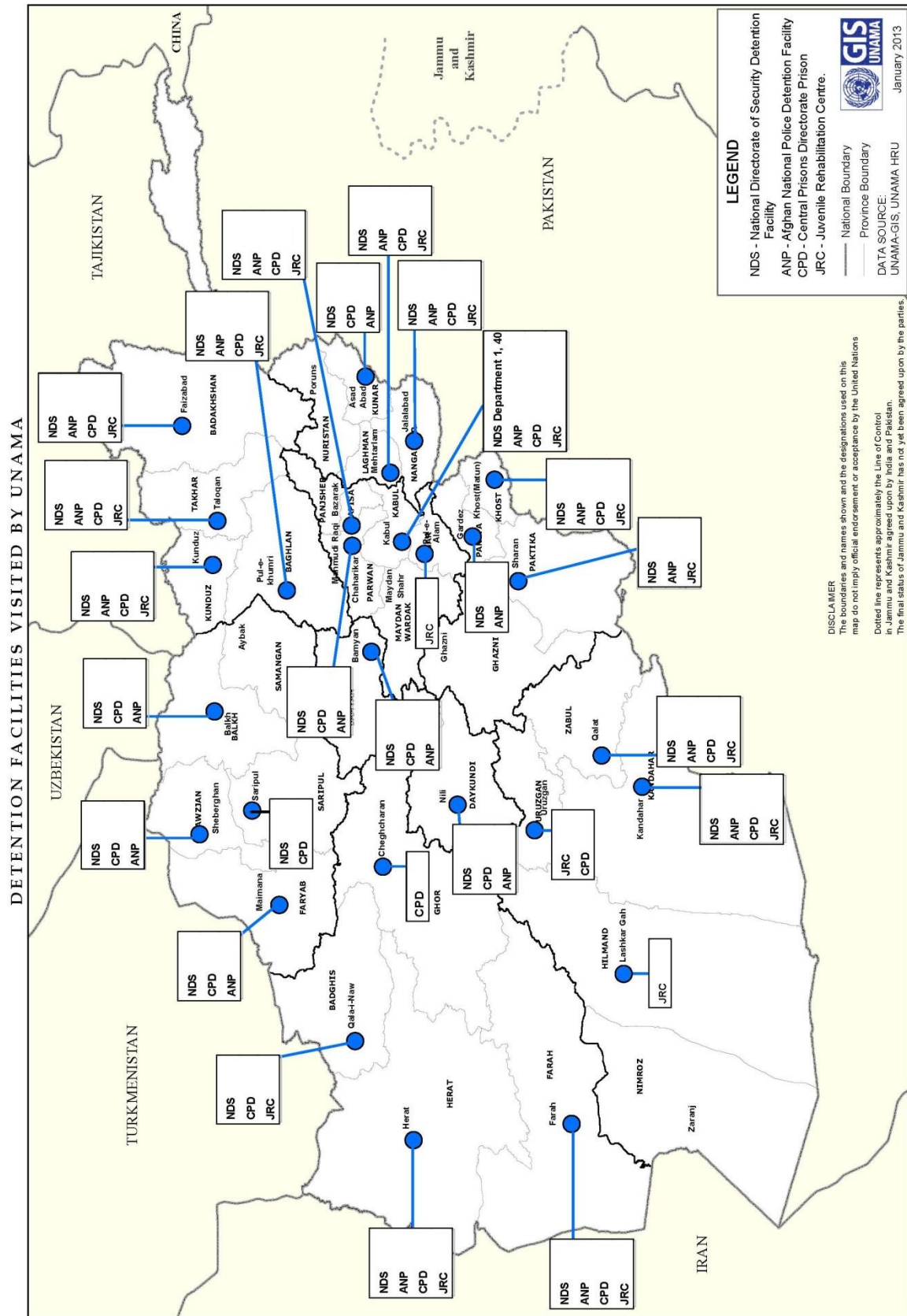
### **To Troop Contributing Countries and Concerned Donor States**

- Establish or reinforce currently existing or planned detainee monitoring schemes for tracking treatment of detainees transferred by national contingents to Afghan facilities.
- Ensure that the use of torture is considered when making determinations on funding of projects or providing overall support or assistance to implicated Afghan institutions or ministries.
- Include, as a matter of urgency, the need to hold perpetrators of torture accountable as a key progress and conditionality indicator under Area 2 of the Tokyo Mutual Accountability Framework on Governance, Rule of Law and Human Rights.
- Continue or increase funding for legal aid providers and related legal defence counsel support projects as a means of assisting the observance of due process guarantees and safeguards against torture and inadmissibility of evidence gained through its use.
- Ensure that all training schemes and projects supporting the NDS, the NDS Academy, Ministry of Interior, or the ANP target investigative officers and their staff and

including mandatory practical skills training on non-coercive interview and interrogation techniques as well as on training on human rights, particularly practical examples of how the prohibition of torture has been implemented.

- Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite regular inspections and monitoring by international organizations and national human rights institutions.
- Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in their detention facilities.

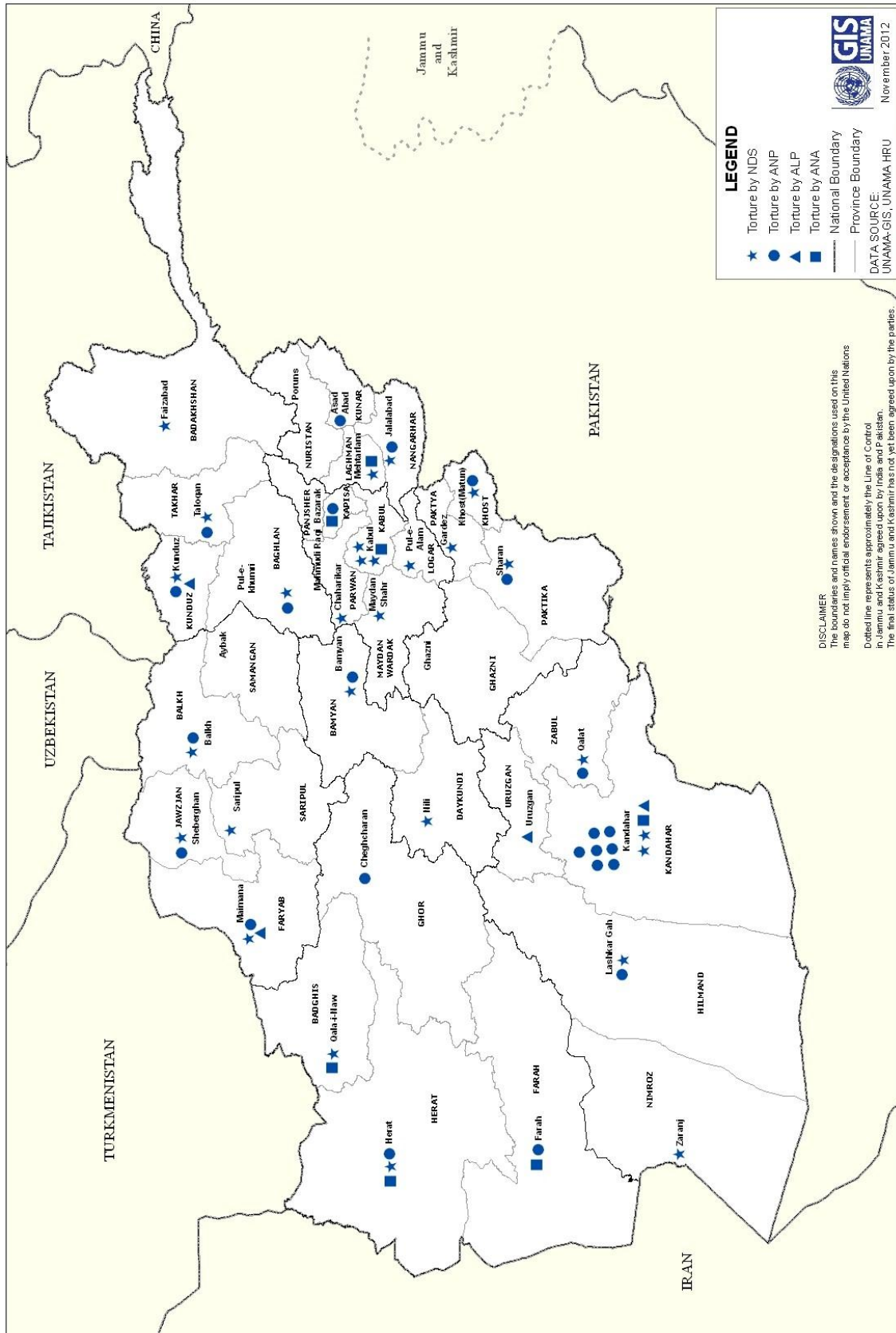
# Map 1: Detention Facilities Visited by UNAMA





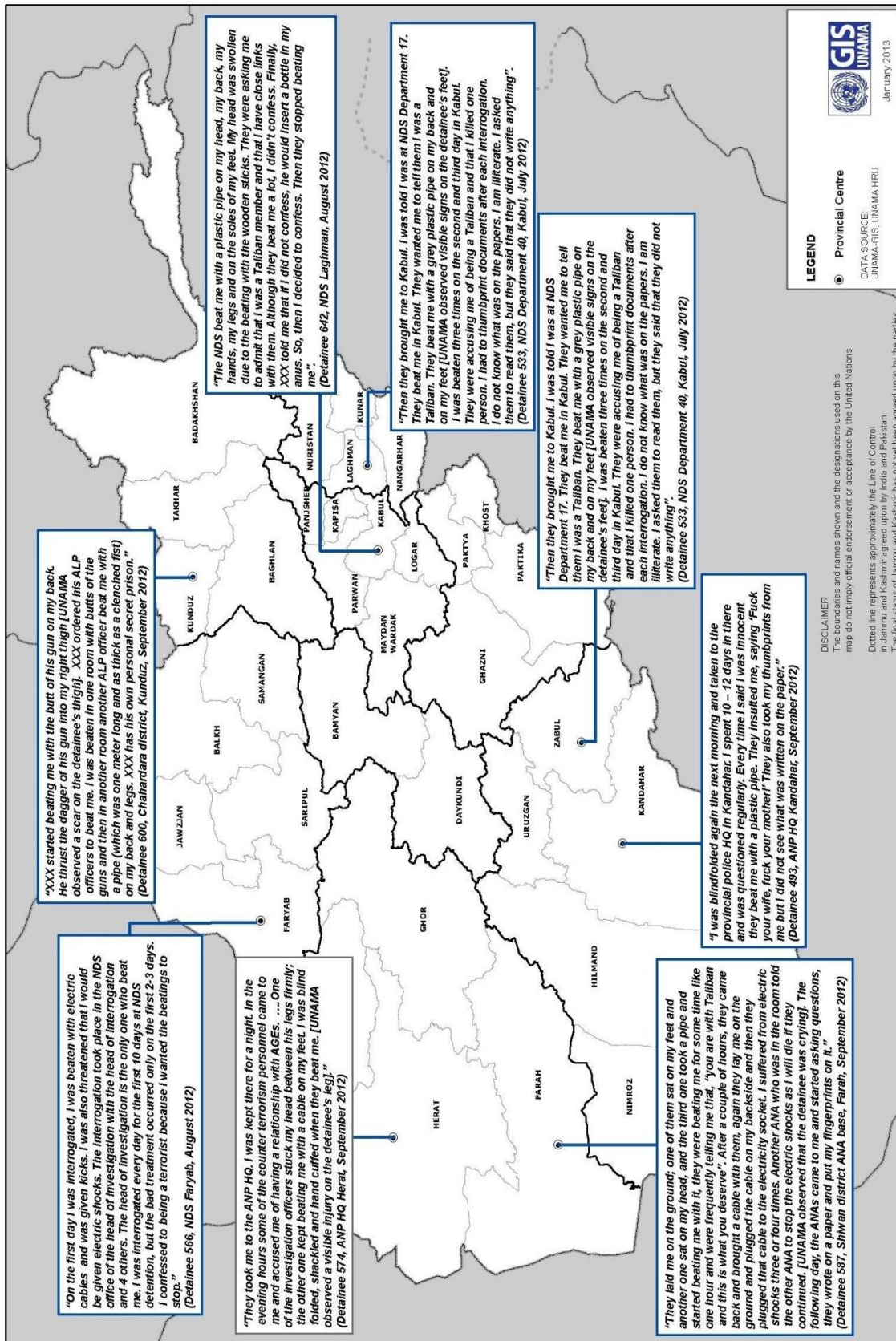
## Map 2: Detention Facilities where Incidents Occurred

DETENTION FACILITIES WHERE INCIDENTS OF TORTURE OCCURRED



# Map 3: Detainee Accounts of Treatment in ALP, ANA, ANP and NDS Locations

## DETAINEES' ACCOUNTS OF TORTURE BY ALP ANA ANP AND NDS



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1st Edition

## Treatment of Detainees by the National Directorate of Security

NDS derives its mandate from the *National Security Law* governing its functions, conduct and activities which include “ensuring national security” and “fighting against terrorism”.<sup>89</sup> Headed by the National Security Director, who reports directly to the President of Afghanistan, NDS is responsible for all intelligence and information gathering including foreign intelligence, counter espionage, terrorism and all other issues relating to national security and foreign affairs.

### Overview

Between October 2011 and October 2012, UNAMA interviewed 514 persons held by the NDS in 32 detention facilities in 30 provinces<sup>90</sup>. Sixty-eight detainees were held in two NDS detention facilities at different times, 18 were held in three NDS detention facilities at different times and three detainees were held in four NDS detention facilities at different times totalling 601 instances of NDS detention in the sample. 151 of 514 were also held by ANP or ANBP. 178 of 514 detainees (34 per cent) reported they had been tortured or ill-treated while in NDS custody.

Reported forms of torture included beatings (with cables, pipes or wooden sticks), electric shocks, and suspension (being hung by the wrists from chains attached to the wall, iron bars or other fixtures for lengthy periods). Other forms of torture and ill-treatment reported included stress positions (such as forced prolonged standing, standing and sitting down repeatedly and standing outside in cold weather conditions for long periods) and threats of sexual violence. Detainees often reported being either blindfolded or hooded when being moved from room to room or facility to facility. UNAMA found that detainees in provincial NDS facilities were held for an average of 19.6 days beyond the 72 hour time limit as prescribed by the Police Law 2005<sup>91</sup>.

### Evidence of systematic torture at two NDS Facilities

Based on rigorous analysis and corroboration of evidence, UNAMA found sufficiently credible and reliable evidence of systematic torture<sup>92</sup> in the national facility of the NDS Counter-Terrorism Department 124 in Kabul and at the provincial headquarters of Kandahar. See map 5).

### Sufficiently Credible and Reliable Incidents of Torture at ten other NDS Facilities

In four other NDS provincial facilities in Herat, Khost, Laghman, and Takhar that UNAMA previously identified in October 2011, UNAMA documented sufficiently credible and reliable incidents of torture.

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<sup>89</sup> Issued by an unpublished Presidential decree on 4 November 2001 (Decree no. 89, 13/12/1380), article 6.

<sup>90</sup> Badakhshan, Badghis, Baghlan, Balkh, Bamyán, Daikundi, Farah, Faryab, Ghor, Helmand, Herat, Jawzjan, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Nimroz, Paktika, Paktya, Parwan, Sari Pul, Takhar, Uruzgan, Wardak and Zabul.

<sup>91</sup> Article 25 of the *Afghan Police Law 2005* states that police can hold a suspect in custody for up to 72 hours after which time they are required to transfer detainees to a facility of the Central Prisons Directorate.

<sup>92</sup> See the section on *Access and Methodology* for a definition of systematic use of torture.

UNAMA also found sufficiently credible and reliable incidents of torture in the provincial facilities of Faryab, Kunduz, Nangarhar, Paktika and the national facility of NDS Department 40 in Kabul. (See map 5).

### **Other NDS Facilities**

UNAMA interviewed numerous detainees who had been held at 16 other NDS facilities. These include the provincial NDS facilities in Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Daikundi, Helmand, Kabul Department 1, Logar, Nimroz, Paktya, Parwan, Sari Pul, Wardak and Zabul. Twenty-one out of the 108 (19 per cent) detainees interviewed who were held in these 16 facilities reported that they had been ill-treated or tortured. At the time of writing, UNAMA had yet to establish the credibility of these allegations based on the number of interviews conducted and the need to corroborate allegations satisfactorily.

### **Facilities where no evidence of torture was found**

In two NDS facilities – Farah and Ghor - no evidence of torture was found at the time of UNAMA's visits. In the case of NDS Paktya, where UNAMA found no evidence of ill-treatment in the October 2011 report, UNAMA found one detainee who reported that he was ill-treated during interrogation.<sup>93</sup>

### **Decline in number of detainees in some NDS facilities**

Following the publication of UNAMA's report in October 2011, UNAMA observed a marked decline in the number of detainees held in some NDS provincial detention facilities. In Herat provincial NDS facility, for example, UNAMA had previously found between 13 and 33 detainees during visits, but only six detainees were held on average in the facility over seven visits conducted by UNAMA from October 2011 to September 2012. According to the Director of NDS Herat, the decline in the detainee population was part of a policy to prevent overcrowding in the NDS detention facility, which was agreed with the local NDS prosecutor's office.<sup>94</sup>

UNAMA observes, however, that ANP, in particular, have taken on a much greater role in arresting and detaining conflict-related detainees. Once arrested, these detainees are not transferred to NDS, as had been past practice, but are held at the ANP facilities and investigated and interrogated by NDS. In some cases, it appears that ANP were charging these detainees with regular common crimes, rather than national security crimes. This raises serious questions suggesting a possible attempt by NDS to reduce the level of scrutiny that they received from UNAMA and other organizations inspecting and observing treatment of detainees.

From November 2011 to October 2012, UNAMA made 19 visits to detention facilities (NDS, Central Prisons Directorate (CPD) prisons and Juvenile Rehabilitation Centres (JRC)) in Laghman, finding 17 conflict-related detainees in custody to interview during this 12 month period. Over a two-month period, UNAMA found 5 out of 17 detainees reported torture or ill-treatment by NDS (the most recent report dates back to August 2012).<sup>95</sup> By comparison, during a five-month period in 2011 (January to May) UNAMA conducted eight visits to Laghman and found a total of 21 detainees present in the NDS

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<sup>93</sup> Detainee 333.

<sup>94</sup> UNAMA meeting with NDS chief prosecutor, 4 April 2012, Herat.

<sup>95</sup> Detainees 90, 95, 98, 588 and 642.



facility, CPD prison and the JRC. Throughout the period in which UNAMA visited the facility, NDS appears to have made few conflict-related arrests.<sup>96</sup> During the late autumn and winter months, the conflict proceeded at a low intensity in the province. The Director of NDS Laghman also claimed to have received instructions from NDS leadership in Kabul to arrest suspects only when they had obtained sufficient evidence to justify it; he suggested that implementation of this order was a factor contributing to a lower detainee population.<sup>97</sup>

A marked decline in the number of detainees held in NDS Takhar was observed. While previously an average of 11 detainees had been held in this location during UNAMA's visits, after October 2011, UNAMA consistently found very few detainees during subsequent visits. For example, during visits to NDS Takhar in November 2011, UNAMA found only one suspect in detention with six detainees in December 2011 and seven detainees in March 2012. The NDS prosecutor confirmed a reduction in the number of arrests by NDS over that period, citing weather factors and other reasons for the low number of detainees.<sup>98</sup>

At the same time, UNAMA noted an increase in the number of arrests of suspects of national security crimes by the ANP counter-terrorism unit (CTU).<sup>99</sup> This gave rise to concerns that other law enforcement agencies were possibly colluding with NDS specifically because of the treatment of conflict-related detainees, while NDS Takhar was under scrutiny by ISAF, UNAMA and other organizations.

UNAMA is unable to make a determination whether torture continued to be a concern in NDS Kapisa, as too few detainees were in the facility to make a conclusion. Between November 2011 and September 2012, UNAMA found nine detainees at the CPD detention centre in Kapisa who had been detained previously by NDS in Kapisa<sup>100</sup>. Over an 11 month period, three out of nine detainees reported they had been tortured or ill-treated by NDS (the most recent report dates back to December 2011).<sup>101</sup> On every monitoring visit conducted by UNAMA, NDS Kapisa contained no detainees. The NDS Director explained that detainees were never detained for more than 72 hours (in compliance with the Interim Criminal Procedure Code (ICPC) and then transferred to the main MoI prison. He stated that "high profile" detainees, such as alleged key commanders of anti-Government groups and alleged suicide attackers, were transferred to NDS in Kabul for investigation immediately following their arrest and were not kept overnight at NDS Kapisa.<sup>102</sup>

### **NDS interrogation in Unofficial NDS locations**

UNAMA observed over the 12-month period that the ANP took on a much greater role in arresting and detaining conflict-related detainees. Once arrested, many detainees

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<sup>96</sup> During the reporting period, there were 23 suspected AGE's arrested according to various security reports tracked by UNAMA and in those cases not all persons arrested were detained further or charged by NDS or ANP with criminal activity.

<sup>97</sup> UNAMA meeting with NDS Director in Laghman, 7 December 2011, Laghman.

<sup>98</sup> UNAMA meeting with NDS chief prosecutor of Takhar province, 1 February 2012, Takhar.

<sup>99</sup> According to the logbooks (MoI prison in Takhar, ANP detention facility in Taloqan and the NDS prosecutor), 24 conflict-related prosecutions occurred from October to December 2011 and 18 of the 24 were arrested and detained by ANP.

<sup>100</sup> Detainees 102, 103, 197, 198, 233, 234, 330, 388 and 389.

<sup>101</sup> Detainees 103, 388 and 389.

<sup>102</sup> UNAMA Central Region meeting with NDS Director of Kapisa, 29 November 2011, Kapisa.

interviewed were not transferred to NDS, as had been past practice; rather they were held in ANP-run facilities but investigated by NDS officials. In some cases, it appeared the ANP was charging these detainees with common crimes, rather than national security. In Kandahar, for example, UNAMA found that 14 out of the 29 detainees that were not tortured by NDS in Kandahar reported they had been tortured by ANP or ANBP in Kandahar before being transferred to NDS<sup>103</sup> A further two detainees stated they were tortured at an unofficial facility (known as *Mullah Omar's house*) before being transferred to NDS.<sup>104</sup>

### **Torture to obtain confessions**

*"First an interrogator asked two others to tie my hands. They tied my hands behind my back and left the room. The interrogator asked me if I was a Taliban and I said no...The interrogator told me to accept my guilt while he beat me and emphasized, "You are a Talib, and you should accept it. You should accept your guilt or we'll continue to beat you". They beat me on my feet, my legs and my back and I still have pain in my legs. They used a dark white cable around one metre long. I was beaten for two days by the NDS interrogator and after these two days they asked me to thumb print papers. I thought that if I don't thumb print the papers they will kill me. After I thumb printed, the beating stopped. I signed the papers but I don't know what was written because I cannot read and they didn't read it to me. The interrogator who beat me up is a short man with a black and short beard; he is around 30 years old and I think he is from XXX province. If I see him, I would be able to recognize him. One of the other two who tied my hands is XXX."*

**(Detainee 579, NDS Khost, September 2012)**

UNAMA's findings highlight that torture and ill-treatment almost always took place during interrogations and was aimed at obtaining a confession or information. Torture and ill-treatment was generally inflicted early in the interrogation process – with more severe techniques used during the interrogation to 'break' the detainee and force a confession.

Of the 178 detainees who reported they had been tortured or ill-treated at the hands of NDS officials, 137 stated they had made a confession during their interrogation to stop torture. All detainees reported that the torture ceased as soon as they confessed.

Of the 514 detainees held in NDS custody interviewed by UNAMA, only 60 stated they were literate; 92 detainees were forced to thumb-print documents while in NDS custody, 50 of whom stated they had no knowledge of the contents as the statements made were not read out to them. One detainee, whose account was consistent with others received by UNAMA, stated:

*"They beat me in Kabul. They wanted me to tell them I was a Taliban. They beat me with a grey plastic pipe on my back and feet [UNAMA observed visible marks on detainee's feet consistent with injuries described]. I was beaten three times on the second and third day in Kabul. ....They accused me of being a Taliban and that I killed one person. I had to thumbprint documents after each interrogation. I do not know what was on the papers. I am illiterate. I asked them to read them, but they refused".*

**(Detainee 533, NDS Department 40, July 2012)**

<sup>103</sup> Detainees 21, 22, 23, 26, 225, 228, 276, 279, 285, 482, 483, 486, 489 and 492.

<sup>104</sup> Detainees 214 and 287.

## Torture of Children by NDS

*"I am 16 years old. I am from xxx district. I was arrested by NDS. They beat me for the first eight days. After they forced me to confess, then the last four days passed without any problems. One day, they took me for an interrogation to their office and they asked me to sit on a chair. When I sat on the chair, they chained me with that chair. There were two interrogators this time. One of them told me to call to my Allah to rescue me from them. The interrogator told me that no one can help me at this stage. I was forced to admit that I was a Taliban but I did not want to say that. Then, he told me that he has many other possible ways for obtaining a confession from me. He grabbed a one metre long yellow plastic pipe that was under the table and two thick sticks, almost one metre long each, and a glass bottle. He threatened to beat me with the pipe and the sticks and if I did not confess that I am a Taliban member, then the last resort would be pulling down my trousers and pushing a bottle into my anus. I could tolerate the beatings but not the insult. They told me to think and decide to confess, or I will face very bad consequences. The next day, it was my seventh day; they took me again to the interrogation room. There were three interrogators who asked me if I had decided to confess. When I said "no", the three of them attacked me and started punching and kicking me all over my body. The other interrogator told them to beat me on the parts of my body that I will not be able to show to others. He asked the other interrogator to bring the bottle and then pull my trousers down. The other interrogator went to the office to take the bottle while he was beating me. I realized that I could not do anything else except to accept what the interrogators wanted me to admit. The interrogators asked me to write with my own handwriting. I was writing all what he was telling me. After this, he asked me to sign the paper. When I did, the beating stopped. This place [JRC] is like a paradise compared to the NDS.*

[UNAMA observed visible injuries on the back of the child detainee consistent with the treatment described. The sizes of the marks were compatible with the size of the pipe described used to beat him].

**(Detainee 89, NDS XXX, January 2012)<sup>105</sup>**

UNAMA's observation found that of the total number detainees who experienced torture by the NDS, 33 (18 per cent) were children, under the age of 18.<sup>106</sup> In NDS Kandahar, for example, six of the 19 detainees that were subjected to torture were children.<sup>107</sup> All six child detainees described being beaten with cables or sticks on the soles of their feet until they agreed to thumb-print confessions against their will, at which point the ill-treatment ceased.<sup>108</sup>

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<sup>105</sup> All identifying details have been omitted to preserve confidentiality and security.

<sup>106</sup> Child detainees provided consistent accounts of torture in the following NDS-run facilities: Kandahar, six children (detainees 214, 268, 269, 282, 283, & 440); Faryab, one child (detainee 303); Khost, three children (detainees 136, 141 & 327); Kunduz, three children (detainees 60, 217, 390); Nangarhar, two children (detainees 89, 97); Takhar, three children (detainees 59, 464, 465); Nimroz, one child (detainee 159); Balkh, one child (detainee 188); Kabul Department 1, one child (detainee 441); Badakhshan, one child (detainee 439); Kabul Department 40, two children (detainees 213 and 438); Kapisa: two children (detainees 388, 389); Paktika: six children (detainees 213, 380, 381, 382, 386, 387).

<sup>107</sup> Detainees 268, 268, 269, 282, 283 and 440.

<sup>108</sup> Detainees 214, 268, 269, 282, 283 and 440. On 30 January 2011, the Government of Afghanistan (the Ministries of Interior, Justice and Defence and NDS) and the UN signed an *Action Plan between the Islamic Government of Afghanistan and the UN Country Task Force on Monitoring and Reporting regarding Children Associated with National Security Forces in Afghanistan*. The baseline report on action plan

UNAMA also interviewed nine child detainees held at the NDS provincial facility in Sharan (Paktika province).<sup>109</sup> Credible evidence led UNAMA to find that six of the nine detainees interviewed were tortured while in NDS detention.<sup>110</sup> All detainees were aged between 15 and 17 years of age who recounted serious forms of torture and ill-treatment; including being beaten with cables<sup>111</sup> and slapped and kicked during interrogation.<sup>112</sup> One detainee reported being subjected to threats of sexual assault.<sup>113</sup> UNAMA documented that all six were forced to make a confession.

## Systematic Torture by NDS

### NDS Department 124

*“A joint team of Afghan National Security Forces and international military forces arrested me from a shop in XXX area of XXX city on XXX. They handcuffed and hooded me and took me directly to NDS Department 124. I was interrogated every day (total nine times in nine days). On the first night, immediately after my arrival, while I was still handcuffed, they took me into the interrogation room and an NDS officer put a list of my mobile calls and also played my recorded phone conversations. Indeed I had called Taliban members because I am an XXX. They threatened me and said I had to confess that I was a Taliban. I denied the allegation. Then the NDS officer threatened that he would take me out to another room to beat me up if I did not confess to the charges. Then he slapped me twice on my face. He shouted at me to confess. He said if I did not confess he would kill me by squeezing my testicles. He also threatened that I would receive electric shocks...On the second day at the Department. 124, the same interrogator came and took me again to the interrogation room. He called another NDS soldier and told him to bring pipes and a power cable of a computer to beat me if I did not confess. I said to him again that I was innocent. They kicked me and threw me on the floor. Then they beat me with the power cable and pipe all over my body continuously for about 25 minutes. It was the XXX beating me the most of the time. After that, they took me back to the interrogation room and told me to confess or face more beatings. I said I am ready to accept any accusations, including my relation with XXX to prevent further beatings. I did not have any more courage to bear the pain. Thus, I confessed to all the charges and I put my thumbprints everywhere they wanted me to.”*

**(Detainee 633, NDS Department 124, August 2012)<sup>114</sup>**

UNAMA continues to be concerned about the systematic use of torture by NDS in Department 124 in Kabul. UNAMA interviewed 44 persons<sup>115</sup> at other facilities who had previously been detained at NDS Department 124. Forty of 44 of those interviewed said

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implementation requires NDS to investigate any cases of ill-treatment of detainees under 18 years of age by NDS officials and sanction perpetrators.

<sup>109</sup> Detainees 213, 380, 381, 382, 383, 384, 385, 386 and 387.

<sup>110</sup> Detainees 213, 380, 381, 382, 386 and 387.

<sup>111</sup> Detainees 213 and 380.

<sup>112</sup> Detainees 382, 386 and 387.

<sup>113</sup> Detainee 381.

<sup>114</sup> NDS has not granted UNAMA access to NDS Counter-Terrorism Department 124 in Kabul. Treatment of detainees at this NDS-run detention facility was assessed by interviewing detainees at other detention facilities (NDS Department 40 and NDS Department 1, Central Prisons Department prisons and Juvenile Rehabilitation Centers) who had previously been detained at NDS Department 124.

<sup>115</sup> Detainees 105, 196, 200, 201, 202, 214, 216, 217, 218, 219, 252, 253, 254, 256, 257, 258, 259, 260, 261, 281, 293, 294, 333, 438, 539, 540, 572, 589, 590, 591, 592, 595, 596, 611, 633, 634, 635, 636, 637, 638, 644, 645, 646 and 650.



they had been arrested by NDS with four detainees stating they had been captured by international “special forces” working with Afghan National Security Forces (ANSF).<sup>116</sup>

Detainees had been held in NDS Department 124 for an average of 9.5 days.<sup>117</sup> This is approximately half the number of days that UNAMA previously reported in October 2011.<sup>118</sup> This finding suggests a reduction in the number of days that NDS initially detained persons at Department 124; however, it still exceeds 72 hours (the maximum time allowed by law for the arresting authority to detain suspects).

Out of the 44 persons interviewed, 22 detainees provided detailed accounts of interrogation methods amounting to torture by NDS officials which UNAMA determined to be sufficiently credible and reliable<sup>119</sup>. Two additional detainees reported that NDS investigators threatened them with torture during interrogation to force them to confess<sup>120</sup>.

### ***Methods of Torture***

UNAMA found that NDS officials in Department 124 continued to use the same methods of torture that had been documented in the October 2011 Report, such as suspension and beatings, including on the soles of the feet with plastic pipes. Five of the 22 detainees reported being suspended<sup>121</sup> while being held at NDS Department 124.<sup>122</sup> Detainees described being hung for prolonged periods from an iron bar with their legs barely touching the ground. They were hung from their wrists by their handcuffs attached to iron barred windows or doors. Ten of the 22 detainees reported having been beaten with cables, plastic pipes and water pipes or hoses<sup>123</sup>. Eleven of the 22 detainees reported being punched, slapped and kicked<sup>124</sup> (including in the genital area<sup>125</sup>) and four detainees reported receiving physical threats of electric shocks<sup>126</sup> and extracting fingernails.<sup>127</sup>

Some detainees reported being forced into stress positions. Fourteen of the 22 detainees that were tortured reported being forced to thumb print confessions.<sup>128</sup> Eleven detainees provided descriptions of their perpetrators.<sup>129</sup> Four of these detainees were forced to thumb print documents that they had no knowledge of the contents.<sup>130</sup>

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<sup>116</sup> Detainee 261, 540, 592 and 646.

<sup>117</sup> This data is not based on official NDS statistics on the length of detention. Rather it is derived from the accounts of detainees UNAMA interviewed who had been detained in NDS Department 124.

<sup>118</sup> Page 20, *Treatment of Conflict-Related Detainees in Afghan Custody*, UNAMA, October 2011.

<sup>119</sup> Detainees 196, 200, 201, 202, 218, 219, 252, 253, 257, 258, 259, 281, 293, 333, 438, 539, 572, 595, 596, 633, 644 and 646.

<sup>120</sup> Detainees 253 and 256.

<sup>121</sup> Detainees 219, 257, 259, 252 and 438.

<sup>122</sup> Detainee 252.

<sup>123</sup> Detainees 200, 201, 202, 257, 258, 259, 539, 572, 595 and 633.

<sup>124</sup> Detainees 196, 200, 218, 219, 252, 259, 281, 293, 596, 644 and 646.

<sup>125</sup> Detainee 572.

<sup>126</sup> Detainee 258, 333, 596 and 646.

<sup>127</sup> Detainee 293.

<sup>128</sup> Detainees 196, 200, 201, 202, 218, 257, 258, 259, 281, 293, 333, 572, 644 and 646.

<sup>129</sup> Detainees 196, 201, 218, 219, 257, 258, 293, 333, 633, 644 and 646.

<sup>130</sup> Detainees 201, 202, 218 and 646.

One detainee described being hooded during torture and interrogation sessions and was unable to identify any perpetrators.<sup>131</sup>

### ***Hiding detainees***

Many detainees provided similar descriptions of Department 124 and the locations of where they were detained and interrogated. Nine detainees described being detained in a corridor.<sup>132</sup> Three detainees described being taken “underground” or “downstairs” and three others detailed being hidden when visitors, such as ISAF, embassy officials or AIHRC, came to the facility because they had visible marks of ill-treatment.<sup>133</sup> One detainee described being hidden in October 2011<sup>134</sup> and another detainee stated he was hidden in November 2011.<sup>135</sup> The third detainee’s account of being hidden was reported in April 2012.<sup>136</sup>

### ***ISAF’s Detention Facilities Monitoring Programme at Department 124***

ISAF’s training for NDS interrogators and staff at NDS Department 124 was completed on 13 February 2012.<sup>137</sup> The training was conducted at the NDS Academy and supported and delivered by instructors and trainers from the UK embassy. Unlike the training by ISAF in provincial NDS detention facilities, for NDS Department 124, the training was a one week course on human rights and detainee procedures. The training to all NDS Department 124 staff was completed over a three-week period and the NDS Director of NDS Department 124 agreed to send all personnel on the course. Despite the remedial training, UNAMA found four detainees had been tortured by NDS after the training was completed in February 2012.

ISAF conditionally certified NDS Department 124 on 8 March 2012. While the overall number of detainees that made sufficiently reliable and credible claims of torture reduced over time, UNAMA found eight detainees who reported that NDS investigators in Department 124 used interrogation methods that amounted to torture after its conditional certification by ISAF. The most recent report of torture was from August 2012. On 24 October 2012, ISAF announced it had de-certified and stopped transfers for a second time to NDS Department 124.

### ***NDS Kandahar***

*“I was taken to the interrogation department - Two NDS personnel cross-examined me and started to beat me with a black cable and they told me that I have to confess that I used to plant IED’s and that I kidnapped and killed people. They told me several times that I have to confess to these crimes otherwise they will continue to beat me. But I did not confess. Still, they prepared a statement and wanted to force me to sign the paper. I refused to sign. I was beaten up as a consequence of the refusal. Then they took me to an underground cell. I was alone in the cell. The next day, they took me once more to the interrogation room located on the ground floor. Same questions, same beatings. They stated that it does not really matter if I confess or not – they will force me to sign the statement anyway. I did not*

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<sup>131</sup> Detainee 200.

<sup>132</sup> Detainees 200, 201, 202, 252, 253, 257, 258, 281 and 293.

<sup>133</sup> Detainees 219, 259 and 281.

<sup>134</sup> Detainee 219.

<sup>135</sup> Detainee 259.

<sup>136</sup> Detainee 281.

<sup>137</sup> ISAF Media Roundtable, 15 February 2012, Kabul.

*confess. On the third day of interrogations, the same scenario, the same interrogators and the same questions followed by harsh beatings and the only difference was that I told them that I will sign whatever they want me to sign with my fingerprint. They brought a huge document and I put my fingerprint on all the pages.*

**(Detainee 573, NDS HQ, Kandahar, September 2012)**

In UNAMA's October 2011 report, NDS provincial headquarters in Kandahar was identified as a location where torture was used systematically. UNAMA found in its previous report compelling evidence that NDS officials had subjected two-thirds of the conflict-related detainees interviewed to beatings, suspension, and stress positions to force a confession. In response to these findings, NDS launched their own investigation in Kandahar. Both the Director and Deputy Director of NDS Kandahar were removed from Kandahar and transferred to other positions within NDS after the investigation although the reasons for these transfers remained unclear.

NDS officials also claimed that the head investigator for the province had been reassigned to other duties that would prevent him from interacting with detainees. ISAF proceeded to implement its six-phase remedial programme, inspecting the NDS provincial HQ and another NDS facility in Police District 2 in Kandahar city where torture was used systematically as found by UNAMA. A variety of trainings of NDS investigative staff took place, including several sessions delivered by ISAF trainers. In spite of these measures, ISAF has not certified NDS in Kandahar and not resumed transfers of detainees to the facility.

UNAMA continues to be concerned about the systematic use of torture by NDS authorities in Kandahar. UNAMA interviewed 48 detainees<sup>138</sup> at the main NDS detention facility or in other premises, including the CPD *Sarpoza* central prison and the Juvenile Rehabilitation Center (JRC), where they were held after a period in the NDS premises between October 2011 and September 2012. UNAMA found that the average length of detention in NDS was 21 days. Previously it was 22 days.

UNAMA found sufficiently credible and reliable evidence that 19 out of the 48 detainees interviewed suffered torture by NDS officials for the purpose of obtaining a confession or information.<sup>139</sup> Detainees provided detailed and consistent descriptions of interrogation techniques being used by NDS investigators in Kandahar similar to previous patterns and practices documented by UNAMA. Eighteen out of the 29 remaining detainees who did not report torture indicated to UNAMA that they were either too uncomfortable or too afraid to share information about their treatment while in NDS custody due to the risk that NDS officials would retaliate against them.

UNAMA found that 14 of the 29 detainees who were not tortured by NDS in Kandahar reported they had been tortured by ANP or ANBP in Kandahar before being transferred to NDS.<sup>140</sup> Four out of these 29 detainees not tortured by NDS in Kandahar reported they were tortured at *Mullah Omar's house* before being transferred to NDS.<sup>141</sup> Two

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<sup>138</sup> Detainees 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 214, 222, 223, 224, 225, 226, 227, 228, 229, 268, 269, 275, 276, 278, 279, 262, 263, 264, 282, 283, 284, 285, 286, 287, 291, 292, 440, 482, 483, 484, 486, 489, 491, 492, 498, 544, 573 and 651.

<sup>139</sup> Detainees 14, 15, 17, 214, 224, 227, 229, 262, 268, 269, 282, 283, 284, 286, 287, 291, 292, 440 and 573.

<sup>140</sup> Detainees 21, 22, 23, 26, 225, 228, 276, 279, 285, 482, 483, 486, 489 and 492.

<sup>141</sup> Detainees 214, 284, 287 and 544.

detainees identified NDS as the alleged perpetrators at *Mullah Omar's house*.<sup>142</sup> Fifteen of the 19 tortured detainees made confessions as a result of being tortured.<sup>143</sup> In nine out of these 15 cases, NDS had forced these detainees to thumb print confessions without knowing the content.<sup>144</sup>

### ***Child Detainees***

Six out of the 19 detainees that suffered torture in NDS Kandahar were under 18 years of age.<sup>145</sup> All six of these children described being beaten with cables or sticks on the soles of their feet until they agreed to thumb-print confessions against their will, at which point NDS stopped the ill-treatment.<sup>146</sup>

A 14-year-old detainee's account epitomizes torture used by NDS officials in Kandahar:

*"The next morning I was transferred to NDS HQ in Kandahar by a ranger. I arrived that evening and I was blindfolded and handcuffed. I was interrogated that evening, the blindfold was taken off and I saw that there were two men in the room; one fat and one thin. I was interrogated for half an hour and was beaten with a stick on the hands and soles of my feet. I was held there for a week and was interrogated two more times....After that I was transferred to the JRC."*

**(Detainee 282, NDS HQ Kandahar, March 2012)**

### ***Methods of Torture***

Consistent with previous reports, UNAMA documented consistent and detailed information that NDS officials in Kandahar continued to torture detainees in their custody to obtain confessions. NDS investigators routinely used electrical cables or plastic pipes, to beat detainees on the soles of their feet, hands, and/or backs. Detainees provided detailed accounts of having been kicked in the head or body to the point of losing consciousness, as well as being suspended, forced into stress positions for prolonged periods, subjected to electric shocks on their ears, nose, head, toes and legs, and, in one case, threatened with sexual assault. Detainees also reported sensory deprivation (routine blindfolding during and after interrogations).

### ***Beatings***

NDS officials in Kandahar consistently used plastic pipes, electric cables, and sticks to beat detainees on the soles of their feet, heads, thighs, back, and hands during interrogations of children. NDS investigators resorted to such methods in cases where detainees did not readily confess with the ill-treatment lasting between a few minutes and several hours over a period of days. In most cases it appeared the ill-treatment would begin once the detainees had usually spent the first night on the veranda and then were taken to the NDS interrogation office to be interrogated the next day or on the second day in detention. One detainee described the process:

*"After spending the night in Mullah Omar house, I was taken to NDS Kandahar. I was brought to this room where we are now having this interview....One person (possibly the interrogator) asked me questions like "Are you a Taliban Commander?" My hands were*

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<sup>142</sup> Detainees 284 and 287.

<sup>143</sup> Detainees 14, 17, 224, 227, 229, 262, 268, 269, 282, 283, 284, 287, 291, 292, 440 and 573.

<sup>144</sup> Detainees 14, 17, 224, 227, 229, 262, 283, 291 and 292.

<sup>145</sup> Detainees 214, 268, 269, 282, 283 and 440.

<sup>146</sup> Detainees 214, 268, 269, 282, 283 and 440.

*...tied at the back and one NDS soldier had a plastic pipe in his hand. When I denied that I was Taliban leader, the NDS soldier beat me on my thigh with the pipe and punched me on my head. There were four or five persons in the room who beat me. The one who asked the questions did not beat me. I was interrogated three times by the same person. I was standing and my hands were tied for the whole time during the interrogation. I was interrogated from around seven-thirty in the evening until 12 mid night. The second interrogation happened after few days later and it was the same questions and the same persons interrogating me. The interrogator told me to confess otherwise I would be beaten severely. They tied both my legs and blindfolded me and beat with sticks on my thighs. During the third interrogation, the NDS just asked me questions and I signed a lot of papers but I did not know what was written on any of them."*

**(Detainee 262, NDS HQ Kandahar, March 2012)**

### ***Electric shocks***

Three child detainees reported that their interrogators in NDS Kandahar forced them to touch wires coming out of a socket on the wall of the interrogation room.<sup>147</sup> All three also described being beaten with a pipe or a stick on their feet. All three detainees refused to make a confession. They were then subjected to electric shock treatment. As a result of the electric shocks, at least one detainee stated he lost consciousness a number of times. He described his experience and how the electric shocks were used:

*"I was interrogated every two days until the eighteenth day when I confessed that I was Taliban. From the second day, during interrogation the NDS tied my hands in a crisscross position and beat me with a plastic pipe. During the interrogation I was beaten in the same way as I was beaten on the first day. On the wall, there was an electricity socket with two wires coming out of it. The interrogator sometimes told me to touch those wires. I felt electric shocks when I touched them. I fell unconscious a number of times after touching the wires. "When I became conscious again, the interrogation would continue. The NDS also carried a stick pasted with chili powder. The interrogator told me that he would put the stick in my anus if I did not confess that I was a Taliban. The NDS also pulled my beard and punched me in the face. They were also telling degrading statement about my mother, sister and wife."*

**(Detainee 291, NDS HQ Kandahar, February 2012)**

### ***Prolonged standing and stress positions***

Confirming the patterns already documented by UNAMA in October 2011, NDS Kandahar continued to use stress positions as a common means of inflicting pain in detainees either during questioning or in between interrogation sessions as a means of intimidating and establishing control over the detainees prior to being questioned again. Detainees reported being forced to standing difficult places or positions from a minimum of two hours to a maximum of four days.<sup>148</sup>

As reported in UNAMA's report of October 2011, NDS officials often questioned detainees on the veranda of the first NDS detention building described above inside the NDS headquarters compound. One of them stated he was left exposed to the elements on the veranda for three days and nights during the winter months while another detainee described being made to stand on the veranda for 14 hours until late in the

<sup>147</sup> Detainees 284, 291 and 292.

<sup>148</sup> Detainees 14, 227, 229, 262, 268, 269, 284 and 291.

night. Only at 01:00am was this detainee given permission to sit down and to sleep outside. He reported this practice as extremely painful adding that after 14 hours his legs were very swollen.

On a number of occasions, child detainees reported that NDS investigators would force them into stress positions,<sup>149</sup> including tying their legs with shawls and stretching them beyond their normal flexibility; handcuffing them behind their backs with one arm above one shoulder and the other arm around the lumbar zone of the back, or shackling detainees' feet and wrists with their hands behind the neck in order to force them to sit with their heads in between their knees. These positions were similar to those described by detainees held in Kandahar noted in UNAMA's previous report. Additionally, one detainee reported being tortured by being hung from his chest from the ceiling while being beaten with an electric cable.

### ***Two NDS Facilities within NDS Kandahar compound***

UNAMA became aware that the NDS Headquarters in Kandahar had two separate locations within the compound where conflict-related detainees were held. NDS labeled the two buildings as the "NDS facility" and the other as the "NDS prosecutor's facility". These two locations were both controlled and operated fully by NDS Kandahar and served to separate detainees between those newly captured (during their initial 72 hours of custody) and those whose case files had already been reviewed by the NDS prosecutor and approved for further investigation by NDS. Despite the description of NDS officials in Kandahar, it is clear that NDS prosecutors did not play a role in the running of the second facility or over the NDS's investigation process.

### ***Unofficial detention facilities***

*"The NDS agents who arrested me in Kandahar blindfolded me and beat me all the way to Mullah Omar's house. I know it was Mullah Omar's house as the NDS told me afterwards when I was in the NDS facility. At Mullah Omar's house, I was questioned and beaten but I couldn't see who beat me. They made me lie down and they tied my feet together. They hit the soles of my feet with a pipe. They told me, "Confess! Or we'll hand you over to the foreigners!" After a while they stopped and said, "You have 10 minutes to think about it." They came back and beat the soles of my feet again. After that they took my thumbprint."*

**(Detainee 544, Mullah Omar's House, Kandahar, July 2012)**

UNAMA received sufficiently credible and reliable accounts from multiple and various sources and documented reports about the existence of unofficial facilities where detainees were held and tortured by NDS before being transferred to the provincial NDS detention facility in Kandahar city. UNAMA interviewed 11 detainees<sup>150</sup> who alleged they were detained at an unknown facility for one night prior to being transferred to NDS headquarters in Kandahar. Seven of these 11 detainees described the location formerly known as *Mullah Omar's house*.<sup>151</sup> These seven detainees stated they knew they were at *Mullah Omar's house* because they recognized the location and they knew the streets of Kandahar well or because they were subsequently told by other detainees they had been at this location when they were transferred to NDS headquarters. Five of seven reported being beaten for one night with a stick or a pipe on the soles of their

<sup>149</sup> Detainees 229, 262, 269, 284 and 291.

<sup>150</sup> Detainees 14, 22, 23, 262, 283, 284, 286, 287, 291, 292 and 544.

<sup>151</sup> Detainees 14, 23, 262, 284, 286, 287 and 544.



feet.<sup>152</sup> Another NDS officer reportedly electrocuted one of the detainees on his toes.<sup>153</sup> Two detainees reported they were forced to finger print documents at *Mullah Omar's house*.<sup>154</sup>

Two of the other four detainees who did not identify the unknown facility, were also tortured using the same method.<sup>155</sup> They also reported being beaten with a stick on the soles of their feet for one night before being transferred to NDS the following day. One of these detainees stated he was forced to thumb print documents at this unknown detention facility.<sup>156</sup>

## **Sufficiently Credible and Reliable Incidents of Torture at Ten Other NDS Facilities**

*"It was during day time. Three or four people took me to the interrogation room and said that I had commissioned the assassination of XXX .... At that point this XXX who was present during interrogation said I needed to receive electric shocks to confess as I was denying making the phone call....Then three of the NDS detention officers told me that they were going to give me electric shocks and then give me time until tomorrow to confess. Then they attached two wires on each foot (on the thumb and one the first finger). The wires were connected to a machine. The shocks were not too long but it felt like someone was displacing my heart. I was shaking a lot and could not control myself."*

**(Detainee 553, NDS Jawzjan, August 2012)**

UNAMA found sufficiently credible and reliable incidents of torture in ten other detention facilities. Four of these facilities were identified previously by UNAMA, namely, the provincial headquarters of Herat, Khost, Laghman and Takhar. Six other NDS facilities where sufficiently credible and reliable incidents of torture were found were the provincial headquarters in Jawzjan, Nangarhar, Faryab, Kunduz and Paktika as well as NDS Department 40 in Kabul. In these ten facilities, UNAMA documented 101 incidents of torture and ill-treatment. (See Map 4).

Detainees in eight of these NDS facilities described methods of torture that included beatings with cables and/or wooden sticks on the soles of the feet. A number of detainees provided details of NDS personnel in NDS Faryab, NDS Kunduz and NDS Jawzjan using electric shocks on them. Detainees also reported being threatened with electric shocks during their interrogations. UNAMA found that detainees experienced threats of sexual violence in NDS Takhar and in NDS Nangarhar. In NDS Paktika, six of eight detainees who provided sufficiently credible and reliable accounts of torture were children. In NDS Takhar, two of the 12 detainees that were tortured were women.

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<sup>152</sup> Detainees 14, 284, 286, 287 and 544.

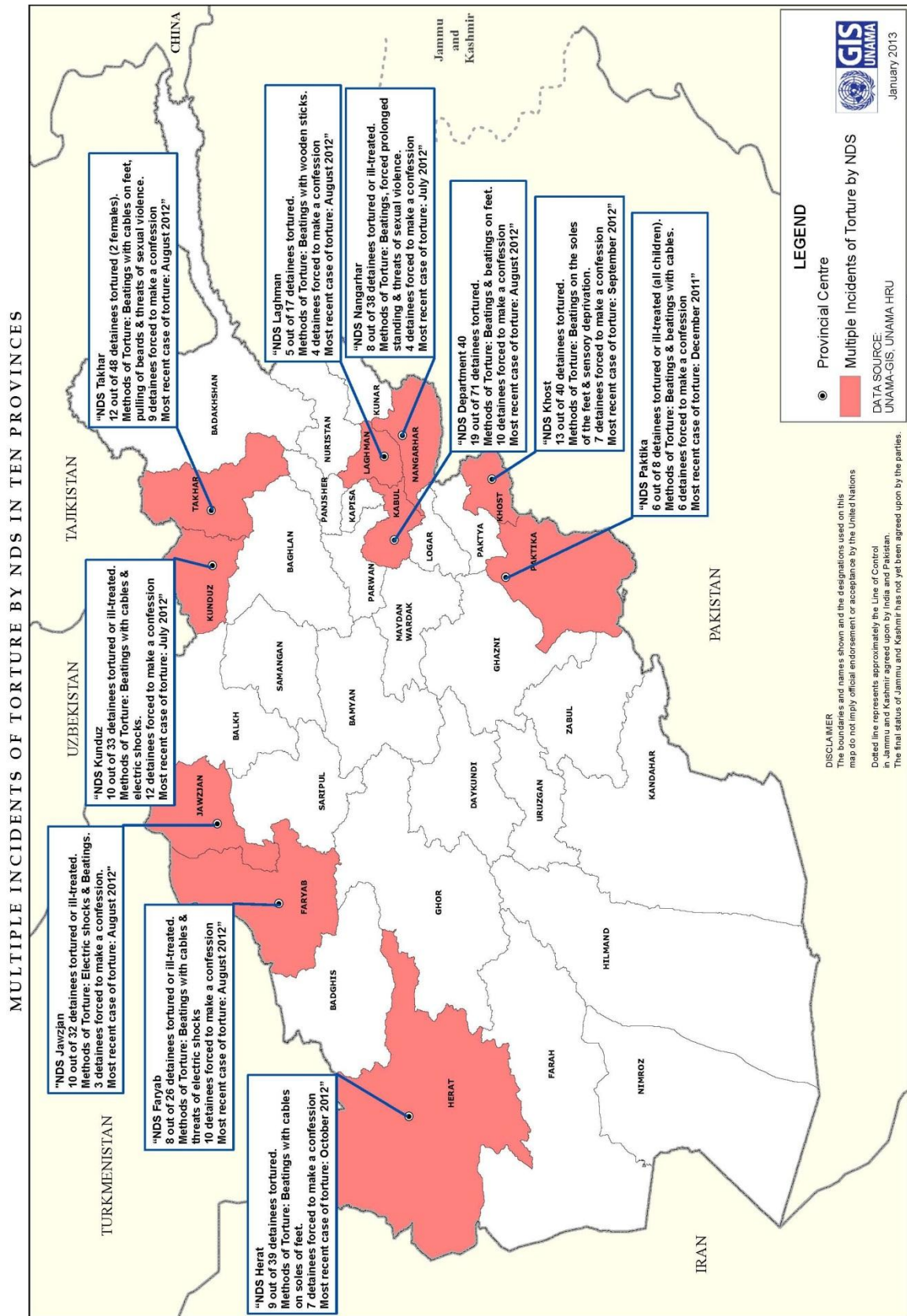
<sup>153</sup> Detainee 284.

<sup>154</sup> Detainees 284 and 544.

<sup>155</sup> Detainees 291 and 292.

<sup>156</sup> Detainee 291.

# Map 4: Multiple Incidents in NDS Custody in Ten Provinces





## Systematic Torture by NDS

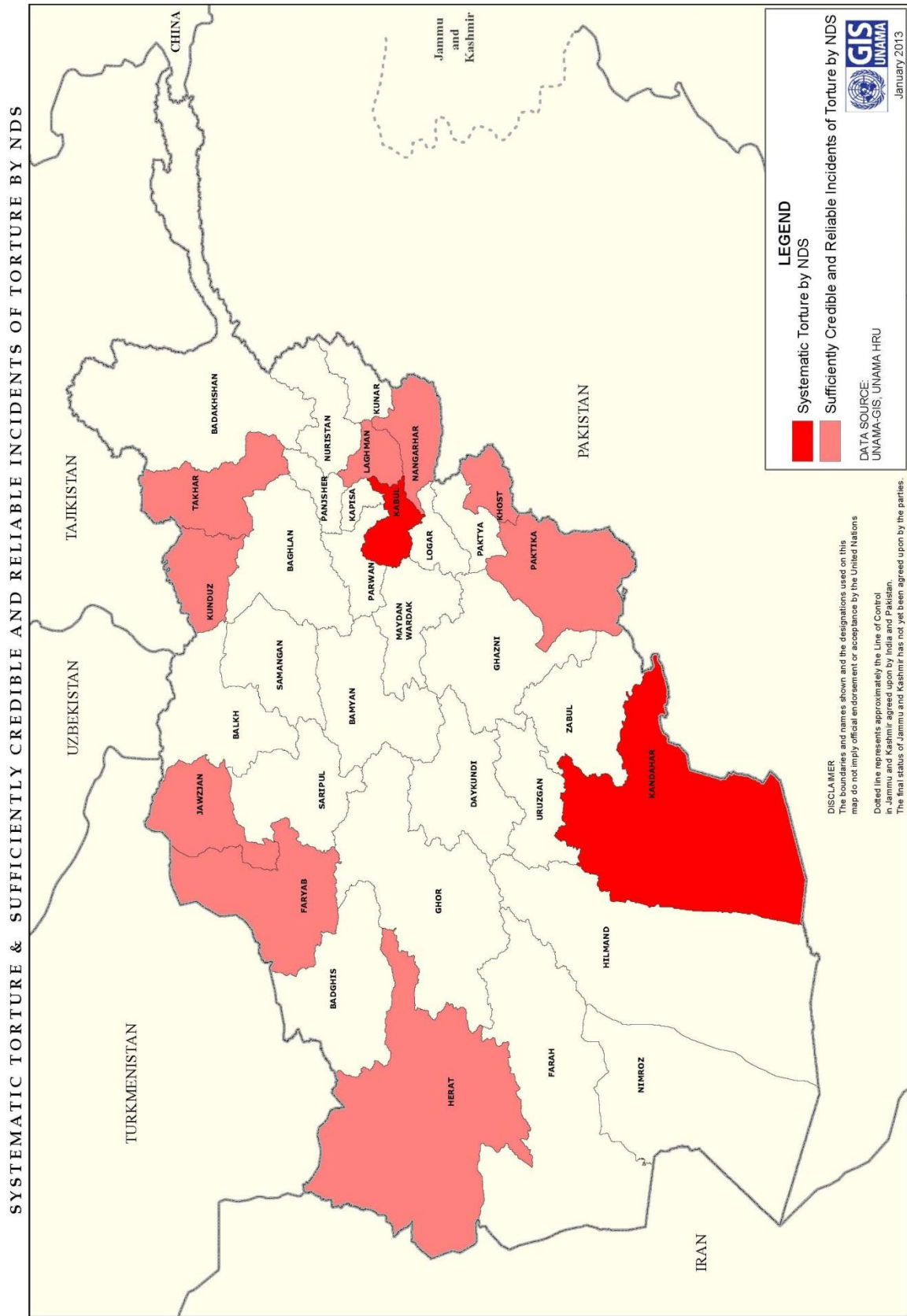
| Province | Methods of Torture   | Location of NDS Detention Facility   | Head of Detention Facility<br><i>[Naming of a director of a detention facility does not indicate or suggest that the director is a perpetrator of torture and ill-treatment at the facility]</i> |
|----------|--|--|--|
| Kabul    | Beatings with cables and pipes on the soles of the feet.<br>Suspension.<br>Threats of electric shocks.                   | Department 124<br><i>(Shashdarak, PD 9, Kabul)</i>                                 | General Mohammad Halim   |
| Kandahar | Beatings with cables and pipes on the soles of the feet.<br>Electric shocks.<br>Prolonged standing.<br>Stress positions. | Kandahar city provincial HQ<br><i>(District 2, close to Tajmahal wedding hall)</i> | Faiz Mohd Khan<br><br>Colonel Haji Essa Mohammad<br><i>(Date of appointment: Aug 2011)</i>   |

## Sufficiently Credible and Reliable Incidents of Torture at Ten NDS Facilities

| Province | Methods of Torture   | Location of NDS Detention Facility   | Head of Detention Facility<br><i>[Naming of a director of a detention facility does not indicate or suggest that the director is a perpetrator of torture and ill-treatment at the facility]</i> |
|----------|--|--|--|
| Faryab   | <i>Beatings with cables;</i><br><i>Threats of electric shocks;</i> | Maimana provincial HQ<br><i>(Park Street, Opposite Provincial Governor Office, District 4)</i> | Aminullah<br><br>General Fazl Nabi Haidari<br><i>(Date of appointment: Dec 2011)</i>   |
| Herat    | <i>Beatings with cables on the soles of the feet;</i>              | Herat city provincial HQ<br><i>(Herat town, Qul Ordo Street, across from Riasat Takhnic)</i>   | General Mohammad Saboor<br><i>(Date of appointment: Aug 2011)</i>  |
| Jawzjan  | Electric shocks.<br>Beatings (punching,                            | Sherbergan provincial HQ<br><i>(Karte Dostum Area,</i>   | Hashmatullah<br><br>Mohammad Sharif  |

|           |  |   |  |
|-----------|--|---|--|
|           | slapping and kicking).   | <i>Street 1)</i>  |  |
| Kabul     | <i>Beatings;<br/>Beatings on the feet;</i>                                     | Department 40<br><i>(Shashdarak, PD 9, Kabul)</i>   | General Mohammad Tahir Mohmand<br><i>(Date of appointment: Dec 2010)</i>   |
| Khost     | <i>Beatings with cables on the soles of the feet;<br/>Sensory deprivation;</i> | Khost provincial HQ<br><i>(next to Porogi Bagh where the quick reaction forces of ANP are also stationed and south of the main ring road to Khost University)</i> | General Abdul Wasih Ahmadzai   |
| Kunduz    | <i>Beatings with cables;<br/>Electric shocks;</i>                              | Kunduz provincial HQ<br><i>(Jade Olayat, Kochai Amnayati-e-mili, PD 2)</i>  | Aminullah<br><br>General Eng. Mohammad Momin<br><i>(Date of appointment: Feb 2012)</i>   |
| Laghman   | <i>Beatings with wooden sticks;</i>  | Mehtarlam provincial HQ<br><i>(Near the Provincial Governor's Office)</i>   | Wali Mohammad Khan <i>(Head of Interrogation)</i><br>Rohullah<br><br>General Mohammad Qasim<br><i>(Head of NDS)</i><br><i>(Date of appointment: June 2011)</i> |
| Nangarhar | <i>Beatings;<br/>Prolonged standing;<br/>Threats of sexual violence;</i>       | Jalalabad provincial HQ<br><i>(Old Kabul bus station, zone 2)</i>   | Abdul Qawi Khan<br><i>(Head of Interrogation)</i><br>Matiullah<br><br>General Gul Nabi<br><i>(Head of NDS)</i>   |
| Paktika   | <i>Beatings;<br/>Beatings with cables;</i>                                     | Sharan provincial HQ<br><i>(next to Governor's compound)</i>  | General Mohammad Qasim<br><i>(Date of appointment: March 2012)</i>   |
| Takhar    | <i>Beatings with cables on the feet;<br/>Threats of sexual violence;</i>       | Taloqan provincial HQ<br><i>(Street 4, Taloqan city)</i>  | Abdul Najibullah<br><i>(Date of appointment: approximately 2.5 years ago)</i>  |

# Map 5: Systematic and Sufficiently Credible and Reliable Incidents in NDS Custody



# Treatment of Detainees by the Afghan National Police and Afghan National Border Police

## *Torture and ill-treatment in ANP detention facilities*

The Afghan police are one of the principle authorities vested with law enforcement powers in the country, including in the arrest and interrogation of conflict-related detainees. UNAMA interviewed 286 detainees who had been held in police custody from October 2011 to October 2012 in 37 facilities covering 24 provinces.<sup>157</sup> Sixty-one detainees were held in two ANP detention facilities at different times and two detainees were held in three ANP detention facilities at different times, totalling 347 instances of ANP detention in the sample.

UNAMA's findings highlight:

- 125 of the detainees interviewed (43 per cent) had been tortured and ill-treated by the ANP or ANBP.
- 38 per cent of all sufficiently credible and reliable incidents of torture were from facilities located in Kandahar province where UNAMA also found compelling evidence of systematic torture. See map 7 for an overview of systematic torture by ANP.
- Sufficiently credible and reliable incidents of torture were documented at five ANP provincial headquarters in Pul-e-Khumri (Baghlan), Herat city (Herat), Kunduz city (Kunduz), Taloqan (Takhar) and Qalat (Zabul) as well as at 10 district ANP facilities in Ishkamesh, Kalafgham, Khwajaghar (Takhar), Chisht-e-Sharif, Pashtoon Zarghoon, Shindad, Gulran (Herat), Yosuf Khel (Paktika), Garamser and Nadi Ali (Helmand) in four provinces totaling 15 ANP detention facilities. In these 15 facilities, UNAMA documented 53 cases of torture and ill-treatment. Despite consistent reports of torture, UNAMA was unable to fully determine that the incidents of torture in these detention centres were systematic in nature. UNAMA found sufficiently credible and reliable incidents of torture that were corroborated but more investigation is needed to establish whether a pattern of torture was occurring systematically. This was due to a range of factors including access to the facility in question, or too small a sample of detainees interviewed. See map 7 for an overview of sufficiently credible and reliable incidents of torture by ANP.
- Of the 125 documented cases of torture, 45 (36 per cent) involved the torture of children.
- Compared to UNAMA's October 2011 report, evidence of torture and ill-treatment by the ANP and ANBP has increased by eight per cent in documented cases.<sup>158</sup>

UNAMA also interviewed numerous detainees who had been or were detained at 15 other ANP provincial headquarters. These include the provincial ANP lock-ups in

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<sup>157</sup> Badakhshan, Baghlan, Balkh, Bamyan, Daikundi, Farah, Faryab, Ghor, Helmand, Herat, Jawzjan, Kabul, Kapisa, Kandahar, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktika, Paktya, Parwan, Takhar and Zabul.

<sup>158</sup> See UNAMA's October 2011 report *Treatment of Conflict-Related Detainees in Afghan Custody*, October 2011, pp.40-43. UNAMA interviewed 117 conflict-related detainees who were in police custody in 19 different provinces, covering 22 facilities and, based on credible evidence, concluded that 41 of these individuals (35 per cent) had been tortured or ill-treated by the ANP or ANBP.

Bamyan, Balkh, Farah, Faryab, Ghor, Jawzjan, Kabul, Kapisa, Kunar, Khost, Laghman, Logar, Nangarhar, Paktya and Parwan. Of the 118 detainees interviewed, UNAMA found twenty-one (17 per cent) sufficiently credible and reliable cases of torture.

### ***Methods of Torture and ill-treatment***

The forms of torture inflicted by the ANP most commonly reported were beatings on the soles of the feet, legs, shoulders, back and chest; suspension; electric shocks; forced prolonged standing; stress positions – such as standing and sitting down repeatedly and standing outside in cold weather conditions for long periods – and threats of sexual violence. Detainees also reported sensory deprivation such as blindfolding and hooding for extensive periods of time.

As stated, earlier, this report uses the definition of torture in the *Convention against Torture*.<sup>159</sup> In line with the findings of the October 2011 report, UNAMA found that detainees were ill-treated at the point of arrest or at a check post. Fourteen of the 81 detainees who alleged ill-treatment or torture stated that such ill-treatment was inflicted at the time of arrest or at a check post. Twenty-nine detainees said that it occurred at an ANP district headquarters; nine stated that it occurred in a *hawza* (city police district) and 38 said it took place at an ANP provincial headquarters.

### ***ANP torture to obtain confessions***

In all instances of torture documented, police inflicted the ill-treatment to extract a confession from the detainee. This usually meant that torture was inflicted early on in the interrogation process; more severe techniques were employed during the course of the interrogation to ‘break’ the detainee and force a confession. Detainees were usually beaten for a lengthy period. If they did not confess, this was followed by additional techniques including, suspension, beating on the testicles/penis, electric shocks and in some instances threats of sexual violence.

Of the 125 detainees who reported they had been tortured, UNAMA observed that 70 (56 per cent) had confessed to a crime during the interrogation period to stop the torture– all detainees reported that the torture ceased as soon as they confessed to a crime. Of the 125 total documented cases of ANP and ANBP torture, 57 detainees signed, or in most cases thumb-printed documents, the contents of which they said they were unaware. For example, of 14 documented cases of torture by ANP in Herat, nine detainees reported they were forced to thumb-print documents with no knowledge of the contents. Only seven detainees said that the confession was read to them before they had signed or thumb-printed it. In any event, UNAMA found that only 14 detainees interviewed who were held by ANP were literate. A detainee from Kunduz detailed the method used by the ANP to force him to confess, similar methods were employed by the ANP in detention facilities throughout the country:

*“I was taken to ANP HQ in Kunduz. Twelve ANP at Kunduz ANP HQ beat me with kicks on my back. I denied the allegation that I had detonated the IED. The head of the counter-terrorism unit (XXX) of ANP Kunduz ordered an ANP officer to bring him a pipe. The pipe*

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<sup>159</sup> *Convention against Torture*, article 1, see *Treatment of Conflict-Related Detainees in Afghan Custody* UNAMA / OHCHR October 2011(p. 62). Article 16 of the convention states that all State parties to the convention have an obligation to prevent acts of cruel, inhuman or degrading treatment or punishment that amount to torture by their officials. See *Annex II: Applicable Law* for a synopsis of Afghanistan’s national and international legal obligations relating to torture and ill-treatment.

*was about one meter long and 10-15 inches thick. My hands and legs were tied and I was told to lie down. I was beaten with that pipe. XXX was telling me to confess. I refused. Then XXX burned both my thighs and legs with a hot chained/coiled electric boiler. [UNAMA observed fresh marks consistent with burns on the thighs and legs of the detainee]. My hands were raised and then tied. I was beaten on my testicles twice with a sandal. I had to confess to make the torture stop. If I had not confessed, they would have carried on beating me. They made a video of my confession.” and then the torture stopped.”*

**(Detainee 627, ANP HQ Kunduz, August 2012)**

A number of detainees also reported that in addition to ANP officers torturing them to extract a confession, they were ill-treated as a form of punishment for their alleged involvement in insurgent activities.

### ***Torture and ill-treatment of children by ANP***

Of the 125 sufficiently credible and reliable incidents of torture by the ANP and ANBP that UNAMA documented, 45 were children – below the age of 18 at the time the torture took place<sup>160</sup>. Of the 48 detainees for whom systematic incidents of torture were documented in Kandahar, 12 of the total documented reports involved children,<sup>161</sup> and one other detainee informed UNAMA that he had just turned 18 years of age.<sup>162</sup> Three of these 12 children reported being subjected to electric shock treatment during interrogation. Similarly, in Paktika province, all the detainees interviewed (six) were children and all reported putting their thumb-prints to documents for torture to cease.

In Helmand province UNAMA received sufficiently credible and reliable cases of torture of children by the ANP; of seven child detainees interviewed at Helmand JRC in Lashkar Gah, UNAMA found five credible allegations of torture by the ANP.<sup>163</sup> Two detainees were aged 17<sup>164</sup>, two aged 15<sup>165</sup> and one detainee interviewed was as young as 14 years of age.<sup>166</sup> Two out of the three children who were detained in Herat province reported being beaten with a black cable on their feet. One of the two children held in Zabul province reported that he was subjected to the same method of torture. The other eight children were detained by the ANP in Baghlan, Faryab, Kapisa, Khost and Nangarhar provinces. These accounts highlight the disregard by the ANP and ANBP for Afghanistan’s national and international obligations protecting the rights of the child.

### ***Beatings on sexual organs – to cause severe pain or suffering***

UNAMA documented evidence that ANP officers were torturing detainees by burning, electrocuting, pulling, twisting and/or squeezing their penis to cause severe pain and suffering and force a confession. In UNAMA’s October 2011 report a number of documented cases of NDS twisting a detainee’s penis were documented. At that time, however, UNAMA could not corroborate evidence that the ANP was using this method of

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<sup>160</sup> Detainees 6, 20, 40, 41, 42, 46, 76, 91, 92, 136, 165, 221, 230, 271, 282, 289, 306, 310, 311, 312, 313, 314, 315, 319, 320, 330, 321, 322, 350, 374, 380, 381, 382, 383, 384, 385, 456, 457, 477, 499, 505, 532, 557, 654 and 655.

<sup>161</sup> Detainees 20, 221, 271, 310, 312, 313, 314, 315, 319, 320, 321 and 322.

<sup>162</sup> Detainee 277.

<sup>163</sup> Detainees 20, 40, 41, 42 and 46 – torture took place between March and October 2011.

<sup>164</sup> Detainees 20 and 40.

<sup>165</sup> Detainees 41 and 42.

<sup>166</sup> Detainee 46.



torture. Eight detainees detailed this pattern of ill-treatment by ANP officers.<sup>167</sup> One detainee reported that the ANP commander in Panjwayi district put his penis on a gas cooker and burned it; he reported that the ANP commander then put a metal stick in the fire and subsequently burned him on the legs before putting the stick in the detainees' ear. The detainee stated he lost consciousness several times during the torture session.

### **Systematic Torture by ANP in Kandahar province**

*"The foreigners left the District Governor's office in the evening and the ANP came for me. They tied my hands behind my back, made me lie on the floor and three of them sat on me; one on my feet, one on my back and one on my head. They pulled my legs far apart... Then they attached me to a ceiling hook. By the time they took me down it was around 4am. I couldn't walk. On the fourth night in the District Office they came and beat me again. This time they asked for a thumbprint but I refused to provide one. One of the ANP punched me in the back but I still refused. The paper they wanted me to sign said that I was part of a terrorist group. After four nights in the Shawali Kot District Governor's office I was taken to the provincial police HQ in Kandahar. The CTP (counter terrorism police) accused me of being a Talib. When I rejected this they whipped me with a cable for around 20 minutes. In the afternoon they took me back into their office and started again. They told me that they would continue until I admit to being a Taliban member."*

**(Detainee 492, ANP HQ Kandahar, July 2012)**

UNAMA found sufficiently credible and reliable evidence of systematic use of torture and ill-treatment by ANP and ANBP in Kandahar province.

UNAMA's research to date suggests that ANP officials in Kandahar province have increased the level of brutality and the use of torture and cruel, inhuman, or degrading treatment at the time of arrest and during interrogation for the purpose of obtaining a confession and information since the appointment of the acting chief of police in May 2011.<sup>168</sup>

UNAMA's findings in October 2011 found compelling evidence of torture or ill-treatment by ANP in several districts of Kandahar. UNAMA found that the majority of detainees interviewed (between January and August 2011) who reported torture or ill-treatment were detained after the appointment of the acting chief of police in Kandahar. UNAMA found one detainee (March 2011) who had been tortured in Arghandab district prior to this appointment.

Following interviews with 63 conflict-related detainees who had been held by the ANP and ANBP between October 2011 and September 2012 in several locations in Kandahar province, including at the ANP provincial detention facility, the MoI prison in Sarpoza, the Juvenile Rehabilitation Centre (JRC),<sup>169</sup> and UNAMA documented 48 sufficiently reliable and credible cases of torture.<sup>170</sup> Six out of the 48 detainees reported they were

<sup>167</sup> Detainees 14, 24, 225, 228, 319, 485, 502 and 627.

<sup>168</sup> The acting chief was officially appointed as Chief of Police of Kandahar province in July 2011.

<sup>169</sup> Detainees 8, 9, 10, 11, 18, 19, 20, 21, 24, 26, 221, 224, 225, 226, 228, 268, 271, 276, 277, 278, 279, 282, 283, 285, 310, 311, 312, 313, 314, 315, 319, 320, 321, 322, 323, 350, 482, 483, 485, 486, 487, 488, 489, 490, 491, 492, 493, 495, 496, 497, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510 and 651.

<sup>170</sup> Detainees 8, 10, 18, 19, 20, 21, 24, 26, 221, 225, 228, 268, 271, 276, 277, 279, 282, 285, 310, 311, 312, 313, 314, 315, 319, 320, 321, 322, 482, 483, 485, 486, 487, 488, 489, 490, 492, 493, 495, 496, 497, 499, 502, 505, 506, 507, 508 and 509.

tortured in more than one ANP detention facility.<sup>171</sup> These reports were consistent with the accounts previously documented by UNAMA in its October 2011 report.

UNAMA gathered reliable information regarding methods of torture by the ANP in several districts, which was corroborated by a number of external sources. Methods of torture in Kandahar included electric shock treatment, suspension, handcuffing in stress positions for long periods, beating with rifle butts and torture of sexual organs. The forms of torture and ill-treatment most commonly reported in Kandahar included hitting, punching and slapping detainees, beatings with wooden sticks, electric cables, and rubber hose pipes on the soles of the feet, legs, shoulders, back, chest, head and sexual organs; suspension of detainees for prolonged periods; electric shocks; stress positions (such as forced prolonged standing, standing and sitting down repeatedly, being handcuffed in stressful and painful positions, for example, one detainee reported he was tied to a bed for 25 days, and standing outside in cold weather conditions for long periods). Detainees also reported blindfolding and hooding, threats of sexual violence, threats to kill detainees, food and water deprivation, and the stretching of detainees' limbs beyond their normal flexibility.

Forty detainees stated they were tortured at the ANP provincial headquarters, 12 at the ANP stations in the *Hawza*, 3, 8, 13 or 15 districts,<sup>172</sup> seven in Panjwayi district either at check-points or in a private house rented by the ANP, two in Spin Boldak district, and one at a check-point on the main Kandahar to Herat road.<sup>173</sup> Additionally, two detainees reported to have been held and tortured by the ANP and the Deputy Commander of the ANBP in an ANBP facility at the Governor's Compound in Kandahar.<sup>174</sup> Moreover, two detainees reported they were tortured at ANP District 2<sup>175</sup>, one detainee alleged torture at ANP District 9<sup>176</sup> and one detainee reported ill-treatment in the district ANP headquarters in Arghandab.<sup>177</sup>

All the detainees stated that the ANP and the ANBP had tortured them with the aim of obtaining information and/or a confession. Twenty-two out of the 48 detainees that had been tortured by ANP and ANBP in Kandahar province confessed. In line with patterns throughout the country, documented by UNAMA, many described thumb-printing documents without knowledge of the contents. UNAMA found that detainees were detained for longer in Kandahar compared to the average length of detention by the ANP in Afghanistan. Detainees were detained for 11 days (compared to the average of seven days that UNAMA found in October 2011).

### **Beatings**

*"I was in Panjwayi district police station for nine days. Seven or eight ANP personnel would come and throw freezing cold water over me before whipping me with cables. The beatings would last maybe an hour or an hour and a half. This happened on five separate*

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<sup>171</sup> Detainees 271, 310, 315, 483, 487 and 495.

<sup>172</sup> A *Hawza* is a Dari word indicating a cadastral zone within a city. Each *Hawza* has an ANP station. Torture was reported by detainees 10, 24, 26, 271, 276, 277, 279, 312, 314, 315, 482 and 488.

<sup>173</sup> Detainee 20 believed the name of the check-point was Govind, but he was not sure.

<sup>174</sup> Detainees 319 and 321.

<sup>175</sup> Detainees 497 and 499.

<sup>176</sup> Detainee 502.

<sup>177</sup> Detainee 505.



*occasions while I was in Panjwayi district police station...I was forced to thumbprint documents three or four times although I have no idea what was written on them.”*

**(Detainee 505, ANP Panjwayi district HQ, Kandahar, August 2012)**

In Kandahar, 36 of the 48 detainees who described torture at the hands of the ANP reported beatings with electric cables, sticks, batons and rubber hoses and some reported beatings with rifle butts. The reports were consistent with the patterns previously documented by UNAMA. Twelve of these detainees stated that ANP officers used electric cables, approximately one meter long, to obtain information and confessions.<sup>178</sup> Detainees were beaten on the soles of their feet, backs, buttocks, shoulders, thighs, and heads. The beatings lasted from a minimum of ten minutes, until the detainees fell unconscious. On several occasions, the beatings took place during the night. In all cases, the beatings stopped after the detainee made a confession. A detainee held in police district 8 in Kandahar described the beating he endured:

### ***Electric shocks***

*“I was arrested 10 days before Ramadan as a suspected Talib in Maiwand district. I was taken to Maiwand district ANP HQ. I was taken to the interrogation room and my hands were tied behind my back and then my head was pushed down between my legs. I refused to confess. I was then given multiple electric shocks on his arms, legs and back [UNAMA observed marks consistent with burns on the detainee’s arm]. On the fourth day after my arrest, I was transferred to the provincial ANP HQ. I was interrogated once on the first day of my arrival and was threatened with electric shocks if I did not make a confession. On the second day, I was beaten on the soles of my feet many times with a pipe by three ANP officers. On the third day, I had to confess for the torture to stop. The next day I was transferred to NDS HQ.”*

**(Detainee 483, Maiwand district ANP HQ & ANP HQ Kandahar, July 2012)**

Detainees in Kandahar held at the ANP headquarters and at the counter terrorism department in Kandahar city consistently reported receiving electric shocks. UNAMA found that among the 48 documented accounts of torture from Kandahar province, 15 detainees alleged they had been subjected to electric shocks<sup>179</sup>; six of these 15 detainees were children – half the total number of children who reported torture. Nine detainees consistently reported that during interrogation an ANP officer would bring a black mobile device approximately of the size of a mobile phone into the room. This was used to give electric shocks, on the penis, ears, head, forehead, toes, feet, Adam’s apple, elbows, knees, legs, thighs, and back.

Seven out of 15 detainees<sup>180</sup>, detained during different times and in different locations in Kandahar province, consistently reported that they were given electric shocks during interrogation and that a small black mobile device was used, UNAMA’s monitoring revealed that detainees described what appeared to be a “taser” when they were describing the equipment used to give them this type of electric shock treatment.

*“When I denied that I had not planted IEDs, the interrogator touched me with that black device and pressed the red button of the device. When the device touched me I felt electric*

<sup>178</sup> Detainees 10, 18, 21, 24, 26, 221, 271, 312, 319, 321, 440 and 573.

<sup>179</sup> Detainees 8, 10, 24, 221, 225, 228, 268, 271, 279, 310, 314, 315, 321, 483 and 509.

<sup>180</sup> Detainees 8, 24, 221, 268, 271, 279 and 310.

*shock. He touched me five times with that machine. It was a strong electric current when the machine touched me”.*

**(Detainee 271, ANP HQ Kandahar, March 2012)**

Detainees in Kandahar also reported being given electric shocks on their sexual organs. A detainee described this form of torture that was consistent with other reports received.

*“After the beating, three of them (ANP officers) came to me and pushed me to the ground. One of them removed my trousers. After that, one of them held my head while the other held my legs. The third one came and held my penis. They pulled me up from the ground for almost one meter and dropped me. I fell down on the floor. It was very painful. My penis was bleeding... After that they made me lay on my back. Two of them walked over my body with their shoes on. They were jumping on my stomach and chest pressing my chest and stomach hard. It was painful, I could not breath. After a while, they brought electric wires and tied it on my second toes (index toes) and started giving me electric shocks. They gave me two shocks each on my second toes, and two more shocks on my penis. The shocks on my penis were really painful, I screamed a lot. I had pain in my penis for next ten days. I was urinating blood for several days.*

**(Detainee 228, ANP HQ Kandahar, October 2011)**

UNAMA also received sufficiently reliable and credible cases of torture by electric shock from facilities located in Herat, Baghlan and Paktika provinces.

### ***Suspension***

Detainees consistently reported being suspended for long periods. This method was documented as a common practice of torture by the ANP in Kandahar, in particular at the Governor’s Compound, at the ANP lock-up in Panjwayi district, at the *Hawza* 8, 13 and 15 and at an ANBP check-point close to Spin Boldak district. Twelve detainees reported torture by suspension.<sup>181</sup> UNAMA found that in Kandahar detainees were suspended during the early stages of detention. Four of the twelve detainees were handcuffed and hung to metal bars placed on the walls; two reported having their leg chained to a hook on the ceiling which caused severe pain – they were kept in this stress position for at least ten minutes.

Three detainees reported being hung from a tree for several hours; two detailed being hung from mulberry trees that were outside *Hawza* 13 and close to a check-point by *Hawza* 15. Two detainees also reported that the ANP officers used weights to further stretch their limbs. One was handcuffed to a metal bar and a battery of a car was attached to his feet. Another detainee described having his hands and feet chained to the ceiling, with weights put on his body. In the majority of the cases, detainees reported that ANP officers also beat and punched them.

UNAMA found that this method of torture by suspension appeared to be specific to ANP practices in Kandahar.

### ***Unofficial Location used for Interrogation in Kandahar***

UNAMA received compelling evidence of the use of a room in the Provincial Governor’s compound in Kandahar where suspected suicide attackers were detained by the ANBP

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<sup>181</sup> Detainees 21, 24, 26, 271, 310, 312, 315, 319, 321, 488, 489 and 508.

and interrogated. Two detainees reported that a deputy commander of the ANBP was in charge of this detention facility.<sup>182</sup> The detainees stated the deputy commander monitored investigations at this location and ordered the torture of detainees.

Detainees provided detailed information about the acts of torture, including electric shocks, suspension from the ceiling, beating with electric wires, human bites on legs and thighs, kicks, punches, life threats, and pulling of the penis. The detainees reported they had to share a smelly room, probably close to a sewer, for 18 days without being allowed to see light or use the toilet before being transferred to ANP headquarters in Kandahar.

### ***Alleged Disappearances in Kandahar***

UNAMA received multiple reports of the alleged disappearance<sup>183</sup> of individuals who had been taken into ANP custody in Kandahar province from September 2011 to October 2012. Information obtained by UNAMA from sources within the criminal justice system, defence lawyers, legal aid providers and other credible sources indicated that the ANP had arrested and detained many persons whose whereabouts remain unknown. Multiple sources shared concerns with UNAMA that following arrest, some detainees may have been killed while in police custody.

At the time of writing, 81 complaints of ‘disappearance’ have been received in Kandahar.<sup>184</sup> Case files on all complaints have been opened but, according to various sources, criminal justice and law enforcement officials have yet to locate any of the missing persons. UNAMA was informed that records of the arrest of detainees are available; however, there is no record of where the detainee was subsequently transferred.

UNAMA also received reports that a large number of unidentified dead bodies, with similar gunshot injuries to the chest and head, were recovered by the ANP in Kandahar city.<sup>185</sup> Moreover, between April and August of 2011 as well as between April and May 2012, the United Nations Department of Safety and Security received information from the ANP who had documented five such incidents (three of which were reported in 2012) that four of the victims had gunshot injuries, one had stab wounds, while one corpse was discovered handcuffed.<sup>186</sup> UNAMA continues to follow very seriously cases

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<sup>182</sup> Detainees 319 and 321.

<sup>183</sup> *International Convention for the Protection of All Persons from Enforced Disappearance* defines “enforced disappearance” under article 2: “The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. Afghanistan has not signed or ratified the convention.

<sup>184</sup> UNAMA meetings with criminal justice officials on 27 May 2012, Kandahar city. Other organisations also informed UNAMA that from September 2011 to June 2012 they received more than 20 complaints of alleged disappearances from victims’ families.

<sup>185</sup> UNAMA meeting with Government official on 24 May 2012, Kandahar city.

<sup>186</sup> UNOSS Reports 17 and 18 April 2011, 21 August 2011, 2 April 2012 and 16 May 2012. UNAMA’s observation also revealed that in the last six months, Mirwais hospital (Kandahar Regional Hospital) received at least 13 dead bodies allegedly recovered from around Kandahar city by the ANP. UNAMA obtained access to and analysed the medical records of these unidentified bodies; all were killed as a result of gunshot injuries to the head and chest. As Mirwais hospital does not have the capacity to conduct adequate ante-mortem and post-mortem analysis, it is difficult to make any firm conclusions about the cause of death.

of alleged disappearance of individuals reported to have been detained by State authorities.

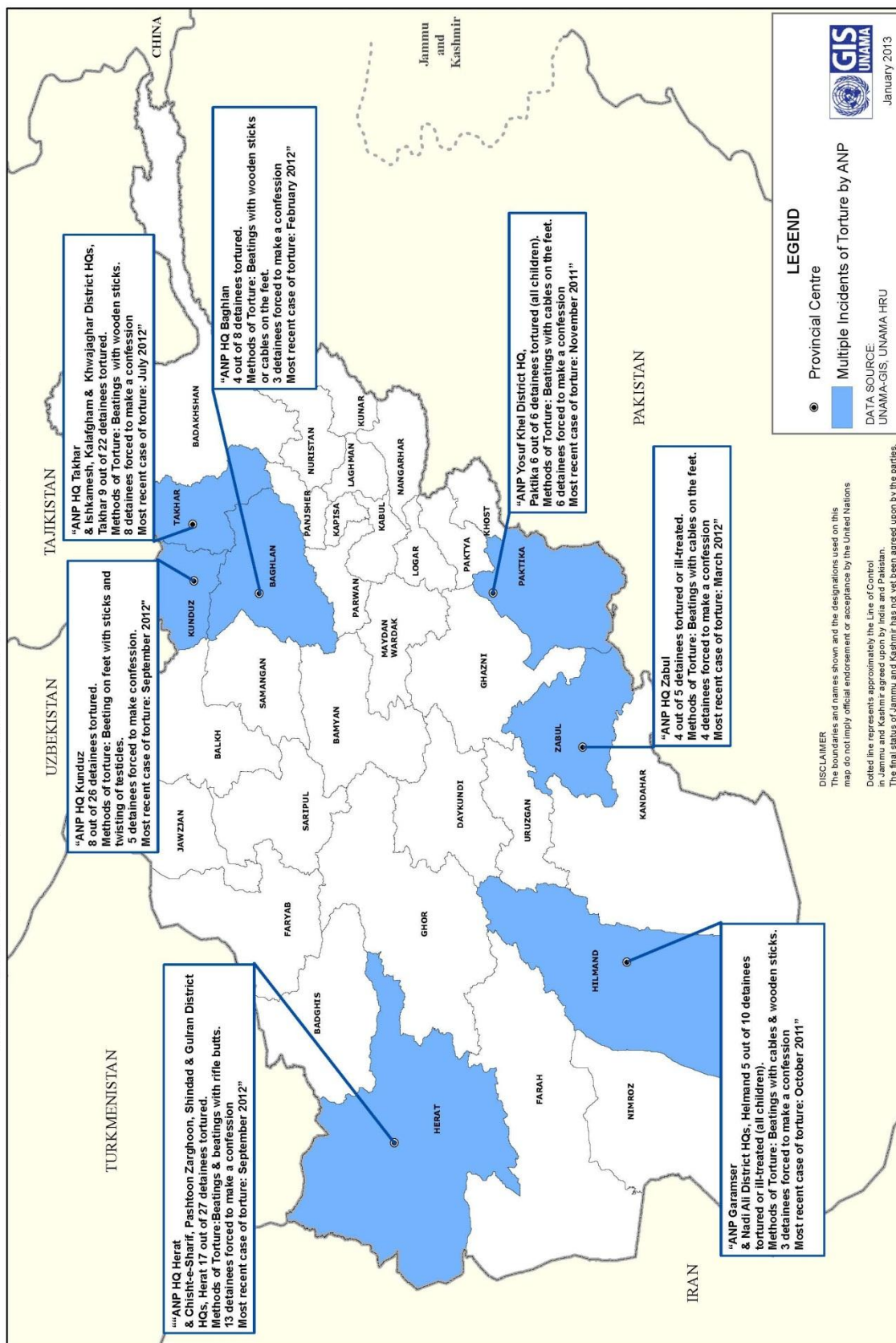
### **Sufficiently Credible and Reliable Incidents of Torture at 15 other ANP Facilities**

Sufficiently credible and reliable incidents of torture were documented by UNAMA at five ANP provincial headquarters in Pul-e-Khumri (Baghlan), Herat city (Herat), Kunduz city (Kunduz), Taloqan (Takhar) and Qalat (Zabul) as well as at 10 district ANP facilities in Ishkamesh, Kalafgham, Khwajaghar (Takhar), Chisht-e-Sharif, Pashtoon Zarghoon, Shindad, Gulran (Herat), Yosuf Khel (Paktika), Garamser and Nadi Ali (Helmand) in four provinces totalling 15 ANP detention facilities in seven provinces across Afghanistan. In these 15 facilities, UNAMA documented 53 incidents of torture and ill-treatment. An overview of these incidents is found in map 6.

Detainees in six provinces described methods of torture that included beatings with cables and/or wooden sticks on the feet. Detainees reported also beating with rifle butts in Herat. In Kunduz, detainees' accounts included torture by twisting of the testicles. Both in Helmand and in Paktika, all the sufficiently credible and reliable reports of torture involved child detainees.

# Map 6: Multiple Incidents in ANP Custody in Seven Provinces

## MULTIPLE INCIDENTS OF TORTURE BY ANP IN SEVEN PROVINCES



AMA-HRT004M121U1712/IncidentsofTortureANP\_00602  
2nd Edition

## Systematic Torture in ANP Facilities

| Province | Methods of Torture   | Location of ANP Detention Facility  | CoP and/or Head of Detention Facility<br><i>[Naming of a director of a detention facility does not indicate or suggest that the director is a perpetrator of torture and ill-treatment at the facility]</i> |
|----------|--|---|---|
| Kandahar | <i>Beatings with cables on the soles of the feet; Electric shocks; Stress positions; Prolonged standing;</i> | Kandahar city provincial HQ<br><i>(District 1, Kabul shah area)</i>             | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i> <sup>187</sup><br>Naqibullah<br><i>(Head of ANP HQ)</i>   |
| Kandahar | <i>Beatings with cables on the soles of the feet;</i>  | Hawza 3, Kandahar city<br><i>(Bacha khan colony area)</i>                       | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i><br>Haji Niamatullah<br><i>(Head of ANP HQ)</i>  |
| Kandahar | <i>Suspension;</i>   | Hawza 8, Kandahar city<br><i>(Sofi shib shrine area)</i>                        | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i><br>Mohibullah<br><i>(Head of ANP HQ)</i>  |
| Kandahar | <i>Suspension;</i>   | Hawza 13, Kandahar city<br><i>(Char Bagh, Ghazi Ba Ghondi area, District 8)</i> | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i><br>Mir Wise<br><i>(Head of ANP HQ)</i>  |
| Kandahar | <i>Suspension;</i>   | Hawza 15, Kandahar city<br><i>(Shin Kariz Malajat District 2)</i>               | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i><br>Ali Ahmad<br><i>(Head of ANP HQ)</i>   |
| Kandahar | <i>Suspension; Beatings with</i>   | Panjwayi district HQ<br><i>(Panjwayi District</i>                               | CoP Major General Abdul Raziq   |

<sup>187</sup> Chief of Police Major General Abdul Raziq was appointed as acting Chief of Police in May 2011. This appointment was made official in July 2011 by President Karzai.



|          |   |  |   |
|----------|---|--|---|
|          | <i>cables on the soles of the feet;</i>                           | <i>Center, Panjwayi Bazaar)</i>  | <i>(Date of actual appointment: July 2011)</i><br>Obaidullah<br><i>(Head of ANP HQ)</i>                                     |
| Kandahar | <i>Suspension; Beatings with cables on the soles of the feet;</i> | <i>Spin Boldak, ANBP check post (Sarhadari Building, Spin Boldak city)</i> | CoP Major General Abdul Raziq<br><i>(Date of actual appointment: July 2011)</i><br>Janan Kakozei<br><i>(Head of ANP HQ)</i> |

### Sufficiently Credible and Reliable Incidents of Torture at 15 ANP Facilities

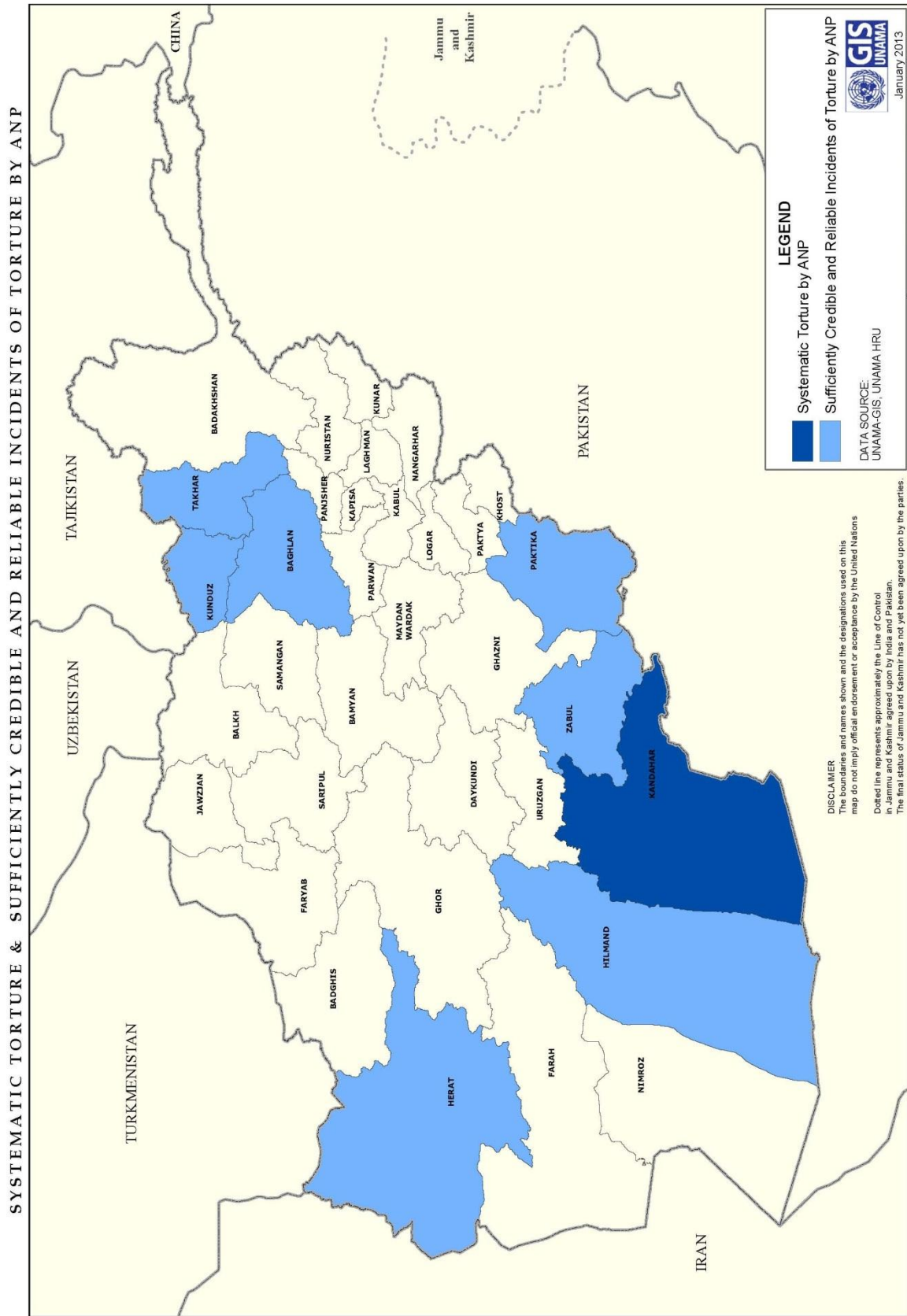
| <b>Province</b> | <b>Methods of Torture</b>                                | <b>Location of ANP Detention Facility</b>                           | <b>CoP and/or Head of Detention Facility</b><br><i>[Naming of a director of a detention facility does not indicate or suggest that the director is a perpetrator of torture and ill-treatment at the facility]</i> |
|-----------------|--|---|--|
| Baghlan         | <i>Beatings with wooden sticks or cables on the feet</i> | <i>Pul-i-Khumri provincial HQ (Governor's office Street, PD 1,)</i> | CoP Major General Asadullah Sherzad<br><i>(Date of appointment: Sept 2011)</i><br><br>Gulistan<br><i>(Head of ANP HQ)</i>  |
| Helmand         | <i>Beatings with cables and wooden sticks</i>            | <i>Garamser district HQ (ANP HQ based in Hazar Juft area)</i>       | Aub Omer<br><i>(Date of appointment: Nov 2012)</i><br><br>Hekmatullah<br><i>(Previous CoP)</i>   |
| Helmand         | <i>Beatings with cables and wooden sticks</i>            | <i>Nadi Ali district HQ (Loy Bagh area)</i>                         | Omer Jan Haqmal<br><i>(Date of appointment: Nov 2012)</i><br><br>Sadi Khan<br><i>(Previous CoP)</i>  |
| Herat           | <i>Beatings;</i>   | <i>Herat city</i>   | CoP General Sayed  |

|         |  |  |   |
|---------|--|--|---|
|         | <i>Beatings with rifles butts</i>                          | provincial HQ<br>( <i>Qumandani Street, across from the Herat blue mosque eastern gate</i> )             | Abdul Ghaffar Sayedzada<br>( <i>Date of appointment: Aug 2011</i> )   |
| Herat   | <i>Beatings; Beatings with rifles butts</i>                | Chisht-e-Sharif district HQ<br>( <i>Inside ANP district HQ</i> )   | Abubakr<br>( <i>Acting CoP</i> )  |
| Herat   | <i>Beatings; Beatings with rifles butts</i>                | Pashtoon Zarghoon district HQ<br>( <i>Inside ANP district HQ</i> )                                       | Paida Gul   |
| Herat   | <i>Beatings; Beatings with rifles butts</i>                | Shindad district HQ<br>( <i>Inside ANP district HQ</i> )   | Ghulam Sakhi Husseini   |
| Herat   | <i>Beatings; Beatings with rifles butts</i>                | Gulran district HQ<br>( <i>Inside ANP district HQ</i> )  | Abdul Qader   |
| Kunduz  | <i>Beatings on feet with sticks; Twisting of testicles</i> | Kunduz city provincial HQ<br>( <i>Inside ANP HQ</i> )  | Khalil Adarabi<br>( <i>Date of appointment: Nov 2012</i> )<br><br>Samiullah Qatrah<br>( <i>Previous CoP</i> ) |
| Paktika | <i>Beatings with cables on the feet</i>                    | Yosuf Khel district HQ<br>( <i>Adjacent to sub-Governor's office</i> )                                   | Naim Jan  |
| Takhar  | <i>Beatings with wooden sticks</i>                         | Taloqan provincial HQ<br>( <i>close to the ANP PHQ, street Ahmad Shah Masoud Foundation Road, PD 4</i> ) | CoP General Khair Mohammad Taimor Noorullah<br>( <i>Head of ANP HQ</i> )                                      |
| Takhar  | <i>Beatings with wooden sticks</i>                         | Ishkamesh district HQ<br>( <i>Inside ANP district HQ</i> )   | Per Sayed Yaqob<br>( <i>Acting CoP</i> )  |
| Takhar  | <i>Beatings with wooden sticks</i>                         | Kalafgham district HQ<br>( <i>Inside ANP district HQ</i> )   | Qari Nayem  |
| Takhar  | <i>Beatings with wooden sticks</i>                         | Khvajaghar district HQ   | Haji Abdullah   |



|       |   |  |   |
|-------|---|--|---|
|       |   | <i>(Inside ANP district HQ)</i>  |   |
| Zabul | <i>Beatings with cables on the feet</i> | <i>Qalat HQ (District 1, close to Hawza 1, Hawashnasi Building street)</i> | <i>CoP Captain Fazal Ahmad Sherzad (Head of ANP HQ)</i> |

# Map 7: Systematic and Sufficiently Credible and Reliable Incidents in ANP Custody



## Treatment of Detainees by the Afghan National Army

*“The ANA tied my hands and hung me from the ceiling of a room in the ANA base...the ANAs came to me and told me that you are supporting the AGEs in Granai village, when I asked them, how can I support them? Three of the ANA solders came to me, one of them had a hose and he started to beat me on my body with it.”*

**(Detainee 586, Shiwan ANA base, Bala Buluk, Farah, July 2012)**

UNAMA interviewed 34 detainees who had been detained by ANA prior to being transferred to NDS or ANP. Three detainees were held in two ANA detention facilities at different times. UNAMA found 13 sufficiently credible and reliable incidents of torture or ill-treatment by ANA.<sup>188</sup> Reports of torture and ill-treatment were found in seven provinces in Afghanistan.

Nine out of 13 detainees who reported torture and ill-treatment were in the Western provinces of Afghanistan (five in Farah, two in Herat and two in Badghis). The other provinces where detainees reported torture and ill-treatment by ANA were Kabul, Kapisa, Kandahar and Laghman. The methods of torture reported include routine and repeated beatings, beatings with pipes and cables, suspension and electric shocks. The most recent sufficiently reliable and credible case of torture was September 2012.

### ***ANA Internal Accountability Mechanism***

The internal accountability framework for ANA officers is regulated by the *Military Criminal Procedure Code*<sup>189</sup>. Any abuse of power including torture or ill-treatment by ANA is governed by article 39 of the Code. Any allegation of torture or ill-treatment of a detainee by ANA should be referred to the Judge Advocate who will examine the detainee’s claim. If the claim has cause, the case will be referred to the military prosecutor for further investigation and possible trial of the accused ANA officer. Detainees can only be held by ANA for a maximum of 72 hours *incommunicado*. Thus, the first opportunity a detainee would have to make a claim would be when he or she is transferred to ANP or NDS (assuming the detainee has knowledge of how and who to make a claim to). There are military primary courts in all eight regional headquarters of Afghanistan as well as ANA detention centres for ANA officers. The military appeal court and the Supreme Court both sit and hear cases in Kabul.

Cases in which these criminal accountability measures are used appear to be minimal. According to the Chief of Legal Staff of the ANA, there was one prosecution two years ago of an ANA officer for beating a detainee. The ANA officer was convicted in Gardez and was sentenced to one year imprisonment.<sup>190</sup> It appears the current internal accountability mechanism is not an effective deterrent against torture as the practice occurs with few cases pursued through the military court.

## Treatment of Detainees by Afghan Local Police

*“They arrested me and brought me to the check point of ALP commander XXX. XXX has personal private prison comprising of three rooms in a building. My legs and hands were tied and one ALP sat on my head and another on my legs. About 6-7 ALP including their*

<sup>188</sup> Detainees 102, 158, 164, 198, 363, 365, 369, 494, 515, 586, 587, 656 and 657.

<sup>189</sup> Military Criminal Procedure Code, Official Gazette, 10<sup>th</sup> May 2012 (No. 1020).

<sup>190</sup> UNAMA meeting with Chief of Legal Department, B.G. Abdul Majid Nayeb (Khawari) on 28 November 2012, Kabul.

*commander XXX beat me on my thighs for about an hour with a half-meter long and about 10 inches thick pipe. XXX forced me to confess.”*

**(Detainee 601, Chahardara, Kunduz, August 2012)**

### ***Background***

From January to June 2012, UNAMA consulted with Government, police, community leaders, tribal elders and other relevant interlocutors from 51 districts, to seek their views regarding the implementation of the Afghan Local Police (ALP) programme<sup>191</sup> in their districts. Many communities and local Government officials reported security gains through the ALP programme, stating that the ALP presence had helped to improve security in areas where they are deployed. However, UNAMA continued to receive mixed reviews regarding the ALP's respect for human rights.<sup>192</sup> UNAMA observes that although ALP are allowed to hold individuals temporarily as part of their mandate to “conduct security missions in villages” they have no role in or powers of law enforcement and lack the authority to arrest and detain. The inferred power to hold suspects temporarily is not defined in scope or timeframe.<sup>193</sup>

### ***Torture by ALP***

UNAMA documented torture and ill-treatment by ALP in four provinces in Afghanistan namely Kunduz, Faryab, Kandahar and Uruzgan. Of the 12 detainees interviewed who were held by ALP, ten reported they had been tortured or ill-treated.<sup>194</sup> Seven out of 12 reported torture by ALP in Kunduz.<sup>195</sup> Four of these detainees identified their perpetrator by name and level of ALP command.<sup>196</sup> Detainees described that the main form of torture used by ALP was beatings with pipes or cables.

### ***Oversight and Accountability of ALP***

UNAMA reiterates its concerns with and the lack of oversight and accountability mechanisms currently in place for the ALP, documented in the 2011 UNAMA Protection of Civilians report.<sup>197</sup> Between January and June 2012, UNAMA continued to receive reports that the ALP operates relatively independently of the Ministry of Interior and with impunity for alleged abuses.

UNAMA acknowledges steps taken in 2012 by the Ministry of Interior's Afghan Local Police Directorate, ANP and ISAF towards ensuring a broader oversight of the ALP Programme. These efforts include: field missions by the Ministry of Interior ALP Directorate to ALP sites, regular meetings between provincial ANP chiefs, ANP-ALP focal points, and ALP commanders and visits to the ALP sites and outreach meetings

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<sup>191</sup> In August 2010, the Government of Afghanistan launched the Afghan Local Police (ALP) programme as a MoI led rural security initiative to protect communities from anti-Government elements through recruitment of local individuals into an armed force with limited security functions. At the district level, the ALP report to the district CoP. Special forces from the United States play a mentoring role, without any official supervisory role, by providing training and working with the ALP units for a limited duration before handing over responsibilities to conventional forces for further mentoring.

<sup>192</sup> As of 22 June 2012, 15,000 ALPs were operating in 70 districts across Afghanistan. The programme is expected to reach 30,000 members by the end of 2014. UNAMA meetings with ISAF HQ and USA CFSOCC-A DCO, 22 June and 1 August 2012, Kabul.

<sup>193</sup> Afghan Local Police Establishment Procedure adopted August 2010 and adjusted January 2012.

<sup>194</sup> Detainees 33, 81, 152, 354, 500, 511, 600, 601, 605 and 653.

<sup>195</sup> Detainees 81, 152, 354, 511, 600, 601 and 605.

<sup>196</sup> Detainees 511, 600, 601 and 605.

<sup>197</sup> UNAMA Protection of Civilians in Armed Conflict 2011 report, pages 35-36, February 2012.

with local elders. In addition, ISAF made efforts to build sustainable mechanisms to strengthen ALP, such as embedding Afghan Special Forces within the ALP to provide ongoing training, which has begun in some districts.

There are reportedly plans to form a unit within the Ministry of Interior's ALP Directorate to investigate claims of gross human rights abuses committed by ALP. This unit would act as a referral mechanism for sending substantiated claims of human rights abuse to judicial organs for adjudication. Accordingly, this special unit will be supported by provincial ANP chiefs, Criminal Investigation Divisions, NDS representatives and local *shura's* and will undertake field missions to investigate reports of ALP abuses.<sup>198</sup> In 2012, however, UNAMA continued to receive reports from communities that the ANP in most cases did not investigate and arrest ALP members suspected of committing human rights violations.

While local elders recognized the importance of training of ALP, they stated to UNAMA that the 21-day basic training package ALP currently receives is not sufficient. Recently, human rights content has been inserted into the training curriculum for new ALP recruits, including basic human rights concepts within the Afghan Constitution, in order to help ALP units better understand how human rights is part of their core protection function in practice.<sup>199</sup> Given that the ALP training package is mainly focused on teaching recruits military-style tactics - with very limited participation by ANP - it is unclear whether human rights training will make a practical difference in the performance of ALP or their respect for human rights on the ground.<sup>200</sup>

## **Treatment of Detainees Transferred to NDS and ANP by International Military Forces**

### ***Background***

Following its suspension of transfer of detainees to 16 detention facilities identified by UNAMA, ISAF transferred detainees to other detention facilities which were not implicated in detainee ill-treatment. Prior to the transfer, ISAF stated it obtained assurances from the detention facility director or the chief that a detainee would not be transferred to locations with credible reports of torture. Upon ISAF certification of a facility, ISAF resumed transfers of detainees to those locations. In the case of conditionally certified facilities, ISAF instituted a procedure whereby their monitoring personnel would make an unannounced visit within 72 hours after detainees were handed over to NDS or ANP to interview detainees regarding their treatment and the conditions in which they were detained.

Nevertheless, UNAMA received allegations from detainees held in facilities that had not completed ISAF's certification process that international military forces had captured them and transferred them to NDS or ANP detention. UNAMA referred many of these

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<sup>198</sup> UNAMA meetings with the Ministry of Interior ALP Directorate, Chief General Ali Sha Ahmad Zai, 10 June 2012, Kabul.

<sup>199</sup> UNAMA meeting with ISAF HQ and USA CFSOCC-A DCO, 22 June 2012, Kabul.

<sup>200</sup> In accordance with the principle of "Afghans train Afghans", ANA Special Forces train ALP in at least eight ALP sites at the moment. Although the training strengthens ALP competence, the ANP still does not take part in training of ALP. ISAF noted that future plans should ultimately entail stronger ANP involvement in the substantive and technical components of the ALP program, not only on its administrative aspect (UNAMA meeting with ISAF HQ and USA CFSOCC-A DCO on 22 June 2012 in Kabul).

cases to ISAF for investigation and confirmation. Following investigations into the cases referred, however, ISAF maintained in all instances that international military forces, including U.S. Special Forces, had not been involved in the capture or transfer of the detainees in question. ISAF recommended that UNAMA attempt to confirm the allegations of capture and transfer with an “other government agency” – an unofficial designation for US intelligence agencies active in the areas where individuals were captured.

### ***Transfer of Detainees to NDS and ANP by International Military Forces***

UNAMA’s detention observation included interviews with 79 detainees who reported the involvement of international military forces or other (foreign) government agencies either alone or with Afghan security forces in their capture and transfer to NDS or ANP custody.<sup>201</sup> UNAMA found sufficiently reliable and credible evidence that 25 of the 79 (31 per cent) detainees were tortured in NDS, ANA or ANP facilities. This again raises concerns about transferring States’ obligations under the *Convention against Torture* not to transfer detainees to another State’s custody where a substantial risk of torture exists.

Thirteen<sup>202</sup> out of the 79 (16 per cent) detainees were tortured or ill-treated by NDS. Seven detainees reported they were tortured by NDS in Kandahar province (four detainees were tortured at the NDS headquarters in Kandahar, one detainee was tortured by NDS in Panjwayi district and three detainees were tortured at an alternative facility otherwise known as *Mullah Omar’s house*. UNAMA found that two detainees reported torture by NDS at Khost; one detainee reported torture at NDS Baghlan and one detainee reported torture by NDS in Mazar (Balkh). Additionally, UNAMA found one detainee tortured at NDS Department 124 in July 2012. UNAMA notes, with concern that in both NDS Kandahar and NDS Khost, reports of torture were as recent as September 2012.

UNAMA found that ten<sup>203</sup> out of the 79 (12 per cent) detainees were tortured by ANP. Four detainees reported they experienced torture in Kandahar province (three detainees at the ANP headquarters and one detainee at the ANP district facility in Panjwayi). Four detainees reported that they were tortured by ANP at the provincial headquarters in Qalat (Zabul) and one detainee reported he was tortured by ANP at the provincial headquarters in Sharan (Paktika).

Two of the 79 detainees transferred by international forces or foreign government agencies experienced torture by ANA. Both detainees reported they were tortured in Bala Murghab in Badghis province.<sup>204</sup>

Robust oversight and monitoring of all transferred detainees to NDS, ANA and ANP custody is critical and not only in areas where ISAF has implemented a monitoring programme. Given that two new NDS facilities (NDS Baghlan and NDS Balkh) and two

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<sup>201</sup> Detainees 9, 13, 14, 17, 18, 20, 22, 23, 24, 43, 44, 45, 49, 64, 75, 111, 131, 132, 133, 134, 135, 137, 172, 173, 174, 175, 176, 177, 178, 182, 187, 208, 222, 230, 234, 239, 246, 247, 248, 249, 261, 266, 267, 270, 283, 284, 286, 287, 288, , 291, 301, 316, 318, 326, 384, 400, 403, 440, 446, 449, 484, 485, 486, 492, 493, 494, 524, 540, 575, 580, 585, 592, 615, 616, 630, 646, 650, 656 and 657.

<sup>202</sup> Detainees 14, 17, 75, 111, 247, 284, 286, 287, 291, 440, 449, 484 and 646.

<sup>203</sup> Detainees 18, 230, 270, 288, 289, 384, 486, 492, 493 and 494.

<sup>204</sup> Detainees 656 and 657.



ANP facilities (ANP provincial headquarters in Zabul and Paktika) have been identified as locations where sufficiently reliable and credible cases of torture have been found, there is a need to monitor detainee transfers to locations beyond the 16 facilities where ISAF has implemented its detention inspection programme.

## **Measures Taken by the Government of Afghanistan to Address Torture and Ill-Treatment**

### **Overview**

Following the publication of UNAMA's October 2011 report, both NDS and MoI stated they had put in place a number of measures to deal with problems in their detention system, including new training programmes for their personnel that covered human rights and humane treatment of detainees, detailed orders to police providing instructions on the protection of detainees' rights, creation of ad hoc delegations to investigate allegations of torture and establishment of a new Human Rights Department within NDS.<sup>205</sup>

### **National Directorate of Security**

#### ***Investigations***

UNAMA provided the Government of Afghanistan with a draft of the report *Treatment of Conflict-Related Detainees in Afghan Custody* a month prior to its release on 10 October 2011. In NDS's written response to the findings of the report dated 6 October 2011<sup>206</sup>, it stated that a delegation had been appointed to investigate the reports of torture and that a work plan had been prepared and was being implemented to address the concerns and issues raised by UNAMA. Apparently, according to the NDS Human Rights Department, internal investigations by an independent delegation comprising parliamentarians was completed, however the findings were not made public.

To date, NDS has not publicly shared the findings of any investigations carried out by NDS or other delegations. According to the NDS Human Rights Department, detainees were interviewed but no specific claims of ill-treatment by NDS personnel were made. The NDS Human Rights Department stated it intended to conduct further interviews of detainees, however to date there has been no reported follow up.<sup>207</sup>

#### ***Prosecutions***

At the time of writing, no alleged perpetrators of detainee ill-treatment have been identified by the delegation or the NDS Human Rights Department and no prosecutions of NDS officials for alleged ill-treatment or torture of detainees have occurred. UNAMA

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<sup>205</sup> In its 14 January 2013 response to this report attached as Annex IV, the Ministry of Interior referenced remedial measures it says it has taken highlighting "Establishment of human rights offices within the structure of the national police, incorporation of human rights subjects into the curriculum of police education centres, conducting of training programs both inside and outside the country for police personnel assigned to the country's prisons, extensive programs for development of infrastructure to improve living conditions for prisoners are the activities that MoI has undertaken to improve and ensure human rights of inmates."

<sup>206</sup> See Annex II of *Treatment of Conflict-Related Detainees in Afghan Custody* October 2011 UNAMA / OHCHR.

<sup>207</sup> Ibid.



observes there has been no independent oversight of these investigations as recommended by UNAMA in its October 2011 report.

### ***NDS Human Rights Department***

In October 2011, NDS established a Human Rights Department<sup>208</sup> to monitor NDS detention facilities. The department is tasked with monitoring all NDS detention facilities. They have conducted a number of visits to a number of provincial facilities.<sup>209</sup> Additionally, they reported that they visit NDS Department 40 twice a week.<sup>210</sup> According to the Head of the NDS Human Rights Department their effectiveness is limited due to a lack of capacity. NDS noted that recruitment plans have been thwarted because the NDS has been unable to attract the best candidates due to low salaries within the NDS. The plan is for the NDS Human Rights Department to have a permanent presence in 16 provinces which will be responsible for training NDS officials on human rights, monitoring human rights violations and investigating any complaints by detainees<sup>211</sup>.

### ***Reassignment of NDS Personnel***

According to NDS's written response to UNAMA's October 2011 report,<sup>212</sup> several employees of NDS Department 124 were dismissed and NDS provincial Directors in Kandahar, Khost, Laghman, Nangarhar, Kunduz, Kapisa, Kunar, Farah, Paktika, Paktya, Takhar and Balkh were reassigned to other locations and the Head of NDS Farah suspended. It is unclear why these transfers occurred and no reasons were provided. This may be a form of discipline but it is not a form of punishment. In some instances, it could be viewed as a promotion, for example the former NDS Director of NDS Laghman was reassigned to the regional Eastern NDS headquarters in Nangarhar.

### ***Training***

NDS Education Department<sup>213</sup> is providing five days training on human rights to all NDS investigators in the regions<sup>214</sup> with the support of the MoJ (funded by UNDP Justice and Human Rights).<sup>215</sup> AIHRC also conducted a three-day training workshop for all NDS investigators from NDS Department 124. The NDS Academy (supported by the British

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<sup>208</sup> UNAMA was notified that the NDS Human Rights Department was named the "Human Rights Monitoring sub directorate" on its creation on 2 January 2012. In communications and meeting with NDS officials throughout the year, the sub directorate moniker was rarely used with "Human Rights Department" being used consistently. Therefore, UNAMA has chosen to use "Human Rights Department" for purposes of this report.

<sup>209</sup> UNAMA meeting with Mr. Nabi, Head of NDS Human Rights Department, 2 February 2012, Kabul.

<sup>210</sup> UNAMA meeting with Mr. Momand, Head of NDS Department 40, 25 January 2012, Kabul.

<sup>211</sup> UNAMA meeting with Mr. Nabi, Head of NDS Human Rights Department, 9 May 2012, Kabul.

<sup>212</sup> See Annex II of UNAMA's October 2011 report *Treatment of Conflict-Related Detainees in Afghan Custody*.

<sup>213</sup> NDS noted that its Education Department's persistent efforts had resulted in "233 officials of the investigation and detention centres of central and provincial offices of the NDS received special professional and legal trainings." They also highlighted receiving training courses from various other organisations and sources, including "training/lessons about human rights for 3,262 relevant students and a training course for 32 officials from detention centres on the rights of accused suspects and prisoners, their treatment and the Universal Declaration of Human Rights."

<sup>214</sup> UNAMA meeting with Mr. Nabi, Head of NDS Human Rights Department, 9 May 2012, Kabul.

<sup>215</sup> UNAMA meeting with UNDP Justice and Human Rights' representative, 4 July 2012, Kabul.

embassy) has trained 80 NDS investigators from NDS Departments 124 and 40 on human rights and interrogation techniques.<sup>216</sup>

### ***NDS Orders***

NDS has issued specific orders to all NDS personnel reminding them of their duties to protect the rights of detainees.<sup>217</sup> For example, one directive -- issued in April 2011 -- (prior to the publication of UNAMA's report) reiterated the obligation to document evidence and the requirement for reasonable evidence for detaining a suspect. It also refers to the obligation to inform NDS Department 40 of an arrest within 24 hours, as well as the 72 hour detention period, stating that if an investigation is not complete, prosecutors are required to apply for an extension. Invoking article 30 of the Constitution, the directive also states that the NDS is accountable.<sup>218</sup> Although well intended, it is clear from the findings of UNAMA's 2011 report and this report that the directive -- more than a year on from when it was first issued -- has had minimal impact in deterring torture or guaranteeing due process rights to persons deprived of their liberty.

### ***No Access to Defence Lawyers during Investigations***

In responding to UNAMA's October 2011 report, NDS recognized the right of detainees to access defence counsel under the Afghan Constitution and the applicable criminal procedures. NDS noted, however, that the ability of detainees to retain defence attorneys had been limited due to the lack of interest by criminal defence lawyers to represent conflict-related detainees and due to the scarcity of defence counsel in many parts of the country.<sup>219</sup>

To address this problem, NDS stated that they had signed an agreement with the Afghan Independent Bar Association (AIBA) requiring detention facilities to be provided with defence attorneys to cover all NDS detainees.<sup>220</sup> Many AIBA lawyers and other defence attorneys consulted by UNAMA have stated that they only have access to detainees in NDS facilities after the interrogation stage in contravention of Article 31 of the Afghan Constitution.<sup>221</sup> No defence lawyers have access to NDS Department 124. As such, the agreement between NDS and AIBA has not been fully implemented.<sup>222</sup>

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<sup>216</sup> UNAMA meeting with the British embassy, 4 July 2012, Kabul.

<sup>217</sup> Copies of the NDS orders issued have been provided to UNAMA.

<sup>218</sup> NDS Directive issued on 4 April 2011.

<sup>219</sup> See Annex II of *Treatment of Conflict-Related Detainees in Afghan Custody* to UNAMA's October 2011 UNAMA / OHCHR, pp. 63-64.

<sup>220</sup> *Ibid.* pp.63

<sup>221</sup> In its 14 January 2013 response to this report attached as Annex IV, NDS stated it does not agree that it has limited the access of defence counsel to national security detainees. They state that, in line with Article 31 of the Afghan Constitution, it "ensured full appointment of defence attorneys for accused persons and has not prevented them from being able to choose defence attorneys." They added "During the current year, the relevant prosecutors' offices have received more than 222 applications from the accused for appointment of defence attorneys." The NDS response also states that defence counsel have met with "the accused 336 times in investigations section of the central departments and requests in the provinces have also been considered."

<sup>222</sup> Meeting of the Detention Working Group, 18 April 2012, Kabul. This working group is an information-sharing and policy discussion forum on issues related to conflict-related detainees. Membership in this working group includes UNAMA, Open Society Foundations, other civil society organizations, the Afghan Independent Bar Association, Afghanistan Independent Human Rights Commission, legal aid providers, defence attorneys, and other international and national organizations interested in conflict-related

While NDS is correct that the shortage of defence lawyers and their concentration in larger cities has limited their ability to represent conflict-related detainees<sup>223</sup>, it is clear that restrictions imposed by NDS limits the availability of legal counsel more than the location or number of defence attorneys present throughout the country. Indeed, several legal aid agencies have stated openly that they have regularly sought to represent NDS detainees, but rarely gain access to them while they are in NDS custody. As a result, it is not possible for these defence attorneys to take on conflict-related detainees as clients until they are transferred to a Ministry of Interior detention centre in most instances.<sup>224</sup>

UNAMA found that of 635 detainees interviewed, 111 had access to a defence lawyer. Only two of these 111 detainees, however, was offered or had access to legal representation during the investigation stage of the proceedings while in NDS detention.<sup>225</sup> Thereafter, 109 detainees had been able to access defence counsel after an indictment had been filed and either primary court or appellate court proceedings were underway or pending. Only five of the 111 detainees had access to a defence lawyer while in NDS detention – all other detainees were thus only able to access legal representation once they had been transferred to a CPD detention facility.<sup>226</sup> It is clear that, despite constitutional guarantees of the right to legal defence from the point of arrest<sup>227</sup>, the majority of detainees undergoing interrogation by law enforcement authorities are denied access to defence lawyers, particularly those held in NDS facilities.

A number of defence lawyers informed UNAMA that they had received “several” complaints of torture from their clients, including two juveniles, in six regions of the country. Most lawyers cited the NDS as a source of ill-treatment, stating that while complaints of torture by the ANP continued to be received, a slow improvement in conditions could be observed in some ANP facilities.

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detainee issues. Additionally, representatives of Government agencies and line ministries have been invited to attend this forum depending upon the subject matter discussed. In the meeting referenced above, representatives of the NDS Human Rights Department were present.

<sup>223</sup> There are a low number of defence lawyers practicing in Afghanistan compared to the number of detainees requiring legal representation. According to the Afghanistan Independent Bar Association, 1406 defence lawyers are registered in Afghanistan as of 4 September 2012. However, there are defence lawyers working in only 31 provinces in Afghanistan (Nuristan, Uruzgan and Zabul do not have any defence lawyers registered). According to Central Prisons Directorate (CPD) monthly statistics, there were approximately 24,027 detainees and prisoners in CPD prisons in Afghanistan as of October 2012. As of 20 October 2012, MoJ monthly statistics indicate 976 juvenile detainees and prisoners in JRCs in Afghanistan.

<sup>224</sup> Detention Working Group meetings, including the meeting on 18 April 2012 in which the Afghan Independent Bar Association (AIBA) and other legal aid providers reiterated to NDS representatives present that they wanted access to detainees in NDS facilities and were ready to ensure the availability of defence counsel to NDS locations. Further, AIBA provided NDS with a list of all defence lawyers licensed to represent clients in Afghanistan and promised to update that directory of attorneys every three months. NDS responded by promising to distribute the list to all local NDS chiefs throughout Afghanistan as a means to improve and facilitate defence counsel access to NDS facilities and detainees.

<sup>225</sup> Detainees 203 and 598 were offered access to a defence lawyer during interrogation by NDS in Jawzjan and NDS Kunduz respectively.

<sup>226</sup> Detainees 66 and 67 in NDS Badhakshan; detainee 6 in NDS Herat, detainee 109 in NDS Balkh and detainee 646 in NDS Department 40.

<sup>227</sup> See Article 31 of the Constitution of Afghanistan.

As torture most often takes place during *incommunicado* detention,<sup>228</sup> access to a lawyer at all stages of criminal proceedings, including preliminary investigation, serves as a deterrent to torture and ill-treatment. The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has also explained the benefits of a right to access legal counsel.<sup>229</sup>

One of the greatest safeguards against torture and ill-treatment for individuals taken into police custody is to have access to a lawyer; the presence of a lawyer acts as a deterrent but also enables a lawyer to take appropriate action in the event of ill-treatment. Lawyers interviewed by UNAMA also observed that most often allegations were made two to five months after the alleged act; thus compulsion in terms of a confession was difficult to establish. This is exacerbated by the fact that no mechanism exists for a detainee to establish the legality of their detention; often the first opportunity a defendant has to complain of torture and/or ill-treatment is when he faces a judge at trial - months after the interrogation period.

### ***Detainees limited access to their families***

NDS established a new office within NDS Department 40 to notify families of detainees' locations and to facilitate the visitation of family members to the specific facilities. UNAMA observed that in all NDS facilities it visited detainees were permitted to have family visits twice a week but only after NDS had completed its investigation. NDS Department 124 appears to be an exception to that observed trend.

### ***UNAMA's sharing of cases with NDS for follow up***

NDS criticized UNAMA for not sharing information of evidence of torture prior to the publication of the October 2011 detention report.<sup>230</sup> During the current monitoring period, UNAMA addressed these concerns by providing NDS with a number of specific cases illustrating the types of torture being used in multiple provincial detention facilities and regularly discussing general concerns in detention facilities across Afghanistan.<sup>231</sup> All identifying features were omitted to preserve the identity and confidentiality of the detainees. NDS responded to UNAMA's concerns<sup>232</sup> refuting verified allegations of torture made by detainees, stating they had followed up with the NDS prosecutor after interviewing detainees. NDS officials noted that detainees had made confessions and thus according to NDS, had admitted their guilt. NDS failed to address whether the detainees had been coerced and whether they had been tortured.

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<sup>228</sup> See, report of UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 17 December 2002: E/CN.4/2003/68, at § 26(g).

<sup>229</sup> "From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one's defence. The presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuse, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment. In addition, the lawyer is the key person in assisting the person deprived of liberty in exercising his or her rights, including access to complaints mechanisms." Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, (CAT/OP/MDV/1, 26 February 2009), at § 62.

<sup>230</sup> *Ibid.*

<sup>231</sup> UNAMA shared sufficiently credible and reliable incidents of torture and ill-treatment with NDS high level official in Kabul on 4 June 2012.

<sup>232</sup> Letter from NDS to UNAMA dated 24 June 2012.

At the time of writing, UNAMA observes that NDS had released a detainee involved.<sup>233</sup> In these cases both the detainees and other sources previously consulted by UNAMA refused to talk further about circumstances of their treatment and the manner in which NDS followed up with them.

## **Afghan National Police and the Ministry of Interior**

### ***Investigations***

MoI and NDS stated in their response to UNAMA October 2011 report: *“The Afghan Security Agencies strongly reject the allegations and remind that they have to allow and facilitate visits to its prisons by the...UN delegations to make their own assessment of the conditions of detention facilities and those in custody.”*<sup>234</sup>

ANP reported that it had investigated claims of torture and stated it dispatched authoritative delegations to those provinces mentioned in UNAMA’s 2011 report:

*“Members of delegations strictly checked the environment and addressed all misbehaviour cases with the accused persons. In a review conducted by MoI, two out of 40 individuals complained about torture by ANP. In Laghman, none of the 21 convicted persons complained about the behaviour of the Afghan police. In Kandahar, 13 out of 476 individuals complained about the bad behaviour of police, and in Kunduz 6 out of 82 had complaints.”*<sup>235</sup>

In MoI’s written response to the findings of UNAMA’s 2011 report,<sup>236</sup> it stated that a MoI delegation was dispatched to Laghman, Kandahar and Kunduz provinces to investigate reports of torture. The delegation assessed the human rights situations within units, divisions and police headquarters. UNAMA understands the detainees who reported ill-treatment and torture to the MoI delegation were in the CPD prisons in Kandahar, Kunduz and Kabul (*Pul i Charkhi*). Only oral complaints were made to the delegation and no written statements were taken. MoI officials stated they accepted that these allegations needed to be investigated further. According to MoI officials, MoI’s Gender, Human Rights and Child Rights department plans to return to these facilities to interview these detainees.<sup>237</sup>

UNAMA observes that there has been no independent oversight of any delegations and investigations. In a review undertaken by MoI of prisoners from *Pul i Charkhi*, Kandahar and Kunduz, two of 40 individuals reported torture by ANP from Pul I Charkhi, 13 of 476 individuals reported torture by ANP in Kandahar and six of 82 individuals reported torture by ANP in Kunduz.<sup>238</sup>

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<sup>233</sup> Detainee 98.

<sup>234</sup> Joint press statement by MoI and NDS issued on 7 September 2011.

<sup>235</sup> See Annex II: Comments of the Government of Afghanistan, the NDS and the MoI to UNAMA’s report on the *Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, October 2011). Available at: [www.ohchr.org/documents/countries/AF/UNAMA\\_Detention\\_en.pdf](http://www.ohchr.org/documents/countries/AF/UNAMA_Detention_en.pdf).

<sup>236</sup> See Annex II of UNAMA’s 2011 report *Treatment of Conflict-Related Detainees in Afghan Custody* UNAMA/OHCHR.

<sup>237</sup> UNAMA meeting with MoI Gender, Human Rights & Child Rights Department on 9 May 2012 and UNAMA meeting with NDS Human Rights Department on 14 May 2012.

<sup>238</sup> MoI report *“Improving Prison Conditions & Promoting Human Rights & Gender Equality within the Ministry of Interior”* March 2012.

## ***Prosecutions***

MoI's Department of Gender, Human Rights and Child Rights informed UNAMA that there have been no prosecutions of ANP police officers for the use of torture. According to the Attorney General's Office, military prosecutors – responsible for criminal investigations of ANP personnel -- had received 35 cases in which ANP officials were accused of beatings and 40 cases of murder involving ANP officers. It appears, however, that none of these cases involved ANP officers using torture. It is unclear from the AGO's records whether the alleged victims of these cases were detainees or whether the cases occurred in the context of a criminal investigation or interrogation.<sup>239</sup>

## ***Training***

MoI has undertaken considerable efforts to implement some of UNAMA's recommendations including the addition of an extra 18 hours of modules on human rights as part of the Police Academy curriculum for all police cadets. Additionally, there are two further types of training for police officers on human rights. First, the MoI Legal department delivers their own training to MoI staff. Second, the Human Rights department is in the process of conducting its own training with the support of the AIHRC who are providing the trainers. To date, the training has only been conducted for Zone 101 in Kabul although the intention is to deliver the training in all police zones and provinces in Afghanistan.

The Human Rights department advised UNAMA that it does not have the financial resources to carry out this task. The participants included ANP interrogators and CID. However, the human rights training is limited in that it does not include a standing operating procedure (SOP) on lawful and effective interrogation techniques as recommended by UNAMA in its October 2011 report. The MoI does not have the capacity for this additional training and needs technical and financial support from the international community to draft an SOP and train interrogators.

## ***MoI Orders***

In a meeting with UNAMA, MoI shared a copy of a detailed directive issued by the MoI in March 2012. This directive stresses the prohibition of torture and other inhumane acts; concerns around non-observance of human rights of suspects, detainees and prisoners; and the non-enforcement of applicable laws of Afghanistan and international instruments to which Afghanistan is State party. It specifically references the prohibition of arbitrary arrest, reiterating that individuals may only be taken into custody if appropriate legal grounds to do so exist. In clarifying these responsibilities of police officers to abide by the existing legal framework, the directive also reminds police officers that illegal or arbitrary arrests and misuse of authority is a crime that will be prosecuted.

MoI's directive also stressed the presumption of innocence as well as the obligation for arresting officers to inform suspects of their rights, including during the primary investigation phase. It also reminds the police of their duty to inform the prosecutor's office of any crimes and arrests of suspects within 24 hours and the time limit of 72 hours custody for an initial investigation.<sup>240</sup> MoI's Department of Gender and Human

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<sup>239</sup> Information received by UNAMA during meeting with officials of the Attorney General's Office on 25 June 2012.

<sup>240</sup> Ministry of Interior Directive, 14 March 2012.

Rights is required under the directive to monitor the situation of suspects, detainees and prisoners throughout the country.<sup>241</sup> Order no. 169 has been issued to all provincial and district police centres.<sup>242</sup> A delegation has been assigned to oversee the implementation of this order. The delegation has been visiting ANP provincial HQ's and lock-ups and communicating the message to ANP officers.<sup>243</sup>

UNAMA welcomes the MoI directive. If it is disseminated to law enforcement officials throughout the country, and is coupled with appropriate training and monitoring of its implementation, it can go a long way in safeguarding detainee rights and preventing torture. The Government should develop indicators to assess the impact of this directive and periodically share findings with UNAMA as well as other independent organisations engaged in human rights monitoring.

On monitoring the rights of detainees, particularly those held in NDS custody, UNAMA calls on the Government to ensure unfettered access to independent monitors who can work in coordination with any State monitoring mechanism.

## **Due Process and the Criminal Justice System's Response**

Under the Afghan Constitution and applicable criminal procedure, evidence gained through torture cannot be used as the basis to convict a criminal suspect. Yet, as this report highlights, in almost all cases where it was used, NDS and ANP officials relied on torture and ill-treatment as an expedient means to obtain a confession. Of the 178 detainees who reported being tortured in NDS custody, 137 stated they had made a confession during interrogation to stop the torture.

As noted in its October 2011 report, UNAMA found that judicial authorities rely almost exclusively on confessions of guilt from defendants as the basis for a prosecution in court.<sup>244</sup> Charges, indictments and convictions are often based on evidence that is obtained through torture and reliance on such evidence is rarely questioned in court.

### ***Judicial and prosecutorial handling of claims of torture***

UNAMA interviewed several judges and prosecutors to gain an insight into how the judiciary and law enforcement authorities handle allegations of torture and coerced confessions.<sup>245</sup> Several judges admitted to having received allegations of torture in court, while many prosecutors denied having received any such allegations.<sup>246</sup> Many officials interviewed by UNAMA, however, acknowledged that they were aware of instances in which NDS, ANP, and the Criminal Investigation Department of MoI had

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<sup>241</sup> Ibid.

<sup>242</sup> Copies of the MoI orders issued have been provided to UNAMA.

<sup>243</sup> UNAMA meeting with MoI Gender, Human Rights and Child Rights Department on 9 May 2012 and UNAMA meeting with NDS Human Rights Department on 14 May 2012.

<sup>244</sup> UNAMA/OHCHR, *Treatment of Conflict-Related Detainees in Afghan Custody* (October 2011) pp. 51-52.

<sup>245</sup> Between 9 and 28 February 2012, UNAMA met with: 15 judges and two provincial representatives of the Ministry of Justice, working in 11 provinces, to inquire about courts' response to allegations of torture and coercion; 15 representatives of the Attorney-General's Office, 13 of them working in 11 provinces (mostly the seat of UNAMA regional offices) and two Heads of Unit of the Attorney-General's Office in Kabul, to inquire about the AGO's response to allegations of torture and coercion.

<sup>246</sup> Between 9 and 28 February 2012, UNAMA interviewed 15 representatives of the Attorney-General's Office throughout Afghanistan, 13 of them working in 11 provinces (mostly the seat of UNAMA regional offices) and two Heads of Unit of the AGO in Kabul to inquire about the AGO's response to allegations of torture.



used torture and ill-treatment to gain confessions in criminal investigations, even when they denied having received such allegations themselves.<sup>247</sup>

No specific guidance has been issued for judges on how to investigate allegations of torture and/or how to proceed where a confession has been obtained through coercion or torture. In fact, several judges, prosecutors and defence counsel have noted that the present system places the burden of alleging and proving that torture has occurred entirely on the defendant. It appears that NDS, ANP, prosecutors and the courts require that a defendant be able to show visible physical injuries as the only means to prove that he was subjected to torture and ill-treatment.<sup>248</sup>

Many judges explicitly recognized that medical referral is an inadequate means to prove torture, especially because NDS often holds suspects far beyond the prescribed time limits for pre-trial detention. By the time most defendants appeared in court, it was too late to establish that torture took place as visible evidence, especially physical marks, have usually long since faded. Compounding this problem, NDS often uses its own medical personnel to examine victims of alleged torture. This raises obvious concerns about the independence of the medical examination of detainees as an NDS doctor is unlikely to present medical evidence of torture that incriminates NDS officials.

### ***Judicial responsibility to reject evidence gained through torture***

Some judges and prosecutors have indicated that their ability to act on claims of torture is limited as the Penal Code and other laws fail to provide a working definition of the elements of the crime of torture. While “torture” is prohibited, the law does not explicitly define the crime. As yet, the international definition of torture has not been transposed into law or policy.<sup>249</sup>

UNAMA also spoke with a number of lawyers who defended clients alleging torture or ill-treatment;<sup>250</sup> all reported having raised the matter before the courts in past cases.<sup>251</sup> One lawyer commented that in his experience no judge has taken action against law enforcement agencies but often judges give a lighter sentence to the defendant if they “felt” a confession had been extracted by coercion. Another lawyer explained that whether physical evidence is still available or not, he brings the allegation to the attention of the court but asserted that in most cases judges disregard these allegations. Similarly, others lawyers commented that they have never been involved in a case where torture was accepted by the courts as grounds to dismiss charges against a suspect.

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<sup>247</sup> Among many judges and prosecutors interviewed, two prosecutors interviewed specifically identified the NDS and the ANP used torture when dealing with conflict-related detainees at district-level.

<sup>248</sup> In discussions with defence counsel, judges and prosecutors, UNAMA was advised that when a detainee alleges torture to an institution or court, the detainee is usually sent to be examined by a public health physician. If there are no clear physical marks remaining on the detainee, it is almost impossible for the detainee to establish that torture ever occurred. In many instances, the detainee’s wounds are explained away by authorities as injuries suffered during combat or during the process of the defendant trying to escape arrest.

<sup>249</sup> *Ibid.*

<sup>250</sup> Between 9 and 28 February 2012, UNAMA met with 12 defence lawyers working in 11 provinces located throughout Afghanistan.

<sup>251</sup> Defence lawyers also informed UNAMA that in three separate instances they raised the issue of torture; medical records were available and part of the case file.

Judges and prosecutors also indicated that their ability to deal effectively with allegations of torture in criminal cases was influenced by difficulties in their relationship with NDS or ANP. One judge said that he had called on the NDS and ANP to appear before the court to answer allegations of torture, but in vain. Another mentioned that if the officials implicated in the defendant's allegation of torture (investigators from NDS Department 40) had been available in the province rather than Kabul, he would have summoned them. Yet another judge mentioned the reluctance of officials in general, including health officials, to testify against the NDS.

Some judges and prosecutors acknowledged that there is a delicate relationship between judicial personnel and the NDS, and in this context, raised issues of personal security (risk of retaliation) and its impact on the processing of such cases. The same concerns apply to defence lawyers and possibly to medical staff required to examine alleged torture victims.

### ***Legal responses to address torture and ill-treatment***

Currently, a process is underway to draft a new Criminal Procedure Code (CPC). This drafting process, led by the Ministry of Justice, has included several revisions of legal safeguards that – if adopted -- could strengthen due process for defendants and reinforce existing prohibitions against torture and arbitrary detention.<sup>252</sup>

UNAMA is encouraged that the new draft CPC includes a legal safeguard that places the burden of proof on prosecutors to show they had obtained evidence against the defendant lawfully and not through coercion or torture. Provisions have also been introduced guaranteeing the right of defendants to access legal counsel at any stage of the proceedings.<sup>253</sup> Presently, the draft CPC includes an article requiring defendants to have legal representation in cases of serious crimes where long-term imprisonment is possible as a minimum sentence.<sup>254</sup>

An article codifying the Constitutional obligation of the State to ensure that free legal aid is available to indigents is also included in the draft,<sup>255</sup> along with requirements for the prosecutor and court to ensure that coerced confessions are removed from a defendant's file.<sup>256</sup> Inclusion of such legal safeguards, backed by robust implementation is essential to ensuring that Afghanistan's laws are in line with constitutional guarantees and the country's international human rights obligations.

The draft CPC guarantees the right of detainees to be brought before a court 3 days prior to the expiration of the detention period. The detention period during investigation shall be 10 days and shall not exceed 30 days each time and 180 days in total. On every application before the court by the prosecution for an extension of detention, the detainee and his defence lawyer have a right to be present in court to challenge the application.

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<sup>252</sup> The draft revision of the Criminal Procedure Code is currently pending adoption in Parliament. The Wolesi Jirga's Judicial Affairs Commission started its review of the draft CPC on 2 October 2012.

<sup>253</sup> See article 8 paragraphs 8, 11 and 14 of the draft Criminal Procedure Code (dated March 2012, English translation by the MoJ and JSSP).

<sup>254</sup> Ibid. article 10.

<sup>255</sup> Ibid. articles 10 and 11.

<sup>256</sup> Ibid. article 22.

### ***Lack of Habeas Corpus and its impact on arbitrary and illegal detention***

Afghanistan's legal system does not provide for habeas corpus<sup>257</sup> despite constitutional prohibitions against arbitrary detention and the country's international obligations as a state party to the International Covenant on Civil and Political Rights.<sup>258</sup> Often suspects do not see a judge or prosecutor until they reach trial, a period of time that can extend up to three months from the time of arrest.<sup>259</sup> Without the ability to challenge the basis for their detention in courts, many detainees are often arbitrarily held in custody as the detaining authority disregards legal time limits and the right to access defence counsel.

Unfortunately, there is no guarantee that such a provision will be included in the draft CPC once it is adopted by parliament. Such a mechanism is essential to enabling detainees to petition a court to review the legality of their arrest bringing Afghanistan's laws into line with the Constitution.

### **Supreme Court and Attorney General's Office**

UNAMA officials were informed that the Supreme Court and Attorney-General's Office also issued instructions on the prevention of torture and judicial follow-up to allegations of torture. During UNAMA's interviews with judges (between 9 and 28 February 2012) two judges referred to Supreme Court guidelines issued "two years ago" by the Supreme Court. Neither UNAMA nor any interlocutors were aware of any guidelines (old or recent) on the issue of torture. UNAMA calls on all judicial authorities as well as law enforcement authorities vested with the power to interrogate suspects to issue standardised instructions that apply equally to all law enforcement entities and publish these directives. This will not only enable independent oversight and monitoring bodies to assess the impact of official directives but will also highlight the positive steps the State is taking to prevent torture and enforce due process rights.

### ***Transfer of Central Prisons Directorate from Ministry of Justice to Ministry of Interior***

The international community expressed concern when the transfer of Central Prisons Directorate (CPD) from the MoJ to MoI in repeatedly throughout 2011 and reiterated such concerns when the transfer occurred in January 2012.<sup>260</sup> The international community insisted that the CPD must remain an autonomous entity within the MoI organizational structure so as to prevent law enforcement, including the ANP, and security agencies from having ready access to detainees. It was also noted that such law enforcement and security agencies should not be able to interfere in the operational and

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<sup>257</sup> *Habeas Corpus* – a Latin term, literally 'to have the body' – consists of a legal action that enables a detainee to petition a competent court to review the legality of any detention. This legal action protects a person against illegal detention.

<sup>258</sup> Articles 9 (1) and (3) of the ICCPR requires parties to the Covenant to ensure that detainees are brought promptly before a judge or other appropriate judicial official. Under the jurisprudence of the UN Human Rights Council, a prosecutor is not sufficiently independent to rule on the legality of a detention.

<sup>259</sup> Interim Criminal Procedure Code – articles 6 and 53 (3.b) As explained in UNAMA's 2011 detentions report often in cases involving national security, prosecutors routinely delegate their investigative authority to the NDS, in some cases prosecutors draft an indictment on the basis of information gathered by NDS.

<sup>260</sup> The legal transfer was by Presidential Decree Letter No. 85 dated 17 December 2011.

management aspects of the CPD. The Minister of Interior publicly expressed support for these notions<sup>261</sup>.

### ***Concerns with Interference by NDS and MoI into Prison Management***

Recently, the MoI has unveiled a plan to deploy “detective units” in all the CPD headquarters and in the provincial prisons. These units will be comprised of personnel from various investigative and intelligence units and ministries including NDS and CID among others. These units will be located in the prisons and would be responsible for conducting counter intelligence, counter narcotics and counter terrorism investigations including interrogations. They will not be accountable to the director of the CPD but rather to their individual agencies.

Concerned international partners raised objections to the MoI, noting that the plan is fraught with potential for human rights abuse and is contrary to internationally accepted corrections standards<sup>262</sup>. More disturbing is the proposed deployment of NDS officials in prisons giving NDS an opportunity to have “two bites at the cherry” in continuing with interrogations after detainees have been subsequently transferred from NDS to a CPD detention facility and thus giving NDS a further opportunity to obtain a confession.

### ***Sarpoza (Kandahar)***

UNAMA received multiple reports with regard to the interference by the Chief of Police in Kandahar in internal issues of the management of the Sarpoza prison in Kandahar. ANP officers other than prison officials, NDS officials and NDS prosecutors have increased their influence within Sarpoza causing concern among some officials, detainees and prisoners. The lack of clarity of the roles of the different institutions has created some problems to detainees and prisoners with regard to access to court and family visits. This issue was raised by UNAMA to the MoI and the MoI stated that they were unaware that NDS were working within the CPD.<sup>263</sup>

## **ISAF’s Detainee Facility Inspection Programme**

*“Three days after they took me to the check-point, they started suspending me. They handcuffed me behind my back and tied fabric very tightly around and under my arms and suspended me from a mulberry tree. They did this for long periods of time until I would lose consciousness. This happened every night for 6 days or so. I would wake up in one of the containers where they moved me after I lost consciousness. When I was suspended my blood could not flow, I could not feel my fingers. Around three times a foreign delegation, composed of American military, I think, came to check the Hawza, but each time they came I was hidden; they told me that if I hid they would release me. My right hand/arm is not working; I can’t move my hand properly.”*

[UNAMA observed the detainee had extremely limited mobility in his right arm and his hand was tender to touch.]

**(Detainee 26, ANP Hawza 15, Kandahar, December 2011)**

<sup>261</sup> Speech by H.E. Bismillah Khan, former Minister of Interior on 10 January 2012.

<sup>262</sup> Members of the international community formally raised their objections to the MoI former minister H.E. Bismillah Khan at the prison working group at the MoI on 29 May 2012.

<sup>263</sup> UNAMA raised this issue with the MoI former minister H.E. Bismillah Khan at the prison working group at the MoI on 29 May 2012 and he said that he did not know that NDS were working within CPD.

### ***Six-Phase Remediation Plan***

In October 2011, ISAF developed a six-phase remediation plan to support the Afghan authorities in reforming their interrogation and detainee treatment practices. This regime stresses the need for regular inspections of facilities and interviews with detention centre personnel and detainees as the primary means of identifying abusive detention practices by NDS and ANP. ISAF worked bi-laterally with embassies and international organizations to develop training seminars that could be delivered to detention facility managers and investigative staff who would have contact with detainees and be responsible for their treatment. These training sessions focused on humane treatment of detainees, including non-coercive interview techniques that investigators could use as an alternative to torture. These training sessions also touched on human rights standards and the need to maintain or improve conditions inside detention facilities.

Following the completion of the trainings and a second round of unannounced facility inspections, NDS and ANP facilities could then be considered for “certification” a process that would lead to the resumption of international military transfers to the facilities. Certification could only be recommended to the Commander of ISAF if all relevant detention centre staff implicated in the ill-treatment of detainees had attended the training sessions and participated in those sessions to the satisfaction of ISAF’s trainers. Inspections of facilities were only considered complete once ISAF had been able to interview an acceptable number of detainees in each location – a number which varied from facility to facility.<sup>264</sup> Any problems discovered or allegations of ill-treatment received by ISAF Provost Marshal monitors in the course of detainee interviews were then reviewed and referred to either NDS or ANP for immediate remedial actions to be taken against detention centre personnel responsible for ill-treatment. In some cases, ISAF would insist that detention facility staff receive additional training sessions.

Following the delivery of training and inspections, ISAF’s programme put in place a programme of regular monitoring that its personnel would undertake. This involved international military personnel making regular monitoring visits to facilities where they have transferred detainees to track the treatment of these individuals throughout the pre-trial process.

### ***Certification of Facilities***

Certification of facilities by the Commander of ISAF began on 8 November 2011 with the clearance of NDS Herat for the resumption of international transfers to that facility. By 8 March 2012, ISAF announced that it had certified 14 of the 16 detention facilities identified by UNAMA as locations where torture occurred.<sup>265</sup> To UNAMA’s knowledge, ISAF “certification” is not an endorsement from the Commander of ISAF that torture is not used in the facility or a guarantee that the personnel of such facilities have been

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<sup>264</sup> According to ISAF, as part of the certification process, ISAF inspectors attempted to interview 3-5 percent of the total detainee population or at least six detainees at each facility. Due to the dramatic decrease in the number of detainees in some detention facilities, ISAF was not able to interview a sufficient number of detainees to assess whether torture persists in these detention facilities. Moreover, in some detention facilities, such as NDS Kapisa and NDS Laghman, ISAF has been unable to carry out inspections and training because they could not access the area due to logistical constraints.

<sup>265</sup> NDS Laghman, NDS Kapisa, NDS Takhar, NDS Department 124, NDS Herat, NDS Khost, ANP Uruzgan, AUP Khost, ANP Zharay, AUP Kunduz, ANP Arghandab, ANP Daman, AUP Dast-e Archi and ANP District 9 Kandahar.

thoroughly re-trained not to use abusive interrogation methods.<sup>266</sup> Rather certification reflects that NDS or ANP facilities have completed the first three stages of the detention facility monitoring programme and that ISAF is not aware of any further ill-treatment.

Certain locations, however, where UNAMA documented some of the most serious ill-treatment of detainees, took much longer to clear the certification process, including NDS Department 124. Due to persistent concerns in some locations and the dramatic drop in the number of detainees held in some facilities – which prevented ISAF monitors from being able to interview a sufficient number of detainees to make a judgment on how detainees were being treated – ISAF only “conditionally” certified some facilities.<sup>267</sup> This means that ISAF would allow transfers of detainees to resume, but that inspections and monitoring of the facility more generally would continue until such a time as there were a sufficient number of detainees interviewed to enable a judgment to be made on detention practices in that location.<sup>268</sup> Five of the 14 facilities that ISAF has certified have been cleared conditionally<sup>269</sup> pending further on-site inspections.

Despite several inspections and training sessions, neither NDS nor ANP facilities in Kandahar have been certified. In recent meetings, ISAF personnel in Regional Command South have made clear to UNAMA that they believe their inspections and training regime has been effective in adjusting the treatment of detainees in the NDS and ANP headquarters facilities in Kandahar.

### ***De-Certification of Facilities***

In some instances, facilities have had their certification revoked. For example, following the certification of NDS Herat on 8 November 2011, UNAMA documented the cases of nine detainees who had been subjected to interrogation methods constituting torture while in NDS custody in Herat.<sup>270</sup> The most recent victim interviewed stated he was tortured in August 2012, nine months after NDS Herat had been certified. Similarly, ISAF certified NDS Khost on 25 January 2012, after which UNAMA found that four detainees<sup>271</sup> had been subjected to torture by interrogators in NDS Khost, the most recent case in September 2012.<sup>272</sup> In March 2012, UNAMA found that one detainee in ANP Khost and two detainees in ANP HQ in Kunduz had been ill-treated or tortured after ISAF’s certification of these facilities.<sup>273</sup>

Incidents of torture have also arisen in ANP Khost and ANP Kunduz as recently as August 2012 respectively, six months after certification. In NDS Department 124, UNAMA found sufficiently credible and reliable incidents of torture as recently as

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<sup>266</sup> Meetings with ISAF HQ personnel, November 2011, Kabul.

<sup>267</sup> Five of the 14 facilities that ISAF has certified have only been cleared conditionally pending further on-site inspections, including NDS Department 124, NDS Laghman, ANP Arghandab, ANP Daman, and ANP District 9 Kandahar.

<sup>268</sup> ISAF can transfer detainees to the conditionally certified facilities on the basis that they make an unannounced visit within 72 hours of the transfer to interview detainees regarding their treatment and conditions.

<sup>269</sup> NDS Laghman, NDS Department 124, ANP Arghandab, ANP Daman and ANP District 9 Kandahar.

<sup>270</sup> Detainees 166, 236, 237, 360, 376, 379, 405, 411 and 609.

<sup>271</sup> Detainees 328, 445, 449 and 579.

<sup>272</sup> The most recent detainee interviewed stated he was tortured in May 2012, three months after NDS Khost had been certified.

<sup>273</sup> Detainees 355, 452 and 445.

August 2012. Additionally, UNAMA received multiple incidents of torture by detainees in NDS Department 40 despite ISAF's phase 5 monitoring<sup>274</sup> of this NDS facility. The multiple incidents are dated August 2012, five months after ISAF implemented a monitoring programme within this facility.

On 24 October 2012, ISAF announced a fragmentary order (FRAGO)<sup>275</sup> had been signed that de-certified and suspended detainee transfers to NDS Department 40, NDS Department 124, NDS Laghman, NDS Khost, NDS Herat, ANP HQ Khost and ANP HQ Kunduz.

### ***Observations on ISAF's Programme***

Inspections and training seem to have resulted in an improvement in the hygiene conditions in many NDS and ANP facilities. Anecdotally, detainees and other organizations conducting monitoring in the Afghan facilities covered by the programme have told UNAMA that the quality of food and medical treatment available to detainees improved after the beginning of ISAF's remediation regime. Some anecdotal evidence exists to suggest that the trainings had helped to raise awareness among NDS and ANP personnel on what kind of treatment constituted torture. While ISAF was conducting inspections of facilities and remedial training for key detention centre personnel, there was a drop in the number of allegations UNAMA received of torture and ill-treatment in many locations.

However, the impact of the ISAF remediation plan has been limited and there are many indications that the improvements it produced may be temporary. The six-phase remediation programme is limited in its design and scope which, in turn, reflects the finite resources that ISAF has at its disposal for implementing it. As troop levels have diminished and as transition has progressed, ISAF has had fewer human resources to conduct inspections, trainings or regular monitoring.

At the same time, many of the ISAF personnel involved in conducting inspections and training were not trained human rights monitors, law enforcement officers, trainers or specialists in conducting interviews with detainees. It is also an open question whether detainees feel comfortable in discussing abusive treatment with monitors in military uniforms and protective equipment and who some may consider the enemy. It is a well-founded principle of interviewing detainees that the presence of police or soldiers in uniforms makes victims extremely reluctant to speak openly or to identify perpetrators freely.

While ISAF brought outside trainers and specialists to supplement their training capacity, training sessions have been limited in length and scope of issues covered. Training sessions within the ISAF mandated scheme varied by facility and according to the resources available to different national contingents within each regional command location. In some locations, NDS and ANP investigators received only two and a half hours of dedicated training on human rights and humane treatment, while in other facilities the training was considerably longer and more extensive, such as in NDS Department 124 and NDS and ANP Kandahar.

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<sup>274</sup> Following the publication of AIHRC/Open Society's report in March 2012, ISAF placed NDS Department 40 in phase five of its six-phase detention facility monitoring programme.

<sup>275</sup> A FRAGO is used by the US military to send timely changes of existing orders to subordinate and supporting commanders while providing notification to higher and adjacent commands.



Inspections covered only those facilities where UNAMA or other human rights groups have identified the use of torture as prevalent or systematic. This has left the possibility open for NDS or ANP to divert detainees to other locations or into the custody of other law enforcement agencies where monitoring agencies are either not focused or able to visit due to security restrictions.

These weaknesses have limited the overall impact of the remediation plan. As has been noted throughout the report, in many of the facilities where ISAF was implementing its remedial scheme, the number of conflict-related detainees dropped dramatically. There are many possible explanations for this reduction, including that the cessation of transfers of individuals captured by ISAF during night search operations or on the battlefield affected the overall numbers of detainees held in NDS or ANP detention. In many locations, however, there were clear indications that NDS or ANP were hiding detainees or sending individuals to alternative locations, including to other NDS or ANP detention sites within the same province.

### ***No Accountability***

ISAF has acknowledged the importance of accountability for detention centre managers and investigators implicated in the torture of detainees. ISAF stresses, however, that its scope of action is limited by Afghanistan's status as a sovereign state.<sup>276</sup> Through its six-phase plan, ISAF has committed to supporting accountability for ill-treatment and other human rights violations in the detention facilities which they are monitoring. That should include the identification of perpetrators of torture, provision of any evidence or information necessary to support investigations and prosecutions in the Afghan criminal justice system.

ISAF, like UNAMA, has noted that despite having shared information and evidence with NDS from their own inspections and monitoring, no follow up is done by Afghan authorities to address those concerns. Despite this, ISAF has neither committed to naming perpetrators of such violations publicly nor to taking other measures within their control that could influence political will on issues of accountability. For example, conditioning of financial and technical assistance and capacity building programmes and projects to NDS and MoI on the removal and prosecution of suspected perpetrators of torture could have a dramatic impact on the Afghan officials use and prevention of torture.<sup>277</sup>

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<sup>276</sup> Meetings with ISAF HQ personnel in Kabul on the design and implementation of the six-phase detention facility inspection programme, January 2011.

<sup>277</sup> Torture and ill-treatment possibly by NDS and particularly by ANP and ALP could trigger application of the "Leahy Law" which prohibits the US from providing funding, weapons or training to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross human rights violations, unless the Secretary of State determines that the concerned government is taking effective remedial measures. In the situation of Afghanistan this would apparently require the US to resume transfer of detainees only when the Government of Afghanistan implements appropriate remedial measures that include bringing to justice NDS and ANP officials responsible for torture and ill-treatment which has not occurred despite ISAF's efforts to support Afghan authorities in this regard (as stated in Commander ISAF's 11 January 2013 letter to UNAMA attached as Annex V to this report). The "Leahy Law" refers to discreet sections in the *Foreign Operations Appropriations Act*, Section 563 of P.L. 106-429 (2001) and the *Defence Appropriations Act*, Section 8092 of P.L. 106-259 (2001). The Leahy provision within the *Foreign Appropriations Act* provides "None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary

Accountability is a critical factor in trying to change the culture of torture that exists in Afghan detention facilities. Among the reasons why torture persists in NDS and ANP detention facilities is the desire to get confessions or information quickly. Without making individual perpetrators accountable for the use of abusive interrogation techniques, either through the loss of their job and salary or their prosecution, torture will persist.

The absence of accountability in NDS and ANP has underscored the limitations of the ISAF six-phase plan: torture cannot be stopped solely through short-term training and monitoring. While the introduction of the system of inspections and trainings resulted in a drop in the number of allegations of torture in those 16 facilities where ISAF implemented its six-phase plan, the use of torture resumed in many facilities after ISAF had certified facilities.

## International Support to the NDS and the Ministry of Interior

### United Kingdom

At the time of writing, a moratorium exists on the transfer of detainees by British forces to Afghan custody due to the risk of torture and ill-treatment. This moratorium was upheld by an injunction granted at the High Court of England and Wales on 6 November 2012 ordering the UK to maintain the moratorium until at least a final hearing before the High Court that was scheduled to occur on 29 November 2012.<sup>278</sup> In light of new information, on 27 November 2012, the UK Secretary of State for Defence maintained the moratorium and imposed a temporary ban on the transfer of UK detainees to NDS on the grounds that *“there are currently reasonable grounds for believing that a UK captured detainee who is transferred to NDS Lashkar Gah would be at real risk of serious mistreatment.”*<sup>279</sup>

According to the UK embassy in Afghanistan, between November 2011 and March 2012, the UK funded the UK’s National Policing Improvement Agency to train around 80 NDS investigators in interview skills and using evidence.<sup>280</sup> The investigators came from across Afghanistan but principally from NDS Department 40 and NDS Department 124. This training aimed to help NDS develop alternative sources of evidence for conviction, rather than confessions. A broader programme of training and professional

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determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice” and the *Defence Appropriations Act* states “none of the funds made available by this Act may be used to support any training programme involving a unit of the security forces of a foreign country if the Secretary of Defence has received credible information from the Department of State that a member of such unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.” Together with provisions in *Arms Export Control Act*, Section 22 U.S.C. 2778 (1976), these provisions together form the basis of an across-the-board policy aimed at ensuring US assistance does not contribute to human rights abuses.

<sup>278</sup> The final hearing relates to the case of *R (Serdar Mohammed) v Secretary of State for Defence* an Afghan national who was detained by UK forces in Helmand in 2010 and subsequently handed over to NDS. Serdar Mohammed alleged that he was tortured while in NDS custody. Defence lawyers acting for Serdar Mohammed brought a claim against the UK government over the legality of his transfer to the NDS, which in May 2012 resulted in the UK imposing a moratorium on detainee transfers to Afghan authorities.

<sup>279</sup> Letter dated 27 November 2012 from UK Treasury Solicitors to Leigh Day & Co Solicitors.

<sup>280</sup> Email correspondence from UK Embassy in Kabul to UNAMA dated 26 June 2012 and 14 November 2012, and UNAMA meetings with personnel from the UK Embassy, June 2012, Kabul.

development for NDS investigators is scheduled to be delivered between April 2012 and March 2013. This includes crime scene investigation, crime scene photography, initial and advance investigation courses, special financial investigation training, internal disciplinary investigation and a study visit to the UK for senior NDS officers and selected prosecutors. In addition, the UK Embassy advised that the UK is assisting the NDS to develop their own forensic capability in support of evidence collection and examination.<sup>281</sup>

In addition, the UK provides mentors to NDS and Anti-Terrorism prosecutors to improve their understanding of the law and evidence, and their use of human rights compliant interview techniques.<sup>282</sup> Financial support has also been given to improve conditions in NDS detention facilities. The UK is working with NDS and the CPD to install CCTV to record activity and video and audio recording equipment to be used during detainee interviews.

### **United States of America**

The United States of America has also been seeking a MoU with the Afghan Government to establish a civilian detention monitoring mechanism for conflict-related detainees since 2010, but to UNAMA's knowledge no agreement has yet been reached. Negotiations on the MoU may have been complicated by the discussions and implementation of the agreement handing over the US military's Detention Facility in Parwan to Afghan authorities.

### **United Nations Development Programme**

The United Nations Development Programme (UNDP) has been providing assistance through its Justice and Human Rights Programme that supports the MoJ Human Rights Support Unit in terms of human rights training to NDS officials.<sup>283</sup> In collaboration with the British embassy, this inter-ministerial mechanism (NDS and MoJ) has been delivering the human rights component of the NDS Academy training curriculum. Since this initiative began in early 2012, all NDS officers at NDS Department 40 have participated in the training. Moreover, UNDP through the MoJ Human Rights Support Unit are building sustainability into this initiative by developing training of trainers (ToT) programmes. This is a long term objective with the aim to integrate and mainstream human rights training into all NDS training programmes by 2015 through delivering three month human rights training refresher courses to all NDS staff to institutionalize human rights within NDS.<sup>284</sup>

Additionally, the MoJ is working with the Ministry of Foreign Affairs to fulfill Afghanistan's treaty obligations in terms of its reporting requirements in the

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<sup>281</sup> In December 2011 the UK deployed a former UK police service investigations mentor to work with NDS Department 40 in Kabul. UNAMA notes that the scope of this training could be expanded to cover all investigators in the NDS system along with an evaluation mechanism to determine how the training is being used and whether it has been effective.

<sup>282</sup> According to the UK embassy in Kabul, over the last two years, the UK has delivered several training courses to approximately 90 anti-terrorist prosecutors from across Afghanistan, together with international partners. The UK has also started to work with anti-terrorist judges in Kabul, to identify problems in the system and see what can be done to improve its effectiveness.

<sup>283</sup> UNDP Justice and Human rights programme is jointly funded by Canada, Denmark, Germany, Norway, Swiss Agency for Development and Cooperation (SDC) and the United Kingdom.

<sup>284</sup> UNAMA meeting with UNDP Justice and Human Rights programme representatives, 4 July 2012, Kabul.

implementation of the *Convention against Torture*. In 2013, Afghanistan plans to submit its initial report to the Committee against Torture and UNDP through the MoJ will support Afghanistan in this regard.

### **European Union Police Mission in Afghanistan**

Over the last two years, the European Union Police Mission in Afghanistan (EUPOL) has been advocating for the establishment of an external, independent oversight and investigative body that can receive complaints about the Afghan National Police. EUPOL and MoI had reportedly made considerable progress during the course of 2011 to create a “Police Ombudsman” investigative unit that would be housed in the AIHRC.<sup>285</sup> Investigators and support personnel for this office had been identified, and UNAMA assisted in a training course for identified personnel.

An initial launch date for the Police Ombudsman mechanism was set for mid-December 2011; however such plans were put on hold by the MoI. Subsequent EUPOL plans to move forward with the initiative have not been successful due to lack of action by the MoI.

### **Way Forward: Proposal for Future Detention Monitoring**

Use of torture for purposes of obtaining confessions is a long established practice in Afghan detention facilities that will take a concerted effort by the Government with sustained support from the international community to address properly. As has already been seen since the release of UNAMA’s report from October 2011, the Government and international community have focused on skills training, awareness raising and inspection/monitoring mechanisms as the primary means to root out torture and abusive detention practices. This has produced only marginal improvements in reducing the use and prevalence of torture.

ISAF has introduced a regime of facility inspections, training and monitoring as a means to track the treatment of detainees. This process of inspection has contributed to some improvements in the conditions of detention and treatment of detainees over all. Unfortunately, this mechanism is not a sustainable one. With the ongoing transition process resulting in the handover of lead security responsibility and the approaching deadline for withdraw of all international combat forces in 2014, ISAF’s ability to continue a regime of inspections is time limited. As the drawdown progresses, ISAF’s resource capacity to conduct visits to detention facilities also will diminish.

Monitoring and inspection of detention facilities will continue to be needed after the international military presence has withdrawn from Afghanistan. Visits to places of detention by independent monitors are an essential element in creating a culture of accountability and humane treatment of detainees. International human rights standards and best practices provide a framework for such mechanisms, particularly the *Optional Protocol to the International Convention against Torture and Cruel, Inhuman and Degrading Treatment* which requires States parties to create and fund “National Preventive Mechanisms (NPMs).”<sup>286</sup> In most cases, these expert visiting bodies are

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<sup>285</sup> UNAMA meetings with EU Pol Rule of Law and Human Rights mentors, April and June 2012, Kabul.

<sup>286</sup> Examples of countries that have ratified the Optional Protocol and that have established a NPM include Albania, Azerbaijan, Croatia, Nicaragua, Serbia, Slovenia, the Former Yugoslav Republic of Macedonia, Senegal and Tunisia.

necessarily national in character, independent of the Government, coordinated by a national human rights institution. They should have a mandate codified by law ensuring free and open access to any place where persons are detained as well as being funded adequately by the Government, with their budget safeguarded against political interference.<sup>287</sup>

A number of CAT States parties that are not parties to OPCAT have nevertheless created NPMs as a means to address torture. No single model for these bodies has been followed, and there are several successful models of functional, independent and effective mechanisms of different kinds. Many states have chosen to take advantage of a pre-existing national human rights institution with constitutionally enshrined powers to access government facilities, documentation and to launch independent investigations as the starting point for an NPM.<sup>288</sup>

Azerbaijan is one such state that empowered its national Human Rights Commissioner/Ombudsman to create a unit to act as an oversight and inspection mechanism to prevent torture.<sup>289</sup> This NPM “group”, consisting of specially selected staff from the Ombudsman’s office, conducts regular visits to all places where persons are detained or may be detained including temporary places of detention, administrative detention locations, penitentiaries and prisons, guardrooms, disciplinary units, and psychiatric institutions. As the Ombudsman is a non-judicial oversight body, the NPM can make recommendations to parliament for legislative change to complement its findings. Government institutions have a time limit established by the country’s constitution to respond to the Ombudsman’s recommendations and proposals.<sup>290</sup>

While Afghanistan is not yet a member state to the Optional Protocol, a national preventative mechanism should be seriously considered as a sustainable means of continuing an inspection regime for the prevention of torture. Such a mechanism could be created within the Afghan Independent Human Rights Commission (AIHRC) who could play either a coordination role or maintain the mechanism itself. As the AIHRC’s existing capacity would not be sufficient, international donor support would be needed to ensure appropriate staffing.

UNAMA and civil society could also provide support to the mechanism by seconding existing Afghan experts (of diverse background and focus) to the mechanism in its initial stages and ensure functionality. The NPM should operate in a preventive visiting mandate. Further, NPM inspectors should be empowered to conduct full inspections and to engage regularly with the Government and provide recommendations on individual complaints and accountability issues, as well as general detention conditions.

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<sup>287</sup> See <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm> for a complete list of State Parties that have established NPMs. Over 35 such mechanisms have been established by State Parties.

<sup>288</sup> Association for the Prevention of Torture’s OPCAT database is an excellent resource that UNAMA consulted relating to the international standards for National Preventive Mechanisms (NPM), international standards for NPMs, States parties’ actions to implement OPCAT and create NPMs, and related reports and analysis: <http://www.apt.ch/en/opcat/>. Similar online resources include the Ludwig Boltzmann Institutes of Human Rights’ Atlas of Torture project resource website: <http://www.univie.ac.at/bimtor/>.

<sup>289</sup> Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, *Report on the National Preventive Mechanism Against Torture, 2009-2010*, (2010) pp. 3-5.

<sup>290</sup> *Ibid*, pp. 15-22.

## Recommendations

### To the National Directorate of Security (NDS)

- Take steps to stop and prevent torture and ill-treatment at all NDS facilities and particularly at facilities where such practices have been used as a method of interrogation.
- Investigate all reports of torture and ill-treatment at provincial NDS facilities in Faryab, Herat, Jawzjan, Kandahar, Khost, Kunduz, Laghman, Nangarhar, Paktika, Takhar and NDS Department 124 and NDS Department 40. Such investigations should be credible, effective and impartial and focus on alleged criminal conduct of NDS officials.
- Cease the use and close all unofficial places of detention.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.
- Remove, discipline and punish, including referral of to military prosecutors, those officials found responsible for torture or ill-treatment of detainees including suspension and loss of pension and other benefits.
- Permit full, regular and unhindered access of independent monitors (including AIHRC, UNAMA and others) to all NDS facilities (including NDS Department 124);
- Require that all interrogations are audio or video recorded (where CCTV is available) and to be made available to prosecutors, judges or any independent oversight and complaints mechanisms that request access.
- Establish a centralized register of all detainees held in NDS custody and ensure that it is openly accessible to independent monitors (including AIHRC, UNAMA and others) and is updated regularly and in a transparent manner.
- Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of age – are given legally required considerations and protections while they go through criminal investigation, processing, and transfer to appropriate juvenile facilities.
- Ensure that child detainees are held in wholly separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.

### To the Ministry of Interior (MoI) and Afghan National Police (ANP)

- Take steps to stop and prevent torture and ill-treatment by ANP and ALP particularly at facilities and locations where such practices have been used as a method of interrogation.
- Investigate all reports of torture and ill-treatment by ANP and ALP at the provincial ANP detention facilities in Baghlan, Helmand, Herat, Kandahar, Paktika, Takhar and Zabul and in districts where ALP are deployed in Faryab, Kunduz, Kandahar and Uruzgan.
- Cease the use and close all unofficial places of detention.
- Remove, discipline and punish, including referral of to military prosecutors, all ANP and ALP officers and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.

- Permit full, regular and unhindered access of independent monitors to all ANP and Ministry of Interior CPD prisons including the AIHRC, UNAMA, and others.
- Issue transparent and legally-binding guidelines regulating ALP powers to detain and ensure that ALP units receive full training on such guidelines.
- Require that all interrogations are audio or video recorded (where CCTV is available) and to be made available to prosecutors, judges, or any independent oversight and complaints mechanisms that request access.
- Change policies and practices on access of defence lawyers to detainees. Permit defence lawyers to visit all detention facilities and offer their services to any detainee from the point of arrest and at all stages of the process (including during interrogation) as required by Afghan law.
- Ensure that all ANP investigators/interrogators participate in mandatory training in lawful and alternative interrogation and interview techniques.
- Establish a centralized register of all detainees held in ANP custody and ensure that it is openly accessible to independent monitors (including AIHRC, UNAMA and others) and is updated regularly and in a transparent manner.
- Establish a commission consisting of senior representatives within the Ministry of Interior and from key international partners (including ISAF, UNAMA, and key international agencies and donors) to review implementation of measures - including the recommendations in this report - aimed at eradicating the use of torture within ANP and ALP.
- Strengthen existing policies and practices for determining the age of detainees at the time they are taken into custody to ensure that children – persons under 18 years of age – are given legally required considerations and protections while they go through criminal investigation, processing, and transfer to appropriate juvenile facilities.
- Ensure that child detainees are held in wholly separate locations from adult detainees from the moment of capture with appropriate consideration given to their legal status as children.

#### **To the Afghan National Army (ANA)**

- Take steps to stop and prevent torture and ill-treatment at all places where ANA holds detainees, particularly those locations where such practices have been used during interrogation.
- Investigate all reports of interrogators using torture and ill-treatment in Farah, Herat, Badghis, Kabul (Surobi), Laghman and Kandahar.
- Discipline, court-martial and punish all ANA personnel and their superiors found responsible for committing or condoning such practices including suspension and loss of pension and other benefits.
- Permit independent oversight of these investigations and publicly report on findings and remedial actions.
- Permit full, regular and unhindered access of independent monitors to all ANA places where conflict-related detainees are held, including the AIHRC, UNAMA, and others.

#### **To the Government of Afghanistan**

- Establish an independent oversight and accountability mechanism modelled on the national preventive mechanism (NPM) in the *Optional Protocol to the Convention*



*against Torture* (OPCAT) – possibly within the Afghanistan Independent Human Rights Commission – with the power (1) to conduct regular unannounced visits to detention facilities, (2) to authorize independent forensic medical examinations to confirm allegations of torture, (3) to conduct impartial and transparent investigations into alleged torture in NDS and ANP facilities, and (4) to make recommendations to detaining authorities and other institutions on the best means to redress torture and ill-treatment in detention facilities, including the referral of cases to the Attorney-General’s Office for investigation – possibly by anti-corruption prosecutors.

- Require all medical personnel and detention facility managers to disclose medical evidence of torture to the external, independent oversight and accountability mechanism and that appropriate professional penalties and financial sanctions are in place – administered by the oversight and accountability mechanism -- to enforce these obligations.
- Make the legal framework and procedures regulating NDS public and transparent, and ensure legal procedures provide for the external investigation and prosecution of allegations of serious criminal conduct, including torture and ill-treatment of detainees by NDS officials in the civilian criminal justice system.
- Ensure that sufficient legal aid is available in all provinces, including independent legal aid providers, and that their access to conflict-related detainees held in NDS and ANP facilities is ensured within the constitutionally-mandated timeframes.
- Require that all conflict-related detainees receive a full medical examination upon arrival at NDS and ANP facilities.
- Sign and ratify the Optional Protocol to the International Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).
- Invite the UN Special Rapporteur on Torture to visit Afghanistan.
- Complete and file the initial state report of Afghanistan with the expert UN Committee against Torture on the implementation of the *Convention against Torture*.
- Revoke the MoU between NDS and the AGO to ensure that prosecutors retain their investigative authority and can interview detainees still in NDS detention before being transferred to a CPD prison.

### **To the Supreme Court**

- Issue instructions requiring primary and appeal court judges to investigate routinely all allegations of torture and coerced confessions and enforce strictly the prohibitions on the use of evidence obtained through torture as required by the Constitution of Afghanistan and *Interim Criminal Procedure Code*.
- Develop detailed guidance to primary and appeal court judges defining the crime of torture to include all elements of the international definition of torture within CAT.
- Direct judges to reject confessions obtained through torture as permissible evidence.<sup>291</sup>
- Remove and/or dismiss judges that continue to accept confessions obtained through torture or coercion as admissible evidence of guilt at trial in court.

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<sup>291</sup> It should be noted that the draft Criminal Procedure Code contains specific references to the obligations to reject the use of torture as a basis of evidence in criminal cases, including Article 22 on the prohibition of use of evidence obtained through coercion and torture; Articles 150-153 on coerced confessions). It is also notable that Article 4(36) provides definition of “confession” as a voluntary admission “and in a sound state of mind without duress before an authorized court”.

## **To the Parliament**

- Ensure that the crime of torture is properly defined, including all elements of the international definition of torture within CAT, in the draft revisions of the Criminal Procedure Code and the Penal Code currently in process.
- Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.
- Revise Afghan legislation to guarantee the right of detainees to challenge the legality of their arrest and detention in Afghan courts.

## **To the Attorney General's Office**

- Issue mandatory instructions to all prosecutors to reject confessions obtained through torture as permissible evidence upon which to base an indictment or a prosecution at trial.
- Ensure that any Supreme Court instruction to judges regarding the definition of torture and the elements of that crime are transmitted to prosecutors at all levels.
- Remove and/or dismiss prosecutors which fail in their duties to impartially and fully investigate allegations brought to their knowledge of torture and ill-treatment of detainees by Afghan officials of the NDS, ANP and ALP.
- Conduct independent, impartial investigations into allegations of torture and ill-treatment of detainees by Afghan officials of NDS, ANP and ALP. Consider assigning anti-corruption prosecutors from the High Office of Oversight and Anti-Corruption to conduct such investigations and prosecutions.
- Stipulate that the burden of proof in cases where detainees allege that torture has occurred rests with the prosecutor who should be able to show that evidence was gained in a lawful manner without resort to torture or coercion to gain a confession.

## **To the International Assistance Security Force (ISAF)**

- Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment.
- Review monitoring practices at each NDS and ANP facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture.
- Review and strengthen the effectiveness, where appropriate, of its detention facility monitoring programme and implementation of its six-phase programme, particularly the communication and accountability components.
- Monitor measures to stop and prevent torture and ill-treatment by ALP particularly in those locations where such practices have been used as a method of interrogation or ill-treatment including in Faryab, Kunduz, Kandahar and Uruzgan.
- Ensure that ALP units are properly trained in the prohibitions against torture and in the transparent legal guidelines governing their powers to detain suspects.
- Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite

regular inspections and monitoring by international organizations and national human rights institutions.

- Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in their detention facilities.
- Follow up with Afghan authorities to ensure that any child detainees transferred by international military forces into Afghan custody are held separately from adult detainees, investigated in compliance with the legal protections afforded to children, and transferred to appropriate juvenile facilities in locations close to their families to enable easier access to family visits and support.

### **To Troop Contributing Countries and Concerned Donor States**

- Establish or reinforce currently existing or planned detainee monitoring schemes for tracking treatment of detainees transferred by national contingents to Afghan facilities.
- Ensure that the use of torture is considered when making determinations on funding of projects or providing overall support or assistance to implicated Afghan institutions or ministries.
- Include, as a matter of urgency, the need to hold perpetrators of torture accountable as a key progress and conditionality indicator under Area 2 of the Tokyo Mutual Accountability Framework on Governance, Rule of Law and Human Rights.
- Continue or increase funding for legal aid providers and related legal defence counsel support projects as a means of assisting the observance of due process guarantees and safeguards against torture and inadmissibility of evidence gained through its use.
- Ensure that all training schemes and projects supporting the NDS, the NDS Academy, Ministry of Interior, or the ANP target investigative officers and their staff and including mandatory practical skills training on non-coercive interview and interrogation techniques as well as on training on human rights, particularly practical examples of how the prohibition of torture has been implemented.
- Strengthen technical and financial support to Afghan governmental and non-governmental institutions to bolster their oversight and monitoring capacity particularly in detention facilities where the use of torture has persisted despite regular inspections and monitoring by international organizations and national human rights institutions.
- Consider conditioning all forms of financial and technical assistance provided to NDS and the Afghan National Police on their production of concrete and measurable results to improve oversight and accountability in their ranks, particularly in preventing, prohibiting and punishing the use of torture effectively in their detention facilities.



## ANNEX I: UNAMA's Detention Observation Programme 2010-12

### *UNAMA Report on Treatment of Conflict-Related Detainees in Afghan Custody October 2011*

From October 2010 to August 2011, in response to ongoing concerns about ill-treatment of conflict-related detainees from communities across Afghanistan and in consultation with the Government of Afghanistan, UNAMA conducted an intensive programme of observation of conflict-related detainees throughout Afghanistan. UNAMA produced a public report on its findings, *Treatment of Conflict-Related Detainees in Afghan Custody* released in October 2011<sup>292</sup> which found:

- Compelling evidence that 125 detainees (46 percent) of the 273 detainees UNAMA interviewed who had been in National Directorate of Security (NDS) detention facilities experienced interrogation techniques at the hands of NDS officials that constituted torture, and that torture was practiced systematically in a number of NDS detention facilities throughout Afghanistan. UNAMA also found that children under the age of 18 years experienced torture by NDS officials.
- More than one third of the 117 conflict-related detainees UNAMA interviewed who had been in Afghan National Police (ANP) detention experienced treatment that amounted to torture or to other cruel, inhuman or degrading treatment.
- Detainees described experiencing torture in the form of suspension (being hung by the wrists from chains or other devices attached to the wall, ceiling, iron bars or other fixtures for lengthy periods) and beatings, especially with rubber hoses, electric cables or wires or wooden sticks and most frequently on the soles of the feet. Electric shock, twisting and wrenching of detainees' genitals, stress positions including forced standing, removal of toenails and threatened sexual violence were among other forms of torture that detainees reported. Routine blindfolding and hooding and denial of access to medical care in some facilities were also reported. UNAMA documented one death in ANP and NDS custody from torture in Kandahar in April 2011.
- UNAMA found compelling evidence that NDS officials at five facilities systematically tortured detainees for the purpose of obtaining confessions and information. These were the provincial NDS facilities in Herat, Kandahar, Khost and Laghman, and the national facility of the NDS Counter-Terrorism Department 124 (formerly Department 90) in Kabul. UNAMA received multiple, credible allegations of torture at two other provincial NDS facilities in Kapisa and Takhar. UNAMA did not find indications of torture at two provincial NDS facilities, Paktya and Uruzgan, at the time of its visits to these facilities.
- UNAMA received numerous allegations regarding the use of torture at 15 other locations covering 17 NDS facilities. Twenty-five percent of detainees interviewed in these 17 facilities alleged they had been tortured.

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<sup>292</sup>*Treatment of Conflict-Related Detainees in Afghan Custody* (UNAMA/OHCHR, October 2011) available at: [http://unama.unmissions.org/Portals/UNAMA/Documents/October10 %202011 UNAMA Detention Full-Report ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10%202011%20UNAMA%20Detention%20Full-Report%20ENG.pdf).

- Detainees in ANP custody reported that torture and ill-treatment occurred in a broader range of circumstances and settings, including at the time of arrest, at check posts, at district headquarters, and at provincial headquarters.
- 22 of 89 detainees transferred into NDS or ANP custody by international military forces experienced torture raising concerns about transferring States' obligations under the *Convention against Torture* not to transfer detainees to another State's custody where a substantial risk of torture exists.
- UNAMA found a lack of accountability for torture or ill-treatment by NDS and ANP officials with investigations kept internal and prosecutions rarely pursued. There was limited independent, judicial or external oversight of NDS and ANP.
- UNAMA found widespread arbitrary detention with 93 percent of detainees interviewed held on average 20 days, far longer than the 72-hour legal limit before being transferred to a Ministry of Justice prison and without the ability to challenge their pre-trial detention.

In the report, UNAMA made 25 recommendations to the relevant authorities including the NDS, Ministry of Interior and justice institutions to end torture and arbitrary detention, in addition to recommendations to concerned partners in particular international military forces. The status of implementation of the recommendations since October 2011 is attached as Annex II.

## ANNEX II: Status of Implementation of UNAMA's Recommendations from October 2011 Report

| STAKEHOLDER - RESPONSIBLE AUTHORITY | RECOMMENDATIONS - OVERALL   | RECOMMENDATIONS - SPECIFIC   | PROGRESS ON IMPLEMENTATION | PAGE REFERENCES TO SECTION ON GOVERNMENT OF AFGHANISTAN'S RESPONSE |
|-------------------------------------|---|--|----------------------------|--|
| NDS                                 | Take immediate steps to stop and prevent torture and ill-treatment at all NDS facilities and particularly at facilities where such practices have been used as a method of interrogation  | Investigate all reports of torture and ill-treatment at provincial NDS facilities in Herat, Kandahar, Khost, Laghman and NDS Department 124.<br><br>Remove, prosecute, discipline and punish those officials found responsible.<br><br>Permit independent oversight of these investigations. | Partial implementation     | Page 64-65   |
| NDS                                 | Review the working methods of the NDS oversight/detention monitoring commission, identify why it has not uncovered torture at the facilities visited, and adopt methods that ensure future monitoring missions  |  | Partial implementation     | Page 64-65   |
| NDS                                 | Implement an external accountability mechanism that allows independent and transparent investigations into alleged torture within NDS facilities.   |  | No implementation          | Page 64-65   |
| NDS                                 | Ensure all NDS interrogators and their superiors receive mandatory training in lawful and effective interrogation methods, alternative investigative approaches (such as forensics), and legal obligations under Afghan and international law that prohibit torture and ill-treatment, in coordination with international partners. |  | Partial implementation     | Page 65-66   |
| NDS                                 | Change policies and practices on access of defence lawyers to detainees. Permit defence lawyers to visit all detention facilities and offer their services to any detainee at all stages of the process as required by Afghan law.  |  | No implementation          | Page 66-68   |
| NDS                                 | Change policies and practices on access of family members. Immediately notify a detainee's family of the  |  | Full implementation        | Page 68  |



|                           |   |  |                        |                      |
|---------------------------|---|--|------------------------|----------------------|
|                           | detainee's location and within 18 hours if NDS has a well-founded reason not to notify family immediately. Permit family members to visit detainees.  |  |                        |                      |
| ANP                       | Take immediate steps to stop and prevent torture and ill-treatment  | Investigate all reports of torture and ill-treatment at police facilities and remove, prosecute, discipline and punish all police officers and their superiors found responsible for committing or condoning such practices. | Partial implementation | Page 69-70           |
| ANP                       | Permit independent oversight of these investigations and publicly report on findings and remedial actions   | Permit full, regular and unhindered access of independent monitors to all ANP and Ministry of Interior facilities including the AIHRC, UNAMA, ICRC and others.   | Partial implementation | Page 69-70           |
| ANP                       | Issue and implement regulations instructing police that a limited number of designated officials with the Criminal Investigation Division, Counter-Terrorism Unit, and similar units conduct interrogations. Issue and train these officials on a standard operating procedure on lawful and effective interrogation and legal obligations on the prohibition of torture and ill-treatment. |  | Full implementation    | Page 70-71           |
| Government of Afghanistan | Make the legal framework and procedures regulating NDS public and transparent, and ensure legal procedures provide for the external investigation and prosecution of allegations of serious criminal conduct, including torture and ill-treatment of detainees by NDS officials, in the civilian criminal justice system.   |  | No implementation      | Page 71-74           |
| Government of Afghanistan | Ensure access of any independent and non-government monitoring body and human rights organisations, including the Afghanistan Independent Human Rights Commission (AIHRC), the International Committee of the Red Cross (ICRC) and UNAMA, to detention facilities and prisons.  |  | Partial implementation | Page iii             |
| Government of Afghanistan | Ensure that an adequate number of qualified defence lawyers are available in all provinces.   |  | Partial implementation | Page 15-17 and 66-68 |
| Government of Afghanistan | Establish an effective and accessible reparation and  |  | No implementation      | Page 17-18           |

|   |   |  |                        |            |
|---|---|--|------------------------|------------|
|   | compensation mechanism for victims of torture and other ill-treatments.   |  |                        |            |
| Government of Afghanistan                         | Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and create an effective and independent domestic monitoring mechanism (possibly under the coordination of the AIHRC).  |  | No implementation      | Page 17-18 |
| Supreme Court                                     | Direct primary and appeal court judges to routinely investigate all allegations of torture and coerced confessions and strictly enforce prohibitions on the use of evidence obtained through torture as required under the Constitution of Afghanistan and the Interim Criminal Procedure Code.   |  | No implementation      | Page 71-74 |
| Supreme Court, MoJ, MoI and Parliament            | Revise the Interim Criminal Procedure Code to guarantee the right of detainees to be brought promptly before a judge for an initial and periodic review of the lawfulness of pre-trial detention, and the right of detainees to challenge the legality of their detention with a speedy court decision.   |  | Partial implementation | Page 71-74 |
| Troop contributing countries and concerned States | Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment. Review monitoring practices at each NDS facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture |  | Full implementation    | Page 75-82 |
| Troop contributing countries and concerned States | Review policies on transferring detainees to ANP and NDS custody to ensure adequate safeguards and use participation in joint operations, funding arrangements, the transition process, intelligence liaison relationships and other means to stop the use of torture and promote reforms by NDS and ANP.   |  | Full implementation    | Page 75-82 |
| Troop contributing countries and concerned States | Build the capacity of NDS and ANP facilities and personnel including through mentoring and training on the legal and  |  | Full implementation    | Page 75-82 |

|   |  |  |                     |            |
|---|--|--|---------------------|------------|
|   | human rights of detainees and detention practices in line with international human rights standards.   |  |                     |            |
| Troop contributing countries and concerned States | Increase efforts to support training to all NDS and ANP interrogators and their supervisors in lawful and effective interrogation methods, and alternative investigative approaches (such as forensics). |  | Full implementation | Page 75-82 |

## ANNEX III: Applicable Law

### 1. Legal Prohibitions of Torture and Cruel, Inhuman or Degrading Treatment

#### Obligations under International Law

The absolute prohibition against torture is a peremptory *jus cogens* norm of customary international law. Several international treaties to which Afghanistan is a party also prohibit torture. These include the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *International Covenant on Civil and Political Rights* (ICCPR), the *Geneva Conventions of 1949*, the *Rome Statute of the International Criminal Court* and the *Convention on the Rights of the Child* (CRC) article 37(a).<sup>293</sup>

The State obligation to respect the prohibition against torture is non-derogable meaning that it is never justified to suspend or to fail to observe the ban on its use. “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>294</sup> In addition, under article 4 (2) of the ICCPR, States cannot derogate from the prohibition of torture and cruel, inhuman or degrading treatment prescribed in article 7 of the ICCPR.

#### Obligations under National Law

Afghan law explicitly prohibits torture with the Constitution of Afghanistan providing that “No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished.”<sup>295</sup> The *Juvenile Code* 2005 prohibits harsh punishment against children.<sup>296</sup> The *Penal Code* also criminalises torture. Article 275 states that if public officials torture an accused for the purpose of obtaining a confession, they shall be sentenced to long-term imprisonment in the range of five to 15 years.<sup>297</sup> However, there are concerns that these national laws do not contain an adequate definition of torture in line with international standards,

#### Definition of Torture

The definition of torture under the *Convention against Torture* is the most cited and authoritative definition and is considered binding under customary international law:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person

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<sup>293</sup> The Government of Afghanistan ratified *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* in June 1987, the ICCPR in April 1983, *the Geneva Conventions* in September 1956 (with the exception of the two additional protocols) *the Rome Statute of the International Criminal Court* in February 2003 and the CRC in 1994.

<sup>294</sup> *Convention against Torture*, article 2(2).

<sup>295</sup> Constitution of Afghanistan, article 29.

<sup>296</sup> *Juvenile Code* 2005, article 7.

<sup>297</sup> *Penal Code*, article 275.

acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>298</sup>

This definition includes four elements: (1) the act of inflicting severe pain or suffering (2) the act is intentional (3) the act is for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or discrimination and (4) the perpetrator is a public official or other person acting in an official capacity. The “elements of intent and purpose . . . do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances.”<sup>299</sup>

Under the *Convention against Torture*, states are required to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

The *Convention against Torture* expressly requires several measures, including:

- *Criminalisation*. To “ensure that all acts of torture are offences under its criminal law” including “act[s] by any person which constitutes complicity or participation in torture” and the offences shall be “punishable by appropriate penalties which take into account their grave nature”.
- *Investigations and victims’ complaints*. To conduct a “prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed” and to ensure the right of “any individual who alleges he has been subjected to torture . . . has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” and to protect the complainant and witnesses against ill-treatment or intimidation.
- *Training*. To include “education and information regarding the prohibition against torture...in the training” of all persons “who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.
- *Rules, directives, procedures*. To include the prohibition of torture in “the rules or instructions” issued to persons involved in the custody, interrogation or treatment of detainees and to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of [detainees] with a view to preventing any cases of torture”.
- *Redress and rehabilitation*. To ensure “that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”
- *Exclusionary rule*. To “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings”.

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<sup>298</sup> *Convention against Torture*, article 1.

<sup>299</sup> Committee against Torture, General Comment No. 2 (“Implementation of article 2 by States parties”), CAT/C/GC/2 (24 January 2008), Para. 9.

- *Non-refoulement*. Not to transfer “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.<sup>300</sup> Further, “[I]f a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State’s obligation to take effective measures to prevent torture. . . .”<sup>301</sup>

### **Ill-treatment**

*Cruel treatment*, and *inhuman* or *degrading treatment* or *punishment* are also legal terms which refer to ill-treatment causing varying *degrees of suffering less severe than in the case of torture*. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose. The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Exposure to significant mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities<sup>302</sup>

The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment<sup>303</sup>.

## **2. Legal Prohibitions of Arbitrary Detention**

### **Obligations under International Law**

The ICCPR to which Afghanistan is a State party states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

Coupled with articles 7 and 14 of the ICCPR, article 9 outlines other essential procedural protections required for a detention not to be arbitrary as follows: anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be informed promptly of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

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<sup>300</sup> *Convention against Torture*, articles 2-4 and 10-14.

<sup>301</sup> Committee against Torture, General Comment No. 2 (“Implementation of article 2 by States parties”), CAT/C/GC/2 (24 January 2008), Para. 19.

<sup>302</sup> Giffard, Camille, *The Torture Reporting Handbook*, Human Rights Centre, University of Essex, 2000.

<sup>303</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Comment No. 02, Adopted on 23-11-2007.

The ICCPR also provides that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, for the court to decide without delay on the lawfulness of detention and order release where the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.<sup>304</sup>

The CRC guarantees rights for children detained including that detention should be used as last resort for the shortest possible time, the right to family visits and have contact with family while in detention, the right to legal assistance, the right to be presumed innocent, the right to be informed promptly and directly of charges, right to have the matter determined without delay, and the right not to self-incriminate and be compelled to give testimony.<sup>305</sup>

### **Obligations under National Law**

Afghanistan's Constitution clearly prohibits arbitrary detention. It largely reflects the general principles laid out in Article 9(1) of the ICCPR. Articles 23(1) and (3) of the Afghan Constitution states that liberty "is the natural right of human beings" which the State must "respect and protect." The Constitution stipulates that a person's liberty can be restricted if his or her liberty is "affecting others' freedoms as well as the public interest" and only when "regulated by law". In addition, the Constitution states that no one can be detained "without due process of law".<sup>306</sup>

Other national laws of Afghanistan reflect these constitutional guarantees and define the grounds and procedures for legal detention. The *Penal Code* 1976 provides the grounds for legal detention. The *Interim Criminal Procedure Code* provides the general procedural framework for legal detention.

This legal framework however does not provide Afghans with the right to be brought promptly before a judge for an initial and then periodic review of the lawfulness of pre-trial detention or the right to challenge the lawfulness of their detention within a reasonable time which is inconsistent with article 9 (3) of the ICCPR and the Constitution of Afghanistan.

The *Police Law* details the standards for police conduct and practice.<sup>307</sup> The *Law on Detention Centres and Prisons* details the procedure to monitor the legality and conditions of detention.<sup>308</sup> The Constitution of Afghanistan guarantees the right to a defence lawyer immediately upon arrest.<sup>309</sup> This right is expanded in the *Advocates Law*.<sup>310</sup>

The *Juvenile Code* provides the legal framework for the detention of children which requires the State to take special measures to protect the rights and interests of children. A child is defined as one who has not completed the age of 18 years. It states that children should be confined for the minimum duration. It guarantees the right to legal representation and requires that police are duty bound to notify a legal

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<sup>304</sup> ICCPR, article 9(1)-(5).

<sup>305</sup> CRC, articles 37 (b)-(c) and 40(2)(b).

<sup>306</sup> Afghanistan Constitution, articles 24 (1) and 27(1)(2).

<sup>307</sup> Official Gazette No. 862 (2005).

<sup>308</sup> Official Gazette No. 852 (2005).

<sup>309</sup> Afghanistan Constitution, article 31.

<sup>310</sup> Official Gazette No. 934 (2007).



representative of the charges. In addition, it recognises that children should be treated differently from adults and prescribes shorter time limits for detention. Police have 24 hours to submit the information to the prosecutor who is required to complete the investigation within one week and prepare the indictment. This period of detention can only be extended for three weeks while the prosecutor completes the investigation.<sup>311</sup>

The *Law on Prison and Detention Centres* states that children and adults should be detained separately.<sup>312</sup> Article 2 of the Law on Juvenile Rehabilitation and Correction Centres provides that children should be detained only in juvenile rehabilitation and correction centres.<sup>313</sup>

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<sup>311</sup> *Juvenile Code*, articles 4, 8, 11, 13-15, 22 and 30

<sup>312</sup> *Law on Prisons and Detention Centres* 2005, article 9(4)

<sup>313</sup> Official Gazette No. 969 (14/01/2009)



**ANNEX IV: Response of the Government of Afghanistan,  
National Directorate of Security and Ministry of Interior to  
this Report dated 14 January 2013<sup>314</sup>**

**Islamic Republic of Afghanistan  
Office of National Security Council**

No. 180/136

Date: 1391/10/25

**To: UNAMA Office in Kabul**

**Attention: Mr. Mark Bowden**

This is to thank UNAMA for sharing the draft report of UNAMA titled as “Treatment of Conflict-Related Detainees in Afghan Custody One Year On” and changing the determined deadline for presentation of the response on the said report.

Experts from Office of National Security Council of Islamic Republic of Afghanistan, Ministry of Interior of Islamic Republic of Afghanistan and National Directorate of Security of Islamic Republic of Afghanistan worked together to share their information and hereby present this response for improvement of “Report on Treatment of Conflict-Related Detainees in Afghan Custody One Year On”.

**Yours Sincerely,**

**Rahmatullah Nabeel**

**Deputy Advisor of National Security of Islamic Republic of Afghanistan**

***(Signed)***

*Copy to:*

*Ministry of Interior of Islamic Republic of Afghanistan*

*National Directorate of Security of Islamic Republic of Afghanistan*

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<sup>314</sup> UNAMA received the Government’s response in the Dari language. UNAMA’s translation unit translated the document into English as attached.

**Islamic Republic of Afghanistan**

**Response of Islamic Republic of Afghanistan on Draft Annual Report of United Nations Assistance Mission in Afghanistan (UNAMA)**

**(“Treatment of Conflict-Related Detainees in Afghan Custody One Year On”-  
December 18, 2012)**

Office of National Security Council of Islamic Republic of Afghanistan

Ministry of Interior of Islamic Republic of Afghanistan

National Directorate of Security of Islamic Republic of Afghanistan

January 14, 2013

## **Introduction**

UNAMA Human Rights Unit, on December 18, 2012, presented printed an English version of its draft report titled as “Treatment of Conflict-Related Detainees in Afghan Custody One Year On” to three organs of Islamic Republic of Afghanistan including the Office of the National Security Council, Office of the Ministry of Interior and the National Directorate of Security for seeking their responses and views. Furthermore, as per the request of the Government of Islamic Republic of Afghanistan, UNAMA provided the three above-mentioned organs with an executive summary of the draft report in Dari on December 23, 2012.

After presentation of the draft report, National Security Advisor, Minister of Interior and Acting Head of National Directorate of Security profoundly studied the issue and decided to establish commissions comprised of experts and assigned them, in their offices, to provide a satisfying response to the said report. After commencing the assignment, the Department of Foreign Affairs of National Security Council, as per the direction of National Security Advisor, requested UNAMA on January 3, 2013 to change the deadline for presenting the response from January 6, 2013 to January 15, 2013 and UNAMA immediately agreed to the request with good will.

Established commissions of the three organs of the Government of Islamic Republic of Afghanistan conducted close studies on the draft report until January 14, 2013 and the Ministry of Interior and the National Directorate of Security, through separate packages, submitted their responses to the National Security Advisor. It is worth mentioning that the experts of the three organs exchanged information and conducted discussions to produce an appropriate response. This response is presented in three parts to improve the draft report on “Treatment of Conflict-Related Detainees in Afghan Custody One Year On” which is prepared by UNAMA.

## **General Response**

Government of Islamic Republic of Afghanistan, during several past years, has consistently endeavoured to observe and implement democratic and human rights values in accordance with the Afghan Constitution. Respect to human rights and individual freedom in a society are amongst the areas on which different organs of the Government, with the support of the international community, has worked and focused on since the last decade. Additionally, full restoration of national sovereignty and territorial integrity of Afghanistan is very much important for the people and leadership of the Government of Islamic Republic of Afghanistan; therefore, Afghan leadership in the past two years has made efforts to ensure that detention and the keeping of Afghan citizens in detentions centres are according to the Constitution and other Afghan laws within the framework of internationally accepted values and principles and they have tried not to violate national sovereignty in this regard.

The Government of Islamic Republic of Afghanistan always tries to not only have the control of detaining and keeping of all citizens of the country that are arrested by legal authorities but also of those detained by international forces, who have come to help Afghanistan in ensuring security, shall be transferred to Afghan Government. Lawful arrest, providing better conditions for keeping of detainees, using appropriate and professional approaches for interrogation of suspects and the accused, fair trial and other issues are amongst the priorities of the Government for observing human rights of

conflict-related detainees and the Ministry of Interior and the National Directorate of Security are emphasizing their commitments to this end.

Having that said, the Ministry of Interior and the National Directorate of Security, based on their commitments, have transparently provided access to facilities during the past years to human rights organizations including UNAMA to visit prisons, detention centres, conflict-related prisoners and detainees. Based on the instruction of the President of Islamic Republic of Afghanistan, last year, a fact finding committee comprised of a number of experts from the Office of National Security Council, Office of the President and National Directorate of Security were assigned to assess and investigate the allegations of torture of detainees under the custody of the National Directorate of Security. Findings of the committee indicated that the allegations of torture of detainees were untrue and thus disproved.

While the Government of Islamic Republic of Afghanistan does not completely rule out the abuse and ill-treatment by staff at detention centres, this is due to a lack of capacity and sound training of these organs, but the level of alleged torture reflected in the report by UNAMA is exaggerated. Therefore, the response of the Government of Islamic Republic of Afghanistan is prepared in three parts which includes views on structure and methodology of the report, a response by the Ministry of Interior and a response by the National Directorate of Security and an overall conclusion.

### **Structure and Methodology of the Report**

The below points and questions on the draft report of UNAMA shall specifically be considered:

- The overall structure of the report and headings on the pages are not well-ordered and this leads the reader to confusion; similarly, some subjects and headings are repeatedly stated in the report. Furthermore, focus is encouraged on the structure and headings of the report.
- UNAMA for the purpose of establishing facts and developing this research has only used the method of interviews with accused persons and suspects and some staff which is not sufficient for proving of the allegations. Although the report is on the conditions of war and conflict-related detainees, it would be better if UNAMA interviewed some criminal detainees in order to deeply assess these allegations. It is because the Government of Afghanistan believes that members of terrorist groups, in order to destroy reputation of the Government, have been trained to make allegations against the detective and legal organs of Afghanistan.
- The term “systematic torture – systematically tortured” has been repeated several times in the report which the Afghan Government believes is not appropriate; further, the report does not provide a specific definition and the purpose of use of this term and no valuable source is referenced for using such term. Therefore, the Government of Afghanistan considers this term “exaggerated” and its use “nonacademic”.
- The overall figures presented in interviews in pages 5 and 6 (in Dari version) are confusing and seems incorrect. These figures need further clarification.
- It is stated on several occasions that torture and harassment of detainees is part of the policy and procedure of legal and arresting bodies of Islamic Republic of Afghanistan (please refer to pages 8 and 25 in Dari version). We believe that this issue is devoid of truth and the Government of Afghanistan is of the belief that

UNAMA has no evidence to prove this and the leadership of the Afghan Government, the Ministry of Interior and the National Directorate of Security has never issued such an order. Making such assertions without any evidence significantly reduces any academic value of the report and undermines other parts of it.

- It would be better, for more clarification, to put marks on key recommendations in Appendix 1 of this report.
- Recommendation provided to ISAF on the suspension of transferring to Afghan Government the detainees under the custody of foreign troops is a violation of the national territory of Islamic Republic of Afghanistan and in contradiction with all previous agreements between the Afghan Government and international forces. Therefore, discussing this recommendation is not appropriate in this report and its removal is proposed. Recommendation on the development of better mechanisms on arresting and transferring conflict-related detainees and improvement of detention conditions are more practical.
- The report also talks about children harassment; however, there is no specific recommendation in this regard. It would have been better if particular and practical measures were recommended for the Government of Afghanistan and the international community on the treatment and detention of children accused of terrorist crimes.
- Issues related to transferring of detainees under the custody of U.S and British forces have not been presented appropriately. The discussion on transferring of Parwan detainees under the custody of U.S troops and the signing of a Memorandum of Understanding between the Ministry of Defence of Islamic Republic of Afghanistan and ISAF Commander in March 2011 were among the most important events which are not reflected in this report.

Therefore, it is recommended to once again focus on the above-mentioned points in order to develop a better structured report reflecting the facts.

### **Ministry of Interior Affairs [response to]**

#### **UNAMA's October 2011 to October 2012 Report on Detainees**

Ministry of Interior Affairs (MoI) of the Islamic Republic of Afghanistan has, in the light of the Afghan Constitution and International Covenants on the prohibition of torture, been working to institutionalize the observance of human rights in the country's national police units by adopting reasonable policies and procedures. Since last year, after the publication of UNAMA's report dated October 2011, MoI has taken special measures by issuing several directives to eliminate ill-treatment of detainees which has produced tangible results. Establishment of human rights offices within the structure of national police, incorporation of human rights subjects in the curriculum of national police education centres, conducting of training programmes both inside and outside the country for police personnel assigned in prisons of the country, extensive programmes for development of infrastructures to improve living conditions of prisoners are the activities that the MoI has undertaken to improve and ensure human rights of detainees.

MoI and the National Police have improved significantly; during the past two years, police awareness of human rights of individuals particularly of detainees in detention



centres has increasingly improved. MoI has made continuous efforts to improve conditions of national police prisons, detention centres and custody centres. Afghanistan National Police has treated suspects in detention centres in accordance with the enforced laws of the country and has observed the detainees' human rights. Afghan National Police considers observance of detainees' human rights as one of its important responsibilities and is committed to the observance of human rights values in detention centres.

The Afghan National Police detention centres are constantly monitored by civil society institutions, Afghanistan Independent Human Rights Commission, internal audit organs, Complaints Commissions of both houses of the parliament and the Red Crescent Organization. There is no cover up during monitoring carried out by various monitoring institutions. In case, violations of human rights of the detainees are reported, MoI addresses such violations seriously. Respect to human rights of detainees and human and Islamic treatment of them is one of the education principles of the Afghan National Police and is taken seriously into consideration. Afghan National Police are duty bound to treat suspects in accordance with the enforced laws of the country and with observance to human rights values. However, the enemy uses this opportunity and orders all its fighters to pretend during monitoring by international organizations that they are tortured in detention centres so that the image of the Government of Islamic Republic of Afghanistan is obscured in the world. MoI believes this approach by the enemy is part of their psychological warfare against the Government of Islamic Republic of Afghanistan.

MoI has thoroughly studied the recent report by UNAMA on conflict-related detainees and responds to it as follows:

MoI strongly rejects instances of detainees' abuse by national police such as systematic torture, beating with rubber pipes or water pipes, forced confession, suspension, twisting of the detainees' penis and wrenching of the detainees' testicles, death threats, sexual abuse and child abuse included in the report. MoI is ready to jointly with UNAMA investigate the above mentioned abuses. If the torture listed in UNAMA's report is verified, MoI is committed to seriously address the issue and punish the perpetrators.

#### Key Points

Based on the provisions of article 30 of the Afghan Constitution, police are duty bound to seriously refrain from any types of physical and mental torture or ill-treatment of the suspects and accused during interrogations to obtain information or confessions to prove commission of a crime or use the statements against others and to respect human rights of the suspects.

Based on article 11 of the Juvenile Law, police are duty bound to complete case files of children in conflict with the law within 24 hours and refer the case to the juvenile special prosecution office. If the police due to justified reasons cannot complete the case within the specified time period, they may request the prosecution office to extend the deadline to an additional 48 hours.

Based on article 3 of the law on prisons and detention centres, personnel of prisons should observe Islamic and human rights values while performing their duties and treat

the prisoners and detainees impartially and without any discrimination based on citizenship, religion, race, gender, and language, social and political status.

MoI commits itself to abide by the Constitution and other enforced laws of the country in their treatment of detainees and prisoners. MoI pursuant to its legal obligations continuously monitors the behaviour of police personnel assigned in prisons and detention centres to detainees and takes legal action against any violations by National Police personnel.

In line with its legal obligations, the Ministry of Interior of the Islamic Republic of Afghanistan has taken legal actions against dozens of National Police personnel who violated their legal terms of references and in some cases has dismissed the violators and referred them to prosecution offices.

Improvement of human rights of detainees is one of the priorities of the MoI. To ensure respect of human rights of detainees and prisoners, MoI has issued directive No. 0117 based on which ensuring human rights in prisons and detention centres are on top of the MoI agenda.

The directive includes the following points:

- General Department of Prisons and Detention Centres is assigned to prepare a programme to prevent violations of human rights in detention centres and the use of violent acts against detainees and to seriously monitor the behaviour of personnel of prisons and detention centres with suspects and criminals.
- In the light of the Law on Prisons and Detention Centres and Regulation on Prisons and Detention Centres, the administrative affairs, security, living conditions, health, environment, rights and rehabilitation training for detainees should be controlled and monitored randomly or based on a schedule.
- Detainees while in detention or in transfer should be treated in a way to ensure that their human dignity is respected.
- Factors contributing to violations of human rights [of the detainees] should be identified through criminal, detective and intelligence analysis and special measures should be taken to prevent such violations.
- Efforts should be made to ensure that male and female prisoners and detainees are not kept in detention without prosecution or court orders or in absence of any legal justifications.

In the past two years, the Ministry of Interior of Islamic Republic of Afghanistan by adopting effective and practical policies has managed to bring about some reforms in prisons and prevent misconduct and abuses by National Police personnel of the detainees.

Hundreds of National Police staff assigned in detention centres have been dismissed and replaced by the right personnel. Development of new and standard facilities for detention centres has provided the ground for observance of the detainees' human rights and improvement of their living conditions.

Despite all of this, MoI still believes that to completely eliminate violations and ill-treatment of detainees, to improve living conditions of them and ensure full enforcement of legal provisions in prisons, more time is required. Given the current

conditions and facilities available to the Afghan National Police in detention centres, large investments on specific programmes are required in the future.

Based on MoI policy, related administrations are duty bound to provide full access to detention centres by human rights organizations, civil society, free media, government and non-governmental organizations, MoI internal audits and the Parliament Audits so that any ill-treatment of detainees by the Afghan National Police is prevented and perpetrators of such acts are identified and punished.

Given the current situation of the country, we do not claim that there are no shortcomings in our performances. In our opinion, some shortcomings are due to a lack of adequate experience of personnel, lack of access to crime scene in some parts of the country and lack of technical equipment to identify material elements of crimes. These factors in some cases provide the ground for violations of legal provisions that we cannot deny. In other words, in exceptional cases, shortcomings in performance of personnel engaged with assignments related to detainees result from violations by individuals and the MoI leadership has taken serious legal action against such acts.

#### Activities of the Ministry of Interior Affairs of Islamic Republic of Afghanistan

Ministry of Interior Affairs of Islamic Republic of Afghanistan treats detainees in accordance with the provisions of the Afghan Constitution, Police Law, Law on Prisons and Detention Centres and International Conventions adopted by Afghanistan particularly the International Convention against Torture and Other Cruel and Inhuman Treatment, the Convention on Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

Pursuant to articles 24 and 25 of the Constitution, police may not arrest a person unlawfully or without justified reasons except for circumstances set forth by law. Therefore, any unlawful or arbitrary arrest and detention or misuse of authority by police is a crime and should be prosecuted.

- MoI has issued directive No. 169 dated 24/12/1390 to all National Police forces to prevent torture, degrading and inhuman acts that damage human dignity and violate individuals' human rights. Based on this directive, National Police personnel are duty bound to refrain from torture and ill-treatment of suspects at the time of arrest and in prisons, detention centres, custody centres and detective organs.
- To promote human rights education programmes, MoI with EUPOL's financial support is developing a pocket booklet containing human rights subjects and will disseminate it among the police force. In this booklet, subjects such as the importance of human rights for the police, observance of human rights by the police at the time of arrest and custody, and acts violating human rights will be included.
- To ensure observance of human rights by police forces and to enhance police awareness of human rights issues and to provide human rights education for the police, the MoI has established the Human Rights and Gender Department. Within the structure of Afghanistan National Police Academy, human rights and gender is included in the curriculum of Afghanistan National Police Academy and is currently being taught.

- Based on article 3 of the Law on Prisons and Detention Centres, personnel of prisons should observe Islamic and human rights values while performing their duties and treat prisoners and detainees impartially and without any discrimination based on citizenship, religion, race, gender, and language, social and political status and should provide living conditions for detainees in an unbiased manner.
- MoI has so far prosecuted tens of MoI staff who have violated this order. MoI in some cases has dismissed the offenders from duty and introduced them to the Attorney General's Office.
- In accordance with the five-year reform strategy of Central Prisons Department, which was approved by the President of Islamic Republic of Afghanistan in 2009, some 5056 officers, non-commissioned officers and soldiers and 2411 civil servant employees were included in the reform process after attending special and professional courses. This phase was successfully implemented and the results are appraised as effective and positive in the improvement of the administration of prisons.
- In view of the significance of education and its role in the improvement of leadership and administration, Educational Centre for of Prisons was upgraded to Prisons Police Academy in 1388; in addition, educational centres were established in six zones of Balkh, Kunduz, Nangarhar, Herat, Paktia and Bamyan. All military personnel, categorized as officers, non-commissioned officers and soldiers are trained in these centres and academies in accordance with their needs and based on a needs assessment.
- Incorporated in the training programmes are modules covering procedures and attitudes of prison police, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, Universal Declaration of Human Rights, administration and management, issues related to management of an entity, psychology, fundamentals of information technology and security measures, Law on Prisons and other enforced laws of the country.
- CSSP and UNODC have had a significant role in establishing educational centres and police academies and providing equipment and educational opportunities. 6056 (70%) of Central Prisons and Detention Centres Department staff have attended training programmes. They know the fundamentals of detention centres and prisons administration. Also, every year, seminars and workshops are held for administrators of prisons and other personnel with the support of UNODC, JSSP and ICRC inside and outside the county in order to raise the administrative abilities of prison personnel.
- In addition, to control and monitoring of prisons and detention centres carried out by the Department of Gender and Human Rights of the MoI, responsible personnel of gender and human rights departments in seven zones and gender and human rights departments in provincial police headquarters have consistently carried out some 500 rounds of monitoring of late.

### **Part of monitoring reports**

- As a result of supervision by the Gender Department of Asmaie zone 101, Mr. Zerak, officer of Discovery of District 11 of Kabul City was accused of beating a detainee named Tawus. He was arrested and prosecuted.
- Gender and Human Rights Department of Regional Zone 404, referred colonel Abdul Malik, Head of CiD of the Kandahar Provincial Police Headquarters to

Attorney General's Office after proper investigations. Abdul Malik was arrested for hiding facts in relation to the case of kidnapping of a five-year-old girl, named Hamida, daughter of Jan Mohammed from Ghazni province. Abdul Malik had released the accused from detention.

- As a result of investigations, five police officers in the Provincial Police Headquarters of Kandahar, Khost and Kunar province were accused of negligence in and misuse of duties. Two were introduced to Attorney General's Office and the other three were disciplined.
- A total of 6177 accused persons are detained in police detention centres. Out of this, only 88 were kept in detention longer than 72 hours. Responsible personnel are advised to treat the accused persons in compliance with the law.
- In all detention centres, suspects did not have specific complaints against the police.
- Situations in Detention Centre of Asmaie Zone 101, detention centres in police headquarters of Baghlan, Nangarhar and detention centres in the centre and provinces seem satisfactory.
- In accordance with the evaluations, prisons conditions in Kapisa, Parwan, Badghis and Ghor provinces are not satisfactory and responsible authorities are advised accordingly.

### **Orders**

- Order number 0112 dated 24/12/1389 regarding the development and protection of human rights for strengthening rule of law at MoI level.
- Order number 0117 dated 10/10/1390 regarding the enforcement of the rule of law for avoiding human rights violations in prisons.
- Order number 0169 dated 24/12/1390 regarding the prohibition of torture and other inhuman treatment in detention centres and prisons and discovery organs of the MoI.
- Order number 08 dated 5/2/1389 regarding the prevention of recruitment of underage children to ranks of police.
- Order number 023 dated 8/3/1389 regarding the prevention of any sort of sexual harassment of female police.
- Order 055 dated 16/6/1390 regarding the recruitment of female police.

### **Provisions of law**

- Article 29 of the Afghan Constitution states; "Persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished. Punishment contrary to human dignity shall be prohibited."
- Article 30 of the Afghan Constitution stipulates: "A statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid."
- Article 134 of the Afghan Constitution stipulates: "Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney's Office, in accordance with the provisions of the law."

- Article 25 of the Police Law states: “In order to comprehensively detect the crime and the criminal, police can hold an arrested suspect in custody for a period of up to 72 hours.”
- Paragraph 1 of article 2 of the Prisons and Detention Centres Law states: “The freedom of an accused in a detention centre can only be taken away in accordance with the concerned attorney’s arrest warrant and the court order in conformity with the provisions of the law.”
- Paragraph 2 of article 2 of the Prisons and Detention Centres Law states: “The application of sentence in prisons shall take place in accordance with the final court order.”
- Paragraph 3 of article 2 of the Prisons and Detention Centres Law states: “The Ministry of interior is the authority for applying orders and the provisions mentioned in paragraphs (1) and (2) of this article.”
- Article 3 of the Prisons and Detention Centres Law states: “The staff of detention centres and prisons, prosecutors, judges and other persons who deal with prisoners in a way are required to respect Islamic instructions and human rights while performing their duties and dealing with the detainees and prisoners, they should treat them equally and impartially irrespective of their tribe, citizenship, religion, race, color, gender, language and social and political status, etc.”
- Paragraph 1, article 17 of the Law on Elimination of Violence against Women: “If a person commits rape with an adult woman, the offender shall be sentenced to continued imprisonment in accordance with the provision of Article (426) of the Penal Code, and if it result the death of victim, the perpetrator shall be sentenced to death penalty.”
- Paragraph 2, article 17 of the Law on Elimination of Violence against Women states: “If a person commits rape with an underage woman even with her consent, the offender shall be sentenced to the maximum continued imprisonment according to the provision of Article (426) of Penal Code, and if it result the death of victim, the perpetrator shall be sentenced to death penalty.”

## **Note**

On the basis of Decree number 45 dated 5/5/1391 of the President of Islamic Republic of Afghanistan, a delegation composed of representatives of the Attorney General’s Office, Gender and Human Rights Department, Central Prisons and Detention Centres Department was assigned to assess the situation in prisons and detention centres. The mentioned delegation delivered its written report after monitoring and assessment of all prisons and detention centres in the centre and the provinces. The report prepared by the aforementioned delegation does not mention any instances of torture or inhuman treatment within prisons.

## **Conclusion**

The Ministry of Interior Affairs denies severe cases of inhuman treatment including systematic torture, beating with cables or pipes, forced confessions, hanging suspects, twisting genitals, death threats and rape or sexual abuse of children by national police that are mentioned in the UNAMA report. The Ministry of Interior Affairs is ready to asses these cases together with UNAMA. If these cases are proven, the Ministry of Interior Affairs will take action and punish the perpetrators.

## **National Directorate of Security**

### **On UNAMA Report about the Detention of Prisoners**

#### **From October 2011 up to October 2012**

The National Directorate of Security as an independent intelligence organ of Islamic Republic of Afghanistan has been working in accordance with all the enforced laws of the country, the Universal Declaration of Human Rights and International Human Rights Covenants, the Anti-Torture Convention and all internationally accepted rules and regulations to combat crimes against internal and external security.

Criminal acts of terror, suicide attacks and explosions, killing of innocent people in the country including women, men and children which are generally organized and carried out with the help of foreign intelligence organizations at the hands of terrorists and murderers cause huge human and material damages and seriously affect the morale of our society .

Despite the cruelty and ruthlessness of terrorists and armed opposition, national security forces of the country, including those from National Directorate of Security, treat them and behave with them based on humanitarian and legal principles from the beginning of the detention and investigation stages.

Providing access for control and monitoring of detention and investigation centres by the Directorate to national and international organs, including Mishrano Jirga Complaints Commission, Wolesi Jirga Complaints Commission, Wolesi Jirga's Internal Security Commission, Monitoring Board of the Attorney General's Office, Afghanistan Independent Human Rights Commission, International Committee of Red Cross, Monitoring Board of ISAF, Human Rights Department of National Directorate of Security, Special Monitoring Board of the Defence Lawyers and Human Rights Section of UNAMA "author of the recent report", is proof of the abovementioned statements about prisoners. National Directorate of Security has always provided necessary facilitation for implementation of monitoring programmes by the above-mentioned organizations including UNAMA to carry out assessments and monitoring of detention and investigation centres of National Directorate of Security both at central and at provincial levels and has cooperated with them in this regard.

These organizations have monitored the manner of treatment and behaviour of detention centres personnel with detainees and detainees' livelihood, health care services, recreation, education, information to families, sun taking schedules, access to newspapers, media and library and the process of cases of the accused persons. In many instances, they have expressed their satisfaction with regards to the work of the relevant employees and for further improvement of the conditions of accused persons and detention centres. These organizations have noted their opinions and the documents are available.

#### **About the draft UNAMA Report**

The Current draft UNAMA report has been prepared pursuant to October 2011 report of the mission for a continued provision of necessary grounds for monitoring by relevant national and international organizations.



The report claims that detainees in the detention centres of the National Directorate of Security have been maltreated and tortured in the centre and in the provinces. The UNAMA report is based on the results of interviews with 514 detainees in detention centres of National Directorate of Security. In addition, the report speaks about the existence of alternate detention centres, hiding of accused persons from the eyes of monitoring groups, use of torture like electric shocks, rape threats, battery and hanging of the accused persons. All of which are in clear contradiction to the working procedures of the National Directorate of Security and it strongly rejects them.

Keeping in mind the general situation and circumstance of the country, we do not claim to be perfect in our work. In our opinion, some of the flaws and faults have been the result of inadequate experience of our officials and because of the lack of security in some regions, lack of access to crime scenes and due to the shortage of technical equipment to prove material evidence of crimes which in some instances have resulted in violations of the law. Some of these exceptional violations are the result of actions by individuals in which circumstances leadership of the National Directorate of Security has taken serious legal measures.

As mentioned, different organizations have been allowed to monitor detention centres of the National Directorate of Security and even His Excellency Assadullah Khalid, Head of National Directorate of Security, in his statement dated 26/06/1391 (16/09/2012) after officially assuming duty, called upon Afghanistan Independent Human Rights Commission and other monitoring organizations to regularly control and monitor detention centres of the National Directorate of Security; officials of the Directorate are obliged to follow and implement this order. Members and officials of monitoring organizations have visited these centres at different times and have noted their opinions and observations in the visitor observations book. **In many instances, National Directorate of Security has been praised for providing better living conditions for accused persons.**

Previously through various reports it was brought to the attention of national and international organizations that enemies of Afghanistan instruct their agents and persons connected to them to raise complaints and accusations of torture of different kinds during monitoring visits by national and international organizations and during judicial sessions regarding the actions and performances of detection and investigation organs and interrogators of National Directorate of Security and police. It is, therefore, requested that in the absence of necessary proof and evidence, these accusations and claims are not to be deemed credible.

The section of the UNAMA report titled, "Protection, Modality and the Criteria for Proof" states: "UNAMA interview officers visit prisons at different times and present their findings after 12 months of assessments."

It would be desirable if the monitoring team had presented their accounts of violations in the centre and in the provinces of Jawzjan, Kandahar, Faryab, Herat, Khost, Kunduz, Laghman and Nangarhar to the leadership of the National Directorate of Security at the time of the visits so that any shortcomings would have been addressed at the time and perpetrators would have been referred to the legal institutions.

The opposition of the Islamic Republic of Afghanistan knows that the human rights institutions and international community are specifically sensitive to violations of

human rights of accused persons and of torture. Therefore, they want to forge facts by making accusations to discredit investigation and judicial prosecution processes. The National Directorate of Security once again states with resolve, that it fully respects national and international laws and is committed to human rights norms and insists on its implementation.

During the last one year, National Directorate of Security has strived to eradicate every kind of maltreatment and acts of torture, improve conditions for investigation of the accused, accelerate the establishment of a transparent legal and judicial system, raise the professional and legal capacity of detention centre personnel of the National Directorate of Security and further improve investigative methods.

As a result of persistent efforts by the education department and other related sections of the Directorate, some 233 officials from investigation and detention centres both in central and provincial offices of the National Directorate of Security attended special professional and legal training. In addition, the following courses have been launched for improving the capacity of relevant personnel:

- Training course on Law of War and Humanitarian Duties of the Red Cross Committee for 270 students conducted by officials of the Red Cross Committee.
- Training course on Armed Conflicts for 21 teachers of the Education Department of National Directorate of Security conducted by the Red Cross Committee.
- Training course on human rights for 3262 participants.
- Training course for 32 officials of detention centres on rights, the treatment of the accused, suspects and prisoners and the Universal Declaration of Human Rights.

The Directorate has also conducted seminars and special training on explaining to officials the provisions of the Country's Constitution, human rights covenants and conventions and Afghanistan's commitments with respect to the non-use of torture as a tool. Officials were warned against any violations and that perpetrators would be dealt with in accordance with the law.

**The report has mentioned incidents of torture which are in contradiction with human dignity like beating, torture by electrical shock, psychological torture, hanging, threats of rape etc. National Directorate of Security fully rejects such claims and deems them baseless.**

The section of UNAMA's report titled "Protection, modality and criteria for proof" states that "UNAMA selects prisoners and interview them in the absence of government officials. Interview officers visit prisons at different times and present their findings after 12 months of assessments."

National Directorate of Security does not have any objection about interviews with detainees in the absence of Government officials and has continually facilitated monitoring teams. But, the question is, whether there is any possibility that could prove the accuracy of one-sided claims of detainees, the characteristics of whom are to some extent elucidated in above, or are there any tests and comprehensive psychological and investigative assessments carried out to support their claims. The answer is in the negative.

Furthermore, the report did not specify by whom, when and where the acts of torture were carried out. The report even one year after its publication is not able to help us verify the reality of the issue.

From the point of view of National Directorate of Security, provisions of country's laws and instructions of the sacred religion of Islam consider these actions as crimes and cardinal sins. Article 29 of the Afghan Constitution stipulates: "Persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished. Punishment contrary to human dignity shall be prohibited." Keeping in mind the contents of the article, officials of the Directorate may act against the provisions of the country's Constitution and in case they dare to, they shall be seriously punished.

**The report has hinted at the existence of "alternate detention centres" hidden detention centres and the transfer of accused persons to other locations during the visits of monitoring teams.**

National Directorate of Security has detention centres in all its provincial branches and in all its central operative departments. The locations and addresses of which are known to all organizations with monitoring roles and they can visit these centres at any time. Therefore, we fully reject reports of the existence of hidden and alternate detention centres and the claim that such locations are under the control of National Directorate of Security and the transfer of accused persons from one location to another during the visits of monitoring teams. None of this is true and is absolutely false.

Despite suffering from financial problems and lack of resources, National Directorate of Security has planned to build new detention centres in Balkh, Kandahar, Kunar and a number of other provinces with the support of international donors. These new facilities will be in conformity with the latest standards and have the necessary facilities for protection and detention of accused persons.

The report highlights some points without reliable documents about systematic torture in departments 124 and 40 and in the National Directorate of Security Departments of Jawzjan, Kandahar, Faryab, Herat, Khost, Kunduz, Laghman, Nangarhar, Paktika and Takhar and we strongly deny it.

Recently, numerous organizations have regularly and constantly been monitoring the performance and activities of the National Directorate of Security's relevant departments and its branches as follows:

During the last one year, the International Red Cross Committee on 4 March 2012, 4 April 2012, 5 and 6 August 2012, 8 August 2012, 20 Mizan 1391 (10/11/2012), 23 Mizan 1391(14/10/2012) 17 and 18 December 2012. ISAF Monitoring Team on 1 March, 22 October 2012, 6 April 2012 and 7 May 2012. Internal Security Commission of Wolesi Jirga on 7/Hamal/1391(26/03/2012). Monitoring board of Afghanistan Independent Human Rights Commission on 21/Hut/1390 (10/04/2011). On 1/03/1391, a nine member delegation from Wolesi Jirga. On 23/1/1391 (10/03/2012), a delegation from the Women and Human Rights Affairs Commission of Wolesi Jirga. On 24/01/1391 (9/03/2012), a representative of the National Security Prosecution. On 22/05/1391 (15/08/2012), a delegation headed by Mr. Qazi Gul Rahman from the

Oversight Commission on the Implementation of the Constitution. On 22/05/1391, a representative of the United Nation Human Rights Commission. On 3/12/2102, a delegation from the Protection of Human Rights Department of National Security. On 9/1/2012, 27/1/1391 (14/03/2012) 7/04/1391 (27/07/2012), 9/06/1391 (30/08/2012) visited detention centre of Department 124. During the period, a monitoring delegation from the General Directorate of Prosecution of Crimes Against Internal Security, members of parliament, ISAF, Afghanistan Independents Human Rights Commission, International Red Cross Committee and a team from UNAMA (Ms. Rasha Jusmo and others) visited and monitored Department 40 of the Directorate and conducted interviews with accused persons. They expressed their satisfaction with the performance and manner of treatment by officials of National Directorate of Security and noted their observations in the observation book. There are no objections or complaints related to torture or maltreatment of detainees.

Some observations and views read as follows:

Views of Afghanistan Independent Human Rights Commission monitoring teams about Detention Centre 124, dated 1/03/ 1391 (21/05/2012):

“Fifteen persons were in detention; rooms/cells, washrooms and bathrooms were clean, only two were in detention for 15 days, the rest were there for two to four days; no complaints about the treatment they received so far by the officials.”

The team on 21/12/1391 (11/03/2012) noted:

“Suspects have access to health services, rooms were clean and during the visit the suspects expressed their satisfaction about their treatment by officials; detainees are served food. We pray for further success of the Administration of the Detention Centre in the implementation of laws of the country.”

Attorney General’s Office monitoring team stated the following:

“Suspects were interviewed, they were happy with the behaviour and treatment they received in the detention centre and no specific problem was observed.”

Board of Internal Security Commission of Wolesi Jirga on 7/01/1391 (26/03/2012) noted:

“No evidence of illegal action was observed; we appreciate their work and activities.”

All the delegations or teams who visited the detention centre of Department 40 of National Directorate of Security through their notes in the observation book expressed satisfaction about the behaviour and treatment by officials with detainees and highlighted the performance and activities of officials with respect to the protection, food supply, health care, cleanliness, hygiene and sun taking and provision of other facilities for detainees.

Some of the expressed views:

Colonel Larks, Deputy of UNAMA Commission noted on 2 December, 2012:

“The Commission visited Department 40 of National Directorate of Security on 2/12/ 2012 and signs of progress/improvement in the conditions of the prisoners/detainees

were observed; installations were found to be clean and in good shape. Our visit was very informative. We appreciate the officials informing us of their operations.”

Jean Estienne, Advocate Counselor of the British Embassy:

“A team from the British Embassy and from the U.K government visited Department 40 of National Directorate of Security; the team appreciated the good behaviour of officials of the prison with the prisoners; clean rooms and bathrooms are available for prisoners; prisoners have full access to sports and sun taking.”

Monitoring Board of the Assigned Prosecutors-12/1/1391:

“Based on our observation and control of the related areas and some sections of the detention centre of Department 40 of National Directorate of Security on 12/1/1391, all the accused persons are fully satisfied with the performance of officials of the detention centre of Department 40. In some instances, their complaints have been resolved and action will be taken with regards to their destiny. Overall, the assigned prosecutors under the chair of the respected director are satisfied with the officials of all sections.”

Assigned team of Wolesi Jirga Complaint Commission:

“I, Obaidullah Barekzai along with other members of the Complaint Commission paid a visit to the prison of National Directorate of Security Department 40. Behaviour of members of the prison, doctors and observers have been Islamic and humanitarian and we appreciate their acts. We are very impressed by the good behaviour of the detention centre officials.”

It is worth mentioning, that during the past one year, the institutions, whose details are stated above, have monitored all detention centres of National Directorate of Security provincial departments in which accused persons and suspects are detained such as the detention centres of National Directorate of Security departments in Jawzjan, Kandahar, Faryab, Herat, Khost, Kunduz, Laghman and Nangarhar more than 310 times. They have interviewed detainees and have written their views and comments in the observation book. They have also reviewed the detainees’ living conditions and hygiene and have praised the good behaviour of officials with detainees and have appreciated the performance and measures of the assigned officials.

**In the draft report provided by UNAMA, it is stated that National Directorate of Security have not allowed defence lawyers to meet with their clients before the primary investigation is completed.**

In accordance with the provisions of article 31 of Constitution of Afghanistan, every individual shall appoint a defence attorney to defend the charges against him or her at the time of arrestment or for proving his/her rights.

National Directorate of Security, considering the provision of the mentioned article, has paved the ground for the appointment of defence attorneys for accused persons and has not prevented them from choosing their own defence attorneys.

**During the current year, the relevant prosecution office has received more than 222 applications from accused persons for the appointment of defence attorneys. Defence attorneys have met with accused persons 336 times in investigation sections of the central departments and requests in the provinces have also been**

**considered. Therefore, National Directorate of Security denies the claim mentioned in the report in this regard.**

It has also been asserted in the report that “the average time in which the suspect comes under primary investigation and remains under the detention of the law enforcers is more than 72 hours exceeding the legal time limit which indicates arbitrary detention.”

Those evil individuals who have committed crimes against national sovereignty and the national interest of the country or those who are suspected of committing such crimes, National Directorate of Security detain them only in the presence of law protecting organs such as prosecutors and police. Only in complicated and exceptional instances, in order to detect and detain the accomplices and prevent the occurrence of other crimes does the National Directorate of Security not provide the Prosecution Office of Crimes against Internal and External Security with the required documents and evidence against suspects within 72 hours.

Despite collecting information particularly in vulnerable provinces and provinces with high threats, the relevant organs forward criminal cases of accused persons to the judicial organs for investigation within the legal timeline.

Since most of the cases are postponed by the prosecution and judicial organs due to numerous reasons and are not resolved by the specific time, accused persons are detained in National Directorate of Security detention centres. The accused persons and the monitoring organs blame National Directorate of Security for delaying the timely investigation process of the cases, while it is not their fault.

**Orders of National Directorate of Security for improvement of the detection and investigation organs and full observance of provisions of enforced laws, the Universal Declaration of Human Rights, international conventions and the UN Convention against Torture:**

- National Directorate of Security, in its orders and instructions issued to its sub-organs has prohibited torture of the accused, has issued serious warnings for violators and is obliged to seriously review and investigate all violations based on enforced national laws and conventions and to bring those responsible to justice. The procedure of controlling detention centres in National Directorate of Security clearly indicates the emphasis of the Directorate in this regard. Order No. 48, dated 16/1/1390 in relation to the collection of incriminating evidence against suspects before the arrest and establishing coordination for observance of the law in the arrest and investigation of the accused in a legal, comprehensive and objective manner within the relevant departments of National Directorate of Security have been clearly stated in orders No. 1263 dated 26/7/1389, 458 dated 19/8/1389, 1560 dated 2/9/1389, 1926 dated 6/10/1389, 15 dated 19/2/1389, 080 dated 29/1/1390, 835 dated 12/10/1390, 870 dated 25/10/1390, 946 dated 4/12/1390 and order No. 0520 dated 6/7/1391 that have been issued **to central and provincial departments that National Directorate of Security will under no circumstances even in emergency instances of war and insecurity, justify acts of torture or allow its officials to misbehave with detainees; the Directorate will always be accountable in this regard.**

- National Directorate of Security in its several instructions including order 17 dated 20/7/1389 and 399 dated 6/2/1389 to all its central and provincial departments has instructed its officials to assist and cooperate with UNAMA field officials, Independent

Human Rights Commission, Red Crescent, Prosecutors in their visits to the detention centres. Based on the abovementioned order, all the national and international organs whose duties are related to the affairs of the accused and who are interested are provided access to observe all the National Directorate of Security detention centres and investigation sections of the central and provincial departments.

- In order to raise the awareness of officials of the investigation sections of detention centres in relation to human rights and the UN Convention against torture, National Directorate of Security has paid serious attention to the abovementioned issues in its provincial departments by conducting training courses and seminars through its Education Departments. The field commissions of the Afghan Human Rights, Red Crescent and Attorney General's Office have also conducted courses in relation to human rights 14 times and also legal and human rights training courses have been conducted in most of the provinces according to the plans provided.

- About 147 members of the central and provincial departments have been trained in human rights courses conducted with the help of MoJ Office for Protecting Human Rights.

- Raising the capacity and awareness of officials in relation to the prevention of misbehaviour with the accused.

- Establishing a sub-directorate for monitoring the observance of human rights and the permanent monitoring of the mentioned organs from National Directorate of Security detention centres and investigation sections in the centre and in the provinces for ensuring the rights of detainees has been very useful.

- Necessary attention has been paid to the legal processing of criminal cases. The criminal cases have been reviewed within the specific legal timeline and have been forwarded to the judicial organs.

- Grounds have been paved for the relatives of accused persons to visit the accused and there are no complaints.

- Patients have been treated in all central and provincial detention centres and during the past one year, accused persons have had medical consultations and been treated 13,700 times in Department 40 and 338 accused persons have had medical consultations and been treated in Ghazi Amanullah Khan Hospital, 65 of whom are under medical supervision in bed.

### **View of National Directorate of Security in relation to the report and recommendations provided by UNAMA**

It is clear that constructive criticisms, useful advice and good recommendations of national and international organs are accepted to further improve the affairs in an organ. Indeed, acceptance of the criticisms and recommendations and bringing changes and reforms will definitely lead to further improvement in the legality of affairs of the organ.

National Directorate of Security has always comprehensively reviewed criticisms of all monitoring organs from the National Directorate of Security detention centres in the centre and in the provinces and has spared no efforts in further strengthening the

legality of affairs of the organ. National Directorate of Security will definitely consider recommendations provided by UNAMA and will use them for consolidation of law and order in detention centres and in ensuring the rights of detainees and the realization of justice.

**National Directorate of Security would like to Draw Attention to UNAMA to the Following Points:**

- National Directorate of Security officials and members of the Sub-directorate for the Protection of Human Rights and other assigned investigative teams, during their visit from National Directorate of Security detention centres and investigation sections of the central and provincial departments, particularly Departments 40 and 124 of National Directorate of Security in Faryab, Jawzjan, Herat, Kandahar, Khost, Kunduz, Laghman, Nangarhar, Paktika, and Takhar reviewed the approach, behaviour with the accused and other issues related to the investigation process of detainees, but has found no evidence indicating torture and misbehavior with the detainees.

- In case some reliable documents and evidence exists in relation to torture and misbehaviour by officials of the Directorate with detainees, National Directorate of Security kindly requests UNAMA to provide the mentioned documents and evidence so that it is investigated by National Directorate of Security and the results will be shared with your Office.

- National Directorate of Security will not consider any reservations contrary to the implementation of the law. Whenever it is confirmed that one of the officials of the Directorate has tortured or misbehaved and is accused of such during investigations, they will introduced to judicial organs and be brought to justice.

- Before this, all the national and international observing organisations including, Afghanistan Human Rights Commission, UNAMA and others have been allowed to observe all the National Directorate of Security detention centres and investigation section in the centre and in the provinces including Department 124. All conditions have been provided for the abovementioned observers to have access with the mentioned organs. This has clearly been stated in declaration dated 26/6/1391 of National Directorate of Security.

- We will record the interviews both visually and in audio as soon as we are provided with the necessary technical tools and after availability of required technicians. We kindly request UNAMA's help in this regard.

**While finding criticisms, recommendations and advice of monitoring organizations particularly UNAMA in relation to ensuring the rights of detainees, consolidating legality and realization of justice is very useful, National Directorate of Security emphasize the following points:**

- In addition to the issues that have been stated in the report and the responses provided in this regard, National Directorate of Security leadership believes that despite the existence of some problems, reforms can be brought and all National Directorate of Security officials are interested in improving the investigative affairs and assures UNAMA and other national and international organizations that National Directorate of Security will observe the rule of law in its detection and investigation process.



- National Directorate of Security will respect all key recommendations including the rights of organizations including UNAMA and will conduct investigations with respect to all reports of misbehaviour, will suspend duties and responsibilities of violating officials and will definitely take legal action against them.
- National Directorate of Security believes that the observance of human rights, the basic rights of individuals including those of the accused are considered the basic pillars of fighting against terrorism and consider its observance and implementation as its legal and moral obligation and will under no circumstance such as war, insecurity and killing of compatriots allow torture to occur and will ensure that officials who commit violence and misbehave will be held accountable in this regard.

Stating the abovementioned points, we kindly request the United Nations Assistance Mission in Afghanistan to review the contents of its report and make efforts to add to the improvement and enrichment of it through amending a number of issues in the report.



## ANNEX V: Letter of Commander ISAF to UNAMA dated 11 January 2013



HEADQUARTERS  
International Security Assistance Force/  
United States Forces-Afghanistan  
Kabul, Afghanistan  
APO AE 09356



|| January 2013

Mr. Jan Kubis  
Special Representative of the Secretary General  
United Nations Assistance Mission in Afghanistan  
Kabul, Afghanistan

Dear Mr. Kubis,

Thank you for the opportunity to respond to *The Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*. The International Security Assistance Force (ISAF) is committed to the respectful and humane treatment of all people in accordance with Afghan and international law. We remain steadfast in our resolve to assist our Afghan partners in their efforts to improve security, governance and the rule of law so that Afghanistan can fulfil its constitutional and international obligations.

Based on information provided by UNAMA, which ISAF determined as credible, ISAF suspended the transfer of detainees to the Afghan facilities identified in the report. In order to further promote the humane treatment of Coalition detainees transferred to Afghan Custody, ISAF is implementing a process that will limit the transfer of detainees to a reduced number of certified Afghan detention facilities and increase the frequency of ISAF monitoring visits to those facilities. In coordination with the Afghan security ministries, the Afghanistan Independent Human Rights Commission (AIHRC), and international monitors, ISAF will re-evaluate the facilities to which ISAF subordinate commands transfer detainees on a quarterly basis.

For nearly 15 months, ISAF commanders at all levels have invested extensive time, resources, and effort to monitor the treatment and promote the well-being of the detainees we transfer into Afghan custody. During that time, ISAF Detention Facility Certification and Inspection Teams and Detentions Oversight Teams from each Regional Command have worked to improve the treatment of people in Afghan detention facilities, often in locations to which ISAF has not transferred a detainee in over a year. As a result of our efforts, your report points out that "ISAF training helped raise awareness of NDS and ANP personnel on what kind of treatment constituted torture." We appreciate your confidence in the processes we have helped the Afghans develop at the Detention Facility in Parwan, but as your report concludes, "torture cannot be stopped solely through short-term training and monitoring." Solving this problem will take commitment on the part of the Afghans and their leaders, over which ISAF's influence is limited and will probably only decline along with our presence. Therefore, a strongly united front by UNAMA and ISAF is the only way we can hope to influence the Afghans.

In terms of accountability, every time ISAF received an allegation of detainee abuse over the last 18 months, the ISAF Deputy Commander, Chief of Staff, or I wrote personal letters directly to Afghan Ministers requesting their action and offering our assistance to support any investigations. In the last eight months alone, ISAF leaders wrote letters to Afghan Ministers requesting the investigation of more than 80 separate allegations of detainee abuse by Afghan National Security Forces. These letters included all evidence available to ISAF, including-when available-pictures, names, and descriptions of alleged abusers. In more egregious cases, I personally requested the removal of individuals. To date, Afghan officials have acted in only one instance. They reassigned

the Kandahar Provincial National Directorate of Security (NDS) Chief, Mohammad Naim Khan, to NDS Sar-e-Pol in January 2012.

In order to increase accountability, ISAF aggressively pursued a solution. We initiated a commission composed of leaders from the NDS, the AIHRC, and ISAF to investigate allegations and conditions in NDS Departments 124 and 40 in Kabul. The intent of this commission is to identify changes that the Afghan Government should implement in detention facilities throughout Afghanistan.

In light of the impending drawdown of ISAF forces, and taking into account the contents of this report, we are adjusting our procedures accordingly.

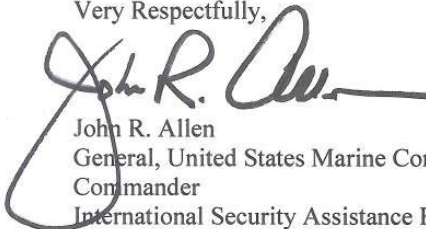
- On a quarterly basis, ISAF commanders will nominate the detention facilities required to meet their operational needs. Each facility nominated will be evaluated through increased monitoring and inspections.
- ISAF will invite the AIHRC, the NDS and Ministry of Interior Human Rights Units, and international monitors (including UNAMA) to provide their assessments of the conditions in the nominated facilities.
- Based on the sum of information available, I will certify the facilities to which ISAF can transfer detainees for the next quarter, and a report based on this information will be published.

In response to the recommendations regarding the Afghan Local Police (ALP), ISAF formally requested that the Ministry of Interior (MOI) investigate the allegations made against the ALP within this report, and will monitor the results of that investigation. All ALP members are required to receive human rights instruction as part of their training, to include training on the provisions of the *Constitution of Afghanistan* that explicitly prohibit torture and other human rights abuses, on police values and ethics, and on human rights related to the Law of Armed Conflict.

Ultimately, the humane and lawful treatment of detainees requires the full commitment of the Government of the Islamic Republic of Afghanistan to implement unobstructed accountability mechanisms. ISAF remains dedicated to continued cooperation with the international community in support of Afghanistan's efforts to address detainee mistreatment, to implement processes that reduce the likelihood of detainee abuse, and to act in accordance with the *Constitution of Afghanistan* and its international obligations. Empowerment of the AIHRC as an independent accountability mechanism is critical to ensuring sustainable accountability within the Afghan detention and prosecution systems.

Thank you for your cooperation and commitment to improving human rights for the people of Afghanistan, and for your organization's continuing efforts to ensure the humane treatment of detainees.

Very Respectfully,



John R. Allen  
General, United States Marine Corps  
Commander  
International Security Assistance Force/  
United States Forces-Afghanistan