



AIHRC

Torture and Ill-treatments in Detention Centers in Afghanistan 1394

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Introduction

Freedom from torture and other inhumane treatments and punishments is an inalienable right of all human beings. Human rights international documents have officially recognized this right and its unconditional observance have been emphasized by these documents. Similarly, this right is guaranteed and protected by the domestic laws of most countries, including the Constitution of Afghanistan. The Constitution of Afghanistan emphasizes on the observance of human rights international documents, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as Civil and Political Rights Convention, which prohibits torture and punishment of individuals and guarantees the right to freedom from torture without any limitation¹.

However, despite that torture and other ill-treatment are absolutely prohibited at all times by the international human rights law, the act of torture and ill-treatment is routine practice in the criminal investigation to obtain confession or extract information from the suspect and accused individuals, especially in the countries with corrupt and deficient system of justice.

Custodies, jails and other detention centers are the places where detainees are subjected to torture and ill-treatment. As we mentioned, we now have a binding set of documents and principles governing the treatment of prisoners. These rules and principles are adopted to protect the detainees against any acts of torture and ill-treatment, which leads to violation of their human rights and freedoms. The states are obliged to observe these rules and principles.

The AIHRC, with regard to its duties and mandates, regularly and consistently monitors the human rights situation in detention centers to assess the level of implementation of human rights norms and principles committed by the state. One of the objectives of the AIHRC's monitoring of places of detention is ensuring compliance with human rights standards and consequently, a reduction of the level of torture and ill-treatment in these centers. The present report contains the most important data on torture and human rights situation in the prisons, custodies and detention centers prepared and published to represent a clear picture of the current practices in the said facilities and to assess the level of improvements made and shortcomings exist in this regard.

¹ Ibid, article 29

Legal bases

Article 58 of the Afghan Constitution enshrines, “To monitor respect for human rights in Afghanistan as well as to foster and protect it, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights. Organization and method of operation of the Commission shall be regulated by law.”²

This Constitutional principle confirms the legal status of the AIHRC as an independent national institution in the framework of the Islamic Republic of Afghanistan and on the other hand, points out the most important duties and mandates of the AIHRC in the area of protection and promotion of human rights. In addition, in order to regulate the functions and mandate of the AIHRC, as stipulated in Article 58 of the Constitution, the “Law on Structure, Duties and Mandates of the AIHRC” was signed by the President in 1384. This Law, which is set out in 4 chapters and 35 Articles, contains the legal objectives, duties and mandates of the AHRC.

Monitoring the human rights observance, promotion and protection of human rights in the country, monitoring the situation of individuals’ access to their human rights and freedoms, assessment and investigation of human rights violations and taking measures for the improvement of the human rights situation in the country are the issues that constitute the main objectives of the AIHRC pursuant to the Law on Structure, Duties and Mandates of the AIHRC.³

In addition, article 21 of the said law has set out and clarified duties and mandates of the AIHRC in 35 paragraphs.⁴ The main legal mandate of the AIHRC is to monitor the human rights situation in our country. Based on article 21, the AIHRC is mandated to monitor the human rights situation, the implementation of the Constitution, other laws and regulations, norms and commitments regarding human rights, justice and judicial practices, administrative system, public access to their human rights and freedoms, as well as monitoring the situation in detention centers and implementation of law related to treatment of the detainees and prisoners. Also, based on paragraph 28 of Article 21 of this Law, the AIHRC is authorized to prepare and publish reports on the human rights situation.

² The State of IRA, the Constitution, adopted in 1382, published by the AIHRC

³ The Law on Structure, Duties and Mandates of the AIHRC, adopted in 1384, article 5 , published by the AIHRC

⁴ Ibid, article 21

However, monitoring the situation in detention centers, investigation and assessment of human rights violations, implementation of the law and treatment of the prisoners, as mentioned earlier constitute an important part of monitoring duties of the AIHRC. In order to modify and improve the current practices in detention facilities, to assure observance of human rights norms and principles of fair trial and ultimately to reduce the level of torture and inhumane treatments in the prisons as specified in its strategic plan, the AIHRC designs and implements educational and advocacy programs to consistently monitor all detention centers under its coverage. In addition, the AIHRC has a duty to share the results of its evaluations and monitoring findings on human rights situation with the government and put forward specific recommendations to relevant authorities to settle the challenges and problems.

Therefore, the present report, which reflects the monitoring findings and data about cases of torture in detention centers during the year 1393, is prepared and published according to the mandates of the AIHRC. It is expected that the government of the IRA while considering the findings and outcomes of this research, takes effective measures for the complete and permanent annihilation of torture in the country, and implement seriously the recommendations made by the AIHRC in this connection.

Methods and Procedures of Collecting Data

Findings, evidences and witnesses obtained as a result of direct monitoring of detention centers conducted by the staff of the AIHRC, and assessment outcomes obtained from the implementation of the laws related to the treatment of prisoners are the main sources of information in this report. Based on its legal mandates enshrined in Article 58 of our Constitution and Article 21 of “the Law on Structure, Duties and Mandates of the AIHRC”, the AIHRC systematically monitors detention centers in the country. The main objectives of monitoring the detention centers are to reduce the level of torture and ill-treatment, prevent arbitrary detentions, unknown-destiny of prisoners and improvement of treatments of prisoners and detainees. The staff of the regional and provincial offices of the AIHRC made 661 times monitoring visits to all detention centers in 32 provinces using the relevant questionnaires. Findings and data from these questionnaires sent to HQ in the form of monthly reports and recorded in the database of HQ, constitutes the main part of the information in this report.

Similarly, findings of direct observations of detention centers by the Special Evaluation Team in the central office constitute another main source of information in this report. The Special Evaluation Team in the central office in cooperation with their colleagues at the regional and provincial offices carried out 22 monitoring missions in 11 provinces to document cases of torture in detention centers and to collect the necessary information in this regard. While evaluating observance of norms and principles of fair trial and treatment of prisoners, the staff of this unit conducted individual interviews with prisoners and detainees to collect evidences about cases of torture. Therefore, the findings and information provided by this unit have further enriched and added to the credibility of this report.

Another source of information in this report is the petitions and complaints received by the regional and provincial offices of the AIHRC. In addition to monitoring the detention centers, the AIHRC addresses and deals with the petitions of human rights violations. Therefore, evidences provided by the victims or their relatives make up another source of information in this report.

Reports published by the AIHRC on the situation of human rights in detention centers as well as published reports by other credible institutions such as UNAMA are other sources of information used in this report.

In addition, to make this report more authentic, and present a clear picture of torture, academic library research has also been carried out to complete this report.

Summary of the Report

Based on its legal duties and mandates, the AIHRC publishes this report containing the findings about torture occurred during the year 1393 in detention centers and jails of the country. Findings and recommendations of this research would help the government of Afghanistan to take effective measures and design efficient programs for the reduction and prevention of torture in detention centers.

In order to evaluate implementation of laws and principles related to treatment of prisoners, the AIHRC staff in regional and provincial offices conducted 661 missions systematically to monitor prisons and detention centers in 32 provinces of our country. During these monitoring missions, individual and separate interviews were conducted with 993 prisoners, including detainees and

those under police custody. One of the monitoring goals of the AIHRC was to evaluate and record cases of complaints about torture. Observers of the AIHRC documented cases of torture in these centers and took measures through related organs to legally address and settle them. In addition, the regional and provincial offices of the AIHRC design and implement vast awareness programs to promote human rights awareness and take effective advocacy measure to remove and settle the shortcomings.

Human rights international document, including the Convention against Torture and other Cruel, Degrading and Inhumane Treatments prohibits torture and consider it a criminal act. Based on the Constitution and other Penal Laws in our country torture and punishment of individual is prohibited and the government is obliged to prevent torture and ill-treatment. This obligation is applicable under any circumstances and without exception. Therefore, the government is obliged to assure freedom of torture and ill-treatment of detainees through implementation of effective programs and mechanisms. Issuance of Presidential decree No. 129 in 1391, and ratification of the “National Program on Elimination of Torture” in 1393, in addition to other measures taken, indicated that the government has abided by its legal commitments in this regard. In spite of the efforts and achievements made in this area, the present report shows that torture and ill-treatment is still practiced as a common practice of taking confession and other related information. Therefore, the government has not been successful in fulfilling its commitments to prevent torture in detention centers. Based on evidences obtained by the regional and provincial offices, over ٢٨٧ cases of torture have been recorded in 32 provinces during the year 1393. Compared to that in 1392, there are ٢١٣ more cases that show an increase of almost four times.

Custodies and detention centers of the NP and NDS as well as detention centers of the NA and international forces are the places where torture and ill-treatment is imposed on individuals under detention and those under custody. Taking confession is the main reason and cause for the use of torture in the aforementioned centers. Most of victims of torture belong to those who are suspected or accused of crimes against national and international security arrested by the police, staff of the NDS, the NA and the international forces. They are tortured during investigation and prosecution.

Findings by the AIHRC show that out of 287 registered cases, 171 cases that make up 59 percent of cases of torture were committed in police custodies. This figure was 55 cases in 1392; it increased three times in 1393. In addition, based on the findings by the AIHRC, three people, out of the victims of torture, died in police custody in Kandahar province, unfortunately, their related cases have not been considered seriously by the authorities. Kicking, punching, beating with gun butt, beating with sticks and hose pipes, hanging from the ceiling, pulling out beards, electric shock, drowning in the water is the common forms of torture used in police custodies.

Based on the reports and statistic by the AIHRC, after the police custodies, most cases of torture have been recorded in NDS-run custodies. Out of 287 cases of torture, 94 cases that make up 33 percent of all the cases of torture were committed in NDS-run custodies during interrogation and prosecution of the accused. According to statistic published by the AIHRC in 1392, 17 cases of torture were recorded in NDS custodies. Compared to 1392, this figure increased five times in the said custodies in 1393. All of the victims were accused of crimes against national and international security. They tortured them in order to make them confess.

Similarly, findings by the AIHRC show that in addition to the said organs, some personnel of the NA in the provinces also engage in torture in order to obtain confessions. According to data available, 5 percent, which constitute 14 cases out of 287 cases of torture, occurred in the facilities run by the NA.

In addition, the Attorney's office, the US Special Force in Afghanistan and ISAF are other organs that resorted in torturing of the suspects and accused persons. Based on the documents and evidences, 2 cases of torture have been committed by the Attorney office and 6 other cases by foreign forces in Afghanistan, which constitute 3 percent of the total cases of torture in 1393.

As mentioned earlier, the AIHRC based on its legal duties and mandates enshrined in the Constitution as well as in the “Law on Structure, Duties and Mandates of the AIHRC” has envisaged specific and systematic activities in its Action Plan to monitor treatments of prisoners and assess the implementation of laws in detention centers. These activities are carried out by the staff of the regional and provincial offices in the areas under the coverage of the AIHRC. It is worth mentioning that the observers of the AIHRC, while monitoring detention centers in some provinces, face obstacles created by the local authorities. For example, NDS authorities in many

provinces do not allow observers of the AIHRC to monitor NDS facilities without prior notice and permission or they accompany the observers during monitoring missions. Therefore, the number of cases of torture may be higher than what is reflected in this report.

The weak rule of law and prevailing impunity for the use of torture are the main reasons for the increased level of torture and ill-treatments in the detention centers of the country. Although all acts of torture are offenses and perpetrators of torture are punishable, reports by the AIHRC indicate that the responsible authorities did not legally address cases of torture and did not prosecute perpetrators of torture in 1393. Therefore, impunity from punishment emanated from weak rule of law and non-observance of human rights norms and principles, have prepared further ground for the acts of torture and perpetrators indulge in torture and ill-treatments of suspects and accused persons without any fear.

Lack of necessary technical facilities and possibilities needed in the detection and investigation departments on the one hand, and unfamiliarity with legal methods of collecting evidence and proving documents on the other hand have caused torture to be used as the main method of obtaining information and confession from the suspects and detainees. Based on the findings by the AIHRC, in most cases torture is considered as the only method of obtaining information and confession, therefore, the prosecutors and detectives resort to it without any fear of its legal consequences. This indicates that the said organs severely suffer from unfamiliarity with scientific methods of proving crimes. Therefore, lack of professional and well-trained cadres as well as lack of scientific equipment at police, attorney and national security departments has caused continuation of torture and ill-treatments in detention facilities.

Limited access to defense lawyers is another important contributing factor of torture in detention centers. The outcomes of the present research show that most of the suspects and accused persons have no full access to the defense lawyer, which is a basic legal right. For this reason, the said individuals are being tortured during interrogation and prosecution. The right to have a legal lawyer is a basic legal principle of fair trial, and it can protect the suspect and accused persons against any torture and ill-treatments. Based on the findings by the AIHRC, the state has not fulfilled its legal obligation in this regard and in many cases, the officials have prevented suspects and accused persons to have access to a defense lawyer.

Findings by the AIHRC show that in some provinces, unawareness of basic rights and freedoms is another reason for torture and ill-treatments of the suspects in detention centers. For example, in many provinces, neither the suspects nor the accused and nor the officials in the judicial organs have the necessary awareness of this right.

Part One

Legal definition of torture and colloquial use of term

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines punishment as such:, Article 1, paragraph 1 “Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”⁵

In addition, the Convention against Torture and other Cruel Punishment, Inhuman or Degrading Treatments is the most important human rights international document on torture. It presents a clear definition of torture. Article 1 of this Convention reads, “ 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 is considered torture⁶”

This definition has priority over any definitions present about torture, because it is addressed in a credible international document and secondly the basic elements and component of torture are clearly stated in this definition, which are reviewed as follows.

Elements and conditions of torture

The Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment specifies the elements of torture as follows:

⁵ The UN General Assembly, Declaration on Protection of Everyone against Torture and other Cruel Punishment, Inhuman or Degrading Treatments (1975), article 1 published by the AIHRC

⁶ The UN General Assembly, the Convention against Torture and other Cruel Punishments, Inhuman or Degrading Treatments

1. Material elements of torture

Material element of torture means intentional performance or refrains from any act, which causes severe pain or suffering. The intentional performance of an act as mentioned in Article one of the Convention against Torture is inflicting of an act on a person who causes severe physical or mental pain or suffering such as beating, or mental harassment..... intentional refraining from an act means that the state officials refrain from carrying out their duties or responsibilities in order to torture the victim.

For example, when an accused person or prisoner needs water, food or suitable clothes or especial medical care, the jail officials refrain from providing it contrary to the principles of jail, or a prisoner needs information about family, including letters, telegraph, etc. but the jail officials avoid putting the information at his/her disposal in order to harass him mentally. In all cases refrain has taken place, but the act of crime will take place in the presence of other elements of crime.⁷

2. Agent of torture

As defined in the Convention against Torture, any painful action directly conducted, instigated and encouraged or agreed by the State official is considered torture. Therefore, one of the conditions of the acts of torture is to be conducted directly or indirectly by the state officials.

For this reason, actions conducted by ordinary people against each other without the involvement of the state agents cannot be included in the definition of torture.⁸

3. Psychological and mental elements of torture

Psychological and mental element of torture means that the torturer intentionally commits an action, which causes severe pain and discomfort to the victim. According to the Convention against Torture any intentional action which causes severe physical or mental pain to a person is considered torture. Therefore, intentional or actions by mistake that causes pain is not considered torture. Intention and willingness of the torturers is a precondition of torture. Moreover, in the event that inflicting of pain and suffering is in the consent of the person, for example, amputation

⁷ Mohammad Ibrahim, Expression of Prohibition of Torture and Inhuman Treatments in in the International Human Rights System, first edition, publication of Khorsand, Tehran, 1398, p. 33

⁸ Ibid, p. 34

of a body member for the purpose of treatment or preventing the spread of diseases in the other part of the body is not considered a torture.⁹

4. The purpose of torture

Another point which is viewed as an important condition of committing torture in the Convention against Torture is the purpose and motivation of the torturer. According to definition mentioned in the said Convention, any act by which severe pain or suffering is inflicted on a person for obtaining information or a confession, or intimidation or coercion for any reason or be based on discrimination of any kind, is considered torture.

5. Severity of pain or suffering

As mentioned in the said Convention, another element of torture is the severity of its pain and suffering inflicted on a person. According to this definition, any act, which inflicts severe physical or mental pain or suffering on a victim, is considered torture.

Forms and patterns of torture

Torture can inflict physical or mental harms. The first form of torture includes severe physical harms inflicted on the victim or victim's relatives or family members, while the second form inflicts mental or psychological harms on the victims.

1. Physical and bodily torture:

One of the most common and recognized form of torture is physical torture, which inflicts severe harm on the victim. These harms can be inflicted directly on the victim or on the victim's relatives or family members including electric shock, beating, pulling of hair, burning with hot metal rods or beating with stick.

2. Mental or Psychological Torture

If the pain and suffering due to torture is directly inflicted on the emotion of a victim or on the emotion of the victim's family members or relatives, it can be called mental or psychological torture. Mental or psychological torture is the most common form of torture practiced by the

⁹ Mohammad Ibrahim, *ibid*, p. 36

state officials for obtaining information and confession. The main distinction between mental torture and other types of torture is the mental aspect of harm on a victim, including threat, coercion, insult, humiliation, sexual assault, deprivation from access to a defense lawyer and family members, making him ride the donkey in the wrong way, blackening of the victim's face while taking a hat or a stick in his mouth.

The European Court considers the following as acts of torture:

“ Using of abusive words, exposing a victim to prostitution and humiliation, exertion of pain and suffering on the victim through the creation of panic and horror without physical assault, threat of death or amputation of body members, showing signs of torture on the body of other victims”¹⁰

In addition to what was mentioned as the forms and patterns of torture, the Human Rights Committee established according to the Convention on Civil and Political Rights, states the following acts as forms of torture:

Beating, electric shock, false and fake executions, inserting batteries or gun barrel in the anus of a victim, forcing to stand for a long time during the days and nights with hands tied while taking a piece of wood in his mouth. Keeping in the cells for more than three months with hands and eyes tied, breaking bones or puncturing ear drum, drowning in the water, the threat of death or amputation of body member, threat of execution¹¹

Prohibition and Criminalization of Torture:

Torture as the most recognized patterns of human rights violation, is clearly prohibited and criminalized by a large number of important international documents and applicable laws in the country. The International Convention on Civil and Political Rights adopted in 1966 by the UN General Assembly; Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments adopted in 1984; International Convention on Child Rights adopted in 1989 by the UN General Assembly, and additional protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment are the most important

¹⁰ Mohammad Ibrahimi, *ibid*, P. 48

¹¹ Mohammad Ibrahimi, *ibid*, p. 50

obligatory international documents, that emphasize on unconditional prohibition of all types of torture.

In addition, other international non-binding documents including the Universal Declaration of Human Rights adopted by the UN General Assembly, Declaration on Protection of All persons against Torture and other Cruel, Inhuman or Degrading Treatments and Punishments adopted in 1975, also prohibit torture, that are reviewed as follows:

Human Rights International Documents

Article 7 of the International Covenant on Civil and Political Rights on the prohibition of torture states as such: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”¹²

Similarly, the International Convention against Torture and other Cruel, Inhuman and Degrading Treatments and Punishments absolutely prohibits torture under any condition. Article 2 of this Convention reads. 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”¹³

Moreover, another part of this Convention emphasizes that the State members should criminalize torture in their Penal Code and specifies a punishment for the perpetrator.¹⁴ Committing torture or complicity in torture is the same and equally punishable according to this Convention.

¹² The UN General Assembly ,International Convention on Civil and Political Rights (1966), article 7, published by the AIHRC

¹³ - The UN General Assembly, the International Convention against Torture and other Cruel Punishments , Inhuman and Degrading Treatments

¹⁴ Ibid, article 4

Prohibition of torture and inhuman treatment is enshrined in the International Convention on Child Rights. Paragraph 1 article 37 of this Convention reads, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age.”¹⁵

The Universal Declaration of Human Rights recognizes safety against torture and other inhuman treatments. Article 5 of this Declaration reads, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁶

Similarly, the Declaration on Protection of Individuals against Torture and other Cruel, Inhuman and Degrading Treatments and Punishments considers torture as a violation of human dignity and a clear violation of the rights enshrined in the Universal Declaration of Human Rights. Article 2 of this Declaration reads, “Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”¹⁷

Furthermore, article 3 of this Declaration reads: “No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment”.¹⁸

Similarly, paragraph 1 article 7 and paragraph 2 Articles 8 of the International Penal Court’s Charter considers torture as a crime against humanity and war crime¹⁹.

1. Domestic Laws

¹⁵ The UN General Assembly, International Convention on Child Rights (1989), article 37, published by the AIHRC

¹⁶ The UN General Assembly, the Universal Declaration of Human Rights (1949), article 5, published by the AIHRC

¹⁷ The UN General Assembly, declaration on protection of everyone against torture and other Cruel, inhuman and degrading punishment (1975) article 2 published by the AIHRC

¹⁸ همان، ماده ۳.

¹⁹ Dr. Mohammad Jawad Shariati Baqeri, documents of the International Penal Court, fourth edition, Jangal Publication, Jawdana, Tehran, 1383

In addition to human rights international documents on prohibition of torture, the Constitution of Afghanistan emphasizes on unconditional prohibition of torture. Article 29 of this Convention reads, “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.”²⁰

Similarly, article 30 of the Constitution proclaims torture illegal even for obtaining information, confession or testimony from an accused or other persons.²¹

The Penal Code of our country severely prohibits imposition of punishments contrary to human dignity.²² Similarly, the Penal Procedural Law emphasizes on prevention of individuals from insult, humiliation, physical and mental punishments and inhuman treatment.²³

In addition, article 22 of the Penal Procedural Law reads, “1- the judicial officer, attorney and court in no circumstances are allowed, in his own or someone else, to make the accused confess, through using torture, ill-treatment, drugs, coercion, magnetic sleep, threat, intimidation or acquiring benefit. 2- Confession or statement obtained from the accused through using the means noted in paragraph 1 of this Article is not reliable. Article 275 of the Penal Code reads, “If the official of public services tortures the accused for the purpose of obtaining a confession, or issue an order to this effect, he shall be sentenced to long imprisonment.”²⁴

Article 414 of the Penal Code of Afghanistan emphasizes: “A person who illegally and without the instruction of concerned authorities arrests, detains or prevents someone else from work shall be sentenced in view of the circumstances to medium imprisonment. If arrest, detention or prevention from work is accomplished by coercion, threat or torture, or the person committing the crime is an official of the government, the offender shall be receiving the maximum anticipated punishment specified under Article 415 of this law,” which is 10 years imprisonment.

²⁵

²⁰ The IRA, the Constitution, adapted in 1382, article 29, published by the AIHRC

²¹ Ibid, article 30

²² .Ministry Justice, Penal Law, series N. 347, published in 1355, article 4

²³ Ministry Justice, Penal Law, series N. 347, published in 1355, article 7

²⁴ Ibid article 22

²⁵ .Ibid article 414

The review of human rights international documents and the applicable domestic laws in Afghanistan indicates that prohibition of torture is guaranteed under any circumstances and without limitation; and committing torture is considered a criminal act. Based on the aforementioned documents, freedom from torture is considered an inalienable right of every person. Therefore, the states are obliged to take effective and practical measures for the prevention and prohibition of torture.

Introduction of the International Convention against Torture and other Cruel, Inhuman or Degrading Treatments and Punishments

The International Convention against Torture was adopted by General Assembly on Dec. 10, 1984, through resolution number 39/26 of the UN and entered into force on 26 Jun 1987 based on its paragraph 2 Article 27.²⁶

This convention contains an introduction and 33 articles and is considered one of the most important binding documents, particularly regarding prohibition of torture. Based on the principles enshrined in the UN Charter, article 5 of the Universal Declaration of Human Rights, article 7 of the Convention on Civil and Political Rights and Declaration on the Protection of Individuals against Torture and other Cruel, Inhuman and Degrading Treatments and Punishments, this Convention was adopted aiming at prohibiting torture and other inhuman treatments and punishments in the world.

One of the important particularities of this Convention, as a credible international human rights document is that observance of its provisions are legally binding for the state parties and legal consequences has been attached to deviation from its provisions. Therefore, the state parties to this Convention are obliged to take effective measures to implement provisions of the Convention against Torture and report about their activities to the Committee of Prohibition of Torture.

²⁶ Ibid

The States Commitments Regarding Torture;

Joining the International Convention against Torture, directs permanent commitments and obligations to the state parties. Two important points are worth mentioning: first, the state parties should avoid torturing, and second that the state members are obliged to take preventive and effective measures and develop practical mechanisms to prevent torture and consider appropriate punishments for the perpetrators through reparation systems. In this regard, the state members' commitments based on this convention to address the crime of torture can be considered in the following areas.

1- Prohibition and Criminalization of Torture

The International Convention against Torture and other Cruel, Inhuman or Degrading Treatments and Punishments defines torture as a criminal act and considers perpetrators of torture punishable. Therefore, prevention and prohibition of torture is the first and most important commitments of the state parties. The state parties should include prevention of torture in their domestic laws and criminalize it in their penal code. This subject was discussed in detail in the previous pages of this report.

2- Method of Addressing Complaints and Reparation for the Victims

Based on the provisions of the International Convention against Torture, the State parties are committed to take effective measures in order to address complaints of torture and provide reparation for victims of torture. Article 13 of this Convention reads, "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

²⁷

An issue that is important here is that the state's commitment to address individuals' complaint is an independent commitment and immediacy of addressing the complaint is another independent commitment. Therefore, if a state addresses complaints of a victim,

²⁷ Ibid article 13

but with delay, it still violates its commitment in this regard, because the condition of immediacy is not fulfilled.²⁸

Another important point, which is emphasized upon by the International Convention against Torture, is reparation for the victim. Article 14 reads, “ Each State Party shall ensure in its legal system 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. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation”²⁹

Executive Mechanisms and Monitoring Regulations Enshrined in the Convention

The state parties to this Convention are obliged to take effective and practical measures for prevention of all types of torture. In this regard, article 11 of the Convention reads, “ Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. ”³⁰

Moreover, based on article 17 of this Convention a committee named the Committee against Torture has been formed for the implementation of this Convention. Review of periodic reports sent by the state parties on the fulfillment of their commitments regarding the prevention of torture as mentioned in article 19; review of the information received on the use of torture in a state party according to article 20, review of complaints lodged by a state party against another state party regarding non-observance of provisions of this Convention envisaged in article 21, and addressing of individuals’ complaints being tortured by a state party as pointed out in article 22, are the most important duties and mandates of this Committee. Based on article 24 of this Convention, the Committee is duty-bound to report about its annual activities to the state parties and to the UN General Assembly.³¹

²⁸ .Md Ibrahimi ibid page 162

²⁹ .Ibid article 14

³⁰ .Ibid article 11

³¹ Ibid, articles 17,19,20,21,22,24

As mentioned earlier, the International Convention against Torture is the most important, credible and internationally binding document in the area of prohibition of torture. In addition to expressing various dimensions of torture, this document clearly explains commitments and obligations of the state parties regarding prohibition and prevention of torture.

The State of Afghanistan adhered to this Convention in April 1987 and is committed to the implementation of its provisions. Moreover, the observance of this document is also ensured in article seven of the Afghan Constitution.

Part Two

Review and analysis of the findings of this report

The time frame of this report starts from 1st of Hamal and ends in Hoot 1393, reflecting the most important findings related to torture and ill-treatments in the detention centers of our country. This report is based on the findings of direct monitoring conducted by the Commission's staff in the detention centers and prisons of 32 provinces in our country. The monitoring teams of the AIHRC made interviews with detainees to collect evidences about cases of torture. The cases of torture after identification and comprehensive study were included in the monthly reports according to the evidence obtained and stored in the AIHRC's database.

Reports and data by the AIHRC indicate that 287 cases of torture have been registered from various detention centers of the country in 1393, this figure shows 213 more cases, compared to the year 1392, which shows almost four times increase.

A total of 73 cases of torture in 1391 and 74 cases of torture in 1392 were registered from all detentions centers of the country³², but the number of torture increased tremendously in 1393. Custodies and detention centers of Police and the NDS, and detention centers of the foreign forces are the places where detainees suffered from torture and ill-treatments. These individuals have been usually tortured during the arrest, transfer and interrogation.

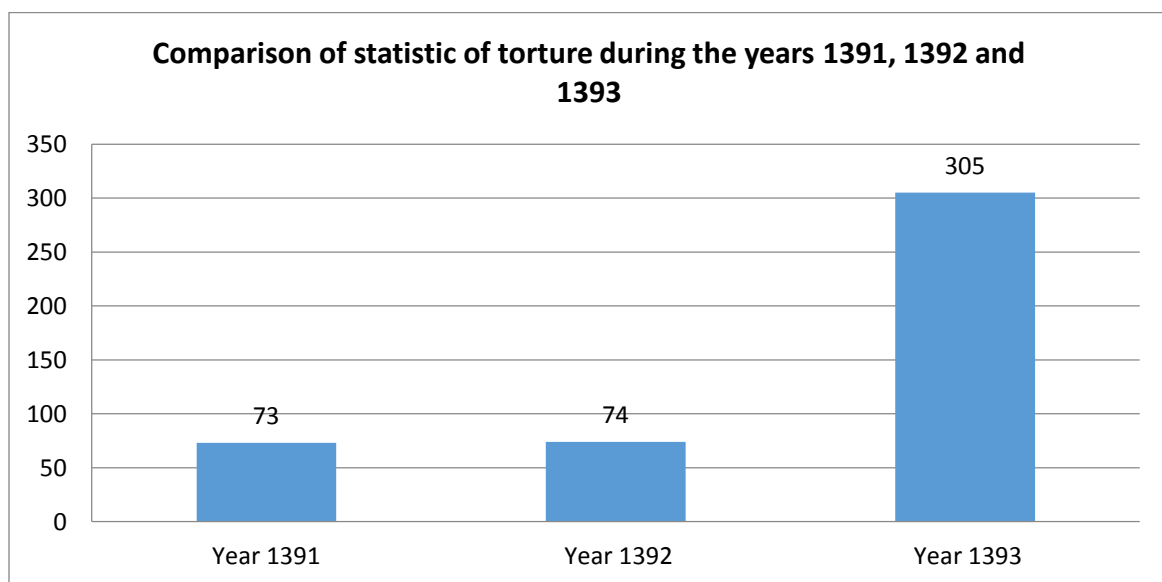
In 1393, the staff of regional and provincial offices of the AIHRC conducted 661 monitoring missions in 32 provinces of our country and interviewed 993 people individually to monitor the implementation of laws and treatment of prisoners. Jails, custodies and detention centers of the NP, NDS, including Bagram detention facility were the places monitored by staff of the AIHRC directly and consistently. The interviewees were chosen randomly from among the detainees.

³² The AIHRC, report on situation of detention centers published n 1392, p. 45

Additionally, the Special Investigation Team from the HQ in cooperation with regional and provincial offices of the AIHRC conducted special monitoring missions to 22 detention centers in 11 provinces to register and follow up the cases of torture in the months of Dalwa and Hoot in 1393.

Outcomes of assessment made by the AIHRC in 1393 shows that the human rights situation in detention centers is faced with serious challenges and problems, and torture is still used as a common means for obtaining confession from the accused. Findings by the AIHRC show that, the State of Afghanistan has not been successful in fulfilling its legal commitments regarding the prevention and reduction of torture in detention centers, and could not bring basic improvements in the current violent and inhuman treatments in detention centers. Eye-catching increase in the statistic of torture in 1393 compared to 1392 is a clear proof to this fact.

The following graph shows the statistic of torture in 1391, 1392 and 1393



Limitations of Access to Detention Centers

As mentioned earlier, the AIHRC based on Article 58 of the Constitution and Article 21 of its Law on Structure, Duties and Mandates has a legal duty to monitor the human rights situation in all detention centers in the country. Therefore, given the said mandate and authorities, the regional and provincial offices of the AIHRC implement monitoring programs in custodies,

detention centers and prisons in 32 provinces according to the AIHRC's Action Plan and Strategic Plan.

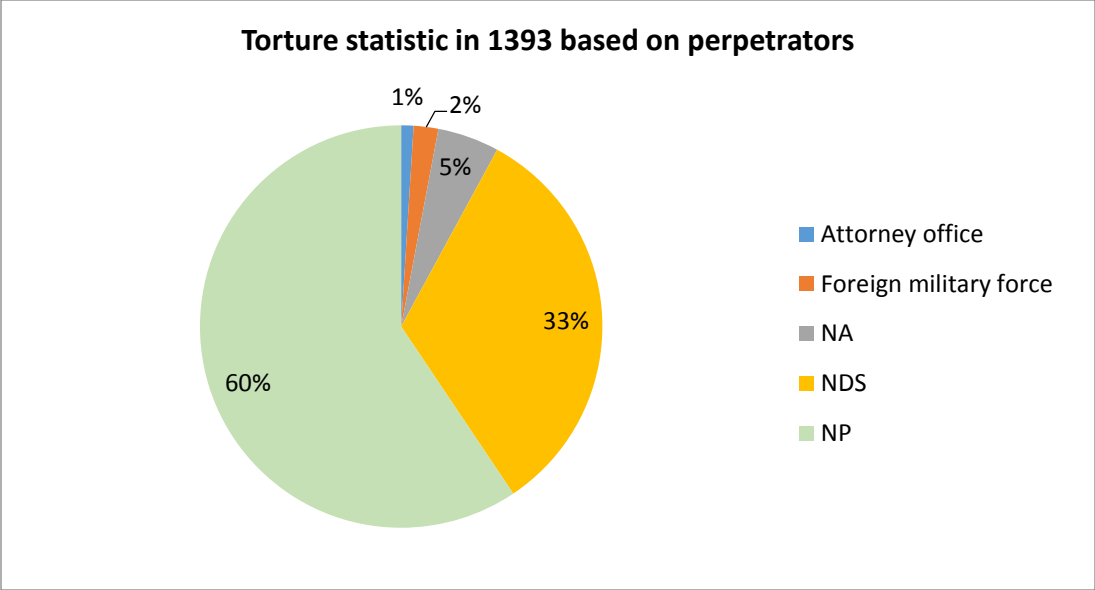
While monitoring the human rights situation in detention centers and documenting cases of torture and ill-treatments, observers of the AIHRC attracted attention of the authorities to the existing problems and made regular advocacy for the removal of the challenges. In addition to systematic advocacy measures, the regional and provincial offices implemented regular and consistent training and awareness programs, which yielded good results. The authorities in most of detention centers in the provinces cooperated with the staff of the AIHRC and prepared the ground for monitoring and interviews with the prisoners. It is worth mentioning that the staff of the AIHRC faced obstacles and limitations while monitoring detention centers. Authorities in some provinces made no cooperation with observers of the AIHRC and did not allow them to monitor facilities without prior-notice. Therefore, it is likely that the cases of torture are more than what is registered by the AIHRC. Officials of custodies of the NDS in many provinces did not permit monitoring without prior-notice or delayed their entrance intentionally. This problem existed specifically in the custodies of the NDS in Kunar, Ningarhar, Badghis, Khost, Paktia, Laghman, Urozgan and detention center of Kandahar province. Similarly, in some detention centers of the NDS, observers of the AIHRC have been accompanied by the in charges of this Department³³.

This is, in fact, an attempt to conceal cases of torture and eliminate the signs and effects of torture. Because, when the in charges of facilities do not allow observers of the AIHRC to monitor without prior-notice and arrangement, or if they deliberately delay or accompany the observers while monitoring facilities, it has no justification except hiding cases of torture.

Perpetrators of Torture:

Reports and monitoring findings by the AIHRC show that most cases of torture have been committed by the police and National security forces in the detention centers of the country. The main reason for torturing of the accused is obtaining confession and information from them.

³³ The AIHRC, report on situation of detention centers addressed to the President of the IRA, Jadi 1393, p. 4



1- Torture by the NP

Documents and evidences show that 171 cases of torture that constitute 59 percent of all cases of torture have been committed by the police in the police detention centers. Most of the victims of torture were persons suspected or accused of crimes against national or international security. They were tortured during the arrest and interrogation.

Findings by the AIHRC indicate that three people out of 171 people lost their lives because of torture by the police in 1393. One person in Naysh distric of Kandahar province was killed by the Security Commander of that district and two others – one of them student - lost their lives in the center of that province as a result of torture. Another person named Hazar Wali son of Abdul Ghani 22 years old, lost his life as a result of torture in the 10th Police Station of Kandahar city. The father of this victim narrated to the observers of the AIHRC as such: “ My son Hazrat Wali fought with a neighbor named Sharafuddin. After Sharafuddin lodged a complaint to the police station, they attacked my house at 9 pm and started beating us. They took away my son. After three days, Mohibullah brother of Sharifullah informed me that my son was killed in the police station. Police authorities told me that my son fainted in the container and died. I took the dead body of my son home; signs of torture were clearly visible on his body.”³⁴

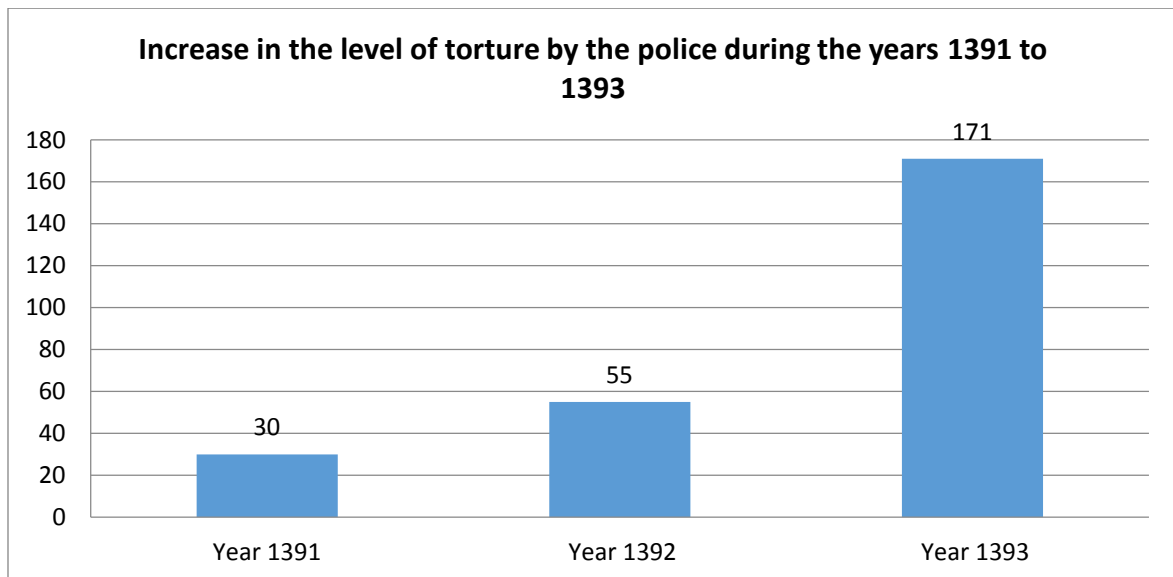
Beating with cable and stick, hanging from the ceiling, pulling out beard, electric shock and putting one’s head in the water are the most common forms of torture in police custodies. The

³⁴ The AIHRC, report on situation of detention centers to the Presidential office, published in 1393, p. 7

most common form of torture at the police custodies is electric shock which is very painful, but its sign is not visible on the body. Staff of the AIHRC in Helmand province found out that detainees were tortured by the electric shock in the police custody.

Additionally, in 1392, 55 cases of torture and in 1391 30 cases of torture were recorded in the police custodies all over the country³⁵. The level of torture in the police detention centers increased tremendously in 1393. In comparison of the number of cases of torture in two recent years, we find out that case of torture in the police detention centers increased three times in 1393, 116 more cases than the previous year.

The following graph shows the level of torture in the police detention centers during the recent three years:



Case 1: A resident of Marja district accused of cooperation with the anti-government armed elements was captured. He told the staff of the AIHRC that after being arrested, the police tied his hands and beat him. Then to obtain his confession, they poured water on him while his hands were tied up and his head was covered with a black bag to suffocate and torture him.

Case 2: Another person accused of theft was arrested by the police. In the police custody, he told monitoring staff of the AIHRC that he was tortured and ill-treated repeatedly by the police. This

³⁵ The AIHRC, report on situation of detention centers in Afghanistan, published in 1392, p. 43

interviewee stated that in order to obtain his confession, the police tied his hands and feet to his neck from behind and covered his face with a veil. Then they poured water on him until he fainted once. The Head of Criminal Department of the Security Police in Helmand province tortured the victim with a water pipe and hit his head to the wall many times. As a result, his head and face were injured.

Case 3: A person accused of harassing the Head of Criminal Department of Police in Mazar-e-Sharif was arrested. In the police custody, he told to observers of the AIHRC that the Head of Criminal Department severely beat and tortured him to confess. When the victim resisted confessing that he had previously harassed the Head of Criminal Department, he was handed over to a policeman who was a boxer. This police officer kicked and punched him on the head, face, mouth and testicles until the victim fainted. The victim complained to the attorney's office and Security Office of Mazar-e-Sharif city, but no attention was paid to his complaint.

Based on the findings of the recent report by the UNAMA on treatment of conflict-related detainees published in February 2015 a total of 93 persons that constitute 31 percent of the interviewees had been tortured by the police³⁶.

Findings by the observers of the AIHRC show that cases of torture committed by the border police have been registered. A resident of Kunar province who were tortured by the border police stated:

Case 4: After a mine explosion on the main road in Sarkano district of Kunar province, around 40 border police officers broke into my house. Without any question, they started beating me kicking and punching and beating me with a gun butt until I fainted. My rib was broken and I could not walk. Then they took me to the border post and transferred me to the Security Police Station in Kunar province and they handed me over to the National Security Department.

In another incident, a man in Ningarhar province complained to the AIHRC's staff that the police had accused him of killing a soldier of the NA and repeatedly tortured him to obtain his

³⁶ The UNAMA, new report on treatment with detainees of armed conflicts in custodies of Afghanistan: Accountability and implementation of decree No 129 of Presidential office, published in 2015. P. 17

confession. For this purpose, the police beat him severely and then pulled out his beard and gave electric shocks to his sexual organ to torture him.

2- Torture by the NDS:

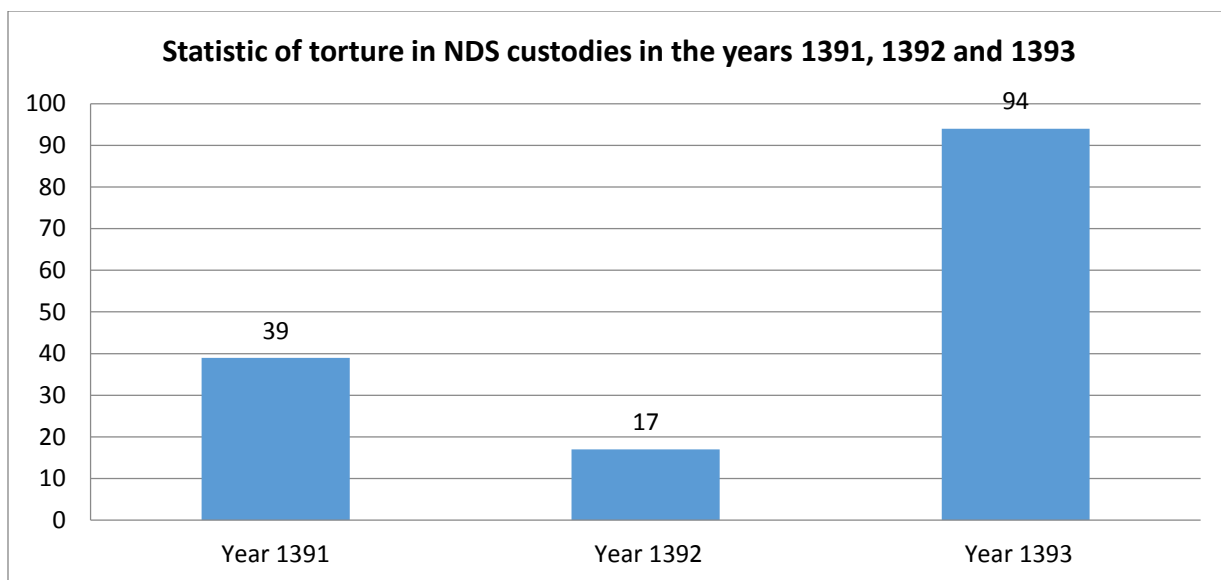
Based on the findings by the AIHRC, the NDS as the main organ for detection and capturing of the anti-government armed elements and individuals suspected and accused of crimes against national and international security is found responsible for the most cases of torture after the police forces.

The findings of this report show that out of 287 cases of torture in 1393, recorded and assessed by the AIHRC, 94 cases which constitute 33 percent of all cases are committed by the staff of the NDS. All victims of torture in the custodies of the NDS are supposed to be anti-government armed elements or those who are suspected of crimes against national and international security.

The statistics published by the AIHRC indicates that 39 cases of torture in 1391, and 17 cases of torture in 1392, were obtained from custodies of the NDS. In this way, the number of cases of torture in 1393 is 77 cases more compared to the year 1392, which shows an increase of five and a half times³⁷. Given that the in charges of this Department due to various reasons created obstacles for the monitoring staff of the AIHRC or they did not allow the observers without prior notice. Therefore, it is likely that the number of cases of torture is much higher than what is recorded by the regional and provincial offices of the AIHRC during the current year.

The following graph compares the statistic of torture in the custodies of the NDS during the recent three years.

³⁷ The AIHRC, report on detention centers, published in 1392, p.43



Given all the findings and information in the present report, it can be concluded that torture is widely practiced in the custodies of the NDS. It shows the lowest level of practical commitment to human rights norms in the said organ. Therefore, as long as the government of Afghanistan has no serious intention and motivation for the implementation of legal mechanisms for the protection of human rights, and does not intend to impose basic amendments in the current behaviors of detection and investigation organs, torture and other shortcomings would continue to exist in these organs as usual.

It is worth mentioning that according to a report by the UNAMA, 161 people who make up 26 percent of all the interviewees have experienced torture or ill-treatments in the custodies of the NDS³⁸.

Findings by the observers of the AIHRC show that punching and kicking, beating with cable and water hose pipe, electric shock, pouring water on the face of the victim, beating with sticks, hanging from the ceiling and forcing to stand for a long time are the main common forms of torture practiced in the custodies of the NDS.

Following are some examples of torture in custodies of the NDS

³⁸ - The UNAMA, new report on treatment with detainees of armed conflicts in custodies of Afghanistan: accountability and implementation of decree No 129 of Presidential office, published in 2015, p.15

Case 1: Armed men related to the NDS, arrested me and tied my eyes and hands, and they took one hundred thousand Afs from me outside the custody. They accused me of being involved in terroristic activities, but I rejected their accusation. Then they started kicking and punching me for almost half an hour. When I did not confess, they started beating me on the feet with sticks and then they hanged me from the ceiling with my turban. I was under torture until 3 o'clock in the afternoon. Finally, I was forced to confess to get rid of more torture. After that, they jotted down my confession on three copies and took my fingerprint.

Case 2: Armed men related to the NDS broke into my house and arrested me. They tied up my eyes and hands and then they started kicking, punching and beating me with gun butt and tortured me so hard that my head injured in two places. While I was falling on the ground and blood was running from my head, they transferred me to their Department. Outside the custody, they started beating me again. In the custody, two people tortured me severely and put pressure on me to confess that I had kidnaped a person, but I did not confess. The next day they started an investigation in another room. To obtain my confession, this time they pulled my hair and testicles. It was very painful and I fainted. After a few minutes, they again started torturing me. Finally, I was forced to confess what they wanted.

3- Torture by the NA

Reports and findings by the AIHRC show that the NA also commit torture and ill-treatments while capturing and prosecuting some persons accused of crimes against national and international security. Out of 287 cases of torture, 14 cases which constitute 5 percent of all registered cases of torture related to the NA.

This is while the UNAMA in its report indicated that from among the people detained by the NA and interviewed by the UNAMA, 20 people out of 60 detainees, making up 33 percent of the interviewees were torture or ill-treated by the NA.³⁹

Kicking, punching and beating with cable and gun butt are the forms of torture exercised by the NA. Most of these victims are accused of cooperation with the anti-government armed elements

³⁹ Ibid ,p. 18

or they have been soldiers of the NA who were accused of having relations and collaboration with the armed opposition elements.

Case: Soldiers of the NA took me to their check post and then they transferred me to their station. After evening prayers, two men in military uniform came. One of them had black cable in his hand and told me to accompany them. We entered a room, where their commander with some soldiers was sitting. He asked me, “Which commander of the anti-government armed elements do you belong to?” I answered, “I am a laborer and farmer and have no connection with any armed opposition groups. My land is near your check post and you can see me every day.” Then they tied my hands and prostrated me on the land. They put an iron bar between my legs and told me to confess that I was a Talib, otherwise they will break my legs. I told the truth that, I was neither a Talib nor had any connection with them. Then, the Commander sat on my back and two soldiers took my head up and the Commander put pressure on my back. It was very painful.

4- Torture by other Organs

Findings from monitoring of detention centers show that in addition to aforementioned organs, the Attorney office, the US Special Force in Afghanistan and ISAF have their involvement in torture. For example, 2 cases of torture committed by the Attorney office and 6 other cases of torture by foreign forces have been recorded. This figure constitutes 3 percent of all cases of torture committed during the year 1393 and recorded by the regional and provincial offices of the AIHRC.

The Main Reasons for Torture

There are numerous reasons for torture in detention centers. The findings by this report show that the weak rule of law, impunity of perpetrators from punishment, limited access to the defense lawyer, lack of awareness of basic rights of the accused and suspected persons, lack of trained and professional staff and lack of modern facilities in police, attorney and national security organs are the main reasons for torture.

1. Impunity of perpetrators of torture from Punishment

As mentioned earlier, the International Convention against Torture and other Cruel, Inhuman and Degrading Treatments and Punishment considers torture as a criminal act. The Constitution of Afghanistan also prohibits torture and the Penal Code of Afghanistan has envisaged punishment for perpetrators of torture. Despite the fact that torture is a crime, perpetrators of torture and ill-treatments remain at large and free from legal prosecution.

Therefore, based on the findings by this report, lack of legal treatment of perpetrators, the culture of impunity from punishment is one of the most important reasons for the continuation of torture in custodies, detention centers and jails in the country. The Presidential Office issued a Decree in 1391 and ordered the General Attorney to prosecute the perpetrators of torture and bring them to justice so that no suspect and accused person or detainees be tortured and no one is sentenced to punishment without any legal reason⁴⁰. However, there is no report regarding the punishment of the torturers and the attorney offices have not accounted about their practices in this regard. Moreover, recently, the government, by adopting the national program of elimination of torture, became committed to deal with torturers in a legal way and brings them to justice, though designating and implementation of effective programs.⁴¹

Similarly, findings by the AIHRC show that none of the cases of torture referred to Attorney office, including the three cases that resulted in death of the victims, were considered properly, the cases were not effectively addressed and no measure was taken for providing reparation for the victims. Therefore, continuation of the culture of impunity from punishment has caused the perpetrators of torture to remain free and at large and use torture as the shortest way of obtaining confession, without any fear from legal subsequences of their action.

Another problem is the legal gap and lack of attention by the Penal Code to all forms of criminal act of torture. The Penal Code of Afghanistan has not presented a specific definition of torture and has not dealt with the patterns of torture. This has paved the ground for the acts of torture and has led to a violation of the right to freedom of torture in detention centers. The State of Afghanistan in its National Plan for the Elimination of Torture has made a commitment to take necessary legal and legislative measures for the amendment and modification of the Penal Code

⁴⁰ Presidential office of the IRA, decree No 129, on implementation of suggestions by the Fact Finding delegation regarding existence of torture at detention centers, published in 1391, article 1.

⁴¹ .GIRA National program on the elimination of torture, adopted in 1393, article 4

of Afghanistan to define torture clearly in compliance with the Convention against Torture and prohibit torture in all phases of criminal procedures.⁴²

2. *Lack of Scientific Establishments in Detective and Investigation Organs*

The findings by the present report show that lack of necessary equipment and facilities in detective and investigation organs on one hand, and lack of familiarity of the said organs of scientific methods of collecting documents and evidences to prove a crime on the other hand, have caused torture to be exercised as the only and justifiable means of discovering facts and maintaining of justice. The findings of the present report show that a number of the officials have engaged in torture based on their reasoning that they are sure of the commission of the act of crime by the people under interrogation, and also they believe torture is the least punishment that the perpetrators of a crime deserve.

In this regard, UNAMA in its latest report regarding the treatment of conflict-related detainees, quotes from the Head of criminal investigations office of one of the provinces as such: "... we don't use forensic medicine office for collecting information and evidence in the crime. All suspects have the right to keep silent, but this is an obstacle for police work, what can the police do if they don't speak? We need to know what has happened; we must use specific methods to understand what has really happened."⁴³ In another part of UNAMA's report it is stated that "the use of torture in places of detention in Afghanistan has been for obtaining confessions and information."⁴⁴

Given that torture can never help detective and interrogation organs to get to the facts, instead in most cases, it leads to false information that endangers the right to liberty and life of an innocent human being. As the findings of the observers of the AIHRC indicate, a number of victims have confessed under torture just to rescue the pain and suffering resulting from torture, while they have been innocent, and their confession extracted under torture has been used as a base for the next proceeding in the responsible organs in the country. While the Constitution and the penal code, in this regard explicitly state that confession obtained as a result of torture do not have

⁴² .GIRA National program on the elimination of torture, paragraph 1, article 2

⁴³ .Ibid page 55

⁴⁴ .Ibid page 34

legal validity, and therefore cannot be used as a base for the next proceeding of the case. Article 30 of the Constitution provides: “A statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is a voluntary admission before an authorized court by an accused in a sound state of mind.”⁴⁵

With regard to the points mentioned, it can be concluded that the absence of the required facilities and equipment, and on the other hand, the lack of familiarity of the Attorney and police institutions about the scientific way of collecting proof and evidence, and thus, a lack of professional and trained staff has contributed the act of torture to be used as a means of obtaining confession from the accused and suspected.

3. Limits access to a lawyer.

The suspects and accused’s right of access to an advocate, is one of the essential elements and components to a fair trial. According to the Afghan Constitution and international instruments on human rights, having access to an advocate is an immediate and a legal right of the suspect and accused, and hence, the government is obliged to provide their access to this right. The right of access to a lawyer, in the fact protects the suspects and defendants against torture and other violent behavior. This right is guaranteed under Article 14 of the International Covenant on Civil and Political Rights,⁴⁶ as well as Article 31 of the Afghan Constitution provides: " Every person upon arrest can seek an advocate to defend his rights or to defend his case for which he is accused under the law. The accused upon arrest has the right to be informed of the attributed accusation and to be summoned to the court within the limits determined by law. In criminal cases, the state shall appoint an advocate for a destitute. The confidentiality of oral, written or telephonic communications between an advocate and his accused client is immune from invasion."⁴⁷

According to the AIHRC’s reports in 1392, the total number of lawyers across the country who had received an operating license from the Association of defense lawyers reached to 1961 people (1575 men and 386 women), while the total number of prisoners (prisoners and accused) in the same year, amounted to 29,600 people. The AIHRC’s findings show that out of 1961

⁴⁵ .ibid article 30

⁴⁶ .ibid article 14

⁴⁷ .ibid article 31

defense lawyer 88.8 percent of them were in Kabul and other three major cities of Herat, Mazar-e-Sharif, Nangarhar, only 18.2 percent of them have been busy in the other 28 provinces of the country, but in Zabul and Nuristan there was no lawyer at all.⁴⁸ However, the number of prisoners reached 30,000 in 1393, but detailed information about how many attorneys increased, is not available.

Based on the Presidential Decree No. 129 of the Islamic Republic of Afghanistan issued in 1391, the Ministry of Justice was instructed to conduct the meetings of legal aid providers, in cooperation with the Faculty of Shari'a and Law at the University of Kabul in order to check the level of detainees' and prisoners' access to lawyers and seek for the best ways of providing inclusive legal services to all detainees and prisoners. Moreover, the Ministry of Justice was assigned to review the existing legal aid providers' setup and adjust it in compliance with the number of suspects, detainees and prisoners in the country.⁴⁹ "But the information and findings of the AIHRC's regional and provincial offices shows that significant progress has not been made regarding the improvement of detainees' and prisoners' access to advocates, and a remarkable number of the interviewees stated that they did not have access to this right.

UNAMA's report also indicates that after the issuance of this Decree, no progress was made to help the defendants and suspects' access to a lawyer.⁵⁰

Based on these findings, a large number of suspects and defendants who interviewed with AIHRC's staff mentioned that they had not had access to a lawyer. In a number of provinces, the NDS officials had not permitted the advocates of some suspected persons to enter into the investigation room. In the detention centers of some provinces such as Baghlan, Kandahar, Faryab, Paktia and Paktika no suspects and defendants had access to a lawyer. In Khost, Nangarhar, Laghman and Kunar, the defendants don't have access to advocates only in NDS detention centers. Also, some prosecutors deliberately frustrate access to legal advocates. For

⁴⁸ .AIHRC, Report on the situation of detention centers to the President of Islamic Republic of Afghanistan published in 1392 page 36

⁴⁹ .ibid article 4

⁵⁰ .The United Nations Assistance Mission in Afghanistan, a new report on treatment of conflict-related detainees in Afghan detention facilities: accountability and implementation of Presidential Decree No. 129, page 129.

example, in Helmand province, Attorney Office fighting crimes against internal and external security, intentionally did not give the cases to advocates, and criminal cases are not handed over to advocates without the permission of the Chief of Appeal Court.⁵¹ ". However, under Article 152 Criminal Procedure Code, presence of an advocate in the judicial prosecution is essential. ⁵²

4. *Lack of awareness of the fundamental rights of suspects and accused*

According to the international human rights documents and laws of the country the suspects, accused and imprisoned people have a bunch of rights and freedoms. These rights are to be respected in pre-trial, trial and post-trial phases. Authorities have a duty to inform the suspect of their legal rights and freedoms immediately after the arrest and prevent its violation. Securing these rights will protect the suspects and accused, particularly against acts of torture, in the prosecution process. However, what is very important in this connection is that the suspect or accused be aware of their rights. But, based on the findings of the observers of the AIHRC a large number of the suspects and accused are not aware of their rights and do not know that freedom from torture and the right to keep silent are about their legal rights. As some of those in detention centers who interviewed with the AIHRC's staff, stated torture as part of legal punishment and said that they have to tolerate torture because they have committed crime. Moreover, institutions and authorities do not have the necessary commitment regarding this right.

Thus, lack of awareness of the suspect and accused as well as of officials of these rights is one of the main reasons why torture is used in places of detention.

In this regard, the government also acknowledged that part of cases of torture is due to "lack of knowledge and awareness within police organs of human rights issues, and pledged its commitment for the development of specific policies in line with the values of human rights, and its inclusion in the educational curriculum of the security organs⁵³".

⁵¹ -AIHRC, Report on the situation of detention centers to the President of Islamic Republic of Afghanistan, page 11.

⁵² .Ibid article 152

⁵³ - GIRA, National Programme on the Elimination of torture, Year of publication: 1393, Article 3.

Part 3

Conclusion and recommendations

1. Conclusion

Based on the findings and the information contained in this research, it can be concluded that, unfortunately, the Afghan government has not been successful in the fulfillment of their legal obligations regarding torture, and has not carried out a desirable job. In this respect, the situation of human rights in detention centers, police and NDS custodies have been faced with serious challenges and deficiencies.

As it was explained in the first part of this report, the right to security and freedom from torture, is a peremptory (*jus cogens*) international norms that nowadays are of overriding importance in the international system of human rights. The states based on this rule, under any circumstances, do not have the right to annul the prohibition of torture, and they are to ensure it in its domestic law. However, despite the emphasis of international human rights documents and domestic laws of the country on this issue, there are remarkable cases of torture in places of detention in Afghanistan, and have substantially increased in 1393. This indicates a clear violation of the obligations arising from the International Convention on the prohibition of torture and other international instruments on human right, and this issue severely harms the international prestige of the Afghan government. Therefore, the government in order to maintain its international credibility as well as fulfill its legal obligations regarding prohibition of torture should develop and implement effective measures and policies.

The findings of this report show that torture is used as one of the method of extracting truth and obtaining confession from the detainees. This issue implies that the government has not considered torture as a violation of human rights standards. Also, according to the findings, the Afghan government compared to previous years, not only failed to prevent torture and ill-treatment in places of detention, but torture has significantly increased as one of the most serious human rights problems.

Weak rule of law and the culture of impunity are the main reason for torture in the places of detention. With regard to the fact that torture is a crime, strictly prohibited by the laws of the country, lack of legal practices and judicial immunity from prosecution, has caused the torturers to engage in this crime without fear of its legal consequences. This brings us to the conclusion that until serious and practical measure to ensure the rule of law in the country are not taken, and punishment is not used as a strategy to prevent torture, the problems and challenges including torture will continue to exist.

Lack of modern and scientific organization at the level of police organs, prosecutors and NDS, are other reasons for torture in places of detention. The findings of the AIHRC show that the lack of modern equipment and facilities, lack of trained technicians and thus, lack the necessary

scientific methods to collect documents and evidence of crime, has made torture to be used as the only way of discovering the truth.

The findings of this study suggest that limited access to advocates is another matter that provides the ground for torture and abuse of the suspects and accused. The right to have a lawyer is one of the elements of a fair trial and the fundamental rights of suspects, accused and imprisoned persons that have not been considered by the government. As in a number of detention centers, police and NDS custodies the suspects and accused have not had access to advocates, while the condition have been provided for this purpose. Therefore, the government not only failed in fulfilling its obligation to provide the suspects with an access to a lawyer, but, in some cases, the accused has been deprived of this right by the government organs and relevant authorities.

Lack of familiarity with the fundamental rights of the suspects and accused, as well as lack of commitment by the officials to respect these rights is another factor contributing to the increase of torture. These findings indicate that in most cases, neither the suspects and accused are aware of their rights, nor the officials in the relevant organs have commitment to this category of legal rights and freedoms. With all this in mind, what is certain is that the government has not made the necessary effort in order to stop and prevent acts of torture in places of detention, and this issue needs and demands for legal action and effective implementation.

2. Recommendations:

- The government should ratify the Additional Protocol to the International Convention against Torture and other cruel, and inhuman or degrading treatment and punishment;
- The Afghan government, in the "National Plan for the Elimination of torture" is committed to cancel its reservation for the accession to the International Convention against Torture. The AIHRC while supporting and welcoming this decision of the government, urges the government to adopt and implement practical measure in this regard
- In the Criminal Code of Afghanistan all conditions and cases of torture have not been discussed and there is a legal gap in this regard. Therefore, it is required that the

- government adopt and implement the Law against Torture in order to launch an effective legal struggle against torture,
- As the findings of this report show, a number of officials have tried to create obstacle on the way to the monitoring of detention centers, Therefore, the Afghan government is demanded to respect the legal mandate of the AIHRC and provide the necessary grounds and facilities for the oversight of the mentioned centers,
 - According to the findings of the report culture of impunity is considered one of the factors contributing to the practice of torture in detention centers. Therefore, the government should take effective and legal measures about all the complaints and allegations of torture, and try to prosecute the perpetrators,
 - To execute and implement the provisions contained in the "National Program on the Elimination of torture" effective mechanisms should be designed and implemented and the responsible institutions should account for their implementation in this regard,
 - According to the International Convention against Torture adhered by the Afghan government as well as in accordance with Article 51 of the Constitution, the government is obliged to make arrangement for the Compensation for the victims of torture. Therefore, specific mechanisms and programs are to be undertaken in this regard;
 - One of the possible ways to prevent the crime of torture is to give authority to and provides the ground for the human rights units of the security organs to monitor detention centers. The government should give more autonomy and power to these institutions,
 - As it was discussed in the present report, one of the effective factors contributing to the practice of torture is lack of modern equipment and necessary scientific possibilities in the research and detective organs, and this has caused torture to be used as a way to extract the truth and obtain confession of the suspect. Equipping of the said institutions with modern equipment can help them in detection of facts and collecting of documents and evidence of crime.
 - Recruitment of professional and trained staff in detective and research organs is the most important thing that government can undertake to address the persistent problem of torture, because lack of familiarity with the modern and scientific legal methods to

- collect documents and evidence of crime, have contributed to spread of torture in the places of detention,
- One of the main reasons for torture in the places of detention is the limited access of the suspects and defendants' defense lawyers. While this right is guaranteed in the applicable domestic law of the country, but the findings of this report show that in most of the provinces individuals don't have access to these rights. Advocates help the suspects against the torture and cruel treatments. Therefore, the government should develop concrete programs to expand access to a lawyer;
 - Lack of necessary awareness of human rights norms and standards is another question that leads to dilemma of torture and violation of basic rights of prisoners. Therefore, the government should take practical steps to include human rights and international humanitarian law in the curricula of security organs,
 - Another effective way to end the torture is ensuring the presence of the media and journalists in the places of deprivation of liberty, the government should provide the media's access to the detention centers based on international human rights documents and in accordance with the laws of the country.

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