Treatment of Conflict-Related Detainees in Afghan Custody

United Nations Assistance Mission in Afghanistan

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Glossary

Acronyms

ANA	Afghanistan National Army
ANBP	Afghanistan National Border Police
ANP	Afghanistan National Police
ANSF	Afghanistan National Security Forces
AUP	Afghanistan Uniformed Police
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICPC	Interim Criminal Procedure Code
ISAF	International Security Assistance Force
KPF	Khost Protection Force
LOTFA	Law and Order Trust Fund for Afghanistan
MoI	Ministry of Interior
MoJ	Ministry of Justice
NDS	National Directorate of Security
NPP	National Priority Programme
OHCHR	UN Office of the High Commissioner for Human Rights
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNODC	United Nations Office of Drugs and Crime

Arabic, Dari and Pashto words

Da Afghanistan da Gato da Saatane Adara	Agency for the Safeguarding of Afghanistan's Interests
Kargari Estekhbarati Muasessa	Workers' Intelligence Institute
Khadimat-e Ettala'at-e Dawlati	State Information Service
Mujahedeen	Muslim engaged in a *Jihad* (struggle)
Patu	Male scarf
Riasat-e Omum-e Amniat-e Melli	National Directorate of Security
Sarandoy	Paramilitary police force operating under the Ministry of Interior during the Communist era
Saranwal-e-btadaiah	Primary Prosecutor
Taliban	Armed opposition group fighting against the Government of Afghanistan and International Military Forces
Wezarat-e Amniyat-e Dawlati	Ministry of State Security

UNAMA's Mandate and Detention Observation Programme

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.

UN Security Council Resolution 1974 (2011) mandates UNAMA to improve respect for human rights in the justice and prisons sectors as follows:

> 21. Emphasises the importance of ensuring access for relevant organisations, 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.
> 31. 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.
> 32. Stresses in this context the importance of further progress in the reconstruction and reform of the prison sector in Afghanistan, in order to improve respect for the rule of law and human rights therein.

UNAMA's Detention Observation Programme

From November 2006 to September 2007, UNAMA and the Afghanistan Independent Human Rights Commission conducted more than 2,000 interviews of detainees at prisons and Afghanistan National Police (ANP) facilities as part of their Arbitrary Detention Verification Campaign. The Campaign monitored detainees in Ministry of Interior (MoI) and Ministry of Justice (MoJ) detention facilities. It did not cover detention for offences related to the armed conflict in Afghanistan (referred to in this report as "conflict-related" detentions) including detainees held by the National Directorate of Security (NDS) or international military forces. The Campaign produced a public report, *Arbitrary Detention in Afghanistan - A Call for Action* which found that "throughout Afghanistan, Afghans are arbitrarily detained by police, prosecutors, judges and detention centre officials with alarming regularity. It is systematic and occurs in a variety of forms."[1] The report made eight key recommendations to relevant authorities to end arbitrary detention.

[1] *Arbitrary Detention in Afghanistan: A Call for Action* (UNAMA/OHCHR, January 2009). The report's key recommendations are: (1) Immediately revise the legal framework to ensure full legal protection of rights; (2) Clarify and strengthen oversight and accountability; (3) Work to improve coordination across institutions at the district, provincial and national level; (4) Adjust training and capacity-building initiatives to account for differing concepts of justice and need to develop better tools; (5) Launch a nation-wide awareness raising campaign for the general public and detainee and prisoners on detention-related rights; (6) Promote and support the education and training of defence counsel, a national legal aid scheme and the creation and deployment of paralegals into districts and provinces in need; (7) Allocate the necessary budgetary and other resources to implement initiatives; and, (8)

From 2007 to 2010, UNAMA continued to visit prisons, detention centres, juvenile rehabilitation centres, and ANP and NDS facilities across Afghanistan. UNAMA engaged in dialogue with detention authorities, security officials, judges, prosecutors, defence lawyers, and others in an effort to improve treatment of detainees and respect for due process guarantees by Afghan security, police and justice officials.

In October 2010, in response to numerous concerns received by UNAMA about mistreatment of conflict-related detainees from communities across Afghanistan and in consultation with Government and other interlocutors, UNAMA launched its current detention observation programme. The programme's focus is on the situation of detainees held for offences related to the armed conflict in Afghanistan. This report presents findings from UNAMA's observation of conflict-related detention for the period of October 2010 to August 2011.

Government officials from the ANP, NDS, MoJ, and other departments cooperated with UNAMA's detention observation programme and provided access to almost all facilities. In particular, the senior leadership of NDS provided assistance in ensuring UNAMA gained access to detainees at NDS facilities throughout Afghanistan with the exception of the NDS provincial detention facility in Kapisa and the national detention facility of NDS Counter-Terrorism Department 90 (now numbered department 124) in Kabul.[2] Treatment of detainees at these facilities was assessed by interviewing detainees at various other facilities who had previously been detained by NDS Kapisa or Department 90/124.

Discipline and prosecute Ministry of Interior (MoI) and Ministry of Justice (MoJ) detention and prison officials, Afghan National Police (ANP) officials, prosecutors and judges who fail to respect detainees' rights, legal timelines and any other legal obligations.

[2] In early 2011 National Directorate of Security (NDS) changed the numbers it uses to designate its various departments. This report uses the former numbers and notes the new numbers.

Methodology

From October 2010 to August 2011, UNAMA interviewed 379 pre-trial detainees and convicted prisoners at 47 facilities including Afghan National Police (ANP) detention centres, National Directorate of Security (NDS) facilities, Ministry of Justice (MoJ) prisons and juvenile rehabilitation centres in 22 provinces.[3] As some detainees had been transferred between provinces, the interviews concerned detainees located in 24 provinces.[4]

At these various detention facilities, UNAMA met with detaining authorities and other relevant Government officials, visited all parts of each detention facility, examined its registry and interviewed randomly-selected detainees in private.

Out of 379 detainees UNAMA interviewed, 324 were held on suspicion of, or were convicted of offences related to the armed conflict.[5] Such conflict-related detainees generally face charges of committing crimes against the State codified in the *Penal Code* (1976), the *Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* (1987) or the *Law on Combat against Terrorist Offences* (2008).[6]

UNAMA found that 48 percent of these 324 conflict-related detainees were alleged to be members of an anti-Government armed group, 20 percent were alleged to have been in possession of explosives and other lethal devices, and 11 percent were alleged to have participated in failed suicide attacks. In 21 percent of cases, the detainee did not know what specific crime he was detained for.

Of the 324 conflict-related detainees, 273 were held or had been held in NDS detention facilities (196 by NDS alone, 69 by NDS and ANP, eight by NDS and Afghan National Army-ANA), 117 were held or had been held in ANP facilities (47 by ANP alone, 69 by ANP and NDS, and one by ANP and ANA) and 12 had been held in ANA detention facilities (three by ANA alone, eight by ANA and NDS and one by ANA and ANP).[7]

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[3] The provinces are Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Dai Kundi, Farah, Herat, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktya, Samangan, Sari Pul, Takhar, Uruzgan and Zabul.

[4] Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Dai Kundi, Farah, Helmand, Herat, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktya, Samangan, Sari Pul, Takhar, Uruzgan, Wardak and Zabul.

[5] Out of the 379 detainees UNAMA interviewed, 55 were held on criminal offences although UNAMA attempted to randomly select among conflict-related detainees. At ANP and MoJ facilities it was not always possible to distinguish criminal and conflict-related detainees before interviewing them.

[6] The *Penal Code* Official Gazette No. 347 (7 October 1976). Conflict-related detainees are often charged under offences in Book Two, Section One, Chapter Two (arts. 204-253) which concern "Crimes Against Internal Security of the State" and also under provisions pertaining to the unauthorised possession of guns (art. 346, as interpreted) or explosives (art. 362). *Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* Official Gazette No. 649 (22 October 1987). *The Law on Combat against Terrorist Offences* Official Gazette No. 952 (15 July 2008).

[7] The total is 402 (not 324) because 78 detainees had been detained by both NDS and ANP or ANA.

Of the 324 conflict-related detainees UNAMA interviewed, NDS (acting alone) arrested 126 individuals, ANP (acting alone) arrested 84, international military forces (operating alone or jointly with ANSF or campaign forces) captured or arrested 89 individuals, ANA (acting alone) captured 10, and others (Afghan Local Police, MoI Criminal Investigation Division or local commanders) arrested or captured eight detainees. Seven of the 324 detainees were unable to reliably identify the capturing or arresting authority in their case.[8] Of the 89 detainees initially arrested or captured by international military forces acting alone or jointly with Afghan forces, 58 were initially transferred to NDS custody, 28 were transferred to ANP and three were transferred to a MoJ prison.

The focus of UNAMA's interviews with the 324 conflict-related detainees was on their treatment by NDS and ANP officials and the Government's compliance in their cases with due process guarantees under Afghan and international human rights law.

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

All UNAMA interviewers received standardised training, detailed instructions and guidance notes on how to conduct interviews, assess credibility, protect confidentiality and corroborate information on matters of detention, torture and ill-treatment with extensive supervision and oversight from experts and superiors 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 one and a half hours with a number of detainees interviewed on multiple occasions). Interviewers clarified questions as necessary to explain treatment and due process issues and made every possible effort to corroborate information from detainees through various methods including interviews with relatives, community members, defence lawyers, experts with the Afghanistan Independent Human Rights Commission, humanitarian agencies, medical personnel and others.

In a number of cases, UNAMA interviewers observed injuries, marks and scars that appeared to be consistent with torture and ill-treatment or bandages and medical treatment for such injuries as well as instruments of torture described by detainees such as rubber hoses. In compliance with NDS instructions, UNAMA was not able to take or use cameras, cell phones, video equipment or recording devices in interviews with detainees and complied with this instruction to maintain access and for security reasons.

[8] In some cases, detainees clearly identified international military forces as the force that physically captured them. In other cases, detainees reported that Afghan forces operating with international military forces captured them. In several cases, detainees were unclear about the identity of the capturing party or arresting force because such forces were not wearing an identifiable uniform and/or faces were covered, the detainee was captured in a night search operation with limited visibility of the capturing party or arresting force, or the detainee was hooded on capture before he could identify the arresting force or capturing party.

UNAMA did not find any female detainees held on conflict-related offences during the observation period. In general, Afghan authorities detain very few women for conflict-related offences. The majority of women in Afghan prisons are detained or have been convicted of violations of customary or Shari'a law, or 'moral crimes'.[9]

In total, UNAMA interviewed 37 detainees under the age of 18 years at the time of their detention.[10]

Analysts in the head office of UNAMA Human Rights compiled findings from all detainee interviews and ensured quality control of all data.

During the planning of this detention observation programme and during the observation period, several Government and international interlocutors raised concerns about the likelihood of lying or false allegations of torture from detainees highlighting the training some insurgents receive in making false allegations of abuse as a form of anti-Government propaganda.

UNAMA addressed these concerns in designing its programme of observation and analysis. UNAMA rigorously analysed patterns of allegations in the aggregate and at specific facilities which permitted conclusions to be drawn about abusive practices at specific facilities and suggested fabricated accounts were uncommon as follows:

- At facilities visited and observed, UNAMA definitively ruled out the possibility of collective fabrication – where a group of detainees would share stories of real or rumoured abuse and, either spontaneously or by design, arrive at and deliver a common account. When a significant portion of interviews regarding an NDS 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 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 abuse, no detainees within these groups alleged physical mistreatment. This finding further suggests that detainees

[9] *Arbitrary Detention in Afghanistan: A Call for Action* (UNAMA/OHCHR, January 2009). UN Office for Drugs and Crime (UNODC) research found that 50 percent of women in Afghan detention are detained for 'moral crimes', 28.5 percent for murder and 12.5 percent for kidnapping. *Afghanistan: Female Prisoners and their Social Reintegration* (UNODC, March 2007). See also *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* (UNAMA, December 2010).

[10] 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).

consistently furnished truthful accounts, free from collusion, sharing of stories and collective fabrication.

- The nation-wide pattern of allegations is inconsistent with a substantial proportion of detainees interviewed having been trained before their detention in what lies to tell about their treatment if detained. This pattern has three characteristics. First, the nature of the abuse reported was 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 abuse at the same facilities were alleged by persons suspected of belonging 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. Third, the pattern of allegations of abuse made did not correspond with any identifiable ideological agenda.

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

UNAMA makes the following observations on the statistical validity of the data analysed in this report. Interviews were conducted with a sample of 379 detainees selected at random from the detainee population in NDS and ANP facilities in Afghanistan during the 11-month observation period October 2010 to August 2011. This sample included a sub-sample of 324 conflict-related detainees, including 273 conflict-related NDS detainees and 117 conflict-related ANP detainees (with some detainees held by both NDS and ANP).

UNAMA estimates that NDS held an average 1,500-2,000 detainees at any one time during the observation period. NDS has not confirmed its average number of detainees at any one time, or provided the total number of detainees in its facilities during the observation period. Minimal reliable data is available on which to base an estimate of the total number of ANP detainees during the observation period.

Recognising these limitations, UNAMA has developed an estimate of the statistical validity of the data analysed in this report. Due to the nature of statistical sampling, margins of error do not vary greatly when the available population from which to draw a sample increases from relative low numbers (i.e., 1,000) to higher numbers (i.e., 5,000-10,000+). On this basis, margins of error for the overall sample and key sub-samples used in this report are estimated to not exceed +/- 4.9 percent for the aggregate sample of 379 detainees; +/- 5.4 percent for the sub-sample of 324 conflict-related detainees; +/- 5.8 percent for the sub-sample of 273 conflict-related NDS detainees; and, +/- 8.9 percent for the sub-sample of 117 conflict-related ANP detainees. The margin of error for each sample is subject to a standard deviation or "confidence level" of 95 percent.

I. Executive Summary

After two days [in a National Directorate of Security (NDS) facility in Kandahar] *they transferred me to NDS headquarters* [in Kandahar]. *I spent one night on their veranda. On the following day, an official called me to their interrogation room. He asked if I knew the name of his office. I said it was "Khad"* [Dari term for the former NDS]. *"You should confess what you have done in the past as Taliban; even stones confess here," he said. He kept insisting that I confess for the first two days. I did not confess. After two days he tied my hands on my back and start beating me with an electric wire. He also used his hands to beat me. He used his hands to beat me on my back and used electric wire to beat me on my legs and hands. I did not confess even though he was beating me very hard. During the night on the same day, another official came and interrogated me. He said "Confess or be ready to die. I will kill you." I asked him to bring evidence against me instead of threatening to kill me. He again brought the electric wire and beat me hard on my hands. The interrogation and beating lasted for three to four hours in the night. The NDS officials abused me two more times. They asked me if I knew any Taliban commander in Kandahar. I said I did not know. During the last interrogation, they forced me to sign a paper. I did not know what they had written. They did not allow me to read it.*

Detainee 371, May 2011[11]

From October 2010 to August 2011, the United Nations Assistance Mission in Afghanistan (UNAMA) interviewed 379 pre-trial detainees and convicted prisoners at 47 detention facilities in 22 provinces across Afghanistan. In total, 324 of the 379 persons interviewed were detained by National Directorate of Security (NDS) or Afghan National Police (ANP) forces for national security crimes - suspected of being Taliban fighters, suicide attack facilitators, producers of improvised explosive devices, and others implicated in crimes associated with the armed conflict in Afghanistan.

Interviews were conducted at facilities including ANP detention centres, NDS facilities, Ministry of Justice prisons and juvenile rehabilitation centres; as a result of transfers, the interviews dealt with detainees located in 24 of Afghanistan's 34 provinces.[12] With two exceptions, Government officials from the ANP, NDS, Ministry of Justice and other departments cooperated with UNAMA and provided full access to detainees and facilities.[13]

NDS and ANP are the main Afghan security forces engaged in detaining and arresting conflict-related detainees with NDS responsible for investigation of national security crimes and interrogation of such detainees. NDS is the State's principal internal and external intelligence-gathering organ, conducting security and law enforcement

[11] All dates referenced in the accounts of detainees refer to their period of detention not to the date of their interview/s with UNAMA.

[12] Of the 324 conflict-related detainees UNAMA interviewed, 273 were held or had been held in NDS detention facilities, 117 were held or had been held in ANP facilities and 12 had been held in Afghan National Army detention facilities. Of the 324 detainees, 78 had been detained by both NDS and ANP or the Afghan National Army. See the Methodology section of this report for details on the methodology UNAMA used to conduct research for this report.

[13] NDS officials did not provide UNAMA with access to NDS Counter-Terrorism Department 90/124 in Kabul and the provincial detention facility in Kapisa.

operations to gather actionable intelligence to prevent crimes against public security. As the country's police force, ANP deals with both criminal and conflict-related offences.[14] International military forces also play a significant role in detention of individuals for conflict-related offences.

UNAMA's research focused on detention practices of the NDS with a secondary focus on detention by ANP. UNAMA's interviews concentrated on the treatment of detainees by NDS and ANP officials and the Government of Afghanistan's compliance with due process guarantees under Afghan and international human rights law.[15] UNAMA made no assumptions or findings on the guilt or innocence of those detainees it interviewed for crimes of which they were suspected, accused or convicted.

UNAMA acknowledges the critical and extremely difficult role that NDS and ANP have in safeguarding national security in the current situation of armed conflict in Afghanistan.

Torture and Abuse of Detainees by NDS and ANP

UNAMA's detention observation found compelling evidence that 125 detainees (46 percent) of the 273 detainees interviewed who had been in NDS detention experienced interrogation techniques at the hands of NDS officials that constituted torture, and that torture is practiced systematically in a number of NDS detention facilities throughout Afghanistan. Nearly all detainees tortured by NDS officials reported the abuse took place during interrogations and was aimed at obtaining a confession or information. In almost every case, NDS officials stopped the use of torture once detainees confessed to the crime of which they were accused or provided the requested information. UNAMA also found that children under the age of 18 years experienced torture by NDS officials.[16]

[14] The National Directorate of Security and the Afghan National Police are allowed by law to detain suspects for up to 72 hours after which time the law requires them to transfer detainees to a facility run by the Central Prison Directorate.

[15] Reports and concerns regarding torture, ill-treatment and arbitrary detention of detainees in Afghan detention facilities are not new. See April 2009 report of the Afghanistan Independent Human Rights Commission, *Causes of Torture in Law Enforcement Institutions*, April 2009, available at www.aihrc.org.af/2010_eng/Eng_pages/Reports/Thematic/Research_cause_of_Torture_2009_April.pdf; Report of the UN High Commissioner for Human Rights on the situation of human rights in Afghanistan Tenth Session, January 2009 (A/HRC/10/23), available at daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/68/PDF/G0910368.pdf?OpenElement; "2010 and 2009 Country Reports on Human Rights Practices" US State Department, 8 April 2011, available at http://www.state.gov/documents/organization/160445.pdf and http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136084.htm.

[16] UNAMA interviewed 37 children detained in NDS or ANP facilities. Twenty-three of the 37 child detainees reported torture or ill-treatment including 19 reports of torture or ill-treatment by NDS officials and four by ANP officials. On 30 January 2011, the Government of Afghanistan (Ministry of Interior, Ministry of Justice, Ministry of Defence and NDS) and the UN signed an *Action Plan between the Government of the Islamic Republic of Afghanistan and the United Nations Country Task Force on Monitoring and Reporting regarding Children associated with National Security Forces in Afghanistan*. The *Baseline Report on Action Plan Implementation* requires NDS to investigate any cases of ill-treatment of detainees under 18 years old by NDS officials and sanction perpetrators.

More than one third of the 117 conflict-related detainees UNAMA interviewed who had been in ANP detention experienced treatment that amounted to torture or to other cruel, inhuman or degrading treatment.[17]

In situations where torture occurred, it typically took the form of abusive interrogation practices used to obtain confessions from individuals detained on suspicion of crimes against the State. The practices documented meet the international definition of torture. Torture occurs when State officials, acting in their official capacity inflict or order, consent or acquiesce to the infliction of severe physical or mental pain or suffering against an individual to obtain a confession or information, or to punish or discriminate against the individual.[18] Such practices amounting to torture are among the most serious human rights violations under international law, are crimes under Afghan law and are strictly prohibited under both Afghan and international law.[19]

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 abuse 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.[20] These are 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.

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[17] UNAMA interviewed 55 detainees held in ANP facilities on criminal offences. Thirteen (24 percent) of these 55 detainees reported torture or ill-treatment by ANP officials.

[18] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, article 1.

[19] 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 *Penal Code* criminalises torture and article 275 prescribes that public officials (this would include 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 to15 years.

[20] For this report, UNAMA defines a systematic practice or use of torture as a pattern or practice of interrogation methods that constitute torture occurring *within* a facility which demonstrate that facility's policy or standard operating procedure for dealing with conflict-related detainees. Since nearly all conflict-related detainees UNAMA interviewed in the named facilities were subjected to interrogation methods amounting to torture, the facility's management and investigative staff must have known, committed, ordered or acquiesced to the practice of torture. As such, it can be concluded that torture was an institutional policy or practice of the facility and was not used by a few "bad apples" in only isolated incidents or on rare occasions.

UNAMA received numerous allegations regarding the use of torture at 15 other locations covering 17 NDS facilities.[21] Twenty-five percent of detainees interviewed in these 17 facilities alleged they had been tortured. At the time of writing of this report, UNAMA had not established the credibility of the allegations based on the number of interviews conducted and the need to corroborate allegations satisfactorily. UNAMA continues to investigate these allegations.

Detainees in ANP custody reported that abuse occurred in a broader range of circumstances and settings. Some of this abuse constituted torture while other methods amounted to cruel, inhuman, or degrading treatment. Reports of abuse by the ANP included police officers committing torture or ill-treatment at the time of arrest, at check posts, at district headquarters, and at provincial headquarters.

The Government of Afghanistan is obliged under Afghan law and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 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 to respect the prohibition against torture is also *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 as a justification of torture. UNAMA calls on the Afghan authorities to take all possible steps to end and prevent torture, and provide accountability for all acts of torture.

Transfer of Detainees to NDS and ANP by International Military Forces

UNAMA's detention observation included interviews with 89 detainees who reported the involvement of international military forces either alone or together with Afghan forces in their capture and transfer to NDS or ANP custody. UNAMA found compelling evidence that 19 of these 89 detainees were tortured in NDS custody and three in ANP custody.

Under the *Convention against Torture* States are prohibited from transferring individuals to another State's custody where a substantial risk of torture exists.[22] Rules of the International Security Assistance Forces (ISAF) also state that consistent with international law, persons should not be transferred under any circumstances where there is a risk they will be subjected to torture or other forms of ill-treatment.

The situation described in this report of transfer to a risk of torture speaks to the need for robust oversight and monitoring of all transfers of detainees to NDS and ANP

[21] The facilities are NDS provincial facilities in Badakhshan, Badghis, Baghlan, Balkh, Dai Kundi, Farah, Helmand, Kunar, Kunduz, Nangarhar, Samangan, Sari Pul, Wardak, Zabul and Kabul (Department 17/40, Department 18/34 and Department 1).

[22] Article 3 in 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, "[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."

custody by international military forces in Afghanistan, and suspension of transfers to facilities where credible reports of torture exist.[23]

Canada and the United Kingdom ceased transfers of detainees to NDS facilities in Kandahar and Kabul at various times in recent years based on reports of torture and ill-treatment. These countries implemented post-transfer monitoring schemes allowing them to track the treatment of detainees their armed forces handed over to Afghan authorities. The United States Embassy recently finalised plans for a post-transfer detainee monitoring programme and a proposal is with the Government of Afghanistan for its consideration.[24] The Embassy advised UNAMA that it regards the programme as a positive way for the US to continue its work with the Government to ensure its detention system is safe, secure and humane.[25]

In early July 2011, US and ISAF military forces stopped transferring detainees to NDS and ANP authorities in Dai Kundi, Kandahar, Uruzgan and Zabul based on reports of a consistent practice of torture and mistreatment of detainees in NDS and ANP detention facilities in those areas.[26] In early September 2011, in response to the findings in this report, ISAF stated that it stopped transferring detainees to certain NDS and ANP installations as a precautionary measure.[27]

Torture and ill-treatment by NDS and ANP could also 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.[28] In the situation of Afghanistan this would presumably require the US to

[23] See Chapter V of this report.

[24] Under a US Presidential Executive Order 13491 dated 22 January 2009, a special task force on interrogations and transfer policies issues recommended the US establish a post-transfer detainee monitoring program which President Obama ordered.

[25] UNAMA interview with US government official 29 August 2011, Kabul.

[26] UNAMA meetings with International Security Assistance Forces (ISAF) officers August 2011 and NDS Deputy Director Kandahar, Col Abdul Wahab 21 August 2011. The suspension of transfer of detainees was ordered pursuant to a FRAGO (fragmentary order 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) dated 12 July 2011.

[27] UNAMA meetings with ISAF officials, September 2011, Kabul and 7 September 2011 public statement of ISAF spokesperson General Carsten Jacobson, "We are aware that a UN report will come out and we will look into that report. We have not stopped the overall transfer of detainees, but to certain installations only." ISAF officers informed UNAMA that in early September ISAF stopped transferring detainees to 16 installations that UNAMA identified as facilities where UNAMA found compelling evidence of torture and ill-treatment by NDS and ANP officials as follows: NDS national Counter-Terrorism Department 90/124 in Kabul; NDS provincial facilities in Herat, Kandahar, Kapisa, Khost, Laghman and Takhar; and Kandahar District 2 NDS office; ANP district facilities in Kandahar including Daman, Arghandab, District 9 and Zhari; ANP headquarters in Khost, Kunduz and Uruzgan; and the ANP district facility in Dasht-e-Archi, Kunduz.

[28] 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 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

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.

Lack of Accountability of NDS and ANP officials for Torture and Abuse of Detainees

UNAMA found that accountability of NDS and ANP officials for torture and abuse is weak, not transparent and rarely enforced. Limited independent, judicial or external oversight exists of NDS and ANP as institutions and of crimes or misconduct committed by NDS and ANP officials including torture and abuse.

Most cases of crimes or abusive or unprofessional conduct by NDS officials are addressed internally. Senior NDS officials advised UNAMA that NDS investigated only two claims of torture in recent years, neither of which led to charges being pursued against the accused.

In December 2010, NDS established an internal oversight commission to examine allegations of mistreatment of detainees, due process issues and detention conditions. Following monitoring visits to several NDS facilities in January 2011, the commission was to report to the Director General of NDS. UNAMA observed the commission's visits to several detention facilities and had concerns regarding the scope and quality of its investigations. Although a positive measure initially, the oversight body appears to have been ineffective to date in addressing torture, abuse and arbitrary detention as this report's findings suggest.

Internal and external accountability mechanisms exist for ANP criminal conduct with most cases addressed internally through the Ministry of Interior. Alleged crimes committed by ANP officials should be referred to the Directorate of Military Affairs in the Attorney General's Office for investigation and criminal trial by a military prosecutor. However, little information from the Ministry of Interior is available regarding any referral of such cases to the judicial system. Although private citizens can report crimes or misconduct committed by police officers through an office of the Ministry of Interior which assesses claims for investigation by one of three Ministry of Interior structures, few cases are pursued through this mechanism.

Due Process Violations and Arbitrary Detention

In almost all criminal cases in Afghanistan, including national security prosecutions, the case against the defendant is based on a confession, which the court usually finds both persuasive and conclusive of the defendant's guilt. In most cases confessions are the sole form of evidence or corroboration submitted to courts to support prosecutions. Confessions are rarely examined at trial and rarely challenged by the judge or defence counsel as having been coerced.

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.

Under Afghan law, where a confession is obtained illegally or forced, for example, under torture, it should be inadmissible in court. However, even in cases where defence lawyers raise the issue of forced confession through torture, courts usually dismiss the application and allow the confession to be used as evidence. This evidentiary practice clearly violates the letter and spirit of the law and is inconsistent with many expert studies that show information gained by torture is manifestly unreliable and non-probative of an individual's guilt or innocence.[29]

UNAMA documented other due process concerns and violations by NDS and ANP officials. These include the routine failure to meet procedural time limits demarcating the phases of the pre-trial criminal investigation and chain of custody, lack of clarity in the roles of arresting authorities and prosecutors, and lack of judicial oversight of pre-trial detention until very late in the pre-trial process. Since most conflict-related detainees do not have access to defence counsel or information about their rights, the absence of these procedural safeguards has a huge negative impact on detainees' ability to challenge the legality of their detention, prepare a credible defence, or seek protection from torture or coercion.

Under Afghanistan's *Interim Criminal Procedure Code*, custody is linked with the phase of a criminal case. Police may detain an individual for up to 72 hours after an arrest, while they conduct initial interviews, prepare charges and hand the case over to a primary prosecutor *(Saranwal-e-btadaiah)* who confirms the charges and basis for detention.[30] Prosecutors then have a maximum period of 30 days from the time of arrest

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[29] See Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, to the UN Human Rights Council, February 2011 "Torture and ill-treatment are and always will be ineffective means or tools for intelligence or information gathering and law enforcement. Confessions and statements obtained under torture are inherently unreliable, and often disorient and disperse the efforts of law enforcement and investigations personnel. It is therefore crucial to recognise that alternatives to brutality are available and, indeed, effective in addressing the needs of States in fighting crime in all its forms." See also Alfred W. McCoy, "The Myth of the Ticking time Bomb," The Progressive, October 2006, http://www.progressive.org/mag_mccoy1006 (accessed September 2011) "So the choices are clear. Major success from limited, surgical torture is a fable, a fiction. But mass torture of thousands of suspects, some guilty, most innocent, can produce some useful intelligence. Useful intelligence perhaps, but at what cost? The price of torture is unacceptably high because it disgraces and then undermines the country that countenances it. For the French in Algeria, for the Americans in Vietnam, and now for the Americans in Iraq, the costs have been astronomical and have outweighed any gains gathered by torture." Lt. General John Kimmons, the US Army's Deputy Chief of Staff for Intelligence at a September 25, 2006 press conference noted "I am absolutely convinced [that] no good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that. Moreover, any piece of intelligence which is obtained under duress, through the use of abusive techniques, would be of questionable credibility, and additionally it would do more harm than good when it inevitably became known that abusive practices were used. And we can't afford to go there." Press conference transcript available at http://www.globalsecurity.org/security/library/news/2006/09/sec-060906-dod02.htm.

Dr. Marvin Zalman, *Criminal Procedure: Constitution and Society* (2007) found "CIA and FBI reports point out the problems of inaccurate recollection and false confessions from torture. The use of torture in Algiers, Northern Ireland and Israel did not and has not produced desired political results." *Human Rights Watch* "France/Germany/United Kingdom 'No Questions Asked' Intelligence Cooperation with Countries that Torture" (June 2010) found "Several of the best known claims that torture produced information that has helped disrupt or prevent terrorist attacks have proven on closer examination to be false."

[30] *Interim Criminal Procedure Code*, Official Gazette No. 820 (25 February 2004), articles 31, 34 and 36.

to investigate and file an indictment. During this process, suspects are to be transferred to a detention centre administered by the Central Prison Directorate – currently within the Ministry of Justice.[31]

Separation of detention authority is aimed at ensuring suspects do not remain in the custody of those responsible for their interrogation for long periods, effectively serving as a safeguard against coercion and abuse. This safeguard is all the more important since the *Interim Criminal Procedure Code* does not provide for judicial review of the legality of detention in the early investigative stages after arrest. Rather the prosecutor effectively retains the ability to detain or release from the time in which charges are brought until the beginning of trial with minimal judicial oversight.[32]

In practice, ANP and NDS officials routinely disregard these time limits and safeguards. UNAMA found that 93 percent of all NDS detainees interviewed were held for periods longer than the 72 hour maximum — an average of 20 days — before being charged with a crime and transferred to a Ministry of Justice detention centre. Many ANP and NDS officials attributed their inability to meet time limits to inadequate human resources, lack of logistical and technical capacity, and difficulties in travel to and from remote locations with poor infrastructure and insecurity to detention facilities.

UNAMA found that many prosecutors in national security cases delegate their investigative authority to the NDS and interview the detainee only after NDS completes its initial investigation and transfers the detainee to a Ministry of Justice prison which can take several months. In some cases, prosecutors draft the indictment solely on the basis of information gathered by NDS. This system of delegating the prosecutor's authority along with the lack of speedy judicial review of the legality of detention means that most detainees do not see a judge or a prosecutor until they reach trial – a period of time that can extend up to three months from the time of arrest.[33] This situation violates Afghanistan's obligation under the *International Covenant on Civil and Political Rights* to ensure all Afghans arrested or detained are brought promptly before a judge or other appropriate judicial official, and is inconsistent with provisions in the Constitution of Afghanistan that prohibit arbitrary detention.[34]

Another weakness in procedural safeguards for detainees in NDS custody is the lack of access to counsel. Despite the right of all detainees under Afghan law to a defence lawyer at all stages of the process, only one of the 324 detainees UNAMA interviewed in ANP or NDS detention reported they had defence counsel. Almost all defence lawyers and legal aid providers informed UNAMA they had minimal access to NDS facilities as

[31] Pursuant to a decision of the Council of Ministries on 20 May 2011, preparations are underway to transfer the Central Prison Directorate from the Ministry of Justice to the Ministry of Interior. As at September 2011, the Ministry of Justice had handed over most responsibilities in this area to the Ministry of Interior in advance of the actual legal transfer.

[32] *Interim Criminal Procedure Code* articles 6(3), 8(4), 34(2), 36, 53 (3) (b) and 84 and *Law on Prisons and Detention Centres* articles 22 and 51.

[33] Ibid.

[34] *International Covenant on Civil and Political Rights*, articles 9 (1) and (3), and articles 23 (1) (3), 24 (1) and 27 (1) and (2) of the Constitution of Afghanistan. Case law of the UN Human Rights Council holds that a prosecutor is not a sufficient independent judicial authority to rule on issues of detention.

NDS officials deliberately prevented them from accessing detainees.[35] NDS officials told UNAMA they deny detainees' access to defence lawyers for fear they will influence detainees and hinder NDS investigations. Defence counsel reported they generally had better access to detainees held in ANP facilities but only after ANP investigating officials presented the case to the prosecutor.

Although detainees have the right under Afghan law to family visits, only 28 percent of detainees interviewed were permitted family visits during their detention in NDS facilities.

Torture and Arbitrary Detention Undermine Reconciliation and Reintegration

Torture, ill-treatment and arbitrary detention by the NDS and ANP are not only serious violations of human rights and crimes they also pose obstacles to reconciliation and reintegration processes aimed at ending the armed conflict in Afghanistan. UNAMA's research along with the findings of other experts who have analysed the emergence and growth of the insurgency post-2001, highlights that such abuses in many cases contributed to individual victims joining or rejoining the Taliban and other anti-Government armed groups.[36]

The findings in this report bring into focus a tension between programmes the Government of Afghanistan launched to promote reintegration and reconciliation with insurgents and abusive practices, particularly against conflict-related detainees, by ANP and NDS officials. The Government's Peace and Reintegration Programme established

[35] UNAMA interviews with defence lawyers from the International Legal Foundation-Afghanistan (ILF-A) and the Legal Aid Organisation of Afghanistan (LAOA), 16 July 2011. A complicating factor is the low number of defence counsel in Afghanistan. According to the Afghanistan Independent Bar Association, 1,200 defence lawyers are registered in Afghanistan. According to Ministry of Justice Central Prison Directorate monthly statistics, approximately 20,700 individuals were detained in Ministry of Justice detention facilities in Afghanistan as of June 2011.

[36] See Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston Addendum Preliminary Note on the Mission to Afghanistan (4 – 15 May 2008) (A/HRC/8/3/Add.6-29 May 2008): "When I spoke with elders from conflict-affected areas, I was repeatedly told that abuses by police were tempting people to support the Taliban. These realities have not, however, been adequately recognised by the Government or the international community. The belief that human rights can be traded off for stability and security seems widely held. It is gravely misplaced. We need to recognise that ensuring respect by Government security forces for basic human rights is *necessary* in order to ensure security and stability." Stephen Carter and Kate Clark in *"No Shortcut to Stability: Justice, Politics and Insurgency in Afghanistan"* (2010) explore at length how abusive security forces, ill-advised raids by the international forces, and the broader failings of the justice system have alienated communities from the Government and pushed some individuals into the insurgency. Anand Gopal in *"The Battle for Afghanistan: Militancy and Conflict in Kandahar"* (2010) provides a detailed account of how these dynamics played out in Kandahar. He found that after the fall of the Taliban regime many senior Taliban commanders and officials decided not to oppose the new government. In explaining why many of them nevertheless came to assume prominent positions in the insurgency over the next few years, he emphasises that their experiences of being arbitrarily arrested and tortured by Afghan security forces led many to conclude there was no place for them in the new order. Martine van Bijlert in *"Unruly Commanders and Violent Power Struggles: Taliban Networks in Uruzgan"* in *Decoding the New Taliban: Insights from the Afghan Field* (ed. Antonio Giustozzi) (2009) noted that this phenomenon is sufficiently common for Afghans to refer to such insurgents as *majbur*, or forced Taliban. Antonio Giustozzi in *Koran, Kalashnikov and Laptop: The Neo Taliban Insurgency in Afghanistan* (2008) found "Beatings and torture appear to be used routinely for this purpose [interrogation]. Since many of those [alleged Taliban] arrested are then released, if for no other reason than a lack of capacity in [NDS'] prisons, these practices are likely to have driven many into the hands of the insurgency."

incentives for insurgents to resolve grievances, reconcile with and reintegrate into their communities. At the same time, ANP and NDS abuses continue to provide individuals with an incentive to put their security in the hands of anti-Government elements and to fight actively against the Government.

The need to reduce the number of persons arbitrarily detained has been also recognised as a key confidence-building measure in efforts to promote reconciliation nationally among local communities and with anti-Government elements. The Government established several prisoner-release programmes to address the lack of confidence and mistrust in Government among local communities caused by high numbers of individuals detained arbitrarily and mistreated in detention. The High Peace Council recently began reviewing cases of conflict-related detainees held without evidence or access to courts as a means of confidence-building. Such efforts are undermined when the ANP, NDS, and the criminal justice system as a whole continue to tolerate torture and prolonged, arbitrary and abusive detention.

Torture and Abuse by State Officials Compromises National Security

It has long been the position of the United Nations that effective counter-terrorism measures require compliance with human rights and that torture and other abusive practices by State officials such as those documented in this report undermine national security. The UN Global Counter-Terrorism Strategy and Plan of Action affirm that human rights for all and the rule of law are essential components of counter-terrorism, recognising that effective counter-terrorism measures and protection of human rights are not conflicting goals, but complementary and mutually reinforcing.[37] The UN Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism notes there is broad consensus that combating terrorism in compliance with human rights is not only a legal and moral obligation of States but also the most effective way to fight against terrorism.[38]

Observations

Torture and arbitrary detention are two of the most pressing human rights issues impeding the establishment of rule of law, transition of lead security responsibilities from international military forces to Afghan National Security Forces and arguably long-term reconciliation in Afghanistan. Persistent ill-treatment of detainees and the inability of judicial authorities to respect basic due process guarantees have long been factors fostering public mistrust in the Government, dissatisfaction with Afghan security forces and the growth and viability of the insurgency. Individuals detained by the NDS or ANP suffer torture without recourse or accountability, the ability to seek redress, to challenge the basis of their detention or, ultimately, to refute the persuasive power of a coerced confession gained through torture.

Afghanistan's Constitution, laws and international legal obligations provide an effective legal framework for prohibiting torture and ill-treatment.[39] While some critical safeguards are not yet in place, particularly the right to challenge the basis of detention,

[37] A/RES/60/288 (8 September 2006).

[38] Available at http://www.un.org/terrorism/terrorism-hr.shml.

[39] See Annex 1 for an overview of applicable laws.

effective implementation of existing laws could ensure the worst abuses are stopped and hold accountable perpetrators of torture and ill-treatment.

UNAMA's detention observation shows that NDS officials are responsible for the serious human rights violations and crimes documented in specific NDS facilities. UNAMA's findings to date are that NDS officials systematically tortured detainees in a number of detention facilities across Afghanistan. Torture does not appear to have been practiced systematically in each NDS facility UNAMA observed. In other facilities UNAMA observed, more investigation is required to determine whether torture is used systematically in the facility. UNAMA concludes on the basis of the findings of this observation programme that the use of torture is not a *de facto* institutional policy directed or ordered by the highest levels of NDS leadership or the Government. This together with the fact that NDS cooperated with UNAMA's detention observation programme suggests that reform is both possible and desired by elements within the NDS. In response to the findings of this report, the leadership of NDS advised UNAMA that it plans to investigate reports of torture and address concerns through a time-limited action plan.

The comments and response of the Government of Afghanistan, the NDS and the Ministry of Interior to the findings in this report are attached as Annex II.

Use and acceptance of abusive interrogation tactics amounting to torture also reflects the need for much greater attention to reforms in the judiciary, prosecution and law enforcement sectors. Police, prosecutors and NDS intelligence officials and interrogators should be trained in national and international legal frameworks prohibiting torture and in interrogation techniques that have proved to be more reliable in gaining the long term trust and cooperation of detainees and suspected perpetrators of terrorism that strengthen national security. These techniques also provide reliable intelligence, information and testimonial evidence on which courts can base decisions and on which police, prosecutors and courts can minimise arbitrary detention and increase respect for due process guarantees the Government is obliged to provide to all detainees.

UNAMA offers the following recommendations to the Government of Afghanistan and its international partners to address and end the practice of torture and ill-treatment, and arbitrary detention in all NDS and ANP facilities.

Key Recommendations

To the National Directorate of Security (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 Counter-Terrorism Department 90/124 in Kabul. Remove, prosecute, discipline and punish those officials found responsible. Permit independent oversight of these investigations and publicly report on findings and remedial actions;

    - Promptly issue directives prohibiting torture and ill-treatment in all circumstances to all NDS personnel and advise them and their superiors they will be prosecuted and disciplined if found committing, ordering or condoning such practices;
    - Permit full, regular and unhindered access of independent monitors to all NDS facilities including the Afghanistan Independent Human Rights Commission, UNAMA, International Committee of the Red Cross and others.
- 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 are effective.
- Implement an external accountability mechanism that allows independent and transparent investigations into alleged abuses within NDS facilities.
- 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.
- 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.

To the Afghan National Police

- 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;
    - 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 Afghan National Police and Ministry of Interior facilities including the Afghanistan Independent Human Rights Commission, UNAMA, International Committee of the Red Cross and others.
- 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.

To the 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.

To the 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*.

To the Supreme Court, Ministry of Justice, Ministry of Interior 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.

To 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.
- 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.
- Build the capacity of NDS and ANP facilities and personnel including through mentoring and training on the legal and human rights of detainees and detention practices in line with international human rights standards.
- 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).

A full set of recommendations is found at the end of this report.

II. Background

Role of the National Directorate of Security and the Afghan National Police

National Directorate of Security

The National Directorate of Security (NDS) is Afghanistan's principal internal and external intelligence-gathering organ and plays a key operational role, arresting and interrogating persons suspected of security-related offences.[40] While it received its current name after the fall of the Taliban in 2001, it is among the most enduring of the State's institutions, with many of its institutional structures, personnel, facilities and legal regulations dating back to the communist period. In 1978, the Government established the *Da Afghanistan da Gato da Saatane Adara*, but later replaced it with *Kargari Estekhbarati Muasessa* (KAM) in 1979.[41] *Khadimat-e Ettala'at-e Dawlati* (KhAD) came into being in 1980, but was renamed *Wezarat-e Amniyat-e Dawlati* (WAD) when it became a full ministry in 1986.[42] The institution continued to operate during the *Mujahedeen* era (1979 – 1989), the Afghan civil war (1989-1996) and, during the Taliban period (September 1996 – October 2001) when it was known as the Islamic Intelligence Service of Afghanistan.[43]

Many officials, policies and practices in NDS have changed over the years. NDS has experienced greater continuity, however, than any other Government security force. Today, NDS consists of a number of departments (sometimes referred to as directorates and sub-directorates), which are designated by numbers for confidentiality and security. The numbers for particular NDS departments were changed in early 2011. Departments relevant to this report are numbered 17 (now 40, Investigations), 18 (now 34, Internal Oversight), and 90 (now 124, Counter-Terrorism). Generally, the national structure of NDS is replicated at the provincial level with the national and provincial offices of Department 17/40 holding and interrogating most NDS detainees.

NDS derives its mandate from the *National Security Law* governing its functions, conduct and activities which include "ensuring national security" and "fighting against terrorism".[44] 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. [45] While collecting and analysing intelligence, however, agency officials have a duty to maintain a balance between "obtaining essential information and protecting the freedom of individuals." They are under an obligation to consider the provisions in the Constitution and other enforced

[40] *Riasat-e Omum-e Amniat-e Melli* (Dari).

[41] *Da Afghanistan da Gato da Saatane Adara* (Agency for the Safeguarding of Afghanistan's Interests). *Kargari Estekhbarati Muasessa* (Workers' Intelligence Institute).

[42] *Khadimat-e Ettala'at-e Dawlati* (State Information Service). *Wezarat-e Amniyat-e Dawlati* (Ministry of State Security).

[43] *Estekhbarat-e Islami Afghanistan*.

[44] Issued by an unpublished Presidential decree on 4 November 2001 (Decree no. 89, 13/12/1380), article 6.

[45] Currently, Maj. General Rahmatullah Nabil serves as Director of NDS.

laws and decrees.[46] NDS operates without judicial oversight and limited review by Parliament.

The *Law on Crimes against Internal and External Security of the Democratic Republic of Afghanistan* lists the categories of offences that NDS investigates. They include national treason, espionage, terrorism, sabotage, propaganda against the Government, war propaganda, assisting enemy forces, and organised activity against internal and external security.[47]

The Director of NDS may offer special monetary bonuses to NDS officials for intelligence activities.[48] NDS employees are subject to disciplinary action under the Military Code of Discipline for violations of the laws of NDS.[49]

Information on the annual budget and other operational expenditures of the NDS is classified as is the number of NDS employees (estimated to be between 15,000 and 30,000). UNAMA received information that NDS' current budget is primarily funded from international sources.[50]

Afghan National Police

The Ministry of the Interior (MoI) controls the Afghan National Police (ANP), including the Afghan Uniformed Police (AUP) and Afghan Border Police (ABP), which are responsible for maintaining law and order and deal with both ordinary and conflict-related crimes. While Afghanistan has had previous police forces, including the *Sarandoy* of the communist era, and some officials from that era still serve today, to a large extent, today's police force was spontaneously reconstituted from the bottom up after the fall of the Taliban in 2001.

Local *mujahedeen* commanders and other powerful figures took over district and provincial police posts, often bringing in their militias with them, impeding effective command-and-control. Training programmes and the pay and rank reform process (which included vetting) in 2006 helped to professionalise the police which remain an ongoing process. Parallel efforts to rapidly expand the number of serving police officers together with high illiteracy rates among recruits and members, high attrition rates and low salaries have made development of high professional standards in the ANP extremely challenging.

The ANP's budget is mainly funded from the Law and Order Trust Fund for Afghanistan (LOTFA), a multi-lateral trust fund set up by the United Nations Development Programme in 2002 to coordinate contributions from international partners. Donors include Canada, Czech Republic, Denmark, European Union, Finland, Germany, Italy, Japan, Netherlands, Norway, Switzerland, United Kingdom and United States. LOTFA activities are clustered around three pillars: police and prisons staff remuneration, and

[46] *National Security Law*, articles 3 and 5.

[47] *Law on Crimes against Internal and External Security*, articles 1-8, 23 and 9.

[48] *National Security Law*, article 24.

[49] *National Security Law*, article 23.

[50] UNAMA meetings with confidential sources, July 2011.

police infra-structure; capacity development and institutional reform at the policy, organisational and individual level; and, democratic policing.

Efforts to reform the ANP, which receives training, technical assistance and equipment from the international community, are coordinated through the European Union Police Mission in Afghanistan and the International Police Coordination Board.

III. Torture at the National Directorate of Security

[NDS officials] *bound my hands and attached them to metal bars on the window high above my head. They used both a chain and shackles to hold my hands there. I could not touch the floor at all. It was before darkness* [evening] *when they released me from this. Every hour, someone came and asked me if I was ready to confess, ready to accept my crime* [alleged membership in a terrorist group]. *Then they left again and locked the door. . . Then, on the next night, they took me out of my cell. It was about 3:30 in the morning. I was in a very bad condition when they woke me up. They took me back to the interrogation section. . . to the first "manager" – the* [NDS] *man I saw on the first night. He showed me a cable and said, "I will shock you with electricity." And then he shocked me* [displays visible injury]. *After that, I did not know where I was or who I was. When I was okay again, I saw that I was back in my cell. But both of my thumbs had ink on them. I did not know it, but they had taken my thumbprints* [as proof of a confession].

Detainee 82, held in an NDS facility in Khost, April 2011

A. Overview

Between October 2010 and August 2011 UNAMA interviewed 273 persons held by the NDS at detention facilities in 24 provinces.[51] Out of 273 detainees interviewed, 125 (46 percent) reported they had been tortured while in NDS custody. The forms of abuse most commonly reported were suspension (being hung by the wrists from chains attached to the wall, iron bars or other fixtures for lengthy periods) and beating, especially with rubber hoses, electric cables and wires or wooden sticks and particularly on the soles of the feet. Other forms of abuse reported included electric shock, twisting of the detainee's penis and wrenching of the detainee's testicles, removal of toenails and forced prolonged standing. Detainees also reported blindfolding and hooding. According to detainees, these abuses almost always took place during interrogations and were aimed at obtaining a confession. Only two percent of those detainees who reported abuse by NDS said that any abuse took place at the time of arrest or in any other context.

UNAMA documented systematic torture by NDS officials at five NDS facilities: the provincial facilities of Herat, Kandahar, Khost and Laghman, and the national facility of the NDS Counter-Terrorism Department 90/124 in Kabul. At two other NDS facilities, UNAMA found multiple, credible allegations of torture: the provincial NDS facilities in Kapisa and Takhar. UNAMA noted two NDS facilities where it found no evidence of torture at the time of its visits: the provincial NDS facilities in Paktya and Uruzgan.

[51] The provinces are Badakhshan, Badghis, Baghlan, Balkh, Bamyan, Dai Kundi, Farah, Helmand, Herat, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktya, Samangan, Sari Pul, Takhar, Uruzgan, Wardak and Zabul provinces.

UNAMA interviewed numerous detainees that had been or were detained at 15 other locations covering 17 NDS facilities. These include the provincial NDS facilities in Badakhshan, Badghis, Baghlan, Balkh, Dai Kundi, Farah, Helmand, Kunar, Kunduz, Nangarhar, Samangan, Sari Pul, Wardak, Zabul and Kabul (Department 17/40, Department 18/34 and Department 1). One quarter (25 percent) of detainees interviewed in these 17 facilities alleged they had been tortured. At the time of writing of this report, UNAMA had not established the credibility of these allegations based on the number of interviews conducted and the need to corroborate allegations satisfactorily. UNAMA continues to investigate these allegations.

B. Torture at the National Facility of the NDS Counter-Terrorism Department 90/124

When they took me to [Department] *90, I did not know where I had been taken. . . After two days, I learned that I was in 90 from my cellmates. There is so much beating at 90 that people call it Hell.*

Detainee 247, May 2011

Overview

UNAMA interviewed 28 persons who were held at the national facility of the NDS Counter-Terrorism Department (known as Department 90/124).[52] At this facility, NDS interrogates "high value" suspects — including persons suspected of being Anti-Government commanders or of having been involved in high-profile attacks. Eleven of those interviewed said they were initially detained by NDS, "Afghan Special Forces", "campaign forces" or unidentified armed Afghan men.[53] Seventeen stated they were initially detained in operations involving small numbers of international military forces usually described as "special forces" along with "Afghan Special Forces", "campaign forces", "quick reaction forces", or unidentified armed Afghan men.[54] None reported being detained by regular ANP or Afghan National Army (ANA). Detainees reported being held in NDS Department 90/124 for an average of 15 days.[55]

[52] Detainees 243, 244, 245, 247, 253, 255, 257, 259, 260, 261, 286, 293, 294, 331, 332, 333, 334, 335, 336, 345, 346, 347, 350, 351, 352, 353, 354 and 356. For this report, UNAMA included interviews with detainees held by NDS Department 90/124 for periods between April 2010 and May 2011.

[53] Detainees 247, 253, 257, 286, 293, 294, 336, 346, 350, 352 and 354. In some cases, detainees were uncertain of which forces had arrested them. In other instances, individuals identified forces as NDS even when their description of the uniforms of those forces that detained them did not match descriptions of NDS uniforms. This may be because the detainees were subsequently taken to NDS.

[54] Detainees 243, 244, 245, 255, 259, 260, 261, 331, 332, 333, 334, 335, 345, 347, 351, 354 and 356. "Afghan Special Forces" designate a specialised branch of the Afghan National Army (ANA). "Campaign forces" is usually used by Afghans to describe those forces recruited by foreign states operating in Afghanistan that go on operations with foreign personnel and do not fall under Afghan National Security Forces (ANSF) command. In some cases, detainees were not able to provide a rigorous basis for their conclusion regarding the precise identity of the Afghan forces involved.

[55] 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 Department 90/124. Where NDS provided statistics they were generally very close to figures obtained from detainees.

Of the 28 persons interviewed, 26 reported torture while held at the NDS Department 90/124 (93 percent).[56] UNAMA made repeated requests to senior NDS officials for permission to visit Department 90/124 and interview detainees while they were held there, but access was not granted. UNAMA gathered substantial information on torture at Department 90/124 by interviewing detainees at various other facilities who had previously been detained at Department 90/124.

Based on the interviews it conducted, UNAMA found compelling evidence that officials at Department 90/124 systematically tortured detainees for the purposes of obtaining information and confessions. According to UNAMA's findings, NDS officials in Department 90/124 used beating, suspension, and twisting and wrenching of genitals as means of torture. Two detainees also reported receiving electric shocks, two detainees reported their beards had been pulled, and three detainees reported having their heads banged against the wall.[57] All of the abuse took place in the context of the interrogation process. In most cases, the detainee's account of the sequence of events makes it clear that NDS officials used abusive interrogation procedures to obtain information and formal confessions.[58]

This detainee's account is representative of how NDS officials at Department 90/124 used various methods of torture to interrogate detainees:

> *My first day in Department 90, I was interrogated by two Afghans. They . . . advised me to confess* [that he used specific phone numbers to contact particular parts of the Taliban structure]*. They also accused me of* [playing a specific role in the Taliban structure]*. I was not beaten or mistreated by those two interrogators on my first day in Department 90. They were only advising me to admit what they claimed against me.*
>
> *For the next two days, I was not interrogated at all, but on each of those days, I was tied up from both wrists to the bars of an iron door in the middle of the hallway from morning until lunch time. They put a hood on my head and hung me by my wrists.*
>
> *The next day — the fourth day of my detention in Department 90 — I was taken to an interrogation room and was interrogated by two Afghans. They asked me again about the phone numbers and wanted me to confess they were mine. I told them they were not mine. There was a file in their hands and they told me that all of the information about me and my confession were in that file. . . . When I insisted that those phone numbers were not mine and that I did not know about them, they called for another two Afghans and both of those interrogators started beating me with hard plastic water pipes on my legs and the soles of my feet. . .*

[56] Detainees 243, 244, 245, 247, 253, 255, 259, 260, 261, 286, 293, 294, 331, 332, 333, 334, 335, 336, 345, 346, 347, 350, 351, 353, 354 and 356. Detainee 261 said he had been seriously abused but that he was too afraid to discuss the abuse while in custody. The sole form of abuse reported by Detainee 336 was being repeatedly slapped and threatened as follows "You will be beaten if you don't tell the truth. This is your one warning." The other detainees reported far more serious forms of abuse.

[57] Detainees 243 and 259; detainees 247 and 331; and detainees 243, 255 and 347.

[58] Detainees 243, 244, 247, 253, 259, 286, 331, 333, 334, 335, 345 and 347 provided information specifically indicating their interrogators abused them to obtain information or confessions.

The next day, they started again interrogating me and asking the same questions. They were also beating me and they threatened to insert a bottle of water inside my anus. During those interrogations, I was not asked to sign or fingerprint any papers. I was again taken back to my cell.

[The detainee described acts of torture that occurred on multiple days including one incident of electric shock.]

They took off my clothes, and one of them held my penis in his hand and twisted it severely until I passed out. After I woke up, I had to confess because I could not stand the pain, and I did not want that to happen to me again and suffer the same severe and unbearable pain. [The detainee made a formal confession] *I was forced to do that to avoid all of the agony. . . . After I was forced to confess that I was a Taliban and cooperated with them, I was returned to my cell and was never interrogated or abused again.*[59]

Detainee 243, April 2011

Beating

Fifteen of the 25 detainees held in Department 90/124 reported having been beaten.[60] Some of these reported having been punched, kicked, or both.[61] Even more reported having been beaten with rubber hoses, plastic pipes, metal pipes, or wooden sticks.[62] Those beaten recalled blows having been inflicted on their feet (including the soles), legs, back, stomach and shoulders.[63] All reported being beaten for the purpose of obtaining a confession.

Detainees reported denial of water for ablution during beatings, *I asked the NDS official to give me water for ablution, and I said to him 'for Allah's sake and for Quran's sake give me water', and he said 'there is no Allah or Quran here'*. [The detainee stated that NDS officials did not give him water until he confessed.][64]

Suspension

[59] The italicized sections are paraphrased to preserve the detainee's anonymity.

[60] Detainees 243, 244, 245, 247, 253, 259, 260, 293, 331, 332, 333, 334, 335, 345 and 347.

[61] Detainees 243, 244, 245, 259, 293 and 331.

[62] Detainees 243, 244, 247, 253, 259, 293, 331, 332, 333, 334, 335, 345 and 347. Detainees 247, 332, 333, 334, 335, 345 and 347 reported having been beaten with a rubber hose. Detainees 243, 244, 253 and 331 reported having been beaten with plastic water pipes. (Note that the usual Pashto expressions for a rubber hose are *paip*, *plastiki paip*, or *obo paip*; whereas, the usual expressions for a pipe used in plumbing is *nal*, although in some contexts one might refer to *paip* with a modifier. It is possible that detainees who were translated as having referred to "plastic water pipes" were, in fact, also referring to "rubber hoses".) Detainees 293 said that he was beaten with a "metal pipe", and Detainee 259 reported he was beaten with a wooden stick.

[63] Detainees 243, 244, 331, 335 and 345 said they were beaten on the soles of their feet. Detainees 247, 332 and 333 said they were beaten on their feet, but did not specify more precisely. Detainees 243, 244, 293, 333 and 334 said they were beaten on their legs. Detainees 247 and 332 said they were beaten on the back, and detainee 247 further said he was beaten on his shoulders and stomach. Detainees 253, 259, 260 and 347 did not specify where they were struck.

[64] Detainee 356.

Ten of the 25 detainees held at Department 90/124 reported being suspended.[65] Those who provided detailed accounts referred to being hung by their hands from a metal door located in a hallway of the facility or from metal bars located above that door.[66] One detainee said:

> *After beating me for a long time — I cannot remember how long it was — they hung me from an iron-barred door. . . I was hung until evening, and the hood was placed over my head during that time. The door was in the hallway. I was released from that door for sunset prayers, then hung again, then released for evening prayers, then hung again, then freed for dinner, and then hung until 10pm. While I was being hung, I only heard someone telling me over and over that I did not tell the truth.*
>
> **Detainee 331, April 2011**

Others who provided detailed accounts also suggested that NDS officials were using the method of suspension to obtain information or confessions:

> *They would hang me after beating me with the rubber pipes, then they would hang me, and they would ask me whether I accepted their accusations or not, and then they would keep beating me.*
>
> **Detainee 253, May 2011**

Being suspended in this manner was described as extremely painful. One detainee said, *I was in severe pain, and when I was screaming out in pain, they were beating me with the pipes to remain silent.*[67]

Twisting of the Detainee's Penis

Four of the 25 detainees reported having their penis twisted or squeezed and testicles wrenched.[68] Detainees who suffered this treatment described it as extremely painful, and two detainees said they lost consciousness due to the experience.[69]

Transfer to NDS Department 90/124

UNAMA interviewed 17 detainees who reported they were initially arrested by international military forces and Afghan National Security Forces (ANSF) and transferred to NDS Department 90/124. UNAMA found compelling evidence that these detainees were tortured at NDS Department 90/124 after their transfer there.

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[65] Detainees 243, 244, 245, 247, 253, 293, 331, 334, 335 and 345.

[66] Detainees 243, 244, 245, 247 and 331 reported being hung from a metal door (or the bars above) located in a hallway. Detainee 334 said his "hands were cuffed and hung from the ceiling", detainee 335 said his "hands were cuffed to a metal rod attached to the ceiling", detainee 293 said "they hung me from my hands on the wall with my feet not touching the floor", and detainee 253 said he was "hung from [his] hands".

[67] Detainee 244.

[68] Detainees 243, 244 and 247 reported having their penises twisted. Detainee 253 reported, "They also put pressure on my testicles with their hands to force me to confess that I was involved in all of the terrorist attacks they charged me with. They did that two times, and I was in terrible pain."

[69] Detainees 243 and 244.

One detainee's account is representative of transfer to NDS Department 90/124 for interrogation:

> *On xxx March 2011, approximately 8:30 to 9pm, I was arrested by the American forces in xxx district of xxx centre. . . We were handcuffed and hooded and taken by the helicopter to the American Base. . . We remained at the American base for four days. I was interrogated by one interrogator for the first three days there. . . They accused me of being affiliated with Taliban and of being a Taliban member, myself. The interrogation went smoothly. After spending four days there, we were all taken by helicopter in another xxx hours flight; to another place. I did not know what it was. We were hooded most of the time. There were only Americans there as well. It was around 10pm. . . I was kept there for one day only. After that, I was transferred to NDS xxx by helicopter. I was handed over to the provincial NDS there. I was not interrogated by them. After spending one day there, I was transferred to NDS xxx where I spent 15 days during which, I was interrogated twice only. Then, I was transferred to Department 90 by car. When I arrived at Department 90, I was interrogated the first day by one interrogator who kept banging my head against the wall and asking me to confess that I was Taliban. I was interrogated on a daily basis during the first four days. I had to confess because I was beaten everyday by the interrogators and I was in pain. I was beaten many times with a rubber water pipe.*[70]
>
> **Detainee No. 347, May 2011**

Torture of Children at NDS Department 90/124

NDS Department 90/124 used a variety of techniques that amounted to torture; this treatment was also used against child detainees (aged between 14 and 17 years). UNAMA interviewed six children who had been detained in Department 90/124; five reported they suffered torture.[71] UNAMA concluded that five children experienced torture during interrogation for purposes of obtaining a confession.[72] One child was not mistreated or tortured but was threatened with torture.

The five children claimed they made false confessions regarding involvement in national security crimes to stop the torture.[73] Five had been beaten with hard plastic pipes, one with a hard plastic pipe and an electric cable, one with an electric cable on his back and three had been beaten on the soles of their feet. [74] Four of the five children had also been subjected to suspension.[75] One child was threatened with electric shock unless he confessed.[76] One child reported NDS interrogators squeezed his testicles, while another child reported NDS officials threatened with sexual assault.

[70] Dates, times and locations have been omitted to preserve the detainee's anonymity and for security reasons.

[71] Detainees 244, 350, 351, 352, 354 and 356.

[72] Detainees 244, 350, 351, 354 and 356.

[73] Ibid.

[74] Ibid.

[75] Detainees 244, 350, 351 and 356.

[76] Detainee 244.

C. Torture at NDS Kandahar

Overview

UNAMA interviewed 35 conflict-related detainees in the main NDS detention facility in Kandahar, and in ANP headquarters in Kandahar and Ministry of Justice (MoJ)'s Sarapoza central prison, after transferred from NDS custody in Kandahar.[77]

UNAMA found compelling evidence that 25 (two thirds) of these 35 detainees were systematically tortured by NDS officials for the purposes of obtaining information and confessions at NDS facilities in Kandahar city or other NDS facilities in the region.[78] Detainees provided detailed and consistent descriptions of NDS officials using suspension or hanging in some cases for up to four days, beating with braided cables, beating with an electric or steel wire, kicking in the head causing the detainee to lose consciousness, beating on soles of the feet, electric shock to the testicles, and manacles to handcuff the arms of individuals in extremely painful positions, including twisting one arm over the shoulder and cuffing it to the detainee's other arm behind the back in some cases for up to four days. One detainee reported that a NDS official removed his toenail with a knife. Detainees also reported routine blindfolding.

Detainees reported a similar pattern of being arrested by NDS at a location, taken to a NDS facility in a specific district of Kandahar city where intensive torture aimed at getting a confession or information occurred immediately and over two to seven days with transfer to NDS' main detention facility in Kandahar where further torture and interrogation occurred over many days followed by eventual transfer to MOJ's Sarpoza prison.[79] Detainees interviewed were in the custody of NDS Kandahar for an average of 22 days.

Beating and Suspension

One account demonstrates how conflict-related detainees were treated by NDS officials in Kandahar during interrogation:

> *I graduated from a religious school in Pakistan. On my way back to Afghanistan, NDS officials arrested me at a check point on the border. Interrogation started as soon as we reached to* [NDS facility in Kandahar city].
>
> *A group of officials asked me where and what activities I was carrying out as a Taliban. I said I was not a Taliban. They warned that if I did not confess they would kill me. I said I was not a Talib - I was a civilian doing religious study in Pakistan. They did not believe it and started beating me. I could not see how many officials were involved in beating, but there were more than two. They had an electric wire. They beat me on my feet, legs and back.*

[77] Detainees 213, 214, 215, 216, 217, 218, 219, 225, 226, 228, 229, 230, 337, 338, 339, 340, 341, 342, 358, 364, 365, 366, 367, 368, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379 and 380. Interviews in Kandahar for this report were carried out between January 2011 and 15 August 2011.

[78] The NDS deputy director in Kandahar city told UNAMA that approximately 150 detainees are held in the main NDS detention facility (UNAMA interview with Col Abdul Wahab, 16 August 2011).

[79] The name of the NDS facility and the district are omitted to preserve detainees' anonymity and for security reasons.

The beating and abuse continued for three days. They interrogated me three times during the day and twice at night. They would hang me in the afternoon after the interrogation. They tied my hands along with my chest with my turban and hung me on the ceiling. I guess there was a ceiling fan on which they were hanging me. It would last for 20-25 minutes. They would not beat me while hanging. It was tied very tight and caused pain all around my chest. I kept crying but they did not listen to me.

On the third day, NDS officials threatened me that they would insert a wooden stick pasted with chilli powder in my anal canal. On the same day, three officials came and made me lie on my chest - two of them sat on me and the third one beat me on the bottom of my feet. He used an electric cable to beat me. It was really painful. The beating lasted for almost one hour. I confessed that I was a Taliban after I could not resist their beatings and torture on the third day.

They did not allow me to pray for three days. They would not release my handcuffs even during the time of eating. They would take off the blindfolds only when I wanted to go to the toilet.

I was then taken to NDS headquarters. Three NDS officials interrogated me three times. They blamed me that I was a Taliban. As I denied, they started beating me. They tied my hands on the back and used an electric cable to beat me. Some of them would hold me and one or two of them would beat me. They beat me on my feet, legs, back and chest. The electric cable was almost one metre long which was thicker in one side. The beating was very hard. I had accepted that I was a Taliban during earlier interrogations. But they asked me to give them details of my activities and operations that I did when I was a Taliban. They had different incidents from different dates that I was not aware of but they forced me to confess that I was behind of all those incidents. I was sick, could not continue standing up or walk around. I asked for doctors but they did not allow.

[The detainee displayed a bandage on his chest which he stated was for pain caused by suspension and displayed four visible recovering injury marks on his left leg and five on his right leg which he stated were caused by electric cable.]

Detainee 379, July 2011

Other detainees interviewed recounted not only beatings and suspension but efforts to obtain a confession when the detainee was injured. This detainee's account is representative.

I was interrogated at [an NDS facility in Kandahar]. *My eyes were blindfolded. I could guess there were maybe three or four people there interrogating me from the voices I heard. They said to me, "Are you a Talib?" I said "no, I'm a student* [talib] *but not a fighter. They kicked me in the head, very hard so that I lost consciousness until the afternoon. I wasn't aware of anything until the afternoon. In the afternoon, at about 3pm, I answered their questions. I was not able to judge what they were saying. I was not completely conscious. I can't remember what they*

asked about or what I answered. I could not judge. It felt like the earth was moving because of the kick on my head earlier in the day.

In the next morning they also beat me on the legs. I did not remember them beating me on the legs and feet, but when I woke up I realised they had beaten me on the legs.

The next morning they came again and asked me questions, like before. They beat me but just a little. They asked me the same questions. They told me "you are a Talib", I said I was not, they kept insisting. They said that the day before in the afternoon I told them I was a Talib, but I said I was not aware during this time, because I could not remember it.

They hit me 20 or 25 times. They beat me mostly on the bottom of my feet, just once they hit me on the side of my legs. Two people would hold me in the air, they tied my legs together, two people would lift my legs up into the air and lift my feet. They would then beat my feet, the soles of my feet, while my feet were held in the air. It was very painful, and I was already injured from the previous day.

While they were beating me like this, they asked me questions, they repeated the questions before, saying that I told them I was a Talib. I told them I was not aware I said I was a Talib, I told them that I didn't know what I told them. They said to me "just tell us you are a Talib."

They were using a cable to beat me. It was about arm's length, about one metre long. The cable was about five centimetres, a few millimetres thick. It was made of steel wire, covered by rubber. It was thicker than that [indicating a bar on a nearby bed, about five centimetres thick], *about three* [adult male] *fingers clustered together. While they interrogated me, they were showing me this written statement they claimed I had written. When they would show me this statement they would take the blindfold off me quickly, then I was able to see the cable, that's how I could see what the cable looked like. They were also reading to me this statement they claimed I had made. They said to me "those are your words."*

They handcuffed me behind my back, blindfolded me and took me to the NDS headquarters. There, one NDS interrogator told me "those are your words." I said I didn't know what I was saying during this time, I was unconscious. [The detainee reported abusive interrogation several times over 15 days before transfer to another facility in Kandahar.]

Detainee 365, March 2011

Denial of Access to Medical Treatment and Death in Custody

Other cases brought to UNAMA's attention include cases in which detainees that were beaten, either in or out of NDS custody, were denied access to medical care. In at least one instance, the individual died.[80]

[80] All names, exact dates and other identifying information have been omitted for security reasons and to preserve confidentiality.

The case involved several individuals who were detained by ANP at ANP check posts in Kandahar city in April and May 2011 and subjected to abusive interrogation at the ANP check post and nearby ANP compound. Police officers tortured the individuals during interrogations over a number of days, beating them repeatedly while they were held down under a blanket including jumping on them under the blanket, hitting them under the blanket and demanding they confess individually to being a Taliban planter of improvised explosive devices, seeking names of other alleged Taliban and owning a pistol and bullets. Other methods of torture these detainees experienced included suspension and pouring water in the nose, mouth and ears. One detainee reported being injected several times in the thigh with a syringe during suspension.

After 14 days in ANP custody, ANP handed the detainees over to NDS custody. At the time of arrival in NDS custody, one detainee was seriously injured as a result of torture with one side of his body visibly black (from possible internal bleeding and injuries). Despite his worsening condition and visible signs of severe abuse, NDS refused the detainee's multiple requests to see a doctor over 13 days, until he began to vomit blood. NDS then sent the detainee to a hospital but he died before arriving there.[81]

Views of NDS Kandahar

UNAMA met with the NDS Deputy Director for Kandahar in August 2011 who advised that as head of operations he had not received any complaints of torture or ill-treatment. He said NDS management would investigate any allegations of abuse and noted investigators received clear instructions to treat all detainees according to laws and procedures.[82]

The chief of investigations at NDS Kandahar told UNAMA that NDS investigators punish insurgents as normal methods of obtaining information from insurgents have not been working in Kandahar.[83] He said UNAMA may ask detainees about NDS treatment in NDS custody and noted *if we know the detainee is an insurgent we punish them*. The NDS official said that given the situation in Kandahar, insurgent activities and Afghan culture, it would be very difficult for NDS to obtain information from a terrorist without punishing him and indicated *we have to use some methods for terrorists so they confess and give us information about what they have been doing.* He further stated,

> *I am well aware about section 275 of the Interim Criminal Procedure Code. I know torture and ill-treatment are prohibited and even those who order his subordinates to inflict torture for obtaining information should be punished. Everyone wants to carry out his job according to law but Kandahar is specific. The situation here is different than other places.*[84]

NDS prosecutors in Kandahar advised UNAMA that in rare cases they receive complaints of torture and ill-treatment of detainees by NDS officials. The NDS

[81] According to NDS, the man died after arriving at the hospital. Staff at the hospital, however, reported that the man was already dead on arrival at the hospital.

[82] UNAMA meeting with NDS Deputy Director Col Abdul Wahab, 21 August 2011, Kandahar.

[83] UNAMA meeting with NDS Chief Investigator, Col Abdul Hamid, 16 August 2011, Kandahar.

[84] Ibid.

prosecutors refer those cases to the police hospital but they do not know what happens next and do not follow up.[85]

In response to concerns raised about mistreatment of detainees by NDS in Kandahar, the Director of NDS indicated in a 26 July 2011 letter to the International Committee of the Red Cross (copied to UNAMA and the Afghanistan Independent Human Rights Commission) that a NDS delegation had been sent to monitor the situation of detainees in Kandahar NDS and produced a report which did not find any problems or complaints with mistreatment. The delegation recommended establishment of a medical clinic in the NDS detention facility.[86]

US Military Suspension of Transfers to NDS and ANP Kandahar

In July 2011, US and ISAF forces stopped turning over detainees to ANP and NDS in Dai Kundi, Kandahar, Uruzgan and Zabul pursuant to a July 12 order from Commander ISAF due to reports of a consistent practice of torture and mistreatment of detainees.[87] See Chapter V of this report.

D. Torture at NDS Herat

Overview

UNAMA interviewed 16 persons who were detained at the provincial NDS detention facility in Herat.[88] On UNAMA's visits to this facility, it held between 13 and 33 detainees, and detainees were held for an average of 28 days.[89] The ANP arrested four of the 16 detainees UNAMA interviewed.[90] These detainees were held at the NDS facility for the convenience of the province's national security prosecutor, whose office is located in an adjacent sub-compound. These four were interrogated only by the national security prosecutor or his staff — not by NDS officials — and did not report any physical abuse while held at the Herat facility.

NDS arrested and interrogated the other 12 detainees of which nine reported mistreatment amounting to torture.[91] This included a 16-year-old boy.[92]

Beating the Soles of the Feet with Rubber Hoses

UNAMA found compelling evidence that NDS officials in Herat systematically torture detainees for the purposes of obtaining information and, possibly, confessions. Their

[85] UNAMA meeting with NDS prosecutor, 28 December 2010, Kandahar.

[86] Letter to International Committee of the Red Cross from Head of NDS dated 26 July 2011.

[87] UNAMA meeting with ISAF officers, August 2011, Kandahar and Kabul.

[88] For this report, UNAMA included interviews with detainees held in NDS Herat between October 2010 and February 2011.

[89] These figures are based on official arrest and transfer dates gathered from registries, prosecutors, and judges and include the 13 detainees held at NDS Herat for which UNAMA gathered the necessary information.

[90] Detainees 193, 200, 201, and 203.

[91] Detainees 180, 181, 182, 183, 184, 185, 186, 190, 191, 192, 202 and 204. Detainees 180, 182, 183, 185, 186, 190, 201, 202 and 204 said they had been physically abused; of these, detainees 184 and 192 declined to provide any further details. Detainees 181 and 191 said they had not been physically mistreated.

[92] Detainee 190.

approach to torture appeared to be highly organised. Many detainee accounts were consistent and detailed. From these accounts, a clear picture emerged of the manner in which their initial interrogations unfolded: During the night, an NDS official removed the detainee from his cell, blindfolded and handcuffed him, and walked him to another room in the NDS detention sub-compound.[93] In that room, he was questioned and, at some point, an interrogator threatened to beat him if he did not start providing the information requested.[94] Then he was told to lie face down on the floor or pushed into that position.[95] The soles of his feet were then struck repeatedly with what most of the victims believed to be an electrical cable.[96] Detainees gave varying accounts of how many times they were struck. One detainee told UNAMA, *You need to experience it. You just scream and cry, not count.*[97] Then, the detainee was taken outside to stand or walk on concrete or gravel for some minutes, and returned to his cell.[98]

A typical account of a torture session at NDS Herat:

> *During my first interrogation, I was beaten. I was taken from my cell that night. I was blindfolded with a patu. It covered my head from my nose up. My hands were cuffed behind my back. I was taken to another room — it was not in the corridor with cells, but I'm not sure which room it was — while two people held me by the shoulders.*
>
> *In that room, I sat on carpet while they questioned me. They asked me about* [alleged accomplice]*, who they seemed to think was the attack's organiser. I kept answering* [with an alibi]*. The people from NDS seemed to know that I wasn't involved in the attack but seemed to want information from me. . . But they believed none of this. They were saying, "If you don't tell us the truth, we will beat you."*
>
> *Before they began to beat me, they made me lie flat on my face with my hands cuffed behind me and my knees bent so that my feet stuck up in the air. . . While I was in that position, they struck me twice on the back with some kind of cable and*

[93] Detainees 180, 182, 183, 185, 186, 190 and 204 said torture happened during the night. Detainees 180, 185, 186, 190 and 204 said they were removed from a cell by an official. Detainees 180, 183, 185, 186, 190 and 204 said they were blindfolded. The three detainees who described the blindfold said that it was a *patu* or a shawl that covered their face from the nose up. Detainees 180, 185, 186, 190 and 204 said they were handcuffed. Detainees 180, 182, 185, 186, 190, 202 and 204 said the official walked them to another room in the sub-compound.

[94] Detainees 185, 186 and 204.

[95] Detainees 180, 185, 186, 190 and 204. Detainee 202 described a different position. Detainees 180 and 190 said they were ultimately pushed into this position. Detainees 182 and 183 did not clarify the position in which they were when beaten, nor how they got into that position. Detainees 180, 185, 186, 190, and 202 specifically stated the floor was carpeted.

[96] Detainees 180, 182, 183, 185, 186, 190, 202 and 204 said they were struck on the soles of the feet. Detainees 202 and 185 also said they were struck on the back once or twice, respectively. Detainees generally said they were unsure what they were being struck with as they were blindfolded. Detainees 180, 182, 185, and 186 said they believed it was an electrical cable. Detainee 204 said he believed it was a plastic water pipe.

[97] Detainee 186.

[98] Detainees 180, 185 and 186 said this had occurred. Detainee 180 also said that water was poured over his feet at this time.

> *then on my feet. . . It was night-time and I was blindfolded, so I'm not sure* [that it was a cable]. *Whatever it was, it was very stiff. I think that it was a cable; because there were small holes on my feet that I think came from wires sticking out of the cable. . . They started beating me, asked me questions, and then started beating me again. When they started beating me again, I began to yell due to the pain. . . They then made me stand up, took me to the yard and had me stand there, on the cement, for five minutes.*
>
> *Then . . . they took me to the corridor, removed the blindfold, I prayed, and I was taken to my cell.*[99]
>
> **Detainee 185, November 2010**

This pattern of abuse suggests that interrogators inflicted the beatings to "break" or "soften up" detainees for the purpose of obtaining information during future interrogations.[100] While the evidence suggests that the decision to inflict beating was motivated by a detainee's refusal to provide requested information when questioned, it was not necessarily inflicted with the primary purpose of acquiring a particular piece of information during the beating itself. When interrogators asked questions during the beating, detainees perceived these as verbal abuse rather than serious queries, and none of them reported being questioned extensively immediately after being beaten. In general, detainees suffered beatings during their first interrogation and sometimes in multiple interviews thereafter, but at some point they apparently broke after which NDS conducted further interrogations without inflicting physical abuse.

E. Torture at NDS Khost

Overview

UNAMA interviewed 31 people who were detained at the provincial NDS detention facility in Khost province.[101] On UNAMA's visits to this facility, it held between 19 and 23 detainees for an average of 16 days.[102] Eighteen had been captured by international military forces, in a joint operation between ANSF, or by "campaign forces" generally accompanied by international forces or foreign personnel.[103]

Based on these interviews conducted in Khost, UNAMA found compelling evidence that NDS officials in Khost systematically used torture to obtain confessions and information from detainees. NDS Khost primarily used forced prolonged standing (which also has elements of sleep and sensory deprivation), suspension and beatings as their primary means of torture. Usually, upon arrival and before they were taken to cells, interrogators briefly questioned the detainees. If a detainee did not confess to the alleged criminal conduct, the NDS officials stated the detainee was lying and ordered

[99] The italicized sections are paraphrased to preserve the detainee's anonymity.

[100] Detainees 180, 182, 183, 185, 186, 190 and 204.

[101] For this report, UNAMA included interviews with detainees held in NDS Khost between August 2010 and May 2011.

[102] These statistics are based on the figures reported by detainees for the period of detention at NDS Khost. 14 detainees who had previously been held in NDS Khost provided this information.

[103] In Khost, "campaign forces" generally refers to the Khost Protection Force (KPF), and some detainees specifically identified them as such.

guards to take him outside and force him to stand. Subsequent interrogations were interspersed with suspension, beating, further forced standing, and time in the cell. Once detainees affixed their thumbprint to what were presumably confessions, NDS neither interrogated nor tortured them again, although they usually spent many more days in NDS custody.

Detainees' accounts explain how beating and forced standing were used to obtain a confession by NDS officials in Khost:

> *The first night I was standing outside, blindfolded. I was brought out there to stand very often, I cannot remember exactly how often that was, but I had to stand for hours during the night and during the day. In between were interrogations and beatings, and then I had to stand again. I had to stand still and always watch at the wall in front of me. I was standing close to the wall. Sometimes, during the day, I was standing in the shadow, sometimes in the sun. I was collapsing and passing out at times, so it is hard to remember for me exactly when I was standing outside.*
>
> *While standing outside they never gave me water to drink, and the guards that watched me were very rude. All in all, I was standing probably for two whole days and nights. It was in sequences, sometimes an hour, sometimes five hours. Sometimes I had to stand and sit down and stand again and when I got too tired to do that they beat me. In between the standings there were interrogations.*
>
> *The first time I was interrogated was in the morning after a night of standing. During that first time, I was interviewed by* [an interrogator]. *The other days another person was interrogating and beating me. The first guy interrogated me three times on the first day. He accused me of having ties with* [insurgents] *and asked me for specific names of commanders. . . I did not know them. . . I was interrogated for two hours, and then I was beaten. He beat me with two things. He used a yellow water hose that was about one metre long and had a diameter, as big as a bottleneck. There were three more water hoses there, and he used the yellow one. Then he also used some electric wires. These wires were intertwined and covered with a black plastic. I think one of these wires was covered with red plastic, but the rest with black plastic. The whole thing was as thick as an index finger. . .*
>
> *I was beaten on the soles, on the thighs and on my back, and also on my left upper arm. When he beat me on the soles I had to lie on the ground and lift my feet on a chair. And when he beat me on the back, bottom, and thighs, I had to lie flat on my belly. . .*
>
> *The beating stopped eventually, when I confessed. They wrote something down on a paper, and I thumb-printed it. I did not want to confess, and I refused the previous days, but after a while I could not take it any longer.*
>
> *After my confession they did not beat me anymore. Now, the injuries, the green and the black spots I had, can hardly be seen any longer, but I have a sharp pain in my stomach that makes walking difficult for me.*
>
> **Detainee 100, April 2011**

Forced Prolonged Standing

Of the detainees who reported physical abuse, six out of 11 detainees said they had been forced to stand for a prolonged period.[104] A session of forced prolonged standing began when, after deciding the detainee was not being fully cooperative, an interrogator ordered a guard to take him outside.[105] One detainee quoted an interrogator as saying, "If he will not explain and confess, then let him stand all night."[106]

Detainees reported that NDS officials took detainees into the detention sub-compound's yard where they placed hoods on the detainees, hand-cuffed them, and shackled their ankles while they were standing.[107] While sitting down was usually prohibited, NDS officials forced some detainees to sit down and stand up repeatedly.[108] Most detainees who had been forced to stand said they were provided with little or no water even if they were continually subjected to direct sunlight over a long period of time.[109] The length of enforced standing varied considerably, and not all detainees could calculate the period with precision.

This torture technique combines elements of a stress position, sleep deprivation, and sensory deprivation. The effects on the detainee are harsh. One detainee who had been forced to stand for multiple days said, "When they took me to the cell, I could not move for two or three days. I had pain in my back, and I could not feel that I still had feet."[110]

Suspension

Two-thirds of detainees in Khost who reported physical abuse said they were suspended.[111] Two slightly different methods of suspension were described. Three detainees said that two sets of handcuffs were used to hang them from a metal grate covering a window.[112] NDS officials bound their wrists with one set of handcuffs while affixing a second set of handcuffs, on one end, to the chain of the first set and, on the other end, to the window grate.[113] Three detainees described a variation on this method: their wrists were bound with one set of handcuffs and then a chain already attached to the wall was looped through the chain connecting the cuffs.[114]

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[104] Detainees 82, 84, 87, 90, 91 and 100.

[105] This was specifically alleged by detainees 82, 87 and 90.

[106] Detainee 87.

[107] Detainees 84, 87, 90 and 100 described the detention sub-compound's yard. Detainees 82, 84, 87, 90, 91 and 100 described the procedure.

[108] Detainees 82 and 100.

[109] The exception is that detainee 87 said he was given water when he requested it.

[110] Detainee 90.

[111] Detainees 82, 84, 87, 90, 91 and 101.

[112] Detainees 84, 87 and 101.

[113] There are grates of thin metal bars forming squares of approximately five-centimetre square in the cells and other rooms inside the NDS building visited by UNAMA. Detainee 87 specifically indicated that he had been hung from one of these grates.

[114] Detainees 82, 90 and 91. These detainees were not as precise, and it is possible the only difference was that the other pair of handcuffs was already attached to the grate. Based on UNAMA's tour of the facility it is reasonable to conclude there were two separate rooms used for suspension and that the technique used differs between the two rooms.

Regardless of the method employed, suspension results in the detainee's arms being stretched above their head, back to the wall, and, at most, the tips of their toes touching the floor.[115]

It may be inferred that the purpose of suspension is to "break" the detainee and obtain a formal confession. No detainee reported any ongoing interrogation during their suspension. Two detainees reported interrogators left them alone until they were taken down. Then NDS officials would ask them to confess or to thumb-print documents.[116] Three detainees reported they were left alone but that, from time to time, an interrogator would enter the room, ask whether they were ready to confess and then leave again.[117]

Beating with Rubber Hoses and Electrical Cables

Almost all detainees in NDS Khost reported having been beaten with a rubber hose, electrical cables or both.[118] Detainees' accounts indicate that the beating was intended to obtain information or a confession.[119] As one detainee put it:

> *They told me to tell them the true story. I told them that I already had. They said, "No, tell us the true story, about your terrorist activity." When I said that I had nothing to say, they started beating me with cables.*
>
> **Detainee 90, May 2011**

Detainees suffered beatings with both rubber hoses and electrical cables. They described the rubber hoses as being approximately one metre long and 2-2.5 centimetres in diameter.[120] Most were reported as yellow, but some detainees also reported seeing red and green hoses and also one or more "electric cables" consisting of multiple cables of similar dimensions, twisted together. [121][122]

Detainees reported being beaten on various parts of their bodies, but nearly all said they were beaten on their backs and on the soles of their feet.[123] Some detainees said this was done while they were laying face-down on the floor.[124] When their feet were being beaten, others said they either had to sit down while an NDS official lifted their

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[115] Detainee 82 said he could not touch the floor at all; detainees 87 and 91 did not clarify whether they could touch the floor.

[116] Detainees 90 and 91.

[117] Detainees 82, 84 and 87. The issue was not addressed in the interview with detainee 101.

[118] Detainees 81, 84, 90, 91, 100, 101 and 257.

[119] Detainees 84, 90, 91, 100, 101 and 257.

[120] Detainees 80, 84, 90, 91, 100 and 101.

[121] Detainees 80, 82, 84, 100 and 101 said they were beaten with yellow hoses; detainee 90 with a red hose; and detainee 91 with a green hose. Detainee 100 said, "There were three more water hoses there, and he used the yellow one." On one of its visits to NDS Khost, UNAMA saw two such yellow rubber hoses in an office used by NDS.

[122] Detainees 80, 90, 91 and 100 reported being beaten with electrical cables; all but detainee 91 provided a more detailed description.

[123] Detainees 84, 90, 91, 100 and 101 reported being beaten on the soles of their feet, and detainees 80 and 257 reported being beaten on their feet without specifying more precisely. Detainees 81, 84, 90, 91, 100 and 101 reported being beaten on the back, sometimes including the buttocks and thighs.

[124] Detainees 90, 91 and 101.

legs or they had to lie down with their feet on a chair.[125] Regardless of method, detainees reported they were handcuffed and their ankles shackled throughout this process.[126] They were not hooded.[127]

Detainees emphasised the degree of extreme pain that this method of abuse inflicted on them. One detainee said, *I could not wear shoes, my feet were so swollen*.[128] Another said, *For five days, I could not even stand when I prayed*.[129]

Torture of Children at NDS Khost

Among detainees who provided credible and consistent accounts of torture by NDS officials in Khost were children who described in detail abusive treatment they suffered during interrogations. UNAMA interviewed six individuals under the age of 18 (one child was aged 15, three children were 16 years old and two children were 17 years old) and four reported they had been forced to make false confessions.[130]

Three children reported they were beaten with cables until they gave the information their interrogators wanted.[131] Two others reported they were subjected to electric shocks until they made confessions.[132] Another child reported he had been beaten on his head until he lost consciousness.[133] In addition, this child reported that two NDS officials used a wooden stick to hurt his testicles and then threatened him with sexual abuse if he did not confess.

UNAMA found that two children were subjected to forced, prolonged standing.[134] Both children reported being made to stand outside (handcuffed and shackled) in the sun for long periods during the day. They also reported that NDS officials bound their wrists with one set of handcuffs while affixing a second set of handcuffs, on one end, to the chain of the first set and, on the other end, to a metal bar. These accounts, in particular reinforce the finding that NDS staff in Khost used similar abusive tactics that amounted to torture to obtain confessions during interrogations.

F. Torture at NDS Laghman

UNAMA interviewed 21 persons who were detained at the provincial NDS detention facility in Laghman province.[135] UNAMA found that detainees were held in this facility

[125] Detainee 80; and detainees 84 and 100.

[126] Detainees 80, 84 and 90 said they were; this was not clarified in interviews with detainees 91, 100, 101 and 257.

[127] This was stated or strongly implied by detainees 81, 84, 90, 91, 100 and 101.

[128] Detainee 84.

[129] Detainee 80.

[130] Detainees 82, 83, 84, 350, 355 and 356 were interviewed and detainees 82, 84, 350 and 355 reported forced confessions.

[131] Detainee 82, 84 and 350.

[132] Detainees 82 and 355.

[133] Detainee 355.

[134] Detainees 82 and 84.

[135] Detainees 109, 114, 115, 123, 124, 125, 126, 127, 128, 133, 134, 135, 142, 143, 145, 146, 147, 148, 149, 150 and 151. For this report, UNAMA included interviews with detainees held in NDS Laghman between January and May 2011.

for an average of 10 days.[136] Of the 21 detainees interviewed, 14 reported that interrogators had abused them, including one child of 14 years.[137] Fourteen individuals stated they had been initially detained by NDS, while four others said that ANP had arrested them.[138]

Some detainees reported having been hidden during UNAMA's monitoring visits to the detention facility. Such allegations coupled with the unusual degree of fear detainees expressed about discussing their treatment with UNAMA interviewers, made documenting some aspects of torture at NDS Laghman difficult.

In spite of such difficulties, UNAMA found compelling and highly consistent evidence that NDS staff in Laghman province systematically used torture to obtain confessions from detainees. Based on accounts of inmates, interrogators used wooden sticks and rubber hoses to beat detainees' feet, back, and head.[139] Individuals also reported their interrogators slapped, punched and kicked them, as well as pulled their testicles.[140]

One detainee provided a representative account of treatment received by most detainees during interrogation at NDS Laghman:

> *I have been interrogated three times – on the second night, and on the mornings of the third and fourth days. On the second and third days, I was beaten with a wooden stick. . . . During the interrogation, they asked why I had* [committed an alleged act for which he admits guilt] *and blamed me for many other incidents as well. . . They would ask me a few questions, and when they did not like my answers, they would beat me. They beat me with a stick and punched me.* [Detainee indicates with his hands and fingers that the stick was approximately one metre long and one centimetre in diameter.] *I was only beaten on the soles of my feet. My back was on the floor, and my feet were shackled and resting on the seat of the chair. During the questioning, there were two or three sessions of beating, during which I was beaten multiple time. . . I thumb-printed documents on the second, third, and fourth days.*
>
> **Detainee 133, March 2011**

All of the abuse took place in the context of the interrogation process, and its main purpose was to obtain formal confessions.[141] One detainee explained, *If they thought*

[136] This figure is based on official arrest and transfer dates gathered from registries, prosecutors, and judges and covers the 13 detainees held at NDS Laghman for which UNAMA gathered the necessary information.

[137] Detainees 114, 115, 123, 125, 126, 127, 128, 133, 134, 135, 143, 146, 147 and 149. Detainee 146 did not provide details, and detainee 134 broke off his account as he grew fearful a guard might overhear.

[138] Detainees 109, 114, 115, 124, 125, 127, 128, 142, 143, 145, 146, 148, 150 and 151 were detained by NDS and detainees 123, 126, 133 and 147 were arrested by ANP.

[139] Detainees 114, 115, 125, 127, 128, 133, 134, 135, 143, 147 and 149 said interrogators used wooden sticks and rubber hoses. Those who were asked to describe the stick with which they were beaten indicated it was approximately one metre long and one-three centimetres in diameter. Detainees 114, 115, 125, 133, 134, 135, 143, 147 and 149 described which parts of body they were beaten on. Those detainees who provided a high level of detail described how the soles of their feet were beaten.

[140] Detainees 114, 123, 126 and 135; detainees 115, 133 and 135; and detainee 114.

[141] This was indicated by Detainees 114, 115, 123, 127, 133, 135, 143 and 149. There was no contradictory information from other detainees.

that I was saying false things, they would beat me. During the beating itself, the investigator would say, "Accept that you did this."[142] Another recounted his interrogator saying, *I will beat you until you confess. Just confess, and we will stop.*[143]

G. Treatment at other NDS Facilities

In addition to these five NDS facilities at which UNAMA documented compelling evidence of systematic torture, UNAMA interviewed detainees held at 17 other NDS facilities. At two of these facilities in Kapisa and Takhar UNAMA received multiple, credible allegations of torture. At the time of writing of this report, UNAMA could not conclude that systematic torture was occurring in these facilities and continues to investigate the situation.

Kapisa
UNAMA interviewed 16 detainees at the MoJ facility in Kapisa who had been detained by NDS in Kapisa.[144] UNAMA found credible evidence that four out of the 16 detainees interviewed were tortured while in NDS detention.[145] Detainees recounted serious forms of abuse, including being beaten with wooden sticks on their legs.[146] One detainee reported he had also been subjected to electric shocks.[147] [UNAMA notes that 12 of the 16 detainees interviewed reported they had not been mistreated while in NDS detention.] [148]

Takhar
UNAMA interviewed nine detainees at the NDS facility in Takhar, and found that five of the nine detainees were tortured or ill-treated including two 17-year-old children.[149] In one instance the common practice of an interrogator beating the detainees feet featured. A 17-year-old boy reported he had been forced to lay down with his feet held up off the ground while the NDS official beat the soles of his feet with a plastic pipe.[150] While these reports are consistent with common practices reported and found in other NDS facilities, UNAMA could not make firm conclusions whether torture was occurring systematically in Takhar.

Paktya and Uruzgan
UNAMA interviewed numerous detainees at these two NDS facilities and at the time of its visits found indications that torture was not occurring. This assessment is based on

[142] Detainee 133.

[143] Detainee 115.

[144] Detainees 236, 237, 238, 239, 240, 241, 242, 265, 266, 267, 268, 269, 270, 271, 272 and 274. In spite of repeated requests, NDS officials at the NDS detention facility in Kapisa did not give UNAMA access to detainees held in the facility.

[145] Detainees 238, 242, 270 and 271.

[146] Detainees 237 and 271.

[147] Detainee 271.

[148] Detainees 236, 237, 239, 240, 241, 265, 266, 267, 268, 269, 272 and 274.

[149] Detainees 36, 37, 38, 39, 41, 42, 43, 44 and 45 were interviewed and detainees 37, 42, 43, 44 and 45 were tortured or ill-treated.

[150] Detainee 43.

interviews conducted over a particular period of time in these facilities, which seldom referred to torture or any other forms of abuse:

- UNAMA interviewed 16 persons detained at the provincial NDS detention facility in Paktya province.[151] One detainee reported he was tortured. Detainees were held at that facility during various time periods between August 2010 and May 2011.

- UNAMA interviewed 23 persons detained at the provincial NDS detention facility in Uruzgan province.[152] None of the detainees reported any mistreatment when detainees were held at that facility during between May 2010 and October 2010.

The finding of no or few incidents of torture at these facilities does not categorically rule out the possibility that torture may have occurred in these locations. The finding may be indicative of the sample of individual conflict-related detainees interviewed and time period of visits or detention.

Other NDS Detention Facilities

UNAMA received numerous allegations regarding the use of torture at 15 other locations covering 17 NDS facilities. These are the provincial facilities in Badakhshan, Badghis, Baghlan, Balkh, Dai Kundi, Farah, Helmand, Kunar, Kunduz, Nangarhar, Samangan, Sari Pul, Wardak, Zabul and Kabul (Department 17/40, Department 18/34 and Department 1). A total of 126 detainees were interviewed across these 17 facilities. Thirty-four alleged they had been tortured at one of these facilities (25 percent). At the time of writing of this report, UNAMA had not established the credibility of the allegations based on the number of interviews conducted and the need to corroborate allegations satisfactorily. UNAMA continues to investigate these allegations.

IV. Torture and Cruel, Inhuman or Degrading Treatment by the Afghan National Police

UNAMA interviewed 117 conflict-related detainees who had been in police custody in 19 different provinces covering 22 facilities.[153] UNAMA found credible evidence that 41 individuals (35 percent) had been tortured or ill-treated by the Afghan National Police (ANP) or the Afghan National Border Police (ANBP) at some facilities in the 19 provinces.[154] UNAMA also received numerous allegations of torture and ill-treatment at

[151] Detainees 64, 65, 66, 67, 68, 69, 70, 71, 75, 76, 77, 328, 329, 330, 331 and 352.

[152] Note that this number includes 13 detainees interviewed before October 2010, when UNAMA began its nationwide programme of systematic detention monitoring, and as such are *not included* in the total number of detainees interviewed between October 2010 and June 2011. UNAMA began systematic detention monitoring in Uruzgan in June 2010. The 10 detainees interviewed as part of the nationwide monitoring effort that began in October 2010 are detainees 296, 298, 299, 300, 301, 302, 303, 306, 324 and 326.

[153] The provinces are Badakshan, Badghis, Baghlan, Balkh, Dai Kundi, Farah, Herat, Kabul, Kandahar, Kapisa, Khost, Kunar, Kunduz, Laghman, Nangarhar, Paktya, Takhar, Uruzgan and Zabul.

[154] Detainees 1, 2, 16, 18, 21, 23, 54, 55, 56, 57, 58, 82, 93, 94, 106, 131, 133, 170, 176, 178, 230, 265, 288, 289, 290, 296, 303, 304, 323, 325, 344, 349, 355, 357, 359, 361, 362, 368, 369, 372 and 374.

several other ANP facilities. At the time of writing of this report, UNAMA had not established the credibility of these allegations and continues to investigate.

UNAMA's research to date suggests that ANP officials in some areas used torture as well as cruel, inhuman, or degrading treatment at the time of arrest and during interrogation. ANP also appears to have a broader range of motivations. Of those who alleged ill-treatment, 31 percent said that it was inflicted at the time of arrest or at a check post, 23 percent at a district headquarters, and 25 percent at a provincial headquarters. Only 60 percent of persons interviewed alleged the abuse took place in the context of an interrogation. [Note that these figures sum to more than 100 percent, because the same individuals alleged abuse at multiple locations.]

UNAMA found compelling evidence of torture or ill-treatment by ANP officers in several districts of Kandahar. The following case is one account of the experiences of detainees interviewed.

> *Around 35 days ago, a group of police came to my house and arrested me around 11am in the morning. They handcuffed me and took me to the district police office. . . At their office, a group of police asked me if I had killed someone recently.* [They told me a name of a man who I did not know and I had not done anything wrong to him]*. I said I did not kill anyone and had been in my home all the time. They said "if you do not confess we will kill you". They also asked me to accept the responsibility of killing so that they would not harm me. I said I did not kill the person. They crossed my hands* [folded left hand from the top of his shoulder and right hand from his waist] *on the back and start beating. They beat me with an electric wire. During the beating, they asked me to confess that I was responsible for killing a man in xxx district . . .* [The detainee displayed four visible recovering injury marks on his right calf, front of his right leg and across his back; each approximately 15 centimetres long and two centimetres wide which he stated were caused by beating with electric wires]*. I did not confess the crime. After a while the officers start beating me on my feet by a stick. That was very painful. They beat me like 20 minutes on both my feet* [the detainee displayed visible recovering bluish-red welt marks on the soles of his feet]*. The beating was very hard. They removed my clothes and threatened they would cut my penis if I do not confess. Seeing a knife, I thought they would cut my penis, I confessed I had committed the crime. Once I confessed they did not beat me but kept me handcuffed for almost the whole day. I was kept in their detention for four more days before being transferred to the NDS detention facility in Kandahar.* [155]
>
> **Detainee 374, July 2011**

Several other examples from interviews with detainees indicate the range of torture and ill-treatment by ANP reported in other areas.

- At the ANP detention centre in Arghandab district of Kandahar three police officers approached a detainee, put a cloth in his mouth, stuck fingers in his nostrils, and beat him with their hands on his back and shoulders. They asked whether he was a

[155] The name of the district has been omitted to preserve the detainee's anonymity and for security reasons.

Taliban commander and whether he had been responsible for attacks on their check posts. They repeated these beatings whenever the detainee denied it.[156] (February 2011).

- In Daman district in Kandahar, police officers detained and tortured a detainee during interrogation. They covered the detainee's face and kept his hands cuffed behind his back. ANP officials subsequently suspended the detainee from the roof of a toilet room using a rope attached to his handcuffs. After an hour he was forced to confess he was a Taliban. ANP officials transferred the detainee to the ANP provincial facility in Kandahar where he was detained for two days in the toilet with his face covered.[157] (March 2010)

- During a series of interrogations, ANP officials in Kunduz provincial headquarters beat a detainee on the soles of his feet with cables, slapped the detainee and beat him repeatedly on the back with a metal rod. ANP officials demanded he either confess to killing a local commander or pay a large bribe.[158] (April 2011)

- ANP officials and Afghan Local Police in Dasht-e-Archi district in Kunduz handcuffed a detainee, beat him with their rifles and rocket-propelled grenade launchers on his arms, legs, and back and squeezed his testicles. They were demanding the location of an alleged weapon.[159] (May 2011)

- ANP officials at the ANP provincial facility in Tirin Kot, Uruzgan severely beat a detainee, poured hot water on his head and burned his left hand with a cigarette. He was accused of planting and detonating an improvised explosive device. UNAMA observers saw six burn marks on the detainee's left hand.[160] (November 2010)

Torture of Children by Afghan National Police

UNAMA found that several child detainees interviewed reported mistreatment and torture by ANP. The following case examples illustrate the range of abuse reported:

- At a provincial ANP headquarters in Khost, after denying that he was a member of the Taliban, a boy aged 16 was pushed to the floor as a police interrogator beat him on the backs of his thighs, lower back, and head first with a wooden stick and then with a rubber hose and an electrical cable. The boy thumb-printed a confession.

- Also at ANP headquarters in Khost, police officers tortured a 16-year-old boy during interrogation over three days.[161] A stick was tied between his legs and he was beaten on the soles of his feet with a cable and a pipe. He was also subjected to electric shocks on his thumbs. The boy was forced to thumb-print documents confessing to crimes.

[156] Detainee 230.

[157] Detainee 290.

[158] Detainee 57.

[159] Detainee 54.

[160] Detainee 323.

[161] Detainee 355.

- At Kunduz provincial ANP headquarters, a 16-year-old boy was tortured.[162] A police officer interrogated him asking if he was a Taliban and told him he should confess to the charges. The boy refused and he was slapped and kicked repeatedly. The police officer forced the child's thumb-print on a piece of paper.

V. Transfer of Detainees to NDS and ANP by International Military Forces

I was arrested in the border between Afghanistan and Pakistan almost xxx months ago by border police. They were undertaking search operations. I was travelling on a commercial vehicle. Border police were searching every vehicle and everyone travelling on those vehicles. They searched my body and found a letter sent by someone to a friend in Kandahar. I was carrying the letter. They arrested me and kept me in a room. In the night two border police officers came and interrogated me. They asked me to tell about the letter and Taliban activities. I said I did not know. Those officers made me lie on my chest and beat me with their boots. They asked if the letter belonged to me. They transported me to NDS headquarters in Kandahar on the following day.

I spent four days on the veranda of the NDS detention office. On the fourth day in the night, around 9pm, NDS officials called for an investigation. They crossed my hands (hands folded left hand from the top of my shoulder and right hand from my waist) and tied them on my back. There were three officers. Two of them held me and third one beat me. He had black electric wires [wide like a thumb] *and beat me on my hands, back and head. The beating lasted for almost three hours. During the beating, they asked me to confess that I was transporting Taliban letters to Afghanistan and back to Pakistan. I denied the allegations.*

After the interrogation and beating, they left me in the veranda for next four days. They did not interrogate me any further. On the eighth day after my arrival, they took me to their detention facility. There were many detainees in the veranda. NDS officials would take them inside one by one and beat them during investigation.

I spent two months and 20 days in NDS detention altogether. I never saw an NDS prosecutor. One month ago, I was taken to the court. I was sentenced to two years imprisonment for "carrying Taliban letter".

Except those arrested by Canadians, every single person arrested by NDS officials has to go through the similar experience I went through. Even the detainees handed over by Americans are interrogated by NDS and tortured. For those arrested by Canadians, two NDS officials were allocated for further interrogation and those interrogated by them never complained about ill-treatment by NDS officials.

Detainee 372, March 2011

UNAMA's detention observation included interviews with 89 detainees who reported the involvement of international military forces either alone or with Afghan security

[162] Detainee 58.

forces in their capture and transfer to NDS or ANP custody. UNAMA found compelling evidence that 19 of these 89 detainees were tortured in NDS facilities namely, NDS Department 90/124 and NDS Laghman and three in ANP custody (ANP in Kunduz and Tirin Kot). This situation speaks to the need for robust oversight and monitoring of all transfers of detainees to NDS and ANP custody and possible suspension of transfers where credible reports of torture exist.

ISAF rules of engagement permit the detention of individuals captured on the battlefield or in counter-terrorism operations that must be released or transferred to the custody of Afghan authorities within 96 hours.[163] Reportedly, Canada, the UK and US have declared caveats permitting them to transfer detainees within 14 days. ISAF rules also state "consistent with international law, persons should not be transferred under any circumstances in which there is a risk that they will be subjected to torture or other forms of ill-treatment."[164] In September 2007, bilateral and multilateral agreements between the Government of Afghanistan and ISAF member states in "Exchange of Letters" permitted ISAF member States access to NDS facilities where they transferred detainees to monitor their treatment. [165]

The US and other ISAF military forces, including Canada and the UK reportedly transferred approximately 2,000 individuals to Afghan custody in 2009 and 2010.[166] Judicial rulings in Canada and the UK resulted in suspension of transfers of detainees by those countries' military forces to various NDS facilities over different periods of time.[167] In both cases, the courts' decisions were based on the credibility of information that NDS abused and tortured detainees in selected locations (Kabul and Kandahar). The UK stopped transfers to NDS Kandahar and NDS facilities in Kabul. Canada ceased transfers to all NDS facilities in Kabul, but continued to transfer to Kandahar's MoJ Sarapoza prison. Canadian and the UK governments also implemented monitoring programmes in detention facilities where they handed over detainees to custody of Afghan authorities.

The US has not yet put in place a monitoring programme to track detainees it hands over to Afghan authorities. A US government official advised UNAMA that the US

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[163] Department of Defence Bloggers Roundtable with Robert Harward, Commander, Joint Task Force 435, www.dodlive.mil/ (27 January 2010).

Available at http://www.defence.gov/Blog_files/Blog_assets/20100127.Harward.transcript.pdf.

[164] See "U.S. Monitoring of Detainee Transfers in Afghanistan: International Standards and Lessons from the UK and Canada" Human Rights Institute, Columbia Law School, December 2010, page 6.
Available at www.law.columbia.edu/ipimages/.../AfghanBriefingPaper%20FINAL.pdf.

[165] Exchange of Letters on Access to Detainees Transferred to the Government of Afghanistan, 6 September 2007.

Available at www.afghanistan.gc.ca/canada-afghanistan/documents/detainee-detenu.aspx?lang=eng.

[166] Department of Defence Bloggers Roundtable with Robert Harward, Commander, Joint Task Force 435, www.dodlive.mil/ (27 January 2010).

[167] *Amnesty International and BCCLA v. Chief of the Defence Staff*, 2008 F.C. 162 (Can.) 85-87 and *Queen in re: Maya Evans v. Secretary of State for Defence*, [2010] EWHC 1445 (Q.B.) (U.K.) 43. The Canadian appellate court found allegations of abuse to detainees transferred by Canada to NDS to be highly credible. The UK High Court ruled the UK could continue to transfer detainees to NDS in Helmand and Kandahar, so long as detainees were properly monitored, but not to Kabul (where transfers had stopped) as the risk of torture was too great making transfers illegal under the European Convention on Human Rights.

Embassy finalised plans for a post-transfer detainee monitoring programme and a proposal is with the Afghan government for its consideration. The Embassy stated that it regards the proposed programme as a positive way for the US to continue its work with the Afghan government to ensure its detention system is safe, secure, and humane.[168]

In early July 2011, US military forces stopped transferring detainees to NDS and ANP authorities in Dai Kundi, Kandahar, Uruzgan and Zabul based on reports of a consistent practice of torture and mistreatment of detainees in NDS and ANP detention facilities in these areas.[169] ISAF advised UNAMA that it asked the Government to investigate these reports and indicates it will not resume transfers until the situation is satisfactorily addressed.

In early September 2011, in response to the findings in this report, ISAF stated that it stopped transferring detainees to certain installations as a precautionary measure.[170]

Recent United States military and ISAF policy decisions to suspend transfers of detainees to NDS and ANP also reflect the legal limits imposed on US military assistance under the "Leahy Law." These legal provisions in the *US Foreign Appropriations Act* and *Defence Appropriations Act* prohibit 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 the concerned government is taking effective remedial measures.[171] In the situation of Afghanistan this would presumably 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.

VI. Accountability of NDS and ANP Officials for Torture and Abuse of Detainees

Accountability of both NDS and ANP officials for torture and abuse of detainees is weak, not public and rarely enforced. Limited independent, judicial or external oversight exists of both NDS and ANP as institutions and of alleged crimes committed by NDS and ANP officials including torture and abuse.

As a matter of practice, most claims of criminal conduct, abusive or unprofessional behaviour are dealt with internally and they rarely (in the case of NDS) or inconsistently

[168] UNAMA interview with US government official 29 August 2011, Kabul.

[169] UNAMA meetings with ISAF officers August 2011 and NDS Deputy Director Kandahar, Col Abdul Wahab 21 August 2011.The suspension of transfer of detainees was ordered pursuant to a FRAGO dated 12 July 2011.

[170] UNAMA meetings with ISAF officials, September 2011, Kabul and 7 September 2011 public statement of ISAF spokesperson General Carsten Jacobson, "We are aware that a UN report will come out and we will look into that report. We have not stopped the overall transfer of detainees, but to certain installations only." Also see footnote 24.

[171] See footnote 28.

(in the case of ANP) result in cases being handed over to prosecutors for independent criminal investigation. When cases warrant criminal investigation, the process of referring cases to an external criminal agency is unclear and infrequently used.

A. Accountability Measures for NDS Officials

Legal Oversight and Mechanisms for Criminal Prosecution and Disciplinary Action
Although the Constitution prescribes that investigation of criminal conduct by police, armed forces, and national intelligence officials shall be regulated by a "special law," the legal basis for the internal accountability framework of NDS is unknown and not public.[172] While the bulk of the mandate of NDS is covered under the *National Security Law*, oversight and accountability measures are not set out in the law. It is unclear whether another confidential presidential decree exists supplementing the legal framework of NDS; in practice, some procedures for oversight of NDS are observed.

Any allegation of torture, mistreatment or violation of due process should be referred to an internal NDS investigator who will examine the claim of a detainee in cooperation with a forensic medical examiner. If the claim is deemed actionable, the case should be referred to a national security prosecutor for further investigation and possible trial of the accused official.[173] At this stage uncertainty exists regarding how cases proceed. According to senior officials in the NDS, a substantiated claim of torture or abuse that is taken to trial will first be prosecuted within a special "NDS court" – an internal tribunal consisting of NDS officials. After this primary court panel has delivered a verdict, the decision may be appealed before another NDS tribunal. A case is handed over to a public security panel of the Supreme Court only when it reaches the final appellate stage. According to this procedure, the competent tribunal applies the *Interim Criminal Procedure Code*, while criminal conduct is charged according to the *Code of Military Justice* and the *Penal Code*.

Apart from this primarily internal accountability mechanism, a separate stream of investigation and prosecution is available in cases of alleged misconduct by NDS officials. According to the Attorney General's Office, when an allegation of torture, misconduct or abuse of office by an NDS official is revealed, it is possible for an anti-corruption prosecutor to take on a criminal investigation and prosecution before an anti-corruption court. In these cases, NDS officials would be tried using the *Interim Criminal Procedure Code*, the *Anti-Corruption Law* and the *Penal Code*.

Cases in which these criminal accountability measures are used appear to be minimal. In the situation of the NDS procedure using NDS courts, it appears there has never been an allegation of torture or abuse reaching that stage of the procedure. Senior NDS officials told UNAMA they have investigated only two claims of torture in recent years, neither of which led to charges being pursued against the accused NDS official.[174] Despite repeated requests, NDS did not provide UNAMA with any information on any other disciplinary or criminal action against NDS officials for torture and abuse.

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[172] Article 134 of the Constitution of Afghanistan.

[173] UNAMA meetings with Sayed Noorullah Sadat, Head of Appeals and Mohibullah Mohib, Chief Director of Judicial Prosecution and Judicial Monitoring, Judicial Prosecution Department, Attorney General's Office of Afghanistan, 5 July 2011, Kabul.

[174] UNAMA meeting with NDS Legal Adviser, Lt. Gen. Sayed Zuhoor Rasully, 16 January 2011, Kabul.

Anti-corruption proceedings have produced criminal investigations and prosecutions of NDS officials. Sources within the Attorney General's Office pointed to nine cases in the last two years that led to a criminal investigation, prosecution and eventual conviction of NDS officials in anti-corruption proceedings. One of these cases involved an allegation of torture, which suggests the system of oversight of NDS through anti-corruption procedures may be more robust than NDS' internal mechanisms.[175] Neither mechanism however is an effective deterrent against torture as it continues to occur with few cases pursued through either the internal NDS investigation system or any external measure.

NDS Oversight Commission

On 28 December 2010, the NDS Chief of Foreign Relations announced the creation of a commission designed to provide oversight of "NDS detention facilities for any issues related with the mistreatment of the detainees and general condition of detention facilities."[176] This commission consisted of representatives from three separate NDS Departments (18, 24 and 33) and the legal advisory and chief of staff offices. According to NDS, the commission's mandate required delegations to undertake unannounced trips to detention facilities in provinces throughout Afghanistan. These delegations were to examine case files in NDS to determine whether problems with due process issues existed and interview detainees regarding any allegations against NDS officials for abuse or mistreatment.[177] These delegations, upon completing a monitoring visit to a province, were to complete a report to the Director General of NDS.

UNAMA followed the work of these oversight commissions as delegations made visits to facilities in Herat, Kandahar and Nangahar in January and early February 2011. UNAMA observed issues with the scope and quality of these inquiries. In spite of UNAMA's requests, NDS has provided no information on the conclusions or recommendations of this oversight body, whether representatives found any grounds for criminal or disciplinary action against NDS staff or recommended investigations into misconduct or abuse. It is unclear whether this commission is still operational.

B. Accountability Measures for ANP Officials

The ANP has both internal and external accountability mechanisms for misconduct with the vast majority of cases against ANP members addressed internally through the MoI. There is limited independent or external oversight of cases of police abuse or criminal conduct. Crimes committed by ANP officials, however, are supposed to be referred to the Directorate of Military Affairs within the Attorney General's Office for investigation and possible criminal trial by a military prosecutor.[178] Little information is available whether MoI refers any cases of ANP crimes to the judicial system.

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[175] UNAMA meetings with Sayed Noorullah Sadat, Head of Appeals and Mohibullah Mohib, Chief Director of Judicial Prosecution and Judicial Monitoring, Judicial Prosecution Department, Attorney General's Office of Afghanistan, 5 July 2011, Kabul.

[176] Letter from NDS Chief Foreign Relations, Ahmad Zia Saraj, to the International Committee of the Red Cross, 28 December 2010. UNAMA and political sections of Australian, Canadian and UK Embassies were copied on this correspondence.

[177] UNAMA meeting with NDS Legal Adviser, Lt. Gen. Sayed Zuhoor Rasully, 16 January 2011, Kabul.

[178] Other possibilities are available for external oversight of the police in criminal cases including the Special Anti-Corruption Unit of the Major Crimes Task Force and the High Office for Oversight in the

External oversight of the ANP is currently being developed with a police monitoring mechanism being introduced in the Afghanistan Independent Human Rights Commission to serve as a type of independent ombudsperson on police misconduct. It remains to be seen how well this office will be staffed and how free their access to the police, its offices, case files, and facilities will be. UNAMA is of the view that the mechanism could promote civilian accountability within ANP if properly designed and resourced.

The internal accountability mechanisms of MoI are more numerous and developed than those of the NDS, although they lack cohesion and coordination. Established MoI policies require police officers to report misconduct or crimes committed by their fellow officials. Private citizens can also report such breaches of conduct or law through a special office established in the Office of the MoI (Central Office 119). This office reviews cases and decides if they have merit and should be pursued with further investigation or not. If a case is to be followed further, it is referred to one of three MoI structures with authority to investigate police misconduct: the Inspector General's Office, the Department of Gender, Human Rights and Child Rights, or the Criminal Investigation Department. Apart from this Central Office 119 referral mechanism, all three units can receive reports, complaints or cases directly from individuals who allege that an ANP official has violated the law, professional conduct or the rights of an individual.

How these different departments and offices interact and the degree to which they coordinate their handling of complaints and cases of abuse is unclear – as are their activities. In addition, the precise standard used to determine when a case is to be addressed internally rather than through referral to a military prosecutor lacks clarity. Duplication of efforts and the possibility of serious criminal cases and human rights violations, such as torture, being referred to an internal investigation measure, rather than to a prosecutor are very high. Real concerns exist regarding how cases of serious abuse are handled, as there appear to be no standards or policies for internal investigative procedures that protect the anonymity, confidentiality or privacy of complainants, victims or witnesses in police abuse cases.

VII. Due Process Violations and Arbitrary Detention

UNAMA found that 93 per cent of conflict-related detainees spent an average of 20 days in detention before being charged with a crime and transferred to a MoJ facility - far in excess of the 72 hour time limit prescribed in law.[179] UNAMA's observation also provides some insight into the periods for which institutions tasked with interrogation typically hold detainees:

Office of the President of Afghanistan. Cases of police involvement in high-level corruption have been prosecuted under the mandates of these offices. It is unknown whether cases taken up by these entities were referred by MoI or the result of separate investigations or complaints.

[179] These figures are based on official arrest and transfer dates gathered from detainees, registries, prosecutors, and judges and include information on the cases of 116 conflict-related detainees for whom UNAMA was able to gather the necessary information.

- Detainees in provincial NDS facilities were held for an average of 15 days, with 92 per cent held longer than the 72 hour statutory limit for time spent in initial custody.

- Detainees in the national facility of NDS Department 90/124 were held for an average of 15 days. Of these detainees, 100 per cent were held for longer than 72 hours, 24 per cent for longer than 15 days, and six per cent for longer than 30 days. These detainees already spent an average of four days in provincial NDS detention prior to their transfer to Department 90/124.[180]

- Detainees in the national facility of NDS Department 17/40 were held for an average of 126 days.[181] While, officially, this facility is not a "detention centre" under the applicable law it serves that purpose in practice.

- Conflict-related detainees in ANP facilities were held for an average of seven days, with 55 per cent held for longer than 72 hours prior to charge and transfer.[182]

- Detainees held by the international military forces were held for an average of 11 days before being transferred to ANP or NDS custody.[183]

These findings reinforce the well-established concern that detainees who "find themselves in the hands of those officers who are also in charge of investigating the crime at stake have an interest in obtaining a confession or other information needed to solve a crime."[184] While 46 per cent of conflict-related detainees UNAMA interviewed experienced torture at some point in their pre-trial detention, only one per cent of those detainees reported their mistreatment occurred while held in a MoJ prison, detention centre, or juvenile rehabilitation centre.[185] UNAMA's findings show that lack of compliance with statutory time limits while detainees are in ANP and NDS detention results in arbitrary detention and increases the vulnerability of detainees to torture.

Afghanistan's Constitution and criminal laws, however, include many due process protections and legal safeguards designed to prevent torture, mistreatment and unlawful detention in the criminal justice system. Both the Constitution and the *Interim Criminal Procedure Code* instruct the courts to reject any evidence, including confessions, gathered through use of torture.[186] Police and prosecutors must adhere to

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[180] These statistics are based on the figures reported by detainees for their period of detention at the national facility of NDS Department 90/124.

[181] These statistics are based on the figures reported by detainees for their period of detention at the national facility of NDS Department 17/40.

[182] These figures are based on official statistics gathered from registries, prosecutors, and judges and cover the 38 conflict-related ANP detainees for whom UNAMA was able to gather the necessary information.

[183] These statistics are based on the figures reported by detainees for their periods of detention at detention facilities (principally, field detention sites) run by international military forces. UNAMA interviewed 49 such detainees who provided the information.

[184] A/HRC/13/39/Add.5, para. 88.

[185] Detainee 104 alleged he had been beaten by a prison director.

[186] Under the Constitution, "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

clear time limits prescribed within the *Interim Criminal Procedure Code* for conducting prompt investigations into criminal conduct and detaining suspects only as long as necessary. A detainee has the right to engage defence counsel from the moment of arrest.[187]

Use of Forced Confessions to Establish Guilt

In spite of these and similar protections in law, due process guarantees are routinely ignored in practice throughout the criminal justice system as this report's findings suggest. Law enforcement and prosecutors rely almost entirely on confessions of guilt from defendants as the basis for prosecution in court. For their part, the courts rarely examine the extent to which confessions have been forced or coerced, even when defendants or defence counsel specifically challenge such evidence at trial. Neither police, the NDS, prosecutors nor judges seem to question the reliability of such information and base charges, indictments and convictions on evidence gained through explicitly illegal means.

These practices violate Afghan law, international human rights standards and are not in line with the body of expert opinion that holds information gained through torture is manifestly unreliable and non-probative of an individual's guilt or innocence.

Lack of Compliance with Legal Time Limits and Procedural Safeguards

ANP and NDS officials also disregard procedural time limits and legal prescriptions for where detainees are held, raising questions about the lawfulness of detentions and giving rise to conditions in which the use of force to obtain confessions are far more prevalent. As the legal process unfolds, the law also requires that the suspected, accused, or convicted criminal be moved through a series of facilities – from the ANP or NDS detention facility, to a detention centre.

Under the *Interim Criminal Procedure Code*, the police may not detain a suspect for more than 72 hours while they conduct initial interviews, prepare charges against an individual and hand the case over to a primary prosecutor *(Saranwal-e-btadaiah)* who confirms the charges and basis for detention.[188] Once the detainee is charged with a crime, prosecutors then have a maximum period of 30 days from the time of arrest, to investigate and file an indictment against a suspect.[189] At this stage, detainees should be

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an authorised court by an accused in a sound state of mind." (Constitution, article 30) *Interim Criminal Procedure Code* (ICPC) articles 5(4) - (5) and 7 provide that "[t]he suspect and the accused shall not undergo intimidations or any form of physical or psychological pressure", that "[t]heir statements shall be made in a condition of absolute moral freedom", and that "[t]he evidence which has been collected without respect of the legal requirements indicated in the law is considered invalid and the Court cannot base its judgment on it."

[187] Constitution, article 31; ICPC articles 32 (3) and 38.

[188] *Police Law*, articles 15 and 25. Article 31 of the ICPC provides for the judicial police to interrogate and inform suspects of the reasons for their arrest within the first 24 hours of being taken into custody. Thereafter, under article 34, the prosecutor has 48 hours to confirm to interview the suspect and review the police investigation.

[189] This 30-day period consists of the initial period of detention up to 72 hours in the arresting authority's custody as per articles 31 and 34 of the ICPC with the prosecution then having up to 15 days from the time of the suspect's arrest for its investigation. Prosecutors can request a further extension of 15 days, to complete their investigation and either file an indictment or release the suspect and drop the charges against them (Article 36 of the ICPC). If an indictment is filed, the court must deliver a copy of the

moved to a "detention centre" administered by the Central Prisons Directorate in the MoJ.[190]

Separation of detention authority is designed to ensure detainees do not remain in the custody of the individuals responsible for their interrogation for long periods of time, effectively serving as a safeguard against coercion and abuse. This safeguard is critical since the *Interim Criminal Procedure Code* does not provide for judicial review of the legality of detention in the early investigative stages after an individual is arrested. Instead, the prosecutor retains the ability to detain or release from the time in which charges are brought until the beginning of trial with little judicial oversight.[191]

Many prosecutors in national security cases routinely delegate their investigative authority to the NDS and wait to interview the detainee after NDS finishes its initial investigation and transfers the detainee to a MoJ prison which can take several months. In some cases, prosecutors draft the indictment on the basis of the information gathered by NDS. This system of delegating the prosecutor's authority means that some detainees see neither a judge nor a prosecutor until they reach trial – a period of time that can extend up to three months from the time of arrest.[192] In the absence of a mechanism to ensure that detainees can petition a competent court to review the legality of their detention, this situation violates Afghanistan's obligations under both the *International Covenant on Civil and Political Rights* -- to ensure that all Afghans arrested or detained are brought promptly before a judge or other appropriate judicial official -- and the Constitution of Afghanistan which protects individuals from arbitrary detention.[193]

Many ANP and NDS officials told UNAMA that their inability to comply with legal time limits is because the 72-hour period is too short for a sufficient law enforcement investigation into charges against a detainee, particularly in national security cases. They also pointed to logistical challenges related to the exigencies of detaining persons in areas with poor roads, poor security, long-distances between the point of capture or arrest and the processing and detaining facility, inadequate forensics and limited human resources as reasons for widespread violation of the 72-hour rule.

Any review of time limits in the *Interim Criminal Procedure Code* for processing and investigating individuals accused of national security crimes should enhance legal safeguards and guarantees of detainees' rights including ensuring access to defence

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indictment to the defendant and schedule a date for the trial to begin within two months from the time the court accepts the indictment.

[190] This is the general understanding of justice sector officials, although the law does not clearly define the term "detention centre" separate and distinct from other places of detention. *Law on Prisons and Detention Centres*, Official Gazette No. 923 (1 July 2007), article 7. As of the time of writing, the Council of Ministers had decided to transfer authority over detention centres and prisons (but not juvenile rehabilitation centres) to the Ministry of the Interior, and the necessary institutional changes and legal revisions were underway. UNAMA interview with Director of MoJ Central Prisons Directorate, 7 June 2011.

[191] ICPC articles 6 and 53 (3) (b).

[192] Ibid.

[193] ICCPR, articles 9 (1) and (3) and the Constitution of Afghanistan, articles 23 (1) and (3), 24 (1) and 27 (1) and (2). Under the jurisprudence of the UN Human Rights Council, a prosecutor is not a sufficiently independent judicial officer or authority to rule on the legality of detention.

counsel at the point of arrest and the right to appear speedily before a competent court to challenge the legality of detention.

Limited Access to Defence Counsel

Another due process violation that exacerbates the failure of NDS and ANP to respect the prohibitions against forced confessions and torture, chains of custody and time limits is the consistent lack of detainee access to counsel. Despite the right of detainees to a defence lawyer at all stages of the process under Afghan law, only one of the 324 detainees UNAMA interviewed in ANP or NDS detention reported they had defence counsel. Almost all defence lawyers and legal aid providers informed UNAMA they had limited access to NDS facilities as NDS officials prevented them from accessing detainees. NDS officials, in many cases, confirmed they deliberately limit defence counsel access for fear that they will influence detainees and hinder NDS investigations. The view of one head of an NDS provincial detention facility was representative of the general views of NDS officials in response to UNAMA's questions about detainees' access to defence lawyers:

> *Of course not! Lawyers have no access to the facility during the pre-trial detention: this is one of NDS' principles . . . Lawyers can influence their clients and compromise the investigation. If we allow lawyers to interact with our detainees they will damage our work. Interrogation of the arrested person must be performed in absence of any external person.*[194]

The National Security Prosecutor in the same province confirmed these difficulties, saying "In the two years that I have been here, I do not know of one single case of a defence counsel being able to see his client while at NDS."[195] No NDS official with whom UNAMA spoke acknowledged that all detainees have a right to a defence lawyer at all stages of the proceedings.[196]

In practice, detainees are not represented during interrogations or during other aspects of the investigation phases. Only one individual of the 324 conflict-related detainees UNAMA interviewed while they were in ANP or NDS custody reported they had a defence lawyer. Forty percent of the conflict-related detainees and prisoners UNAMA interviewed after their transfer to a MoJ facility reported they had a lawyer. Generally, detainees who were represented said that a lawyer had been appointed at or after their first court appearance.

VIII. Government and International Response

Government of Afghanistan

The Government's priorities for reform and development in the justice sector acknowledge the weaknesses of the justice system including the need to address

[194] Interview with a provincial director of NDS Department, 10 April 2011.

[195] Interview with a provincial National Security Prosecutor, November 2010.

[196] NDS officials in three provinces told UNAMA that defence lawyers are not permitted access to their facilities. (Interviews with provincial directors of NDS or NDS Department 17/40 in three provinces in October and November 2010, and April 2011.)

arbitrary detention and improve protection of prisoners' rights through strategic use of donor assistance and national investment. The *National Development Strategy and National Priority Programme (NPP) on Law and Justice for All* sets out key priority objectives guiding donor assistance and government institutional development in the law enforcement and justice sectors for August 2010 to July 2013.

On rights of prisoners, the NPP on Law and Justice for All sets its key objective as restoring "the faith of Afghans in the ability of the law to protect and defend their best interests as individuals and as a nation." Improving the human rights of prisoners through provision of more responsible custodial measures is one of its expected results. These measures include the introduction of tools to better track and more transparently regulate detainees, including a detainee case tracking system, the transfer of a prisoner data collection repository into the Central Prisons Directorate, introduction of forensic evidence collection and preservation mechanisms, and introduction of remedies for unlawful detention of prisoners, including cases of arbitrary detention. All these measures if properly implemented could act as safeguards against torture and ill-treatment and are designed to reduce the criminal justice system's reliance on confessions as its primary source of evidence at trial.[197]

International and Government rule of law reforms have also stressed the need to fight corruption and abuse of office by Government officials and introduced special judicial measures to ensure external oversight of public structures. Legislative reforms in the judiciary have concentrated on supporting due process guarantees and legal safeguards with mixed success to date and as this report's findings suggest.

Regarding children, the Government of Afghanistan and the UN signed an Action Plan for the prevention of recruitment and use of children in the ANSF on January 30, 2011[198] The Action Plan includes activities to ensure that all children allegedly associated with armed forces and groups are treated in line with international standards for juvenile justice and, that MoI, NDS and the Ministry of Defence initiate specific training and procedures for child specific hand-over of children associated with armed groups who come in custody. The Baseline Report on Action Plan Implementation also requires NDS to investigate any cases of ill-treatment of detainees under 18 years by NDS officials and sanction perpetrators.

International Partners

Afghanistan's international donors and partners have been involved for several years in supporting and providing technical assistance to the Afghan criminal justice system to improve laws, operational procedures and professional practices including of NDS and the ANP. The US Departments of Justice and State have provided extensive mentoring to national security prosecutors through the Major Crimes Taskforce and donor assistance projects.[199] Similarly many judges, prosecutors and criminal investigators in MoI and ANP have received training and professional mentoring, capacity building and skills

[197] National Priority Programme on Law and Justice for All (Governance Programme 5), June 2011.

[198] Action Plan between the Government of the Islamic Republic of Afghanistan and the United Nations Country Task Force on Monitoring and Reporting regarding Children associated with National Security Forces in Afghanistan (signed on 30 January 2011).

[199] "FBI Director Inaugurates New Facility for Afghanistan Major Crimes Task Force", Press Release, 25 February, 2010. http://kabul.usembassy.gov/pr-02252010.html.

development programmes aimed at improving their professional capacity and effectiveness in combating criminality, instability and terrorism.[200]

The level and type of international donor assistance and support for NDS personnel and activities regarding detention, intelligence-gathering and interrogation is not publicly reported or available. Representatives from several embassies advised UNAMA that coordination mechanisms existed among international donors to track assistance to NDS and avoid funding projects or assistance schemes that duplicated efforts. Donors have not shared such information despite numerous requests.

NDS reportedly receives technical assistance and training from Germany, the UK and US.[201] Different justice sector advisers working through the US Department of Justice schemes have provided assistance and advice to NDS through the framework of the Major Crimes Taskforce or through direct assistance programmes to different NDS departments.[202] The US State Department employs contracted personnel to train staff at NDS - it is unknown whether the training includes a robust human rights component.

Abusive practices within NDS detention centres and intelligence gathering may be addressed through concerted efforts at enforcing accountability measures, implementing oversight, reforming legislation and policy and building the capacity of NDS officials to conduct detainee interviews that do not involve torture or unlawful coercion of confessions from detainees. UNAMA believes that such support offered through internationally supported mentoring schemes, and assistance projects and programmes (as have been provided to other agencies in the Government) would be useful in assisting NDS to seriously address torture and ill-treatment which must be accompanied by appropriate safeguards and due diligence.

IX. Conclusion

Through its detention observation, UNAMA found a compelling pattern and practice of systematic torture and ill-treatment at a number of NDS and ANP detention facilities. In many other facilities, UNAMA identified practices and documented allegations of abuse that raise serious concerns about the possible use of torture and ill-treatment. These allegations require further investigation and prompt action by all concerned. Use of interrogation methods, including suspension, beatings, electric shock, stress positions, and threatened sexual assault is unacceptable by any standard of international human rights law, Afghan law and professional standards for security forces. In particular, the abuses found against children in custody are a clear indication that NDS and ANP should undertake urgent reforms to ensure proper oversight and accountability within their ranks.

[200] Law and Order Trust Fund for Afghanistan, Annual Progress Report 2010 (UNDP Afghanistan) available at http://www.undp.org.af/whoweare/undpafghanistan/Projects/sbgs/prj-lotfa.htm.

[201] Mark Sedra, Geneva Centre for the Democratic Control of Armed Forces, Security Sector Transformation in Afghanistan, Working Paper No. 143, August 2004, www.dcaf.ch/_docs/WP143.pdf.

[202] UNAMA meeting with EUPOL rule of law adviser, 21 July 2011, Kabul.

To improve their human rights records and meet their human rights obligations, the NDS and the ANP should undertake serious systemic reform and cease any use of torture and ill-treatment. Internal education is needed to ensure that all NDS and ANP officials understand what constitutes torture, know that using such methods is illegal under the Constitution, criminal laws and international law and that any official using or condoning such practices will be prosecuted and disciplined.

International support and assistance could play a key role. Decisions to provide donor support should be based on NDS and ANP taking concerted action to cease torture and abusive interrogation practices accompanied by appropriate safeguards. The provision of training in non-coercive interviewing techniques, modern prison management and administration and a basic understanding of national legal norms and international standards relating to prohibitions of torture and respect for legal safeguards and due process rights are essential to assisting NDS and ANP to move forward with institutional reform and modernisation. In the context of transition of lead security responsibility from international military forces to ANSF, the imperative to ensure that NDS or ANP do not abuse detainees or provoke local grievance through mistreatment or arbitrary detention is particularly important.

UNAMA offers targeted recommendations aimed at assisting efforts to address torture, ill-treatment and arbitrary detention in a constructive, cooperative and timely effort with Afghan authorities and international partners.

X. Recommendations

To the National Directorate of Security (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 Counter-Terrorism Department 90/124. Remove, prosecute, discipline and punish those officials found responsible. Permit independent oversight of these investigations and publicly report on findings and remedial actions;
    - Promptly issue directives prohibiting torture and ill-treatment in all circumstances to all NDS personnel and advise them and their superiors they will be prosecuted and disciplined if found committing, ordering or condoning such practices;
    - Permit full, regular and unhindered access of independent monitors to all NDS facilities including the Afghanistan Independent Human Rights Commission, UNAMA, ICRC and others.

- 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 are effective.

- Implement an external accountability mechanism that allows independent and transparent investigations into alleged abuses within NDS facilities.

- 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.

- 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.

- Change policies and practices on access of family members. Immediately notify a detainee's family of the 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.

To the Afghan National Police (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;
    - 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 Afghanistan Independent Human Rights Commission, UNAMA, International Committee of the Red Cross and others.

- 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.

To the 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.

- Ensure access of any independent and non-government monitoring body and human rights organisations, including the Afghanistan Independent Human Rights

Commission, the International Committee of the Red Cross and UNAMA, to detention facilities and prisons.

- Ensure that an adequate number of qualified defence lawyers are available in all provinces.

- Establish an effective and accessible reparation and compensation mechanism for victims of torture and other ill-treatments.

- 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 Afghanistan Independent Human Rights Commission).

To the 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*.

To the Supreme Court, Ministry of Justice, Ministry of Interior 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.

To 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.

- 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.

- Build the capacity of NDS and ANP facilities and personnel including through mentoring and training on the legal and human rights of detainees and detention practices in line with international human rights standards.

- 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).

ANNEX I: Applicable Law

1. Legal Prohibitions of Torture and Cruel, Inhuman or Degrading Treatment

Obligations under International Law

Several international treaties to which Afghanistan is a party 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).[203]

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."[204] 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 also 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."[205] The *Juvenile Code* 2005 prohibits harsh punishment against children.[206]

Afghan law, namely 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.[207]

Definition of Torture

This report uses the definition of torture in the *Convention against Torture*:

> 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

[203] 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.

[204] *Convention against Torture,* article 2(2).

[205] Constitution of Afghanistan, article 29.

[206] *Juvenile Code* 2005, article 7.

[207] *Penal Code*, article 275.

> 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.[208]

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."[209]

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".

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[208] *Convention against Torture*, article 1.

[209] Committee Against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), para. 9.

- *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".

- *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". [210] 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. . . ."[211]

States also have an obligation to prevent acts of cruel, inhuman or degrading treatment or punishment by its officials, although these obligations are less extensive than those for torture.[212]

2. Legal Prohibitions of Arbitrary Detention

Obligations under International Law

The ICCPR to which Afghanistan is a 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.

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

[210] *Convention against Torture*, articles 2-4 and 10-14.

[211] Committee Against Torture, General Comment No. 2 ("Implementation of article 2 by States parties"), CAT/C/GC/2 (24 January 2008), para. 19.

[212] *Convention against Torture*, article 16 and ICCPR article 7

not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.[213]

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.[214]

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 Constitution state 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".[215]

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.[216] The *Law on Detention Centres and Prisons* details the procedure to monitor the legality and conditions of detention.[217] The Constitution of Afghanistan guarantees the right to a defence lawyer immediately upon arrest.[218] This right is expanded in the *Advocates Law*.[219]

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

[213] ICCPR, article 9(1)-(5).

[214] CRC, articles 37 (b)-(c) and 40(2)(b).

[215] Afghanistan Constitution, articles 24 (1) and 27(1)(2).

[216] Official Gazette No. 862 (2005).

[217] Official Gazette No. 852 (2005).

[218] Afghanistan Constitution, article 31.

[219] Official Gazette No. 934 (2007).

legal representation and requires that police are duty bound to notify a legal 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.[220]

The *Law on Prison and Detention Centres* states that children and adults should be detained separately.[221] Article 2 of the Law on Juvenile Rehabilitation and Correction Centres provides that children should be detained only in juvenile rehabilitation and correction centres.[222]

[220] *Juvenile Code*, articles 4. 8, 11, 13-15, 22 and 30.

[221] *Law on Prisons and Detention Centres* 2005, article 9(4)

[222] Official Gazette No. 969 (14/01/2009)

ANNEX II: Comments of the Government of Afghanistan, the National Directorate of Security and the Ministry of Interior to UNAMA's Report on the Treatment of Conflict-Related Detainees in Afghan Custody (translated in full from Dari to English by UNAMA)

Assessment of and Recommendations on UNAMA's Report (6 October 2011)

The Islamic Republic of Afghanistan is committed to observe the whole enforced laws of the country; international human rights treaties; the Convention against Torture and approved articles and put to use all its efforts towards their realisations. Since ten years ago, sound consultations and recommendations of national and international legal and human rights organisations, on improvement of detention, investigation, trial and imprisonment processes of the accused and criminals, have been welcomed and efforts have been made with respect to their implementation. The government, in this regard, is determined to abide by provisions of the enforced laws of the country particularly (Article 29, Chapter Two of the Constitution which deals with prohibition of torture).

Although the Islamic Republic of Afghanistan is firm on observation of the above-mentioned commitments, there are still challenges on the way due to security problems and existence of corruption in the country. Any reports published by national and international organisations which actually reflect the procedure of detention, investigation, trial and imprisonment of the accused and criminals will be welcomed by Islamic Republic of Afghanistan. Hence, although the report prepared by UNAMA is to some extent not close to reality, it may draw the attention of law enforcement institutions of the government to improve the process.

Similarly, despite the fact that the recent report to be released by UNAMA is not entirely in compliance with the facts, it may give hand to remove and eradicate existing barriers.

After being provided with a draft of the report, the Ministry of Interior and National Directorate of Security (NDS) of Islamic Republic of Afghanistan appointed an authorised delegation to assess the situation, the result of assessments carried out by the delegation is provided herein below;

Comments and Responses of the National directorate of Security to the United Nations Assistance Mission in Afghanistan (UNAMA)'s Report

The NDS as an institution responsible for detecting and preventing crimes against internal and external security of the country, is guided in its work by the applicable laws of the country, the international human rights treaties, the Convention against Torture and all other internationally accepted principles. This institution is committed to their full application. For its commitment to the principle of law-abiding in the country, this Directorate welcomes all constructive advices from national and international organisations for the improvement of the conditions of the accused and the administration of justice.

The Role of International Organisations in the Elimination of Violence

It is clear that the international human rights organisations, UNAMA, ICRC and other international organisations have made a lot of efforts for rebuilding our aggrieved society and for making it a law-abiding one. The people of Afghanistan will always remain grateful for these humanitarian assistances. These organisations presented to the Afghan institution the best trends and practices and the most accepted universal principles of human rights and to the Afghan security forces. These national institutions have really made great strides with regard to strengthening rule of law and social justice in the country. Despite these progresses we still have a long way to go for realising the highest aspirations of the people of Afghanistan.

Security Institutions of the Country

Committing crimes such as bombing, suicide attacks and mass murdering of the innocent people have spread fear and a sense of insecurity among our people, inflicting colossal human and financial losses and it is evident that some organised terrorist acts are behind these acts and are sponsored and supported by foreign states. Despite their cruel and barbaric acts, the security forces of the country including the national security forces are treating them humanely and in accordance with the law. Beginning from their arrest and investigation to the final verdict of the court they are treated in accordance with the Islamic and humanitarian norms. For ensuring these objectives, all the

detention centres and investigation sub-directorates of NDS are open to inspections of the following institutions and they have full access to them:

1. Mishranu Jirga Complaint Hearing Commission;
2. Wolesi Jirga's Complaint Hearing Commission;
3. Inspection Delegation of the Attorney General's Office of Islamic Republic of Afghanistan;
4. International Red Cross Committee;
5. UNAMA delegation;
6. The General Directorate of National Security's Delegation for Monitoring the Detention Centres;
7. Afghanistan Independent Human Rights Commission;
8. Defence Attorneys of the Accused;
9. NATO's Delegation;
10. The states who handed over the accused to the NDS visit them every now and then.

The above-mentioned institutions who inspected the manner of treatment, living conditions, sun exposure, access to medical facilities of the accused, and the treatment by interrogators and the processing of their cases, in most of the case they express satisfaction and sometimes they gave advices regarding the improvement of the conditions of the accused and that of the detention facilities.

NDS has always welcomed the inspection programmes of the above-mentioned entities and has been fully cooperative with them, including UNAMA delegation both in the capital and in the provinces and provided them with access to all detention centres of the NDS.

On UNAMA'S Recent Report

In a report compiled during the period (2010-2011) by the United Nations Assistance Mission in Afghanistan (UNAMA), this organisation reflected on the existence of violence and torture within the NDS. This report was issued after its interview with 324 of the detainees of NDS and the ANA.

In the report, reference has been made to some issues that are not in conformity with work principles of the NDS and the acceptance of these issues is very hard for the NDS.

Torture methods such as electric shock, threat of rape, twisting of sexual organs etc. are methods that are absolutely non-existent in the NDS.

Maybe there are deficiencies with a country stricken by war and a wave of suicide attacks and other terroristic crimes, we do not claim perfection and that we are doing things 100% in accordance with how things should be. Some of these deficiencies, however, are due to a lack of experience within our staff and their lack of access to proving equipments and facilities and in part due to isolated incidents of individual violations. We are happy that this report also testifies in a part that **torture did not take place in a systematic manner in all NDS headquarters**.

This issue is discussed in details as follows:

CONCERN 1: In its previous reports, the NDS repeatedly drew the attention of the international organisations to the fact that enemies of the Islamic Republic of Afghanistan always resort to false accusations against officials of the NDS as to torturing and mistreating them. UNAMA employed special monitoring methods to verify those cases. And the opposition do not have such pre-arranged plot to intentionally defame the NDS, i.e. they cannot tell all their members to make different complaints of different torture methods allegedly applied by the NDS. Hence, UNAMA accepted their statements in the report.

Response 1: It is obvious that the enemies of the Islamic Republic of Afghanistan seize every opportunity and spare no efforts even for the dismantling of our government system. For this purpose, they resort individually to methods such as distortion of facts and false accusations of torture and mistreatment, merely for the defamation of our system and its institutions and its employees. That is because they know that the international community is very sensitive to this issue. Taking advantage of this sensitivity, they try to tarnish the reputation of our security institutions and our

investigation and legal prosecution procedures. The NDS once again reaffirms its commitment to respecting international laws and human rights principles

Concern 2: With regard to the detainee # (371) in Kandahar (2011), of whom confessions were extracted through torture and physical violence.

Response 2: National Directorate of Security has improved and made its investigation methods in conformity with the law to eliminate misconduct and persecution; administrate justice for accused persons; improve a transparent justice system; eradicate the culture of immunity; and oblige individuals in strengthening rule of law in all custody centres of NDS. The Directorate also convenes seminars focusing on observation of the Afghan constitution, human rights treaties and conventions, and Afghan commitments towards non-application of torture. During these seminars, NDS warns its sub offices that violation of these laws and treaties will be followed by serious disciplinary measures. It shall be noted that although UNAMA had not produced any evidence to NDS, it was decided to replace the Head and Deputy Head of Kandahar Security Directorate with professional officials. Also, based on the findings of monitoring body of NDS on 28 September 2011, the Head of Farah Security Directorate was suspended from his position within 24 hours.

Concern 3: On punishment contrary to human dignity and integrity such as electronic shocks, sexual threats, pulling testicles of the accused and other cases …?

Response 3: These types of punishment which were pointed out in the report have strictly been refused by NDS. Afghan legislations and Islamic teachings have prohibited and penalised such activities as article 29 specifically stipulates that: “torture of human beings is prohibited. No person, even with the intention of discovering the truth, can resort to torture or order the torture of another person who may be under prosecution, arrest, detention or convicted to be punished.” The stakeholders do not take action in contradiction to the constitution but by doing so, they will be severely punished.

Concern 4: The report also produced evidence which confirms persecution of accused persons in Herat, Kandahar, Laghman, Kapisa and Takhar provinces and Department 124 of NDS.

Response 4: NDS has assigned in this regard an authorised delegation to follow up and assess the situation and report to Office of NDS' Director so that appropriate measures are taken accordingly. Several employees of Department 124 have been dismissed and now professional officials are carrying out investigations. They are advised to observe human rights seriously while performing investigations.

Concern 5: Some complaints have been registered on lack of defence attorneys in NDS detention centres.

Response 5: Having access to defence attorney is not lawfully prohibited and NDS has not limited appointment of defence attorneys. The main challenge is the insufficient number of defence attorneys which makes it difficult to cover all cases. Defence attorneys do not show interest in cases of crimes against internal and external security and on the other hand they do not provide services in insecure provinces which is a matter of concern. However, recently an agreement has been signed between Afghan Independent Bar Association and NDS based on which requires facilities to be provided with defence attorneys to cover all detainees in NDS detention centres and defend their rights.

Concern 6: Arbitrary detention and persecution of accused persons may undermine the peace process and increase the number of anti-government elements.

Response 6: With regard to arbitrary detention, it shall be noted that there is no arrest case in NDS without documents, evidence or order of relevant authorities and without due legal process. Except for the cases of flagrante delict, NDS arrests perpetrators and suspects of crimes against national interest of Afghanistan with presence of representatives from rule of law agencies such Attorney General's Office, the Ministry of Interior, etc and produces incriminating documents to Prosecution Office on Crimes against Internal and External Security within 72 hours. If house search is required, it

obtains search warrant from the court. Therefore, expressing concern over the issue that 21% of the detainees are not aware of the accusation is not acceptable to NDS. According to provision of the law, individuals shall be notified of their accusations within 72 hours and the prosecution office shall approve and issue arrest warrant.

Article 27 of the Constitution stipulates that "No act is considered a crime, unless determined by a law adopted prior to the date the offense is committed. No person can be pursued, arrested or detained but in accordance with the provisions of law." Article 2 (3) of Law on Discovery and Investigation indicates that "The initiation of handling a criminal case during which the traces of the crime has been identified and urgent actions have been taken in order to specify the occurrence of the crime and arrest the criminal." In terms of reintegration process, NDS' efforts resulted to reintegrate 220 armed groups which include 2103 anti-government elements and it currently holds talks with more than 4000 anti-government armed elements to encourage them to put down their weapons and join reintegration process. Such individuals indicated certain other concerns as impediments to join reintegration process.

Concern 7: Delays in processing the cases of the accused transferred from provinces to Kabul?

Response 7: Impassability of roads, security and transportation problems have resulted in slowing down the process of transferring accused persons, which has prolonged the process of investigations.

Concern 8: Lack of notification to the accused persons' families as they are legally entitled to visit their families.

Response 8: It is obvious that all accused persons are arrested by representatives of AGO, MOI and NDS from their houses and resident area where their families are informed that by which organs they are arrested. They will be notified of the accusation within the time frame provided by the law. To ensure notification of their families, recently a new office has been established within the structure of Department 40 of NDS to notify the families of the accused whose families are not aware of. Once their families

are informed, they are not prohibited to visit the accused in Department 40 or other investigative departments of NDS. Since an exact time is specified, families and relatives of the accused may easily visit them on a weekly basis. NDS is and will remain committed to providing necessary facilities to provide the accused persons with the opportunity to visit their families.

Concern 9: Part of the report titled "Torture and Mistreatment by NDS and Afghan National Police" explains persecution occurs systematically in certain NDS detention centres in all over the country but another part titled "Observations" discusses that the accused are not systematically tortured in all NDS detention centres.

Response 9: The report contains two contradicting concerns (systematic torture and lack of systematic torture). NDS, through various letters to its subordinate offices, has instructed to avoid any types of persecution of accused persons and warned that violators will face serious disciplinary actions. The Directorate is committed to investigating and evaluating all violations according to enforced laws of the country and the convention against torture and bring to justice the perpetrators. This has been clearly confirmed through Procedure on Monitoring NDS Detention Centres. Circular No. 048 dated 5 April 2011 on collecting adequate incriminating evidence against accused/suspect prior to his arrest and coordinating the observance of law to comprehensively, objectively and lawfully arrest and investigate accused persons within NDS haven been sent to central and provincial offices which was reaffirmed through circulars No. 1263 dated 18/10/2010; No. 1458 dated 10/11/2010; No. 1560 dated 23/11/2010; No. 080 dated 18/04/2011; No. 1926 dated 27/12/2010; and No. 150 dated 09/05/2010. A copy of letter of the office of NDS' Director and implantation plan is herewith attached.

Even emergency situations, war and insecurity do not convince the National Directorate of Security to justify torture. It does not allow its personnel to execute torture and NDS will remain accountable for any such actions. In connection to UNAMA report, letters No. 0557 dated 17/09/2011 and No. 0548 dated 05/09/2011 were sent and an authorised committee is assigned to transparently assess the concerned subjects in the report and present its findings to office of NDS.

Concern 10: UNAMA interviewed 37 underage detainees.

Response 10: Not only organisers of suicide attacks and explosions use children and youth but also most of the anti-government elements do not hold ID cards (Tazkira) which makes it challenging for NDS to identify underage individuals. So, at when suspects/the accused are arrested, it is impossible to determine their ages. Therefore, NDS requires keeping the suspect/accused persons in custody until forensic medicine presents the result of its examinations which takes some time. Once it is confirmed that the arrested person is underage, NDS immediately transfers him/her either to the Juvenile Rehabilitation Centre or Juvenile Prosecution Office to investigate the case.

Background about Complaints on the Situation of Detainees in NDS

1- **Afghanistan Independent Human Rights Commission's (AIHRC) Chairperson's complaint on persecution and beating of an specific personality in Badakhshan province:**

NDS immediately appointed an authorised delegation comprised of representatives from NDS and AGO who travelled to Badakhshan; assessed the situation and reported to office of NDS based on which president of AIHRC. Ms. Sima Samar paid a visit to Badakhshan and it was proved that the claim was baseless and she confirmed the result of the report.

2- **Allegation of British Embassy on misconduct of NDS personnel with a prisoner (Sardar Mohammad):**

Office of NDS allowed the following four authorised representatives from the British Embassy who visited Department 40 of NDS, evaluated the situation, met with and conducted body checkups as a result of which signs of torture were not seen on his body. As well as they visited detention centre of Department 124 where also signs of torture were not visible.

- Ms. Champa Belluci, Second Secretariat of British Embassy, Correction Section

- Mr. Tambon, Legal Advisor
- Mr. Toran Webes, Military Police, UK
- Mr. Gran Dawson, Military Court Advisor

3- National Directorate of Security (NDS) as per the fax numbers 71 dated 20/07/1389 and 099 dated 06/02/1389 of UNAMA respected representative instructed all central and provincial administrations that they should facilitate UNAMA representative's access to their detention centres and cooperate with them fully.

In this regard NDS received ciphers number 1795, dated 02/11/1389 of NDS Kunduz, 2823 dated 11/10/1389 of NDS Balkh, 448/385 dated 10/09/1389 of Laghman NDS, 1990, dated 05/08/1389, of NDS Jozjan, 1186, dated, 18/08/1389, NDS Paktya, 1931 dated 12/08/1389 NDS Samangan, in which their related departments stated that representatives of UNAMA visited their detention facilities, jot down result of their visit in to observations book and they expressed their satisfaction in all visits.

So far none of visits made by representatives of social societies were prevented in Central or Provincial detention facilities and no big gap was fond during these visits. Observation documented in these facilities may prove our claim. Their messages are annexed with this letter.

National Directorate of Security's (NDS) Points of View on UNAMA's Report

It is obvious that in order to make an entity law obedient, critics and consultations of international entities should be accepted. Acceptance of critics will result to prosperity and improvement in field of law obedient affairs of NDS. Thus the NDS will scrutinise all critics made by entities and will do their utmost struggle for rule of law.

Here we draw your attention to our efforts and attempts made in this regard:

1- The National Directorate of Security (NDS) has dispatched authoritative delegations to those provinces that were mentioned in your report. Members of delegations strictly checked the environment and addressed all misbehaviour cases with the accused persons.

2- The National Directorate of Security (NDS) intends to convene a seminar for interrogative and reconnaissance departments as soon as possible. In this seminar, in the light of Country's Constitution, legal lectures as well as international commitments will be delivered to the participants that will increase their awareness regarding obedience and implementation of enacted laws to prevent them from misbehaviour with accused persons.

3- The National Directorate of Security (NDS), through mass media, will do its efforts to select and recruit educated people, especially in the field of Sharia Law and Law. Right now this practice is in progress to ensure a legal and professional behaviour.

Soon, more than 80 people will be trained with the support of the British Government in the field of interrogation that subsequently will be deployed as interrogators in the Centre and Provinces.

4- On 27/06/1390, the following parliamentarians visited detention facilities of Departments 40 and 124:

- Obidullah Barakzai, head of delegation
- Allah Gul Mujahid, member
- Abdul Wakeel, member
- Saliman Khail, member
- Ameer jan Dolatzai, member

The above delegation visited detention facilities individually and secretly and wrote down their observations in observation book. They evaluated performance of detention centres appropriate and in none of these observations you may find signs of torture

occurred. Besides this another delegation from NATO countries comprising of US, UK and Germany representatives visited our detention centres which satisfied them.

5- A unit will be created under the framework of our Office of Legal Affairs, which will be called Human Rights Unit. This unit will have permanent access to interrogation process and will protect accused persons' rights as well as facilitate visits of International Organisation representatives. Staff of this unit will be selected from legal elites out of NDS and will be directly supervised the Director of NDS.

6- As per the proposal of National Directorate of Security (NDS) and decision of the Supreme Court High Council, another court will be established to address Crimes against Internal and External Security. By establishing the mentioned court proceedings of the cases will be expedited and their trail will be professional, transparent and justice. At the moment Supreme Court is busy with finalising this court structure, after which all provincial detention centres may shut down.

7- As per the previous delegations' recommendations, which were dispatched to the provinces pursuant to order number 1926 of the Director of NDS, heads and deputies of Kandahar, Laghman and Khost NDS departments were reassigned else where and new people were assigned instead of them to further comply with and strengthen rule of law.

8- For further strict compliance with the law in detention and interrogative units of NDS, the Director of NDS issued a number of orders, instructions and guidelines to his sub-ordinate units. In this regard we would like to highlight order number 048 of the Director of NDS in which he insists on collection of proper incrimination documents against the accused person prior his arrest and establishing coordination during arrest and interrogation of accused people for batter adherence of law in all NDS departments. In this regard, orders number: 1263 dated 26/01/1389, 1458 dated 19/08/1389, 1560 dated 02/09/1389, 080 dated 29/01/1390, 1926 dated 06/10/1389 and 150 dated 19/02/1389 issued to all central and provincial departments. Regulation of Director of NDS plus its implementing plan is also annexed with this letter.

9- Construction work of 13 new detention centres is in progress with the support of the international community, in particular US and UK. Also, employees of detention centres are trained by British mentors in NDS training centre in accordance with the enacted law and international accepted principles. After the accomplishment of training, the trainees will be deployed to Capital and Provincial detention centres.

10- Handing over of suspects from the International Security Forces to the NDS has been carried out as per the signed protocols. Representatives of the mentioned countries are regularly visiting handed-over accused persons. Till now, Embassies of UK, the Netherlands and Canada have logged one case of beating that was not proved after review and inspection, and at the same time results of the inspections were submitted to the Ministry of Foreign Affairs through letter number 4693 dated 17/08/1387.

At the End, the Director of NDS insists on the Importance and Commitment of Following Points:

• Despite the fact that the points mentioned in your report were responded to, senior management of NDS strongly believes that besides of a number of existing problems, reform is feasible. NDS' all officials are keen for reform and improvement in the field of interrogation and assure UNAMA of their scrutiny and attention to UNAMA's report. We have prepared a work plan and started its implementation in order to fully overcome your concerns highlighted in the report.

• We respect your all recommendations and will conduct proper investigation regarding all misbehaviours cases. If proved, responsible individuals will be suspended from their positions and in serious cases they will be prosecuted.

• NDS believes that human rights and rule of law are the basic pillars for combating terrorism, and feels that the implementation and adherence to these principles are our legal and ethical obligation. Circumstances such as war, insecurity and the killing of our fellow countrymen can never justify torture. We will not allow any of our officials or

employees to misbehave with accused persons and every one will be responsible for this matter.

NDS' RECOMENDATIONS:

It will be recommended to refer any case of torture, with proof, in an urgent manner to the Human Rights Monitoring Cell of NDS for urgent monitoring and review.

1- As and pursuant to articles 14 and 21 of Penal Code, crime is subject to statute of time and venue limitations. Thus human rights violation cases must be registered in observation book and the NDS should be put in the picture, in a confidential manner, as soon as possible. Receiving such timely information can help us monitor the situation and prosecute persons responsible for human rights violations, if the violation is proved, he/she will be sentenced, the issue will be circulated to all relevant authorities and we assure that the accused person will remain unharmed.

2- In case the arrest of a suspect is made during the night, the interrogator is obligated to interrogate the suspect in order not to lose time and opportunity for discovering facts and protecting people from further terrorist attacks. This should not be deemed and forcing suspects for facts by methods of sleeplessness. In such cases, which is purely intended to avoid further feasible terrorist attacks and in which the interrogator himself also does not sleep to fulfil his duty and responsibility, hence the procedure should not to be counted as misbehaviour.

COMMENTS AND RESPONSES OF THE MINISTRY OF INTERIOR AFFAIRS TO UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN (UNAMA) REPORT

After the receipt of UNAMA's report on human rights violations of the accused during detention and investigation processes, the Ministry of Interior dispatched a team to Laghman, Kandahar and Kunduz provinces to investigate the accuracy of the UN report within the relevant institutions of the Ministry of Interior. The team also has assessed human rights situations within units, divisions and police headquarters.

It is evident from the contents of the inspection and findings, that the outcome of the report cannot be totally rejected/denied due to some existing problems, but what is worth mentioning here is that in some cases where the number of the detainees who have spoken of torture during the investigation process is less than those who have denied the existence of any form of torture during the investigation process. The Ministry of Interior is exploring ways to identify violators and prosecute perpetrators of human rights violations so that they are brought to justice and that it becomes a lesson for others in order to bring compliance to their treatment of suspects in particular those of crimes against national and international security with national enforced laws, the Universal Declaration of Human Rights, and recommendations of the Afghanistan Independent Human Rights Commission and to avoid inhumane and immoral treatments contrary to the dignity of the human being and at the same time prevent from happening any type of harsh treatment, coercion and torture.

The above mentioned points have all been being integrated into police academy, divisions, units and recruitment centres training curriculum by the Ministry of Interior. Annually, approximately thousands of officers are presented to the service of the Afghan society having this status of mind.

Since the appointment of the new Minister of Interior, the General Department of Human Rights has prioritised education, especially legal training, to divisions, border units, public order, and reconnaissance sections of the Ministry of Interior and has educated more than 5,000 individuals with legal understanding and the implementation of this policy. The abovementioned legal training programs are still in progress.

In order to raise the professional and the human rights knowledge level of police officials during the supervision of the human rights situation in all the police units both in centre and provinces, the Gender and Human Rights Department has organised guidelines and training seminars and has arranged the 0112 and 050 order of the Minister of Interior regarding rule of law, promotion, development of and improvement of the human rights situation in the current year and has increased it to units, regional zones and provincial police commandments. The Gender and Human Rights Unit and its administrative units in all regional commandment zones and provincial commandment have supervised the police detention centres for reduction of torture, in accordance with the approved plan. The adopted measures will definitely lead to reduction of the human rights violation in units of the Ministry of Interior.

In a review which was taken from the prisoners of the central prison, two out of 40 individuals complained about the torture in police organs. In Laghman, none of the 21 convicted persons complained about the behaviour of the police. In Kandahar, among 476 individual, 13 of them complained about the bad behaviour of police, and in Kunduz province only 6 individuals out of 82 had complaints. It is worth mentioning that all the prisoners had no complaints about the behaviour of the administrative officials of the prisons.

Hereby, we come to a conclusion that based on the assessments and reviews, violation of human rights in police units has been less discussed for the following reasons:

1. When the police detain criminals against the national and international security during the operations, it is their duty to forward suspects and their cases to the National Directorate of Security and prosecution offices to complete their investigation process, prosecution and to lodging the appeal.
2. Minister of Interior has always issued his orders in relation to prevention of human rights violation and has assigned the units for observance of the law provisions.
3. The telephone number 119 for receiving complaints at the Ministry of Interior and No 100 in the provinces indicate that if they have any complaints regarding

the behaviour of police, they should share it with the relevant organs. In fact, receiving the complaints and taking serious actions for its improvement, has met the satisfaction of the people.

Therefore, we reach to this conclusion that violation of the human rights within the units and commandments of police has been under consideration but not as much as UNAMA has pointed that. We can surely say that the adopted measures have had its effect on prevention of the violation of human rights and realisation of the training programs and plans have made us sure that we will witness that removal of the violation of human rights at the Ministry level.

The leadership of the Islamic Republic of Afghanistan believes that identification of the violations of human rights in prisons and detention centres and investigative processes must be carried out in accordance with the enforced laws of the country. In this regard, the Ministry will work in accordance with the provisions of the constitution and universal declaration of the human rights, will conduct more training programs and will serious measures for the better control.

With Regards.