



**Afghanistan Independent Human Rights Commission (AIHRC)**

**Shadow Report on the Realization and Implementation of  
the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or  
Punishment in Afghanistan**

**61<sup>st</sup> session of Human Rights Council, 12 April 2017**

## **Introduction**

This report is prepared by the Afghanistan Independent Human Rights Commission (AIHRC) on the Realization and Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan. This Convention is commonly known as the United Nations Convention against Torture.

This report highlights some of the achievements, challenges and opportunities in relation to the prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan.

Furthermore, this report discusses Afghanistan's obligation not only under the UN CAT but also Afghanistan's obligations under other treaties and domestic laws.

Moreover, this report will provide the details of its findings collected during the monitoring of detention centers and prisons for the Afghan calendar year 1394 (2015-2016). It will illustrate that while torture have decreased in 1394 in comparison with 1393 (2014-2015), but it still remains a challenging issue in Afghanistan.

Despite the AIHRC, other human rights organizations and the Afghan government efforts to reduce the torture and ill-treatment, their efforts fall short of decreasing torture cases significantly, let alone eliminating torture in Afghanistan.

By taking into account the findings of this report and assessment of the torture cases in Afghanistan, the report concludes by offering some recommendations on the prevention of torture and ill-treatment in Afghanistan.

AIHRC hopes that the government of Afghanistan, implement these recommendations and take practical, effective and serious measures to eliminate torture and ill-treatment in the country.

## **Background**

Afghanistan has been facing armed conflict since 1978 and Soviet Union Invasion a year later. Consequently, Afghans experienced severe torture, cruel, inhuman and degrading treatment and punishment at the hands of pro-soviet government and the Soviet Union army and unfortunately, the situation for the Afghans did not get any better even after the withdrawal of the Soviet troops from Afghanistan in 1989.

Between 1978 and 1992, the agents of the ruling party, People's Democratic Party of Afghanistan (PDPA) arrested thousands of civilians, including elders, religious leaders, intellectuals, women, farmers, civil servants and shopkeepers. The PDPA subsequently tortured and killed a lot of these detainees. The ruling party (PDPA), specifically its intelligence agency, snatched people from streets and their houses during nights and made them disappeared without a trace and as a result, the fate of a lot of them is unknown to this day.

However, the AIHRC as part of its mandate and recommendation of a National Inquiry, has documented and mapped the conflict and more than 80 mass graves have been identified and mapped to this date in different parts of the country.

In 2014, during the interrogation of a former Afghan intelligence officer residing in the Netherlands, who were allegedly involved in the crimes against humanity in Afghanistan between 1978 and 1979 accidentally gave the name of a woman in Germany that had access to a list of people killed by the PDPA. This list contained the names of 4790 victims.

The Embassy of The Netherlands in Kabul and the Afghanistan Independent Human Rights Commission officially published names of the victims in the list. Off course, this were only the name of a fraction of the people killed or disappeared by the PDPA, not an exclusive list by any means. Nevertheless, as a result of this announcement, the Afghan Government declared three days of national mourning.

The end of the Soviets occupation and the subsequent demise of the People's Democratic Party of Afghanistan did not spell an end to human rights violation in Afghanistan.

The AIHRC's records show that armed men from Mujahidin groups who were fighting with the Communist regime (1979-1992) committed human rights violation, including torture, inhuman ill-treatment and cruel and degrading punishment as well. After collapse of the pro communist regime in early 1992, just a week later, the people of Afghanistan started being witness to a different form of war fueled by various Mujahidin factions each vying for political influence. The result was a devastating civil war that destroyed public infrastructure, killed thousands of civilians and displaced again millions of people.

Between 1994 and November 2001, severe fighting took place between Taliban and Mujahidin forces and Taliban have been able to take over most part of the country. This also resulted in further displacement, mass killings, regional blockade, torture and ill -treatment of civilians, specially people of minorities.

Furthermore, the Taliban applied a strict sharia law. It meant that they chopping off hands and foets of thieves, beheading murderers in public (for Qasas), lashing people for pity crimes, and were people forced to pray and those who did not have beards were harassed and publicly beaten and even tortured while arrested. The Taliban even forced some of Afghans of Hindu Origin to attend prayers.

However, the Taliban is not the only actor that is accused of torture, inhuman ill-treatment, cruel and degrading treatment. Afghan National Police, Afghan National Army and the agents of the National Directory of Security (NDS), also stands accused of torture, inhuman, ill-treatment, cruel and degrading treatment of the people and their opponents.

### **Legal Context of Monitoring Detention Centers and Recording Cases of Torture and Ill-treatments**

The AIHRC is a constitutional national human rights institutions (article 58<sup>th</sup>). It is also a full member of the APF and has acquired status "A" accreditation and is a full member of the GANHRI.

#### **"Article Fifty-Eight of the National Constitution**

*"To monitor respect for human rights in Afghanistan as well as to foster and protect it, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights.*

*The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights. Organization and method of operation of the Commission shall be regulated by law."*

In accordance to this Article, the AIHRC is mandated to monitor and report on the realization, protection and promotion of human rights all over the country. Furthermore, the AIHRC is also mandated to assess the situation of human rights across the country to understand the level of citizens' access pertaining their fundamental rights and freedoms as well as conducting investigation on cases of human rights violation and referring them to relevant judicial authorities.

Another legal instrument that authorizes the AIHRC to prepare periodical report on cases of torture and human rights situation is law of the AIHRC, "Law on Structure, Mandate and Responsibilities of the Afghanistan Independent Human Rights Commission", which is adopted in May 2005. Article 21 of the AIHRC Law authorizes the commission to monitor the human rights situation of places of detention. The aim of the AIHRC is to make sure that the UN Convention against torture is respected, realized and implemented while the principles of fair trail and due process is also observed and maintained.

### **Afghanistan and the UN Human Rights Treaties**

Government of Afghanistan has signed and ratified seven UN human rights treaties among them is the International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (The UN Convention against Torture) and ratified in 1987. Since the

date of ratification, the Government has not submitted its treaty report to the CAT Committee up until 2016. However, between the years 1978-2002, the UN special human rights rapporteurs visited Afghanistan and reported to the UN on cases of torture and ill-treatment and monitored detention centers.

Since 2004, the AIHRC has been constitutionally mandated to record and make reports on the cases of torture, ill treatment and inhuman punishment. Afghanistan also ratified and acceded to the Rome Statute, International Criminal Court in June 2003.

### **Realization of the Convention against Torture and Other Cruel, Inhuman and Degrading and Ill-Treatment or Punishment in legislation**

The prohibition of torture and Other Cruel, Inhuman and Degrading and Ill-Treatment or Punishment to some extent have been considered in Afghanistan, particularly in the legislation since 1976 as follow:

#### **Realization of Article 1 of CAT**

##### **1. The Draft Penal Code of Afghanistan, 2016, has defined the nature of torture and sentence for the perpetrator. (This Draft has not yet adopted)**

**Article 444 of this law define the torture as follow:**

1. Torture is the action which is performed by a public servant or any other official authority at the instigation of his consent, instruction or his intentionally negligence, inflicted on a person that brings severe pain, either physical or mentally or bring suffering to suspects, accused, convicted persons or other persons for the purpose of:
  - a) Obtaining confession from a suspect or an accused person for the crime he or she has been alleged for or giving information about other person,
  - b) Obtaining information from a third person on the suspect, accused or convicted person for the crime he or she has alleged for,
2. Abusing, cruelty and inhuman treatment or the act of causing pain and suffering, based on discrimination of any kind, for the purpose of punishment or for the crime happened, imposed on a suspect, accused, convicted or other person. Persecution or coercing someone to torturing, are also amounted the act of torture.

#### **Realization of Article 2-4, 15 and 16 of CAT**

##### **2. The National Constitution of Afghanistan, 2004**

**Article Twenty-Nine states**

*"Torture of human beings is prohibited."*

*"No person, even with the intention of discovering the truth, can resort to torture or instigate to torture another person who may be under prosecution, arrest, or imprisoned, or convicted to punishment.  
Punishment contrary to human integrity is prohibited."*

### **Article Thirty**

*"Any statement, testimony, or confession obtained from an accused or of another person by means of compulsion, are invalid.*

*Confession to a crime is: a voluntary confession before an authorized court by an accused person in a sound state of mind."*

### **3. The Penal Code of Afghanistan 1355 (1967)**

**Article 4** of the Penal Code of Afghanistan strongly prohibits any punishment which is against human dignity as:

- 1) Innocence is the original state. An accused person is considered innocent unless otherwise convicted by a final decision of an authorized court.
- 2) Those punishment which are contrary to human dignity, is forbidden.

### **4. The Criminal Procedure Code, 2014**

Article 22:

- 1) Neither the judicial officer, prosecutor nor the court, at any circumstances, have no permission, itself or by other person, compelling a suspect for confession through ill-treatment, forced use of drug, torturing, deceiving or fall promising and hypnotizing.
- 2) Those confession obtained by using the means mentioned in the item 1 of this Article, is invalid.

(The abovementioned Article 22 refers to the Article 15 of CAT.)

### **Punishment of perpetrator of torture case (Art. 4, CAT)**

### **5. Penal Code, 1976**

- 1) **Article 414:** A person who illegally or without the consent of an authorized official arrest a person, detain or prohibit him of working, the perpetrator, according to the degree of violation, is sentenced to mid-term of imprisonment (1-5 Years).
- 2) **Article 416:** If the arrestment, detaining and prohibiting of a person to work takes place as a result of force, threatening for death or physical persecution, the perpetrator, if he is the official government employee, is sentenced to maximum of long-term period of imprisonment (10 Years).

**3) Article 275:**

1) If the judicial agent, for the purpose of obtaining information or confession, torture a suspect or an accused person, himself or as per instruction of another person to do so, the perpetrator is sentenced to long-term imprisonment (5 to 10 years).

2) If the accused person dies due to severe torture, the perpetrator is sentenced equivalent to the sentence for murdering.

**4) Article 276.** If the assigned public servant punished a convicted person more than the sentence adopted by the court, or to instigate someone else to do so, or other punishment that has not been adopted by the court, the perpetrator in addition to convicted to mid-term imprisonment (1-5 Years), he is dismissed from taking government office and deprived to work in the area under his profession.

**Realization of the Article 14 of CAT**

**Compensation for cases of torture**

Article 446 of the Draft Penal Code:

(1) At all circumstances of torture mentioned in this Chapter 9 (of Penal Code), the perpetrator of torture, in addition to punishment as Article 445 of this Law, is sentenced for paying fine for bearing the cost of suffering brought to the victim.

(2) If the perpetrator cannot afford or his financial ability couldn't be verified, the department he/she belongs to, shall bear the cost of suffering as mentioned in item (1) of this Article.

**Realization of Mutual International Cooperation, Article 8 CAT**

According to the Article 51 of the Penal Code (1976), the government of Afghanistan can cooperate with other states, where the suspect or accused person is the national of that country, in the areas of collecting the relevant information and evidences on the criminal case, facilitation for handover of the criminal person to judicial authority of the requesting country for further evidence collection and investigation, sending judicial document and providing with proofing evidence on the criminal case and information on financial affairs related to the criminal person.

**Article 11 and 12 of CAT on Systematic Review of Interrogation Rules and Monitoring Torture**

One of the main departments of the Attorney General Office is to monitor the interrogation process in the National Police, National Army and NDS interrogation sections so as to sustain the prevention of torture and ill-treatment. However, the AIHRC findings indicate that in many cases ill-treatment and torture have taken place during interrogation in these organizations. The AIHRC has not yet been able to access to the interrogation process. Although closed circuit cameras have been installed in some interrogation rooms, but such monitoring tools, except in a few main provinces, is not available in all police and the NDS departments in all provinces.

The AIHRC has requested several times from the NDS to provide it with the procedure of handling detainees, method of case investigation and interrogation method/techniques, but so far AIHRC

have not received such information. However, the NDS has verbally said to the AIHRC that the investigation techniques are classified documents and cannot be released to third parties.

In addition, all of these three defense and security organizations have established human rights departments within their organization, but still these departments are very weak and incapable to monitor the interrogation process.

### **Realization of the Article 10 of CAT (Education)**

Since 2003, the AIHRC has been cooperating with the national security forces (National Police, National Army and National Directorate of Security) regarding educating personnel of these defense and security organizations on the issues related to the laws of war (IHRL) international human rights law and international humanitarian law (IHL). As a result, International human rights law and international humanitarian law is incorporated in the curriculum of security and defense organizations.

In 2016, the AIHRC convened 29 training workshops in which 948 security personnel from various areas including National Police, prosecutors, prison staff, judges and defense lawyers participated. The AIHRC also signed a joint memorandum of understanding with the Afghanistan National Security Forces (ANSF) including Ministry of Defense, Ministry of Interior and National Directorate of Security.

As a provision of this MoU, the AIHRC has extended its police Ombudsmen Section in its 14 satellite and provincial offices to monitor and assess actions and human rights abuses caused by members and staff of security forces as well as to investigate complaints on their wrongdoing and refer it to their judicial departments for the purpose of further investigation and executing the rule of law.

On the basis of this MoU, the AIHRC is to train their staff on IHRL and IHL, mostly focusing on the principles of provisions of IHRL and IHL to minimize civilian casualties and respect laws of war during the anti-terrorism campaign and military operations.

### **The Achievements of the Government of Afghanistan against Torture, Other Cruel, Inhuman and Degrading Treatment or Punishment**

The following Government achievements could be considered as significant steps toward elimination of torture:

- The issuance of the presidential decree No. 129, 1391 (2012) on prohibition of Torture, Other Cruel, Inhuman and Degrading Treatment or Punishment,
- The Adoption of the “*National Plan of Action on Elimination of Torture*” in 1393 (2014)
- The adoption of the “*Draft Law on Elimination of Torture*” on 28 February 2017 by the Legislation Committee of the Minister’s Council. The Draft is to be adopted by the council of Ministers and the Parliament of Afghanistan;
- Based on the AIHRC’s recommendation, the Afghan Government drafted the National Plan on the elimination of torture in Afghanistan. The recommendation included among other things, legislative measures in relation to torture, educational and capacity programs



for the defense and security forces and preventive measures against torture. However, the National Plan has not been implemented yet.

- The adoption of the Law on Prisons and Detention Centers in 1386 (2007). This Law obliges the prisons authorities, officers, prosecutors and other prisons' staff to realize the human rights of prisoners, handle and treat them humanely.
- The Establishment of "*The High Council of Prisons*", based on the Article 13 of the "*Law on Prisons and Detention Centers*" with the membership of high level government authorities including the AIHRC. The Council is chaired by the Minister of Justice. The mandate of the Council is to take the leadership of managing prisons in order to making sure of human rights realization in prisons.
- The adoption of the "*Regulation on Management of Prisons and Detention Centers*". According to this Regulation the officers of the prisons and detention centers are obliged to refrain from torturing, ill treatment, and any persecution or harassment of prisoners and detainees that cause physical and mental suffering.

### **The AIHRC's Achievement**

The AIHRC is regularly monitoring the situation of human rights in detention centers across the country. It is also committed not only making sure that the people deprived of liberty have access to minimum international standard of living but more importantly it is committed to prevent torture and ill-treatment in the detention centers. In addition to regular and pre scheduled visits, AIHRC also conducts random and unannounced visits to places of detention and prisons to make sure that prisoners and suspects are not being tortured by defense and security forces.

The outcome of each monitoring mission is reported immediately to the prison authorities for taking immediate action to stop torturing and ill-treatment and also taking measures for improvement of the prisoner's living conditions. The AIHRC also publishes its findings and recommendation for public.

Since its commencement, the AIHRC has identified and took the issues with relevant authorities which ended in closing down more than 80 private jails.

According to annual report of the AIHRC on implementation of CAT for the year 1394 Hijri-Shamsi (21 March 2015-20 March 2016), it has conducted 1094 monitoring visits to police stations, detention centers and prisons of 31 provinces, and interviewed approximately 2,000 inmates.

Between 21 March 2015 and 20 March 2016 (1394), the AIHRC has documented 93 cases of torture while this figure for the previous year (2014/2015, 1393) was 287 cases. That is a reduction of 32% in 2015-2016 (1394) in comparison to 2014-2015 (1393). The Afghan National Police and the National Directorate of Security (NDS) have been responsible for most of these cases of torture and inhuman treatment while the victims have mostly been the alleged insurgent group members and their supporters.

According to the AIHRC's findings in 1394 (2015-2016), out of 93 cases, 74 suspects (80%) have been tortured by the police and the rest were tortured by the staff of the NDS (16%) and National

Army (4%) respectively. It should be mentioned that this figure might not indicate the real number of people tortured by the staff of the NDS because the AIHRC staff did not have access to all of the NDS detention centers during 1394. However, comparing the percentage of torture cases to 1393 (2014/2015), the number of people tortured by police has been decreased by 43%, 33% by NDS and 0.8% by the National Army.

All of the victims who were subject to torture were people alleged of violating Afghanistan's security interest. The security and defense forces tortured the alleged suspects using different methods including but not limited to beating by wooden stick, wire cable and water pipe, kicking, hanging them from ceiling, pulling off the beard, electric shocking, water boarding, shackling, keeping in isolated cells, sleep deprivations.

The National Army personnel also tortured those who were arrested from the battleground to obtain information or confession. Out of 287 cases, 14 cases of torture has been committed by Afghan National Army in 1993, while in 1394 only 4 persons were tortured by Afghan National Army.

## **Cases of Torture**

### **A) Torture by staff of the National Police**

1. *One victim of torture in Kunduz province reported to the AIHRC Satellite Office, who was recognized as suspect for a kidnap case, the he was kept locked for 5 days in police custody and badly tortured. After release, the AIHRC's staff documented the wounds and scars marks the back of the victim.*
2. *A man reported to the AIHRC office that on the morning of 21/01/1394 (11 May 2015), a landmine exploded near a police vehicle in Panjwai District of Kandahar. Later at 1:00pm of that day policemen raided my house and took my 18 years old brother0 as a suspect to the police office. I was told by police officer that he will be returned soon after short investigation. After one hour I went to the police office looking for my brother, but I was told that my brother is no longer there. When I returned home, I saw the villagers crowded the entry door of my house, who were preparing for burying my brother's body. I saw wounds and other signs of torture on his body, which indicates that he was tortured by the police.*
3. *An inmate in the prison of Paktia Province reported to the AIHRC office, that he was severely beaten with plastic water pipe by the prison officer in an early morning of November 2015. He told that the prison officer accused him of communicating with someone outside of prison through a cellphone. The prison officer searched his room, looking for the cellphone, but couldn't find any cellphone in his cell. This was despite the fact that I didn't have any cell phone let alone talking to anyone outside. Then the officer took me to the office of the Prison Chief. He inmate further added that as a result of severe beating with wire cable he has suffered physically and mentally and amounts to torture.*

4. *A man reported to the AIHRC office in Kandahar province that one day Kandahar police arrested me and took me to the police station. The officer ordered me to disclose names of Anti-Government Elements. He said that he told to the officer that he is a shopkeeper and has no relation with the Taliban. He told that the police has start beating him severely with wire cable to disclose names and address of the Taliban men. He told our colleague that as a result of that beating I fainted on the floor. He added, however after a short recovery, the beating continued again.*

#### **Torture cases done by the staff of the National Directorate of Security**

Among the 93 cases of torture in 2015, fifteen (15) cases (16% of all cases) were committed by the NDS. The victims have been tortured while they were in the custody of the NDS. They have been reported as suspects or had relation with the Anti-Government Elements. This figure can't be the real number of victims tortured by the NDS agents, because the AIHRC didn't have adequate access to places of detention running by NDS to conduct interviews with suspected detainees. The authorities within NDS citing different excuses in order to prevent AIHRC from monitoring detention centers run by them.

The AIHRC found that severe beatings by wood stick, wire cable and water pipe, facing to electric circuit, hanging on the ceiling, throwing water on nose and mouth and forcing for prolonged standing have been practiced by the NDS agents during interrogations. However, the following several cases indicates that how the suspects have been tortured in the NDS custody.

- (1) A man reported to AIHRC in Faryab province that: *"On 1/5/1394 (around 10 July 2015), the NDS agents of Faryab province arrested me and interrogated me at 03:00 AM. They blindfolded my eyes and severely beat me with piece of wire cable and no one was able to hear my screaming, then they tied up my ankles with wire cable and forcibly kept me standing for half of hour."*
- (2) Another man reported to the AIHRC office in Kunduz province and told his story in this way: *"On the way from Kunduz to Kabul, the NDS agents arrested me and took me to the headquarters of the NDS Department in Baghlan. They accused me of being an agent of the Taliban. They tied up my legs by a piece of rope and severely beat me with wood stick on my feet which was very painful and as a result I was not able to move for a week."*
- (3) Another man reported to the AIHR office in Helmand that:  
*"I was arrested by the NDS' agents of Helmand province. They accused me of kidnapping. They (the agents) blindfolded my eyes and shackled my hands and three of the agents who were dressed in military uniform kept me tights and the forth one without uniform tortured me in different ways. They forcibly sank my head and nick four times in a water bucket that I was feeling being drowned and suffocated. And they were forcing me to swallow water which was very painful. They also beat me a lot with wire cable on the waist, genitals and feet which made me unable to walk for several days. I was forcibly lied down on my chest, then they pulled my head and legs backward which was very painful and put pressure on my genitals and as a result of that, I now feel that I'm sexually a disabled man. After two months of detention I was identified as an innocent and released and then I reported this to AIHRC."*

## **Violence against women**

Despite of the lobbying and efforts of AIHRC, government of Afghanistan, women rights organization and other rights organizations, violence against women still remains one of the greatest human rights challenges in Afghanistan.

The EVAW<sup>1</sup> Law has been signed by the president of Afghanistan and is in full force, but it yet to be passed by the Parliament of Afghanistan.

The AIHRC findings show that violence against women has seen a steady increase in the last three years. For example, in 2014, the AIHRC has documented 4873 cases of violence against women while this figure for 2015 was 5132, that is an increase of 5.3%. However, in 2016, the AIHRC registered a record number of 5575 cases of violence against women<sup>0</sup> that is an increase of 8.6% compared to 2015. Off the 5575 cases registered in 2016, 1591 cases constitute cases of physical violence while 361 of are cases of sexual violence and abuse. The remaining 2502 and 1121 cases are cases of verbal and mental and economic violence respectively.

The increased number of violence against women could be due to few factors including an increased awareness of the public about the role of AIHRC, increased media awareness or an increase in to women's understanding of their rights. However, the AIHRC statistics does not reflect the overall violence against women in the whole country. There are a lot of cases of violence against women particularly in provinces that are not recorded or reported.

## **Extrajudicial Killing of women**

Extrajudicial killing of women is a serious human rights violation committed in areas that the government have less control or no control or in areas that are controlled by insurgents and Taliban. In the last 3 years, the AIHRC has documented 28 cases of women being killed arbitrarily and unlawfully in places under the control of armed opposition groups mainly Taliban. Taliban and insurgent groups often subject innocent people to harsh sentences and often execute them summarily.

## **Punishment of the perpetrators of torture cases?**

According to the AIHRC's 1393 (2014) annual report, three suspects in 1393 and one suspect in 1394 (2014 and 2015) died as a result of severe torture in Kandahar police custody/detention center, but there is no report of the perpetrators being brought to justice or prosecuted. This is despite the Penal Code of Afghanistan clearly states that "the perpetrators of torture should be prosecuted and punished according to the law." So far very few number of perpetrators symbolically prosecuted for committing torture.

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<sup>1</sup> Elimination of Violence Against Women Law (EVAW LAW)

### **The Reasons of Torture Practice in Afghanistan are:**

- The weak and deteriorating rule of law and impunity enjoyed by perpetrators, is one of the main reasons that perpetrators are not being tried. AIHRC's Annual report for the years of 1393 and 1394 (2014-2015) indicates that no perpetrator of torture has been prosecuted and brought to justice. Impunity has given the opportunity for perpetrators to commit torture without any fear of repercussions.
- Due to lack and shortage of much needed modern equipment of investigations, very few police and intelligence offices in the capital and merely large cities of Afghanistan have been equipped with such equipment in order to produce valid and credible evidence against crimes. That is why the police, interrogators and investigators resort to torture as easy method of obtaining information and confession.
- The existence of poor training facilities for police and security personnel on the use of modern method of criminal investigations.
- Lack or poor access of suspects to defense lawyers/attorneys, from the moment they are arrested and onwards, there will always be fear of being maltreated. It is very particular for those suspects that are accused of breaching national security of Afghanistan (mainly the Anti-Government Elements), while the existing laws has recognized the right to have access to defense lawyer/attorney.
- Lack of awareness of both suspects and police and security agents on the rights to free and fair trial.

### **AIHRC's General Conclusion and Comments**

Despite the fact that Afghanistan has signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1976 and the subsequent international treaties as well as enacting domestic laws prohibiting torture in the country, suspects and detainees are still being tortured and maltreated in Afghanistan.

The main factors that lead to the continuation of torture by the security and defense forces, are the low level of criminal investigation knowledge, expertise as well as insufficient technologies in these departments. On one hand, the security and defense forces are not adequately trained on respecting the rights of people deprived of liberty and on the other hand, absence and lack of investigative technology and equipment, they feel compelled to get information from the suspects by resorting to torture.

There is no written and adopted procedure for interrogation; the monitoring mechanism during interrogation is very weak; therefore, perpetrators of torture and inhuman treatment are intentionally not prosecuted; and also there is no mechanism to compensate the victims of torture.

The AIHRC's monitors have no adequate access to places where suspects and accused are kept, particularly by the NDS.

Criminal suspects, detainees and prisoners have no sufficient information neither on their rights nor on the relevant laws. They don't have access to defense lawyers from the moment they are

apprehended, especially those who are alleged for being insurgents or cooperating with the Anti-Government Elements.

### **Recommendations**

- 1) The Government of Afghanistan, in accordance with the National Program of Elimination of Torture, should unconditionally sign and ratify the Optional Protocol to the CAT.
- 2) The Government of Afghanistan should remove its reservation pertaining Paragraph 1 of article 28 of the Convention.
- 3) The Government of Afghanistan should extend an official invitation for the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment to visit Afghanistan.
- 4) The domestic laws have not adequately addressed details of the torture related crimes, therefore, the Government should criminalize torture as a separate and independent crime, and penalize torture with punishment commensurate to the gravity of the crime.
- 5) The Government should also criminalize cruel, inhuman or degrading treatment and punishment.
- 6) The definition of torture should be broadened to include the article 1 of the UN CAT as well as the Rome Statute in the Penal Code. The definition should contain that torture can be committed for the purpose of "discrimination", "punishment" and "intimidation" in addition for the purpose of obtaining "confession".
- 7) The Government should ensure facilitation for easy approach for the right of victim of torture to complain to the office of Attorney General, relevant courts, and the Afghanistan Independent Human Rights Commission, and protect victims and witnesses against reprisal.
- 8) The Government should ensure and provide necessary facilities for the AIHRC monitors to conduct prompt and impartial investigation on allegation of torture and provide access to custody and detention centers without pre-notice condition.
- 9) The Government should stop and put an end to immunity for perpetrator of torture and bring them to justice.
- 10) Victims of torture must have the right to redress; therefore, the Government has make sure that to develop mechanisms that could address all forms of reparation for victims of torture.
- 11) The government agents (interrogators/investigators) should inform the suspects, accused persons on their rights including the right to have defense lawyer. If the suspect doesn't have financial mean to attain defense lawyer/attorney, the government have to provide either defense lawyer or financial means.
- 12) The international forces who detain suspects of the Anti-Government Elements should let the AIHRC's monitors to have access to these suspects for the purpose of the realization of IHRL and IHL.
- 13) The security and defense organizations should value the work of human rights departments within their organizations and enhance and strengthen the role law and provide them the much needed training and documents.

## **Additional information on detention period in Afghanistan legislation**

### **The legal period of detention**

#### **Article 100, Criminal Procedure Code, 2014**

Article 100:

Para 3: If the period of 7 days for the crime of misdemeanor and 15 days for the crime of felony is not sufficient for collection of evidence and completion of investigation, the prosecutor can ask the relevant court (in accordance with 2<sup>nd</sup> paragraph of this article) to extend the detention (custodial detention) period for the:

1. Crime of misdemeanor up to 10 days.
2. Crime of Felony up to 30 days.

Para 5: If the prosecutor couldn't collect the evidence and complete the investigation within the time frame provided in para 3 and he or she feels/thinks that there is need for more time and extension of custodial detention for collection of evidence and completion of investigation, he/she can ask the court for more extension. After assessment and consideration of the prosecutor's deliberation and suspect's statement, the court on the demand of prosecutor can extend custodial detention for crime of misdemeanor up to further 10 days and for the crime of felony up to further 30 days. The suspect and his/her defense lawyer have the right to be present at the time of delivering the decision by court as well as the right of objecting the decision.

Para 6: extension of custodial detention can't exceed from 20 days for crime of misdemeanor and from 60 days for crime of felony.

#### **Article 101 Criminal Procedure Code, 2014**

Article 101:

Para 1: After submission of evidence and completion of investigation by the prosecutor, it is the court's duty to deliver its verdict within the time frame provided as below:

1. Due process, in the Primary Court, 30 days.
2. Due process in the Appeal Court, 30 days.
3. Due process in the Supreme Court, 60 days.

Para 2: If the court, due to insufficient evidence and incomplete investigation, sent back the case to the office of prosecutor, the court has to decide the fate of suspect in accordance with para 1 of this article.

Para 3: custodial detention of a suspect in all cases can't exceed more than 120 days.

## Appendix: Glossary

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PDPA	People's Democratic Party of Afghanistan
UN CAT	United Nation's Committee Against Torture
AIHRC	Independent Human Rights commission
ANP	Afghan National Police
ANA	Afghan National Army
NDS	National Directorate of Security

The United Nations convention against Torture    the UN Convention against Torture and Other  
Cruel, Inhuman or Degrading Treatment or Punishment

March 2017  
Kabul, Afghanistan