



Afghanistan's Record on Torture to Come under UN Scrutiny

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On 24 and 25 April 2017, Afghanistan's record on torture will be reviewed by a committee of experts under the auspices of the Convention Against Torture (CAT). The CAT Committee will hear from the government, United Nations human rights officials and NGOs before making recommendations. In the weeks leading up to the committee meeting, the government has been scrambling to put new legislation and mechanisms in place, but it may not be enough to deflect criticism. UNAMA has already said there has been an increase in the use of torture since its last report in 2015, and perpetrators are still not being prosecuted, or even sacked. AAN's Kate Clark (with input from Sari Kouvo and Ehsan Qaane) here answers some questions on how the CAT Committee works, how the government is defending itself and what Afghanistan's record on torture is.

AAN's reports on detentions and torture can be found in our [Detentions and Torture Dossier](#). It bring together dispatches and reports on detentions by United States forces on Afghan soil and by the Afghan state, and the detention of Afghans by the US in Guantanamo Bay.

How does the Convention Against Torture work?



Afghanistan signed the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT](#)) in 1984 and it came into force 1987. The Afghan constitution recognises the country's commitments under international law and confirms its obligation to comply with them. (1) A committee overseeing the implementation of the Convention is due to review Afghanistan's record on torture on 25 and 26 April 2017 (See the agenda and read documents here ([read them here](#))). The committee is made up of independent experts selected from different United Nations member states and meets regularly in Geneva where it is serviced by the Office of the UN High Commissioner for Human Rights. Its main obligations are: dialogue with member states on their periodic reports; dealing with complaints from states that have accepted the individual complaints procedure (ie states that have signed and ratified the CAT Optional Protocol – more of which later); and developing and adopting general comments that are interpretative statements about the implementation of the Convention, (see [here](#)) for detail on Afghanistan's session.

According to the CAT, all state parties should regularly report to the Committee. Afghanistan did submit its initial periodic report in 1992 – during the civil war! – but there was then a long, long lapse. In 2010, the CAT Committee issued a request for “Specific information on the implementation of articles 1 to 16 of the Convention,” a list of questions and issues which it wanted [Afghanistan](#) to address. Afghanistan [responded](#) to these in a report dated May 2016. It was the first report prepared by the Afghan government and submitted to the CAT Committee in a quarter of a century.

The government's response to the CAT Committee involved a lot of listing of laws as evidence of action, rather than actual action. It ignored many requests for specific information or obfuscated in its answers. For example, question 2 from the CAT committee asked for “current criminal provisions concerning offences such as attempted acts of torture, instigation or consent of torture or the order to commit torture by a person in authority and the exact penalties imposed for any of these offences” *and* the number and nature of the cases (including geographical location of the offences prosecuted) and the penalties imposed or the reasons for acquittal. The government just described the law, giving no information about how – or indeed whether – it had actually been carried out. (2)

However, there is a tradition within the UN human rights treaty body system of civil society and other groups submitting what are called ‘shadow reports’. These are alternative reports that can clarify or, as needed, challenge the information provided by the government. Human Rights Watch, Open Society Afghanistan and the [Civil Society and Human Rights Network](#) (CSHRN) in cooperation with eight other Afghan civil society organizations have submitted such reports. The CSHRN's report, which is the first report in its kind submitted from Afghan civil society to the CAT Committee, says the government's response to the Committee “falls short in addressing the most pressing issues when [the report] comes to the absolute prohibition of torture and other ill-treatment.” The biggest challenge, it says, “remains the implementation of existing laws.” The Afghan Independent Commission for Human Rights (AIHRC) has also submitted its investigations into state agencies' use of torture.



What will happen at the CAT Committee sessions?

On 25 April, there will be a closed session with the Committee being briefed by UN human rights officials who are based in Kabul, followed by private sessions with the AIHRC and then with NGOs. On 26 April, at a public session at which anyone who is accredited can attend, government officials have their chance to answer questions and make statements; members of the [delegation](#) include the Attorney General, deputy interior and justice ministers and human rights officials from various ministries (see the agenda [here](#)).

The Committee's 'concluding comments', a set of recommendations to the Afghan government, should be published on 12 May 2017. The government is expected to follow up on the recommendations and show how they have been addressed when their next periodic report is issued.

What is the 'status' of torture in Afghanistan?

Torture is illegal in Afghanistan in multiple ways:

Penal Code 1976

If the public service official tortures the accused for the purpose of obtaining a confession or issues an order to this effect, he shall be sentenced to long imprisonment.

October 7, 1976; 15 Mizan 1355), Art 275

Constitution of Afghanistan 2004

No one shall be allowed to order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished.

January 26, 2004 (6 Dalwa 1382) Art 29

Presidential Decree No 129 To Implement The Afghan Fact-Finding Delegation's Suggestions On The Presence Of Torture And Ill-Treatment In Detention Centres

The Attorney General of the Government of the Islamic Republic of Afghanistan is ordered to prosecute those who violate article 51 of the Prisons and Detentions Law [3] in the light of the findings of the delegation's report which has reported on the torture and mistreatment of detainees and prisoners, this in order to prevent torture and mistreatment and the conviction of any innocent detainee in the future.

Issued by Hamed Karzai, 16 February 2013 (28 Delwa 1391), art 1

(Read the text at the end of this [dispatch](#))



Criminal Procedure Code 2014

... the judicial police officer, prosecutor and court themselves or through means of another person, in any case, are not allowed to force the suspect or accuse to confess using misconduct, narcotics, duress, torture, hypnosis, threat, intimidation, or promising a benefit. If the statements of the suspect or accused person are taken in violation of the provision set forth in paragraph of this article, they shall not be admissible. 5 May 2014 (28 Saur 1393), art 22

Last month, Ashraf Ghani introduced another presidential decree prohibiting torture – more of which later.

However, lack of legislation has never been the reason why torture carries on in Afghanistan. The problem is that the law is not implemented. Perpetrators are rarely prosecuted, or even sacked or demoted, and this encourages a culture of impunity. Moreover, the drive to torture is embedded in the Afghan criminal justice system which accepts confessions only, without any other supporting evidence, as enough to convict people. Many in the security ministries, including at the highest levels, also believe that ‘torture works’. The use of torture has a long history, featuring in war crimes [reporting](#) of all governments and most armed groups, some of whom have had their own quasi-criminal justice systems, with prosecutors and judges. Current locations and methods are usually familiar, appearing throughout the historical reporting of torture between 1978 and 2001.

Who has reported on torture in Afghanistan?

In recent years, systematic reporting on the conditions of security detainees has been carried out by UNAMA under its Security Council mandate and the AIHRC. These are the only two organisations with the authorisation and reach to be able to, first, get into places of detention to speak to prisoners and, secondly, do that across the country.

[The International Committee of the Red Cross](#) also has a mandate to visit detention facilities and speak to those being held. It works behind the scenes speaking to the authorities to ensure detainees are treated humanely. It does not report publicly on its findings.

What have investigations found and what has been their impact?

The UN’s 2011 [report](#) (see AAN analysis [here](#)) was the first systematic investigation into the conditions of conflict-related detainees in Afghanistan.(4) As AAN reported :

The types of torture most commonly reported by detainees to UNAMA were beating, especially with rubber hoses, electric cables or wires or wooden sticks and most frequently on the soles of the feet, and suspension, being hung from bars or chains for lengthy periods. Less common, but still widespread, were the twisting of the penis and wrenching of the testicles, and threats of sexual abuse, electric shocks, forced standing, and the removal of toenails.



UNAMA found that torture was systematic (ie more than half of those interviewed reported having been tortured) in the provincial NDS facilities in Herat, Kandahar, Khost and Laghman and NDS's Counter-Terrorism Directorate in Kabul. In another 15 NDS facilities, a quarter of those said they had been tortured. Torture at the hands of the Afghan National Police (ANP) was also reported.

An investigation by the [AIHRC/Open Societies Institute](#) published a few months later in early 2012 (see AAN analysis [here](#)) echoed and reinforced the findings of the UNAMA report of the previous year. In addition, it found evidence of possible complicity by the CIA and US Special Operations Forces in the actions of the Kandahar Strike Force, an informal, 'counter-terrorism' militia operating in southern Afghanistan.

The government denied there was anything wrong. However, the reports did have a knock-on effect. Transfer where there is a substantial risk of torture is also illegal under the CAT (the legal principle of *non-refoulement*). The international military mission, ISAF, had turned a blind eye to the fact that detainees it was transferring to NDS were being tortured (even after public enquiries and legal challenges in some member countries, including [Canada](#) and the [UK](#)). It was only the publication of the UN 2011 report – and the publicity surrounding it – which finally forced ISAF to take action. It had the clout to be able to insist on monitoring, training and certifying NDS facilities, blacklisting those where there was a record of torture – although it only monitored those detainees it transferred.

However, **UNAMA's next [report in 2013](#)** (see AAN analysis [here](#)) found that torture was as extensive as ever (as AAN [reported](#)). The then ISAF commander, General John Allen, admitted failure, saying their influence over Afghan behaviour was limited. The fundamental problem, said UNAMA, was that virtually no official had been held to account, either by sacking or prosecution.(5)

... torture cannot be addressed by training, inspections and directives alone but requires sound accountability measures to stop and prevent its use. Without effective deterrents and disincentives to use torture, including a robust, independent investigation process or criminal prosecutions, Afghan officials have no incentive to stop torture.

The government accused UNAMA of exaggeration, with NDS saying it treated detainees according to "humanitarian and legal principles." Even so, soon after, President Karzai ordered a fact-finding investigation and issued a decree criminalising what was already, in multiple ways, illegal. ISAF also strengthened its system of oversight of transferred detainees. **UNAMA's 2015 [report](#)** (see AAN analysis [here](#)) did find a substantial – 14 percent – reduction in incidents of torture. Perpetrators were still largely being left in place, but it seems ISAF action had led to a reduction – or possibly re-location – of torture.

Are there locations that appear repeatedly in the reporting on torture?

The NDS Counter-Terrorism Directorate, is regularly named as a site of torture (it appears as



the Fifth Directorate in historical reports on torture and has subsequently been renumbered 90, then 124 and most recently, AAN was told, 241). This directorate is located in the Shashdarak area of Kabul, a neighbour to the Afghan ministry of defence, ISAF and then Resolute Support headquarters and the United States Embassy.

Kandahar, both NDS and police (central and local stations), also appears regularly. In 2013, for example, half of all detainees held by the ANP in Kandahar said they had been tortured and it represented a third of the cases nationwide. This is also where 81 detainees had, in that reporting period, allegedly disappeared. “Multiple sources,” said UNAMA, “shared concerns that some detainees may have been killed in police custody [in Kandahar] following arrest.” Then, as now, the ANP in Kandahar is under the command of General Abdul Razaq. He already had a long list of credible and well-sourced allegations of abuses and crimes to his name (see [here](#), [here](#) and [here](#)). The US and many in government feel that, despite the atrocities, Razeq’s presence is necessary to secure the south. (6)

What has happened since Ashraf Ghani took power?

Ashraf Ghani became president, it was officially confirmed that the CIA had tortured Afghans and foreigners in black sites on Afghan soil in the early years of the ‘War on Terror’ Ghani appeared genuinely horrified, [calling](#) the revelations shocking and inhumane:

“This is a vicious cycle. When a person is tortured in an inhumane way, the reaction will be inhumane,” Ghani told a specially convened news conference in Kabul. “There can be no justification for these kinds of actions and inhumane torture in today’s world.”

He also [told](#) Human Rights Watch after reading its 2015 [investigation](#) into Afghan strongman and impunity that the “Afghan government would not tolerate torture,” and he was “committed to addressing allegations of torture.” Since then, there have been promises to take action, but apparently not much else. Such promises were made in the context of the European Union-Afghanistan Human Rights dialogue, so that, on 15 June 2015 (link now taken off the website) and again on [1 June 2016](#), the government said it would:

In accordance with the National Action Plan to prevent torture:

- Ratify the CAT Optional Protocol and sign it at the UN General Assembly in September 2015, (repeated for September 2016) (Read the text of the Optional Protocol [here](#))
- Establish an Independent Oversight Mechanism (National Preventive Mechanism) by November 2015 (repeated “within a year of the ratification of the CAT Optional Protocol”)
- Strengthen the role of the Ombudsman Office within the AIHRC, with a Memorandum of Understanding to be signed with the Ministry of Interior by September 2015 (repeated with the MoU to be signed by the ministries of interior and defence, and the NDS by July 2016 and instructions on the Ombudsman to be sent to all units by September 2016)
- Draft and finalise a law on the prevention of torture to be drafted and finalised by the



Ministry of Justice by February 2017 (in 2016 Dialogue only)

None of these actions were taken at the time.

Are there recent reports on torture and has the government taken any recent actions?

UNAMA is due to issue its latest two-yearly report on the treatment of conflict-related detainees. Publication is likely to be just after the CAT Committee sessions, but as the UN will be briefing the Committee in a closed session, the experts will have full disclosure of what is in the report. A sense of what is likely to be in it came in UNAMA's [reporting](#) to the UN Human Rights Council on 11 January 2017:

UNAMA found that the detainees had experienced torture or ill-treatment at levels exceeding those documented in its 2015 public report. In most cases, the authorities used torture and ill-treatment to extract a confession. While the majority of documented cases related to incidents allegedly carried out in National Directorate of Security facilities, UNAMA also noted a significant increase in the use of torture and ill-treatment by the Afghan National Police. Since December 2015, the Government has made little tangible progress in meeting its commitments under the 2015 national plan on the elimination of torture. Notably, accountability [sic] persists for alleged perpetrators of torture and ill-treatment.

UNAMA reported restrictions placed by the government on access for its human rights officials to detention facilities, to monitor the treatment of conflict-related detainees. Although UNAMA's 2017 report will not be published ahead of the CAT Committee, the government has been briefed and it is worried. In recent weeks, there has been a cascade of actions on preventing torture.

On 5 March 2017, President Ghani passed a twenty-article decree on the Prohibition of Torture (hard copy with AAN). It defines torture for, we think, the first time in Afghan law:

...an act which causes pain or physical or psychological suffering against a suspect, an accused or a convict or any other person for the purpose of forcing [the individual] to confess, give information or force another person to give information or to force an individual not to do an act.
(art 3)

Article 3 outlaws the commission of torture by a public service agent or official, ordering or agreeing to torture or being silent about it. It also outlaws torture commissioned because of discrimination or as a punishment. For the first time (we think) the defence of 'obeying orders' is explicitly outlawed, no matter what the situation (for example during wartime) (art 7). The decree outlines the penalties for those convicted of torture (higher for torturing women and children or for torture which injures or kills) and orders compensation for their victims (art 17).

The decree orders the establishment of a 15 member commission lead by the head of the AIHRC (and representatives from the security and legal ministries, lawyers and civil society (art



12). (7) The commission can establish sub-committees to implement decisions or to follow special cases and members can directly enter detention centres and prisons without announcement.

Off the back of that decree, a series of actions was scheduled to take place. The “Calendar of the Implantation of the President’s Order on the Prohibition of Torture” (hard copy with AAN) set out the following actions for 10 April – 21 April 2017:

10 April

- Nader Naderi (former AIHRC commissioner, now head of the Civil Service Commission) to discuss actions with Mrs Denik (*as written, possibly Danielle Bell, head of human rights for UNAMA?*)

11 April

- Afghanistan to join Optional Protocol of CAT that would allow individual complaints under the CAT. *This was [reported](#). However, neither AAN or others that we spoke to have yet seen any document related to this.*
- Withdraw Afghanistan’s reservation to article 20 of CAT and table this cancellation on the cabinet agenda

This is significant as it allows the CAT Committee to request investigations of torture if it “receives credible information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party.”

- Amend an unspecified article of the Criminal Procedural Code

12 April

- Cabinet to discuss cancellation of Afghanistan’s reservation of article 20, CAT
- Publish report of cabinet decision
- National Security Council to be in charge of publishing all administrative and criminal decisions that have been made in regard to perpetrators of torture in the Afghan security organs, in a press conference (*as far as we know, this did not happen*)

13 April

The Ministry of Foreign Affairs to send cabinet decision to Afghan diplomatic missions in New York and Geneva and to international human rights organisations

16 April

Office of Administrative Affairs to submit the presidential decree on torture to the parliament for



approval and ask them to approve it (*AAN's parliamentary reporter said the decree has not yet been put on parliament's agenda.*)

18 April

The Commission for the Prohibition of Torture to be established as a 'National Mechanism' with the Office of Administrative Affairs and the Second Vice President in charge. *This has happened, with the AIHRC in charge. It is one of the obligations under the Optional Protocol to CAT and was [reported](#) in the media.*

21 April

- Naderi to announce the position of the Afghan government in relation to the forthcoming UNAMA report on the conditions of security-related detainees
- The National Security Council to ask for the reports by the ministries of Interior and Defence and NDS on their activities regarding the prohibition of torture in their organs for the period up till 21 April
- Acting presidential spokesman Shah Hussein Murtazawi and director of the Government Media and Information Centre Sidiq Sidiqqi to make a one-week action plan for public reporting on the CAT session in Geneva.

Will Afghanistan's appearance at the CAT Committee have an impact on the International Criminal Court?

Whatever decisions the CAT Committee makes will have no direct impact on the decisions of the ICC which is currently weighing up whether or not to investigate the Afghan state over its use of torture (as well as American forces over their use of torture in Afghanistan and the Taliban for a host of alleged war crimes and crimes against humanity). (See AAN reporting [here](#) and [here](#)). Nevertheless, the government and some of its foreign backers are concerned that a negative report from the CAT Committee could make an investigation more likely. This is something to watch.

Will any of the recent government actions convince the CAT Committee of the seriousness of its intent – or actually reduce torture?

Given the comments about torture made to the UN Human Rights Council in January 2017, it can safely be said that the latest UNAMA report will show an increase in the use of torture since UNAMA's last report in 2015, as well as a continuing absence of accountability. One senior government official questioned UNAMA methodology and said Taliban detainees had lied to defame the government. This is the regular line made by the government each time UNAMA or others have reported on the state's use of torture. At the same time, the official admitted to AAN that it was hard to reduce torture. There was, he said, an institutional belief in its effectiveness, a belief that, without torture, the state cannot get convictions and that 'terrorists' will be released and be able to attack again. There is also, he said, the institutional capacity to



carry out torture. Even pressure by ISAF, he said, had managed to achieve only a “dip” in the cases of torture. He claimed the government was serious this time and pointed to the Department 13 of the NDS as involved in investigations, saying three investigations were ongoing with all three individuals concerned removed from their posts. (That number does seem very low.) He also said the government could not publicise what it was doing on torture because many Afghans thought it good to torture ‘terrorists’. The mix of responses – UNAMA is hoodwinked by lying detainees, some in the administration think that torture works, it’s hard to stamp out, but it’s not happening – are very familiar.

The slew of recent government measures and its report to the CAT Committee focusing on laws, rather than actions, may not convince the Committee that the government is serious about reducing and eliminating the use of torture by state agencies. More importantly, it is impossible to see how these laws and measures, by themselves, can lead to any reduction in the use of torture. For that to happen, perpetrators would need to fear the consequences of torturing people. Yet, successive UN and other reports have shown that Afghan officials are rarely held to account for committing or ordering torture. Despite the old and the new laws and the establishment of yet another oversight body, unless senior officials are prosecuted, it is difficult to imagine anything changing at all.

(1) Signed human rights treaties also include: the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child. In the meantime, the Afghan government has reported on its human rights obligations to other UN bodies. Afghanistan has issued a report under the UN Human Rights Council’s Universal Periodic Review process which highlighted torture and has also reported to the Committee overseeing the Convention on the Elimination of All Forms of Discrimination against Women.

(2) The government response was:

15. *The Penal Code of Afghanistan has firmly prohibited the exercise of any kind of torture by a public servant in order to obtain confession etc. According to articles 4, 275, 276, 277 and 286 of the penal code the presumption of innocence is respected. Punishment contrary to human dignity, is not permissible. If a public servant resort to torture or any inhuman act in order to obtain a confession, he/she will be punished on the provisions of the penal code and will be fired from his/her job.*



16. *According to Article 414 of the Penal Code, midterm imprisonment will be applied if a public servant without permission of relevant, high authorities, arrests, detains someone or bans from work. In addition to this, if an ordinary person wears a police uniform or pretends to be an official authority, arrests, detains or torture someone, he/she will be sentenced to long-term imprisonment which should not be less than ten years according to Article 415 of the Penal Code.*

(3) Article 51 of the Prisons and Detentions Law enshrines the Attorney General as the competent authority to ensure prisons and detention centres observe both the law and human rights standards:

1. *The Attorney General's Office is the authorized authority to supervise the application of legality and controlling the observance of human rights standards in detention centres and prisons.*
2. *Prisons and detention centres are required to consider all the demands of the concerned attorney with regard to the observance of the provisions of the law and human rights standards and take action accordingly.*

(4) In 2009, UNAMA issued two major reports on arbitrary detention (of all detainees, criminal and security). Read them [here](#) and [here](#).

(5) Some officials had been transferred, but not demoted. General Allen said ISAF had experienced the same problem; despite informing the authorities in detail of 80 allegations, only one person had suffered any consequences – a transfer.

(6) AAN recently [revealed](#) that Razeq is officially 'tainted' by the US Leahy Law which aims to stop foreign security forces where there is credible information that a member has committed gross violations of human rights.

(7) The members are: head of AIHRC, head of the law department at the Ministry of Defence, head of human rights department at NDS, head of the Criminal Investigation Department at the Ministry of Interior, head of the detentions and prisons directorate, the deputy Attorney General, representatives from the ministries of foreign affairs, women's affairs, the Commission for Overseeing the Constitutions, the Forensic Science Directorate and civil society and the heads of the Afghan independent Bar Association and Afghan Lawyers Union.