



Home Office

# **Country Information and Guidance**

## **Afghanistan: Prison conditions**

**Version 1.0**

**September 2015**

# Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

## Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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# Guidance

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## 1. Basis of Claim

- 1.1.1 Fear of being imprisoned on return to Afghanistan and that prison conditions are so poor as to amount to torture or inhuman or degrading treatment or punishment.

## 2. Consideration of Issues

### 2.1 Is the person's account credible?

- 2.1.1 For guidance on assessing credibility, see sections 4 and 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also ensure that each asylum application has been checked to establish if there has been a previous UK visa or other application for leave. Asylum applications matched to visas should be investigated prior to the asylum interview. (See [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing. (See [Asylum Instruction on Language Analysis](#)).

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### 2.2 Is the person reasonably likely to be imprisoned on return?

- 2.2.1 Decision makers must establish the likelihood that the person will be imprisoned on return, including if necessary whether the alleged offence constitutes an offence under Afghan law and, if so, is one which is likely to be punishable by a term of imprisonment (see [Penal Code](#) for prescribed penalties for criminal offences).
- 2.2.2 If so, decision makers must also consider whether the law is discriminatory or being disproportionately applied for Convention reasons, in which case the person may be entitled to a grant of asylum.
- 2.2.3 If the decision maker believes that the person is likely to face imprisonment on return to Afghanistan, consideration must be given as to whether Article 1F of the Refugee Convention is applicable.
- 2.2.4 For further guidance on exclusion see [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#).

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### 2.3 Is the person reasonably likely to face the death penalty on return?

- 2.3.1 Afghanistan retains the death penalty and the crimes subject to capital punishment are identified in the Penal Code. The two main categories of crimes concerned are crimes against the security of the State and crimes against individuals, namely certain types of aggravated murder. In October 2014 President Ghani committed to review 400 outstanding death penalty cases (see [Penal Code](#) and [Death Penalty](#)).

2.3.2 Decision-makers must determine whether there is a real risk of the person being convicted and facing the death penalty in on return to Afghanistan.

2.3.3 For further guidance on the death penalty see [Asylum Instruction on Humanitarian Protection](#).

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2.4 **Are prison conditions so severe that prisoners suffer treatment contrary to Article 3 ECHR?**

2.4.1 In general prison conditions in Afghanistan are not so systematically inhuman and degrading or life-threatening as to meet the threshold of Article 3 of the ECHR.

2.4.2 Prisons conditions in Afghanistan vary widely; ranging from old, overcrowded establishments with inadequate food, water and sanitation facilities through to new establishments which conform to international standards. Even in those establishments where conditions are harsh, they are not in general life threatening. Inmate deaths are infrequent and largely due to natural causes. The Afghan government has sought to address some of the failings of the prison system though the impact of this has been limited (see [Physical conditions](#)).

2.4.3 There are reports of detainees – mainly alleged members of the Taliban and other anti-Government groups or individuals suspected of conflict-related crimes – being subjected to torture and ill-treatment, aimed mainly at obtaining a confession or information. The Afghan government’s efforts to prevent torture and ill-treatment have shown some progress over the last two years. According to the UN, the number of such incidents is decreasing but one-third of all detainees were still found to have suffered ill-treatment. The decrease in reports of torture or ill-treatment has been attributed to new government policies and directives banning torture, increased inspection visits to detention facilities, focused training on alternative interrogation techniques and other measures by national and international actors. The new Afghan government has committed to accelerate its efforts to fully eliminate the practice of torture and ill treatment in detention (see [Torture and mistreatment of persons in custody](#)).

2.4.4 Decision makers must consider each case on its facts. For the factors to be considered and further information, see Section 3.4 of the [Asylum Instruction on Humanitarian Protection](#).

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2.5 **If refused, is the claim likely to be certifiable as ‘clearly unfounded’?**

2.5.1 Where a claim falls to be refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.5.2 For further information on certification, see the [Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#).

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## 3. Penal Code

### 3.1 Penal Code

3.1.1 Afghanistan's Penal Code<sup>1</sup> was adopted on 22 September 1976.

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## 4. Death penalty

### 4.1 Death penalty

4.1.1 In information for 2015 the 'Hands Off Cain' website, undated, explained the legal position regarding the death penalty, stating:

'The 2004 Afghan Constitution, in article 23 asserts the right to life, envisaging at the same time the possibility of its deprivation by the provision of law. However, in accordance with Article 396 of Afghanistan's Constitution, a convict sentenced to death can appeal to two higher courts and article 129 of the Constitution establishes that "...All final decisions of the courts shall be enforced, except for capital punishment, which shall require presidential approval."

'The 1976 Penal Code...identifies the crimes subject to capital punishment in numerous articles, which refer to two main categories: crimes against the security of the State and crimes against individuals, namely certain types of aggravated murder.

'Other provisions of aggravated murder have been included in recent legislation, such as: the Anti Narcotic and Drug Law issued in November 2003, which provides for the death sentence in the case where a drug smuggler, while resisting arrest, kills a law enforcement officer; and the presidential decree of July 3, 2004 that foresees the death penalty for those convicted of child kidnapping and smuggling aimed at using the victim's body parts whenever a death is caused as consequence.

'Crimes punishable by death are also listed in the Law on Crimes against Internal and External Security of 1987, and in the Military Law of 1989, both of soviet inspiration and still in force. Such crimes are mostly related to the security of the State, especially in time of war. The crimes identified by these laws are processed respectively by the National Security Court and by the Military Court.'<sup>2</sup>

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<sup>1</sup> Afghanistan Penal Code 1976. Available UN Office for Drugs and Crime <https://www.unodc.org/tldb/showDocument.do?documentUid=2100> [Date accessed 7 September 2015]

<sup>2</sup> Hands Off Cain. Afghanistan, 2015. <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=23&nome=afghanistan> [Date accessed 7 September 2015]

4.1.2 The Amnesty International report on 'Death Sentences and Executions, 2013,' released in 2014, noted that there was a 'considerable rise in the number of reported death sentences compared to 2012' in Afghanistan. The same report stated:

'Two executions were carried out in Afghanistan, and 174 new death sentences were imposed for murder and terrorism. Approximately 300 people were under sentence of death at the end of the year. Two men were exonerated in the Western province of Herat after they had been sentenced to death in relation to the kidnapping and killing of a child.

'In November the Ministry of Justice and the Ministerial Committee of Shari'a and Traditional Penalty and Investigating Crimes proposed at least 26 amendments to the country's Penal Code. The proposed changes included the reinstatement of punishments dating to the Taliban era and reflecting their interpretation of Shari'a law, including public stoning to death for "adultery" by married people, amputation of hands and feet for theft and robbery, and flogging of up to 100 lashes for unmarried people found guilty of "adultery". Following international criticism, the President stated in an interview on 28 November that the government had backed away from the proposal to reintroduce stoning as punishment for adultery.'<sup>3</sup>

4.1.3 Amnesty International provided the following information in a document dated September 2014:

'Most [of those sentenced to death] had been convicted in unfair trials which, like most trial proceedings in Afghanistan, fall short of international law and standards for fair trial including the presumption of innocence, access to a defence lawyer, the right to examine witness evidence and testimony, and insufficient time for the accused to prepare the defence. The judicial decisions are largely based on confessions from the accused, which are often coerced, including through torture or other ill-treatment. International law explicitly prohibits statements made as a result of torture being used as evidence in proceedings. Despite the prohibition of torture under national and international human rights law, torture is widely used in most Afghan police stations and detention centres to obtain confession.'<sup>4</sup>

4.1.4 The Hands Off Cain website also noted that:

'No executions took place in Afghanistan in 2005 and 2006 but in 2007 Hands Off Cain recorded 15 executions. In 2008 at least 17 were carried out, while there were no executions in 2009 nor in 2010. Two executions were carried out in 2011, 14 in 2012 and 2 in 2013.

'On 14 October 2014, Presidential Palace officials said the government would review the cases of 400 convicts sentenced to death by the courts of

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<sup>3</sup> Amnesty International – Death Sentences and Executions, 2013 (p 8, 18-19), released 2014 <http://www.amnestyusa.org/sites/default/files/act500012014en.pdf> [Date accessed 7 September 2015]

<sup>4</sup> Amnesty International, Afghanistan: Seven-point human rights agenda for President Ghani, 28 September 2014, ASA 11/010/2014, available at: <http://www.refworld.org/docid/542ba86d4.html> [Date accessed 7 September 2015]

the country. They further added that around 100 cases had been approved by the Supreme Court of Afghanistan and were pending the signing of the new President, Ashraf Ghani, while over 300 others had not been approved by the Supreme Court. However, they insisted that the government would seek alternatives for the convicts who were waiting for death penalty.’<sup>5</sup>

4.1.5 In its 2014/15 annual report, Amnesty International stated:

‘Afghanistan continued to apply the death penalty, often after unfair trials.

‘On 8 October [2014], six men were executed in Kabul Pul-e-Charkhi prison, less than two weeks after President Ghani’s inauguration. Five had been convicted in connection with the gang-rape of four women in Paghman district. A sixth man had been convicted in a separate case of a series of kidnappings, murders and armed robberies. On 28 September, then President Karzai signed the death warrants for the six men. The trial proceedings of five men were considered unfair and controversial, marred by public and political pressure on the courts to hand down a tough sentence while the accused claimed to have confessed following torture by police in detention. President Ghani ordered a review of nearly 400 death row cases’<sup>6</sup>

4.1.6 The Foreign and Commonwealth Office’s Human Rights and Democracy Report published in March 2015 noted that “Afghanistan retains the death penalty and the UK strongly opposes its use in all circumstances. We called for the abolition of the death penalty at Afghanistan’s UPR last year. Most recently, President Ghani has committed to review 400 outstanding death penalty cases. We welcome this review and will continue strongly to condemn any future use of the death penalty”<sup>7</sup>.

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## 5. Prison Conditions

### 5.1 Numbers of prisons and prisoners

5.1.1 The US Department of State (USSD) reported in its Human Rights report covering 2014 that:

‘There were reports of harsh and sometimes life-threatening conditions and abuse in official detention centers. Different organizations oversaw prisons, juvenile rehabilitation centers, and detention facilities. The general directorate of prisons and detention centers (GDPDC), part of the Ministry of Interior, has responsibility for all civilian-run prisons (for both men and women) and civilian detention centers, including the large national prison at

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<sup>5</sup> Hands Off Cain. Afghanistan, 2015. <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=23&nome=afghanistan> [Date accessed 7 September 2015]

<sup>6</sup> Amnesty International, Amnesty International Report 2014/15 - Afghanistan, 25 February 2015, <https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/report-afghanistan/> [Date accessed 7 September 2015]

<sup>7</sup> Foreign and Commonwealth Office, Human Rights and Democracy Report - Afghanistan, 12 March 2015, <https://www.gov.uk/government/publications/afghanistan-country-of-concern--2/afghanistan-country-of-concern#death-penalty> [Date accessed 7 September 2015]



Pul-e-Charkhi. The Ministry of Justice's juvenile rehabilitation directorate (JRD) is responsible for all juvenile rehabilitation centers. The ANP [Afghan National Police], which is under the Ministry of Interior, and the NDS [national directorate of security] also run short-term detention facilities at the provincial and district levels, usually colocated with their headquarters facilities. The Ministry of Defense runs the Afghan National Detention Facilities at Parwan and Pul-e-Charkhi.<sup>8</sup>

5.1.2 The same report also stated that:

'There were 34 provincial prisons under GDPDC control, 187 active Ministry of Interior detention facilities, and 33 juvenile rehabilitation centers. The total number of active detention facilities reportedly fluctuated from month to month. Overall, the Ministry of Interior lacked sufficient detention facilities. No official information was available on the number of NDS prisoners or NDS-operated facilities.

'Authorities generally did not have the infrastructure capacity to separate pretrial and post-trial inmates. In July [2014] the GDPDC reported it had in custody 8,147 male pretrial detainees, 17,654 male prisoners, 150 female pretrial detainees, and 568 female prisoners. In most instances limited infrastructure hindered housing prisoners by classification, but the GDPDC did so where it was feasible. Authorities did not imprison women with men.

'Provisions for alternatives to incarceration were rarely utilized in practice. Regular presidential pardons on holidays were the only practice that diverted inmates from prison.'<sup>9</sup>

5.1.3 The US Department of State (USSD) also reported in its Human Rights report covering 2014 that:

'Overcrowding in prisons continued to be a serious, widespread problem. According to a report issued during the year, 28 of 34 provincial prisons for men were severely overcrowded when compared to the recommended standards of the International Committee of the Red Cross (ICRC). The Kapisa Provincial Prison for male inmates had the highest percentage of overcrowding, at 831 percent of the recommended maximum capacity. Eight of 25 prisons for women exceeded capacity, according to the report, and the Kunduz Provincial Prison for female inmates had the highest overcrowding rate at 392 percent.'<sup>10</sup>

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<sup>8</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236632> [Date accessed 7 September 2015]

<sup>9</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236632> [Date accessed 7 September 2015]

<sup>10</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236632> [Date accessed 7 September 2015]

## 5.2 Physical Conditions

- 5.2.1 A UN Assistance Mission in Afghanistan (UNAMA) report of 8 July 2013, 'Amid challenges, UN supports Afghan efforts to improve correction', noted:

'Extreme overcrowding, a lack of medical care and poor sanitation. These are just some of the challenges facing the Afghan corrections system, and which the United Nations Assistance Mission in Afghanistan (UNAMA) is helping the authorities to deal with... Some prisons are in critical need of refurbishment as they were built many years ago. Funding for their reconstruction is a major challenge facing CPD [Afghan Government's Central Prison Department]...

'...A recent prison assessment in Kapisa, conducted by UNAMA, suggested that the facility has poor access to electricity and clean water. Most of the prisoners suffered from skin diseases and medical supplies from the authorities were not sufficient, according to the assessment. With a capacity for 40 inmates, the prison was housing more than 200 prisoners, and due to the lack of space in the leased premises, no vocational training could be provided.'<sup>11</sup>

- 5.2.2 The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, dated 6 August 2013, stated:

'The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding, with pre-trial detention routinely stretching up to three months or longer. This situation is reported to be a contributing factor in the willingness of law enforcement agencies to use torture in order to coerce confessions from detainees, particularly conflict-related detainees.'<sup>12</sup>

- 5.2.3 A Pajhwok Afghan News article of 3 December 2013, 'Inmates held under poor conditions in jails', noted:

'The Special Committee for Evaluation of Prisons Situation on Tuesday expressed its concern over poor living conditions of prisoners held at various detention facilities across the country.

'Last year, President Hamid Karzai directed the Constitutional Oversight and Implementation Commission to create a body and task with evaluating and monitoring the situation of prisons and update the Presidential Palace. Gul Rahman Qazi, the panel's chief, released the panel's three-month report at a press conference in Kabul, saying they had interviewed 29,000 prisoners in 21 provinces, with most complaining about poor living conditions...

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<sup>11</sup> UN Assistance Mission in Afghanistan - 'Amid challenges UN supports Afghan efforts to improve correction', 8 July 2013

<http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=37016&language=en-US> [Date accessed 7 September 2015]

<sup>12</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 6 August 2013, HCR/EG/AFG/13/01, 1. Human Rights Abuses, a) Human Rights Violations by State Actors, available at: <http://www.refworld.org/docid/51ffdca34.html> [Date accessed 7 September 2015]

'He cited the lack of health services [a] serious problem facing prisoners, saying prisoners at many jails had no access to proper health facilities, health workers and medicine.

'Overcrowding and space shortage also contributed to their plight, Adalatkhwah [a member of The Special Committee for Evaluation of Prisons Situation] said, claiming in some cells up to 50 prisoners were held while the cells had the capacity to accommodate 20 people.

'He also said some prisoners complained they lacked access to education facilities and the educational curriculum had not been properly enforced in the available facilities.'<sup>13</sup>

5.2.4 A BBC News article of 11 June 2014 noted:

'A report by the US Inspector General for Afghanistan Reconstruction, Sigar, says that Baghlan prison in North Eastern Afghanistan needs major repairs, just 18 months after it opened...Large parts of the facility resemble a building site. There are cracks in walls and some buildings are deserted.

'...approximately 700 prisoners are left to live in overcrowded conditions...Inside the buildings it is dark. There is little electricity and irregular water supplies. The place is stifling hot and depressing. There were many complaints from the inmates...One prisoner, Mohammad Yunus said conditions could hardly be worse: "It is not hygienic, it is hot and we barely have drinkable water," he told me. Another prisoner bemoaned problems with the water supply and electricity cuts. Such complaints chimed with what Sigar inspectors found: apart from the structural problems, their report highlights a lack of proper maintenance at the prison. For example two generators meant to power the prison have broken down because no-one knew how to look after them properly.'<sup>14</sup>

5.2.5 The International Committee of the Red Cross (ICRC) Annual Report of 2014, published in June 2015, noted:

'Efforts to mobilize international stakeholders to invest in prison infrastructure became difficult as many of them had left/were in the process of withdrawing. Resource constraints limited the authorities' capacity to address the consequences of overcrowding, particularly on detainees' health.

'The Public Health Ministry enhanced its services for inmates, such as those in Herat and Sarpoza prisons, using ICRC-provided medical supplies, equipment, technical advice and/or financial support for staff salaries. A week-long training course helped raise awareness among prison health staff of detainees' health-care needs. Ailing inmates, including the mentally ill, at

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<sup>13</sup> Pajhwok Afghan News - 'Inmates held under poor conditions in jails', 3 December 2013  
<http://www.pajhwok.com/en/2013/12/03/inmates-held-under-poor-conditions-jails>  
[Date accessed 7 September 2015]

<sup>14</sup> BBC News - 'The crumbling Afghan prison built with US cash', 11 June 2014  
<http://www.bbc.co.uk/news/world-asia-27715351> [Date accessed 7 September 2015]

the Pul-i-Charkhi prison received treatment from prison health staff or at hospitals following referrals.

‘Various initiatives promoted health, hygiene and a cleaner environment, thus helping limit disease outbreaks. With ICRC support, the authorities/staff and detainees at two prisons established maintenance and hygiene committees tasked to identify and tackle hygiene and infrastructure problems. Nearly 40,000 detainees had improved living conditions following upgrades to infrastructure; rehabilitated water and sanitation facilities, kitchens and courtyards in five provincial prisons benefitted 5,679 inmates.<sup>15</sup>

5.2.6 The US Department of State (USSD) reported in its Human Rights report covering 2014 that ‘The media and other sources continued to report inadequate food and water, and poor sanitation facilities were common in the prisons. Some observers, however, found food and water were sufficient throughout the GDPDC prisons. The GDPDC had a nationwide program to feed prisoners but was on an extremely limited budget. Many prisoners’ families provided food supplements and other necessary items.<sup>16</sup>

5.2.7 A July 2014 feature by the International Committee of the Red Cross (ICRC) reported on the improving health care in Afghan prisons, stating:

“In Kandahar’s overcrowded Sarposa prison, addressing the medical concerns of inmates is a daily challenge. But thanks to the services being offered in a small, blue-and-cream painted clinic in the prison compound, the health status of the prison population is now stable.

"We struggled for years to fund and run the clinic," said Dr Poukhla, a representative of the ministry in Kandahar, during a recent interview. "The inmates were complaining, but now they are quiet because the health services are functioning properly at last."

“The ICRC is carrying out similar activities at several detention facilities in the country. Working in cooperation with prison authorities and the health ministry, ICRC medical staff make regular visits to prisons throughout Afghanistan to monitor the health of detainees, and the services on offer. ICRC engineers are helping to improve prisons’ infrastructure by refurbishing kitchens, improving sanitation and water supplies and, as in the case of Sarposa, undertaking a major renovation of health facilities. Hygiene promotion is taking place in regional and provincial prisons, and financial support is provided for medical staff. In Herat prison, the second biggest in

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<sup>15</sup> International Committee of the Red Cross (ICRC), Annual Report 2014 - Afghanistan, 9 June 2015, <https://www.icrc.org/en/document/ICRC-annual-report-2014> [Date accessed 16 July 2015]

<sup>16</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

Afghanistan, the renovation of the clinic has almost been completed and health services similar to the ones on offer in Sarposa will begin soon.<sup>17</sup>

5.2.8 The October 2014 update to the FCO Human Rights & Democracy Report recorded that:

‘An important element of our support to the Afghan prisons sector is the promotion of international standards of treatment for all detained individuals. In addition to monitoring visits and mentoring and training of Afghan prison personnel, we funded the construction of a female detention facility, attached to the UK-funded Helmand Provincial Prison. Opened in December, it conforms to international standards, and provides vocational training to female prisoners.

‘We funded HM Prison Service staff seconded to the embassy and the Provincial Reconstruction Team (PRT) in Helmand, who worked closely with the National Directorate of Security and others, both in Kabul and Helmand. The UK provided training for the Afghan authorities involved in detention related activity, including on human rights. Through the embassy and the PRT in Lashkar Gah, we provided mentoring support to the senior leadership of Afghan authorities involved in detention activity. We support legal and institutional reform and invest in training, including on human rights, for personnel involved in the criminal judicial system. We will continue to support the Afghan government’s efforts to tackle mistreatment and abuse and implement processes that reduce the likelihood of detainee abuse.<sup>18</sup>

5.2.9 The US Department of State further stated that “inmate deaths were infrequent and largely due to natural causes. Several prisoners died during the year [2014] due to insurgent attacks, attempted escapes, or suicide. One prisoner died at Baghlan Prison during a large-scale disturbance in June [2014] when an unknown officer fired on a large group of prisoners approaching the prison gates”.<sup>19</sup>

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### 5.3 Remand prisons

5.3.1 See US Department of State (USSD) reported in its Human Rights report covering 2014 at paragraph 5.1.2.

5.3.2 An article published by Institute for War and Peace Reporting on 27 January 2014 stated that ‘The slow-moving nature of Afghanistan’s judiciary means

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<sup>17</sup> International Committee of the Red Cross (ICRC). Afghanistan: Improving health care in prisons. 3 July 2014. <https://www.icrc.org/eng/resources/documents/feature/2014/07-03-afghanistan-health-prison.htm> [Date accessed 7 September 2015]

<sup>18</sup> FCO Human Rights & Democracy Report. Updated 16 Oct 2014. <https://www.gov.uk/government/publications/afghanistan-country-of-concern/afghanistan-country-of-concern> [Date accessed 7 September 2015]

<sup>19</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

that legal cases remain almost static, with inmates seeing little progress towards trial or appeals hearings.<sup>20</sup>

5.3.3 The UN Security Council Report of the Secretary General of 7 March 2014, 'The situation in Afghanistan and its implications for international peace and security', noted that 'Female prisoners in Mazar-e Sharif staged a three-day strike in January, claiming that male prisoners accused of serious crimes had been released while their cases, many involving "moral crimes" unsupported by the law, were not being addressed.'<sup>21</sup>

5.3.4 The US Department of State annual report covering 2014 stated:

'UNAMA, the ICRC, the AIHRC, and other observers reported arbitrary and prolonged detention frequently occurred throughout the country. Authorities often did not inform detainees of the charges against them.

'The new criminal procedure code came into effect on June 5 and changed many of the time frames and procedures associated with pretrial detention. The law provides for access to legal counsel and the use of warrants, and it limits how long detainees may be held without charge. Police have the right to detain a suspect for 72 hours to complete a preliminary investigation. If police decide to pursue a case, the file is transferred to the attorney general's office. The investigating prosecutor can continue to detain a suspect for an additional period while continuing the investigation; the length of continued detention depends on the level of the offense. With court approval the investigating prosecutor may detain a suspect for up to a maximum of 10 additional days for a petty crime, 27 days for a misdemeanor, and 75 days for a felony. The prosecutor must file an indictment or release the suspect within those time frames, and no further extensions of the investigatory period are permitted if the defendant is in detention. Prosecutors often ignored these limits on pretrial detention.'<sup>22</sup>

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## 5.4 Women's prisons

5.4.1 Human Rights Watch, in their report of 24 June 2014, 'Afghanistan: End "Moral Crimes" Prosecutions', estimated that 95 percent of girls and 50 percent of women imprisoned in Afghanistan had been accused or convicted of "moral crimes," such as zina [extramarital sexual relations]. Often, the only evidence in these cases was that the women or girls had "run away" from home either to escape domestic violence or an illegal forced marriage, and

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<sup>20</sup> Institute for War and Peace Reporting (IWPR) - 'Inside Kabul Women's Jail', 27 January 2014 <http://iwpr.net/report-news/inside-kabul-womens-jail> [Date accessed 7 September 2015]

<sup>21</sup> UN Security Council Report of the Secretary General - 'The situation in Afghanistan and its implications for international peace and security', 7 March 2014, III. Human rights, paragraph 27, <http://unama.unmissions.org/Portals/UNAMA/SG%20Reports/SG-report-Afghanistan-March2014.pdf> [Date accessed 7 September 2015]

<sup>22</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1d. Arrest Procedures and Treatment of Detainees <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

were then charged with “attempted zina,” a crime that does not exist in Afghan law.<sup>23</sup>

5.4.2 An Institute for War and Peace Reporting (IWPR) article of 27 January 2014, ‘Inside Kabul Women’s Jail’, noted:

‘On a bitterly cold winter’s day, the inmates of Badam Bagh prison in the Afghan capital Kabul do whatever they can to keep warm. With no stoves in their cells, some cover themselves with blankets, while others huddle together in a queue for soap, washing powder and baby diapers. “We spend all day and night just wrapped in blankets, as there’s no way of warming up our rooms,” said Razia, 22. “The whole city is short of electricity these days. Officials acknowledge this but don’t do anything about it.”

‘As well as the cold, Badam Bagh’s female inmates complain that nutrition and healthcare are inadequate, and that prison warders mistreat them and ignore bullying by other prisoners.

‘Badam Bagh is a new facility, set up in 2007 with Italian government assistance. It currently holds about 230 female inmates plus 70 children under four, whom mothers are allowed to keep with them.

‘One 21-year-old inmate called Nadia complained that prison staff turned a blind eye to bullying. She recalled one incident in which an inmate was set on fire in a quarrel with other women. Fellow-prisoners helped extinguish her burning clothes, Nadia said, but staff “did not intervene to resolve the problem, even though they witnessed the incident”.

‘Prisoners say medical care is poor, with only a few medicines prescribed to treat a wide range of ailments. Lailuma, 38, said prison staff practiced double standards when it came to healthcare, and more affluent inmates got better treatment. “There are some prisoners who wear trousers and make-up, so clearly they’re getting help from outside prison. If these fashionable women get a little sick, they are taken for treatment in hospitals outside prison, and their visitors can continue to see them,” she said. “But on the inside, there are people who won’t get any attention even if they die of their illness. Their visitors don’t get to see them when they are supposed to.”

‘Ramin, 17, was visiting Badam Bagh to see his brother’s wife, and said it was often difficult for visitors to secure meetings. He confirmed that medication and decent food were in short supply. He said his sister-in-law had accused prosecutors of asking for money or sex in return for leniency. “These women can’t complain anywhere as there is no one to hear their voices,” Ramin said.

‘Other inmates accused prosecutors and police of asking for favours in return for a softer sentence or release...<sup>24</sup>

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<sup>23</sup> Human Rights Watch - ‘Afghanistan: End ‘Moral Crimes’ Prosecutions’, 24 June 2014 <http://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions> [Date accessed 7 September 2015]

<sup>24</sup> Institute for War and Peace Reporting (IWPR) - ‘Inside Kabul Women’s Jail’, 27 January 2014 <http://iwpr.net/report-news/inside-kabul-womens-jail> [Date accessed 7 September 2015]

5.4.3 The same IWPR article continued:

'Latifa Sultani, coordinator for women prisoners' rights at the Afghan Independent Human Rights Commission, confirmed that staff at prisons tried to prevent the media from reporting problems on the inside. "The prisons have some shortcomings, and officials don't want this to leak out, because they don't want to come under scrutiny," she said, adding that the government was fearful that negative stories would stem the flow of international donor funds. Sultani said that where there was a degree of openness, conditions improved. "For example, the womens' prison in Herat is in better shape, as media outlets and human rights observers can inspect it at any time," she said.'<sup>25</sup>

5.4.4 A BBC article of 19 May 2014, 'Afghan notebook: Life inside Badam-Bagh women's prison', noted:

'...in Badam-Bagh, Kabul's only women prison, convicted drug traffickers and murderers mix with women accused of "moral crimes", as well as dozens of children held alongside their mothers. When I visited the prison a few months back I found a place that appeared to be in constant upheaval. Two dozen small rooms are spread over three floors with around eight women sharing a room and the inmates I met were complaining about cramped conditions. The prison perimeter is guarded by policemen, but the main building is entirely secured by female staff. The atmosphere between prisoners and their guards is often tense.... [Badam-Bagh] currently houses over 200 prisoners, mostly Afghans, held for a multitude of reasons, from murder and kidnapping to adultery or simply for "running away from home".'<sup>26</sup>

5.4.5 The same article further noted that:

"Amid the tension and upheaval there are concerns about the welfare of more than 50 children and babies living in Badam-Bagh, imprisoned alongside their mothers. I saw a bunch of kids playing in the dark corridors in unsanitary conditions. One woman who has been serving a 14-year term since 2012, has been jailed with her five children. She told me she's scared that her kids will one day ask her why they were deprived of their freedom".<sup>27</sup>

5.4.6 However, the 2014 US Department of State report stated that 'By law children younger than age seven may live with their mothers in prison. This practice, however, became less prevalent after the GDPDC increasingly utilized children's support center programs. Reports indicated children placed in the support centers thrived in this new environment, and even after

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<sup>25</sup> Institute for War and Peace Reporting (IWPR) - 'Inside Kabul Women's Jail', 27 January 2014 <http://iwpr.net/report-news/inside-kabul-womens-jail> [Date accessed 7 September 2015]

<sup>26</sup> BBC - 'Afghan notebook: Life inside Badam-Bagh women's prison', 19 May 2014 <http://www.bbc.co.uk/news/world-asia-26344398> [Date accessed 7 September 2015]

<sup>27</sup> BBC - 'Afghan notebook: Life inside Badam-Bagh women's prison', 19 May 2014 <http://www.bbc.co.uk/news/world-asia-26344398> [Date accessed 7 September 2015]



being released, some mothers requested their children remain in the centers due to improved education and health services'.<sup>28</sup>

5.4.7 The UN Human Rights Council's Special Rapporteur on violence against women reported in May 2015:

'During her visits to the Badam Bagh women's prison in Kabul and the juvenile rehabilitation centre in Herat, the Special Rapporteur expressed serious concern at the high number of women and girls arrested, prosecuted and imprisoned for so-called "moral crimes", including adultery and premarital sex. Interlocutors stated that such convictions were often made on the basis of minimal evidence of wrongful behaviour and that investigations were often not properly carried out. Of the 744 female prisoners across the country, 428 — or 58 per cent — were charged with so-called "moral crimes". In the Badam Bagh prison, where 159 women were held at the time of the visit, the Special Rapporteur was informed that 90 women were in pretrial detention and 69 had been convicted. A total of 11 girls were being held at the juvenile rehabilitation facility in Herat, most of who had been arrested on charges of attempted zina.'<sup>29</sup>

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## 5.5 Juvenile prisons

5.5.1 A UNAMA news update of 7 October 2013, 'New female wing in Gardez prison to help end discrimination issues', noted:

'... UNAMA has also backed the construction of new juvenile rehabilitation centre (JRC) building in Khost province. "We shared our concerns about the dreadful conditions of JRC premises with the NATO- Rule of Law Field Force and convinced them to construct a brand new building, meeting international standards on juvenile justice," Mr. Obembo [Jean Pascal Obembo, Judicial Affairs Officer with UNAMA] said. It is estimated that it will cost around \$450,000.

'In addition to improved living conditions in the JRCs, UNAMA's Rule of Law Unit has worked closely with Afghanistan's Ministry of Justice to facilitate the establishment of juvenile courts in the country's south-eastern region.

'The trial of juveniles in adult courts is against Afghan law as well as the Convention of the Rights of the Child which the Afghan Government ratified in 1994. The Government has also adopted the Juvenile Code that provides juvenile justice system. Today, there are only six juvenile courts in six provinces out of Afghanistan's 34 provinces.

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<sup>28</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

<sup>29</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, (Para 23) available at: <http://www.refworld.org/docid/5583f8224.html> [Date accessed 7 September 2015]  
[Date accessed 7 September 2015]

‘According to the latest report of UN Secretary-General Ban Ki-moon on children in armed conflict, a UN-led country task force documented 189 cases of boys detained in JRCs by Afghan authorities in 2012, with a “further unknown number of children” held in detention facilities of the national police and the National Directorate of Security.’<sup>30</sup>

5.5.2 The US State Department (USSD) 2014 Report on Human Rights Practices noted the country had 30 juvenile rehabilitation centers but that the “Authorities generally did not have the infrastructure capacity to separate juveniles based on the nature of the charges against them, with the exception of some juvenile facilities that separately housed juveniles imprisoned for national security reasons.”<sup>31</sup>

5.5.3 The same source also reported that:

‘As of June [2014], according to the Ministry of Justice, authorities detained 176 children on national security-related charges in juvenile rehabilitation centers. The juvenile code states the arrest of a child “should be a matter of last resort and should last for the shortest possible period.” Reports indicated children in juvenile rehabilitation centers across the country lacked access to adequate food, health care, and education. Similar to adult detainees, detained children frequently were denied basic rights and many aspects of due process, including the presumption of innocence, the right to be informed of charges, access to defense lawyers, and the right not to be forced to confess. The law provides for the creation of juvenile police, prosecution offices, and courts. Due to limited resources, special juvenile courts functioned in only six areas (Kabul, Herat, Balkh, Kandahar, Nangarhar, and Kunduz). In provinces where special courts do not exist, children’s cases fall under the ordinary courts. The law also mandates children’s cases be addressed in private and, like all criminal cases, may involve three stages: primary, appeals, and the final stage at the Supreme Court.

‘Some of the children in the criminal justice system were victims rather than perpetrators of crime. Some victims were perceived as in need of punishment because they brought shame on the family by reporting an abuse. In some cases authorities imprisoned abused children because they could not return to their families and shelter elsewhere was unavailable. Authorities allegedly imprisoned some children related to a perpetrator as a family proxy for the actual perpetrator.’<sup>32</sup>

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<sup>30</sup> UNAMA - ‘New female wing in Gardez prison to help end discrimination issues’, 7 October 2013 <http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=37341&language=en-US> [Date accessed 7 September 2015]

<sup>31</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

<sup>32</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1d Arrest Procedures and Treatment of Detainees. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

## 6. Torture and mistreatment of persons in custody

- 6.1.1 The UN Assistance Mission in Afghanistan (UNAMA)/ The Office of the High Commissioner for Human Rights (OHCHR) report of January 2013, 'Treatment of Conflict-Related Detainees in Afghan Custody: One Year On', reported:

'UNAMA found that multiple credible and reliable incidents of torture and ill-treatment had occurred particularly in 34 facilities of the ANP, ANBP and NDS. UNAMA found sufficiently credible and reliable evidence that NDS officials at two facilities systematically tortured detainees mainly to obtain confessions and information. Multiple credible and reliable cases of torture and ill-treatment were documented in ten other NDS facilities. The systematic use of torture was found in six ANP facilities and one ANBP location. In 15 other ANP provincial headquarters and district police stations, UNAMA found numerous credible and reliable cases of torture or ill-treatment. UNAMA observed more conflict-related detainees detained and interrogated by the ANP in several regions with an increase in reports of torture by ANP. UNAMA also received sufficiently reliable and credible information that in some NDS facilities, officials hid detainees from international observers and held them in underground or other locations. Multiple credible reports were received about the existence of unofficial detention facilities in a few locations. Similar to previous findings, UNAMA observed that credible and reliable evidence of torture was most prevalent in NDS and ANP facilities in Kandahar.'<sup>33</sup>

- 6.1.2 The Office of the High Commissioner for Human Rights (OHCHR) 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013' of 10 January 2014 noted:

'Treatment of conflict-related detainees while in ANP and NDS custody remains a major human rights concern. On 20 January 2013, UNAMA/OHCHR released its second major report on human rights concerns in places of detention, entitled 'Treatment of Conflict-Related Detainees in Afghan Custody: One Year On'. Based on interviews with 635 conflict-related detainees in 89 Afghan facilities covering 30 provinces, torture was found to persist in a number of detention facilities, despite efforts by the Government and international partners to address it. More than half of conflict-related detainees interviewed had experienced torture and ill-treatment as defined and prohibited under Afghan and international law. Torture was found to be prevalent in several ANP and NDS detention facilities and took the form of coercive interrogation techniques in which

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<sup>33</sup> UN Assistance Mission in Afghanistan (UNAMA)/ The Office of the High Commissioner for Human Rights (OHCHR) - 'Treatment of Conflict-Related Detainees in Afghan Custody: One Year On', January 2013, Executive Summary <http://www.unama.unmissions.org/mwg-internal/de5fs23hu73ds/progress?id=kYbQ9+YN1N&dl> [Date accessed 7 September 2015]

Afghan officials inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information.

‘UNAMA/OHCHR made 64 recommendations to the Government and international partners to prevent torture and ill-treatment, ensure accountability and build the capacity of State institutions. One key recommendation is the creation of an independent national preventive mechanism on torture in line with the Optional Protocol to the Convention against Torture — which Afghanistan has not yet ratified — which could be located within the AIHRC with authority and enhanced capacity to inspect all detention facilities, make detailed technical recommendations and assist institutions with follow-up implementation. I also encourage the Government to invite the Special Rapporteur on torture to make a country visit and assist in these important reform efforts.

‘In response to the UNAMA/OHCHR report, on 22 January 2013, President Karzai established a fact-finding presidential delegation to investigate the allegations of torture and ill-treatment contained in the report. UNAMA/OHCHR cooperated fully with the delegation. In February 2013, the delegation publicly announced that 48 per cent of the detainees it interviewed had experienced torture and ill-treatment at the time of arrest and during interrogation by ANP and NDS officials. The delegation also noted that two thirds of the detainees who were interviewed had not had access to a defence lawyer.

‘After receiving the delegation's report, on 16 February 2013, President Karzai endorsed its recommendations and issued Presidential Decree No. 129. This decree ordered the NDS, the Attorney General's Office, the Ministry of Interior Affairs, the Ministry of Justice and the Supreme Court to investigate allegations of torture, prosecute alleged perpetrators, release detainees and prisoners in arbitrary detention, and increase access of defence lawyers and medical personnel to detainees to prevent torture and arbitrary detention and ensure accountability.’<sup>34</sup>

6.1.3 A Pajhwok Afghan News article of 1 July 2014, ‘Inmates being treated harshly in Kilagi prison’, noted:

‘Family members of prisoners expressed concerns the way the inmates were being treated inside the Kilagi prison in northern Baghlan province. They feared the situation would again lead prisoners to clash with security forces.

‘On June 26, two prisoners were killed and 18 injured in a clash among prisoners and security forces inside the jail. The inmates accused police of treating them harshly.

‘Muhammad Safdar Muhsini, relative of a prisoner, alleged jail authority was dealing prisoners ruthlessly [sic]. He said inmates wanted some prison and

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<sup>34</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013, 10 January 2014, A/HRC/25/41, III. Protection from arbitrary detention and respect for fair trial rights, paragraphs 31-34, available at: <http://www.refworld.org/docid/52e109fa4.html> [Date accessed 7 September 2015]

police officers dismissed. Governor Sultan Muhammad Ebadi said a body tasked to evaluate the fighting between inmates and jail officials had yet to submit its report.’<sup>35</sup>

6.1.4 The US Department of State (USSD) reported in its Human Rights report covering 2014 that:

‘Although the constitution prohibits such practices, there were widespread reports government officials, security forces, detention center authorities, and police committed abuses. NGOs reported security forces continued to use excessive force, including torturing and beating civilians.

‘In May [2014] the New York Times reported the death of 23-year-old plumber Hazrat Ali, whom ANP members allegedly tortured and killed while he was in custody in Kandahar. Police in Kandahar did not permit the father of Hazrat Ali to see his son. A few days later, Ali’s father tried to visit his son again and learned his son was dead. Ali’s father reported his son’s body showed signs of torture, including signs he was beaten by a cable rod.

‘In 2013 UNAMA reported it found “sufficiently reliable and credible” incidents of torture at 10 national directorate of security (NDS) facilities, as well as at 15 ANP facilities. For example, UNAMA reported systematic torture at the NDS detention facility in Kandahar Province and NDS department 124 (counterterrorism) in Kabul. A government delegation assigned to investigate the claims made by UNAMA in its January 2013 report also found officials tortured detainees at NDS department 124, including with electric shocks, beatings, and threats of sexual violence. During its monitoring visits, the International Security Assistance Force (ISAF) also continued to find instances of torture and abuse of detainees held at NDS department 124. UNAMA also found instances of torture or other mistreatment of detainees held in Afghan National Army (ANA) and ALP custody prior to transfer to the NDS or ANP. Similarly, the government found 48 percent of detainees interviewed for its investigation claimed to have been tortured.’

‘The government created a committee to address allegations of torture emanating from UNAMA’s January 2013 report on mistreatment of conflict-related detainees, and the committee conducted visits and interviews. The committee, however, did not make its findings public. The government did not hold the perpetrators accountable for torture or conduct credible investigations and prosecutions in relation to these allegations.’<sup>36</sup>

6.1.5 The United Nations Assistance Mission in Afghanistan (UNAMA) published an update on the Treatment of Conflict- Related Detainees in Afghan Custody on 25 February 2015 which reported:

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<sup>35</sup> Pajhwok Afghan News - ‘Inmates being treated harshly in Kilagi prison’, 1 July 2014 <http://www.pajhwok.com/en/2014/07/01/inmates-being-treated-harshly-kilagi-prison> [Date accessed 7 September 2015]

<sup>36</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

'UNAMA interviewed 790 pre-trial detainees and convicted prisoners including 105 children detained by the ANP, ANBP, ANA, ALP and NDS for crimes related to the armed conflict. Of these 790, 35 detainees interviewed were in custody for offences unrelated to the armed conflict.<sup>24</sup> UNAMA's observation encompassed 221 facilities located in 28 provinces with interviews conducted between 1 February 2013 and 31 December 2014.

'Using internationally accepted methodology, standards and best practices, UNAMA found sufficiently credible and reliable evidence that 278 of the 790 detainees interviewed (35 per cent) – one in three detainees interviewed – had experienced torture or ill-treatment on arrest or in certain facilities of the NDS, ANP, ANA and ALP over the 23-month period. Of the 105 child detainees interviewed, 44 were subjected to torture or ill-treatment (42 per cent).

'UNAMA observed that overall the number of detainees interviewed who experienced torture or ill-treatment was 14 per cent lower in the current period compared to the previous period. While the current study found that 35 per cent (278 of 790 detainees interviewed) experienced torture or ill-treatment, UNAMA's previous report determined that 49 per cent (314 of 635 detainees interviewed) were tortured or ill-treated. When torture occurred, similar to UNAMA's previous findings, it generally took the form of interrogation techniques in which NDS, ANP, ALP or ANA officials deliberately inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information. Such practices amounting to torture are among the most serious human rights violations and crimes – including war crimes and crimes against humanity – under international law. Torture and ill-treatment are prohibited in the Constitution of Afghanistan which also grants victims a right to compensation, under Afghan law, and are incompatible with the fundamental principles of Islam and Sharia law.<sup>37</sup>

#### 6.1.6 The same reports stated:

'UNAMA also observed the Government's efforts to address torture and ill-treatment over the 23-month period including implementation of Presidential Decree 129. UNAMA's observation is that these efforts, while significant, have had mixed results. An encouraging sign was the finding that the overall percentage of detainees interviewed who experienced torture was 14 per cent lower among the 790 detainees UNAMA interviewed compared to UNAMA's previous observation sample. The change may partly have resulted from new policies and directives banning torture, increased inspection visits to detention facilities from external organizations, focused training on alternative interrogation techniques and other measures by national and international actors.

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<sup>37</sup> UNAMA, 'Update on the Treatment of Conflict- Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129. Afghanistan Annual Report 2014, Protection of Civilians in Armed Conflict', 25 February 2015, Executive Summary. Pages 17 -20 [http://unama.unmissions.org/Portals/UNAMA/human rights/2015/UNAMA Detention Report 2015\\_revised.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/2015/UNAMA%20Detention%20Report%202015_revised.pdf) [Date accessed 7 September 2015]

'The Government's efforts, however, have not embraced accountability for torture and ill-treatment. Similar to previous findings, UNAMA observed a persistent lack of accountability for perpetrators of torture with flawed investigations of allegations of torture by prosecutors and very few prosecutions, loss of jobs or disciplinary sanctions for those responsible for torture. NDS and Ministry of Interior internal accountability and oversight mechanisms including their human rights and inspections' departments remained deeply inadequate lacking independence, authority, transparency and capacity.

'This continuing impunity enabled torture to continue as reflected in this report which found that while the incidence of torture decreased among detainees interviewed compared to the previous period, Afghan authorities were still using torture on one-third of the 790 detainees interviewed (35 per cent).

'UNAMA also observed that torture continued because NDS and ANP officials still consider it the best way to get a confession to convict individuals they believe have committed or supported conflict-related crimes and remove them from the battlefield. A further factor enabling torture is that Afghanistan's criminal justice system continues to rely almost entirely on confessions as the primary basis to prove a case and justify a conviction.

'The Constitution of Afghanistan and the new 2014 Criminal Procedure Code include due process guarantees that protect detainees from the use of torture. Many of these provisions, however, continued not to be implemented, such as time limits for holding detainees in police or NDS custody and for prosecutor's investigations and filing of indictments. The legal prohibition against using evidence gained through torture as the basis for prosecution or conviction at trial and a detainee's right to mandatory access to defence counsel were found to be routinely violated by judges and prosecutors.

'The Government of Afghanistan has shown it is serious about addressing torture and ill-treatment through Presidential Decree 129 and other measures. Further efforts are needed to fully end and prevent its use, reinforce the prohibition of torture and improve accountability.'<sup>38</sup>

- 6.1.7 A UNAMA Press Release accompanying publication of the report noted that there had been some progress and welcomes the new administration's commitment to accelerate its efforts to fully eliminate the practice of torture and ill treatment in detention. The press release continued:

'The report shows a 14 per cent decrease in the number of detainees tortured or ill-treated compared to the previous reporting period, with one-

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<sup>38</sup> UNAMA, 'Update on the Treatment of Conflict- Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129. Afghanistan Annual Report 2014, Protection of Civilians in Armed Conflict', 25 February 2015, Executive Summary. Pages 17 -20 [http://unama.unmissions.org/Portals/UNAMA/human rights/2015/UNAMA Detention Report 2015\\_revised.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/2015/UNAMA%20Detention%20Report%202015_revised.pdf) [Date accessed 7 September 2015]

third of all detainees interviewed found to have endured ill-treatment or torture.

'It highlights ill-treatment and torture during the arrest and interrogation phases in numerous facilities of the National Directorate of Security, the national police, the local police and the national army. Detainees – mainly alleged members of the Taliban and other anti-Government groups or individuals suspected of conflict-related crimes – were subjected to severe pain and suffering, aimed mainly at obtaining a confession or information. Sixteen methods of torture and ill-treatment were described including severe beatings with pipes, cables and sticks, suspension, electric shocks and near-asphyxiation.

'The decrease is due to new Government policies and directives banning torture, increased inspection visits to detention facilities, focused training on alternative interrogation techniques and other measures by national and international actors following the issuance of Presidential Decree 129 in February 2013. facilities.'<sup>39</sup>

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## 7. Accountability and monitoring

### 7.1.1 The US State Department Report on Human Rights Practices, covering the year 2014, stated:

'Administration: The seven government entities involved in the criminal justice sector – the ministries of justice, interior, and defense; the attorney general's office, the Supreme Court, the NDS, and the high office of oversight – continued to implement a standard case management system with computerized records for prisoners from the time of arrest through release, resulting in fewer errors from poor recordkeeping.

There was an informal grievance procedure within the GDPDC. The Ministry of Justice, the attorney general, and some governors monitored or assessed prison conditions, but investigations and monitoring revealed prisons did not fully meet international standards, including violating ICRC space standards due to overcrowding. A GDPDC directive outlined a formal prisoner complaint procedure implemented in May 2013.

'The law provides prisoners with the right to leave prison for up to 20 days for family visits. Most prisons did not implement this provision, and the law is unclear in its application to different classes of prisoners. At inmates of GDPDC and JRD correctional facilities were able to receive visitors on a regular basis.

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<sup>39</sup> UNAMA. Press Release. Afghanistan: UN report on torture in detention shows some progress, calls for more effective measures 25 February 2015.  
[http://unama.unmissions.org/Portals/UNAMA/human%20rights/2015/Detention%20report%202015/25\\_Feb\\_2015-Press%20Release\\_detention-report-Eng.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/2015/Detention%20report%202015/25_Feb_2015-Press%20Release_detention-report-Eng.pdf) [Date accessed 7 September 2015]



'Provisions for alternatives to incarceration were rarely utilized. Regular presidential pardons on holidays were the only means to release inmates from prison prior to the end of their sentences.

'In government detention facilities, observers reported authorities permitted prisoners religious observance.'<sup>40</sup>

7.1.2 The same report also stated:

'Independent Monitoring: The Afghan Independent Human Rights Commission (AIHRC), UNAMA, the ICRC, and ISAF generally had access to detention facilities of the NDS and the ministries of interior, justice, and defense. Security constraints and obstruction by authorities occasionally prevented visits to some places of detention. UNAMA and the AIHRC reported difficulty accessing NDS places of detention unannounced. While ISAF did not experience the same level of difficulty, authorities denied unannounced access on several occasions at both NDS and ANP facilities. The AIHRC reported before visiting detention facilities, NDS officials usually required the AIHRC to submit a formal letter requesting access at least one to two days in advance. NDS officials continued to prohibit AIHRC and UNAMA monitors from bringing cameras into NDS facilities, thereby preventing AIHRC monitors from properly documenting physical evidence of abuse, such as bruises, scars, and other injuries. The NDS assigned a colonel to monitor human rights conditions in its facilities. In February and May, members of parliament visited GDPDC prison facilities to conduct monitoring and oversight of prison conditions, with a focus on female inmate conditions. The JRD also produced an annual report in March on juvenile justice problems, drafted by the JRD's monitoring and evaluation office.'<sup>41</sup>

7.1.3 A US Congressional Research Service report of November 2014 stated that 'UNAMA visits Afghan-run detention facilities to monitor implementation of presidential decree No. 129 preventing torture and ill-treatment of detainees. UNAMA provided assistance for the redrafting of 173 prison-related operational directives. As of the end of 2013, 114 such revised directives were issued, although there continue to be concerns about new incidents of alleged torture and ill-treatment.'<sup>42</sup>

7.1.4 The International Committee of the Red Cross [ICRC] Annual Report of 2014, published in June 2015, recorded that during 2014 ICRC had visited

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<sup>40</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

<sup>41</sup> US Department of State, Country Report on Human Rights Practices 2014, Afghanistan, 26 June 2015, Section 1c. Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236632> [Date accessed 7 September 2015]

<sup>42</sup> United States Congressional Research Service, Afghanistan: Politics, Elections, and Government performance, 4 November 2014, Harsh Punishments/Torture, <http://fas.org/sgp/crs/row/RS21922.pdf>, [Date accessed 7 September 2015]

43 places of detention; making a total of 149 visits; and had visited 28,017 detainees. ICRC visited and monitored individually 1,896 detainees.<sup>43</sup>

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<sup>43</sup> International Committee of the Red Cross (ICRC), Annual Report 2014 - Afghanistan, 9 June 2015, <https://www.icrc.org/en/document/ICRC-annual-report-2014> [Date accessed 7 September 2015]

# Version Control and Contacts

## Contacts

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## Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- published for Home Office staff on **14 September 2015**

## Changes from last version of this guidance

- First version in new template

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