



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the third periodic report of Afghanistan*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee's previous recommendations

Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/AFG/CO/2, para. 47),¹ the Committee requested the State party to provide further information regarding areas of particular concern identified by the Committee, namely the culture of impunity for acts of torture; coerced confessions; and the imposition and use of the death penalty (paras. 8 (c), 28 (c) and 34 (a)). Noting that a reply concerning the information sought by the Committee was provided on 28 June 2018 (CAT/C/AFG/CO/2/Add.1), and with reference to the letter dated 23 October 2018 from the Special Rapporteur for follow-up on concluding observations, the Committee considers that the recommendation included in paragraph 34 (a) has not yet been implemented (see para. 34 of the present document). The recommendations included in paragraphs 8 (c) and 28 (c) of the previous concluding observations are considered to have been only partially implemented (see paras. 21 and 28, respectively, of the present document).

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (paras. 23–24), please indicate whether the State party's criminal laws have been amended to ensure that all acts of torture are punishable by appropriate penalties which take into account the grave nature of such acts, in accordance with article 4 (2) of the Convention.²

* Adopted by the Committee intersessionally on 7 May 2020.

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

² A/HRC/41/5, paras. 136.87; United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-torture Law* (Kabul, 2019), pp. 8–9.



Article 2³

3. In the light of the previous concluding observations (paras. 25–26), please provide information on any new measures taken by the State party during the reporting period to ensure that all detainees, including national security-related detainees, enjoy all legal safeguards, in law and in practice, from the outset of their deprivation of liberty.⁴ In particular, please provide information on any new measure to:

(a) Ensure the rights of detainees to be informed of the reasons for their arrest and the nature of the charges against them, to receive legal counsel without delay, to notify a relative or any other person of their choice of their arrest, to request and receive an examination by an independent physician of their choice and to be brought promptly before a judge;

(b) Keep detention registers up to date;

(c) Ensure the availability of free legal aid in all cases where the interests of justice so require.

4. With regard to the Committee's previous concluding observations (paras. 31 and 32 (b)), please indicate the efforts made to ensure regular monitoring of places of detention by the Afghanistan Independent Human Rights Commission and non-governmental organizations. Please also provide information on the steps taken to establish a national preventive mechanism in compliance with the Optional Protocol to the Convention.⁵ Please indicate which measures have been adopted to ensure that the Afghanistan Independent Human Rights Commission has the independence, budget, infrastructure and resources it needs to fully execute its mandate in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).⁶

5. Further to the Committee's previous concluding observations (paras. 37–38), please provide information on the measures taken to combat gender-based violence, particularly with regard to cases that involve the actions and omissions of State authorities and others that engage the State party's international responsibility in accordance with the Convention. Please also provide updated information on the protection and support services available to victims of gender-based violence related to acts or omissions by State authorities. Please include statistical data on the number of complaints of gender-based violence and the investigations, prosecutions, convictions and punishments resulting from those complaints since the consideration of the second periodic report of Afghanistan. Please indicate if the State party has taken any concrete steps to discourage the application of mediation or traditional dispute resolution mechanisms to cases involving allegations of criminal acts of violence against women.⁷ Please also provide information on the impact of the Law on the Elimination of Violence against Women and the number of victims who have benefited during the reporting period from the support services established for this purpose in the State party.⁸

³ The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman and degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

⁴ UNAMA and OHCHR, *Treatment of Conflict-Related Detainees in Afghanistan*, pp. iv, 9–11 and 22–25.

⁵ A/HRC/41/5, paras. 136.24, 136.26–29 and 136.31.

⁶ *Ibid.*

⁷ See UNAMA and OHCHR, *Injustice and Impunity: Mediation of Criminal Offences of Violence against Women* (Kabul, 2018).

⁸ A/HRC/41/5, paras. 136.35, 136.40, 136.105, 136.107, 136.109, 136.114, 136.188–190, 136.193, 136.195–215, 136.217–218, 136.220, 136.234 and 136.247.

6. Please provide information, disaggregated by the age, sex, ethnicity or nationality of the victims, on the number of complaints, investigations and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous periodic report.⁹ Please also provide information on:

(a) Any new law or measure that has been adopted to prevent or combat trafficking in persons;

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies and reparation;

(c) The measures taken to ensure that non-custodial accommodation is provided, with full access to appropriate medical and psychological support, for potential victims of trafficking while identification processes are being carried out;

(d) The signature of agreements with the countries concerned to prevent and combat trafficking in persons.

Article 3

7. Please describe the measures taken during the period under review to ensure that no person was returned to a country where he or she was at risk of being tortured. Please indicate the status of the draft National Asylum Law and whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision, and whether such an appeal has suspensive effect. Please provide an update on appeals that have been made and the outcome of those appeals. Please also provide detailed information on the measures adopted to identify vulnerable persons seeking asylum in Afghanistan, including victims of torture or trauma, and to ensure that their specific needs are taken into consideration and addressed in a timely manner.

8. Please provide the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by country of origin, on the number of persons who have been returned, extradited or expelled since the Committee considered the State party's previous periodic report, including the list of countries to which individuals were returned.

9. Please indicate the number of returns, extraditions and expulsions carried out by the State party during the reporting period on the basis of diplomatic assurances or the equivalent thereof. Please also indicate the minimum content of any such assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

Articles 5–9

10. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please indicate what measures have been adopted by the State party to comply with its obligation to extradite or prosecute (*aut dedere aut judicare*). Please clarify what treaties or agreements on mutual legal and judicial assistance the State party has entered into, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

Article 10

11. Bearing in mind the Committee's previous concluding observations (paras. 45–46), please provide up-to-date information on educational programmes developed by the State party to ensure that all law enforcement officials, prison staff, border guards and members

⁹ Ibid., para. 136.132.

of the military are fully acquainted with the provisions of the Convention and are aware that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please also provide details on the programmes used in the training of police officers and other law enforcement officials in non-coercive investigating techniques. Please include information on training and advisory activities provided by third parties, including international missions. Lastly, please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and, if so, please provide information on that methodology.

12. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether the programmes contain specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Article 11

13. With regard to the Committee's previous concluding observations (paras. 9–10), please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous periodic report. Please indicate the frequency with which they are reviewed. Please also indicate whether the State party has made audio and video recording of interrogations a standard procedure.

14. With regard to the Committee's previous concluding observations (paras. 17–18 and 29–30), please inform the Committee about the measures taken to address concerns regarding conditions of detention in prisons and other places of detention, including the detention facility run by the Afghan National Army in Parwan (Bagram).¹⁰ Please describe the measures taken to reduce prison overcrowding during the period under review, including the use of alternatives to imprisonment both before and after trial. Please provide statistical data, disaggregated by gender, age, and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention.

15. Please provide information on the efforts by the State party to ensure adequate health-care services and medical staff capacity in prisons, and to meet the special needs of women, minors and persons with disabilities in detention. In particular, please indicate the measures taken to ensure that juveniles are separated from adults in all places of detention. Please also provide information on the concrete measures taken by the State party to address concerns about the treatment of minors in detention, especially in the case of those held in the custody of the Afghan National Defence and Security Forces.¹¹

16. With reference to the Committee's previous concluding observations (paras. 29 (a) and 30 (d)), please indicate whether the State party has taken measures to bring its legislation and practice on solitary confinement into line with international standards.¹² Please include data on the use of solitary confinement during the period under review and an indication of its duration. Please indicate whether this prison regime is subject to any oversight mechanism or external supervision.

17. Please comment on the information before the Committee according to which, during the period under review, the overall figures concerning torture and ill-treatment of persons detained in the context of the armed conflict in Afghanistan remained disturbingly

¹⁰ A/HRC/41/5, paras. 136.88; UNAMA and OHCHR, *Treatment of Conflict-Related Detainees in Afghanistan*, pp. iv and 19–20.

¹¹ A/HRC/41/5, paras. 136.88; UNAMA and OHCHR, *Treatment of Conflict-Related Detainees in Afghanistan*, pp. iii and 20.

¹² UNAMA and OHCHR, *Treatment of Conflict-Related Detainees in Afghanistan*, p. 20.

high, despite a documented reduction in the number of alleged cases in 2018.¹³ Please also comment on concerns regarding the continuing high rates of torture and ill-treatment in some detention facilities under the control of the National Directorate of Security, particularly those located in Kabul, Khost and Samangan, as well as the counter-terrorism department, known as NDS 241, and the different special forces of the National Directorate of Security and pro-Government armed groups, such as the Khost Protection Force. Please further comment on the alleged misconduct of the Afghan National Police in Kandahar province.¹⁴ In this connection, please provide information on the investigations and disciplinary or criminal proceedings in relation to the alleged ill-treatment and torture of detainees. Please also provide information on the regulations governing the access of lawyers to their clients while in detention, especially with regard to National Directorate of Security detention facilities and the detention facility run by the Afghan National Army in Parwan (Bagram). Lastly, please indicate what measures the State party has put in place to ensure that foreign advisers or consultants involved in the running of detention centres respect the provisions of the Convention.¹⁵

18. Please provide information on whether the authorities monitor inter-prisoner violence, on the number of complaints that have been made or registered, and on whether investigations are conducted and the outcome of such investigations. Please describe any preventive measures that have been taken in this regard.

19. Please provide statistical data regarding deaths in custody during the period under consideration, including in police custody, disaggregated by place of detention, sex, age, ethnic origin or nationality, and cause of death. Please provide information on the manner in which those deaths were investigated, the results of the investigations and the measures taken to prevent similar cases from occurring in the future. Please indicate whether relatives of the deceased persons received compensation in any of the cases.

20. Please provide information on the measures taken by the State party, including adequate training for law enforcement and military personnel, to ensure that security checks at checkpoints are conducted in a humane and respectful manner, in accordance with the Convention.

Articles 12 and 13

21. In the light of the Committee's previous concluding observations (paras. 11–16), please indicate what concrete measures the State party has put in place to ensure that all instances of torture, ill-treatment and excessive use of force are promptly, effectively and impartially investigated. Please provide statistical data, disaggregated by sex, age, ethnic origin or nationality, and place of detention, on complaints of acts of torture, ill-treatment and excessive use of force recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the disciplinary or criminal sanctions applied.¹⁶ In particular, please provide detailed information on the outcome of the investigations and disciplinary and/or criminal proceedings concerning: the alleged torture in an unknown location of Nizamuddin Qaisari, a district police chief, in July 2018; the alleged torture and death of Mohammad Hussain Shujaie, the bodyguard of a local commander, in Asad Abad (Ghor province) in October 2018; the alleged torture and ill-treatment of Mahdi Kazemi during police custody in Nowabad district (Sari Pul province) on 6 August 2018. Please also provide updated information on the measures taken to ensure that officials suspected of having committed acts of torture or ill-treatment are immediately suspended from duty for the duration of the investigation. Please also include examples of relevant cases and/or judicial decisions.

22. With reference to the Committee's previous concluding observations (paras. 7–8), please provide clarification regarding any efforts under way to repeal domestic legislation preventing the prosecution of gross human rights violations, including torture. Please comment on the information before the Committee according to which many of those

¹³ Ibid.

¹⁴ Ibid., pp. iii–iv and 12–21.

¹⁵ CAT/C/AFG/CO/2, paras. 19 and 20 (b).

¹⁶ A/HRC/41/5, paras. 136.72 and 136.83.

suspected of criminal responsibility for such crimes continue to hold official executive positions, including in government.

23. Please also indicate what measures the State party has put in place to ensure that all allegations relating to enforced disappearances and summary executions that are said to have occurred during raids carried out by Afghan special forces, with the support of the Central Intelligence Agency of the United States of America, will be fully investigated and addressed. In particular, please provide up-to-date information on the outcome of the investigations with regard to the killing of four civilian brothers during an operation in the city of Jalalabad by National Directorate of Security unit “02” on 5 September 2019; and the killing of 11 men, most of them members of one extended family, during a night raid in Zurmat district, Nangarhar, on 11 and 12 August 2019. Please also comment on reports indicating that the air force operations of Afghanistan and the United States caused 885 civilian casualties in the first nine months of 2019, a 28 per cent increase over the same period in 2018.¹⁷

24. In its previous concluding observations (paras. 21–22), the Committee expressed concern about severe human rights abuses, including extrajudicial killings and corporal punishment, such as flogging and stoning, by non-State armed groups. Please provide information on the concrete measures taken to investigate and document these abuses in order to identify, prosecute and punish the perpetrators of these crimes and to provide effective redress to victims. Please also comment on reports of unprecedented levels of violence harming civilians during the third quarter of 2019, mainly as the result of a significant increase in civilian casualties from the combined use of suicide and non-suicide improvised explosive devices.¹⁸

25. Please describe any efforts by the State party to ensure that victims and witnesses of human rights violations, including torture, and members of their families are effectively protected and assisted.

26. Please indicate the level of cooperation between the authorities of the State party and the Prosecutor of the International Criminal Court during the preliminary examination of the situation in Afghanistan relating to alleged crimes against humanity and war crimes committed in Afghanistan since 1 May 2003.¹⁹

Article 14

27. With reference to the Committee’s previous concluding observations (paras. 41–42), please provide information on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families during the period under review. That should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment, and the material, human and budgetary resources allocated for their effective functioning.

Article 15

28. With regard to the Committee’s previous concluding observations (paras. 27–28), please provide information on the measures taken to ensure respect in practice for the principle of inadmissibility of evidence obtained through torture and ill-treatment. Please

¹⁷ UNAMA Human Rights Service, “Quarterly report on the protection of civilians in armed conflict: 1 January to 30 September 2019”, 17 October 2019, pp. 2 and 8.

¹⁸ In the period from 1 July to 30 September 2019 alone, UNAMA documented 4,313 civilian casualties (1,174 deaths and 3,139 individuals injured), which is the highest number of civilian casualties recorded in a single quarter since it began collecting systematic data in 2009. See UNAMA Human Rights Service, “Quarterly report on the protection of civilians in armed conflict”, pp. 1 and 3.

¹⁹ See www.icc-cpi.int/afghanistan.

also indicate whether judges have refused to admit evidence in any cases during the reporting period on the grounds that it was obtained through torture or ill-treatment.²⁰

Article 16

29. With reference to the Committee's previous concluding observations (paras. 35–36), please indicate the measures that the State party has taken to strengthen its efforts to combat harmful traditional practices against women and girls, such as child marriage²¹ and virginity tests.²² Please also provide information on the steps taken to investigate and criminally prosecute the alleged sexual abuse of and violence against boys and young men linked to the practice known as *bacha bazi*.²³ In that connection, please comment on the information before the Committee that human rights defenders Musa Mahmoodi and Ehsanullah Hamidi, who revealed allegations of sexual abuse of boys in Logar province, had received threats for months before they publicized their research, were arrested by the National Directorate on 21 November 2019, and were held in an unknown location for several days before being released after publicly denying their findings.

30. In the light of the Committee's previous concluding observations (paras. 43–44), please comment on reports of threats and attacks against human rights defenders, journalists, legal professionals and humanitarian workers during the period under review.²⁴ Please provide information on the steps taken to discipline or criminally prosecute the perpetrators of such acts. Please also provide information on any measures taken by the State party to facilitate the work of persons seeking to bring to light cases of alleged violations of the Convention.

31. Further to the Committee's previous concluding observations (paras. 39–40), please indicate what measures the State party has put in place to set up an effective system for monitoring and revising decisions of the *jirga* courts in order to ensure that State officials do not recognize or carry out the judgments of these parallel judicial mechanisms that are inconsistent with the State party's obligations under the Convention, including those calling for women to be subjected to corporal punishment. Please also indicate the measures taken by the State party to ensure that corporal punishment of children is prohibited by law.²⁵

32. Please indicate what concrete measures have been taken to implement the National Policy on Internally Displaced Persons, with a view to addressing the specific needs of internally displaced persons.²⁶ According to the information before the Committee, internally displaced persons continue to face significant obstacles in accessing basic rights and essential services, which may undermine their dignity and, in situations of protracted internal displacement, amount to cruel, inhuman or degrading treatment. Please comment.

Other issues

33. With regard to the Committee's previous concluding observations (para. 49), please indicate whether the State party has reconsidered its position regarding the possibility of making the declarations under articles 21 and 22 of the Convention.²⁷

²⁰ A/HRC/41/5, para. 136.100.

²¹ Ibid., paras. 136.229, 136.241 and 136.246.

²² Ibid., para. 136.191.

²³ Ibid., paras. 136.237 and 136.239–240; see also European Parliament resolution of 19 December 2019 on Afghanistan, notably the allegations of sexual abuse of boys in the Logar Province (2019/2981(RSP)).

²⁴ A/HRC/41/5, paras. 136.95, 136.101–102 and 136.119–128; see also OHCHR, "Afghanistan: UN expert condemns attacks on journalists, says perpetrators must be brought to justice", 1 May 2018.

²⁵ A/HRC/41/5, paras. 136.86, 136.89 and 136.236.

²⁶ See A/HRC/35/27/Add.3.

²⁷ On the withdrawal of reservation, see United Nations Treaty Collection at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en#14. The State party ratified the Optional Protocol to the Convention on 17 April 2018: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en.

34. Bearing in mind the Committee's previous concluding observations (paras. 33–34), please indicate whether the State party has considered abolishing the death penalty and, in the meantime, establishing a moratorium on executions.²⁸ Please indicate the measures taken by the State party to put an end to the execution of juvenile offenders.²⁹

35. Please provide updated information on the measures taken by the State party to respond to threats of terrorism. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with all its obligations under international law, especially the Convention.³⁰ Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to anti-terrorism measures; and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.³¹

36. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement, such as in homes for the elderly, hospitals, or institutions for persons with intellectual and psychosocial disabilities.

General information on other measures and developments relating to the implementation of the Convention in the State party

37. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party may consider relevant.

²⁸ A/HRC/41/5, paras. 136.14, 136.70–71 and 136.74–82.

²⁹ CAT/C/AFG/CO/2, paras. 33 and 34 (c).

³⁰ A/HRC/41/5, para. 136.53.

³¹ A/HRC/WG.6/32/AFG/1, paras. 5, 8, 10 and 20–21.