



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

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Committee against Torture

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Consideration of reports submitted by

States parties under article 19 of the Convention

**Concluding observations on the second periodic report of
Afghanistan**

Addendum

**Information received from Afghanistan on follow-up to the
concluding observations***

[Date received: 28 June 2018]

* The present document is being issued without formal editing.



I. Background

1. On 1 April 2016, The Islamic Republic of Afghanistan submitted its second periodic report on the implementation of Convention against Torture (CAT). An Afghan delegation headed by the Attorney General, responded to the questions posed by the members of Monitoring Committee against Torture on May 9–10, 2017 and presented Afghan Government's achievements on the implementation of CAT. Appreciating the work of the Government, in accordance with provisions of CAT, the Committee then expressed their contentment of the constructive discussion with the Afghan Delegation and called for prioritization and implementation of the Concluding Observations by the Afghan Government.
2. The committee called for immediate response on recommendations number. 8 (paragraph C), 28 (paragraph C) and 34 (paragraph A).
3. For this purpose, considering the existing challenges and understanding the necessity of Maintaining and developing a constructive dialogue with all human rights monitoring mechanisms the government of the Islamic Republic of Afghanistan, has prepared this report for submission to the CAT Monitoring committee.
4. To prepare this report a technical committee consisted of representatives from the relevant governmental institutions namely (second Vice President Office, Ministry of Justice, Supreme Court, Attorney General Office, Independent Commission of Human Rights, Independent Administrative Reform and Civil Service Commission) was tasked. The report is prepared through several meetings by technical committee in collaboration with coordinating team of DG of Human Rights-MoFA.

II. Follow up on the Implementation of Government's Commitments

5. In order to follow up on the implementation of government's commitments with regards to human rights instruments, the Islamic Republic of Afghanistan has established an entity at the Ministry of Justice called as 'Human Rights Support Unit' (HRSU), first, to continuously assess the treaties that the government has ratified with the existing laws and policies of the country and second to propose necessary modifications and amendments based on the provisions of the conventions. The HRSU is also mandated to conduct follow up, trainings on and monitoring of the international human rights instruments and recommendations from the monitoring committees. With regards to recommendations received from the Committee Against Torture, the HRSU has so far undertaken the following steps:
 - Translating of the concluding observations to national languages namely Dari and Pashto;
 - Conducting a one-day workshop to share the recommendations of the Committee Against Torture with relevant national and International Organizations;
 - Prioritizing the recommendations through consultation sessions with relevant entities;
 - Setting indicators for monitoring aimed at implementing the recommendations in government institutions;
 - Preparing the draft action plan and Sharing it with all relevant organizations for their inputs;
 - Sharing the action plan once it is approved (in the near future), with the related institutions for implementation;
 - Starting the monitoring and reporting process on the implementation of the action plan.

III. Report on the Implementation of Paragraphs No. 8 (C), 28 (C) and 34 (A)

1. Respond to clause (C) paragraph (8) of the recommendations of the CAT Committee

6. On preventing Human Rights violators and perpetrators of torture from being appointed in government executive positions, the Government of the Islamic Republic of Afghanistan is obliged, in accordance with the Constitution and other laws, to prevent the appointment of individuals accused of human rights violations and torture to government positions. To this end, the Administrative Office of the President sends the CVs of candidate ministers, provincial governors and district governors to Afghanistan Independent Human Rights Commission (AIHRC) well before their appointments. The AIHRC background checks the candidates for human rights violations and committing of torture and reports the findings to the Administrative Office of the President and thus prevents the appointment of individuals accused and/or convicted of clear violations for human rights.

2. Respond to clause (C) of paragraph 28 of the CAT committee

7. The Government of the Islamic Republic of Afghanistan, through proper measures, has guaranteed that all cases of forced confessions are legally invalid. In cases where the use of force during investigation is proved, the accused are prosecuted in accordance with the laws.

8. In accordance with Article 30 of the Constitution, obtaining confession or testimony by means of compulsion is not legally valid. The accused shall confess an offence before a competent court only when he/she is in good health and meets all the legal requirements.

9. Paragraph 4 of Article 4 of the Criminal Procedures Law also requires a testimony or confession to be made in good health, without coercion with full consent of the accused while he/she is enjoying sound psychological status and that such confession or testimony is made before a competent court. Meanwhile, Paragraph 3 of Article 7 of the said law states that during interrogation, the accused shall not be humiliated, insulted and tortured physically or psychologically.

10. In accordance with Article 22 of the Criminal law Procedures, the judicial record keeper, prosecution or court are under no circumstances allowed to force the accused or suspect to make confession through misconduct, reluctance or torture. If a testimony or confession of the accused or suspect is obtained without due considerations of the law, it is legally invalid and cannot be presented in the courts of law.

11. Based on Article 29 of the Constitution, torture and harassment is prohibited and no one should be subject to torture or misconduct even for the purpose of extracting truth. Based on this article, setting degrading and inhuman punishments are also prohibited. Article 12 of the Penal Code also prohibits punishments that are inhumane and degrading.

12. In accordance with articles 3/15 of the Law on Structure and Authority of the Attorney General's Office and Article 15 of the Manual on Regulation of Detention Facilities, Articles 22/51 of the Law on Prisons and Detention Centers, to ensure the Human Rights of the suspects, the accused and detainees in detention centers and in order to prevent unnecessary and illegal detentions, torture or causing any types of physical or psychological harms, the Attorney General's Office (AGO) is obliged to monitor all the detention facilities (including prisons, detention centers, custody and juvenile correction facilities). The Attorney General Office performs such monitoring through its assigned professional prosecutors committees and then reports of its activities to the Attorney General's Office of the Islamic Republic of Afghanistan.

13. Acts of torture are prohibited as stipulated in the Constitution, the Penal Code and the Law against Torture of Afghanistan. In case a person commits an act of torture, he/she is punished and is held responsible for compensating the victim of such acts.

14. Based on the Article 450 of the Afghan new Penal Code, committing torture of various types and for various reasons and motivations that cause pain and physical or psychological harm, are prohibited. And, based on the Article 451 of the said law, a person charged with torture is given a medium prison sentence of over three years. In cases where the victim is disabled or deceased as a result of acts of torture, the perpetrator is sentenced to long term imprisonment or convicted for the punishment for intentional murder. Based on Paragraph 6 of this Article, threatening to torture is also considered torture. This is to be mentioned that the perpetrator of torture is also held responsible to pay compensation of the harm resulted from acts of torture. In order to compensate the victim, the law against torture has obliged the offender to pay damages caused by human rights violations. In case the offender does not have sufficient financial ability to pay damages in accordance with article 18 of the law against torture the institution for which he/she works is obliged to pay the compensation.

15. The Prevention mechanism of torture in the Islamic Republic of Afghanistan: in order to prevent torture and to follow up its cases based on article 11 of the law against torture a commission was formed. The commission is consisted of members from judicial and monitoring institutions and besides preventing torture; they regularly pay visits to all the detention facilities and report on their activities to H.E the President and the National Assembly.

16. Considering the rules of free and fair trial and in order to observe the human rights of accused person, the Attorney General Office of Afghanistan has taken the following preventive measures:

- In order to prevent torture and follow its related cases, in accordance with Article 22 of the Law Against Torture, an Anti-Torture Committee has been established;
- Conducting coordination meetings with the national and international institutions and inviting them to oversee the work of the committee;
- Hearing the complaints of victims personally by Attorney General and the committee against torture and proceeding them immediately;
- Drafting and codifying the procedure of the committee against torture;
- Designing an efficient database for filing and registering the cases of torture;
- Taking Practical, credible and immediate action for the cases of torture and stopping the original case until the issue of torture is approached. As of the cases of (Kandahar, Ghazni and Heart);
- Increasing the monitors in the organizational structure of the Attorneys General Office section responsible for detention centers, in order to have observations in two shifts (Day/night);
- So far, a total of 650 monitoring visits have been conducted by the monitoring attorneys in the provinces in order to prevent torture in prosecutors offices across the country. In addition to that, an ad hoc monitoring mission of the detention facilities was conducted by the Attorney General's Office of the Islamic Republic of Afghanistan on June 20, 2017. In a visit to Kabul Detention Center, 380 suspects were visited and interviewed directly and individually inside the detention center, and they were heard on the authenticity of their testimonies and complaints. The Attorney General of the Islamic Republic of Afghanistan and his accompanying delegation personally paid a visits to central detention centers and jails of Bagram, Pul e Charkhi, Kabul, logar, Pawran, Kapisa and children rehabilitation centers;
- So far, 25 cases of the offence of beating and torture have been investigated through the Office of Deputy Attorney General for Military Affairs that are now under prosecution.

3. Respond to Paragraph A of Article 34 of the recommendation from the CAT Committee

17. In order to immediately stop the capital punishment, reduce it or amend the related provisions, the Islamic Republic of Afghanistan has taken the following steps:

18. In the Penal Code, published in the official gazette no. 1260 dated May 15, 2017 the instances of death penalty have been decreased. Only in a limited number of crimes the death penalty has been kept in Article 170 of the Penal code only for extremely dangerous crimes. These cases include:

- The crime of Genocide, attack against the government, terror and explosion, abduction and kidnapping and banditry that result in the death of person(s);
- Intentional murder in cases as stipulated in this law;
- In crimes as a result of which lands of the Islamic Republic of Afghanistan is transferred under the control of a foreign state or harm the territorial integrity, national sovereignty or independence of the country;
- Gang rape of a woman;
- Gang rape of a man.

19. It must be mentioned that the Criminal law Procedures, published on the Official Gazette, stipulates a list of requirements and conditions for the enforcement of capital punishment. As given for in the Article 129 of the Constitution, the sentence of capital punishment requires the endorsement of the President himself.

20. Taking into consideration safeguarding the justice precisely, better accuracy and transparency in execution cases based on penal code 2017, and administrator order issued by the Attorney General in 27/07/2017 a Monitoring Committee has been established under chairmanship of Deputy Attorney General and membership of 6 experienced prosecutors to review all cases of capital punishment. Since, then Prosecutors across the country are obliged to submit the cases of death row to the Monitoring Committee before sending them to courts. The Committee confirms or rejects the cases through scrutinizing and reviewing all cases prior to its submission to courts. This committee is functional and investigate all received cases in due date. It is worth mentioning that establishment of this committee has positive effects on the reduction of death penalty through precise review of all accused cases. This committee also takes in to account all international human rights instruments which Afghanistan is a state party to in determining the capital punishment on the serious offences imposed by penal code. So far the committee has received 150 death penalty cases of which 29 of them received confirmation so far and rest of them were rejected and referred to relevant prosecutors for further proceeding.

21. In order to prevent the possibility of error during the adjudication of cases that result in the sentence of capital punishment, a commission composed of 6 expert prosecutors headed by Deputy AG is assigned to accurately re-examine all the documents of the case files and issued verdicts (both from Capital and provinces) to prevent the occurrence of judicial error. This commission is always active and considers the files in the due time.