



**Submission to the Committee of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT)**

**Civil Society Follow-up Report to the Concluding Observations of the Committee against Torture on Afghanistan's Second Periodic Report**

Submitted by: Civil Society and Human Rights Network (CSHRN)  
And  
The World Organisation against Torture (OMCT)

with the participation of and endorsement by:

International Legal Foundation – Afghanistan (Strategic Litigation & Legal Relations) (ILF-A); Feminine Solidarity for Justice Organization (FSJO); Afghan Civil Society Forum (ACSF); Afghanistan Forensic Science Organization (AFSO); Da Qanoon Ghushtonky (DQG); Afghanistan Human Rights and Democracy Organization (AHRDO); Women and Children Legal Research Foundation (WCLRF); Human Rights; Eradication of Violence Organization (HREVO); Afghanistan Democracy and Development Organization (ADDO) and Relief Organization for Rehabilitation of Afghanistan (RORA)

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The Civil Society and Human Rights Network (CSHRN), is a network of a wide range of civil society organisations active in the field of human rights, with offices in three zones of the country. The aim of the Network is to contribute to a society based on democracy and the rule of law in accordance with human rights. To this end, CSHRN is working to establish a capable human rights movement. By this it aims to increase the understanding of and respect for human rights and the rule of law for everybody in Afghanistan. CSHRN consists of over 100 Afghan organisations which are active in the promotion of human rights. In addition to its member organisations, CSHRN works together with other partner organisations in different regions of Afghanistan and the world.

The World Organisation against Torture (OMCT) is the catalyst of the SOS-Torture network, a coalition of more than 200 international and national non-governmental organisations fighting torture, summary execution, enforced disappearances and all other cruel, inhuman or degrading treatment and punishment. With offices in Geneva, Brussels and Tunis, OMCT runs programmes to favour State compliance with international law and national anti-torture legislation, provide urgent assistance to victims of torture and seek justice for them, advocate greater protection for children in detention, women, and human rights defenders worldwide.

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## A. Introduction

1. The following report comments on the priority recommendations number 8 (C), 28 (C) and 34 (A) issued by the Committee against Torture (the Committee) presented to the Government of the Islamic Republic of Afghanistan in its Concluding Observations on June 12, 2017 (CAT/C/AFG/2). The priority recommendations touch on the following issues: recommendation 8 (C): Culture of impunity, recommendation 28 (C): Coerced confessions and recommendation 34 (A): Death penalty.
2. In its Concluding Observations, the Committee asked the Government of Afghanistan to provide follow-up information on the above recommendations by May 12<sup>th</sup>, 2018. The state follow-up report was submitted on 28 June 2018. On 7<sup>th</sup> of August the civil society anti-torture coalition,<sup>1</sup> under the auspices of the Civil Society and Human Rights Network, organized a roundtable with the support of the World Organisation against Torture, to discuss the Afghan government's implementation of the follow-up recommendations. The following organisations participated in the roundtable: International Legal Foundation – Afghanistan (Strategic Litigation & Legal Relations) (ILF-A); Feminine Solidarity for Justice Organization (FSJO); Afghanistan Forensic Science Organization (AFSO); Da Qanoon Ghushonky (DQG); Women and Children Legal Research Foundation (WCLRF); Human Rights and Eradication of Violence Organization (HREVO) and Afghanistan Democracy and Development Organization (ADDO). The results of the discussions held during the roundtable and subsequent research are captured in this alternative follow-up report.

## B. Recommendation 8 (C) Culture of impunity

3. In its concluding observations, the Committee expressed deep concern about the general climate and the culture of impunity regarding torture in Afghanistan and the involvement of senior State officials in a large number of cases of alleged human rights violations. The Committee recommended the government of Afghanistan:

**(c) To ensure that all candidates for official executive positions have not perpetrated any human rights violations and, if found responsible for past human rights violations, including torture, are not nominated.**

4. On this recommendation, the government's follow-up report reads as follows *"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*

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<sup>1</sup> The Anti-torture Coalition was formed in late 2016 to draft a civil society submission parallel to the state report on implementation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Coalition consists of Civil Society and Human Rights Network, International Legal Foundation – Afghanistan (Strategic Litigation & Legal Relations) (ILF-A); Feminine Solidarity for Justice Organization (FSJO); Afghanistan Forensic Science Organization (AFSO); AWA Social Foundation (ASF); Society Empowerment Organization (SEO); Noor Social & Cultural Organization (NSCO); Navin Youth Cultural Association; Development and Support of Afghan women and children Organization (DSAWCO); Afghanistan Democracy and Development Organization (ADDO).

*thus prevents the appointment of individuals accused and/or convicted of clear violations for human rights”.*

5. As per the information gathered by civil society and through discussions with senior AIHRC staff members, this is unfortunately not correct. The CVs of the candidate ministers, provincial governors and district governors have never been sent to the AIHRC for background checks on their human rights compliance. We encourage the government to follow the procedure described in their follow-up report.
6. In the context of the culture of impunity for torture cases and the involvement of State officials, we would like to expose three emblematic cases which have taken place since the adoption of the Concluding Observations. The first case is the arrest of Nizamuddin Qaisari,<sup>2</sup> a district police chief, on 2 July 2018. He was arrested together with his bodyguards and allegedly tortured at the hands of security officials. As will be described, there are still question marks regarding possible implications of top executive officials in the case.
7. On 2 July 2018, Nizamuddin Qaisari was arrested together with his 29 bodyguards after allegedly threatening security officials during a security meeting.<sup>3</sup> Mr. Qaisari and his 29 bodyguards were reportedly ill-treated and tortured and three of the bodyguards were killed.<sup>4</sup> Mr. Qaisari was transferred to Kabul immediately after his arrest where his whereabouts remained unknown to his family, the AIHRC and civil society organisations for two weeks. During this time, Qaisari had no access to a defense lawyer and later Mr. Qaisari told the media that he was given electric shocks for three days while in custody.<sup>5</sup>
8. On 14 July 2018, a video emerged on social media showing Afghan security forces (army commandos and National Directorate of Security officers) using profane language, kicking blood-soaked detainees identified as bodyguards of Mr. Qaisari, and stepping on their heads while posing for the camera.<sup>6</sup>
9. On 15 July the President ordered an immediate probe into the alleged misconduct of the security forces following the release of the above-mentioned video.<sup>7</sup> Mr. Qaisari claimed that Dr. Yasin Zia, the deputy of the National Security Council was behind his arrest.<sup>8</sup> Mr. Qasari is from the

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<sup>2</sup> Nizamuddin Qaisari is a close ally of General Dostum who also leads local resistance against Taliban and ISIS forces. General Dostum, current first Vice-president, and the leader of the Junbish Milli Islami was forced to leave Afghanistan after he was accused of abducting and sexually assaulting a political opponent Ahmad Eshchi the former governor of Jawzjan province. He left Afghanistan to receive medical treatment and lived in a self-imposed exile in Turkey for over a year. However, Mr. Dostum rejected the accusation calling it a made-up story against him. The Ghani-Dostum differences surfaced not too long after President Ghani took office. In several events, Dostum, publicly complained that despite his role in securing Ghani the presidency, he is not heard by the President.

<sup>3</sup> <https://etilaatroz.com/62931/%D9%81%D8%B1%D9%87%D9%85%D9%86%D8%AF-%D9%86%DB%8C%D8%B1%D9%88%D9%87%D8%A7%DB%8C-%D8%A7%D9%85%D9%86%DB%8C%D8%AA%DB%8C-9-%D9%86%D9%81%D8%B1-%D8%A7%D8%B2-%D8%A7%D9%81%D8%B1%D8%A7%D8%AF-%D9%82%DB%8C/> accessed 2018-10-10.

<sup>4</sup> <https://www.hushdar.com/1397/04/23/afghan-parliament-reaction-2/> accessed 2018-10-10.

<sup>5</sup> <http://khabarnama.net/blog/2018/08/11/how-qaisari-was-arrested-and-tortured/> accessed 2018-10-10.

<sup>6</sup> <https://www.khaama.com/ghani-orders-immediate-probe-into-alleged-misconduct-by-afghan-forces-05582/> accessed 2018-10-10.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

Uzbek minority in Afghanistan. It is believed that President Ghani is in pursuit of sidelining other ethnicities, such as the Uzbek minority, to consolidate power.

10. On July 21, members of the Afghan Anti-torture Commission (appointed by the government) asked representatives of the Ministry of Defense and the National Directorate of Security – also members of the Anti-torture Commission – to follow-up on the case of Mr. Qasari, to identify and hold the perpetrators to account. This request was also communicated via an official letter. However, on 14 October 2018, during the last meeting of the Afghan Anti-torture Commission, representatives of the Ministry of Interior, the Ministry of Defense and the National Directorate of Security stated that no action had been taken so far regarding ensuring accountability in Mr. Qasari's case.
11. Afghan civil society organizations are concerned that the possible implications in this case of top executive officials will not be investigated and that focus will be put on lower ranking officers. There is a persistence of the sentiment that executive officials are untouchable for torture cases in Afghanistan.
12. The second emblematic case is the one of Mohammad Hussain Shujaie.<sup>9</sup> At dawn on October 6, 2018, around 30 officers from Army Commandos, Intelligence and Police forces, reportedly stormed a house in Asad Abad village of Lal-o-Sarjungle district of Ghor province. The security officers were in pursuit of a local commander, Alipoor, nicknamed as Commander Shamsher. Mr. Shujaie was the bodyguard of Mr. Alipoor and was present in the house in Asad Abad. Security forces accuse Mr. Alipoor of owning illegal arms and leading an illegal squad of armed people. Whereas Mr. Alipoor himself, a Shia Islam follower from Hazara ethnicity, as well as a great part of the citizens of the Ghor province, also Hazaras, claim that Mr. Alipoor forms part of the local resistance against the Talibans and ISIS insurgents.
13. Between 9:00 - 10:00 am on October 6, 2018, Mr. Alipoor, together with his men – including Mr. Hussain Shujaie – and with the support of local communities, disguised himself and broke the house siege and escaped on motorbikes. The security forces guarding the house became aware of the break out and chased the motorbikes. They fired on the escapees and the last motorbike carrying Mohammad Hussain Shujaie and a man from the local community were hit. During this incident eight civilians were killed including two women and a child; 18 others were injured. According to eye witnesses, the security forces were allegedly deliberately shooting towards civilians with excessive use of force.<sup>10</sup>
14. The security forces arrested Mr. Hussain Shujaie and they tied him to a rope fastened to a police vehicle. They towed him to the house from where he had escaped. Mr. Hussain Shujaie was towed approximately four hundred meters on unpaved roads, stones and bushes. Afterwards, the security officers untied him and threw him in a police vehicle and moved him to the capital of the Ghor province. Allegedly, Mr. Hussain Shujaie was tortured to death while in police custody. After two

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<sup>9</sup> <https://etilaatroz.com/66738/%D8%B9%D9%85%D9%84%DB%8C%D8%A7%D8%AA-%DA%A9%D9%88%D8%B1-%D8%AF%D8%B1-%D8%BA%D9%88%D8%B1%D8%9B-%DA%A9%D8%B4%D8%AA%D8%A7%D8%B1-%D8%BA%DB%8C%D8%B1%D9%86%D8%B8%D8%A7%D9%85%DB%8C%D8%A7%D9%86-%D9%88-%D8%A7/> accessed 2018-10-24.

<sup>10</sup> Ibid.

days his body was delivered to his family. While his family and local mourners were washing his body for burial there were signs of torture on his body; bruises; pebble stones rammed into his flesh due to being towed; and, deep wounds, mainly on his thighs.<sup>11</sup> It would be impossible for such a grave incident to occur without the knowledge and possible consent of higher officials.

15. The third emblematic case is the one of Mahdi Kazemi. On 6 August 2018, Mr. Kazemi, from Nowabad district of Saripul Province was arrested on charges of drug trafficking and kept in the police station for hours. During this time, he was allegedly tortured by the Office-in charge of the second police district of the Province, Mr. Maiwand. Reportedly, Mr. Kazemi was given electric shocks and was beaten up with a metal cable.<sup>12</sup> Zabihullah Amani the provincial governor's spokesperson confirmed the torture to media and affirmed that the perpetrator of the beatings, Mr. Maiwand, was under police investigation.
16. However, with later follow-up the Afghan anti-torture coalition found out that Mr. Maiwand was not under police investigation; on the contrary the victim, Mr. Kazemi, had to leave Saripul Province for Mazar-Sharif and eventually to Kabul, following threats from Mr. Maiwand.
17. Afghan civil society organisations are worried that the cases of Mr. Qaisari, Mr. Hussain Shujaie and Mr. Kazemi are only the tip of an ice berg and show that Afghan authorities and officials only pay lip service to fighting torture and addressing the possible involvement of high-level officials in such cases. Afghan civil society organisations are very concerned by the reported cases of torture and underline the absolute and unequivocal prohibition of torture and the obligation to bring the perpetrators to justice.
18. Given what has been stated above, Afghanistan cannot be considered having implemented follow-up recommendation number 8 (C) and should therefore be assessed with a **C**.

### **C. Recommendation 28 (C) Coerced confessions**

19. The Committee also expressed concern over numerous allegations of the widespread use of forced confessions and recommended the government of Afghanistan to:

**(c) Take appropriate remedial measures and ensure that all cases of coerced confessions are promptly and impartially investigated, prosecuted and punished.**

20. In the follow-up report of Afghanistan, a number of articles of different laws for prevention of torture are cited. While appreciating the legal safeguards for the prevention of torture and progresses made so far, in practice, these articles are rarely applied.

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<sup>11</sup> Ibid. See also Annex A – photo of Mr. Shujaie published in various media outlets (Mr. Shujaie's family agreed to the publication of the photo).

<sup>12</sup> <https://yash.news/?p=21707> accessed 2018-10-10.

21. The AIHRC published a report on the situation of detention centers which was released on 6 June 2018.<sup>13</sup> The AIHRC had interviewed 621 detainees and came to the conclusion that torture is still prevalent in detention to extract confessions, information or for punishment. The AIHRC documented 79 cases of torture in the detention facilities they had visited. Of the 79 cases of torture, 62 cases were perpetrated by the police, 13 by the National Directorate of Security and 4 cases by Afghan National Army soldiers.<sup>14</sup>
22. It is worth mentioning, that the AIHRC still does not have access to detention facilities in remote areas where insecurity is high and there is an important prevalence of conflict-related detainees, despite repeated attempts from the AIHRC to obtain access to detention facilities in rural areas. United Nations Assistance Mission in Afghanistan's (UNAMA) reports show a consistent high level of torture of conflict-related detainees around 35-39%.<sup>15</sup> The majority of the reported cases of torture was inflicted to exert a confession.<sup>16</sup> It would be instrumental that AIHRC had access to detention centres also in remote areas to better be able to map the persistence of torture and ill-treatment throughout Afghanistan and in particular in relation to coerced confessions.
23. It is stated in the state follow-up report that the Anti-torture Commission visits detention facilities on a regular basis. However, the Anti-torture Commission meets regularly, every three months, but it doesn't visit detention facilities regularly. From the inception of the Commission in 2017, it has paid only one visit to a detention facility at the headquarter of the police and the Juvenile Rehabilitation Center in Kabul in March 2018.
24. In March 2018, for the first time a delegation of the Anti-torture Commission visited the Juvenile Rehabilitation Center in Kabul. Representatives both from the Ministry of Justice and the Ministry of Interior are members of the Anti-torture Commission, and the detention facility seemed to have been forewarned about the visit; the administration and the personnel appeared prepared for the visit, which should have been unannounced. The personnel of the institution were closely accompanying the Anti-torture Commission at all times. During the visit, several detainees complained to the delegation that they were beaten up at the time of arrest and they were forced to confess to crimes they allegedly did not commit; their thumb prints were forcefully put to validate confessions in their dossiers.
25. Given what has been stated above, Afghanistan has not taken any substantive action to implement follow-up recommendation number 28 (C) and should therefore be assessed with a C.

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<sup>13</sup> [http://www.aihrc.org.af/home/research\\_report/7398#](http://www.aihrc.org.af/home/research_report/7398#) accessed 2018-10-10.

<sup>14</sup> Ibid.

<sup>15</sup> United Nations Assistance Mission in Afghanistan, OHCHR, Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture, April 2017, p. 7, available at: [https://unama.unmissions.org/sites/default/files/treatment\\_of\\_conflict-related\\_detainees\\_24\\_april\\_2017.pdf](https://unama.unmissions.org/sites/default/files/treatment_of_conflict-related_detainees_24_april_2017.pdf) accessed 2018-10-10.

<sup>16</sup> Ibid. see for instance pages 6, 8, 24, 25 and 31.

#### D. Recommendation 34 (A) Death penalty

26. In its concluding observations, the Committee expressed concern about the high number of prisoners on death row and the persistence of capital punishment in Afghanistan, therefore the Committee recommended the government of Afghanistan to:

**(a) Promptly consider taking measures for an immediate moratorium on executions and a commutation of sentences**

27. In the new Penal Code, which came into force on May 15, 2017 the instances of death penalty have decreased which the Afghan civil society welcome. However, the death penalty is kept for extremely dangerous crimes (Article 170), which includes for instance crimes of terror. This is particularly worrisome since terrorist and rebel groups are operating in Afghanistan. Only in 2018, Afghanistan has suffered several terror and suicide attacks, and the number of death sentences and prisoners on death row will remain or even increase.

28. While welcoming the developments towards actions for decreasing death penalty, the reported extra-judicial killings of detainees and civilians by security forces of Afghanistan remains a big concern.<sup>17</sup> It is very difficult for civil society to obtain information about the work of the monitoring committee mandated to commute death penalties to lighter sentences. The process seems opaque and more transparency would be very welcome.

29. Afghanistan is still far from declaring a moratorium on the death penalty and the work with commuting death sentences is slow, Afghanistan should therefore be considered having taken some initial steps towards implementation, but that further action is needed to implement recommendation number 34 (A) and should therefore be assessed with a **B2**.

#### E. Noteworthy developments since the adoption of the Concluding Observations

30. Afghan civil society organisations welcome the government of Afghanistan's ratification of the Optional Protocol to the UNCAT on 17 April 2018 and hope that this will contribute to substantive steps towards torture prevention in Afghanistan. It is of utmost importance that the future National Preventive Mechanism (NPM) is established according to international human rights standards; that it is fully independent and that it will receive sufficient resources to carry out their mandate in a due manner. In this context, we would like to stress that the NPM will be a perfect complementary body to the Afghan Anti-torture Commission.

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<sup>17</sup> <https://www.hrw.org/news/2018/02/21/afghanistan-alleged-summary-executions-special-forces> ; <https://www.independent.co.uk/news/world/middle-east/kabul-attack-latest-police-shoot-hundreds-protesters-calling-better-security-afghanistan-government-a7768856.html> and <https://etilaatroz.com/66738/او-غیر نظامیان کشتار-غور؛ ددر کور- عملیات/> accessed 2018-10-24.



31. On 14 June 2018 the government of Afghanistan released 260 detainees of the terror group Hizb-e Islami under The National Reconciliation, General Amnesty and National Stability Law (the Amnesty Law).<sup>18</sup> A majority of the released were believed to be accused of gross human rights violations and crimes against humanity. This shows that the government of Afghanistan has not taken any steps to repeal or amend provisions of the Amnesty law, which was recommended by the Committee in its Concluding Observation number 8(A).<sup>19</sup>
32. The Afghan civil society anti-torture coalition would like to draw the Committee's attention to five cases of reported torture in the Kandahar Province that have taken place in March 2018, to show the seriousness and persistence of torture and ill-treatment in Afghanistan. The Afghan civil society anti-torture coalition met with the victims in Kandahar's detention facility and all the statements were concurring and coherent. In this report, the names of the individuals have been altered to protect their security.
33. On 3 March 2018, representatives of the Afghan anti-torture coalition met Mahmood who was arrested a few days earlier on the charges of acts of terrorism in the Kandahar Province. He claimed that he was tortured by the police at the time of arrest and also when being held in the police station. The signs of torture were still visible on several spots on his body. Despite several complaints to judicial authorities no action had been taken.
34. On 12 March 2018, representatives of the Afghan anti-torture coalition met Abdullah at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and in custody. His right leg was severely hurt, and he could hardly walk. Signs of beatings were also visible on several areas of his body.
35. On 26 March 2018, representatives of the Afghan anti-torture coalition met Mustafa at the Kandahar detention facility. He alleged that he was tortured by police at the time of arrest and in detention. Signs of torture were visible on both his feet and hands. He was arrested on charges of acts of terror.
36. On 26 March 2018, representatives of the Afghan anti-torture coalition met Wali at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and in custody. Signs of torture were visible on his right foot and left hand. Medical documents from Public Health authorities confirm his claims. He was arrested on charges of terrorism.
37. On 26 March 2018, representatives of the Afghan anti-torture coalition met Ghani at the Kandahar detention facility. He claimed that he was tortured by police at the time of arrest and also later in the police station. Signs of torture were visible on both his feet, hands and buttocks. He was arrested on charges of terrorism.
38. All of the five cases mentioned above have been presented to relevant authorities by the victims' defense lawyers, but no action has been taken so far.

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<sup>18</sup> <http://www.bbc.com/persian/afghanistan-44451383> accessed 2018-10-15.

<sup>19</sup> Concluding Observation 8 (A): The Committee urges the State party To repeal provisions from the National Reconciliation, General Amnesty, and National Stability Law preventing the prosecutions of perpetrators of gross human rights violations, including acts of torture.

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