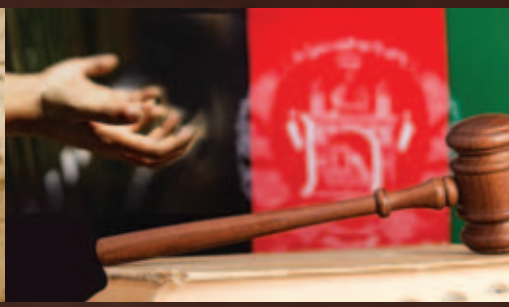
Finding Patterns through Documentation



Reconstructing the History of Torture and Cruel, Inhuman and Degrading Treatment of Detainees in Afghanistan

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Executive Summary

Based on an analysis of documents pertaining to torture and inhumane treatment in Afghanistan going back 36 years, this report examines how institutional structures have promoted impunity and replicated patterns of violations over the years. Chief among the institutions responsible for torture has been the intelligence apparatus which, under various regimes, has used torture to sow terror, extract information, and punish its opponents. Throughout Afghanistan's history, the failure to hold those responsible for these abuses accountable has meant that torture—while varying in the numbers of victims—has persisted relatively unchanged as a tool of repression in Afghanistan from the beginning of the Afghan war in 1978 to the present day.

The documents that form the basis of this report are for the first time all accessible in one searchable database created as part of the Afghanistan Documentation Project, http://www.afghandocproject.org/. The database includes reports by international human rights organizations, the United Nations (UN), and Afghan human rights organizations. The documentation included in the database is searchable according to name, date, geographic location, or kind of violation and thus serves as an invaluable resource on human rights issues in Afghanistan for individuals and organizations, whether for research or advocacy purposes.

Each time power changed hands in Afghanistan , the new government—or in the case of the 1992-1996 period, the competing factions—undermined the legitimacy of its own rule by abusing state power against its perceived opponents. Researchers trying to reconstruct the history of this period, and assemble evidence of past human rights violations and violations of international humanitarian law, have had a difficult task, given the fact that the war has destroyed most social and political institutions, left over one million people dead, and driven 6 million more out of the country as refugees or permanent exiles. However, as reviewed in this report, some documentation exists from even the earliest years of the war, and human rights reporting increased as the war continued, providing vital information about the atrocities that

occurred. The report outlines the documentation that is available for various phases of the war in Afghanistan and reviews the abuses documented by the reports and other accounts that are available for each period.

Importantly, review of the available documentation on torture indicates that because the practice has become deeply ingrained in the culture of state security institutions in Afghanistan, it has persisted regardless of any political transitions that have taken place. In addition, despite years of police training, there has been a steady failure to implement the most important safeguards against torture, above all, ensuring that each instance is investigated and those responsible for abuses are prosecuted. The fact that torture has been widely practiced by each successive regime in Afghanistan is substantiated by the available documentation. It is also widely known among Afghans. However, that knowledge has not yet translated into effective mechanisms to prevent abuses. Until it does, documentation is critical for maintaining a historical record of the abuses that have taken place.

Introduction

Overview

Each time power changed hands in Afghanistan over the past 36 years, the incoming leaders claimed their right to rule on the grounds that they had vanquished the abusive or corrupt regime that preceded them. The rhetoric of the communist putsch proclaimed an end to the tribal aristocracy and the promise of land reform, mass literacy and education for women; the Islamic State of Afghanistan established in 1992 took credit for vanquishing an occupying atheistic power and sought to restore Islamic values to the country; the Taliban were initially motivated by a determination to rid the country of predatory warlords and build a truly Islamic state.[1] Most recently, the

[1] *See* David B. Edwards, BEFORE TALIBAN: GENEALOGIES OF THE AFGHAN JIHAD (Berkeley: University of California Press, 2002), [hereinafter, *Before Taliban*], http://publishing.cdlib.org/ucpressebooks/view?docId=ft3p30056w&chunk.id=d0e535&toc.depth=1&toc.id=d0e535&brand=ucpress.

signatories to the Bonn Agreement expressed a determination to "end the tragic conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights in the country."[2]

But in each phase, the new government—or in the case of the 1992-1996 period, the competing factions—undermined the legitimacy of its own rule by abusing state power against its perceived opponents. The circumstances in each case were different, and the means employed to eliminate opposition varied, but some similarities persisted over time. A review of the reports written about these different periods of the war reveals an institutional architecture underlying patterns of abuse and suggests that while power changed hands multiple times over the course of the war, pitting different alliances of armies and militia forces against each other, certain patterns of violations remained intact. Chief among these was the role played by the intelligence apparatus under various regimes in using torture to sow terror and extract information.

Methodology and Terminology

The Afghanistan Documentation Project (ADP) database houses documents pertaining to human rights and international humanitarian law (IHL) violations committed by various state agents, as well as human rights abuses and IHL violations committed by militia forces, since the war[3] in Afghanistan began in 1978. This report is based on an analysis of documents pertaining to torture and inhumane treatment of detainees in Afghanistan over this 36 year period. The source material is accessible through the ADP's website, http://www.afghandocproject.org/. The documents cited herein

[2] United Nations, Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment
of Permanent Government Institutions," [hereinafter, Bonn Agreement],

http://www.un.org/News/dh/latest/afghan/afghan-agree.htm.

[3] We recognize that there have been a series of armed conflicts in Afghanistan since 1978 involving a variety of different actors. Throughout this report, we use the term "war" to refer to these conflicts in the aggregate, encompassing the entire period of conflict over the past 36 years.

include reports by international human rights organizations, the United Nations (UN), and Afghan human rights organizations. The search terms used to locate relevant documents included: "act of a sexual nature," "beating(s)," "degrading treatment," and "physical or mental abuse."

In this report, we use the terms "torture," "inhumane treatment" and "degrading treatment" as they are used in the documents cited. However, the following definitions of the terms "torture" and "ill-treatment" are instructive:

- The UN Convention against Torture uses this definition of torture:

  "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[4]

- The International Committee of the Red Cross (ICRC) "uses the broad term 'ill-treatment' to cover both torture and other methods of abuse prohibited by international law, including inhuman, cruel, humiliating, and degrading treatment, outrages upon personal dignity and physical or moral coercion."[5]

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[4] United Nations General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 1984, Art. 1(1),

http://www.un.org/documents/ga/res/39/a39r046.htm.

[5] International Committee of the Red Cross, *What is the definition of torture*

What distinguishes these different forms of abuse is the purpose of the perpetrator of the act and the "severity of pain or suffering imposed."[6] Thus:

- Torture requires the existence of a specific purpose, such as acquiring information, plus intentional infliction of severe suffering or pain;
- Cruel or inhuman treatment has no specific purpose requirement but involves the infliction of a significant level of pain or suffering; and
- Outrages upon personal dignity have no specific purpose requirement, but involve a significant level of humiliation or degradation.[7]

Methods and effects of ill treatment may be both physical and/or psychological in nature.[8]

Phases of War in Afghanistan and the Limits of Documentation

Afghanistan has been at war for 36 years. Reconstructing the history of this period, and assembling evidence of past human rights violations and violations of international humanitarian law is enormously difficult, given the fact that the war has destroyed most social and political institutions, left over one million people dead, and driven 6 million more out of the country as refugees or permanent exiles.[9] Between 1978 and the

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and ill treatment?, ICRC Resource Centre, FAQ, http://www.icrc.org/eng/resources/documents/misc/69mjxc.htm (accessed 5 December 2013).

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] No one knows how many people have been killed in Afghanistan since the war began. In 1988, the UN Special Rapporteur cited estimates ranging from 1.5 to 3.5 million in what was then the first ten years of the war. *See* United Nations General Assembly, Report of the Economic and Social Council, *Situation of*

Human Rights in Afghanistan, A/43/742, 1988, para. 105. *See also* UN Office of the High Commissioner for Human Rights, *Afghanistan Mapping*

early 1980s, most of Afghanistan's educated elite was either killed or fled the country. [10]The situation is further complicated by the fact that power in Afghanistan has changed hands multiple times over the course of the war. The militias that fought Afghanistan's communist government and its Soviet backers in the 1980s failed to form a coalition government after 1992, and instead fought among themselves. They were eventually ousted by other veterans of the war against the Soviets—the Taliban—who were themselves defeated when US forces aligned themselves with the Taliban's rivals for power.[11] As violence and instability have continued, efforts aimed at documenting past events have been stymied.

The First Phase: PDPA under Taraki and Amin (1978-79)

The first phase of the war, from the outbreak of armed conflict in April 1978 until the Soviet intervention in December 1979, suffers from the poorest documentation. This period began in April 1978 (Saur 1358 by the Afghan calendar) when the People's Democratic Party of Afghanistan (PDPA) seized power in a coup, setting off mutinies in the army and rebellion in the countryside.[12] No international human rights organizations, and few international journalists, had access to the country at the time.

Reports from the 1980s, written after the United Nations and international human rights groups began investigating these events, include only limited testimony and documentation from this early period.[13] The ADP archive also includes the early

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Report, January 2005, at 84 [hereinafter *UN Mapping Report*], http://www.flagrancy.net/salvage/UNMappingReportAfghanistan.pdf.

[10] *UN Mapping Report, supra* note 9, at 12-13.

[11] For a history of this period, *see UN Mapping report, supra* note 9, at 273, and Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes Against Humanity* 1978-2001, 2005, at 61-63. [hereinafter *Casting Shadows*], http://afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity1978 2001.pdf.

[12] For a history of this period, see *Casting Shadows, supra* note 11, at 10-11; *see also, UN Mapping Report, supra* note 9, at 9-10.

[13] *See e.g.*, UN Commission on Human Rights, *Report on the situation of*

reports of the UN Special Rapporteur on human rights for Afghanistan, whose mandate and first visits to Afghanistan did not begin until 1984, but whose reports briefly cite some interviews about torture and disappearances in the 1978-79 period.[14] The 2005 Mapping Report completed by the UN Office of the High Commissioner for Human Rights, and the Afghanistan Justice Project's 2005 report, *Casting Shadows*, contain additional references to interviews conducted with persons who had been detained during this period.[15]

Interviews of this kind, together with descriptions by foreigners who witnessed the aftermath of the Saur coup,[16] support the conclusion that during the period in which the PDPA under Nur Muhammad Taraki and Hafizullah Amin was in power, it carried out widespread abuses, including torture and mistreatment of detainees, in its efforts to eliminate opposition from other political groups as well as from traditional tribal and religious elites. Disappearances and executions in this period were also widespread, possibly numbering in the tens of thousands, but very few individual testimonies from Afghans who witnessed these events have been recorded.[17] In scope and scale, this early PDPA resembled the

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human rights in Afghanistan, prepared by the Special Rapporteur, Felix Ermacora, in accordance with Commission on Human Rights resolution 1984/55, 19 February 1985, E/CN.4/1985/21, http://www.refworld.org/docid/482994662.html.

[14] *See id*.

[15] *See Casting Shadows, supra* note 11, at 14-19; *see also, UN Mapping report*, supra note 9, at 14-28.

[16] The UN Mapping Report cites several documents describing the coup, notably the eyewitness account by American anthropologist Louis Dupree, who was in Kabul at the time. *UN Mapping Report, supra* note 9, at 9. *See also* Louis Dupree, *Red Flag Over the Hindu Kush, Pt. II: The Accidental Coup, or Taraki in Blunderland*, American Universities Field Staff, Asia series, No. 23, (Hanover, New Hampshire: AUFS, 1980).

[17] In October 2013, Dutch authorities made public a list of 4,785 persons who had been forcibly disappeared between 1978 and 1979. Amnesty International had mentioned the existence of such a list in its 1980 report, but this was the first time the actual list was made available. *See* Kate Clark, *Death List Published: Families of disappeared end a 30 year wait for news*, Afghanistan Analysts Network , Sept. 26, 2013, http://www.afghanistan-analysts.org/death-list-published-families-of-

Khmer Rouge regime which ruled Cambodia during the period of 1975 through 1979, [18] but unlike in Cambodia, where the Documentation Center (DC-Cam) has been able to assemble a great deal of evidence about executions and torture by the Khmer Rouge,[19] no organization has pursued the effort to acquire from Afghan survivors testimony of similar volume and level of detail about the earliest period of the war. In addition, unlike the Khmer Rouge, the PDPA did not keep detailed records of its treatment of detainees, or if it did, no such records have surfaced.

The Second Phase: PDPA under Soviet Occupation (1979-89)

The next phase of the war began with the intervention by Soviet forces in late December 1979, the assassination of President Amin, and the installation of Babrak Karmal as the new chairman of the PDPA and president of the country. During this period, Soviet forces numbered 100,000 at their highest point and worked beside Afghan armed forces; Soviet officers were present in all ministries and the intelligence services.[20] This phase of the war ends with the withdrawal of Soviet forces in February 1989.

Abuses occurring during this period are somewhat better documented. As Afghan refugees settled in Pakistan and Iran, some formed organizations that began reporting on conditions in Afghanistan. As in many similar conflict situations, in some cases, the work was tied to political groups who used the information to advocate for aid—both humanitarian and

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disappeared-end-a-30-year-wait-for-news. *See also* Amnesty International, *Violations of Human Rights and Fundamental Freedoms*, AI Index: ASA 11/04/79, Sept 1979, http://www.amnesty.org/en/library/asset/ASA11/004/1979/en/d497639c-6b61-499e-9057-aaa5a0edc617/asa110041979en.pdf.

[18] Olivier Roy may have been the first to compare the early PDPA to the Khmer Rouge. *See* Olivier Roy, L'AFGHANISTAN: ISLAM ET MODERNITÉ POLITIQUE (Paris: Editions du Seuil, 1985), *cited in* the *UN Mapping Report*, *supra* note 9, at 12.

[19] The Documentation Center of Cambodia, www.dccam.org.

[20] *UN Mapping Report*, *supra* note 9 at 35.

military—for the Afghan opposition, known as the *mujahidin*. Journalists, human rights investigators and the UN also began to send delegations to the refugee camps and, to a limited extent, inside Afghanistan itself. UN Economic and Social Council resolution 1984/37 of 24 May 1984,[21] mandated the establishment of a Special Rapporteur on human rights in Afghanistan, who began issuing regular reports based on visits to refugee camps in Pakistan, and who was eventually allowed access into Afghanistan in 1987.

Unlike the earlier period of the war, human rights reports covering this phase included considerable first-hand testimony.[22] In particular, human rights reporting during this phase focused on interviews with refugees who described the conditions that had caused them to flee, principally aerial bombardment in the countryside, as well as repression in urban areas.[23] Unfortunately, only the reports, and not the interviews on which they are based, are available in the ADP archive. Furthermore, the reports are limited by the experiences of the refugees to which investigators had access. Notably, every major human rights organization that reported on Afghanistan in this period sent investigators to Pakistan, but not to Iran, which did not allow the UN Special Rapporteur on Afghanistan to visit until 2002.[24] Thus, although as many as two-fifths of the Afghan refugees who fled following the outbreak of war in 1978 settled in Iran, their accounts are largely missing from the known archives.[25]

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[21] UN Office of the High Commissioner for Human Rights, *Situation of human rights in Afghanistan*, 1984/37,

http://ap.ohchr.org/documents/dpage_e.aspx?m=78.

[22] *See, e.g.*, Helsinki Watch, *Tears, Blood and Cries: Human Rights in Afghanistan since the Invasion 1979 – 1984*, December 1984 [*Hereinafter Tears, Blood and Cries*],

http://www.hrw.org/reports/1984/12/01/tears-blood-and-cries.

[23] *See, e.g.,Tears, Blood and Cries, supra* note 22.

[24] Commission on Human Rights, UN Report on the Situation of Human Rights in Afghanistan, E/CN.4/2002/43, 6 March 2002, at 1-2.

[25] For more on the situation of Afghan refugees in Iran, *see* Human Rights Watch, *Unwelcome Guests:*

Among the Afghan organizations based outside the country that reported on events during the 1980s, including but not limited to human rights concerns, were the Afghan Information Centre (AIC) and the Writer's Union for a Free Afghanistan (WUFA), both of which were established by prominent Afghan intellectuals who were relatively independent of the *mujahidin* groups, or were royalist in their politics.[26] To some extent, these groups also reported on human rights concerns among the refugee population, which entailed greater risk of retaliation from political groups based in Pakistan. Although much of the written materials produced by AIC and WUFA have not surfaced, some documents produced by these groups have been sources for documents included in the ADP archive.[27] A later group, the Cooperation Center for Afghanistan (CCA), founded in 1990, produced some reports on human rights violations committed in the 1980s, along with other reports on development issues.[28] ADP plans to begin coding CCA's archives for inclusion in the database in 2014.

Human rights reports documenting events of the PDPA period under Soviet occupation focused almost exclusively on violations perpetrated by the PDPA and Soviet forces in the countryside, and by the PDPA intelligence organization, Khadamat-e Aetla'at-e Dawlati, commonly known by its acronym, KhAD. These reports detailed the arbitrary arrests, torture, detention conditions, indiscriminate bombardments and reprisals against civilians that characterized this period.[29]

Iran's Violation of Afghan Refugee and Migrant Rights, ISBN 978-1-62313-0770, November 2013, at 1,

http://www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf.

[26]To be royalist signified continuing support for the monarchy under Zahir Shah, who had been overthrown in 1973. For more on WUFA, *see* Thomas Ruttig, *Prof. Rasul Amin passed away*, Afghanistan Analysts Network**,** 6 November 2009, http://www.afghanistan-analysts.org/prof-rasul-amin-passed-away. *See also Before Taliban*, *supra* note 1.

[27] Human Rights Watch has cited the Afghan Information Centre's Monthly Bulletins as a source for information on reprisal killings by PDPA and Soviet forces. *See UN Mapping Report*, *supra* note 9, at 64, n.96 and 65, n. 102.

[28] For more on CCA, *see* http://www.ccamazar.org.

[29] *See, e.g., Tears, Blood and Cries*, *supra* note 22.

It was not until the Soviet forces began to withdraw in 1988 that international and Afghan human rights groups began to document abuses by resistance forces operating within Pakistan or in areas they controlled inside Afghanistan. These included violations of international humanitarian law, specifically common article 3 to the Geneva Conventions, which forbids summary executions, torture and inhumane treatment of persons taking no active part in the hostilities.[30]

The Period of the Islamic State of Afghanistan (1992-96)

Following the Soviet withdrawal in 1989, the PDPA government, then under President Najibullah, abandoned its communist ideology, renamed itself the Watan ("homeland") party, and began to pursue a policy of national reconciliation.[31] Despite the reforms, the government was still dependent on financial support from the Soviet Union, which ended abruptly with the collapse of the USSR in December 1991. President Najibullah held on for only a few months before announcing his intention to step down pending the establishment of a UN-brokered interim government.[32] Events on the ground overtook international diplomacy, however, and Najibullah's government collapsed on April 16, 1992.[33]

Over the next few months, Afghanistan, and particularly Kabul, became engulfed in intense fighting between rival

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[30] After the departure of Soviet armed forces from Afghanistan, the war reverted to a non-international or internal conflict as defined under international humanitarian law. Thus, both the Afghan government and the opposition forces were bound by Article 3 common to the Geneva Conventions (to which Afghanistan is a party). *See, e.g.*, Helsinki Watch/Asia Watch, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, March 1988 [*hereinafter, By All Parties*], http://www.hrw.org/legacy/reports/1988/afghan0388.pdf.

[31] For further details on this period of history, *see Casting Shadows*, *supra* note 11, at 48; *see also UN Mapping report*, *supra* note 9, at 36, 142.

[32] Barnett Rubin, THE FRAGMENTATION OF AFGHANISTAN, 269–271 (New Haven: Yale University Press, 1995), *cited in UN Mapping Report*, *supra* note 9, at 207.

[33] These events are described in the *UN Mapping Report*, *supra* note 9, at 207.

mujahidin and militia forces.[34] Insecure conditions led to a decline in all kinds of record-keeping, although humanitarian organizations and some journalists who continued to operate in the country contributed to documentation of serious incidents of IHL violations. Some of these are included in the ADP archive.[35] In addition, with the withdrawal of Soviet forces, there was far less international interest in the conflict, and few countries maintained embassies in Kabul. However, Afghan refugee organizations based in Pakistan, including CCA, did carry out some monitoring. The major incidents of this period included indiscriminate bombing, rape, hostage taking and summary executions of detainees; virtually every party to the conflict engaged in these violations.[36]

The Period of the Islamic Emirate of Afghanistan (1996-2001)

In 1994, the Taliban, made up of former members of the *mujahidin*, emerged out of the chaos that had consumed Afghanistan since the Soviet withdrawal. [37] Benefitting from Pakistani and Saudi patronage, the Taliban became a formidable military force, taking control of Kabul in 1996, and most of the rest of the country by 1999. Global interest in Afghanistan increased with the appearance of Osama bin Laden in the country in 1997; the relative security of Kabul and other cities also made it possible for journalists and other observers to report on conditions in the country. In addition, the Taliban's harsh treatment of women garnered media attention.[38] Security and access to some areas remained a problem, however. Massacres that took place in remote areas did not come to light

[34] For a description of the fighting in this period, *see Casting Shadows*, *supra* note 11 at 61-63, and *UN Mapping Report*, *supra* note 9, at 206-208. *See also* Human Rights Watch, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, ISBN 1-56432-334-X, July 7, 2005, http://www.hrw.org/sites/default/files/reports/afghanistan0605.pdf.

[35] *By All Parties*, *supra* note 30.

[36] *By All Parties*, *supra* note 30, at 13-15.

[37] The emergence of the Taliban is detailed in the *UN Mapping Report*, *supra* note 9, at 241-247.

[38] The author has described this history in *Casting Shadows*, *supra* note 11at 118-120, and the *UN Mapping Report*, *supra* note 9, at 242-246.

until long after they had happened, making investigations difficult despite improved communication. Major human rights violations in this period included summary executions, among them several large-scale massacres, torture, and a range of restrictions that limited women's ability to work and gain access to education and health care.[39]

Post-2001: Better Documentation but Continuing Patterns of Abuse

Finally, following the 2001 US intervention in Afghanistan, a number of human rights organizations began documenting the ongoing human rights violations and violations of IHL. While these organizations have not had access to all areas of the country, they have been able to report on a wide range of abuses, including arbitrary detention and torture by both Afghan government institutions and Coalition forces, as well as executions and mass killings by insurgent forces. Afghan and international non-governmental organizations (NGOs), Afghan government agencies and the UN have also documented these abuses at length. Many of their reports are included in the ADP archive. [40]

Documented Evidence of Torture and Ill-Treatment in Afghanistan

In 36 years of war, Afghanistan lost most of its educated elite to secret police death squads or permanent exile. Those capable of documenting what was happening in the country were the very people most likely to be killed. Those who were not killed fled. Today, most of the reporting on human rights is still carried out by international groups, but Afghan efforts have grown in strength. While the capacity to document these events has improved, many of the kinds of abuses documented over the years have endured, although not on the same scale as earlier

[39] There is no real comparison in recent Afghanistan with the efforts of the early PDPA to eliminate its opposition through mass disappearances, which became the hallmark of the Taraki-Amin years, or the massive bombardments of the early years of Soviet occupation. *See UN Mapping Report*, *supra* note 9, at 12, 41-50.

[40] *Id.* at 16.

phases of the war.[41] The effort by the Soviet Union and PDPA government in the early 1980s to control Afghanistan through the intelligence network in the cities and military campaigns in the countryside has not been replicated on anywhere near the same scale. What has endured is the prevalence of torture along with other forms of physical and mental abuse and mistreatment of detainees.

Torture and Ill-Treatment in Afghanistan Prior to 1978

The outbreak of conflict in 1978 did not introduce torture to Afghanistan, of course. Afghanistan's Constitution of 1923 expressly prohibited arbitrary arrest and torture, suggesting these were practices that needed to be prevented. Specifically, Article 10 provided that:

> Personal freedom is immune from all forms of violation or encroachment. No person may be arrested or punished other than pursuant to an order issued by a Sharia court or in accordance with the provision of appropriate laws.[42]

In addition, Article 24 stated that:

> All types of torture re hereby prohibited. No punishment may be imposed on any person except as provided in the general penal code and the military penal code.[43]

Following a rebellion by members of the Mangal tribe in 1924, and demands by tribal leaders that any reforms enacted by King Amanullah be subject to the concurrence of religious leaders, the Constitution was amended to reflect those concerns. Thus, Article 24 was amended to provide at the end:

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[41] *Id*. at 15-16.

[42]The 1923 Constitution of Afghanistan, trans. Checchi Consulting, Afghanistan Rule of Law Support Project, USAID 2004-2009, http://afghantranslation.checchiconsulting.com/constitutions.htm.

[43] *Id*.

> Except those punishments which are in accordance with the rules of the sharia and which are in accord with other public laws which are themselves codified according to the rules of sharia.[44]

We have little information about how well the Constitution's provisions were followed in practice, as these were part of Amanullah's larger, and very controversial, effort at reform, which ended with his abdication and exile in 1929. Amanullah's cousin and successor, King Nadir Shah, promulgated a new Constitution in 1931 that was even more explicit concerning torture. Article 19 of that Constitution stated that "the rack and other kinds of torture are absolutely abolished."[45] Nadir Shah was assassinated in 1933 and succeeded by his son, Zahir Shah, who reigned until 1973. In 1964, Zahir Shah promulgated yet another new Constitution that outlined the prohibition against torture in some detail, and included a provision that confessions made under torture were not valid in court. Specifically, Article 26 of the 1964 Constitution provided:

> No one may be pursued or arrested except in accordance with the provisions of the law. No one may be detained except on order of a competent court, in accordance with the provisions of the law. Innocence is the original state; the accused is considered to be innocent unless found guilty by a final judgment of a court of law. Crime is a personal deed. Pursuit, arrest or detention of the accused and the execution of sentence against him does not affect any other person. Torturing a human being is not permissible. No one can torture or issue orders to torture a person even for

[44] Appendix B: Annotated Amendments of January 28, 1925 (8 Dalw 1303) to the 1923 Constituion, USAID 2004-2009, http://afghantranslation.checchiconsulting.com/constitutions.htm.

[45] The 1931 Constitution of Afghanistan, trans. Checchi Consulting, Afghanistan Rule of Law Support Project, USAID 2004-2009, http://afghantranslation.checchiconsulting.com/documents/constitution/Constitution_1931-1310_ET.pdf.

> the sake of discovering facts, even if the person involved is under pursuit, arrest or detention or is condemned to a sentence. Imposing punishment incompatible with human dignity is not permissible. A statement obtained from an accused or any other person by compulsion is not valid.[46]

Despite these evolving constitutional safeguards against torture, there is little in Afghanistan's history to suggest that they represented anything more than paper promises, particularly with regard to most of the country's detention facilities at the time. President Daoud Khan, who overthrew king Zahir Shah in a bloodless coup in 1973, organized his own secret police with the help of SAVAK, the secret police of the Shah of Iran, in order to suppress the leftists (who had initially helped him take power).[47] Muslim organizations were also targeted, as documented by David Edwards, who interviewed activists who described arrests and torture of Islamist leaders in the early 1970s.[48] Thus, as Barnett Rubin observed,

> We should not romanticize Afghanistan before 1978. Afghan prisons were punishing, and the interrogators might have been surprised to learn that all Afghan constitutions since 1923 had prohibited the use of torture. The police could be corrupt and brutal. But the revolution of 1978 brought about an intensity and scope of violence that had not been seen at least since the formation

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[46] Constitution of Afghanistan, October 1, 1964, USAID 2004-2009, http://afghantranslation.checchiconsulting.com/documents/constitution/Constitution_1931-1310_ET.pdf.

[47] M. Hassan Kakar, THE SOVIET INVATION AND THE AFGHAN RESPONSE, *1979—1982*, (Berkeley : University of California Press, 1995), http://vserver1.cscs.lsa.umich.edu/~crshalizi/reviews/kakar-soviet-invasion/

[48] *Before Taliban*, *supra* note 1.

> of the modern Afghan state in the closing years of the nineteenth century.[49]

Torture under PDPA (1978-79)

The PDPA regime under Taraki and Amin used torture both to punish detainees suspected of opposing the regime, and as a tool of interrogation.[50] The UN Mapping report gives the following account of the ways I which torture was used at this time:

> Testimonies... are unanimous... that prisoners were tortured during their interrogation and as punishment, that punishments included the use of torture as a particularly painful form of execution, and that the conditions under which the government held detainees, especially in Pul-i Charkhi prison, were uniquely painful, life-threatening, degrading, and humiliating.[51]

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[49] Barnett R. Rubin, "Transitional Justice in Afghanistan," The Anthony Hyman Memorial Lecture, School of Oriental and African Studies, University of London, 3 February 2003, at 2, http://www.soas.ac.uk/cccac/events/anthonyhyman/file25446.pdf.

[50] In addition, prisoners were subject to other forms of inhumane treatment. Thousands were held in overcrowded prisons with inadequate food and no access to medical care; no one knows how many hundreds or thousands died of disease. In September 1979 Amnesty International estimated that Pul-i Charki prison held 12,000 prisoners. "As a result, prisoners were crowded, often to the point where there was no room to lie down to sleep. Disease was rampant, respiratory diseases in the winter and gastrointestinal ones in the summer. Food was scarce and rancid. But the biggest source of humiliation was control by the guards over access to the prison's toilets, located in latrines outside the main prison blocks." Amnesty Int'l, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan*, ASA 11/04/79, 1979 [hereinafter *Violations of Human Rights and Fundamental Freedoms in Afghanistan*], *cited in the UN Mapping Report, supra* note 9, at 26. While poor prison conditions do not in themselves constitute cruel or inhumane treatment, testimony from former detainees of this period suggests that the authorities may have manipulated these conditions in order to cause pain and humiliation.

[51] *UN Mapping Report, supra* note 9, at 24.

Furthermore, in his 1986 report, the UN Special Rapporteur for Afghanistan, Professor Felix Ermacora, described the treatment of prisoners during the 1978-79 period by saying:

> Several individuals gave the Special Rapporteur an account of ill-treatment suffered
> during their detention, including, deprivation of sleep, tearing out of fingernails, burns of various types, electric charges, in some cases involving the use of electric generators.[52]

Similarly, the UN Mapping report notes that Azizullah Ludin, who was as of 2013 head of the government's office on anti-corruption, told Professor Ermacora in 1985 that he had personally been tortured by some of these methods.[53] Ludin also described the torture he witnessed of Sayed Abdullah Kazim, a former Dean of the Faculty of Economics at Kabul University, who was arrested with Ludin in 1978 and "who had the fingers of both hands crushed under the legs of a chair on which two of his torturers sat."[54]

Finally, Amnesty International reported in 1979 that it had "received a substantial number of allegations that political prisoners [were]... subjected to torture. Fears ha[d] been expressed that some prisoners [were] paralyzed and that others died as a result of torture."[55] Witnesses told Amnesty International of a former minister held in Pul-i Charkhi who had "blood coming out of his mouth."[56] Amnesty International also "received several specific allegations that political prisoners have died as a result of torture."[57] Methods of torture included "severe beatings, whipping, pulling out of prisoners' nails,

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[52] *UN Mapping Report, supra* note 9, at 24-25.

[53] *Id*.

[54] *Id*. at 25.

[55] *Violations of Human Rights and Fundamental Freedoms in Afghanistan*, *supra* note 50, at 13.

[56] *Id*.

[57] *Id*.

burning of the hair and sleep deprivation. Some reports also allege that political prisoners [were] given electric shocks."[58]

Of course, torture survivors whose accounts have been recorded by human rights investigators most likely represent a fraction of those who were subjected to torture in these years; most are among the tens of thousands of disappeared. Those taken into custody at this time included all those the PDPA considered to be obstacles to their efforts to transform the Afghan state: Islamists; mullahs, pirs and other religious elites; tribal leaders; Maoists and other leftists outside the PDPA; and leaders of various ethnic communities.[59]

KhAD: Torture Becomes Systematic (1980-1992)

In December 1979, Soviet forces ended the reign of Hafizullah Amin and installed Babrak Karmal as President. According to the UN Mapping report, the new government, unlike the previous one, was largely under the control of the Soviet Union. Indeed, Soviet troops soon numbered some 100,000, and Soviet advisers were present in every ministry.[60] The report continues:

> In addition, the KGB established a new Afghan organization, modeled on itself, combining domestic and international intelligence functions with those of a secret police and covert action organization. The new organization was called Khidamat - i Ittila'at - i Dawlati, the State Information Services, known by its acronym, KhAD. Its founding leader was Dr. Najibullah.[61]

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[58] *Id*.

[59] See *Casting Shadows, supra* note 11, at 13, and the *UN Mapping Report, supra* note 9, at 15-21.

[60] William Maley, THE AFGHANISTAN WARS, 25–31 (London: Palgrave Macmillan, 2003), *cited in UN Mapping Report, supra* note 9, at 9.

[61] *UN Mapping Report, supra* note 9, at 35.

Dr. Najibullah was a graduate of the Medical Faculty of Kabul University who belonged to the Parcham wing of the PDPA. He remained as head of KhAD until 1986, when he replaced Babrak Karmal as head of state.

Torture by KhAD agents has been widely documented. For instance, in a 1985 report, UN Special Rapporteur Ermacora explained that "[t]orture against opponents of the regime... [was] commonplace and... ha[d] almost assumed the character of an administrative practice."[62] With the establishment of KhAD in 1980, torture in Afghanistan had become a constituent part of the intelligence apparatus. Indeed, Amnesty International reported that, although the organization had received reports of torture under all three governments since the 'Sawr' revolution of April 1978... it was only after the formation of KhAD... that the practice was reported to have become systematic."[63]

According to the Special Rapporteur, torture took place in a number of detention centers operated by KhAD, including the Ministry of the Interior and all Kabul prisons and other detention centers around the country. Similarly, the UN Mapping report specifies that the primary locations at which torture was carried out within Kabul, included KhAD headquarters at Sedarat, which contained the central interrogation office; eight detention centers; and some 200 individual houses used for that purpose.[64]

Both Human Rights Watch and Amnesty International published reports with extensive testimony from torture survivors during this period.[65] In addition, with the assistance

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[62] UN Commission on Human Rights, *Situation of human rights in Afghanistan*, 12 March 1998, E/CN.4/1998/71, para. 187, http://www.refworld.org/docid/3ae6b09010.html.

[63] Amnesty International, *File on Torture*, ASA 12/12/84, 1984.

[64] *UN Mapping Report*, *supra* note 9, at 134. These facilities were used for intelligence purposes by later regimes; as of 2013, the National Directorate for Security under the Karzai government had its offices in the Sedarat complex in central Kabul.

[65] *See, e.g.*, *File on Torture*, *supra* note 63, and *Tears, Blood, and Cries*, *supra* note 22. Compared to the early PDPA period of Taraki and Amin, a

of Amnesty International, Dr. Mohammad Azam Dadfar, a German-trained Afghan psychiatrist, opened a clinic in Peshawar to treat former torture victims for post-traumatic stress syndrome and other ailments; Dr. Dadfar later published his findings based on his experiences with these patients.[66] Finally, the Afghanistan Justice Project has interviewed a number of persons who were imprisoned and tortured during this time.[67] From these and other accounts, it is clear that many arrests occurred during nightly raids in which KhAD agents worked with Afghan security forces to search houses of suspected resistance sympathizers.[68] In other cases, boys and men were detained while outside the home when agents stopped them on the street or coming from schools and marketplaces, and took them away to be interrogated.[69]

All political prisoners were subjected to interrogation by KhAD, which invariably included torture. Amnesty International described the pattern of torture:

> There are central and local KHAD interrogation centres in Kabul, and one or more KHAD centres in provincial cities. Among the cases reported to Amnesty International, the largest number allege[s] that torture occurred in the two Kabul centres known as Shashdarak and Sedarat. The

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greater percentage of torture victims survived to tell their stories.

[66] Mohammad Azam Dadfar, THE IMPAIRED MIND (Peshawar: Psychiatry Centre for Afghans 1990), Mohammad Azam Dadfar, VICTIMS OF TORTURE IN AFGHANISTAN: A DECADE OF SOVIETISATION 141-157 (Sayed Mohammad Yusuf Elmi, eds., Afghan Jehad Works Translation Centre, trans., Peshawar 1988). Dr. Dadfar was elected deputy chairman of both the Emergency and Constitutional Loya Jirgas in 2002 and 2003. As of 2013, Dr. Dadfar was Afghan Minister of Higher Education. *See* Afghanistan Ministry of Higher Education, Memorandum of Understanding Between The Afghanistan Ministry of Higher Education And The Global Learning Portal, http://mohe.afghanistan.af/en/page/307.

[67] *Casting Shadows, supra* note 11at 35-41.

[68] *Tears, Blood, and Cries, supra* note 21 at 130.

[69] Amnesty International, *Afghanistan: Torture of Political Prisoners*, ASA/11/04/86, November 1986, at 9-10, http://www.refworld.org/pdfid/47fdfaf10.pdf.

> most cornmon pattern is for people arrested to be taken first to the KHAD headquarters and primary interrogation centre at Shashdarak for initial interrogation, and subsequently transferred to the central interrogation office at Sedarat for interrogation over a long period, which may extend to several months...[70]
>
> Prisoners report being beaten with several kinds of instruments and abused in a variety of ways.... Many prisoners reported being deprived of sleep and required to stand for prolonged periods.... In other cases, too, such treatment was exacerbated by prisoners being exposed to sun or forced to stand in water or snow.... Some prisoners reported being only threatened with electric shock torture, but many others reported being subjected to it, apparently quite routinely at an early stage as well as later stages of their interrogation. The most common electric shock torture device is referred to as the "telephone": a small machine that looks like an old-fashioned telephone with wires that are attached to the victim's body and a handle which is turned or pulled to apply the current. Other prisoners simply referred to a small box with wires coming out of it.... Several other forms of serious physical abuse were reported. These included prisoners having a bottle or in one case a heated wire thrust into the rectum, having fingernails pulled out or needles inserted under them, being cut with a knife, having a chair placed on the stomach or hands and sat upon, being burnt with cigarettes, being scalded with very hot water, and having hair torn out. Several prisoners reported being forced to eat or drink until they vomited, or being denied the opportunity to relieve themselves, sometimes by a string being tied

[70] *Id*. at 6.

around the penis.[71]

In 1987, the ICRC was allowed to open an office in Kabul, and begin prison visits. Its visits to notorious prisons like Pul-i Charkhi had an effect in reducing the incidence of torture, as did the advent of the policy of National Reconciliation under President Najibullah in September 1987.[72] However, one exception was the treatment of those arrested in connection with the Tanai coup in March 1990.[73] The UN Special Rapporteur, Amnesty International, and Human Rights Watch received reports that some of these detainees were tortured, and that at least one was known to have died as a result. [74]

Torture by the Afghan Resistance (1980-1992)

During the period of resistance against the Soviet occupation, many *mujahidin* commanders detained captured combatants, including members of rival *mujahidin* factions who were held for interrogation as well as for their possible exchange value. Some *mujahidin* groups also held non-combatants as prisoners, including Afghan refugees suspected of opposition to the policies or these groups. According to Human Rights Watch, torture by these groups sometimes resulted in false confessions of guilt, and suspected spies were sentenced to death by Islamic courts and executed.[75]

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[71] *Id*. at 11-15.

[72] *UN Mapping Report, supra* note 9, at 142.

[73] *UN Mapping Report, supra* note 9, at 143, and United Nations General Assembly, Report of the ECOSOC, *Situation of Human Rights in Afghanistan*, A/45/664, 1990, para. 52.

[74] United Nations General Assembly, Report of the ECOSOC , "Situation of Human

Rights in Afghanistan", A/45/664, 1990, para. 52; Amnesty International, *Reports of Torture and*

Long-term Detention Without Trial, ASA 11/01/91, 1991.

[75] Asia Watch, *Afghanistan: The Forgotten War. Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal,* 2001, at 101-108.

Human Rights Watch has described some of the prisons used by the rebel factions. One of the best known was Shamshatoo, which was a facility located in Pakistan that was used by Gulbuddin Hikmatyar, a *mujahidin* commander, to detain both men and women. According to Human Rights Watch, torture at Shamshatoo was "reported to be routine, including severe beatings and the use of electric shock."[76] The intelligence agencies of the rebel factions also carried out abductions of Afghan refugees in Pakistan.[77] In addition, the Pakistani intelligence agency, the Inter-Services Intelligence (ISI), detained Afghan refugees who were not aligned with one of the Peshawar-based *mujahidin* parties recognized by Pakistan; Human Rights Watch found evidence that these detainees were often handed over to mujahidin parties and were subsequently tortured.[78]

Mujahidin prisons operated inside Afghanistan as well. According to witnesses interviewed about detention practices by *mujahidin* during the 1980s, the Shura-i Nazar faction operated a detention facility in Lejdey, Farkhar district, Takhar Province. The facility was active in the period from 1983 through 1992.[79] Credible testimony indicates that the authorities in Lejdey systematically used torture as a tool in their interrogation of political and security prisoners in the jail.[80] Indeed, the Afghanistan Justice Project documented the following methods used at Lejdey:

> 1. suspending a prisoner by the hands from a pair of iron rings mounted in the ceiling;2. beating, often with wooden truncheons; 3. electric shock; 4. sleep and food deprivation; 5. confinement in a cage; 6. sexual abuse; and 7. psychological torture: as the main torture sessions took place during the

[76] *Id*. at 101-102. The report had testimony on torture specifically from Shamshatoo; presumably torture occurred at other detention centers as well.

[77] *Id*.

[78] *Id*.

[79] *Casting Shadows*, *supra* note 11 at 57.

[80] *Id*.

> night, inmates had to listen to the sounds of torture.[81]

Persistence of Torture and Inhumane Treatment of Detainees in the Islamic State of Afghanistan (1992-96)

The USSR withdrew its forces from Afghanistan under the 1988 Geneva Accords. After the Soviet withdrawal, the government, under President Mohammad Najibullah, abandoned the PDPA ideology and undertook a number of reforms. Abuses continued, although not at the same level. The dissolution of the Soviet Union in late 1991 lent urgency to UN efforts to find a political solution to the Afghan conflict. But while the UN sought agreement from the Afghan parties on a transitional arrangement, other *mujahidin* and former militia forces readied themselves to take advantage of the anticipated power vacuum. On April 25, 1992, forces of the newly formed "Northern Alliance" of non-Pashtun *mujahidin* and former regime militias from Northern Afghanistan entered Kabul; those under Ahmad Shah Massoud took control of the major government security institutions, including KhAD /Ministry for State Security (WAD). Other *mujahidin* and militia forces, largely composed of Pashtuns, took control of various neighborhoods. Coalition governments, headed first by Sighabatullah Mojadedi and then by Burhanuddin Rabbani, had only nominal control over a divided city.[82]

According to the UN Mapping Report:

> All of the major armed factions involved in the conflict after the fall of the Najibullah government maintained detention facilities. In addition, individual commanders maintained private jails. Between 1992 and 1996 thousands of detainees were reportedly held in facilities ranging from the prisons and detention centers used by the former government to the ubiquitous shipping containers

[81] *Id*. at 58.

[82] These events are summarized in the *UN Mapping Report, supra* note 9, at 206-207.

> scattered across the country. Those detained included members of the former government, members of rival factions, and civilians detained because of their ethnicity or political affiliation. Extortion was a common apparent motive for detaining both combatants and noncombatants. In addition, hostage-taking was commonplace among all the major factions fighting for control of Kabul. In some cases, militias abducted members of rival militias as an act of retaliation or to exchange for members of their own forces who had been taken hostage.[83]

Many prisoners arrested by Shura-i Nazar forces in Kabul were apparently first taken to the detention centers run by the former KhAD, which was renamed the *Wizarat-i Amaniyyat-i Dawlati*, or WAD, under Najibullah.[84] As reported by Amnesty International, as of "early 1994, there were two hundred prisoners held in Riyasat-i Awal (Directorate One), located in the KhAD office in Sheshdarak," and "[f]ormer detainees stated that torture and ill-treatment were routine there."[85] Those categorized as political prisoners were routinely deprived of contact with other prisoners.[86] Amnesty International interviewed a former prisoner who described how torture was carried out:

> I was put in an isolated cell. In the interrogation room, I could hear cries of pain from cells around me. They interrogated me by putting a picture of a person in front of me asking who he was. I did not know, so they gave me electric shocks.[87]

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[83] *UN Mapping Report*, *supra* note 9, at 234.

[84] *Id*. at 238.

[85] *Id*.

[86] *Id*.

[87] *Id*.

Within the WAD, it was not just the practices, but the personnel that persisted over time. In 2001, the Dutch Ministry of Foreign Affairs prepared an analysis of the PDPA-era Afghan intelligence agencies, and noted that "many former KhAD and WAD agents... were active in the intelligence services of the [Islamic State of Afghanistan] government and the various *mujahedin* groups in the 1992 to 1996 period."[88]

The systematic use of rape as a form of torture first emerged in this period. The Special Rapporteur reported that he had received information about the alleged imprisonment and rape of women being detained by one of the militia forces in the northwestern part of Kabul.[89] Both the UN Mapping Report and AJP also include accounts of rape by the various forces fighting for control of Kabul.[90]

Torture and Inhumane Treatment in the Islamic Emirate of Afghanistan under the Taliban (1996-2001)

As noted above, the Taliban emerged in late 1994 out of the chaos of the post-1992 period. Within a year, it had taken control of most of southern and western Afghanistan. In 1996, it took control of Kabul and proclaimed the Islamic Emirate of Afghanistan. In Kabul, the Taliban instituted a highly repressive administration based primarily on its intelligence apparatus, the main organization of which was run by Qari Ahmadullah, who—like his predecessors—operated out of the former office of KhAD in Sedarat.[91]

In urban areas, the Taliban's abuses were carried out as a matter of policy that included harsh restrictions aimed at

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[88]Netherlands, The Ministry of Foreign Affairs, *Afghanistan - Security Services in Communist Afghanistan (1978-1992): AGSA, KAM, KhAD and WAD*, 26 April 2001, at 30, http://www.refworld.org/docid/467006172.html (accessed 26 August 2013).

[89] ECOSOC, Commission on Human Rights, "Report on the Situation of Human Rights in Afghanistan", E/CN.4/1995/64, para. 10.

[90] UN Mapping Report, *supra* note 9 at 239-40; *Casting Shadows supra* note 11 at 87-88, 103-106.

[91] UN Mapping Report, *supra* note 9 at 244.

controlling the civilian population. Torture was practiced both for the purpose of punishment and to extract information.[92] According to the UN Mapping report,

> Taliban commanders detained persons, often on the basis of ethnicity, as had been the case when rival factions had fought for control of Kabul. In some cases the detentions were part of the Taliban's overall strategy for social control; persons belonging to ethnic groups who had resisted the Taliban lived in fear of arrest, torture, and execution. In other cases, persons were detained for the purpose of extortion.[93]

The Taliban also imposed punishments prescribed by Shariah law in cases of theft, adultery and drinking alcohol that included flogging and amputation of the hands.[94] In addition, "a new form of cruel, inhuman or degrading punishment was introduced in Afghanistan by the Taleban in early 1998 when five men convicted of sodomy were sentenced to death by crushing a wall
on them."[95]

Torture and Inhumane Treatment in the Islamic Republic of Afghanistan and as part of the War on Terror in Afghanistan (2001-13)

Much has been written about the use of torture by US and Coalition forces in Afghanistan since the war against the Taliban and al-Qaeda began in late 2001. In its 2005 report, the Afghanistan Justice Project argued that:

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[92] Amnesty International, *Afghanistan: Cruel, inhuman or degrading treatment or punishment*,
ASA 11/15/99, November 1999, at 1-2, [hereinafter *Afghanistan: Cruel, inhuman or degrading treatment or punishment*],
http://www.refworld.org/docid/3ae6a9d78.html

[93] UN Mapping Report, *supra* note 9 at 268.

[94] *Afghanistan: Cruel, inhuman or degrading treatment or punishment, supra* note 92 at 2.

[95] *Id*.

> [I]n this latest phase of the war, serious human right violations—including deaths in custody [and] torture... have... continued. Those responsible have included militia groups, some of them former mujahidin, fighting for control of territory, power and resources—including control of the narcotics trade. Some of the commanders responsible have been allied with the U.S.[96]

US forces have also been responsible for torture and other abuses. According to the Afghanistan Justice Project, they have engaged in practices used by previous regimes, such as "crude and brutal methods of torture that have sometimes led to death, and the use of secret detention facilities that facilitate torture."[97] Human Rights Watch described one such case as follows:

> In November 2002, the CIA was reportedly involved in the torture and killing of a detainee in Afghanistan. A CIA case officer at the "Salt Pit," a secret U.S.-run prison just north of Kabul, ordered guards to "strip naked an uncooperative young Afghan detainee, chain him to the concrete floor and leave him there overnight without blankets," the *Washington Post* reported on March 3, after interviewing four government officials familiar with the case. According to the article, Afghan guards "paid by the CIA and working under CIA supervision" dragged the prisoner around the concrete floor of the facility, "bruising and scraping his skin," before placing him in a cell for the night without clothes. An autopsy by a medic listed "hypothermia" as the cause of death, and the man was buried in an "unmarked, unacknowledged cemetery." A U.S. government official interviewed told the Post: "He just disappeared from the face of the earth."[98]

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[96] *Casting Shadows*, *supra* note 11 at 155.

[97] *Id*. at 156.

[98] Human Rights Watch, *Afghanistan: Killing and Torture by U.S. predate*

In a 2006 report into abuses against detainees by US personnel in Iraq and Afghanistan, Human Rights First observed that, "[c]ritically, only half of the cases of detainees tortured to death have resulted in punishment; the steepest sentence for anyone involved in a torture-related death has been five months in jail."[99] Indeed, in early 2005, the US blocked the renewal of the UN Independent Expert's mandate in Afghanistan because of his repeated efforts to gain access to such detention facilities in Afghanistan.[100]

NDS and KhAD: Recurrent Themes in Contemporary Afghanistan

Torture has been a persistent problem within the current successor to KhAD/WAD, the National Directorate of Security (NDS). Afghans frequently refer to the agency or its facilities by the old acronym, suggesting that in popular perceptions, little has changed.[101] Other government security agencies, including the national police, have also been accused of mistreating and torturing detainees.[102] No official of the NDS or the Afghan

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Abu Ghraib, Press Release, May 20, 2005 ; *see also* Dana Priest, "CIA Avoids Scrutiny of Detainee Treatment," *Washington Post*, March 3, 2005 (reporting on the illtreatment with a detainee).

[99] Human Rights First, *Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan*, February 2006, at 35, :

http://www.humanrightsfirst.org/wp-content/uploads/pdf/06221-etn-hrf-dic-rep-web.pdf.

[100] Warren Hoge, *Lawyer Who Told of U.S. Abuses at Afghan Bases Loses U.N. Post*, New York Times, 30 April 2005,

http://www.nytimes.com/2005/04/30/international/asia/30nations.html?_r=0.

From 2002-2005, the UN Human Rights Council designated the mandate-holder for Afghanistan as an Independent Expert. The mandate remained otherwise unchanged. *See* UN Office of the High Commissioner for Human Rights, *Afghanistan and UN Charter-based Bodies*, http://www.ohchr.org/en/countries/asiaregion/pages/afindex.aspx.

[101] Author's observation.

[102] Afghanistan Independent Human Rights Commission (AIHRC), Open Society Foundations, *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, March 17, 2012, at

National Police has been prosecuted for torture. In September 2012, President Karzai appointed Asadullah Khalid, former governor of Kandahar, as chief of the NDS, over the protests of Afghan and international human rights organizations who accuse Khalid of running an unauthorized secret prison in Kandahar city where torture was routine.[103]

Torture has been well documented by Afghan and international organizations. The Afghanistan Independent Human Rights Commission and Open Society Foundation monitored detention conditions at prisons and other facilities over a one year period from February 2011 until January 2012, and "found credible evidence of torture at nine NDS facilities and several Afghan National Police (ANP) facilities, including beatings, suspension from the ceiling, electric shocks, threatened or actual sexual abuse, and other forms of mental and physical abuse, which were routinely used to obtain confessions or other information."[104] A follow-up report by the two organizations found some improvement at all facilities except Kandahar, where the patterns detailed in the earlier report continued.[105]

According to the United Nations, torture and abuse of prisoners continues to be a common practice in Afghan detention facilities. For instance, a 2013 report by the United Nations Assistance Mission in Afghanistan (UNAMA) found that the NDS regularly engages in torture and abuse in its facilities across the country.[106] UNAMA's findings were based on

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2, [hereinafter *Torture, Transfers, and Denial of Due Process],* http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%20Final%2017-3-2012.pdf.

[103] Human Rights Watch, *Rewarding Afghanistan's Torturers?*, Sept. 10, 2012, *:* http://www.hrw.org/news/2012/09/10/rewarding-afghanistan-s-torturers.

[104] *Torture, Transfers, and Denial of Due Process*, *supra* note 102 at 2.

[105] AIHRC, *Update to the Report of AIHRC and Open Society on Monitoring of NDS Facilities*, http://www.aihrc.org.af/en/daily-reports/1037/report-of-aihrc-and-open-society-on-monitoring.html.

[106] UN Assistance Mission to Afghanistan, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On,* January 20, 2013, http://unama.unmissions.org/Default.aspx?ctl=Details&tabid=12254&mid=

investigations in prisons across Afghanistan and interviews with 635 detainees, most of whom had been detained by the NDS because of alleged links to the Taliban.[107] Specifically,

> UNAMA found sufficiently credible and reliable evidence that more than half of 635 detainees interviewed (326 detainees) experienced torture and ill-treatment in numerous facilities of the Afghan National Police (ANP), National Directorate of Security, Afghan National Army and Afghan Local Police.... UNAMA interviewers observed injuries, marks and scars on numerous detainees that appeared to be consistent with torture and ill-treatment and/or bandages and other evidence of medical treatment for such injuries.[108]

In NDS prisons in Kandahar City—the former base of the Taliban—UNAMA found torture to be "systematic."[109] Both the UNAMA report and the OSF/AIHRC reports support the argument that the only way to effectively curb abuse of detainees is by adopting a strategy that includes consistent monitoring of detention facilities.

In response to the UNAMA report, the Afghan government initially dismissed the findings of systematic torture as "exaggerated," claiming that insurgents were trained to accuse the government of torture.[110] For its part, the NDS denied running secret jails.[111] However, in February 2013, President Hamid Karzai issued a decree ordering anti-torture

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15756&ItemID=36279.

[107] *Id*.

[108] *Id*.

[109] *Id*.

[110] Emma Graham-Harrison, *Torture on rise in Afghan jails, says UN report*, *Guardian*, 20 January 2013, http://www.theguardian.com/world/2013/jan/20/un-report-torture-afghan-jails.

[111] *Id*.

measures, including handing over detainees to the Attorney General's office for investigation within 72 hours of arrest, and prosecuting officials allegedly responsible for torture.[112] Additionally, on September 8, 2013, President Karzai created a committee to "study the general conditions of prisons and detention centers, along with the condition and situation of prisoners and detainees." [113] The committee was due to report its recommendations within three months.[114] To date, no Afghan official has been prosecuted for torture.

Conclusion: The Institutionalization of Abuse

Why has torture persisted as a tool of repression in Afghanistan over the years? Part of the answer lies in the fact that Afghan investigations rely excessively on confessions, despite the fact that confessions obtained under torture are prohibited in the constitution.[115] The former Special Rapporteur on Torture of the UN Human Rights Commission, Peter Kooijmans, has rightly stressed that torture is never an isolated phenomenon: "It does not start in the torture chambers of this world. It begins much earlier... Therefore, safeguards against torture must already be built up in the treatment of prisoners and other detained persons."[116] In addition, when "torture is committed on a widespread basis, it can become embedded in the functioning and culture of the state security apparatus."[117]

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[112] Kate Clark, *Torture, Illegal Armed Groups: Signs of Possible Afghan Government Action?*, Afghanistan Analysts Network, 22 February 2013, [hereinafter *Torture, Illegal Armed Groups*] http://www.afghanistan-analysts.org/torture-illegal-armed-groups-signs-of-possible-afghan-government-action.

[113] Human Rights Watch, *Afghanistan: Prison Probe Should Address Longstanding Abuses*, Sept. 26, 2013, http://www.hrw.org/news/2013/09/26/afghanistan-prison-probe-should-address-longstanding-abuses.

[114] *Id*.

[115] *Torture, Illegal Armed Groups supra* note 112.

[116] Peter H. Kooijmans, THE ROLE AND ACTION OF THE UN SPECIAL RAPPORTEUR ON TORTURE 65 (Antonio Cassese, eds., Baden-Baden 1991).

[117] Lorna McGregor, *Transitional Justice and the Prevention of Torture*, 7 INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 29, 46 (2013),

Transitions attempted after or in the midst of ongoing conflict pose even greater challenges, "with torture often an engrained *modus operandi* of all actors in a conflict."[118] In such situations, torture may persist long after any transition has taken place.

Georgette Gagnon, Director of Human Rights for UNAMA, has pointed to pervasive impunity as the most important reason torture has persisted in Afghanistan:

> UNAMA found a persistent lack of accountability for perpetrators of torture with few investigations and no prosecutions for those responsible... The findings highlight that torture cannot be addressed by training, inspections and directives alone but requires sound accountability measures to stop and prevent its use. Without deterrents and disincentives to use torture, including a robust, independent investigation process, criminal prosecutions and courts' consistent refusal to accept confessions gained through torture, Afghan officials have no incentive to stop torture.[119]

In light of these observations, the most important steps to curb mistreatment and torture of detainees include providing access to prisoners for monitoring groups, eliminating secret detention, providing a reliable and safe complaint mechanism for prisoners, and ensuring such complaints are fairly investigated and those responsible for abuse prosecuted.[120] To the extent

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http://ijtj.oxfordjournals.org/content/7/1/29.full.pdf+html.

[118] *Id*. at 36.

[119] United Nations Assistance Mission in Afghanistan (UNAMA), *UNAMA releases report on treatment of conflict-related detainees in Afghan custody*, 20 January 2013. http://unama.unmissions.org/Default.aspx?ctl=Details&tabid=12254&mid=15756&ItemID=36279.

[120] Amnesty International, *Twelve Point Program for the Prevention of Torture*, AI Index ACT 40/001/2005, April 22nd, 2005, http://www.amnestyusa.org/our-work/campaigns/security-with-human-rights/security-with-human-rights-campaign-resources/12-point-program-for-the-prevention-.

that these steps have not yet been implemented, documentation is critical for maintaining a historical record of the abuses that have taken place in order to preserve knowledge about violations. The fact that torture has been widely practiced by each successive regime in Afghanistan is widely known among Afghans. However, that knowledge will not translate into an official acknowledgement that torture has occurred, nor into effective mechanisms to prevent abuse, without good documentation.

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