

Summary

The Afghan Independent Human Rights Commission (A.I.H.R.C.) carried out the present research to investigate the causal factors of torture in law enforcement institutions. Torture is prohibited by the Afghan Constitution and the Afghan Penal Code, and the various international treaties, to which Afghanistan is a party, have banned torture and other cruel, inhuman, or degrading treatment. Although torture is considered an act against human dignity, an egregious violation of human rights, and part of crimes against humanity, the findings of this study indicate that torture is a commonplace practice in Afghanistan's law enforcement institutions, for several reasons. Torture and other cruel, inhuman, or degrading treatment have negative, harmful effects for the victims and the larger society alike. It, therefore, must be prevented and the pertinent laws should be amended in line with the internationally accepted standards and Afghanistan's obligations vis-à-vis the treaties it has ratified.

We should mention that torture is also perpetrated by the parties to the armed conflict in Afghanistan, including the international security forces and the opposition. This aspect of torture in the country has been covered in separate reports published by the Commission.

Introduction

Historically, various despotic and totalitarian regimes have employed torture and other cruel treatment to terrorize people. In today's world, torture and other cruel and inhuman treatment too are prevalent in many parts of the world and it is a significant issue for discussion. Torture and other cruel, inhuman, or degrading treatment are against human dignity, natural rights of human beings, and the standards accepted by the international community. Considering the current context of the country that witnesses rule of law, human rights, and some progress after a long period of war and insecurity, infractions of law by the institutions responsible to uphold and implement them are disappointing and an obstacle to lasting peace in the country. Hence, not only torture must be prevented, but its perpetrators also must be prosecuted.

Several international treaties have prohibited torture and other cruel and inhuman treatment under all circumstances, including the Universal Declaration of Human Rights (U.D.H.R.),¹ the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (C.A.T.),² and the International Covenant on Civil and Political Rights (I.C.C.P.R.).³ Despite these norms and standards, torture, other cruel and inhuman treatment, and persecution of suspects and the accused persons are common in many regimes. Afghanistan too is one in which torture is perpetrated in different forms, albeit considerable achievements in the sector of rule of law.

The Afghan Constitution has prohibited torture and inhuman treatment of suspects and the accused persons. The confessions and testimonies obtained from the accused persons under conditions of unwillingness or torture are also invalid according to the Afghan Constitution. The Islamic Republic of Afghanistan has enshrined the U.D.H.R. in its Constitution, which prohibits all kinds of torture and other inhuman treatment. Besides, Afghanistan is a state party to C.A.T. As a result, legally speaking, inadequacy of laws is not the main problem. What is needed is awareness of the government and people of these laws and their cooperation to implement them. Law enforcement institutions play a major role in this field.

This report studies the causal factors of torture and other cruel, inhuman, or degrading treatment in law enforcement institutions so as to analyze the reasons underlying this treatment and make the decisions necessary to ameliorate the present state of affairs. It is based on the research project conducted by the A.I.H.R.C. The report will first focus on research methodology, research constraints, and a review of previous studies on torture and will then discuss the theme of torture in several separate chapters. Chapter one traces the history of torture, defines torture, and enumerates Afghanistan's national and international commitments. Chapter two discusses the findings of this research and the institutions where torture has been perpetrated. Chapter three is about the causal factors of torture in these institutions. Chapter four explains the instruments and methods employed to perpetrate torture. Chapter five is devoted to a description of the physical

¹ Universal Declaration of Human Rights (U.D.H.R.).

² Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (C.A.T.).

³ International Covenant on Civil and Political Rights (I.C.C.P.R.).

Causes of torture in law enforcement institutions

and psychological ramifications of torture. Chapter six reviews the petitions filed by the tortured persons in relevant authorities. And chapter seven studies the methods of perpetrating torture in different provinces and the years that witnessed higher levels of torture. At last, we concentrate on the A.I.H.R.C.'s performance in dealing with torture cases and we will end with presenting a series of conclusions and recommendations to resolve this issue.

Research methodology

As mentioned earlier, this report is based on the research project conducted by the A.I.H.R.C. The research methodology includes field research carried out in a direct and first-hand manner by A.I.H.R.C.-assigned researchers through the use of interviews and questionnaires. 18 professional human rights researchers and interviewers took part in this research. Therefore, the collected data are primary in nature, which were obtained from the victims of torture or their relatives. Additionally, the research has used observation, library-style research, legal sources, and the A.I.H.R.C.'s database as part of its methodology. The project began at the end of the third quarter of the year 1385 (2006/2007) and was completed in the year 1386 (2007/2008).

Population and sample

In this research report, our population (including victims of torture, prisoners, and detainees in detention centers) comprises 10,000 persons, according to the figures provided by the A.I.H.R.C.'s database. The families of victims form a part of this population, with the officers and staff of law enforcement institutions constituting another segment. The sample of this research consists of 398 victims of torture in prisons and other detention centers. This sample covers almost all regions and provinces of the country. In order to enrich this study, however, 100 questionnaires were sent to the families of victims and approximately another 100 were sent to authorities and experts. The collected interviews and questionnaires cover over 28 provinces of the country. This sample also covers most of the ethnic groups in the country. About 45% of interviewed victims were Pashtun, about 34% were Tajik, at least 10% were Hazarah, 4% were Uzbek, and the rest were Arab, Turkman, Baloch, and Pashai. On the basis of gender, 95% (379 persons) were men and 3% (11 persons) were women, while around 2% (8 persons) of interviewees did not specify their gender.

With respect to employment, 36% of interviewees were laborers, about 30% were businesspersons, over 13% were government employees, around 10% were jobless, and about 11% did not state their employment. Regarding education, over 60% of interviewees were illiterate, 13% had finished their high school education, 11% had had primary education, around 3% had had higher education, 3.5% had had private education, and the rest refused to provide information on their education levels.

Over 92 law enforcement officers interviewed in this research comprise 9 police officers, 23 court staff, 3 security staff, 9 staff from departments of police, 45 staff from prosecution offices, and 3 staff from other institutions. More than 80% of these officers stated they had higher education.

Research constraints

One of the constraints this study faces is the collection of cases of torture by law enforcement institutions that have been verified. What it means is that due to administrative corruption and the influence exerted by powerful persons, few such cases are investigated. In some instances, for example, prison or detention center officers hid victims or kept them away from the Commission's reach. Research on victims of torture in these institutions is, therefore, very difficult and complicated. The other limitation is that all victims do not complain against torture and that is because complaints are not followed up, leading to disillusionment in victims.

The other constraint is that inadequate studies have been conducted on the causal factors of torture and other cruel, inhuman, or degrading treatment. The researches undertaken by relevant international organizations do not specifically discuss the causes of torture in Afghanistan's law enforcement institutions. So this study is the first of its kind.

A predominant portion of this report is related to the third quarter of the year 1385 (2006/2007) and the first half of the year 1386 (2007/2008), which can be questioned. That is because this research project began in the last year, its data were gathered during that period, and it was analyzed in the last quarter of the year 1386 (2007/2008), drawing on new complaints and the Commission's database.

A review of previous studies

Formerly there has been no complete research or report on the causes of torture in Afghan law enforcement institutions. Nonetheless, some scattered reports indicate torture and other inhuman treatment have been perpetrated by government forces or by forces under the command of powerful persons who are, in one way or another, linked with the government or law enforcement institutions. For instance, Human Rights Watch (H.R.W.) expressed its serious concern over acts of torture by Afghan forces against prisoners in its report “*Enduring Freedom*” *Abuses by U.S. Forces in Afghanistan*⁴ in March 2004. In its study, H.R.W. states that according to its researchers who have visited prisons, met victims, or interviewed human rights monitors, torture in prisons and detention centers under the control of Afghan forces is an ordinary, widespread matter. It also says those suspected or accused of collaborating with Taliban and anti-government elements constitute the majority of the tortured persons. Based on another report by this organization, torture of prisoners is commonplace in prisons under the control of police and security departments in Herat and other western provinces.⁵

The other report in this area, based on a study by School of Law of New York University,⁶ Center for Human Rights,⁷ Human Rights *First*,⁸ Global Justice,⁹ and H.R.W., is called *Detainee Abuse and Accountability Project*¹⁰ that was carried out in 2006.¹¹ As a comprehensive and valid study, the 27-page report investigates torture and maltreatment of prisoners in Afghanistan, Iraq, and Guantánamo. The report deals with torture and maltreatment committed by the U.S. forces and not the Afghan forces.

Therefore, the findings of previous studies and reports are not related to the causes of torture in Afghanistan’s law enforcement institutions. This report that aims to find out the causal factors of torture and other cruel, inhuman, or degrading treatment in Afghanistan is the first of its kind in this area.

⁴ H.R.W., “Enduring Freedom” Abuses by U.S. Forces in Afghanistan, March 2004.

⁵ H.R.W., “*All our hopes crushed: violence and repression in western Afghanistan.*” October 2002.

⁶ New York University, School of Law.

⁷ Center for Human Rights.

⁸ Human Rights First.

⁹ Global Justice.

¹⁰ Detainee Abuse and Accountability Project.

¹¹ *By the Numbers: Findings of the Detainee Abuse and Accountability Project*, Vol. 18, No. 2 (G.), April 2006.

1. Generalities

1.1. History of torture

In any historical epoch, torture has been one of the most significant and common tools to create fear and terror among people. Usually totalitarian governments and systems have employed this means to terrorize people in different societies. For example, prophets and other religiously respected persons have been the victims of torture, of whom we can refer to Ammar's mother, the first martyr in Islam, Yasser ibn Amer, the second martyr in Islam, and Balal-e-Habashi. Divine prophets like Abraham (P.B.U.H.) and Jesus (P.B.U.H.) underwent different types of torture like setting them on fire and crucifixion. Philosophers and scientists like Galileo Galilei are the most famous victims of state-sponsored torture with some dying under torture sanctioned by the then despotic regimes in medieval courts. Torture, therefore, has a long historical background and even some of its medieval methods still persist in some countries around the world. Societies, however, look at torture as an ugly, horrible, and inhuman phenomenon.

1.2. Definition of torture

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (C.A.T.) defines torture thus:

*"...the term "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..."*¹²

This definition includes both the physical and mental dimensions of torture and other cruel and inhuman treatment. According to general comments by the United Nations Human Rights Committee,¹³ the distinguishing elements of this definition are the following:

- Intentional act aimed at causing severe physical or mental suffering
- An act done for a specific purpose
- An act done by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity

The Human Rights Committee comments that the distinction between different forms of sentence or treatment depends on the nature, purpose, and severity of the treatment employed.¹⁴ The identification of such a treatment is, therefore, subjective and should consider such factors as victim's gender, age, and mental health. In the opinion of the

¹² C.A.T., Article 1, paragraph 1.

¹³ Human Rights Committee.

¹⁴ Human Rights Committee, General Comment No. 7, torture and cruel treatment or punishment, (1982).

Human Rights Committee, examples of such treatment include investigation by resorting to sexual humiliation, drowning to the extent of death, shackling hands, using dogs to terrorize, and so forth. All these kinds of treatment are regarded as torture and other cruel, inhuman, or degrading treatment. Even sentences like prolonged isolation and detention of a person that can affect his or her mental health is also a form of torture. Therefore, there exists an important relationship between torture and the right to liberty and security of person, because torture is usually perpetrated by public officers like police and security personnel under conditions of detention.

Torture, then, not only refers to its traditional manifestations like drawing off nails, burning body parts, electric shock, etc., but it also includes such treatment as punching and kicking, slapping, humiliation, and the like. Inflicting systematic physical and mental suffering on a person, albeit he or she is a suspect or accused person, for obtaining confession or other information, or any other purpose is deemed torture. It is essential to have a clear understanding of what torture means.

1.3. Afghanistan's national and international commitments regarding prohibition of torture and other cruel treatment

Islamic Republic of Afghanistan is committed to ensuring the rights of all its citizens in order to establish peace, stability, and equality, and implement the standards of human rights. The Afghan Constitution, the Afghan Penal Code, and the Afghan Civil Code have prohibited all acts of torture and inhuman punishment. Article 29 of the Afghan Constitution specifies:

“Persecution of human beings shall be forbidden.

No one shall be allowed to order torture, even for discovering the truth from another individual who is under investigation, arrest, detention, or has been convicted to be punished.

Punishment contrary to human dignity shall be prohibited.”¹⁵

The Afghan Constitution, in its next article, has got this to say about the confession or testimony obtained from a person through torture:

“A statement, confession, or testimony obtained from an accused person or another individual by means of compulsion shall be invalid...”¹⁶

Since protecting the constitution is one of the most significant national commitments of the government, the government has the responsibility to implement these legal provisions and ensure the rights of all its citizens.

At the same time, the principles enshrined in the United Nations Charter have proclaimed the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world, recognizing that these

¹⁵ Afghan Constitution, Article 29.

¹⁶ Afghan Constitution, Article 30.

rights emanate from human dignity and worth. The signatory governments have the duty to adhere to the norms set out in the Charter and protect the rights of all human beings. Article 5 of the U.D.H.R. explicitly states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁷

Additionally, Afghanistan has ratified other international treaties such as the International Covenant on Civil and Political Rights (I.C.C.P.R.). The I.C.C.P.R. was adopted by the U.N. General Assembly on December 16, 1966 and was ratified by Afghanistan on January 24, 1983.¹⁸ Article 7 of the I.C.C.P.R. reads:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”¹⁹

Based on the I.C.C.P.R., even medical experiments without free consent are considered torture and are included in the definition of torture.

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (C.A.T.) is the most important international treaty governing torture. Afghanistan ratified C.A.T. on February 4, 1985 and it entered into force for Afghanistan in April 1987.²⁰ The C.A.T., which was adopted by the U.N. General Assembly resolution 39/46 of December 10, 1984, entered into force on June 26, 1987, after twenty governments ratified it in their law-making authorities. The Convention comprises a preamble and 33 articles in 3 parts. After defining torture, the C.A.T. explains legal effects, powers and duties of member states, ways to resolve differences, denunciation, and the formation of the Committee against Torture and its duties. Paragraph 1 of Article 2 of the C.A.T., which deals with the duties of member states, stipulates:

“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”²¹

Paragraph 2 of this Article reads:

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Paragraph 1 of Article 4 of the C.A.T. specifies:

¹⁷ Please see the U.D.H.R. in the U.N. website <http://www.un.org/overview/rights.html>.

¹⁸ Please see U.N.O.H.C.H.R. website <http://www2.ohchr.org/english/bodies/ratification/4.htm>.

¹⁹ Please see U.N.O.H.C.H.R. website http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

²⁰ Please see U.N.O.H.C.H.R. website <http://www2.ohchr.org/english/bodies/ratification/9.htm>.

²¹ The Covenant is available at U.N.O.H.C.H.R. website.

Causes of torture in law enforcement institutions

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.”

Taking into account Article 5 of the U.D.H.R., Article 7 of the I.C.C.P.R. and above all the C.A.T., torture is a heinous and inhuman act that is an egregious violation of human rights. Afghanistan, which is a party to these treaties, is required to implement these international commitments and prevent torture and other cruel treatment. Peace and stability, a significant commitment of by the government, can only be established in light of equality and realization of human rights for all citizens of the country. This national commitment is made real when all Afghan citizens obtain their legal rights, even if they are suspects or accused persons.

2. Research findings

The findings of this research reveal that torture and other cruel, inhuman, and degrading treatment are a commonplace practice in the majority of law enforcement institutions and that at least 98.5% of interviewees believed they had been tortured by these institutions.

The causal factors of torture in law enforcement institutions include:

- Obtaining confession and testimony from the suspected or accused person
- No means to prove crime
- Inadequate professionals and lack of necessary training in this area
- Lack of such techniques as collecting evidences and documents to prove crime
- Bribery and financial gain
- Personal enmities and the influence of powerful persons
- Impunity of torturers

Torture causes serious bodily and mental harm to victims. The complaints of victims have not been appropriately addressed. No information has been provided about the human rights of the accused in courts. In most cases, the suspected or accused persons do not have sufficient awareness of their human rights.

Institutions where torture and other cruel treatment take place

Institutions where torture is common include police (security, justice, traffic), national security, detention centers, prisons, prosecution office, and national army. In addition, these include criminal investigation departments, departments of police, districts, and sections of police. Figure 1 indicates the institutions that torture and the percentage of victims, which is analyzed in the following.

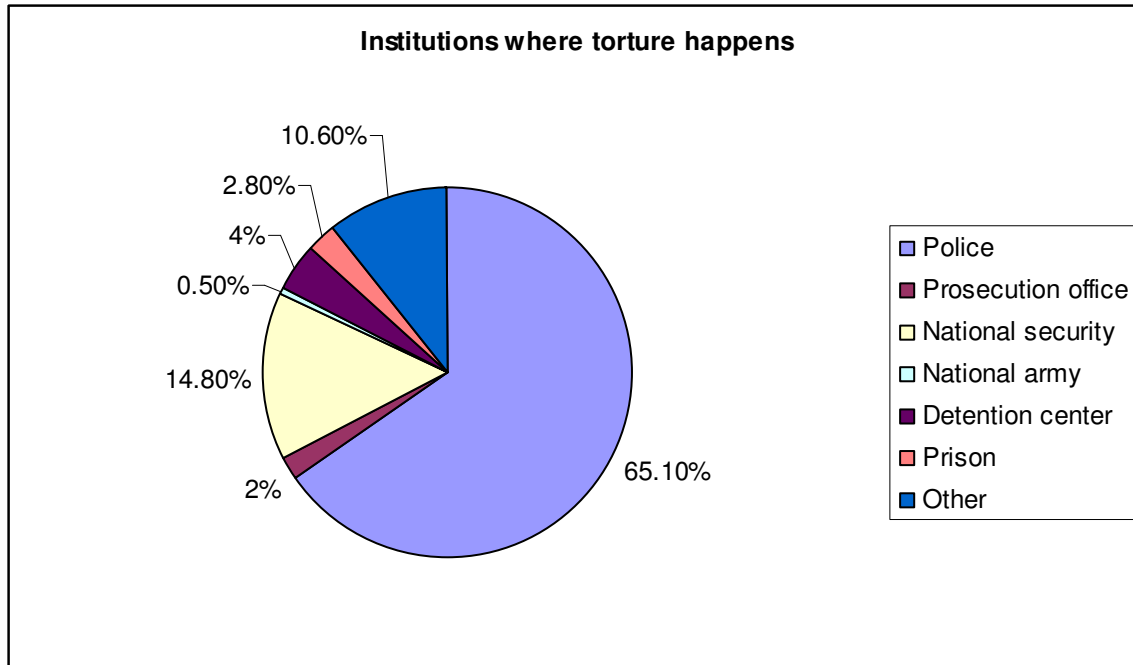


Figure 1

2.1. Police (security, justice, traffic)

Most of torture and other cruel, inhuman, and degrading treatment have been perpetrated by police. Out of 398 interviewees, 259 were tortured by police. As shown in figure 1, this statistics constitutes over 65% of all interviewed victims. It should be noted that police force comprises security, justice, and traffic police officers.

2.2. National security

Based on this study, national security is the second institution in which the majority of cases of torture and other cruel treatment are present. At least 59 persons of all interviewees were tortured in the offices, departments, and sections of national security. This number includes 14.8% of all interviewed victims, as indicated in figure 1.

2.3. Detention center

Detention center is the third institution where victims were tortured. Over 16 interviewees were tortured and subjected to cruel, inhuman, or degrading treatment by officers affiliated to detention centers. This covers 4% of all interviewed victims.

2.4. Prison

The number of victims who were tortured and subjected to inhuman treatment in prisons is 11 persons. As shown in figure 1, this includes only 2.8% of all interviewed victims, but this percentage is considerable, given a total sample of 398 persons. If the sample size is ten times larger than the present one (3,980 persons), 2.8% will be 111 persons.

2.5. Prosecution office

A number of victims have been tortured and subjected to inhuman and degrading treatment in prosecution offices. At least 8 interviewees or 2% of all 398 interviewees have been tortured in prosecution offices, which, like the statistics discussed under the section of prison, is a considerable number.

2.6. National army

Torture and other inhuman or degrading treatment have been perpetrated by national army too. Only 3 out of 398 victims of torture who were studied have been tortured or subjected to inhuman treatment by national army. This covers only 0.5% of all victims. Although this figure is a small one given the number of units of national army, this is, nonetheless, considerable, taking into account the national and strategic responsibilities of national army.

2.7. Other institutions

As indicated in figure 1, 42 out of all victims, comprising over 10% of sample size, chose the option “other” in the questionnaire. These other institutions include police, criminal investigation department, police department, prosecution office, national security, and district. Some may have protected their privacy by doing this or by not choosing any option on the questionnaire. It should be noted that 6.3% or 25 persons identified police as the institution that tortures. It means police and the departments related to it are again at the top of table.

Causes of torture in law enforcement institutions

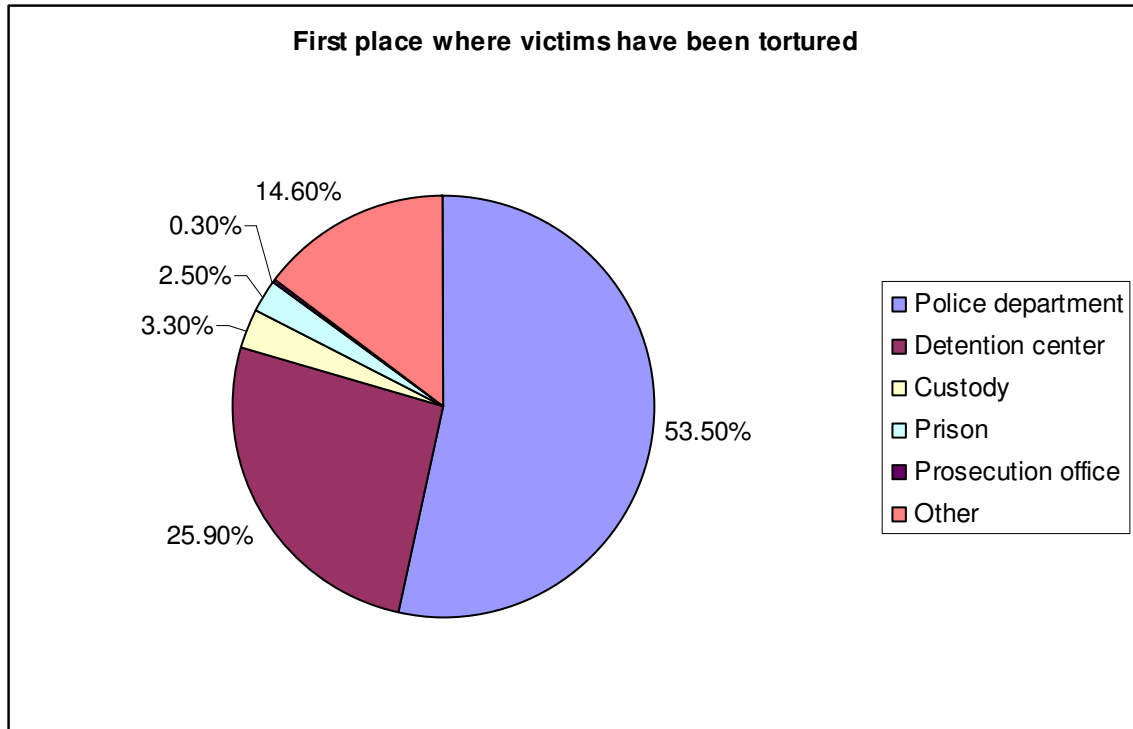


Figure 2

Figure 2 shows the first place where victims have been tortured and its related percentages. As you can see, with regard to the first place of torture, police and its departments too have topped the list.

3. Causes of torture

Torture and other cruel, inhuman, and degrading treatment are mostly perpetrated in law enforcement institutions to obtain confessions and testimonies. Lack of means to prove crime, personal enmities, administrative corruption and financial gain, lack of knowledge of officers of the rights of the suspected and accused persons, lack of knowledge of the suspected persons of their rights, lack of follow-up of torture cases, legal lacunae regarding torture, and inadequacy of professional cadres in criminal investigation departments are the major causal factors of torture and other inhuman treatment, which are discussed in the following.

3.1. Obtaining confessions and testimonies

One of the main causes of torture and other inhuman treatment is to obtain confessions and testimonies. Although the Afghan Constitution and the Afghan Penal Code have considered confession and testimony obtained from a suspected or accused person under the circumstances of unwillingness or torture as invalid, lack of proper awareness of these laws, insufficiency of professional cadres or technical methods, and other causes have led to the torture of the suspected or accused persons to obtain confessions and testimonies.

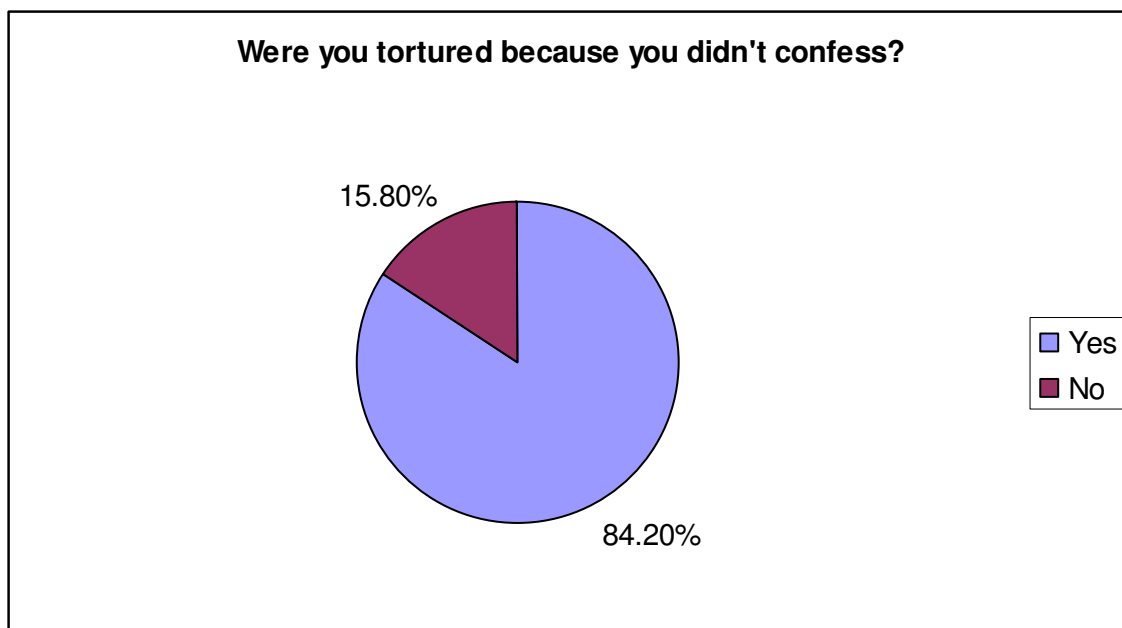


Figure 3

Based on the research sample of this project, as observed in figure 3, of all 398 interviewees, at least 335 stated they were tortured because they did not confess. This comprises over 84% of the total of this research population. Only over 15% of interviewees were tortured for other various reasons.

3.2. Personal enmity

Causes of torture in law enforcement institutions

Based on this research sample, respondents²² referred to personal enmities as another causal factor of their torture. Of all 398 interviewees, 93 provided the following answers to the question of why they were tortured: personal enmities like land expropriation, free oneself from one's real enemy, defending the rights of prisoners, and other reasons. As it can be seen in figure 5, personal enmities comprise approximately 23% of causal factors of torture for victims.

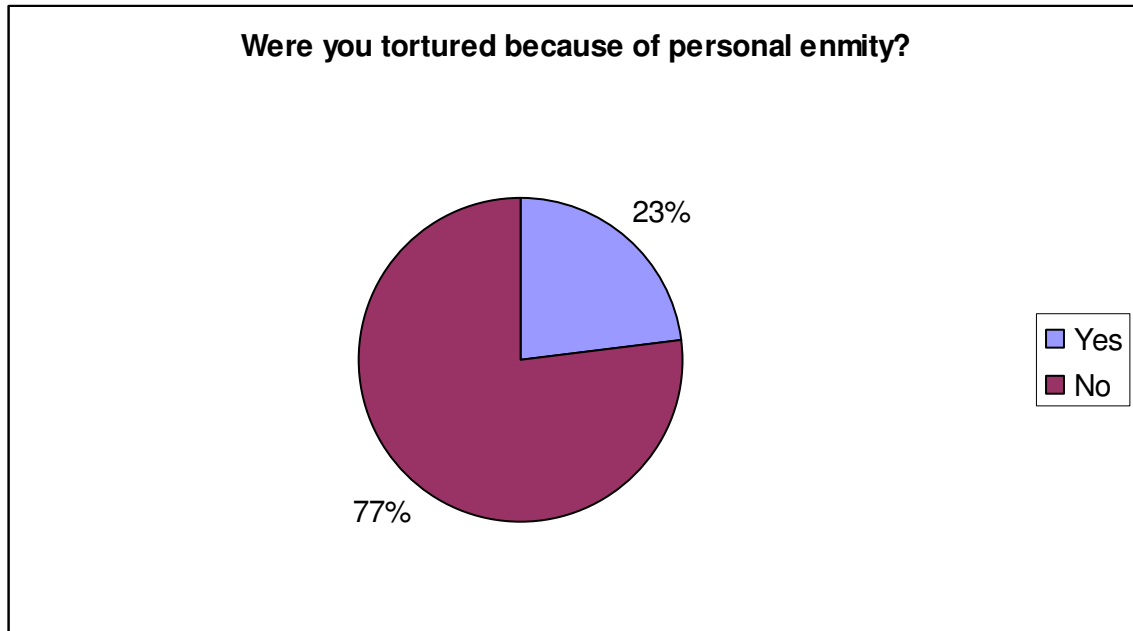


Figure 4

At least 5% of interviewed victims chose the option of other causes with regard to torture. In this option, as indicated by figure 6, personal enmities still count as causes of torture of these victims.

²² Respondents.

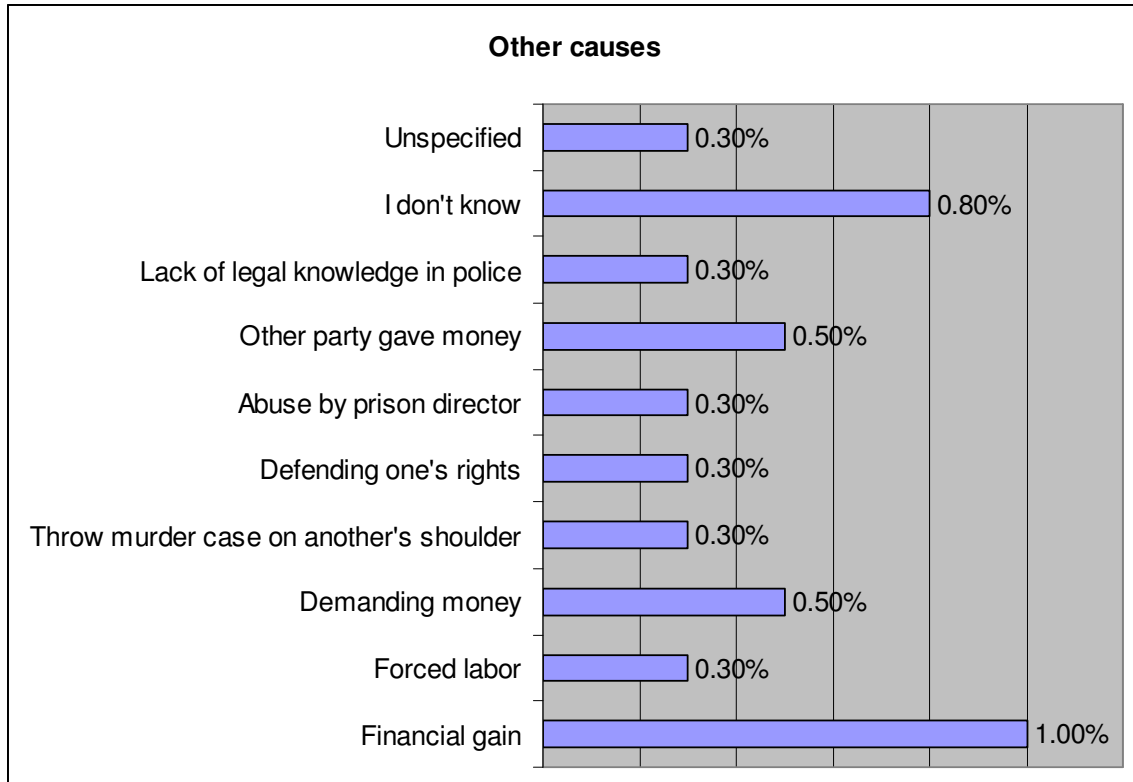


Figure 5

3.3. Lack of means to prove crime

Lack of means to prove crime is another major causal factor of torture in law enforcement institutions. So the suspected or accused persons are tortured for this reason. A considerable number of respondents regarded this as the reason for their torture. This comprises 184 or 46.2% of the total of 398 interviewees. As it will be discussed in figure 10 under the title of inadequacy of professional cadres, at least 6.5% of interviewed officers believe they torture the suspected or accused persons because the means to prove crime is lacking.

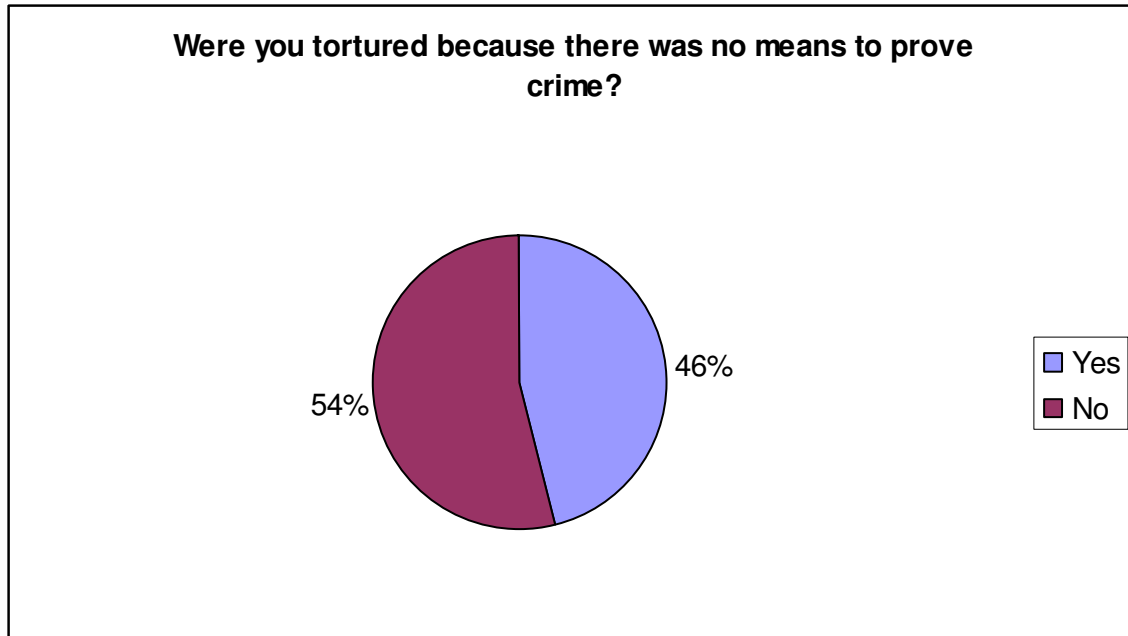


Figure 6

3.4. Financial gain

Bribery, administrative corruption, and financial gain are another major causal factor for the torture of the suspected and accused persons. 6.6% of interviewed officers regard financial gain as the reason for torture and other cruel treatment. It should be noted here that such causal factors as inadequate pay and an abuse-prone situation are the basic reasons for administrative corruption and personal gain. A number of interviewed victims too considered financial gain, demanding money, bribery, and personal gain as the reasons for their torture.

3.5. Lack of knowledge of officers of the rights of the suspected and accused persons

Lack of knowledge of officers of the rights of the suspected and accused persons is another major causal factor of torture in law enforcement institutions. In the questionnaires filled out by the officers, only 17.4% of these officers have knowledge of the right against torture and 12% of interviewed officers know the rights of the suspected and accused persons in light of the Afghan Constitution, the Afghan Penal Code, and the Afghan Civil Code.

In another question in the questionnaires filled out by officers, it was asked: how do you treat an accused person while he or she is committing crime? According to the responses, only 16.3% of officers selected the option of humane, necessary, and proportionate treatment and 23.9% of them chose the option of lawful treatment. As indicated in the below figure, about 60% of interviewed officers did not select these two options.

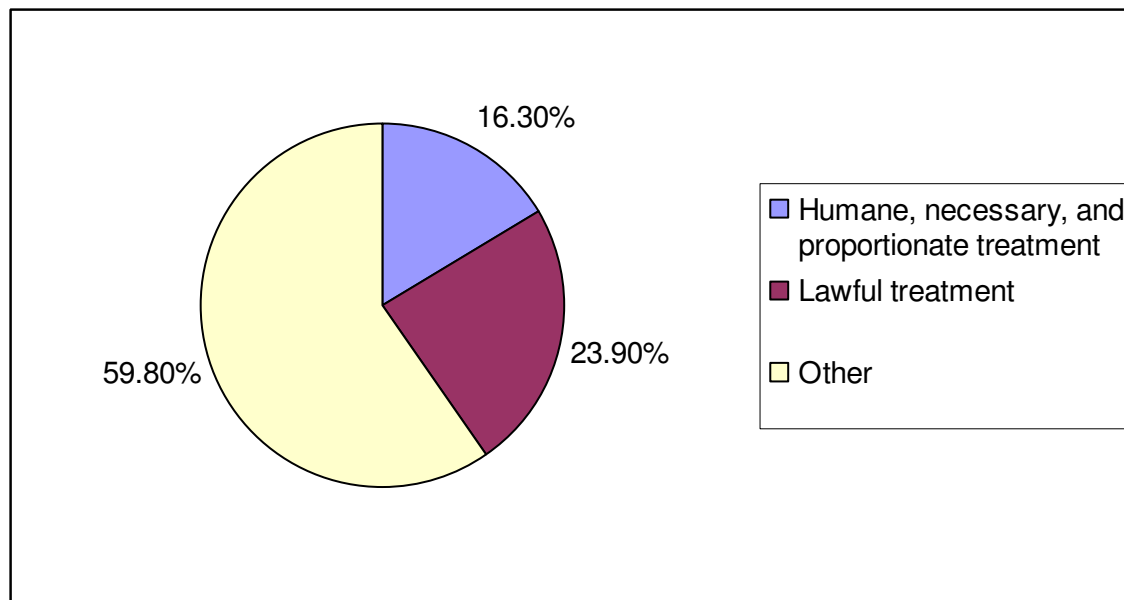


Figure 7

3.6. Lack of knowledge of the suspected and accused persons of their rights

The majority of the suspected and accused persons too do not have an essential awareness of their rights and entitlements. The reason is that officers and judges do not render clear information on the rights of the suspected and accused persons in times of arrest, detention, imprisonment, and presence at court. With regard to the question of whether judges gave them any information on their rights during trial, around 78.6% of interviewed victims replied in the negative. Concerning another question of whether they complained against torture, at least 56% of victims replied in the negative and 43% had complained, but almost in all cases in vain. This will be discussed in a later section of this report. Of all victims who completed questionnaires, at least 86% did not have an essential awareness of their human rights.

3.7. Lack of follow-up of torture cases

Lack of follow-up of torture cases and victim complaints is a basic reason why torture and other cruel, inhuman, or degrading treatment are widespread in law enforcement institutions. According to the responses provided by officers, the obstacles preventing the follow-up of these cases include failure of officers to implement laws, legal ambiguities, lack of facilities to prove crime, interference of powerful persons, and other reasons like bribery, lack of professional cadres, and favoritism in governmental organizations. About 99% of interviewed officers believe that torture cases are not followed up because of the aforesaid causes. Of those, failure to implement laws, interference of powerful persons, and lack of facilities to prove crime are at the top of answers.

Based on the responses given by victims of torture, judges do not pay heed to the observations that the accused persons have confessed under the conditions of torture. Therefore, another cause here is the lack of knowledge of victims of their human rights.

Over 56% of interviewed victims did not complain to any institution against their torture. Of all 398 interviewed victims, approximately 346 did not have proper awareness of their human rights.

3.8. Lack of a monitoring institution

Lack of an institution to monitor torture and other cruel, inhuman, or degrading treatment is another reason why torture and torturing are a widespread, commonplace practice in law enforcement institutions. The majority of torture complaints end up being fruitless. The petitions of those victims who have complained against torture have yielded no results for various reasons. These reasons include bribery, insinuations of falsehood, inadequate claims, unavailability of judges, humiliation, abusive language, and threats. This is while most complaints have been addressed to court, prosecution office, prison office, detention office, and other authorities like police department, governor's office, and even the department of administration of affairs.

3.9. Legal lacunae regarding torture

Though the Afghan Constitution and the Afghan Penal Code have seriously prohibited torture and have determined long-term imprisonment and even the sentence of intentional murder for torturers, torture and other cruel, inhuman, and degrading treatment are widespread in law enforcement institutions and no torturer has been prosecuted or tried so far. The Afghan Penal Code recognizes, in an explicit manner, torture as a punishable act in its Article 275, but there are still two problems in this area. One, the Afghan Penal Code was approved and promulgated over 30 years ago. And two, the Code has not been amended and, therefore, does not comprise all the content of the C.A.T., to which Afghanistan is committed as a member state. What it means is that other cruel, inhuman, or degrading treatment that is enshrined in the C.A.T. is not explicitly contained in relevant Afghan national law. The current laws only recognize torture under conditions of confession, while torture is widespread under such conditions as arrest, before, during, and after that.

3.10. Inadequacy of professional cadres in criminal investigation departments

Inadequacy of professional cadres in criminal investigation departments and law enforcement institutions is another reason why torture exists in these organizational setups. As discussed in the aforesaid sections, different causes like lack of knowledge of officers of the rights of the suspected and accused persons, administrative corruption, and institutional favoritism play major roles in this area. A considerable number of interviewed officers, as indicated in the below figure, do not know that according to the laws, a suspected or accused person should, under no conditions, be tortured. Only 58.7% of these officers know that an accused person should never be tortured, for any reason whatsoever.

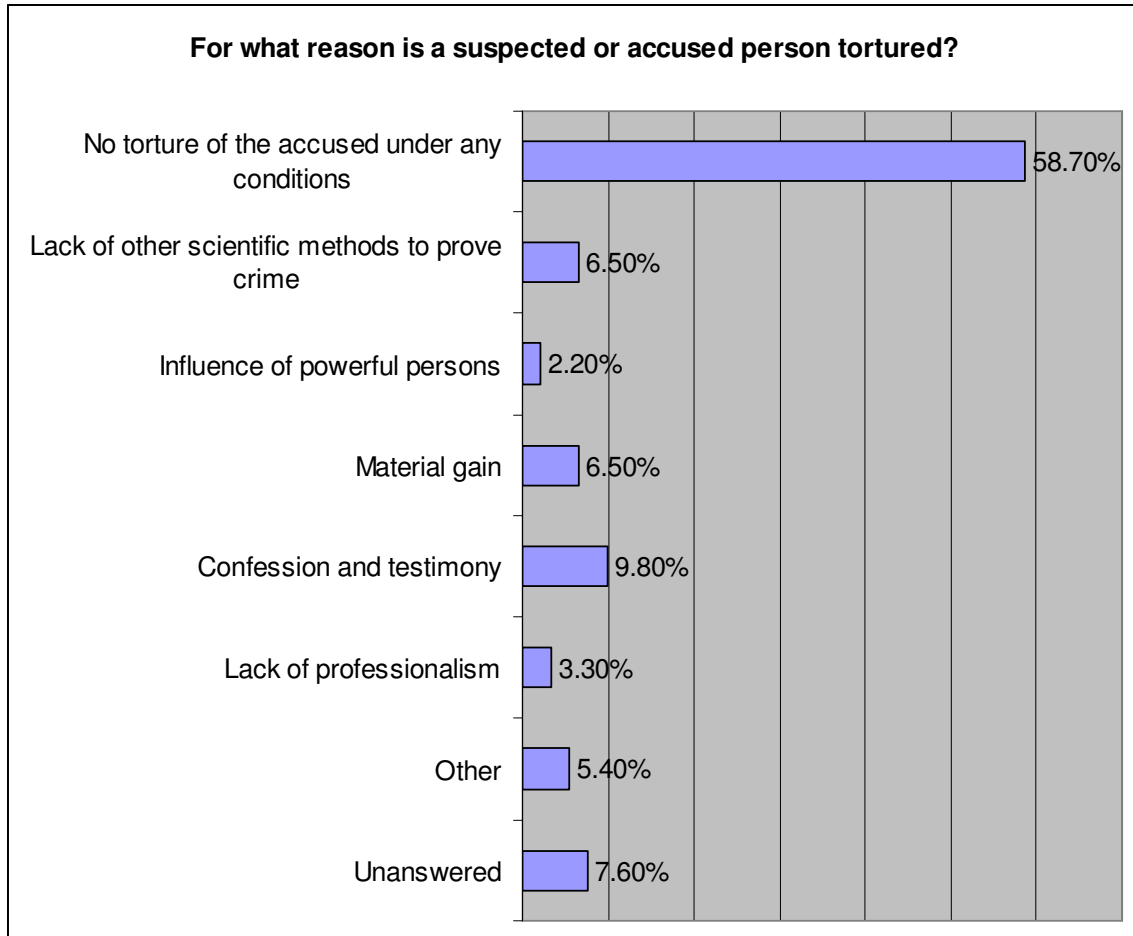


Figure 8

As mentioned earlier, in the questionnaires filled out by officers, only 17.4% of them have stated that they are aware of the right against torture. They are not clear and unanimous on what constitutes torture. Therefore, this shows lack of coordination and professional training in law enforcement institutions. In reply to a question on what methods officers use to obtain confession, only 21.7% of interviewed officers named the collection of evidences and documents to prove crime, while 23.9% selected technical methods, and 14% chose methods based on law and logic. 21.7% of them mentioned methods not otherwise specified by previous officers to obtain confessions and a considerable 18.5% have even no reply to this question. These are represented in the below figure.

Causes of torture in law enforcement institutions

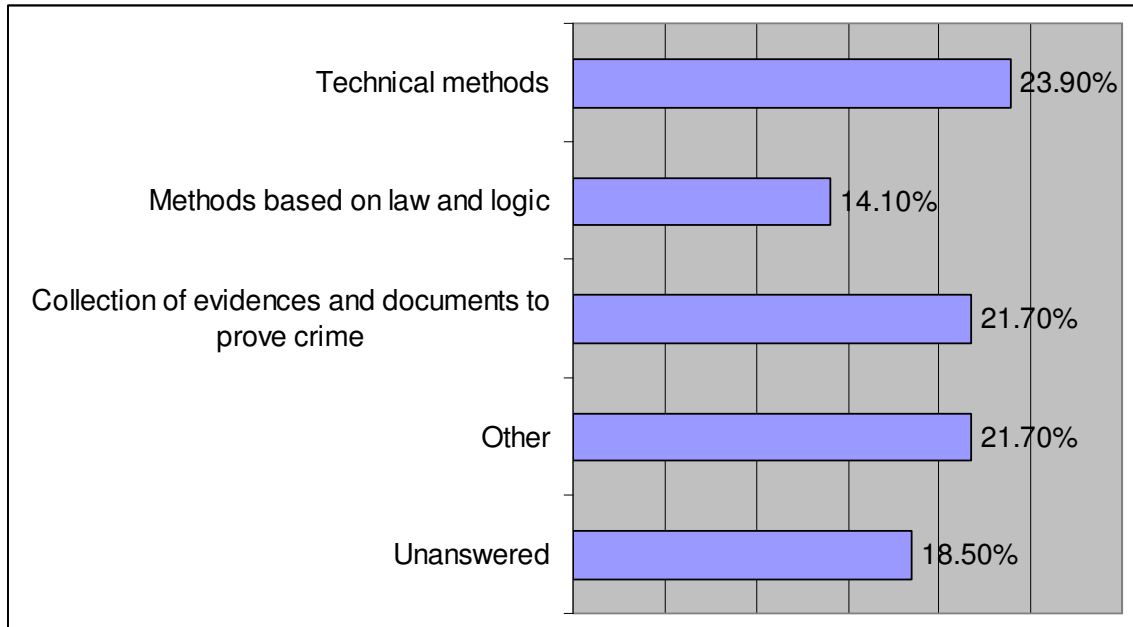


Figure 9

The above figure shows the replies of officers to the question of what methods they use to obtain confessions. As you can clearly see in this figure, only 21.7% of interviewed officers use the collection of evidences and documents, which is considered the most valid way to do it. It is while the rest who have given no answers or use methods other than the mentioned three methods comprise over 40% of all interviewed officers.

4. Tools and methods of torture in Afghanistan

The methods of torture and other cruel, inhuman, or degrading treatment, which are common in Afghanistan, are generally violent and horrible. The tools used to torture victims are vehemently inhuman and against human dignity. These methods range from punching, kicking, slapping, and humiliation to flogging by cable and electric shock, sometimes leading to a victim's unconsciousness and death.

4.1. Punching, kicking, and slapping

Punching, kicking, or slapping the suspected or accused person is considered torture and other cruel, inhuman, and degrading treatment. Based on national law and our country's international commitments, these types of treatment are absolutely forbidden. Despite this, punching, kicking, and slapping have been recorded as the most common forms of torture and other cruel, inhuman, and degrading treatment. Almost all 398 interviewed victims were tortured through punching and kicking.

4.2. Weapons

The use of weapons is another common method against victims. Of 398 interviewees, 30 (7.5%) were tortured through the use of weapons or were threatened to death through weapons.

4.3. Rod

The use of rod to torture victims is another common method. Rods were used to torture at least 122 victims. These include beating by rod when hands and feet are tied, beating by rod in time of arrest, battering by rod, beating by rod when victims are blindfolded, and beating feet by rod. At least 44 victims were beaten in their feet by rod.

4.4. Cable

The use of cable in different ways is another method of torture in Afghanistan. This includes various types of cables like electric, iron, and plastic cables. Cable is usually used to batter a victim's back, waist, feet, head, face, and other body parts. Over 70 victims were battered and tortured by cable.

4.5. Electric shock

Exposing a victim's body to electric shock is among the methods of torture common in Afghanistan. Over 44 victims were tortured by electricity and electrical equipment. Most often victims are exposed to electric current through their nails and fingers.

4.6. Continuous use of chain and shackle

The long and continuous use of chain and shackle or even the short use of such tools on hands and feet on the ground or on the back of head is another method of torture mentioned by the respondents. Chain and shackle is sometimes used to tie or batter victims. 15% of victims claim they were tortured this way.

4.7. Deprivation of sleep, water, and food

Deprivation of enough and necessary sleep, water, and food is another kind of torture employed against the victims. At least 16 victims were tortured by deprivation of sleep, while their hands and/or feet were tightly and continuously tied by chain and shackle.

4.8. Scorching bar, iron bar, and police baton

The use of scorching bar against or burning victims is another kind of methods of torture. In addition, the use of iron bar and police baton for battering constitutes a number of torture cases mentioned in this research sample. Sometimes other forms of physical torture have been employed. Other methods of torture include the use of mower, tire rod, sexual abuse, and using stapler on hand.

4.9. Abusive language

Abusive language is a degrading and inhuman act and a form of psychological torture. In most cases, abusive language has been used against victims and this is in contravention of laws and human dignity and is common in law enforcement institutions that are supposed to implement such laws.

5. Effects of torture

Torture not only leads to destructive physical and mental effects on the lives of the victims, but it also causes harmful social ramifications. The objective of torture is often the disintegration of the victim's identity and personality that is usually intentionally inflicted on him or her to cause physical or mental pain and suffering. Therefore, torture has painful and detrimental physical and mental outcomes for the victims, their families, and the broader community.

5.1. Physical effects

Physical effects of torture include such physical or bodily signs and symptoms as injuries, harms, pain, and disability of body organs and muscles. In addition, total and partial loss of body organs like eye, ear, and other senses has been recorded as physical outcomes of torture. Of all interviewed victims, 21 exhibited physical signs of torture on their heads. Likewise, the effects of torture on feet, waists, and backs of the majority of victims were observable. Fracture of hands or feet or other body bones is another symptom that can be seen in the victims. Burns and scratches on the body or face and ailments like heart problems are also part of physical effects of torture on these victims.

Of all interviewed victim families, 74% observed physical effects of torture in victims. These range from death and visual loss (one case of death and one case of visual loss) to other diseases and disabilities.

5.2. Mental effects

Mental effects of torture and other cruel, inhuman, and degrading treatment are also seriously destructive and remain in victims for years to come or to the end of their lives. These include mental disorders, asociality, impatience, shame and isolation, impaired daily functioning, insomnia, fear during sleep, and other mental impacts. Over 55 victims believe they are more irritable after torture, over 50 are depressed, and at least 44 suffer from insomnia or dread during their sleep. These are shown in figure 11.

This is while 53 out of a total of 100 interviewed families have seen such mental effects as moodiness, poverty of speech, isolation, sleep disturbances, and panic in victims.

Causes of torture in law enforcement institutions

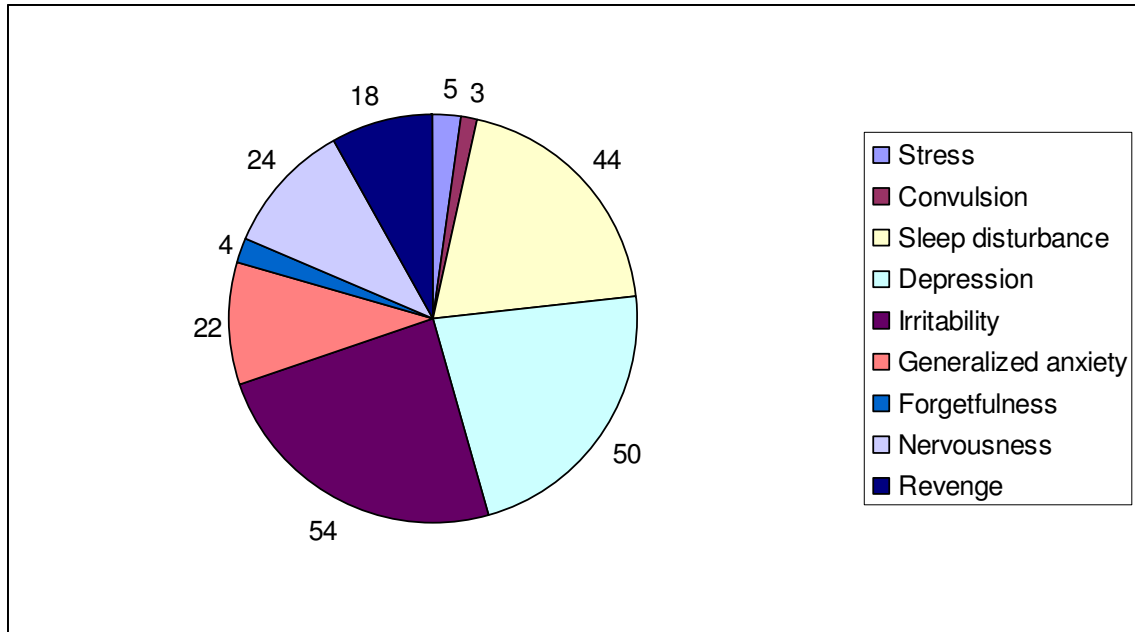


Figure 10

6. Petitions of tortured victims to relevant authorities and the performance of these authorities

As discussed under causes of torture titled lack of knowledge of the suspected and accused persons of their rights and lack of follow-up of torture cases, a large number of the tortured persons have not complained against torture. The petitions of 171 victims (43%) who have complained against torture have yielded no results. This is discussed below under the two sections of institutions to which victims have complained and their performance and causes of lack of follow-up of torture cases.

6.1. Institutions to which victims have complained and their performance

Institutions to which victims have complained include prosecution office, court, A.I.H.R.C., detention office, prison office, and other institutions like governor's office, police department, and department of administration of affairs. 25% of complaints have been lodged in prosecution offices, around 23% in courts, only 9.8 in A.I.H.R.C., and a few of them in detention offices and prison offices.

Unfortunately there has been no performance in most cases and the complaints have usually not been followed up. Of all complaints, only about 3% have been investigated. This is while even one torturer has so far not been prosecuted and sentenced as per the laws.

6.2. Causes of lack of follow-up of torture cases

There are many causes why torture cases have not been followed up. Certain inadequacies can, however, be named as the most vivid causal factors. These include lack of implementation of laws by officers, legal ambiguities in this area, financial gain, administrative corruption, and interference of powerful persons in cases. What it means is that due to administrative corruption, lack of professionalism, and favoritism in persons and institutions, officers have refrained from following up torture cases. As mentioned in the questionnaires filled up by officers, over 60% of petitions are not followed up by officers due to administrative corruption and lack of implementation of laws. According to the responses of interviewed officers, interference of powerful persons in cases is another major causal factor that prevents the follow-up of cases. They have also referred to legal ambiguities in this area as another causal factor.

7. Afghanistan's provinces and the years when torture took place

A total of 398 interviewed victims in this research named 24 provinces and/or districts of Afghanistan as the places where they were tortured. These incidents have usually taken place during the past six years. Most incidents have happened in Kapisa province (119 cases). Herat is the second province at the top with at least 67 cases of all 398 cases. In Kandahar, 47 victims were tortured, placing it as the third province. 35 victims were tortured in Nangarhar and 30 in Balkh. 14 victims were tortured in Parwan, 13 in Ghazni, and 13 in Logar. 8 victims were tortured in Sar-e-Pul, 7 in Takhar, 7 in Maidan, and 6 in Badakhshan. 1-5 victims were tortured in Paktia, Panjsher, Nimroz, Helmand, Laghman, Bamiyan, and Jawzjan provinces each. It should be noted that a total of 398 interviewed victims named these provinces as the places where they were tortured and torture happens in most of the provinces of the country.

As mentioned earlier, the years, when the torture cases discussed by this study happened, begin in 1380 (2001/2002) and continue to the first half of 1386 (2007/2008). The majority of cases were recorded in the year 1385 (2006/2007), comprising 232 victims (over 58%). This is followed by 1384 (2005/2006) with 59 cases, 1383 (2004/2005) with around 43 cases, 1382 (2003/2004) with around 24 cases, 1381 (2002/2003) with at least 15 cases, and 1380 (2001/2002) with only 2 cases. As a result, most of torture cases discussed by this study took place during the years 1384 (2005/2006) and 1385 (2006/2007). This does not mean that torture cases have declined in the current year. It is only because most cases were gathered in the past year and analyzed in the current year.

8. The Commission's performance regarding torture cases in the previous year

As it was mentioned earlier, a number of complaints have been sent to the A.I.H.R.C. by the victims. To address these complaints, the Commission has, first of all, collected the necessary evidence to verify the complaints and has sought the opinions of doctors about the effects of torture when necessary. To investigate the cases, the Commission has referred the complaints of the victims to prosecution offices and other relevant authorities to take legal action against the alleged perpetrators of torture. It should be noted that most of these authorities except national security have, to some extent, cooperated with the Commission.

In the year 1385 (2006/2007), the Commission too has received a number of complaints, mainly from Kabul province and sometimes from Ghazni, Maidan Wardak, and Panjsher provinces. The Commission's monitoring and follow-up has partially and gradually decreased torture in some of agencies except national security. According to the statistics provided in the last year, police and national security departments show the highest levels of torture. It is still rare to prosecute the alleged perpetrators of torture. The perpetrators are sometimes removed from their positions and/or their appointments to high governmental positions are obstructed.

9. Conclusions and recommendations

9.1. Conclusions

- Torture and other cruel, inhuman, or degrading treatment are common in the majority of law enforcement institutions and at least 98.5% of interviewed victims have been tortured. Institutions where torture has occurred include police (security, justice, traffic), prosecution office, national security, detention center, custody, prison, and national army.
- According to the findings of this research project, torture is usually perpetrated to obtain confessions and testimonies from the suspected or accused persons, while inadequacy of professional cadres, violations of law by officers in law enforcement institutions, inadequacy of and failure in using technical methods in the collection of evidence to prove crime, bribery, personal gain, personal animosities with the suspected or accused persons, and influence of powerful persons are considered the major causal factors of torture in law enforcement institutions.
- The methods of torture employed in Afghanistan are seriously cruel and inhuman and horrible instruments are used to perpetrate torture. These methods and tools include threatening with weapons; beating by stick, cable, scorching bar, iron bar, and police baton; electric shock; punching, kicking, and slapping; chain and shackle; deprivation of sleep, food, and water; and abusive language.
- Torture causes harmful physical and mental damage to the victims and even their families. It also causes detrimental social effects. These effects include physical illnesses like sightlessness, heart problems, and severe mental disorders that remain in victims for years to come and even throughout their lives. In some cases, the tortured persons bear such psychological grudges that they want to do evil with all humanity after their release from prison.
- Torture cases and victim complaints are not followed up. Institutions like court, prosecution office, detention office, custody office, and prison office have not followed up the complaints of torture victims due to administrative corruption, lack of implementation of laws by officers, and influence of powerful persons.

9.2. Recommendations

1. The government of Afghanistan should respect its national commitments regarding torture and other cruel, inhuman, or degrading treatment that run contrary to the Constitution of Afghanistan and the Afghan Penal Code. It should adhere to these national laws and protect the human rights of all its nationals. Likewise, the government should uphold its international human rights commitments. The Afghan Penal Code should be amended according to the commitments of the government of Afghanistan vis-à-vis international conventions and covenants to which Afghanistan is a party, especially C.A.T.

2. High government officials should publicly condemn and prohibit torture in their messages to the people. Torture should be proclaimed as an inhuman act and part of crimes against humanity.
3. The petitions of torture victims should be investigated and the alleged perpetrators should be prosecuted.
4. Clear and essential information should be given by officers of law enforcement institutions to the suspected or accused persons on their human rights not only during investigation, but also in times of arrest, detention, trial, and any other necessary occasion.
5. Adequate professional and legal training should be provided to officers of police and prosecution offices on methods of detention of the suspected and accused persons and methods of investigation. At the same time, these institutions should be equipped with new technical means so as to enable them to prove the occurrence of crime and atrocity without taking recourse to torture.
6. Based on a human rights benchmark contained in the human rights sector of Afghanistan National Development Strategy and Afghanistan Compact, security and law enforcement institutions should design and implement their codes of conduct with a view to ending arbitrary arrest and detention, torture, persecution, and expropriation of private and public properties.

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