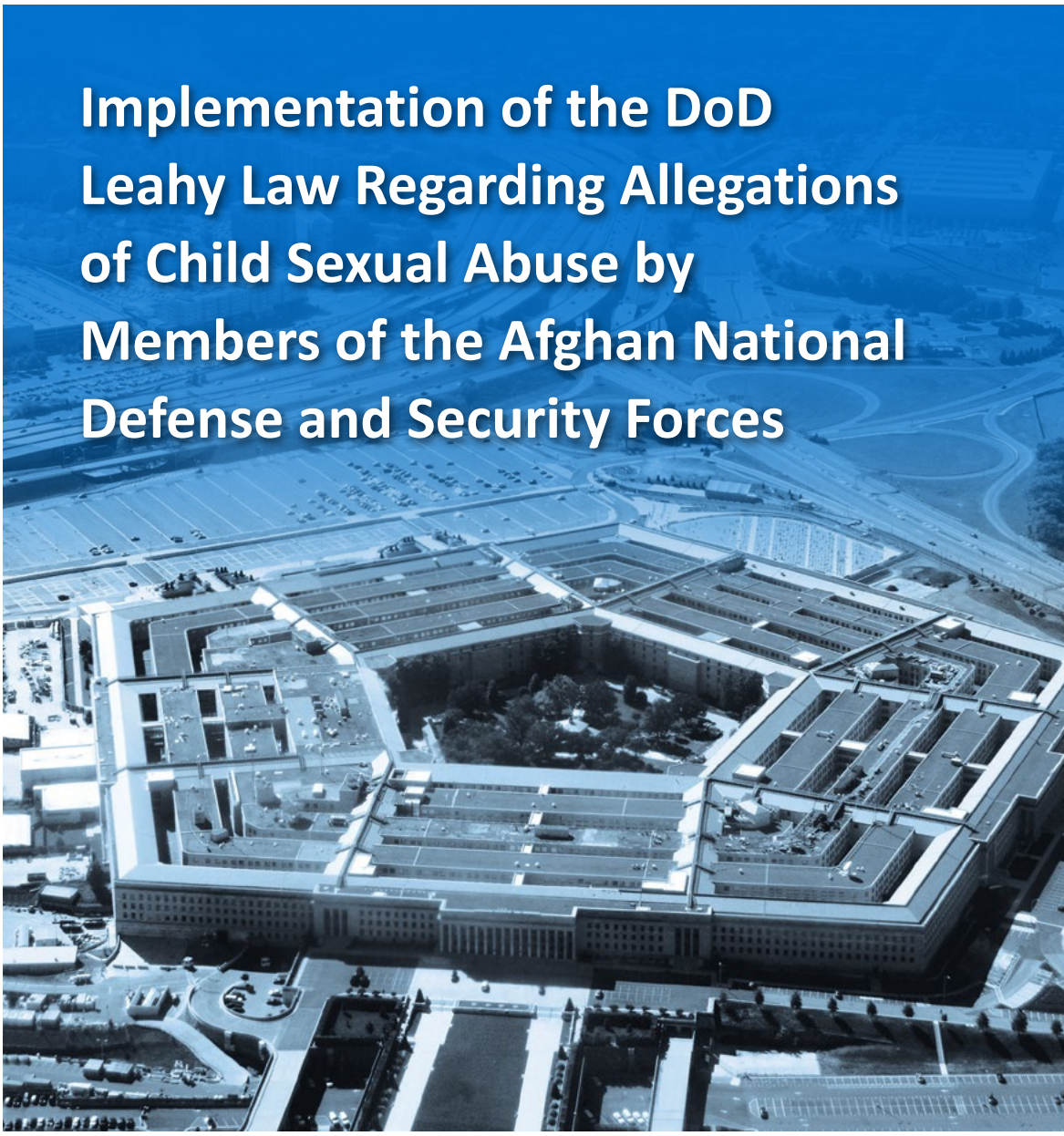
Report No. DODIG-2018-018

INSPECTOR GENERAL

U.S. Department of Defense

NOVEMBER 16, 2017

Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

Mission

Our mission is to provide independent, relevant, and timely oversight of the Department of Defense that supports the warfighter; promotes accountability, integrity, and efficiency; advises the Secretary of Defense and Congress; and informs the public.

Vision

Our vision is to be a model oversight organization in the Federal Government by leading change, speaking truth, and promoting excellence—a diverse organization, working together as one professional team, recognized as leaders in our field.

For more information about whistleblower protection, please see the inside back cover.

Results in Brief

Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces

November 16, 2017

Objectives

To evaluate the implementation of the DoD Leahy Law regarding child sexual abuse as it applies to DoD interaction with, and Title 10 support of, the Afghan Security Ministries and the Afghan National Defense and Security Forces (ANDSF).

Congressional Concerns

Members of Congress expressed concerns regarding allegations of child sexual abuse in Afghanistan, particularly against young boys by ANDSF personnel. In response, we conducted this evaluation to address the following questions:

1. What laws, regulations, directives, standards, or other guidance, including international laws, treaties, or agreements, exist that impact DoD policy related to allegations of child sexual abuse involving ANDSF personnel; the obligation of DoD-affiliated personnel to report suspected child sexual abuse by Afghan government officials; and DoD involvement in responding to such reports or allegations?

    - We identify in this report the laws, regulations, and guidance impacting DoD policy.

2. Is there, or was there, any DoD guidance, informal or otherwise, to discourage reporting by DoD-affiliated personnel?

    - We did not identify official guidance that discouraged DoD-affiliated personnel from reporting incidents of child sexual abuse.
    - In some cases, personnel we interviewed explained that they, or someone whom they knew, were told informally that nothing could be done about child sexual abuse because of

Congressional Concerns (cont'd)

Afghanistan's status as a sovereign nation, that it was not a priority issue for the command, or that it was best to let the local police handle it.

3. What training has been conducted or planned for DoD personnel on identifying and responding to alleged child sexual abuse, or the obligation to report suspected violations?

    - The DoD did not conduct training for personnel deployed or deploying to Afghanistan before 2015 on identifying, responding to, or reporting suspected instances of child sexual abuse. In September 2015, the Staff Judge Advocate (SJA) for U.S. Forces-Afghanistan (USFOR-A) prepared training slides titled "Mandatory Reporting of Suspected Human Rights Abuses," for use in theater. This training states that Resolute Support (RS) and USFOR-A personnel are required to report any suspected human-rights abuses, including suspected child sexual abuse. USFOR-A personnel conducted such training for DoD personnel deployed to Afghanistan beginning in late 2015.

    - The DoD also provides Cultural Awareness Training, Combating Trafficking in Persons Training, and Sexual Assault Prevention Training to personnel deploying to or assigned in Afghanistan. However, this training does not specifically instruct U.S. personnel to report allegations of child sexual abuse.

4. How many cases of child sexual abuse alleged against Afghan government officials have been reported to U.S. or Coalition Forces Commands, the Service Inspectors General, or the DoD Office of Inspector General? When were such reports made? What actions were taken and by whom?

    - Between 2010 and 2016, we identified 16 allegations of child sexual abuse involving Afghan government officials that were reported by DoD and Government of the Islamic Republic of Afghanistan (GIRoA) personnel to the DoD. However, we could not confirm that the 16 allegations represented the total number reported to U.S. or Coalition Forces Commands in Afghanistan due to inconsistent DoD reporting procedures and an overall lack of unified guidance on reporting and record keeping relating to child sexual abuse. See the response to question 4 in the classified appendix D for additional information on these 16 allegations.

Results in Brief

Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces

Congressional Concerns (cont'd)

5. How many cases of alleged child sexual abuse have been reported to the Afghan government by DoD affiliated personnel? When were such reports made? What knowledge does the DoD have of action taken by the Afghan government?

    - We identified that 11 of the 16 allegations reported to the DoD between 2010 and 2016 were reported to officials of the GIRoA by DoD affiliated personnel.

    - See the classified appendix for additional information.

6 and 7. What legal authority do U.S. Forces in Afghanistan have to intervene in cases in Afghanistan where they observe or suspect child sexual abuse by ANDSF personnel? Are U.S. Forces authorized to use force to stop instances where they witness child sexual abuse by ANDSF personnel?

Under the DoD Law of War Program, and consistent with bilateral and international agreements governing U.S. operations in Afghanistan, U.S. Forces who observe a member of the ANDSF sexually abusing a child are not prohibited from intervening and using reasonable force as may be necessary to prevent or stop such sexual abuse. However, U.S. Forces are under no obligation to intervene.

8. What authority do DoD personnel have on bases in Afghanistan to control who can enter the bases, either Afghan Security Force personnel or Afghan civilians?

    - DoD personnel have the authority to control access to "Agreed Facilities and Areas," which are identified in the "Status of NATO [North Atlantic Treaty Organization] Forces and NATO Personnel Conducting Mutually Agreed NATO-Led Activities in Afghanistan" and the "Security and Defense Cooperation Agreement between the United States of America and the Islamic Republic of Afghanistan." These agreements authorize NATO or U.S. Forces to control entry into agreed facilities and areas provided for their respective exclusive use and to coordinate entry with Afghan authorities at joint-use agreed facilities and areas, for the purposes of safety and security.

9. What DoD guidance exists for U.S. military personnel regarding intervention and use of force when witnessing child sexual abuse in Afghanistan and what related training is provided?

    - This question is partially answered in response to questions 6 and 7. Additional information related to this question can be found in the classified appendix to this report.

Findings

In addition to providing specific responses to the nine questions, our evaluation also resulted in four findings, which are discussed briefly in this Results in Brief section, the unclassified report, and in more detail in the classified appendix.

Finding A

We found that prior to specific command guidance issued in September 2015, U.S. personnel in Afghanistan may not have known to report allegations of child sexual abuse to their chains of command. This occurred because there was no guidance prior to that date that identified child sexual abuse as a human rights violation that should be reported. Additionally, there is still no specific guidance from the Office of the Under Secretary of Defense for Policy (OUSD(P)) for reporting gross violations of human rights (GVHR). As a result, there is no certainty that USFOR-A SJA received notification of all allegations of human-rights violations, including child sexual abuse involving ANDSF personnel.

Finding B

We found that OUSD(P) does not have standardized guidance or a process for determining whether information supporting GVHR allegations is credible. This occurred because:

- The phrase "credible information" is not defined as it applies to the DoD Leahy Law;

- There is no DoD or OUSD(P) guidance for determining whether credible information exists; and

Results in Brief

Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces

Findings (cont'd)

- The OUSD(P) does not require or maintain any documentation pertaining to whether or how information was determined to be credible.

As a result, this creates the risk of inconsistent credibility determinations that, in the absence of clearly articulated guidance, could adversely affect the OUSD(P)'s ability to comply with the DoD Leahy Law.

Finding C

We found that DoD decisions to withhold funding or apply the notwithstanding authority for GVHRs, including instances of child sexual abuse committed by ANDSF personnel under the color of law, only occur about once a year. This occurred because notwithstanding authority packages are grouped together and forwarded to the USD(P) about once a year. As a result, the DoD is not applying the DoD Leahy Law in a timely manner.

Finding D

We found inconsistencies in the data provided to us and records maintained by DoD components about reported allegations of child sexual abuse involving ANDSF personnel in Afghanistan. This occurred because of the absence of effective DoD policy and guidance about data collection, tracking, and records maintenance for allegations of GVHR in Afghanistan including child sexual abuse by ANDSF personnel under the color of law. As a result, we were unable to confirm the completeness and accuracy of information maintained on allegations of child sexual abuse involving ANDSF personnel being tracked by the DoD.

Recommendations

We recommend that the Secretary of Defense develop procedures for the application of the DoD Leahy Law with respect to allegations of gross violations of human rights involving members of the ANDSF. Specifically:

- Designate an Office of Primary Responsibility to develop and implement detailed procedures on gross violation of human rights reporting within the Department (Recommendation A.1);
- Define "credible information" as it applies to gross violation of human rights determinations and the DoD Leahy Law (Recommendation B.1);
- Establish the specific process by which DoD Leahy Law credible information determinations are made, including requiring time frames for reaching all such decisions (Recommendations B.2 and C);
- Establish and implement a records management policy for all alleged gross violations of human rights in Afghanistan, and specifically require the Office of the Secretary of Defense for Policy maintain documentation sufficient to identify how and why credible information determinations were made and identify what credibility determinations were made in each case (Recommendation B.3); and
- Issue guidance specifying the requirements for creating and maintaining an official system to track GVHR information which could include allegations of child sexual abuse by ANDSF. (Recommendation D.1).

We recommend that the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia (DASD APC) review the United States Central Command and United States Special Operations Command historical records containing allegations of child sexual abuse by the ANDSF personnel to determine whether any of the allegations are gross violations of human rights that require further review by USFOR-A or the GVHR Forum. If those allegations have credible information, determine what actions should be taken to comply with the DoD Leahy Law (Recommendation D.2).

We recommend that the Commander, USFOR-A, establish more detailed procedures for DoD affiliated personnel in Afghanistan to report allegations of child sexual abuse committed by ANDSF personnel, and other human rights violations, including procedures that verify that the USFOR-A SJA receives such reports (Recommendation A.2).

Results in Brief

Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces

Management Comments and Our Response

The Assistant Secretary of Defense, International Security Affairs (ASD(ISA)), performing the duties of the Under Secretary of Defense for Policy (PDO USD(P)), answering on behalf of the Secretary of Defense, agreed with seven of our recommendations and partially agreed with the eighth. Specifically:

- In response to Recommendation A.1, he stated that the USD(P) agreed and was developing detailed procedures on GVHR reporting within the DoD. Those procedures are addressed in a draft DoD Instruction 2110.AA, "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing interagency review.

- In response to Recommendation B.1, he stated that the USD(P) agreed and would adapt the DOS Leahy Vetting Guide's definition of "credible information" to the DoD Leahy Law implementation in the draft DoD Instruction 2110.AA "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing review.

- In response to Recommendation B.2, he stated that USD(P) agreed and that the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs (DASD SHA) will issue a clarification memorandum on the application of the DoD Leahy Law in Afghanistan that will include the checklist for the GVHR credibility determination process.

- In response to Recommendation B.3, he stated that the USD(P) agreed and that the DASD APC created and launched a central database accessible to all stakeholders in July 2017 to record allegations of GVHR by Afghanistan National Defense and Security Forces (ANDSF) and document the credibility determinations for each report.

- In response to Recommendation C, he stated that USD(P) agreed and that the forthcoming DASD SHA clarification memorandum on implementation of the DoD Leahy Law in Afghanistan will include procedures for application of the DoD Leahy Law, including timelines for reaching credible information decisions.

- In response to Recommendation D.1, he stated that USD(P) agreed, citing the responses to Recommendations B.1, B.2, and B.3.

- ASD(ISA), PDO USD(P), answering on behalf of the Commander, USFOR-A, agreed with Recommendation A.2. Specifically, he stated that the RS GVHR SOP will be updated once the new DASD SHA clarification memo on implementation of he DoD Leahy Law in Afghanistan is issued.

- ASD(ISA), PDO USD(P), answering on behalf of the DASD APC, partially agreed with Recommendation D.2. Specifically, he stated that the DASD APC will coordinate with U.S. Central Command and U.S. Special Operations Command to review historical data and apply the DoD Leahy Law in accordance with Secretary of Defense Guidance.

Management comments to the recommendations were responsive; therefore, the recommendations are resolved, but will remain open. We will close the recommendations once we determine that the actions described in the response have been implemented.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Secretary of Defense	D.1	A.1, B.1, B.2, C	
Commander, United States Forces–Afghanistan		A.2	
Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia	B.3	D.2	

Please provide Management Comments by December 16, 2017.

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

November 16, 2017

MEMORANDUM FOR SECRETARY OF DEFENSE
UNDER SECRETARY OF DEFENSE FOR POLICY
DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR
AFGHANISTAN, PAKISTAN, CENTRAL ASIA
COMMANDER, UNITED STATES FORCES–AFGHANISTAN

SUBJECT: Implementation of the DoD Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces (Report No. DODIG-2018-018)

We are providing this report for action and comment, as requested below. We conducted this evaluation in response to a request from congressional committee staff and individual Members of Congress. This report relates to the overseas contingency operation, Operation Freedom's Sentinel.

We conducted this evaluation from February 2016 through October 2017 in accordance with the "Quality Standards for Inspections and Evaluations," published by the Council of Inspectors General on Integrity and Efficiency in January 2012.

We found that, prior to specific command guidance issued in September 2015, U.S. personnel in Afghanistan may not have known to report allegations of child sexual abuse to their chains of command. We identified areas for improvement concerning DoD guidance on reporting gross violations of human rights, determinations of credibility, application of the notwithstanding authority, and records management. We answered a set of specific questions related to the subject of this report. This report has a separate classified appendix.

We considered management comments in response to a draft of this report when preparing the final report. DoD Instruction 7650.03 requires that all recommendations be resolved promptly. Comments on Recommendation B.3 from the Assistant Secretary of Defense, International Security Affairs, performing the duties of the Under Secretary of Defense for Policy, were partially responsive. Specifically, the response does not mention establishing a records management policy. Furthermore, as a result of management comments, we redirected Recommendation B.3, to the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia and clarified our intent that the records management policy only address gross violations of human rights in Afghanistan. Therefore, we request that the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia comment on Recommendation B.3 by December 16, 2017.

Please send a PDF file containing your comments to SPO@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to [redacted] Mr. Joseph Oliva at (703) 604-9488 (DSN 312-664-9488).

Kenneth P. Moorefield
Deputy Inspector General
Special Plans and Operations

Contents

Contents (cont'd)

Appendixes

Management Comments

Acronyms and Abbreviations

Introduction

In the fall of 2015, several news articles reported by U.S. media raised allegations that members of the Afghan National Defense and Security Forces (ANDSF) committed acts of child sexual abuse, particularly against young boys.[1, 2] The media reported on alleged incidents asserted to have occurred in Afghanistan from 2011 and 2012, including crimes such as rape, kidnapping, sex slavery, beatings, pedophilia, and a practice called "bacha bazi."[3]

Following the publication of the articles, Members of Congress sent letters to the Secretary of Defense and the Secretary of the Army. The letters expressed concerns about U.S. Service members' authority to confront ANDSF personnel alleged to have sexually abused boys. Several letters inquired about whether the DoD had policies related to that matter. A congressional staff member also asked whether the DoD Office of Inspector General (DoD OIG) was looking into allegations that U.S. personnel serving in Afghanistan had been advised to "look the other way" when confronted with allegations of child sexual abuse.[4]

On October 28, 2015, the DoD OIG initiated preliminary research to assess the news allegations, and later decided to conduct a more extensive evaluation. Members of Congress requested that the Special Inspector General for Afghanistan Reconstruction (SIGAR) examine related concerns regarding child sexual abuse by ANDSF, and requested that the DoD OIG and the SIGAR coordinate efforts.

---

1 *The New York Times,* "U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies," September 20, 2015; Fox News "Army kicking out decorated Green Beret who stood up for Afghan rape victim," August 21, 2015; *The Daily Beast,* "Marines Trained That Rape in Afghanistan Is a 'Cultural' Issue," September 23, 2015.

2 The ANDSF includes the Afghan National Army and Afghan National Police forces. The Afghan Local Police are not officially part of the ANDSF. However, for this project we include the Afghan Local Police when we refer to the ANDSF. The Afghan Local Police receives U.S.-funded assistance and is overseen by the Ministry of Interior.

3 *Bacha bazi* is a form of child sexual abuse, and the literal translation is "boy play." It is spelled variously, but in this report, we use the most common spelling, which is "bacha bazi." See pages 5 and 6 for more information about bacha bazi.

4 U.S. personnel includes U.S. military personnel, DoD civilians, and U.S. contractors.

Objective

Our objective was to assess the implementation of the DoD Leahy Law regarding child sexual abuse as it applies to DoD interaction with, and Title 10 support of, the Afghan Security Ministries and the ANDSF. Further, we sought to answer the following questions:

1. What laws, regulations, directives, standards, or other guidance, including international law, treaties, or agreements, exist that impact DoD policy toward allegations of child sexual abuse involving ANDSF personnel; the obligation of DoD-affiliated personnel to report suspected child sexual abuse by Afghan government officials; and DoD involvement in responding to such reports or allegations?[5]
2. Is there, or was there, any DoD guidance, informal or otherwise, to discourage reporting by DoD-affiliated personnel?
3. What training has been conducted or planned for DoD personnel on identifying and responding to alleged child sexual abuse, or the obligation to report suspected violations?[6]
4. How many cases of child sexual abuse alleged against Afghan government officials have been reported to U.S. or Coalition Forces Commands, the Service Inspectors General, or the DoD Office of lnspector General? When were such reports made? What actions were taken and by whom?
5. How many cases of alleged child sexual abuse have been reported to the Afghan government by DoD-affiliated personnel? When were such reports made? What knowledge does the DoD have of action taken by the Afghan government?
6. What legal authority do U.S. Forces in Afghanistan have to intervene in cases where they observe or suspect child sexual abuse by ANDSF personnel?[7]
7. Are U.S. Forces authorized to use force to stop instances where they witness child sexual abuse by ANDSF personnel?
8. What authority do DoD personnel have on bases in Afghanistan to control who can enter the bases, either Afghan Security Force personnel or Afghan civilians?
9. What DoD guidance exists for U.S. military personnel regarding intervention and use of force when witnessing child sexual abuse in Afghanistan and what related training is provided?

[5] DoD-affiliated personnel includes U.S. military personnel, DoD civilians, and contractors.

[6] DoD personnel includes U.S. military personnel and DoD civilians.

[7] U.S. Forces includes U.S. military personnel.

Background

North Atlantic Treaty Organization Mission and Afghan National Defense and Security Forces

The U.S. and its Coalition partners conducted combat operations in Afghanistan between October 7, 2001, and December 31, 2014. On August 11, 2003, the North Atlantic Treaty Organization (NATO) assumed leadership of the International Security Assistance Forces (ISAF). In October 2003, the United Nations extended ISAF's mandate to provide security over the whole of Afghanistan, with a primary objective of enabling the Afghan government to provide effective security across the country and develop an ANDSF to ensure that Afghanistan would not become a safe haven for terrorists. Between 2003 and 2005, ISAF's area of operations expanded outside of Kabul into the Northern and Western regions. In 2006, ISAF assumed command of international military forces in the southern and eastern regions of Afghanistan from U.S.-led coalition forces. Starting in 2011, responsibility for security gradually transitioned from ISAF to the ANDSF. The ANDSF assumed full security responsibility at the end of 2014, following the completion of the ISAF mission.

At its height, the ISAF's force had more than 130,000 personnel from 51 NATO and partner nations. As of December 2016, NATO and partner nations' force strength was just over 13,000 personnel.[8] On January 1, 2015, ISAF transitioned from a combat mission to the NATO-led Resolute Support (RS) mission to provide further training, advice, and assistance to Afghan security forces and institutions. The RS mission advisory effort focuses on functions, systems processes, and organizational development to achieve sustainable systems within the Afghan Security Ministries and their forces. The RS mission is focused on developing eight Essential Functions (EF):[9]

- **EF 1**. Plan, Program, Budget, and Execute. Increase resource management capability within the ministries; build donor confidence and trust that the Afghan resource management process is transparent, accountable, and effective; and set conditions to sustain an effective ANDSF in the future.
- **EF 2**. Transparency, Accountability, and Oversight. Improve internal controls and maintain accountability and oversight.

[8] As of December 2016, the U.S. had up to 9,800 military personnel in Afghanistan conducting two missions. The NATO train, advise, and assist mission had about 6,900 U.S. personnel assigned. The U.S. counterterrorism mission had about 2,900 U.S. personnel assigned.

[9] Essential functions are security-force assistance-advisory efforts that are normally defined by NATO and the DoD as defense-institution reform and defense-institution building.

- **EF 3**. Civilian Governance of the Afghan Security Institutions and Adherence to Rule of Law. Ensure that the ANDSF respect and adhere to the rule of law.
- **EF 4**. Force Generation. Build combat power through recruiting, training, retaining, managing, and developing a professional security force
- **EF 5**. Sustain the Force. Sustain ANDSF combat power through maintenance, medical-support, and logistics systems.
- **EF 6**. Plan, Resource, and Execute Effective Security Campaigns. Help the ANDSF effectively employ all elements of the ANDSF in support of the Afghan government.
- **EF 7**. Develop Sufficient Intelligence Capabilities and Processes. Help the ANDSF develop and integrate intelligence into operations.
- **EF 8**. Maintain Internal and External Strategic Communication Capability. Help develop counter-insurgent messaging and offer a positive narrative to the Afghan people and the international community.

One essential function, EF 3, Rule of Law and Governance, concentrates on the development of civilian governance of the Afghan security institutions and adherence to the rule of law. Officials from the Office of the Under Secretary of Defense for Policy (OUSD(P)) explained that EF 3 advisors work with the Afghan Ministry of Defense (MoD) and Ministry of Interior (MoI) to ensure that the ANDSF respects the rule of law, domestic laws, and international obligations.[10, 11] An OUSD(P) official also stated that EF 3 advisory efforts also focus on preventing gross violations of human rights (GVHR).

[10] The MoD manages the Afghan National Army (ANA), which has a pivotal role in maintaining security and stability across Afghanistan.

[11] The MoI is responsible for enforcing the law, ensuring public order, fighting terrorism, and providing security throughout Afghanistan and for managing the Afghan National Police. The MoI also oversees the ALP.

Child Sexual Abuse in Afghanistan

Although the Department of State (DOS) has explained in its reporting that it is difficult to determine the actual extent of child sexual abuse due to a cultural taboo against reporting these crimes, both the DOS and the UN reported that the sexual abuse of children is pervasive throughout Afghanistan.[12, 13] DOS human-rights reports from 2011 through 2015 also state that ANDSF personnel recruited children for both military purposes and as personal servants, who were sometimes sexually abused.[14]

DOS and UN reports also identify "bacha bazi" as one form of child sexual abuse in Afghanistan, and they describe it as a practice in which powerful or wealthy local figures and businessmen sexually abuse young boys who are trained to dance in female clothes. These reports also allege that local authorities, including police, were involved in the practice.[15] The Department of Labor 2015 Findings on the Worst Forms of Child Labor also stated "Reports indicate that some government officials, including members of the Afghan National Police, Afghan Local Police, and the Afghan Border Police, have boys for bacha bazi and also have them work as tea servers or cooks in police camps."[16]

---

[12] DOS: 2013 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 4; 2014 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 5; 2015 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan Section 1, subsection C.

[13] DOS: 2006 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, March 6, 2007 at Section 5 subsection "Children"; 2007 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, March 11, 2008 at Section 5 subsection Children; 2008 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, February 25, 2009 at Section 5 subsection Children; 2009 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, March 11, 2010 at Section 6 subsection Children; 2010 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, April 8, 2011 at p. 47; 2011 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 41; 2012 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 42; 2013 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 44; 2014 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 47; 2015 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan Section 6 subsection Children-Child Abuse, and United Nations: Report of the Secretary-General on children and armed conflict in Afghanistan, February 3, 2011, at p. 10; Department of State Country Reports on Human Rights Practices for 2014, Afghanistan 2014 Human Rights Report, at p. 48.

[14] DOS: 2011 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 17; 2012 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 17; 2013 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 18; 2014 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 19; 2015 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan, Section 1 subsection G, Use of Excessive Force and Other Abuses in Internal Conflicts–Child Soldiers.

[15] DOS: 2012 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 17, 42; 2013 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at pp. 44-45 ; 2014 Country Reports on Human Rights Practices–South and Central Asia–Afghanistan at p. 5; United Nations: Report of the Secretary-General on children and armed conflict in Afghanistan, February 3, 2011; Children and armed conflict – Report of the Secretary–General A/67/845-S/2013/245, May 15, 2013, at pp. 9, 15.

[16] U.S. Department of Labor, Bureau of International Labor Affairs, "2015 Findings on the Worst Forms of Child Labor," Required by the Trade and Development Act of 2000, September 30, 2016, at p. 60.

In its 2014 report, "The Causes and Consequences of Bachabazi [*sic*] in Afghanistan," the Afghanistan Independent Human Rights Commission (AIHRC) also stated that the custom of bacha bazi has long existed in Afghanistan. The AIHRC reported that some individuals, including locally powerful people, keep with them boys younger than 18, who are called "bacha." In some instances, the boys wear female outfits and are made to dance for men. At the end of these dancing parties, these children are sometimes taken to private houses or hotel rooms to be sexually abused. The practice of bacha bazi varies throughout the country; in some places, boys are kept for sexual purposes only. In other areas they are used for showing off power and money, and in some cases the boys are not directly sexually abused but are subjected to touching and other forms of sexual harassment.[17]

Boys kept for bacha bazi are also used as bodyguards, house servants, apprentices, or waiters. Most are between 10 and 18 years of age and are from poor families or do not have guardians. The AIHRC reports that in most cases "the main motive for Bachabazi [*sic*] is sexual abuse." The AIHRC report also states, "bacabazi [*sic*] is considered as a kind of trafficking in persons."[18]

United Nations and GIRoA Efforts to Address Children and Armed Conflict Violations

In 2005, under Resolution 1612, the UN Security Council established a monitoring and reporting mechanism on grave violations against children in armed conflict, which included sexual violence against children.[19] According to a UN report on children and armed conflict (CAAC), President Hamid Karzai of Afghanistan supported and endorsed monitoring and reporting on grave violations and abuses committed against children in July 2008.[20] The UN also reported that on July 18, 2010, the Government of the Islamic Republic of Afghanistan (GIRoA) launched a government steering committee to develop an action plan to prevent the recruitment and use of children in the ANDSF.[21] On November 30, 2010, the steering committee approved the proposed action plan, which included an annex addressing the prevention of sexual violence against children.

17 "The Causes and Consequences of Bachabazi in Afghanistan," 1393/2014, AIHRC at p. 24.

18 Ibid at p. 32.

19 The UN defines the six grave violations as: killing or maiming of children, recruitment or use of children by armed forces and groups, sexual violence against children, attacks against schools or hospitals, abduction of children, and denial of humanitarian access for children.

20 Report of the Secretary-General on children and armed conflict in Afghanistan, November 10, 2008, at p. 2.

21 Report of the Secretary-General on children and armed conflict in Afghanistan, February 3, 2011, at p. 15.

According to the action plan, GIRoA is responsible for developing and adopting a national strategy to address rape and other forms of sexual violence of children. In March 2012, GIRoA issued a report on its implementation of the action plan, which stated that they lacked a national strategy to address child sexual abuse.[22] In 2013, the UN country task force, along with GIRoA, developed a plan designed to complement and expedite the implementation of the action plan, called the "road map to compliance." On July 23, 2014, the inter-ministerial steering committee on CAAC officially endorsed the road map toward compliance.

To support the enforcement of the action plan, GIRoA ministries took measures to prohibit the recruitment and abuse of children in the ANDSF. On April 24, 2010, the MoI issued an executive order that prohibited child recruitment by Afghan National Police (ANP). On September 27, 2011, the MoD issued a decree to prohibit the recruitment of children in the Afghan National Army (ANA). According to UN reports, both Afghan parliamentary chambers approved a draft presidential decree criminalizing the recruitment of underage children by the ANDSF, which Afghan President, Ashraf Ghani, endorsed on February 2, 2015.[23]

In a report in May 2016, a UN Security Council working group on CAAC acknowledged that GIRoA had made progress in implementing the action plan, including measures to address sexual abuse of children. The working group condemned child sexual abuse in Afghanistan, and it called on the ANDSF, the Taliban, and other parties to take immediate and specific measures to end and prevent the perpetration of rape and other child sexual abuse activities, including the practice of bacha bazi.

Leahy Law

The term "Leahy Law" refers to two statutory provisions prohibiting the U.S. Government from using funds for assistance to units of foreign security forces that have committed GVHR.[24] Under section 502B (d) of the Foreign Assistance Act of 1961, as amended, "gross violation of human rights" includes torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges and trial; causing the disappearance of persons by the abduction and clandestine detention of those persons; and other flagrant denial of the right to life, liberty, or the security of a person.

[22] "Report of Afghanistan Islamic Republic to Children Action Plan and Armed Disputes," March 2012.

[23] A/69/801*-S/2015/151 United Nations General Assembly Security Council "The situation in Afghanistan and its implications for international peace and security" p. 8, February 27, 2015; S/2015/336 United Nations Security Council "Report of the Secretary-General on children and armed conflict in Afghanistan" p. 16, May 15, 2015.

[24] The limitations on the use of DoD funds is codified in Title 10, United States Code, and Section 362. The limitation on assistance to security forces is codified in Title 22, United States Code, Section 2378d.

Various international declarations and conventions that relate to the protection of civilians during times of armed conflict prohibit rape and other forms of sexual violence.[25] DoD officials, including representatives from the OUSD(P) and the Office of General Council (OGC), stated that the DoD has determined that child sexual abuse by ANDSF personnel in certain circumstances could be considered a GVHR.[26] Specifically, instances in which the member of the ANDSF sexually abused a child while acting "under the color of law"—meaning that the unit or members of the unit must be acting, or appear to be acting, in their capacity as a security force—could rise to the level of a GVHR. Whether an action took place under color of law is a fact-specific inquiry. Actions under color of law can include actions taken by a unit or member of a unit that are beyond the bounds of the unit's lawful authority as well as actions taken while "off duty" when a unit or member of a unit is acting or appears to be acting in the capacity as a security force. Any reference to GVHR in this report includes instances of child sexual abuse by ANDSF personnel that were committed under the color of law.

In the FY 1999 DoD Appropriations Act, Congress enacted prohibitions against the use of DoD funds for any training program for security forces of a foreign country if the Secretary of Defense received credible information that a member of such forces had committed a GVHR.[27] Congress routinely included such prohibitions in subsequent appropriation acts. In 2014, Congress expanded its previous prohibitions when it enacted title 10, United States Code, section 2249e (10 U.S.C. § 2249e). In 2016, Congress amended and transferred 10 U.S.C. § 2249e to 10 U.S.C. § 362.[28] We refer to the statute in the remainder of this report either by the term "DoD Leahy Law," or by its current citation, 10 U.S.C. § 362.

Since its enactment in 2014, the DoD Leahy Law has provided that no funds made available to the DoD "may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights." Under this law, if the Secretary of Defense determines that there is credible information that a unit has committed a GVHR, then that unit becomes ineligible to receive support from the DoD with any appropriated funds.

---

[25] See, for example, Article 27, Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1997, prohibiting rape; Rome Statute of the International Criminal Court, July 17, 1998, classifying rape, sexual slavery, and other forms of sexual violence as, depending on the circumstances, crimes against humanity, war crimes, or both.

[26] Briefing provided to the DoD OIG team and SIGAR representatives on March 10, 2016, titled "The DoD Leahy Law and ASFF."

[27] Department of Defense Appropriations Act, P.L. 105-262, 112 Stat. 2335, October 17, 1998.

[28] P.L. 114-328, Division A, Title XII, Subtitle E, Section 1241(1), 130 Stat. 2509, December 23, 2016.

However, the DoD Leahy Law provides two exceptions to the general prohibition against supporting a unit that has committed a GVHR. The DoD may continue to provide support to a unit accused of GVHR if the Secretary of Defense, after consultation with the Secretary of State, determines:

- the government of the country of which the unit is a part has taken all necessary corrective steps to address the alleged GVHR;[29] or
- the equipment or other assistance to be provided is necessary to assist in disaster-relief operations or other humanitarian or national-security emergencies.

The DoD Leahy Law also provides that the Secretary of Defense, after consulting with the Secretary of State, may waive the prohibitions against funding training, assistance, or other equipment if the Secretary of Defense determines that such a waiver is required by extraordinary circumstances.[30] The Secretary of Defense has 15 days to report to Congress on the reasons for granting the waiver, including a description of the extraordinary circumstances, the purpose of the training program, assistance, or equipment being funded, the role of U.S. Forces, and the nature of the human-rights abuses.

DoD-DOS Remediation Policy Regarding Gross Violations of Human Rights

The DoD Leahy Law authorizes the Secretary of Defense to continue funding a unit of a foreign security force which would normally be prohibited from receiving funding under the DoD Leahy Law if, after consulting with the Secretary of State, the Secretary of Defense determines that the government of the country has taken "all necessary corrective steps" to remediate the GVHR.[31] Congress previously had authorized such an exception when the DoD Leahy Law funding prohibition applied only to DoD training programs.[32] However, Congress has not defined the term "all necessary corrective steps."

---

[29] This exception is also referred to as remediation and is discussed in more detail in the following section.

[30] Congress has not defined "extraordinary circumstances" in this public law. Administrations have granted Leahy Law waivers based on national security interests, which could be determined by threat projections, intelligence, and other matters. See, for example, National Security Interest Determination and Waiver relating to Egypt, 73 Fed. Reg. 55 (73 FR 15041, March 20, 2008); National Security Interest Determination and Waiver Relating to Honduras, 64 Fed. Reg. 60 (64 FR 15197, March 30, 1999).

[31] 10 U.S.C. §362. See, also, Secretary of Defense Memorandum, "Additional Guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the 'DoD Leahy law') and New or Fundamentally Different Units," February 10, 2015.

[32] See, for example, Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10, Section 8058(c), 125 Stat. 38, April 15, 2011.

In 2015, the DoD and the DOS adopted a joint policy, "Joint Department of Defense and Department of State Policy on Remediation and Resumption of Assistance Under the Leahy Laws," which describes the steps required for the DoD to declare a unit of a foreign security force eligible for DoD-funded and DOS-funded assistance when there is credible information that the unit committed a GVHR. According to the policy, "When both Departments determine there is credible information that a unit has committed a GVHR, and a request is made for that unit to receive DoD-funded or DOS-funded assistance, the Departments will begin the process of assessing whether the partner nation is taking or has taken appropriate remediation measures." The determination focuses on "three primary components of the remediation process:

(1) investigation;

(2) as appropriate, judicial or administrative adjudication; and

(3) as appropriate, sentencing or comparable administrative actions."

The DoD and the DOS are responsible for assessing each of the above factors in accordance with their own procedures. According to the "DoD Procedures for Resumption of Assistance Under the DoD Leahy Law," after the Senior Defense Official in country submits a request addressing how the foreign government has taken or is taking appropriate remediation measures through the relevant Combatant Command for endorsement to the Joint Staff, the Office of the Under Secretary of Defense for Policy/Stability and Humanitarian Affairs will convene a Remediation Review Panel (RRP), including DoD and DOS officials, within two weeks of receiving that request.[33, 34]

In cases where the RRP reaches a consensus, the Office of the Under Secretary of Defense for Policy/Stability and Humanitarian Affairs prepares an action memo to the Under Secretary of Defense for Policy (USD(P)), stating that appropriate remediation has taken place, or that the unit does not meet the standard for remediation. In cases in which the RRP does not reach consensus, but the DoD believes that the partner nation has taken or is taking appropriate remediation measures, a Senior Remediation Review Panel (SRRP) convenes.[35] If the SRRP does not reach consensus about the remediation measures, the issue is elevated to the

[33] This document is an attachment to a February 2015 memorandum from the Secretary of Defense, "Additional guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the 'DoD Leahy law') and New or Fundamentally Different Units."

[34] The RRP is composed of the following: "O-6/GS-15/FSO-1 members from the following offices or bureaus: OSD-P/Special Operations and Low Intensity Conflict (SOLIC), OSD-Policy Regional Office, Joint Staff (Deputy Directorate-Global Policy and Partnerships (DD-GPP)), DoD Office of General Counsel, State Bureau of Democracy, Human Rights and Labor (DRL), State Regional Bureau, State Functional-Bureau, and the State Office of the Legal Advisor."

[35] The SRRP is composed of "DASD-level members from the following offices or bureaus: OSD-P/SOLIC, Joint Staff (DD-GPP), and OSD-P Regional Office, State DRL, State Regional Bureau, and State Functional Bureau."

Assistant Secretary level, the Under Secretary level, or both for resolution. The DoD procedures state that, if there is no resolution, the OSD(P), in conjunction with the Joint Staff, will decide whether to recommend to the Secretary of Defense that the unit is eligible to receive DoD-funded assistance, which recommendation also would include the views of the DOS. If the Secretary of Defense determines that a unit is eligible to receive DoD-funded assistance, the Office of the Under Secretary of Defense for Policy/Stability and Humanitarian Affairs will notify Congress within 15 days of the determination.

We confirmed at least three instances of the use of the "all necessary corrective steps" exception. One USD(P) congressional notification discussed two Afghan units approved for remediation. One of the incidents discussed in the notification occurred on August 4, 2014, and involved a group of Afghan soldiers who committed an extra-judicial killing of a civilian following a cordon and search operation in the vicinity of Charkh District, Logar Province. The General Staff of the MoD conducted an initial investigation and ultimately ordered the arrest of seven individuals. The accused were tried in the Afghan 203rd Corps Court of Primary Decision. Five of the seven individuals were found guilty of the death of a civilian due to assault and battery and received between 16 and 18 years of confinement. The other two individuals were found guilty of assault and battery and violating military order, respectively, and were sentenced to 1-year confinement each. Five individuals appealed to the Court of Military Appeals and their convictions were upheld by that court. Subsequently, the Supreme Court of Afghanistan upheld the convictions and sentences for the five individuals.

The second incident, which occurred on October 11, 2014, was reported in the same congressional notification. In that incident, four soldiers planned a reconnaissance patrol in the vicinity of Andar District, Ghazni Province, with the intent of committing murder and robbery and hiding the acts by planting an improvised explosive device on the victims. An investigation was conducted by the General Staff of the MoD, which initially implicated 10 people from the unit on patrol during the incident. After further investigation by the Primary Military Attorney Office of the Special Operations Division, six of the individuals were not charged due to lack of evidence. The remaining four accused personnel were tried in the 203rd Corps Court of Primary Decision and on December 18, 2014, were found guilty of intentional murder of three victims. They were each sentenced to death

and ordered to pay for misuse of ammunition. The Supreme Court of Afghanistan upheld the convictions and sentences for all four individuals. The cases were pending final approval of the death sentences by the President of Afghanistan. We did not verify if the death sentences were approved.

Another USD(P) congressional notification discussed one ANDSF unit that was approved for remediation. The alleged incident took place on June 1, 2015, and involved the ANA Special Operations Command commandos in Deh Rawud District of Uruzgan Province. During a search and clearance operation, three ANA Special Operations Command soldiers found two noncommissioned officers (NCOs) attempting to sexually assault a girl. Additionally, one of the NCOs shot and killed the family's donkey to further intimidate the family. The congressional notification states that the USD(P) determined that GIRoA took all necessary corrective steps with respect to the GVHRs implicating the unit. The report explains the corrective steps, first stating that the three ANA Special Operations Command soldiers who witnessed the incident immediately reported it to the 3rd Tolay Deputy Commander, who then reported the information to the Company Commander.[36] The report adds that, upon the unit's return to the 3rd Special Operations Kandak Headquarters, the two NCOs were investigated by the Afghan 205th Corps Counterintelligence Department.[37] Following initial investigation, the matter was referred for further action to the 205th Corps Legal Advisor's Office. The investigation determined that the two NCOs threatened and attempted to sexually assault a female minor to coerce information from the girl's mother. Proceedings in the 205th Corps Court of Primary Decision resulted in the indictment and conviction for attempted sexual assault of a minor in violation of the Afghan penal code. Additionally, one of the NCOs was also convicted of killing a donkey. Consistent with Afghan legal and judicial standards, both were sentenced to 6 years of confinement.

In all three cases the DoD used the "all necessary corrective steps" exception and thus continued to provide assistance to the units described above.

Application of the DoD Leahy Law for Assistance Funded by the Afghan Security Forces Fund

Before the 2014 expansion of the DoD Leahy Law, the DoD did not apply prohibitions to the use of funds for the provision of mentors, embedded personnel, or equipment to the ANDSF because the DoD did not consider assistance to be a "training program." As a result, the majority of DoD-funded support to Afghan defense and security forces had not been subject to the DoD Leahy Law's

[36] An Afghan tolay is equivalent to a U.S. military company sized unit.

[37] An Afghan kandak is equivalent to a U.S. battalion.

funding prohibition. However, on August 18, 2014, the Secretary of Defense issued guidance on the global application of the DoD Leahy Law, requiring that assistance funded by the Afghanistan Security Forces Fund (ASFF) be subject to the DoD Leahy Law requirements.[38, 39]

In a May 1, 2015, memorandum, "Policy Guidance on Application of the Department of Defense Leahy Law to Assistance Provided Using amounts Appropriated for the Afghanistan Security Forces Fund," the Secretary of Defense reiterated that ASFF exists for the sole purpose of providing assistance to the security forces of Afghanistan, and that it is subject to the DoD Leahy Law. An attachment to the memorandum explains that one challenge in applying the DoD Leahy Law to ASFF is that all ANDSF personnel, in some way, receive ASFF assistance, and that final expenditure of ASFF cannot be traced to a specific unit. The Secretary's memorandum also stated, "In the event a determination of credible information of a GVHR committed by ANDSF personnel is made, U.S. Forces will engage Afghan officials, to the extent practicable, to encourage investigations, and, as appropriate, prosecution." The memorandum added, "Steps will be taken to withhold ASFF or other DoD-funded assistance from a unit of the Afghan security forces for which a determination of credible information of GVHR is made."

Office of the Under Secretary of Defense for Policy

In his May 1, 2015, memorandum, the Secretary of Defense delegated authority to the USD(P), in consultation with the Joint Staff, to consider and determine the continued provision of ASFF assistance to a unit determined to be ineligible for such assistance under the DoD Leahy Law.[40] Two components of the OUSD(P) are responsible for DoD Leahy Law implementation in Afghanistan:

- The Office of the Assistant Secretary of Defense for Stability and Humanitarian Affairs is responsible for global DoD Leahy Law policy.
- The Office of the Deputy Assistant Secretary of Defense for Asian and Pacific Security Affairs, Afghanistan, Pakistan, and Central Asia (DASD APC) is specifically responsible for DoD Leahy Law implementation for Afghanistan.

Unless otherwise specifically stated, we refer to representatives of these two component offices collectively as OUSD(P) officials.

---

[38] Secretary of Defense August 18, 2014 memorandum, "Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) ("the DoD Leahy law").

[39] ASFF is a DoD authority used to provide assistance to the security forces of Afghanistan.

[40] In his August 2014 memorandum, the Secretary of Defense previously delegated authority to the USD(P), to approve and transmit to the appropriate congressional committees a report, as required by Section 8057(e), within 15 days of the exercise under the DoD Leahy law of an exception or a waiver.

The Notwithstanding Authority

Congress granted the Secretary of Defense the broad authority to forego implementation of the DoD Leahy Law, if necessary, with respect to ASFF assistance notwithstanding any other provision of law. In appropriation provisions for the ASFF, Public Law 109-13, "Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief," Congress expressly provided:

> Such funds shall be available to the Secretary of Defense, **notwithstanding any other provision of law**, for the purpose of allowing the Commander, Combined Security Transition Command–Afghanistan, or the Secretary's designee, to provide assistance, with the concurrence of the Secretary of State, to the security forces of Afghanistan, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction, and funding. (Emphasis added.)[41]

In a May 1, 2015, memorandum, the Secretary of Defense provided a limited exercise of the notwithstanding authority for current and future ASFF appropriations. (See the classified appendix, Finding C, for more information about the Secretary of Defense's limited exercise of the notwithstanding authority.)

[41] P.L. 109-13, 119 Stat. 231, 235 (May 11, 2005).

Part I

Answers to the Nine Questions


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Question 1

Laws, Regulations, and Guidance

What laws, regulations, directives, standards, or other guidance, including international law, treaties, or agreements, exist that impact DoD policy toward allegations of child sexual abuse involving ANDSF personnel; the obligation of DoD-affiliated personnel to report suspected child sexual. abuse by Afghan government officials; and DoD involvement in responding to such reports or allegations?

Child sexual abuse is a violation of both international and Afghan law. The United Nations Treaty, Convention on the Rights of the Child, Article 34, requires signatories to protect children from all forms of sexual exploitation and sexual abuse. Article 54 of the Constitution of Afghanistan says, "Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child . . . as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam."

The Penal Code of Afghanistan also restricts the practice of child sexual abuse. Article 427 states, "A person who commits adultery or pederasty shall be sentenced to long-term imprisonment."[42] Additionally, in September 2015, the President of Afghanistan declared, "The laws, culture, and religious values of the people of Afghanistan recognize sexual abuse of children as one of the severest crimes and violations of human rights."

In December 2010, the Commander, ISAF issued an Operations Plan, which included an annex titled "Combating Trafficking in Human Beings in Afghanistan." The annex identified that Afghanistan is a source, transit, and destination country for men, women, and children subjected to human trafficking. It also identified that Non-Governmental Organizations had reported a growing problem of Afghan boys, in particular, being subjected to sexual exploitation, also called bacha baazi [*sic*].[43]

The annex stated that women and girls are forced into prostitution and marriage, often to settle debts or family disputes. Also, it stated children are further exploited by insurgents for use as suicide bombers, child soldiers, and as sexual entertainment. The annex states that NATO policy takes a zero tolerance approach to human trafficking and specified that all personnel taking part in NATO led

[42] Merriam-Webster's Collegiate Dictionary defines a pederast as a lover of boys.

[43] The annex stated exploitation includes any form of sexual abuse, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

operations should receive appropriate training to make them aware of the problem of trafficking and how this modern day slave trade impacts on human rights, stability and security, as well as being informed of their own responsibilities and duties and the respective responsibilities of international organizations in this field. We discuss training on combating trafficking in persons that is provided to U.S. personnel in our response to Question 3.

We found no evidence that the information presented in the annex to the Operations Plan about the sexual exploitation of Afghan boys and forced marriage of girls was ever communicated to U.S. or NATO personnel in Afghanistan via an implementing order or other guidance that required reporting, training, or any other action, until September 2015.

In 2013, NATO ambassadors sent the NATO Secretary General a letter requesting training and other assistance to GIRoA, ANDSF personnel, and NATO personnel regarding children and armed conflict. In August 2014, ISAF headquarters developed an annex to an Operations Plan for RS personnel covering CAAC. The annex noted that the sexual violence against boys and girls had a direct impact on the safety and protection of children in Afghanistan. In July 2016, NATO announced it had appointed an RS CAAC advisor to contribute to the training of the ANDSF.[44] The CAAC advisor is working with the ANA Legal School to incorporate CAAC training into the school's human rights and law of armed conflict training for ANA recruits.

United States Forces–Afghanistan (USFOR-A) and Resolute Support Headquarters guidance, issued in September 2015, to USFOR-A and RS personnel, requires that USFOR-A and RS personnel immediately report suspected human rights violations—including suspected child sexual abuse by ANDSF in Afghanistan—through their respective chains of command. The guidance further states, "USFOR-A will support Afghan investigations and encourage GIRoA to hold those responsible accountable for their actions." A USFOR-A official explained that several years ago, when the Coalition Force strength was 100,000, the Coalition conducted investigations on GVHR allegations for GIRoA and turned over the completed investigation files to GIRoA.[45] However, Coalition personnel no longer conduct such investigations. GIRoA conducts its own investigations, and the Coalition advises on investigatory issues.

[44] NATO Warsaw Summit Communique, issued by the heads of state and government participating in the meeting of the North Atlantic Council in Warsaw, 8-9 July 2016, at statement 133.

[45] ISAF reported force strength of over 100,000 personnel from April 2010 through February 2013.

In January 2016, the Commander, Resolute Support (COMRS), issued updated guidance, stating "When Resolute Support Personnel suspect that members of the ANDSF have violated human rights, [to include sexual abuse], Resolute Support Personnel will report the information through the RS chain-of-command and to appropriate ANDSF officials." Further, in March 2016 RS released a Standard Operating Procedure 00066 UNSCR1612, "Children and Armed Conflict (CAAC)" to provide guidance on CAAC. This Standard Operating Procedure (SOP) stated, "All personnel have a responsibility to report any offences against children that are observed through TAA [train, advise, and assist] activities," including sexual violence against children.[46] According to the SOP, COMRS is required to report on CAAC to NATO headquarters.

See Appendix B for summaries of applicable laws and guidance that implement DoD policy or could affect DoD policy regarding allegations of child sexual abuse involving ANDSF personnel.

[46] "Standard Operating Procedure 00066 UNSCR1612, Children and Armed Conflict (CAAC)," March 2016.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Question 2

Guidance to Discourage Reporting

Is there, or was there, any DoD guidance, informal or otherwise, to discourage reporting by DoD-affiliated personnel?

Some media reports claimed that the DoD had enacted a policy instructing soldiers to ignore child sexual abuse.[47] Following a review of DoD Instructions, Command Policy, and Service guidance, we did not identify any guidance or policy that expressly discouraged personnel from reporting incidents of child sexual abuse. However, as explained in the following sections, DoD cultural-awareness training for U.S. personnel deploying to Afghanistan and two Human Terrain System Reports identified child sexual abuse as a culturally accepted practice in Afghanistan.

Additionally, we interviewed several current or former U.S. Service members who had served in Afghanistan, some of whom stated they had information about child sexual abuse in Afghanistan.[48] None of the individuals said that they had actually witnessed child sexual abuse. However, some stated that they had heard about the occurrence of child sexual abuse and reported this to their chains of command. In some cases, the interviewees explained that they, or someone whom they knew, were told that nothing could be done about child sexual abuse because of Afghanistan's status as a sovereign nation, that it was not a priority for the command, or that it was best to ignore the situation and to let the local police handle it. For instance, interviewees told us the following in four separate interviews:

- An interviewee indicated awareness of an Afghan commander keeping little boys for pleasure. The interviewee reported to the chain of command and had been told, "There's nothing we can do about it," "It was out of our control," "This is Afghanistan," or "It's their country."
- An interviewee verbally reported an incident involving a 14-year-old boy and a former Afghan Local Police commander to his chain of command and through situational reports (SITREPs). The interviewee added that there was an attitude of "Afghan problem, Afghan solution" when it came to the removal of police officers.

[47] *The New York Times,* "U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies," September 20, 2015; *The Daily Beast,* "Marines Trained That Rape in Afghanistan Is a 'Cultural' Issue," September 23, 2015.

[48] The DoD OIG interviewed current or former U.S. Service members, including those who were mentioned in media articles, contacted the DoD OIG with complaints, were members of the human terrain teams, and other individuals who had deployed to Afghanistan.

- An interviewee stated, "There were a couple cases where Service members brought it to commanders' attention, and they said there's nothing we can do. There's no recourse to stop them from bacha bazi. Soldiers [were] told to ignore it and drive on." The interviewee did not have direct evidence but stated that there was an "impression that the command as a whole wasn't all that concerned about bacha bazi by the ANDSF." The interviewee further stated, "The initial reaction of the staff was 'we don't really care about this, and we're not going to do anything about it.' Then, after *The New York Times* article came out, and the issue got traction, we had to pay attention to it."[49]
- An interviewee indicated that a Security Force Assistance Advisor Team course at Camp Lejeune included a simulated village with conditions advisors could expect in Afghanistan. During the simulation, students were told that if they witnessed child sexual abuse, they should let the local officials or police know and not interfere with the locals. The interviewee said that the reason given as to why not to interfere was "due to maintaining cooperation with the Afghans."

Cultural Awareness Training

The USCENTCOM outlines theater-entry training requirements for all forces deploying to the USCENTCOM area of responsibility (AOR), including Afghanistan. Cultural-awareness training is included in these requirements. However, USCENTCOM does not provide this training to Service personnel deploying to Afghanistan. To satisfy this requirement, each Service provides training to its personnel prior to deployments to Afghanistan.

The Services' cultural-awareness training products for Afghanistan vary in content but not in purpose, which is to provide general cultural awareness information to U.S. personnel concerning the customs, traditions, and commonly accepted norms in Afghanistan.

The U.S. Army and U.S. Air Force training products provide detailed information on the geography, history, government, tribes, religion, and societal norms in Afghanistan.[50] However, neither Service's training discusses child sexual abuse in Afghanistan.

[49] *The New York Times,* "U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies," September 20, 2015.

[50] The U.S. Army training is titled "Afghanistan," and the Air Force training is titled "Expeditionary Airman Field Guide Afghanistan."

The U.S. Navy training product states, in a section titled "Society and Norms," that pedophilia exists in Afghanistan, that there are reports of men having sexual relations with boys in public, and that children are trafficked as sex slaves.[51] The training documents open with a disclaimer, stating that the training is an "introduction to cultural norms and not intended to countermand or supersede current rules of engagement (RoE)." (Emphasis supplied.) The presentation adds that the information is for informational purposes only, and it advises readers to control and overcome any frustration caused by cultural differences that they may experience during their deployments. The training also advises that sailors should consult their chains of command about what they should do in specific situations where ambiguity or inconsistency exists.

The U.S. Marine Corps operational cultural-awareness guide for Afghanistan provides Marines with specific guidance on interacting with the Afghan populace, and it includes the statement that Marines "need to understand the culture, accept it without making judgments, and figure out how to work with it or around it to accomplish your mission."[52] The guide briefly introduces the topic of pedophilia in Afghanistan, states that pedophilia exists, and that Afghan men may "joke among themselves" about pedophilia. The guide tells Marines to be mentally prepared to encounter this attitude, and to "move on." However, the guide offers no specific guidance for Marines suggesting what action they should take if they encounter actual instances or allegations of pedophilia.

Human Terrain System Reports

In 2007, the U.S. Army Training and Doctrine Command implemented the Human Terrain System in Afghanistan. The Human Terrain System consisted of Human Terrain Teams (HTTs), composed of social scientists, analysts, research managers, and team leaders. The HTTs were attached to U.S. Army, U.S. Marine Corps, or Allied units with the goal of providing knowledge of the local population to military commanders to enable them to make informed decisions. The last HTT redeployed from Afghanistan in September 2014.[53] An official from OUSD(P) stated that U.S. Army Training and Doctrine Command identified that there were about 5,000 reports issued by the HTTs. U.S. Army Training and Doctrine Command searched through the HTT reports and identified that two of those reports contained information about child sexual abuse in Afghanistan.

---

[51] The U.S. Navy training is titled "Operational Cultural Awareness Training–Islamic Republic of Afghanistan."

[52] "Afghanistan Operational Culture for Deploying Personnel," May 2009. This document was in active circulation from 2009 through 2012 and can still be found online.

[53] The DoD Dictionary of Military and Associated Terms defines redeployment as "the transfer or rotation of forces and materiel to support another joint force commander's operations requirements, or to return personnel, equipment, and materiel to the home and/or demobilization stations for reintegration and/or out-processing." Page 199.

We reviewed the two HTT reports and one Red Team study written by a former HTT member about child sexual abuse in Afghanistan.[54] The first HTT report emphasizes the growing visibility of sexual abuse in Afghanistan, and it describes the sexual abuse of children as disturbingly widespread.[55] It also states that in Afghanistan many child abusers are in official government, police, or army positions, as well as other positions of power. The second HTT report, issued at the request of British forces regarding male-sexuality issues among Afghan men, was intended to "provide insight on Pashtun cultural traditions regarding male sexuality."[56] This HTT report noted anecdotes of suspected child sexual abuse by Afghan men, including members of ANDSF, and refers to boys apprenticed to older men for their sexual initiation as an openly celebrated and long-standing cultural tradition. It also mentions the practice of men of status and power, including former commanders and warlords, using boys for sexual relationships. Finally, the Red Team study stated that there were accounts of Canadian troops in Kandahar complaining about the sexual abuse of children by ANDSF personnel.[57] The report focused mainly on the cultural differences between ISAF soldiers and the Afghan soldiers they partnered with. Although these reports discuss the issue of child sexual abuse by Afghan men, none identified any related DoD policy or guidance for U.S. personnel who witness or suspect child sexual abuse by ANDSF personnel.

[54] A Red Team is defined as "[a]n organizational element comprised of trained and educated members that provide an independent capability to fully explore alternatives in plans and operations in the context of the operational environment and from the perspective of adversaries and others." Source: Department of Defense Dictionary of Military and Associated Terms, Joint Publication 1-02, November 8, 2010 (as amended through February 15, 2016), p. 205.

[55] Dr. Ian Chesley and Susan Sypko, Human Terrain System-Research Reachback Center, *Cultural Knowledge Report, Child Abuse in Afghanistan,* Tracking Number: RRC-AF4-09-0003, February 18, 2009.

[56] AnnaMaria Cardinalli, Human Terrain Team (HTT) AF-6, Research Update and Findings, Pashtun Sexuality (undated).

[57] Jeffrey Bordin, *A Crisis of Trust and Cultural Incompatibility: A Red Team Study of Mutual Perceptions of Afghan National Security Force Personnel and U.S. Soldiers in Understanding and Mitigating the Phenomena of ANSF-Committed Fratricide-Murders*, May 12, 2011.

Question 3

Training and Reporting Requirements

What training has been conducted or planned for DoD personnel on identifying and responding to alleged child sexual abuse, or the obligation to report suspected violations?

We determined that the DoD did not conduct training for personnel on identifying, responding to, or reporting instances of child sexual abuse involving ANDSF personnel before 2015. OUSD(P) officials stated the human rights training provided to U.S. personnel is Combating Trafficking in Persons (CTIP) Training and Sexual Assault Prevention Training. Additionally, U.S. personnel deploying to Afghanistan are required to complete Cultural Awareness Training, However, such training does not instruct U.S. personnel specifically to report allegations of child sexual abuse.

Command guidance since 2011 has required U.S. personnel to report human rights violations. Guidance did not specifically define child sexual abuse as a human-rights violation until September 2016. For example, in May 2015, COMRS, who is also dual-hatted as the Commander, USFOR-A (COMUSFOR-A), issued guidance to U.S. personnel, which stated, "In the event U.S. Forces personnel suspect members of the ANSF have violated the human rights of another individual, including a detainee, such personnel shall report those suspicions up the chain of command to the USFOR-A SJA [USFOR-A Staff Judge Advocate]."[58] This guidance did not explicitly identify child sexual abuse as a human-rights violation or specifically require the reporting of child sexual abuse. Moreover, the guidance did not define what is considered as a human-rights violation.

The first express command guidance including a specific requirement to report instances of child sexual abuse was issued in September 2015, after media reports surfaced with allegations from U.S. personnel who had been deployed to Afghanistan.[59] On September 20, 2015, the COMUSFOR-A issued a memorandum explaining his expectations about the reporting of suspected sexual abuse. The memorandum stated that COMUSFOR-A expected all suspected child sexual abuse to be immediately reported through the chain of command. On September 28, 2015, COMRS issued a Fragmentary Order (FRAGO) requiring all RS personnel to report "suspected human rights violations, including suspected

[58] The ANDSF was previously known as the Afghan National Security Forces (ANSF).

[59] *The New York Times,* "U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies," September 20, 2015, and Fox News, "Army kicking out decorated Green Beret who stood up for Afghan rape victim," August 21, 2015.

child sexual abuse by ANDSF, in Afghanistan," through their respective chains of command.[60] The FRAGO also directed that all RS personnel receive training about the requirements to report suspected human rights violations, including suspected child sexual abuse.

However, the guidance on the process for the transmittal of reports through the chain of command is unclear. Neither the COMUSFOR-A memorandum nor the FRAGO clearly establishes a process by which USFOR-A and RS personnel may make and process reports of suspected child sexual abuse through the chain of command. Additionally, the FRAGO does not specify what training personnel are supposed to receive about reporting allegations of child sexual abuse and other human rights violations.

In late 2015, RS LEGAD (Legal Advisor)/USFOR-A SJA personnel prepared training slides and began conducting training for personnel in Afghanistan on the mandatory reporting of suspected human rights abuses, including child sexual abuse and bacha bazi. The training slides, titled "Mandatory Reporting of Suspected Human Rights Abuses," consists of six slides composed mainly of direct quotes from previously released RS and USFOR-A guidance. (See Appendix C for the training slides.) The slides begin by highlighting the expectations discussed in the COMUSFOR-A September 20, 2015, memorandum, and they restate the requirement for all RS and USFOR-A personnel to report any suspected human-rights abuses, including suspected child sexual abuse. The slides conclude by stating, "bacha baazi [*sic*] ('boy play') is not merely a 'cultural issue'" but also a violation of Afghan and international law. The reporting process described in the training slides explains that reporting suspected violations should first flow through the chain of command, and that "unit commanders will ensure allegations are reported to COMRS and RS LEGAD/USFOR-A SJA via operational channels."

Human-Rights Training for Service Members

Officials from the OUSD(P) reported to us that DoD military, civilian, and contractor personnel are required to complete annual training on Combating Trafficking in Persons (CTIP) and Sexual Harassment/Assault Response and Prevention (SHARP), also known as Sexual Assault Prevention and Response (SAPR).[61] They explained that CTIP and SAPR training address the subject of human rights.

---

[60] Fragmentary Order (FRAGO) is defined as "[a]n abbreviated form of an operation order issued as needed after an operation order to change or modify that order or to execute a branch or sequel to that order." Source: Department of Defense Dictionary of Military and Associated Terms, Joint Publication 1-02, November 8, 2010 (as amended through February 15, 2016), p. 100.

[61] Only the U.S. Army refers to this training as SHARP; however, the U.S. Navy, U.S. Marine Corps, and U.S. Air Force all refer to the training as SAPR. We refer to the training throughout this report as SAPR training.

Department of Defense Instruction 2200.01, "Combating Trafficking in Persons (CTIP)," April 21, 2015, states, "It is DoD policy to oppose prostitution, forced labor, and any related activities contributing to the phenomenon of trafficking in persons."[62] CTIP training is an annual and pre-deployment training requirement for DoD military, civilian, and contract personnel. The training defines sex trafficking as a "commercial sex act induced by force, fraud, or coercion, or in which the person who is induced to perform such an act is under the age of 18." In this type of trafficking in persons, the sex must be commercial in nature (for example, prostitution).[63] The training does not specify whether instances of child sexual abuse, if not readily apparent to be commercial in nature, would be considered as trafficking in persons. The CTIP training explains that, if trafficking in persons is detected, then DoD personnel should not become directly involved but should report the trafficking to the appropriate authority. The CTIP training does not identify child sexual abuse as a human rights violation, and it does not discuss a requirement to report suspicions of child sexual abuse.

The DoD Sexual Assault Prevention and Response (SAPR) program has two main components. The first is sexual-assault prevention through training, and the second focuses on the victim and on doing what is necessary and appropriate to support victim recovery. However, the DoD SAPR program is applicable only to DoD personnel and their family members. A review of the SAPR program indicates that it is related to sexual assault within the DoD, and that it is unrelated to child sexual abuse in a foreign country by citizens of that country.

Cultural-Awareness Training

As stated in our response to question two, USCENTCOM requires cultural training for all forces deploying to the USCENTCOM AOR, which includes Afghanistan, and the Services provide cultural-awareness training to personnel before deployments to Afghanistan. The Services' cultural-awareness training documents do not provide express guidance directing action by a U.S. Service member to prevent, intervene to prevent, or report suspected child sexual abuse. Although the Navy and Marine Corps cultural-awareness training products briefly discuss pedophilia as a cultural norm in Afghanistan, they do not present policy or other guidance for Service members on responding to suspected pedophilia by Afghan nationals, including ANDSF personnel. (More information about cultural-awareness training is discussed in response to question 2.)

[62] 22 U.S.C. §7102(10) defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining a person for the purpose of a commercial sex act."

[63] 22 U.S.C. § 7102(4) defines a commercial sex act as "any sex act on account of which anything of value is given to or received by any person."


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Question 4

Number of Cases of Alleged Child Sexual Abuse by Afghan National Defense and Security Forces Reported to U.S. or Coalition Forces Commands

How many cases of child sexual abuse alleged against Afghan government officials have been reported to U.S. or Coalition Forces Commands, the Service Inspectors General, or the DoD Office of Inspector General? When were such reports made? What actions were taken and by whom?

We identified 16 allegations of child sexual abuse involving Afghan government officials reported to and tracked by the DoD between 2010 and 2016.[64] However, for reasons discussed in more detail below, including inconsistent procedures and an overall lack of unified guidance and clarity about which DoD office has overarching responsibility, we could not confirm that the 16 allegations represented the total number or allegations reported to U.S. or Coalition Forces in Afghanistan. The classified appendix of this report has more detailed discussion of the 16 allegations.

OUSD(P) officials told us that the DoD does not maintain a comprehensive list of all human-rights violations in Afghanistan, and that it has not created such a list from operational records. However, during the course of this evaluation, we reviewed multiple sources of information containing allegations of child sexual abuse against members of the ANDSF to attempt to determine the number of reported cases.

[64] As noted in the background section of this report, the DoD Leahy Law only applies to the U.S. Government funded assistance to units of foreign security forces that have committed GVHR. Additionally, the 16 allegations of child sexual abuse identified are not all considered GVHR.

Internal DoD Tracking Documents

Officials from the OUSD(P), USFOR-A, and a USFOR-A subordinate command stated that they used internal tracking systems to record and track allegations of GVHRs, sexual assault, and law of armed conflict violations.[65] We received copies of the following trackers:

- **OUSD(P) Afghanistan GVHR Tracker**: An OUSD(P) employee created a spreadsheet to track GVHR allegations in Afghanistan. As explained below, this spreadsheet later became the official tracking device of the OUSD(P) because there was no other database or system available for tracking GVHRs. As of August 2016, this tracker listed a total of 75 allegations, seven of which were allegations of child sexual abuse. The OUSD(P) Afghanistan GVHR Tracker was replaced by the Official Afghanistan GVHR Tracker.
- **USFOR-A GVHR Tracker**: USFOR-A SJA/RS LEGAD maintained this spreadsheet to document GVHR allegations in Afghanistan. As of August 2016, a total of 25 allegations were listed on this tracker, five of which were allegations of child sexual abuse. The Official Afghanistan GVHR Tracker replaced this tracker.
- **USFOR-A Sexual Assault Tracker**: USFOR-A SJA/RS LEGAD maintained this spreadsheet to document reports of sexual-assault allegations by contractors, Afghan citizens, as well as ANDSF personnel in Afghanistan. As of December 2016, a total of 21 allegations were listed on this tracker, 10 of which were allegations of ANDSF personnel engaging in acts of child sexual abuse. USFOR-A reports that they no longer maintains this tracker.
- **Train, Advise Assist Command–South Tracker**: An advisor in Train, Advise Assist Command–South created and used this spreadsheet to track investigations involving the Afghan 205th Corps and Kandahar Police Headquarters. This spreadsheet also included criminal allegations and was not limited to sexual-abuse or GVHR allegations. As of September 2016, a total of 23 allegations were listed on this tracker, 11 of which were labeled as GVHR or extrajudicial killings. One of the 11 GVHR allegations also involved an allegation of child sexual abuse.

[65] Each tracker consisted of a spreadsheet containing various data that was initially created by personnel within the respective offices maintaining the data.

- **Official Afghanistan GVHR Tracker**: In November 2016, an official from the OUSD(P) said that an updated version of the OUSD(P) Afghanistan GVHR Tracker had been designated as the official tracker for GVHRs in Afghanistan. This tracker replaced both the OUSD(P) Afghanistan GVHR Tracker and USFOR-A GVHR Tracker, listed above. As of November 2016, a total of 96 allegations of GVHR were listed on this tracker, nine of which were allegations of child sexual abuse. This tracker was in use as of June 2017.
- **USCENTCOM Judge Advocate (CCJA) Tracker**: We obtained a spreadsheet from USCENTCOM that is an extract from a database that USCENTCOM uses to record alleged Law of Armed Conflict violations throughout the USCENTCOM AOR. An official from CCJA explained that this was not a GVHR database, but GVHR allegations were extracted from the database and provided to the OUSD(P) in July or August 2016. The spreadsheet with extracted data was provided to us on November 18, 2016. As of June 2016, this tracker listed a total of 88 GVHR allegations, 7 of which were allegations of child sexual abuse. This database was in use as of November 2016 when we spoke with USCENTCOM personnel.

Data Analysis

The DoD OIG created the following chart to depict the organizations tracking each of the 16 allegations of child sexual abuse by ANDSF. The chart shows those allegations that are tracked on one or more trackers. The allegations on the trackers are not consistent. As noted above, the classified appendix contains a description of the alleged incidents listed on the chart.

Figure 1. Consolidated Document of DoD Provided Sources Depicting Allegations of Child Sexual Abuse

Allegation*	CCJA Tracker	OUSD-P GVHR Tracker	USFOR-A GVHR Tracker	TAAC South Unofficial Tracker	Official GVHR Tracker	USFOR-A Sexual Assault Tracker
Date of Tracker →	June 2016	August 2016	August 2016	September 2016	November 2016	December 2016
1	X	X	–	–	X	–
2	X	X	–	–	X	–
3	–	X	X	–	X	X
4	–	X	X	–	X	X
5	–	–	–	–	X	–
6	X	X	X	–	X	X
7	X	X	X	–	X	X
8	X	X	X	–	X	X
9	–	–	–	–	X	–
10	X	–	–	–	–	–
11	X	–	–	–	–	–
12	–	–	–	–	–	X
13	–	–	–	–	–	X
14	–	–	–	–	–	X
15	–	–	–	X	–	X
16	–	–	–	–	–	X
Totals	**7**	**7**	**5**	**1**	**9**	**10**

* See classified appendix for details and description of the 16 allegations.

Source: DoD OIG

Other Sources of Information

Historical Records

OUSD(P) officials also stated that after September 2015, they were specifically tasked with identifying allegations of GVHRs in Afghanistan. In response, OUSD(P) officials requested that USCENTCOM and United States Special Operations Command (USSOCOM) search their historical records' databases and collect reports from U.S. Forces related to sexual abuse by ANSDF. The OUSD(P) provided the DoD OIG with a copy of the search results of the historical records from USCENTCOM and USSOCOM spreadsheets. We reviewed each command's spreadsheets of historical records, and identified more than 300 entries containing excerpts of reports describing allegations of child sexual abuse by ANDSF personnel, dated between 2005 and 2015. U.S. personnel and Coalition Forces in Afghanistan reported these allegations to various commands in Afghanistan.

The 300-plus entries indicate that between 2005 and 2015 some U.S. Forces were aware of incidents related to child sexual abuse and discussed allegations with GIRoA officials in key-leader engagements or reported these allegations to their chains of command. However, we cannot attest to the completeness of the data or that the search captured all reported incidents of child sexual abuse. The 300-plus entries include many duplicate reports of alleged child sexual abuse containing varying degrees of detail, often insufficient to identify alleged perpetrators, victims, or ANDSF elements associated with them. The entries also contain reports that do not provide specific details concerning alleged instances of child sexual abuse. For example, we identified at least 63 "Atmospheric" reports mentioning allegations of child sexual abuse committed by ANDSF but they do not all provide identifying information, such as the names of victims, perpetrators, or units involved.[66] As a result, we could not determine the exact number of incidents reported.

[66] The DoD had an Atmospherics reporting program in which Afghan employees or contractors documented conversations they overheard other Afghan nationals discuss in public. These reports were consolidated and submitted to ISAF officials.

Additionally, the specific data-search terms used by USCENTCOM and USSOCOM did not ensure that all reports of child sexual abuse would be included. For example, while USCENTCOM included the phrase "rape" in the search terms, USSOCOM did not. However, at least 8 of these reports within the USCENTCOM and USSOCOM historical records matched the 16 allegations of child sexual abuse currently being tracked by the DoD.

See Question 5 for more information on GIRoA officials' actions as reported by U.S. Forces.

NATO Database

An OUSD(P) official identified that during ISAF operations, there was a NATO database created and used by ISAF personnel that could have contained allegations of child sexual abuse by ANDSF personnel. However, we could not obtain access to that NATO-maintained database. An OUSD(P) official stated that DoD officials contacted NATO Joint Force Command in Brunssum, the Netherlands, but were told the database could not be located. Therefore, we could not determine whether it contained additional allegations of child sexual abuse committed by ANDSF personnel.

Offices of Inspectors General Records

The Military Department Inspectors General reported that they had not received any reports of allegations of child sexual abuse committed by ANDSF personnel.

In August 2013, a U.S. Service member made a whistleblower retaliation complaint to the DoD Hotline. He also stated that a specific District Chief of Police (DCOP) in Afghanistan engaged in serial kidnapping and rape of children. In September 2013, the DoD OIG received a congressional letter requesting an investigation into the whistleblower retaliation complaint. The letter referenced a green-on-blue incident in which three U.S. Service members were killed in Helmand Province in August 2012 that involved the same DCOP.[67] The letter also posed a list of questions for the DoD OIG to answer, including whether the DCOP had committed sex crimes against juveniles.

The DoD OIG referred this whistleblower retaliation complaint and congressional letter to relevant Service Inspectors General. In response to these referrals, a Service and criminal investigative organization Inspector General provided related investigative reports. The criminal investigative organization IG response stated that their investigation disclosed no additional evidence of participation in the commission of sex crimes against juveniles, the commission of sexual assaults

[67] Green-on-blue incidents involve neutral forces (in this case, Afghans) attacking friendly forces.

on U.S. DoD facilities, or the use of U.S. Government funds to procure victims by the DCOP. The Service IG response included an additional report that contained information from an interview of the victims' Team Leader, who stated that at no time was there any human trafficking or sexual abuse of children, nor did any U.S. Service member ever make such an allegation against the DCOP.

In June 2014, the DoD OIG replied to the first congressional letter, stating there had been no reports that the DCOP was involved in any type of criminal activity. In November 2014, the DoD OIG met with a second Member of Congress who posed additional related questions. In February 2015, the DoD OIG replied to that Member of Congress with the specific information from the reports mentioned above. Before and after the announcement of this evaluation, the DoD OIG received multiple hotline contacts from related sources from August 2013 through February 2016 about matters related to the same green-on-blue incident and DCOP.

The DoD OIG received a congressional inquiry and the DoD Hotline also received several contacts about a proposed military involuntary separation of a U.S. soldier who had assaulted an ANDSF member accused of sexually abusing a young boy. The proposed action against the soldier ultimately was resolved in his favor.

The DoD OIG received another report from a Service member in 2016 after the issuance of the announcement letter for this evaluation, alleging child sexual abuse by ANDSF personnel. DoD OIG personnel interviewed the complainant, who did not provide enough details to warrant forwarding the complaint to USFOR-A or the OUSD(P) for further review. For example, the complainant did not know the date of the incident, the name of the alleged perpetrator or the ANDSF unit. He had not witnessed child sexual abuse occurring but was told by another ANDSF officer that the perpetrator kept boys for pleasure. We requested more detailed information, and the complainant said he would reply. As of October 2017, the complainant has not provided any additional information.

Records of Coalition Partners

In 2008, the Canadian Chief of Defence Staff ordered a Board of Inquiry (BOI) following media reports that a Canadian soldier had witnessed child sexual abuse by a member of the ANDSF but did not intervene. A media article also reported that Canadian soldiers were ordered to ignore such behavior by ANDSF.[68]

[68] *Toronto Star,* "Don't Look, Don't Tell, Troops Told," June 16, 2008.

A redacted copy of the BOI report, made public in 2016 by the Canadian Defence Forces, noted instances in which Canadian soldiers reported to their chains of command alleged or observed incidents of sexual activity between ANDSF personnel and children. The BOI found that there were instances in which Canadian forces stated that they had witnessed or heard of child sexual abuse by ANDSF personnel. However, the report did not find any evidence that such an instance had been reported up the Canadian chain of command in Afghanistan (to either Joint Task Force–Afghanistan or Canadian Expeditionary Forces Command). The BOI also concluded that no Canadian commander had ever ordered troops under their command to ignore sexual assault by ANDSF personnel.

Actions Taken in Response to Allegations of Child Sexual Abuse

Classified Appendix, Answer to Questions 4 and 5, describes all the information identified (including actions taken in response to the allegations) about each of the 16 allegations tracked by the DoD as of November 2016.

Question 5

Number of Cases of Alleged Child Sexual Abuse by Afghan National Defense and Security Forces Reported by DOD Personnel to Afghan Officials

How many cases of alleged child sexual abuse have been reported to the Afghan government by DoD-affiliated personnel? When were such reports made? What knowledge does the DoD have of action taken by the Afghan government?

We determined that USFOR-A officials reported 11 of the 16 allegations previously discussed to Afghan government officials between 2010 and 2016. However, as stated in our response to Question 4, we could not obtain access to the NATO-maintained database that had been created during ISAF's operations in Afghanistan. Therefore, we could not determine whether it contained additional allegations of child sexual abuse committed by ANDSF personnel or any related reporting of such allegations to Afghan government officials. (See the classified appendix for additional information about the allegations.)

OUSD(P) officials told us that USFOR-A officials had reported nine allegations of child sexual abuse to Afghan government officials since October 2015. In his role as the COMRS, the COMUSFOR-A issued separate letters to the MoD and MoI ministers on October 13, 2015, reporting eight allegations of human-rights violations involving child sexual abuse by ANDSF personnel.[69] Four allegations involved MoD army personnel, and four allegations involved MoI police personnel. The letters stated that the allegations had been "made to NATO or U.S. personnel since October 2009."[70] Each letter requested the respective ministry to investigate the allegations, take appropriate actions, and designate a point of contact to provide updates on their investigations.

GIRoA officials responded about one of the reported cases and stated that they had arrested, tried, and sentenced the perpetrators to 6 years in prison. See the classified appendix for more information on the other seven allegations from the letters COMRS sent to the MoD and MoI ministers.

[69] The letters contained eight of the nine total allegations that the OUSD(P) stated that the USFOR-A had reported to Afghan government officials.

[70] Despite stating that the allegations were made since October 2009, the letters listed the date on which each allegation was made and identified that they were made from March 2010 through October 2015.

OUSD(P) officials stated that EF 3 advisors reported the ninth allegation to the MoI on January 19, 2016. The report included information about an alleged rape of a young girl, which was reported on an Afghan news network. The MoI on February 21, 2016, provided EF 3 advisors with information on the investigation, which stated that the allegation of sexual assault was false. (See the classified appendix for more information.)

In addition to the nine allegations discussed above, our review of the Official Afghanistan GVHR Tracker and the CCJA Tracker identified two additional allegations that had been shared with GIRoA officials. (See the classified appendix for more information.)

Historical Records

As mentioned above, the OUSD(P) provided the DoD OIG with historical records of reports made by U.S. personnel in Afghanistan and maintained by USCENTCOM and USSOCOM, dated from 2005 through 2015. We reviewed these records, which included reports documenting meetings between U.S. personnel and their GIRoA counterparts regarding their response to allegations of child sexual abuse by ANDSF officials. In at least 11 reports, GIRoA officials informed U.S. Forces that they had investigated arrested, or imprisoned ANDSF officials accused of sexually abusing children. In other cases, GIRoA officials determined that the allegations were not credible. The information in the USCENTCOM and USSOCOM historical records did not include information on the final results for all allegations. As a result, we could not verify what actions, if any, were taken in those cases.

Questions 6 and 7

Legal Authority to Intervene and the Use of Force

What legal authority do U.S. Forces in Afghanistan have to intervene in cases where they observe or suspect child sexual abuse by ANDSF personnel?

Are U.S. Forces authorized to use force to stop instances where they witness child sexual abuse by ANDSF personnel?

OUSD(P) officials stated that "while U.S. personnel are in Afghanistan, their conduct and authority is defined by their orders, the rules of engagement, the law of war, and our agreements with the Afghan government." They further stated that U.S. Forces who witness an act of child sexual abuse "may intervene as legally appropriate, but they are not obligated to do so."[71]

Consistent with the DoD law of war program and the various bilateral and international agreements we discuss in more detail below, U.S. Forces are not prohibited from intervening and using reasonable force as may be necessary to prevent or stop observed sexual abuse against a child by ANDSF personnel.

Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, "Standing Rules of Engagement for the Use of Force for U.S. Forces" (SROE), states that unit commanders retain the rights and obligations to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. The SROE also authorizes military members to exercise individual self-defense, unless directed otherwise by a unit commander, in response to a hostile act or demonstrated hostile intent. Finally, the SROE requires unit commanders at all levels to ensure that personnel within their units understand and are trained on when and how to use force in self-defense.[72] For further information and discussion on rules of engagement, see the classified appendix answer to Questions 6 and 7.

The United States began a steady increase in its military presence in Afghanistan in 2002-2003. In 2003, NATO assumed control of ISAF operations in Afghanistan. ISAF personnel engaged in military operations pursuant to the 2002 Military Technical Agreement (MTA) between ISAF and the Interim Administration

[71] Our discussion focuses on the principle of defense of another and is not intended to address U.S. Forces' actions under existing rules of engagement in the context of combat actions against enemy forces or combatants.

[72] The Standing Rules of Engagement establish fundamental policies and procedures governing actions to be taken by U.S. commanders and their forces during military operations. Commanders are expressly authorized to establish supplemental rules of engagement to meet mission-specific requirements.

of Afghanistan (Interim Administration).[73] U.S. Forces who were engaged in operations strictly under U.S. operational control acted pursuant to a 2003 diplomatic agreement between the U.S. and the Interim Administration. The agreement was reached through the exchange of diplomatic notes between representatives of the Embassy of the United States and the Transitional Islamic State of Afghanistan.[74]

From 2003 to 2012, U.S. Forces engaged in operations pursuant to the diplomatic agreement and standing rules of engagement. In 2012, GIRoA entered into a bilateral strategic partnership agreement with the United States. In 2014, GIRoA and NATO entered into the "Agreement Between the North Atlantic Treaty Organization and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-led Activities in Afghanistan." GIRoA also entered into the "Security and Defense Cooperation Agreement (SDCA) Between the Islamic Republic of Afghanistan and the United States of America."

Each of the foregoing agreements afforded the United States jurisdiction and control over all of its personnel, including military personnel, DoD civilians, and contractors. We discuss these agreements in more detail below.

Beginning in 2002, ISAF engaged in military operations under the MTA between ISAF and the Interim Administration. Under the MTA, the Interim Administration had responsibility for the provision of security and law and order. The MTA required ISAF personnel to respect the laws and culture of Afghanistan, and required the Interim Administration to respect internationally recognized human rights and fundamental freedoms. The MTA also vested exclusive jurisdiction over criminal matters involving ISAF personnel to their respective national elements. The MTA did not prohibit ISAF personnel from detaining, arresting, or otherwise imprisoning Afghans or other nationalities in connection with ISAF operations in the country.

The 2003 diplomatic agreement afforded U.S. military and civilian personnel the status equivalent to administrative and technical staff of the Embassy of the United States, pursuant to the Vienna Convention on Diplomatic Relations of 1961. This status includes diplomatic privileges and immunities, such as personal inviolability, immunity from the criminal jurisdiction of the host country, and immunity from civil jurisdiction in connection with the performance of their

[73] The Interim Administration of Afghanistan was the internationally recognized governing entity of Afghanistan prior to the 2003 adoption of the new constitution for the Government of the Islamic Republic of Afghanistan.

[74] Diplomatic Note No. 202, Embassy of the United States of America, Kabul, September 26, 2002; Document No. 93, Transitional Islamic State of Afghanistan, May 28, 2003.

official duties. Additionally, the parties agreed to waive all claims against each other for damage, loss, or destruction of property, or for death or injury to any military or civilian personnel of the armed forces of either party arising out of activities in Afghanistan. The diplomatic agreement also provided the United States with exclusive jurisdiction and disciplinary control over U.S. Forces in Afghanistan.

In 2012, the United States and GIRoA entered into a strategic partnership agreement identifying each government's responsibilities concerning operations in Afghanistan. Specifically, the agreement authorized U.S. Forces to continue military operations under existing frameworks, including the 2003 diplomatic agreement. Accordingly, U.S. Forces retained their various diplomatic privileges and immunities, including immunity from criminal prosecution by GIRoA.

On September 30, 2014, GIRoA entered into a Status of Forces Agreement (SOFA) with NATO and the SDCA with the United States. The SOFA and the SDCA each provide for the respective rights, duties, and obligations of GIRoA, NATO Forces, and U.S. Forces. Each agreement addresses the presence in Afghanistan of NATO or U.S. Forces; provides authorization for their activities in a training, advising, and assistance mission; and defines the terms and conditions describing that presence. NATO and U.S. Forces' respective authorities under the agreements are granted without prejudice to Afghan sovereignty over its territory.

NATO and U.S. Forces have authority under the SOFA and the SDCA to exercise all rights and authorities on designated agreed facilities and areas as are necessary for their use, operation, defense, or control.[75] Additionally, such forces may conduct necessary force protection activities at and near bases in Afghanistan, with full respect for Afghan sovereignty, and with full regard for the safety and security of the Afghan people. The SOFA and the SDCA both provide that Afghan law enforcement personnel enforce Afghan law and order. Neither NATO nor U.S. Forces have a role in enforcing the laws of Afghanistan. The SOFA and the SDCA prohibit NATO or U.S. Forces from arresting or imprisoning Afghans and from maintaining or operating detention facilities in Afghanistan. However, neither agreement prohibits NATO or U.S. Forces from detaining an Afghan national for delivery over to GIRoA law enforcement officials in connection with an alleged crime.[76]

[75] The designated facilities and areas are identical under both agreements.

[76] We did not evaluate or address circumstances under which U.S. and Afghan authorities might dispute whether the detention of an Afghan national for delivery to GIRoA authorities constitutes an improper arrest or imprisonment under the SOFA or the SDCA.

DoD Directive 2311.01E, "DoD Law of War Program," requires members of DoD components to comply with the law of war during all armed conflicts and in all other military operations. The law of war program is applicable to U.S. Forces assigned in Afghanistan, as the United States has been engaged in military operations there since October 2001. The law of war program is based on international law, including treaties to which the United States is a party, and customary international law. International conventions on the protection of civilians in time of war and on the rights of children require nation states to protect children from physical violence, abuse, and exploitation, including sexual abuse and exploitation. The Geneva Conventions and its Additional Protocols prohibit sexual assault against civilian persons and other forms of violence to their life, health, or physical or mental well-being.[77]

Afghanistan is a party to the Geneva Conventions, the Additional Protocols, and the United Nations Convention on the Rights of the Child. Accordingly, members of the ANDSF have an obligation to protect children from sexual abuse and exploitation. Additionally, if a member of the ANDSF sexually assaulted a child, this act would be a crime under Afghan law and, depending on the circumstances, could constitute an indecent assault and inhuman, degrading treatment under international law. If a member of the U.S. Forces observed the sexual assault, nothing in the law of war or under international law would prohibit the member from intervening to stop the assault.

Under the above agreements and consistent with the U.S. law of war program, U.S. Forces are not prohibited from intervening and using reasonable force as may be necessary to prevent or stop an observed sexual assault against a child by an ANDSF member—or by any person. However, such personnel could be subject to possible allegations of criminal misconduct (e.g., assault) resulting from the use of force during the intervention. If this were to occur, GIRoA would not have criminal jurisdiction over the U.S. service member pursuant to the SOFA or SDCA.[78] Instead, U.S. authorities would have jurisdiction concerning any such claim of criminal wrongdoing.

[77] Although the United States is not a party to the 1977 Additional Protocols I and II to the Geneva Conventions, U.S. Forces serving in Afghanistan could rely on the Additional Protocols under the Law of War to support intervening to stop an act of child sexual abuse in that the Additional Protocols represent customary international law norms, and GIRoA is a signatory to each.

[78] GIRoA retained jurisdiction over contractors and contractor personnel under the SOFA and the SDCA.

It is well established under U.S. law that persons may use force to defend themselves from death or grievous bodily harm.[79] It is equally well established that a person may use reasonable force to defend another from such death or grievous bodily harm.[80] Accordingly, a member of U.S. Forces who observes the sexual assault of a child could intervene and use such force as may be necessary to defend the child, if the member reasonably believed bodily harm was about to be inflicted on the child and did not use more force than was reasonably necessary under the circumstances.[81] However, such personnel are not under any legal duty to intervene. We note that intervention and, if necessary, use of force to stop such an assault is dependent on actually observing the abuse or assault in question. Such action would not be appropriate based on others' assertions, allegations, of complaints of alleged abuse.

[79] Beard v. United States, 158 U.S. 550 (1895); New Orleans & N.R. Co. v. Jopes, 142 U.S. 18 (1981); United States v. Scott, 40 M.J. 914 (A.C.M.R. 1994).

[80] United States v. Ravenel, 26 M.J. 344 (C.M.A. 1988); United States v. Lanier, 50 M.J. 772 (A.C.M.R. 1999); United States v. Oakie, 709 F.2d 506 (8th Cir. 1983), quoting W. LaFave & A. Scott, *Handbook on Criminal Law*, § 54 (1972): "As with self-defense, so too with the defense of another, one is not justified in using force to protect the other unless he reasonably believes that the other is in imminent danger of unlawful bodily harm and that force is necessary to prevent that harm …."

[81] For example, see Rule for Courts-Martial 916(e), Manual for Courts-Martial; Scott, *supra*, 40 M.J. at 917; Lanier, *supra*, 50 M.J. at 777-78.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Question 8

Access to Bases

What authority do DoD personnel have on bases in Afghanistan to control who can enter the bases, either Afghan Security Force personnel or Afghan civilians?

During Operation Enduring Freedom, which ended in 2014, U.S. personnel were deployed to various types of contingency bases, including Forward Operating Bases (FOBs), combat outposts, and Village Stability Platforms. Depending on the type of base, control of access varied from exclusive U.S. and Coalition control to complete ANDSF control. Some of these bases were co-located with ANDSF compounds, but U.S. and Coalition Forces and ANDSF maintained separate control points. One U.S. Service member told us that his team stayed on various ANDSF-controlled outposts for multiple days to provide training and to conduct joint patrols to advise the respective ANDSF units on their missions.

DoD personnel have the authority to control access to "Agreed Facilities and Areas," which are identified identically in the SOFA and the SDCA, although all such facilities and areas are on the sovereign territory of GIRoA. The SOFA grants base-access control to agreed facilities and areas to NATO Forces, which include U.S. Forces conducting a NATO mission (Resolute Support) in Afghanistan. The SDCA authorizes U.S. Forces to control entry to agreed facilities and areas provided for the exclusive use by U.S. Forces in Afghanistan.

Through these agreements, Afghanistan authorizes NATO and U.S. Forces to exercise all rights and authorities within the agreed facilities and areas necessary for their use, operation, defense, or control, including the right to undertake new construction works. The agreements authorize NATO or U.S. Forces to control entry into agreed facilities and areas provided for their respective exclusive use and to coordinate entry with Afghan authorities at joint-use agreed facilities and areas, for the purposes of safety and security. Each agreement states that upon request NATO or the United States shall provide access to relevant authorities of GIRoA to any agreed facility or area provided for the exclusive use of NATO or U.S. Forces. The agreements further state that the parties (NATO or the United States and GIRoA) shall establish mutually agreed procedures about the access by Afghan authorities to any NATO or U.S. exclusive-use facility or area. In June 2015, the DoD reported that 21 NATO bases remained in Afghanistan to support the RS and counterterrorism missions.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Question 9

Related Guidance and Training

What DoD guidance exists for U.S. military regarding intervention and use of force when witnessing child sexual abuse in Afghanistan, and what related training is provided?

Please see the classified appendix for the answer to this question.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Part II

Findings


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Finding A

U.S. Personnel Reporting Allegations of Child Sexual Abuse Involving Afghan National Defense Security Forces Personnel

U.S. personnel may not have known to report allegations of child sexual abuse to their chains of command prior to specific command guidance to do so, issued in September 2015.

Prior to the September 2015 command guidance, there was no policy that identified child sexual abuse as a human rights violation that should be reported.

Additionally, there is still no specific guidance from USD(P) for reporting GVHR.

As a result, there is no certainty that USFOR-A SJA received notification of all allegations of human-rights violations, including child sexual abuse committed by ANDSF personnel that could have risen to the level of a GVHR.

Discussion

See the classified appendix for discussion.

Recommendations, Management Comments, and Our Response

Recommendation A.1

We recommend that the Secretary of Defense designate an Office of Primary Responsibility to develop and implement detailed procedures on gross violation of human rights reporting within the Department.

Office of the Under Secretary of Defense for Policy

The Assistant Secretary of Defense for International Security Affairs (ASD(ISA)), performing the duties of the Under Secretary of Defense for Policy (PDO USD(P)), answering on behalf of the Secretary of Defense, agreed with the recommendation. He stated that in the Secretary of Defense's memorandum, "Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) ('the DoD Leahy law')," dated August 18, 2014, the Secretary of Defense designated the Office of the Deputy Assistant Secretary of Defense for Stability and Humanitarian

Affairs (DASD SHA) as the office for receiving reports of relevant information about GVHR. Additionally, the Under Secretary of Defense for Policy was directed to develop and implement detailed procedures on GVHR reporting within the DoD. Those procedures are addressed in a draft DoD Instruction 2110.A, "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing interagency review.

Our Response

Comments from management addressed all specifics of the recommendation; therefore the recommendation is resolved. We will close Recommendation A.1 once we verify that the new policy has been issued and includes detailed procedures on GVHR reporting within the DoD.

Recommendation A.2

We recommend that the Commander, United States Forces–Afghanistan establish more detailed procedures for DoD affiliated personnel in Afghanistan to report allegations of child sexual abuse committed by ANDSF personnel, and other human rights violations, including procedures that verify USFOR-A SJA receives such reports.

Office of the Under Secretary of Defense for Policy

The ASD(ISA) PDO USD(P), answering on behalf of the Commander, U.S. Forces–Afghanistan agreed with the recommendation. He stated that the October 2016 Resolute Support (RS) GVHR SOP specifies detailed reporting requirements, including reporting procedures of GVHR allegations to all RS and USFOR-A Commands. The RS GVHR SOP will be updated once the new DASD SHA clarification memo on implementation of the DoD Leahy Law in Afghanistan is issued. The USFOR-A SJA has a procedure in place for DoD-affiliated personnel in Afghanistan to report human rights violations, including allegations of child sexual abuse by ANSDF.

Our Response

Comments from management addressed all specifics of the recommendation; therefore the recommendation is resolved. We will close Recommendation A.2 once we verify that the RS GVHR SOP has been updated to include more detailed procedures for DoD affiliated personnel in Afghanistan to report allegations of child sexual abuse committed by ANDSF personnel, and other human rights violations, including procedures to verify that USFOR-A SJA receives such reports.

Finding B

Lack of Standardized Guidance and Process for Application of the DoD Leahy Law

The OUSD(P) does not have standardized guidance or a process for determining and documenting whether information supporting GVHR allegations is credible.

This occurred because:

- The phrase "credible information" is not defined as it applies to the DoD Leahy Law.
- There is no DoD or OUSD(P) guidance for determining whether credible information exists.
- The OUSD(P) does not require or maintain any documentation pertaining to how or whether information was determined to be credible.

As a result, this creates the risk of inconsistent credibility determinations that, in the absence of clearly articulated guidance, could adversely affect the OUSD(P)'s ability to comply with the DoD Leahy Law.

Discussion

10 U.S.C. § 362 states, "of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force, if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights." However, the OUSD(P) does not have standardized guidance or a process for determining whether information is credible.

Definition of Credible Information

The phrase "credible information" is not defined by the DoD Leahy Law or DoD guidance. In a briefing provided to the DoD OIG team and SIGAR representatives on March 10, 2016, on "The DoD Leahy Law and ASFF," OUSD(P) officials stated that "credible information" is not defined in the law, but it is "generally understood that 'credible information' is a lower standard than that required to convict a person in a criminal court, but a simple allegation, standing alone, is not sufficient." In April 2017, the DOS published the "2017 Leahy Vetting Guide; A Guide to Implementation and Best Practices." In its "Key Terms" section, it explains that

State has interpreted the term 'credible information' to mean information that is sufficiently believable that a reasonable person would rely on such information in their decision making process. The application of the standard does not require a fact finder actually to conclude that a security force unit has committed a GVHR. The term 'credible information' . . . is a low evidentiary standard. State has not required, for example, that the standard of credible information establish the evidentiary standards of 'proof beyond a reasonable doubt' or a 'preponderance of the evidence. The DOS Guide also states that:

> No single factor should be considered determinative on its own. A credibility determination with respect to a particular piece of information is a judgment call based on all the facts and circumstances relevant to that piece of information. Information from a single source can be found to be credible, and corroboration from additional sources is not required. Information which appears credible on its face can be rebutted by equally credible contrary information.

The DOS guide also provides a list of seven factors that "should be considered, weighing both the credibility of a source and the veracity of an allegation." Those factors are:

1. Past accuracy and reliability of the reporting source, as well as original source, if known;
2. How the source obtained the information (e.g. personal knowledge obtained by a witness, witness interviews collected by a non-governmental organization, descriptions collected from government records, etc.);
3. Known political agenda of a source (both reporting source and/or original source, if known) which might lead to bias in reporting;
4. Corroborative information to confirm part or all of the allegation;
5. Information that contradicts part or all of the allegation;
6. History of unit and known patterns of abuse/professional behavior;
7. Level of detail of the GVHR allegation, including detail in identification of the GVHR, perpetrator (or link to an operational unit), and victim.

Officials from the OUSD(P) and the DoD Office of General Counsel (OGC) stated that the DoD does not use the definition provided in the DOS 2017 Leahy Vetting Guide for "credible information." The officials did not identify specific concerns with the definition, only that the DoD generally requires additional information. The officials gave an example of DOS finding that information contained in a

United Nations Assistance Mission in Afghanistan (UNAMA) report was credible. The officials stated that for the DoD to consider that information credible, it would need a corroborating source or additional evidence from UNAMA, beyond the statement in its report.

DoD Guidance

The OUSD(P) does not have any SOP or other guidance for determining whether information is credible. An OUSD(P) official stated that the credibility of information is determined on a case-by-case basis and the knowledge of doing so is gained through doing the job and having experience. Another OUSD(P) official added that it is very subjective. The OUSD(P) officials stated that the official DoD recommendation on whether information was credible comes after discussing all available information about an allegation in an interagency meeting, called the GVHR Forum, which includes representatives from the DOS and the DoD. The DoD representatives are selected from the following offices:

- DoD Office of General Counsel;
- OUSD(P) Asian Pacific Security Affairs/Afghanistan, Pakistan, and Central Asia;
- OUSD(P) Special Operations and Low Intensity Conflict / Stability and Humanitarian Affairs;
- Joint Staff Legal
- Joint Staff J-5 Strategic Plans and Policy Pakistan Afghanistan Coordination Cell;
- Joint Staff J-5 Global Policy and Partnerships;
- USCENTCOM;
- USFOR-A (including USFOR-A SJA); and
- the Defense Intelligence Agency.

Officials from the OUSD(P) and the DoD OGC were unable to articulate the methodology used by the GVHR Forum to determine whether the information was credible. They simply stated that the GVHR Forum representatives always reach a consensus and that it was a judgement call decided on a case-by-case basis.

Documentation

The GVHR Forums did not have official meeting minutes or other documentation explaining the reasoning for determining whether information was credible until February 2017. A review of the GVHR Forum meeting minutes from three meetings held from February 2017 through April 2017 did not reveal any information regarding the credibility of information of alleged GVHRs. A DoD OGC official stated that the GVHR Forum had not made any credibility determinations since he started attending the meetings in December 2016. We attended the May 2017 GVHR Forum secure video teleconference and noted there were no credibility determinations made in that GVHR Forum. Additionally, an OUSD(P) official stated there was no requirement to provide reasoning for determining whether the information was credible.

Conclusion

The DoD, the OUSD(P), and the GVHR Forum do not have any guidance that directs how the GVHR Forum, and ultimately the OUSD(P), determines whether information is credible. In addition, there is no record of the reasoning behind any credible information determinations, and there is no specific guidance or criteria for making these decisions, except prior experience participating in these GVHR Forum meetings. As a result, there is a risk of inconsistency, and the OUSD(P)'s process could be deficient in identifying credible information to comply with the DoD Leahy Law.

See the classified appendix for more detail.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend that the Secretary of Defense define "credible information" as it applies to gross violation of human rights determinations and the DoD Leahy Law.

Office of the Under Secretary of Defense for Policy

The ASD(ISA) PDO USD(P), answering on behalf of the Secretary of Defense, agreed with the recommendation. He stated that according to the Secretary of Defense memorandum, "Implementation of Section 8057, DoD Appropriations Act, 2014(division C of Public Law 113-76) ('the DoD Leahy law')," dated August 18, 2014, DoD uses the Department of State (DOS) automated vetting system, "International Vetting and Security Tracking System (INVEST)," for vetting foreign security forces, and uses the DOS Leahy Vetting Guide for

detailed information on INVEST vetting procedures. That guide defines "credible information" as it applies to the DoD Leahy Law. That definition will be adapted as it applies to the DoD Leahy Law in the draft DoD Instruction 2110.A "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing review.

Our Response

Comments from management addressed all specifics of the recommendation; therefore the recommendation is resolved. We will close Recommendation B.1 once we verify that the new policy includes the definition of "credible information" as it applies to GVHR determinations and the DoD Leahy Law.

Recommendation B.2

We recommend that the Secretary of Defense establish the specific process by which DoD Leahy Law credible information determinations are made.

Office of the Under Secretary of Defense for Policy

The ASD(ISA), PDO USD(P), answering on behalf of the Secretary of Defense, agreed with the recommendation. He referenced the responses to Recommendations A.1 and B.1. Additionally, he stated that the DoD will develop a checklist outlining a specific process by which GVHR credible information determinations are made in Afghanistan. The Office of the DASD SHA will issue a clarification memorandum on the application of the DoD Leahy Law in Afghanistan that will include the checklist for the GVHR credibility determination process.

Our Response

Comments from management addressed all specifics of the recommendation; therefore the recommendation is resolved. We will close Recommendation B.2 once we verify that the Office of the DASD SHA has issued a clarification memorandum on the application of the DoD Leahy Law in Afghanistan that includes the checklist for the GVHR credibility determination process.

Recommendation B.3

We recommend that the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia establish and implement a records management policy for all alleged gross violations of human rights in Afghanistan. Specifically, this policy should require that the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia maintain documentation sufficient to identify how and why credible information determinations were made and to clearly identify what credibility determinations were made in each case.

Office of the Under Secretary of Defense for Policy

The ASD(ISA), PDO USD(P), answering on behalf of the Secretary of Defense, agreed with the recommendation. He stated that, in general, DoD relies on the DOS-maintained INVEST system for adjudicating allegations of GVHR. Additionally, the Office of the DASD APC created and launched a central database accessible to all stakeholders in July 2017 to record allegations of GVHR by Afghanistan National Defense and Security Forces (ANDSF) and document the credibility determinations for each report. The Office of the DASD APC and the USFOR-A SJA maintain records of initial incidents reports and credibility determination memorandums.

Our Response

Comments from management were only partially responsive because they did not address all specifics of the recommendation; therefore, the recommendation is unresolved. Specifically, the response did not mention establishing a records management policy for all alleged GVHR in Afghanistan sufficient to identify how and why credible information determinations were made and to clearly identify what credibility determinations were made in each case. Based on management comments, we also redirected this recommendation to the DASD APC and revised the recommendation to clarify our intent that the records management policy only address alleged GVHR in Afghanistan.

We request that the DASD APC address the recommendation specifics by December 16, 2017.

Finding C

Lack of Timely Application of the DoD Leahy Law and Notwithstanding Authority in Afghanistan by the Department of Defense

Decisions to withhold funding or to apply the notwithstanding authority, for GVHRs including instances of child sexual abuse involving ANDSF personnel under the color of law, occurs only about once a year.

This occurs because notwithstanding authority packages are grouped together and forwarded to the USD(P) about once a year.

As a result, the DoD is not applying the DoD Leahy Law in a timely manner.

Discussion

See the classified appendix for discussion

Recommendation, Management Comments, and Our Response

Recommendation C

We recommend that the Secretary of Defense develop procedures for application of the DoD Leahy Law, as stated in our recommendations from Findings A and B, including requiring time frames for reaching credible information decisions.

Office of the Under Secretary of Defense for Policy

The ASD(ISA), PDO USD(P), answering on behalf of the Secretary of Defense, agreed recommendation. He stated that the forthcoming DASD SHA clarification memorandum on implementation of the DoD Leahy Law in Afghanistan will include procedures for application of the DoD Leahy Law, as stated in recommendations from Finding A and B, including timelines for reaching credible information decisions.

Our Response

Comments from management addressed all specifics of the recommendation; therefore the recommendation is resolved. We will close Recommendation C once we verify that the DASD SHA has issued a clarification memorandum on the application of the DoD Leahy Law in Afghanistan that includes timelines for reaching credible information decisions.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Finding D

Ineffective Records Maintenance

We found inconsistencies in the data provided to us and records maintained by DoD components about reported allegations of child sexual abuse involving ANDSF personnel in Afghanistan.

The inconsistencies occurred because of the absence of DoD policy and guidance about data collection, tracking, and records maintenance for allegations of GVHR, including child sexual abuse, committed by ANDSF personnel under the color of law.

As a result, we were unable to confirm the completeness and accuracy of information maintained on allegations of child sexual abuse committed by ANDSF personnel being tracked by the DoD.

Discussion

An OUSD(P) official told us that, as of November 2016, the OUSD(P) Afghanistan GVHR Tracker became the Official Afghanistan GVHR tracker for the DoD. Before November 2016, the OUSD(P) and USFOR-A maintained separate GVHR tracking spreadsheets. USCENTCOM also maintains a database that includes, but is not limited to, allegations of GVHR in the USCENTCOM area of operations, including Afghanistan. The various trackers do not contain uniform or consistent information regarding allegations of child sexual abuse involving ANDSF personnel. For example, as of August 2016, 1 tracker listed 75 GVHR allegations, 7 of which involved child sexual abuse. Another tracker, also as of August 2016, listed 25 GVHR allegations, 5 of which involved child sexual abuse.

In addition, USCENTCOM and USSOCOM data identified more than 300 individual record entries containing allegations of child sexual abuse against ANDSF personnel.

This data indicated that, in some cases, U.S. personnel were aware of alleged child sexual abuse-related incidents and discussed them with GIRoA officials in meetings or reported these allegations through their chains of command. However, we cannot confirm the completeness of the data or that the requested search captured all reported incidents of child sexual abuse. Moreover, the 300-plus entries included duplicate reports of alleged child sexual abuse containing varying degrees of detail, often insufficient to identify alleged perpetrators, victims, or ANDSF elements associated with them. As a result, we could not determine an exact number of actual reported incidents from this data.

Conclusion

Due to inconsistent procedures and a lack of guidance about which DoD office had the overarching responsibility to record and track GVHR in Afghanistan, including allegations of child sexual abuse committed by ANDSF personnel, under the color of law, we could not confirm the completeness and accuracy of allegations tracked by DoD officials.

See the classified appendix for more detail.

Recommendation, Management Comments, and Our Response

Recommendation D.1

We recommend that the Secretary of Defense issue guidance outlining the requirements for creating and maintaining an official system to track gross violation of human rights information, which could include allegations of child sexual abuse by Afghan National Defense and Security Force personnel in Afghanistan.

Office of the Under Secretary of Defense for Policy

The ASD(ISA), PDO USD(P), answering on behalf of the Secretary of Defense, agreed with the recommendation, citing the responses to Recommendations B.1, B.2, and B.3.

Our Response

Comments from management addressed all specifics of the recommendation; however, because Recommendation B.3 is unresolved, this recommendation is also unresolved. This recommendation will be considered resolved once Recommendation B.3 is resolved.

Recommendation D.2

We recommend that the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia review the United States Central Command and United States Special Operations Command historical records to determine whether allegations of child sexual abuse by Afghan National Defense Security Forces personnel are gross violations of human rights that require further review by United States Forces–Afghanistan or the Gross Violation of Human Rights Forum. Subsequently, if those allegations have credible information, determine what actions should be taken to comply with the DoD Leahy Law.

Office of the Under Secretary of Defense for Policy

The ASD(ISA), PDO USD(P), answering on behalf of the DASD APC, partially agreed with the recommendation. He stated that the Office of the Under Secretary of Defense for Policy has reviewed and made determinations on incidents that were reported to have occurred in 2013, 2014, and 2015 and is focusing available resources on reviewing incidents from 2016 and 2017. The Office of the Under Secretary of Defense for Policy will coordinate with U.S. Central Command and U.S. Special Operations Command to review historical data and apply the DoD Leahy Law in accordance with Secretary of Defense Guidance. Further, he stated that the recommendation implies that the DoD conducts investigations of GVHR by ANDSF; in fact, unless information on incidents deemed credible cannot be released due to classification, the DoD would provide that information to either the Afghan Ministry of Defense or Ministry of Interior, which has jurisdiction over any investigation of ANDSF personnel.

Our Response

Although only partially agreeing with the recommendation, comments from management, and the actions proposed, addressed all specifics of the recommendation; therefore the recommendation is resolved. Based on management comments, we revised the recommendation to say "review" rather than "investigation." We will close Recommendation D.2 once we verify that the Office of the Under Secretary of Defense for Policy has coordinated with U.S. Central Command and U.S. Special Operations Command to review historical data and apply the DoD Leahy Law in accordance with Secretary of Defense Guidance.


INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Appendix A

Scope and Methodology

We conducted this evaluation from February 2016 through October 2017 in accordance with the "Quality Standards for Inspection and Evaluation," published by the Council of the Inspectors General on Integrity and Efficiency in January 2012. We made minor changes to our announced questions to provide further clarity.[82]

We reviewed Federal, International, and Afghan laws, including National Defense Appropriation Acts; DoD instructions and directives; and ISAF and RS tactical guidance and SOPs for guidance related to allegations of child sexual abuse involving ANDSF personnel. We reviewed DOS and UN human rights reports to analyze human-rights abuses in Afghanistan, including child sexual abuse.

We interviewed personnel previously deployed to Afghanistan and an instructor at a pre-deployment training school, and we reviewed DoD directives, commanders' guidance, and other publications to identify any DoD guidance, formal or informal, that could have discouraged DoD personnel from reporting allegations of child sexual abuse by Afghan officials.

We obtained and reviewed USCENTCOM theater entry requirements for pre-deployment training requirements, Military Service cultural-awareness training documents, as well as CTIP, SHARP, and SAPR training documents to determine what training DoD personnel may have received about identifying, responding to, or reporting alleged child sexual abuse.

To determine the number of cases of alleged child sexual abuse by ANDSF personnel reported to U.S. or Coalition Forces Commands, the Service Inspectors General, or the DoD OIG, the details of those allegations, and actions taken, we obtained, reviewed, and analyzed various spreadsheets that included allegations of human-rights violations, including GVHR trackers, from the OUSD(P) and USFOR-A. We reviewed historical records provided by USCENTCOM and USSOCOM, and we included as allegations any report indicating that a boy, girl, child, juvenile, daughter, son, children, teenager, bacha bazi, chai boy, or tea boy was the victim of child sexual abuse by an ANDSF or government official. We also queried the Service IGs and the DoD OIG Hotline personnel about any contacts received

[82] Minor changes were made to announced questions 1, 6, 7, and 9.

related to child sexual abuse by ANDSF personnel. We relied on reports from Headquarters Marine Corps and Naval Criminal Investigative Service to identify the outcome of Hotline referrals that included questions about potential child sexual abuse by ANDSF personnel. We did not independently confirm the results of those investigations.

To determine whether DoD personnel are authorized to intervene and use force to stop instances where they witness child sexual abuse by ANDSF personnel, we reviewed Rules of Engagement for U.S. Forces and the Law of War Program; and interviewed OUSD(P), DoD OGC, and USCENTCOM personnel. We also reviewed the SDCA between the U.S. and Afghanistan, the SOFA between NATO and Afghanistan, and other related documents. We also reviewed the SDCA and SOFA to determine authority to control base access.

We coordinated this evaluation with the SIGAR, which was also examining related concerns about child sexual abuse by ANDSF personnel. We reviewed responses to requests for information from the OUSD(P) and interviewed OUSD(P), USCENTCOM, and USFOR-A personnel responsible for the DoD Leahy Law implementation.

Use of Computer-Processed Data

We used computer-processed data in Excel spreadsheets provided by officials from the OUSD(P), USCENTCOM, and USFOR-A for this evaluation. Specifically, officials from the OUSD(P) and USFOR-A provided GVHR trackers; and USFOR-A officials also provided the USFOR-A Sexual Assault Tracker and a tracker used by Train, Advise, Assist Command–South that contained allegations of criminal activity by the 205th Corps and the Police Headquarters in Kandahar. USCENTCOM officials provided the CCJA incident tracker, an Excel spreadsheet containing a data extract from a CCJA database. The database is not Afghanistan-, foreign force-, or GVHR-specific, but CCJA officials extracted Afghanistan-GVHR-specific allegations from it and put it into the CCJA incident tracker for our review. We did not review, test, or have access to the CCJA database.

We reviewed and compared Excel spreadsheets from the OUSD(P), USCENTCOM, and USFOR-A and found that data provided in the various spreadsheets did not consistently list the same allegations of GVHR, including child sexual abuse committed by ANDSF personnel. We also found that the data in the individual spreadsheets was incomplete.

For example, the OUSD(P) GVHR tracker did not always identify the source of the allegation, the date the allegation was reported to U.S. personnel, or the date the allegation was added to the tracker. In addition, the OUSD(P) did not maintain all supporting information to verify the accuracy of the data entered in the spreadsheets. We reported the inconsistencies in Finding D.

We also reviewed additional Excel spreadsheets of data extracted by USCENTCOM and USSOCOM personnel from USCENTCOM and USSOCOM databases that contained information from historical reports, including allegations of child sexual abuse committed by ANDSF personnel. We did not review or test the sources of the data they extracted, nor did we have access to those databases to perform any additional tests or comparisons. Due to inconsistent and incomplete data, we determined the data was unreliable but usable, in certain instances. Although we could not reliably use the data to determine the total number of allegations of child sexual abuse reported to U.S. and Coalition forces personnel or how many of those allegations U.S. personnel reported to GIRoA officials, we determined it was still usable for the information about allegations of GVHR and child sexual abuse involving ANDSF personnel.

Use of Technical Assistance

We did not use technical assistance for this evaluation.

Prior Coverage

The Government Accountability Office and the Special Inspector General for Afghanistan Reconstruction had issued reports relevant to our evaluation objectives.

Government Accountability Office

GAO-13-866, "Human Rights Additional Guidance, Monitoring, and Training Could Improve Implementation of the Leahy Laws," September 2013

> This report provided background information about the DoD Leahy Law. The GAO coverage examined the extent to which the DOS and the DoD provided guidance to their personnel to address the Leahy Laws, and it concluded that those departments had used a variety of mechanisms to provide guidance for implementing the Leahy Laws, including a guide to the human-rights vetting process.

SIGAR

SIGAR Quarterly Report "Quarterly Report to the United States Congress" 2016-01-30

> This report stated that members of Congress asked SIGAR to conduct an inquiry into the U.S. government's experience with allegations of sexual abuse of children committed by members of the Afghan security forces.

SIGAR 15-68 Audit Report, "Rule of Law in Afghanistan: U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than $1 Billion," 2015-07-01

> This audit addressed impairments with the U.S. development of the rule of law in Afghanistan.

SIGAR Quarterly Report "Quarterly Report to the United States Congress" 2015-10-30

> This report noted the New York Times reporting that U.S. forces had been instructed to ignore the rape of young boys by ANDSF members, Afghan President Ghani's call for action to remove ANDSF members who violate children and charge them in court, and General Campbell's testimony to the Senate Armed Services Committee of October 6, 2015. This report also discussed the Combined Security Transition Command–Afghanistan's report that both the Afghan MOI and MOD made significant progress with regard to the DoD Leahy law.

SIGAR "Quarterly Report to the United States Congress," 2014-10-30

> This report summarized an AIHRC National Inquiry Report, on the causes and negative consequences of bacha bazi.

SIGAR "Quarterly Report to the United States Congress," 2012-07-30

> This report stated that: (1) some Afghan families knowingly sell their children into forced prostitution practices, such as bacha bazi, (2) the Afghan government has sometimes been an enabler or a culprit in human trafficking, and (3) members of the ANDSF have sometimes sexually abused boys.

Appendix B

Laws, Policies, and Guidance

Summaries of U.S. Law, Policy, and Guidance

1. **10 U.S.C. § 362**: This is the codified "DoD Leahy Law," which states "The amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force, if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights." Additional information regarding the DoD Leahy Law is located in the background of this report.
2. **22 U.S.C. § 2378d**: This is the codified "Department of State Leahy Law." It states, "No assistance shall be furnished under this chapter or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights."
3. **22 U.S.C. Chapter 78 – Trafficking Victims Protection**:
    a. Section 7101 states that the purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are mainly women and children, to ensure the just and effective punishment of traffickers, and to protect their victims.
    b. Section 7102 defines "sex trafficking" as the "recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." It also states "severe forms of trafficking in persons" means, "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age."
4. **DoD Directive 2311.01E, DoD Law of War Program, 9 May 2006**: The Directive states the law of war "encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens," including treaties, agreements to which the United States is a party, and applicable customary international law. Members of DoD components must comply with the law of war in all armed conflicts and other military operations.
5. **DoD Law of War Manual, June 2015 (Updated December 2016)**:
    a. The manual represents the legal views of the Department of Defense and seeks to address the law of war applicable to the United States, including treaties to which the United States is a party and customary international law. It focuses on the law relating to conduct of hostilities and the protection of war victims.

b. Section 10.5.1.2, "Protection for Women Against Rape or Other Indecent Assault," states women shall be protected against any attack on their honor, in particular against rape, forced prostitution, and sexual assault. It provides that "although the Geneva Convention provides special protection for women against these offenses, all individuals, including children and men, should also be protected against these offenses."

6. **ISAF Commander's Counterinsurgency Guidance, signed in August 2009, Commander, USFOR-A/ISAF**: Describes how to develop good governance and responsibility, especially while working with Afghan officials. It states, "Looking the other way or enabling government officials who fail to meet their obligations makes you part of the problem."

7. **COMISAF's Tactical Directive, dated November 30, 2011**: The Commander, International Security Assistance Force (COMISAF)/United States Forces-Afghanistan (USFOR-A), issued this Tactical Directive, releasable parts of which were published in a memorandum dated 30 November 2011. It identifies respect for human rights in accordance with the Law of Armed Conflict, international law, and the laws of Afghanistan. It also states that ISAF will support and encourage GIRoA to hold those responsible to be accountable for their actions.

8. **Secretary of Defense Memorandum, "Additional Guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the "DoD Leahy law") and New or Fundamentally Different Units," February 10, 2015**:

   a. This memorandum supplements the August 18, 2014, memorandum on "Implementation of Section 8057" (the DoD Leahy Law) and provides additional guidance with respect to section 8057(b), commonly referred to as the remediation of units of foreign security forces.

   b. This document has attachments which provide the steps required for a foreign security force unit implicated in GVHR to regain eligibility for Department of Defense (DoD)-funded assistance and the procedures the Department will utilize to assess those steps.

   c. This memo states that the "Joint Department of Defense and Department of State (DOS) Policy on Remediation and the Resumption of Assistance under the Leahy Laws" has been developed in conjunction with the DOS, which will also utilize this policy to determine eligibility for resumption of assistance under the DOS Leahy Law.

9. **"DoD Procedures for Resumption of Assistance Under the DoD Leahy Law." (Attachment to the Secretary of Defense Memorandum, "Additional Guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the "DoD Leahy law") and New or Fundamentally Different Units," February 10, 2015)**:
    a. This document is an attachment to a February 2015 memorandum from the Secretary of Defense, "Additional guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the "DoD Leahy law") and New or Fundamentally Different Units."
    b. The document outlines the procedures, which provide further guidance on the process by which an existing unit of a foreign security force that has been denied assistance under the DoD Leahy law will be evaluated for the resumption of assistance.
    c. It explains that the Senior Defense Official in country will submit a request addressing how the foreign government has taken or is taking appropriate remediation measures through the relevant Combatant Command for endorsement to the Joint Staff. Next, a Remediation Review Panel (RRP) will be convened by the Office of the Under Secretary of Defense for Policy/Stability and Humanitarian Affairs (OSD-P/SHA) within 2 weeks of the receipt of a request for a review and associated Combatant Command endorsement.
    d. It adds that in cases where the RRP reaches consensus, OSD-P/SHA will prepare an Action Memo to USD(P) recommending that USD(P) endorse a decision by the RRP. In those cases where the RRP is unable to reach consensus, but the DoD believes the partner nation has taken or is taking appropriate remediation measures for the unit in question, a Senior Remediation Review Panel (SRRP) will be convened within 2 weeks.
    e. It explains that if the SRRP is unable to reach agreement, every effort will be made at the Assistant Secretary level or the Under Secretary level to achieve consensus.
    f. It also states that, "[s]hould there be no resolution, OSD-P, in conjunction with the Joint Staff (J5), will decide whether the Department should proceed with a recommendation to the Secretary of Defense. OSD-P/SHA will be responsible for preparing an action memorandum to the Secretary which will include the views of the Department of State."
    g. Finally, it states, "[I]f the Secretary of Defense makes the determination that appropriate remediation measures have been taken and that the unit is eligible to receive DoD-funded assistance under the DoD Leahy law, OSD-P/SHA will prepare the required congressional notification for transmission within 15 days of the Secretary's determination."

10. "Joint Department of Defense and Department of State Policy on Remediation and Resumption of Assistance Under the Leahy Laws":

ca. This document is an attachment to a February 2015 memorandum from the Secretary of Defense, "Additional guidance on Implementation of Section 8057(b), DoD Appropriations Act, 2014 (Division C of Public Law 113-76) (the "DoD Leahy law") and New or Fundamentally Different Units." February 10, 2015.

b. It provides policy guidance for DoD and DOS on remediation and the resumption of assistance under the DoD and DOS Leahy laws. It describes the steps required for a unit of the security forces of a foreign country that has been implicated in a GVHR to regain eligibility for DoD-funded and DOS-funded assistance.

c. This document states, "[W]hen both Departments determine there is credible information that a unit has committed a GVHR, and a request is made for that unit to receive DoD-funded or DOS-funded assistance, the Departments will begin the process of assessing whether the partner nation is taking/has taken appropriate remediation measures.

d. It further explains that this determination will focus on three primary components of the remediation process; (1) investigation; (2) as appropriate, judicial or administrative adjudication; and (3) as appropriate, sentencing or comparable administrative actions.

11. Commander, USFOR-A Memorandum, Confirmation of the Commander's Expectations in the Event That Members of the Force Suspect Sexual Abuse, September 20, 2015:

a. Commander USFOR-A, General Campbell, USA, said that he was "absolutely confident" that no theater policy ever existed that directed U.S. Forces to ignore suspicions of sexual abuse committed by Afghans against children.

b. He added that he "further expect[s] that any suspicions of sexual abuse will be immediately reported to the chain of command, regardless of who the alleged perpetrators or victims are."

c. He also stated, "If abuse involves Afghans, a report shall be forwarded to [him] through operations channels, copy to the Staff Judge Advocate, so that the Government of the Islamic Republic of Afghanistan can be advised and requested to take appropriate action."

12. HQ RS FRAGO 172 2015, Reporting of Suspected Child Sexual Abuse and Required Training on Human Rights and Reporting Requirement, September 28, 2015:

a. Suspected human rights violations, including suspected child sexual abuse by ANDSF in Afghanistan shall be reported immediately by RS personnel through their respective chains of command.

b. Quoted Commander U.S. Forces–Afghanistan (USFOR-A) Supplemental Tactical Guidance and Delegation of Approval Authorities for Operation Freedom's Sentinel, May 30, 2015: "In the event U.S. Forces personnel suspect members of the ANSF have violated the human rights of another individual, including a detainee, such personnel shall report those suspicions up the chain of command to the USFOR-A SJA."

c. Required that all subordinate headquarters, Train Advise Assist Commands, and Commander, Bagram Air Field provide a report (not later than September 30, 2015) to HQ RS (DCOS-OPS) of the number of reports of child sexual abuse in Afghanistan received by respective RS and ISAF personnel since August 1, 2014.

d. Required that all RS personnel receive training on the reporting requirements of human-rights violations, including suspected child sexual abuse.

13. **Resolute Support and United States Forces–Afghanistan, Training Slides, Mandatory Reporting of Suspected Human Rights Abuses, September 2015**:

    a. Resolute Support (RS) and United States Forces–Afghanistan (USFOR-A) Coalition Force personnel must report any suspected human rights abuses, including suspected child sexual abuse, through their chains of command.

    b. "Bacha bazi ('boy play') is NOT merely a 'cultural issue."'

    c. Report suspected human rights violations, including suspected child sexual abuse, through the chain of command, regardless of who the alleged perpetrators or victims are.

    d. Unit Commanders will ensure that allegations are reported to COMRS and RS LEGAD/USFOR-A SJA via operational channels.

14. **HQ RS FRAGO 176-2015, Required Newcomer Training on Reporting Requirements of Suspected Human Rights and Child Sexual Abuse, October 2015**: Requires all incoming RS personnel to receive training on the reporting requirements about suspected human rights abuse, including suspected child sexual abuse. Annex A to this FRAGO contains the September 2015 training slides, summarized above.

15. **Uniform Code of Military Justice, Section 934, Article 134**: "Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offense not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court."

16. **DoD Instruction 2200.01, Combating Trafficking in Persons (CTIP), April 21, 2015**:
    a. Trafficking in Persons (TIP) is a violation of U.S. law and internationally recognized human rights, and it is incompatible with DoD core values.
    b. It is DoD policy to deter activities such as forced labor and involuntary servitude.
    c. It is DoD policy to deter activities such as sex trafficking of children.
17. **Department of State, 2017 Leahy Vetting Guide: A Guide to Implementation and Best Practices**:
    a. This guide describes how Section 620M of the Foreign Assistance Act (FAA) and the Leahy Laws should be implemented. It defines key terms, sets forth updated procedures, and provides guidance to the field, interagency partners, and to United States-based policymakers who plan, resource, vet, and execute training or assistance to foreign security forces.
    b. This document states that "rape committed under color of law" is considered a GVHR.
    c. It also discusses the concept of "Color of Law" and states that "[i]n order for a security force unit to commit a GVHR under the Leahy Laws, that unit must be acting under the color of law, meaning that the unit or members of the unit must be acting, or appear to be acting, in their capacity as a security force.
    d. It also states that, "[u]nder the State Leahy Law, no assistance authorized under the Foreign Assistance Act or the Arms Export Control Act "shall be furnished . . . to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights."
    e. The document also explains that DOS interpreted the term "credible information" to mean information that is sufficiently believable that a reasonable person would rely on such information in their decision making process. It adds that the term "credible information" is a low evidentiary standard.

Summaries of Afghanistan Laws and Other Guidance

1. **Afghanistan Constitution, Article 58 (p. 16)**: "The state shall establish the Independent Human Rights Commission of Afghanistan to monitor respect for human rights in Afghanistan. Individuals shall complain to this commission about the violation of personal human rights. The commission shall refer human-rights violations of individuals to legal authorities and shall assist them in defense of their rights."

2. **Afghanistan Constitution, Article 54 (p. 15)**: "The family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child . . . as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam."
3. **Press Release: President of Afghanistan (September 23, 2015)**: "The laws, culture, and religious values of the people of Afghanistan recognize sexual abuse of children as one of the severest crimes and violations of human rights."
4. **Penal Code of Afghanistan, Article 429**:
    a. "A person who, through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years."
    b. "In the case where the person against whom the crime is committed is not eighteen years old, or the person who commits the crime is one of the persons specified under paragraph 2 of Article 427, the offender shall be sentenced to long imprisonment, not exceeding ten years."
5. **Penal Code of Afghanistan, Article 427**:
    a. A person who commits adultery or pederasty shall be sentenced to long-term imprisonment.
    b. Aggravating conditions include:
        i. Person against whom the crime is committed is not yet 18 years old.
        ii. Person against whom the crime is committed is a third degree relative of the offender.
        iii. Offender is a tutor, teacher, or servant of the person against whom the crime is committed, or the offender has authority or influence over the person against whom the crime is committed.
        iv. Person against whom the crime is committed is a married woman.
        v. Offender deflowers a maiden.
        vi. Two or more persons have assisted each other in committing the crime, or committed the act one after another.
        vii. Person against whom the crime has been committed is affected by genital disease.
        viii. Person against whom the crime has been committed becomes pregnant.

6. **Civil Code of Afghanistan, Article 39**: "Age of majority is having completed 18 Shamsi (Islamic solar-calendar years). The major person, while being sane in concluding contracts, is recognized to have complete legal capacity."
7. **Civil Code of Afghanistan, Article 70**: Capacity to marry shall be complete when males attain 18 and females 16 years.
8. **Civil Code of Afghanistan, Article 71**:
    a. Marriage contract of a girl who has not attained the age of 16 may be concluded only by her competent father or competent court.
    b. Marriage contract of minor girls under 15 years old are not permissible by any means.
9. **Juvenile Code of Afghanistan, Article 7**: Humiliating and harsh punishment of a minor, even if for correction and reeducation purposes, is not allowed.
10. **Law on Elimination of Violence Against Women, Article 3**:
    a. Definition of Terms:
        i. **Woman**: "an adult or underage female person."
        ii. **Sexual Assault**: "committing fornication and pederasty act on adult women with force or committing such acts on underage woman, or assaulting to the chastity and honor of a woman."
        iii. **Humiliation**: "using words or committing acts which result in degradation of personality of a woman."
        iv. **Intimidation**: "committing acts or using words which cause fear to a woman."
11. **Law on Elimination of Violence Against Women, Article 17**:
    a. "If a person commits sexual assault with an underage woman, the offender shall be sentenced to the maximum continued imprisonment according to the provision of Article 426 of Penal Code and if it results to death of the victim, the perpetrator shall be sentenced to death penalty."
    b. "If a person commits assault on chastity of a woman but his act does not result to adultery or pederasty—rubbing together of sexual organs—considering the circumstances he shall be sentenced to long term imprisonment not exceeding 7 years."
    c. If the victim "has not attained the age of 18 or the perpetrator is a close relative up to degree 3, teacher, servant, doctor, or has influence and authority over the victim, considering the circumstances, the perpetrator shall be sentenced to long term imprisonment not exceeding 10 years."

12. **Law on Elimination of Violence Against Women, Article 29**: "If a person curses, intimidates or degrades a woman, considering the circumstances he/she shall be sentenced to short term imprisonment of not less than 3 months."
13. **Law on Elimination of Violence Against Women, Article 31**: "If a person forces a woman to isolation, considering the circumstances the offender shall be sentenced to short term imprisonment not exceeding 3 months."

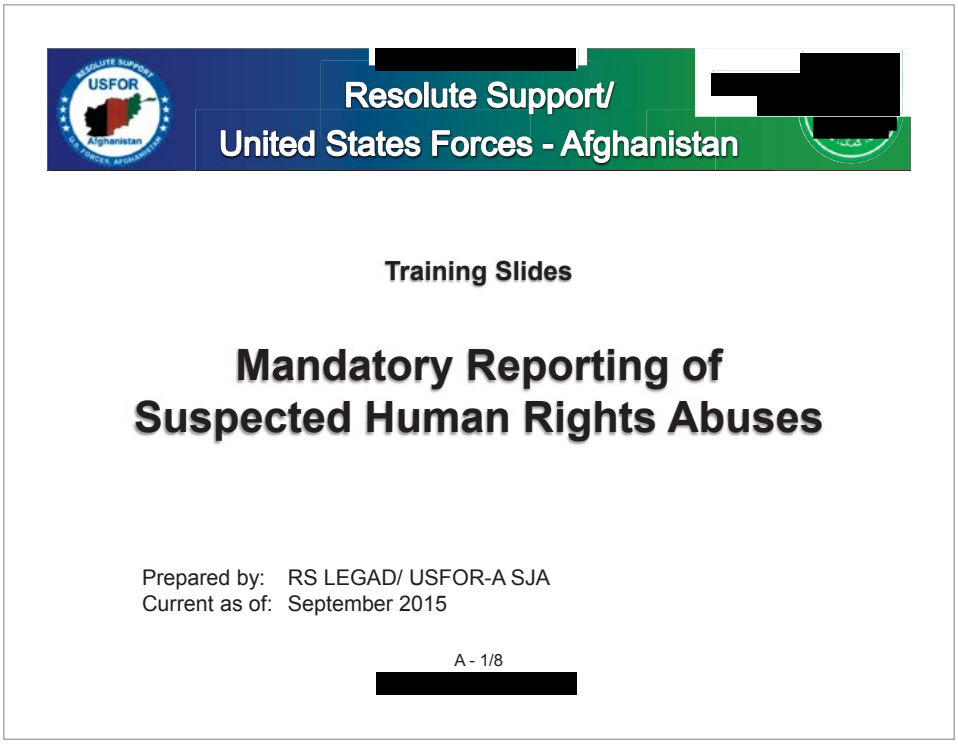
Summaries of International Guidance, Laws, and Treaties:

1. **Convention on the Rights of the Child, Article 19** ***(United Nations Treaty)***: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."
2. **Convention on the Rights of the Child, Article 34** ***(United Nations Treaty)***:
    a. "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
        i. The inducement or coercion of a child to engage in any unlawful sexual activity;
        ii. The exploitative use of children in prostitution or other unlawful sexual practices;
        iii. The exploitative use of children in pornographic performances and materials."
3. **Convention on the Rights of the Child, Article 35** ***(United Nations Treaty)***: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of, or traffic in children for any purpose or in any form."
4. **Convention on the Rights of the Child, Article 36** ***(United Nations Treaty)***: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."
5. **Convention on the Rights of the Child, Article 37** ***(United Nations Treaty)***: "States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment."
6. **Geneva Convention III Relative to the Treatment of Prisoners of War, Article 3**: Persons taking no active part in the hostilities shall in all circumstances be treated humanely.

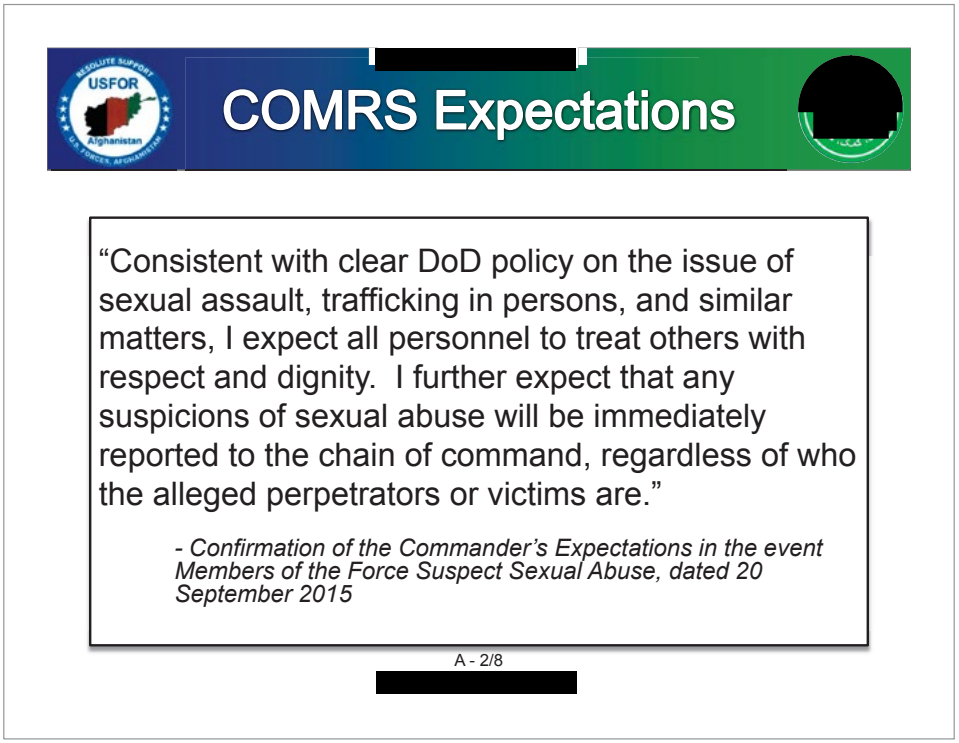
7. **Geneva Convention IV of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War, Article 27**: "Protected persons are entitled, in all circumstances, to respect for their persons . . . they shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."
8. **Additional Protocol I of 1977 to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, Article 75**: "Violence to the life, health, or physical or mental well-being of persons is prohibited, as are outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, and any form of indecent assault."
9. **Military Technical Agreement between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan (Interim Administration), September 2002**:
    a. The agreement provides that the Interim Administration authorized the ISAF Commander, "without interference or permission, to do all the Commander Judges necessary and proper, including the use of military force, to protect ISAF and its Mission."
    b. The agreement required the Interim Administration to provide security and law and order "with respect for internationally recognized human rights and fundamental freedoms."
    c. Annex A to the agreement provided ISAF personnel immunity from personal arrest or detention, and vested exclusive jurisdiction over such personnel to their respective national elements.
10. **Agreement between the North Atlantic Treaty Organization and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-led Activities in Afghanistan**: Authorizes NATO Forces to conduct force protection and control entry to agreed facilities and areas provided for NATO forces' exclusive use in Afghanistan, with full respect for Afghan sovereignty and with full regard for the safety and security of the Afghan people. It also prohibits NATO Forces from arresting or imprisoning Afghan nationals, and from maintaining or operating detention facilities in Afghanistan
11. **Security and Defense Cooperation Agreement between the Islamic Republic of Afghanistan and the United States of America**: Expresses the United States' commitment to the sovereignty, independence, and territorial integrity of Afghanistan, as well as full respect for Afghan laws, customs, and traditions. It also authorizes U.S. Forces the right to access agreed facilities and areas provided for U.S. Forces' exclusive use in Afghanistan.

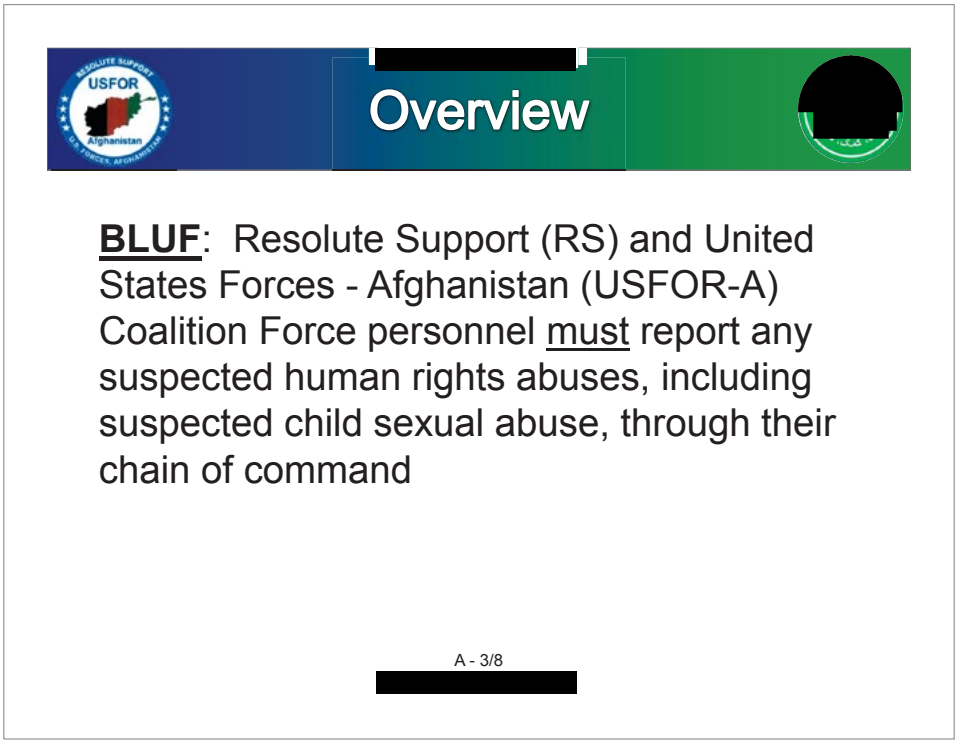
Appendix C

Training Slides for Mandatory Reporting of Suspected Human-Rights Abuses



Training Slides for Mandatory Reporting of Suspected Human-Rights Abuses (cont'd)





Training Slides for Mandatory Reporting of Suspected Human-Rights Abuses (cont'd)

Respect for Human Rights. "When RS personnel suspect the ANDSF has violated the human rights of a citizen or detainee, it is critically important that RS personnel report the event to appropriate ANDSF officials and up the RS chain-of-command. RS will support Afghan investigations and encourage GIRoA to hold those responsible accountable for their actions."

- COMRS Tactical Guidance and Delegation of Approval Authorities for RESOLUTE SUPPORT, dated 9 September 2015

A - 4/8

Respect for Human Rights. "In the event U.S. Forces personnel suspect members of the ANDSF have violated the human rights of another individual, including a detainee(s), such personnel shall report those suspicions up the chain of command to the USFOR-A SJA. USFOR-A will support Afghan investigations and encourage GIRoA to hold those responsible accountable for their actions."

- Commander USFOR-A Supplemental Tactical Guidance and Delegation of Approval Authorities for Operation Freedom's Sentinel, dated 30 May 2015

A - 5/8

Training Slides for Mandatory Reporting of Suspected Human-Rights Abuses (cont'd)

- ***Bacha bazi* ("boy play") is NOT MERELY A "CULTURAL ISSUE"**
- Violates International and Afghan domestic law
  - International - **Convention on the Rights of the Child, Art 34** - State Parties (including Afghanistan) undertake to protect children from all forms of sexual exploitation and sexual abuse
  - Domestic - "[T]he laws, culture and religious values of the people of Afghanistan recognize sexual abuse of children as one of the severest crimes and violations of human rights." - *President Ashraf Ghani, 23 Sep 15*

A - 6/8

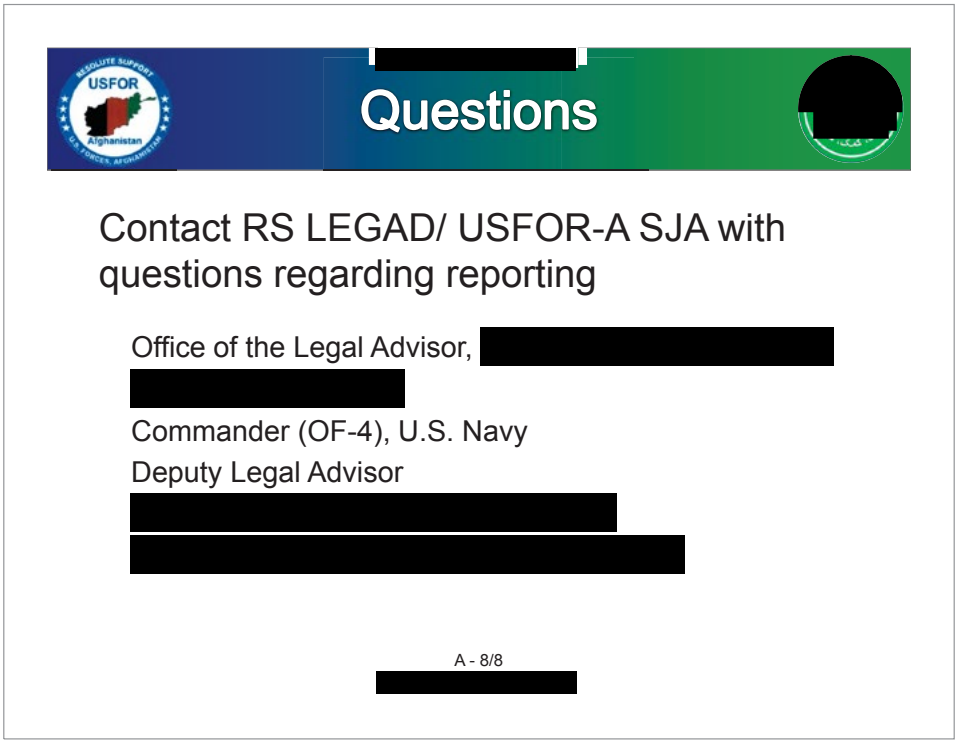
[redacted]

1. Report suspected human rights violations, including suspected child sexual abuse, through the chain of command, regardless of who the alleged perpetrators or victims are
2. Unit commanders will ensure allegations are reported to COMRS and RS LEGAD/ USFOR-A SJA via operational channels

A - 7/8

[redacted]

Training Slides for Mandatory Reporting of Suspected Human-Rights Abuses (cont'd)




INSPECTOR GENERAL
INTEGRITY
EFFICIENCY
DEPARTMENT OF DEFENSE

Management Comments

Under Secretary of Defense for Policy

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2000

POLICY

Glenn A. Fine
Acting Inspector General
Department of Defense Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear Mr. Fine:

This letter and its enclosure comprise the Department of Defense (DoD) response to the Department of Defense Office of the Inspector General (DODIG) draft report on "Evaluation of DoD Implementation of Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces." I am responding on behalf of the Secretary of Defense.

I appreciate the work DODIG undertook to address this subject and the collaboration between your team and OSD-Policy staff in addressing your questions and providing requested documentation.

DoD strongly condemns the exploitation of children, including *bacha bazi*, a practice in which men exploit boys for social and sexual entertainment in Afghanistan. The draft report should clearly emphasize that, until recently, Afghan law made it difficult for the Afghan Attorney General's office to prosecute cases involving *bacha bazi* because acts associated with the practice were not criminalized. In January 2017, the Afghan government enacted a new Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants, which criminalizes various acts associated with *bacha bazi*, including sexual exploitation of a minor and forced dancing. Although this is a positive step in Afghanistan's efforts to address sexual abuse of children, the new 2017 law needs to be supplemented by a more rigorous penal code. Due to strong condemnation of *bacha bazi* by the Departments of Defense, State, and Justice, and engagement at the highest levels of the Afghan government, the Afghan Ministry of Justice, with the help of U.S. personnel, is drafting a new Afghan Penal Code provision that would specifically criminalize all acts associated with *bacha bazi*. The new Penal Code with these provisions is to become effective in February 2018.

Congress asked DODIG to undertake this project based on two 2015 *New York Times* articles that claimed U.S. soldiers and Marines were instructed not to intervene in incidents of sexual assault of children by members of the Afghan National Defense and Security Forces (ANDSF). Given the seriousness of such assertions, the DODIG draft report makes an important contribution in determining the veracity of such claims. Indeed, the draft report concludes that DODIG did not identify official guidance that discouraged DoD-affiliated personnel from reporting incidents of child sexual abuse. Similarly, the Special Inspector General for Afghanistan Reconstruction report on the same topic acknowledged that there is no evidence that

Under Secretary of Defense for Policy (cont'd)

DoD condones gross violations of human rights by ANDSF or that DoD provided guidance that service members should ignore such acts committed by the ANDSF.

The Department recognizes that such acts committed by ANDSF personnel could constitute gross violations of human rights. Your draft report accurately references DoD guidance and procedures for U.S. military personnel to report such incidents. Your draft report also acknowledges that U.S. military personnel have in fact reported a number of instances of sexual assault of children by ANDSF personnel. The information obtained in connection with all credible reports was shared with the Afghan Ministries of Defense and Interior to encourage accountability within the ANDSF.

The report also contains some recommendations for how DoD could improve implementation of the DoD Leahy Law. We concur with most of the recommendations and partially concur with D.2.

We appreciate the insights from your team on ways to improve our procedures, and I ask that the following specific points be addressed more clearly in the final report. First, in Questions 1 and 4, the draft report refers to child sexual abuse by "Afghan government officials." The report should be more precise in stating that because DoD does not provide funding to ministries other than Defense and Interior, DoD's implementation of the Leahy Law applies only to allegations involving official is from those two ministries, including members of the ANDSF, and not to Afghan government officials from other ministries.

Second, the report should clarify that not all incidents of potential gross violation of human rights are observed first-hand by DoD-affiliated personnel. Reports of incidents from non-DoD personnel typically lack information to identify an individual perpetrator or his unit, which significantly complicates DoD's ability to apply the Leahy Law to such instances.

Finally, the draft report implies that without explicit guidance pertaining to whether child sexual assault is a gross violation of human rights, DoD personnel may be confused about whether such acts are reportable. There should be no such confusion; U.S. military personnel do not require explicit guidance to know that child sexual assault in all cases is wrong, must not tolerated, and requires informing the chain of command.

Thank you again for the work your team has done to review this important matter. We look forward to working closely with you to ensure the success of the DoD mission in Afghanistan.

Sincerely,

Robert Story Karem
Performing the Duties of the Under Secretary
of Defense (Policy)

Enclosure:
DoD Response to DODIG Draft Report Recommendations

Under Secretary of Defense for Policy (cont'd)

Department of Defense (DoD) Response to the Department of Defense Office of the Inspector General (DODIG) Draft Report Recommendations

Evaluation of DoD Implementation of Leahy Law Regarding Allegations of Child Sexual Abuse by Members of the Afghan National Defense and Security Forces

1. The Office of the Under Secretary of Defense for Policy submits the following responses to the six recommendations to the Secretary of Defense in the report:

A. Recommendation A.1:

We recommend that the Secretary of Defense designate an Office of Primary Responsibility to develop and implement detailed procedures on gross violation of human rights reporting within the Department.

DoD Response:

Concur. In his memorandum, "Implementation of Section 8057, DoD Appropriations Act, 2014 (division C of Public Law 113-76) ("the DoD Leahy law"), dated August 18, 2014, the Secretary of Defense designated the Office of the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs (DASD SHA) as the office for receiving reports of relevant information about gross violations of human rights (GVHR). The Under Secretary of Defense for Policy was directed to develop and implement detailed procedures on gross violations of human rights (GVHR) reporting within the Department of Defense. Those procedures are addressed in a draft DoD Instruction 2110.AA, "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing interagency review.

B. Recommendation B.1:

We recommend that the Secretary of Defense define "credible information" as it applies to gross violation of human rights determinations and the DoD Leahy Law.

DoD Response:

Concur. Per the Secretary of Defense memorandum, "Implementation of Section 8057, DoD Appropriations Act, 2014 (division Co Public Law 113-76) ("the DoD Leahy law"), dated August 18, 2014, DoD uses the Department of State (DOS) automated vetting system, "International Vetting and Security Tracking System (INVEST)," for vetting and uses the DOS Leahy Vetting Guide for detailed information on INVEST vetting procedures. That guide defines "credible information" as it applies to GVHR determinations and the DoD Leahy Law. That definition of "credible information" will be adapted as it applies to the DoD Leahy Law in the draft DoD Instruction 2110.AA, "Implementation of DoD Leahy Law Restrictions on Assistance to Foreign Security Forces," which is currently undergoing review.

Page 1 of 4

Under Secretary of Defense for Policy (cont'd)

C. Recommendation B.2:

We recommend that the Secretary of Defense establish the specific process by which DoD Leahy Law credible information determinations are made.

DoD Response:

Concur. See responses to Recommendations A.1 and B.1. In addition, DoD will develop a checklist outlining a specific process by which GVHR credible information determinations are made in Afghanistan. The Office of the DASD SHA will issue a clarification memorandum on the application of the DoD Leahy Law in Afghanistan that will include the checklist for the GVHR credibility determination process.

D. Recommendation B.3:

We recommend that the Secretary of Defense establish and implement a records management policy for all alleged gross violations of human rights. Specifically this policy should require that the Office of the Under Secretary of Defense for Policy maintain documentation sufficient to identify how and why credible information determinations were made and to clearly explain the basis for credibility determinations in each case.

DoD Response:

Concur. In general, DoD relies on the DOS-maintained INVEST system for adjudicating allegations of gross violations of human rights. Additionally, the Office of the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia created and launched a central database accessible to all stakeholders in July 2017 to record allegations of GVHR by Afghanistan National Defense and Security Forces (ANDSF) and document the credibility determinations for each report. The Offices of the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia and the U. S. Forces–Afghanistan Staff Judge Advocate (USFOR-A SJA) maintain records of initial incident reports and credibility determination memorandums.

E. Recommendation C:

We recommend that the Secretary of Defense develop procedures for application of the DoD Leahy Law, as stated in our recommendations from Findings A and B, including requiring time frames for reaching credible information decisions.

DoD Response:

Concur. The forthcoming DASD SHA clarification memorandum on implementation of the DoD Leahy Law in Afghanistan (referenced in our response to Recommendation B.2) will include procedures for application of the DoD Leahy Law, as stated in DODIG recommendations from Findings A and B, including timelines for reaching credible information decisions.

Page 2 of 4

Under Secretary of Defense for Policy (cont'd)

F. Recommendation D.1:

We recommend that the Secretary of Defense issue guidance outlining the requirements for creating and maintaining an official system to track gross violation of human rights information, including allegations of child sexual abuse by Afghan National Defense and Security Force personnel in Afghanistan.

DoD Response:

Concur. See responses to Recommendations B.1, B.2, and B.3.

2. The Office of the Under Secretary of Defense for Policy submits the following response to the recommendation to the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia:

Recommendation D.2

We recommend that the Deputy Assistant Secretary of Defense for Asian and Pacific Security Affairs, Afghanistan, Pakistan, and Central Asia review the United States Central Command and United States Special Operations Command historical records to determine whether allegations of child sexual abuse by Afghan National Defense Security Forces personnel are gross violations of human rights that require further investigation by United States Forces - Afghanistan or the Gross Violation of Human Rights Forum. Subsequently, if those allegations have credible information, determine what actions should be taken to comply with the DoD Leahy Law.

DoD Response:

Partially concur. The Office of the Under Secretary of Defense for Policy has reviewed and made determinations on incidents that were reported to have occurred in 2013, 2014 and 2015 and is focusing available resources on reviewing incidents from 2016 and 2017. The Office of the Under Secretary of Defense for Policy will coordinate with U.S. Central Command and U.S. Special Operations Command to review historical data and apply the DoD Leahy Law in accordance with Secretary of Defense guidance. The recommendation implies that the Department of Defense conducts investigations of gross violations of human rights by ANDSF; in fact, unless information on incidents deemed credible cannot be released due to classification, the Department would provide that information to either the Afghan Ministry of Defense or Ministry of Interior, which has jurisdiction over any investigation of ANDSF personnel.

Page 3 of 4

Under Secretary of Defense for Policy (cont'd)

3. The Office of the Under Secretary of Defense for Policy submits the following response to the recommendation to the Commander, U. S. Forces – Afghanistan:

Recommendation A.2

We recommend that the Commander, United States Forces – Afghanistan establish specific procedures for DoD affiliated personnel in Afghanistan to report allegations of child sexual abuse involving by ANDSF personnel, and other human rights violations, including procedures that ensure USFOR-A SJA receives such reports.

DoD Response:

Concur. The October 2016 Resolute Support (RS) GVHR SOP specifies detailed reporting requirements, including reporting procedures of GVHR allegations to all RS and USFOR-A Commands. The RS GVHR SOP will be updated once the new DASD SHA clarification memo on implementation of the DoD Leahy Law in Afghanistan is issued. The USFOR-A SJA has a procedure in place for DoD-affiliated personnel in Afghanistan to report human rights violations, including allegations of child sexual abuse by ANDSF.

Page 4 of 4

Acronyms and Abbreviations

AIHRC	Afghanistan Independent Human Rights Commission
ANDSF	Afghan National Defense and Security Forces
ANA	Afghan National Army
ASFF	Afghanistan Security Forces Fund
ASD(ISA)	Assistant Secretary of Defense, International Security Affairs
CAAC	Children and Armed Conflict
COMRS	Commander, Resolute Support
COMUSFOR-A	Commander U.S. Forces–Afghanistan
CTIP	Combating Trafficking in Persons
DASD APC	Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, and Central Asia
DASD SHA	Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs
DOS	Department of State
EF	Essential Function
FRAGO	Fragmentary Order
GVHR	gross violation(s) of human rights
GIRoA	Government of the Islamic Republic of Afghanistan
HTT	Human Terrain Team
ISAF	International Security Assistance Force
LEGAD	Legal Advisor
MoD	Ministry of Defense
MoI	Ministry of Interior
MTA	Military Technical Agreement
NATO	North Atlantic Treaty Organization
OUSD(P)	Office of the Under Secretary of Defense for Policy
RRP	Remediation Review Panel
RS	Resolute Support
SAPR	Sexual Assault Prevention and Response
SHARP	Sexual Harassment / Assault Response and Prevention
SIGAR	Special Inspector General for Afghanistan Reconstruction
SJA	Staff Judge Advocate
SROE	Standing Rules of Engagement
SRRP	Senior Remediation Review Panel

Acronyms and Abbreviations (cont'd)

USSOCOM	U.S. Special Operations Command
UN	United Nations
USCENTCOM	U.S. Central Command
USD(P)	Under Secretary of Defense for Policy
USFOR-A	U.S. Forces – Afghanistan

Whistleblower Protection
U.S. Department of Defense

The Whistleblower Protection Ombudsman's role is to educate agency employees about prohibitions on retaliation and employees' rights and remedies available for reprisal. The DoD Hotline Director is the designated ombudsman. For more information, please visit the Whistleblower webpage at www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/.

For more information about DoD OIG reports or activities, please contact us:

Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324

DoD OIG Mailing Lists
www.dodig.mil/Mailing-Lists/

Twitter
www.twitter.com/DoD_IG

DoD Hotline
www.dodig.mil/hotline

DEPARTMENT OF DEFENSE | OFFICE OF INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, Virginia 22350-1500
www.dodig.mil
Defense Hotline 1.800.424.9098