

Death Penalty & Detention Conditions

Submitted by: The Advocates for Human Rights and the World Coalition Against the Death Penalty

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Summary: While the former Afghan government began to take steps away from the death penalty, the *de facto* government has re-established its use. Afghanistan does not limit the application of the death penalty to the most serious crimes. Furthermore, people under sentence of death experience torture and other inhuman detention conditions. Courts often issue death sentences arbitrarily, without granting defendants due process and without adhering to formal judicial procedures.

Afghanistan actively uses the death penalty.

- The former Afghan government had taken important steps away from the use of the death penalty and toward long-term imprisonment. Prior to the *de facto* authorities' assumption of power, commissions formed by the Attorney General's office had granted commutations to many people under sentence of death.
- Courts wield considerable discretion in issuing death sentences for a wide variety of crimes. Judges often issue death sentences in cases of murder, adultery or fornication, apostasy, and "waging war against God," among other offenses. Many of these crimes do not meet the international human rights threshold of "most serious" crimes.
- There are credible reports of at least 216 people who are currently under judicial death sentences in Afghanistan. In May 2023, Afghanistan's Supreme Court announced that courts across the country had handed down 175 death sentences for murder since the summer of 2021.

Authorities subject people in detention to torture and other inhuman treatment.

- As of June 2023, *de facto* authorities control more than 41 prisons housing more than 15,000 people. Recent reports by local media suggest that more than 1,100 of these people are women.
- There appear to be no nationwide detention standards and no mechanism to challenge detention conditions. Many defense lawyers have reported difficulties accessing their clients.
- From January 2022 to 31 July 2023, the UN Assistance Mission in Afghanistan (UNAMA) documented over 466 instances of torture and abuse in custody, including hundreds of instances of severe physical and mental abuse, and 19 instances of solitary confinement. Approximately 18 individuals have died while in custody. UNAMA opines that the extent of torture and ill-treatment in custody is likely underreported.
- Detained individuals report experiencing various forms of torture, such as beatings, being hung upside down, electrocution, and choking.

- Due to the ongoing humanitarian crisis, prison conditions have deteriorated, including access to food, clothing, hygiene, and other necessities.

Authorities do not adequately protect due process and fair trial rights.

- Since the *de facto* government came to power, legal ambiguity is widespread. Judicial hearings lack standardization, and courts issue verdicts without trials, *in absentia*, and/or without the presence of defense lawyers.
- In August 2021, the Taliban issued a death sentence for the brother of an Afghan translator on claims he had helped U.S. troops and provided security to his brother. Upon ignoring a subpoena from the *de facto* authorities, the court found him guilty *in absentia* and sentenced him to death.
- There is no specific or consistent process for appointing judges, and there are no formal training or education requirements. Under the *de facto* regime, each court (or division within a court) usually comprises a judge, a *mufti* (Muslim legal expert), and a clerk. Authorities have removed judges who served under the previous government.
- From January 2022 to 31 July 2023, there were widespread reports of due process violations. Only one of the people UNAMA interviewed stated that authorities had rightfully informed them of their fundamental rights when they were detained, that a lawyer was present during their interrogations, and that authorities promptly brought them before a *de facto* court or judge.
- According to reports, police and other security agencies summarily detain, sentence, and punish suspects within the same day.

Recommendations

- Abolish the death penalty, replace it with a penalty that is fair, proportionate, and consistent with international human rights standards, and commute the sentences of all individuals currently under sentence of death.
- In the meantime, limit the death penalty to the “most serious” crimes under Article 6(2) of the ICCPR.
- Clarify the status of all laws enacted by the previous Afghan government, including laws related to the death penalty.
- Prohibit the use of torture, abuse, and mistreatment during interrogations and in detention facilities.
- Establish a standardized court system that applies across all provinces of Afghanistan, with clear, speedy, and predictable judicial processes.
- Promptly and thoroughly investigate sentences handed down through any processes other than official judicial proceedings, and prosecute any people responsible for executing such sentences, prioritizing allegations raised by persons who are sentenced to death or charged with capital crimes.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women’s detention, ensuring women’s safety and security pre-trial, during admission to any detention facility, and while incarcerated, consistent with the Bangkok Rules.