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CORPORAL PUNISHMENT AND THE DEATH PENALTY IN AFGHANISTAN

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Background

Under the first Taliban regime (1996 to 2001), public corporal punishment¹ (including lashings and amputations) and executions were carried out by officials against individuals convicted of crimes, often in large capacity venues such as sports stadiums and at urban intersections.² At the time, concerns were raised about the serious violations of human rights inherent in public executions and corporal punishment,³ with Taliban officials responding that such punishments were a “major deterrent” for criminals and the population at large.⁴

During the 20 years of armed conflict which succeeded their fall from power on 9 December 2001, the Taliban continued to carry out corporal punishment and executions in areas under their control. The United Nations Assistance Mission in Afghanistan (UNAMA) documented at least 182 parallel justice structure⁵ punishments carried out by the Taliban between 15 August 2010⁶ and 15 August 2021, resulting in 213 deaths and 64 injuries. Such punishments generally involved a decision by a Taliban judge or commission, with sentences of corporal punishment or the death penalty imposed on the basis of religious or traditional interpretations of custom or law. Punishments imposed included lashings and other beatings, amputations and executions by shooting, beheading and hanging.

Under the government of the Islamic Republic of Afghanistan, both corporal punishment and the death penalty were lawful (see further discussion under [Domestic legal framework](#) below). Human rights mechanisms called on the government of the Islamic Republic of Afghanistan to both abolish corporal punishment and establish a moratorium on executions.⁷ Between 2001 and 15 August 2021, the government of the Islamic Republic of Afghanistan reportedly executed at least 72 persons.⁸ Based on available information, 31 people were executed for common crimes (including theft and rape); 18 for security-related crimes; and one person for crimes committed during the civil war. There is insufficient information regarding the crimes for which the remaining 22 people were executed.⁹

¹ Defined as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light’. See any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light’: UN Committee on the Rights of the Child, General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8, para. [11].

² Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/75, 20 February 1997, E/CN.4/1997/59, para [44]-[46].

³ Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/75, 20 February 1997, E/CN.4/1997/59, para [48].

⁴ Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/75, 20 February 1997, E/CN.4/1997/59, para [44]-[46].

⁵ The term ‘parallel justice structure’ refers to punishments carried out by non-State armed groups (in this case, the Taliban) against civilians, following a decision by a self-identified court or commission operating in parallel to existing formal justice mechanisms.

⁶ UNAMA commenced civilian casualty recording in January 2009. 15 August 2010 is the date of the first recorded instance of ‘parallel justice structure punishment’ documented under this methodology.

⁷ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Afghanistan, 3 April 2019, A/HRC/41/5, Conclusions and/or recommendations; Committee Against Torture, Concluding observations on the second periodic report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, paras [23]-[24].

⁸ Figures obtained from: the Attorney General’s Office (for 2012-2018); reports of the High Commissioner for Human Rights; Amnesty International; Human Rights Watch; Cornell Center on the Death Penalty Worldwide (<https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan#f16-2>); international and national media. According to media reports, at least in one case the person executed was a minor: ABC News, “How the Taliban Turned a Child into a Suicide Bomber”, 21 June 2011. Available at: <https://abcnews.go.com/Blotter/taliban-killer-zar-ajam-duped-terror-attack/story?id=13894578&singlePage=true>.

⁹ This is mainly due to the fact that authorities often released the total of those executed and mentioned a list of the crimes committed by them, without providing a breakdown by crime or providing relevant information for only some of those executed.

The methods of execution employed by the government were hanging and shooting. The government of the Islamic Republic of Afghanistan ended executions by shooting after public outcry following a botched mass execution in October 2007.¹⁰

There is no comprehensive data available on the number of instances of corporal punishment inflicted by the judiciary or government entities during the period of the Islamic Republic of Afghanistan, although there are isolated public reports of instances of judicial corporal punishment. For example:

- In May 2011, in Nangarhar province, Jalalabad city, a man was publicly whipped by a judge, inside the courtroom, as a punishment for drinking alcohol.¹¹
- On 30 August 2015, a woman and man were publicly lashed 100 times each by a primary court judge, who had convicted them of adultery.¹²

In 2013, a working group from the Ministry of Justice proposed amendments to the Penal Code which would have introduced provisions establishing stoning or lashing as punishment for the offence of adultery.¹³ The amendments were not passed.

Since their takeover of Afghanistan on 15 August 2021, the Taliban *de facto* authorities have implemented corporal punishment and the death penalty. In a media interview on 23 September 2021, then Acting Director of the *de facto* Office of Prison Administration, Mullah Nooruddin Turabi,¹⁴ told Associated Press that “cutting off of hands is very necessary for security” as it has a deterrent effect, but that Cabinet was still assessing whether punishments would be conducted in public.¹⁵ The first instance of corporal punishment recorded by UNAMA following the takeover occurred on 20 October 2021, in Kapisa province, Nijrab district. A woman and man convicted of *zina*¹⁶ by the *de facto* District Court were publicly lashed 100 times each by members of the *de facto* District Court in the presence of religious scholars and members of the local *de facto* authorities.

Since this first instance in October 2021, the *de facto* authorities have continued to implement corporal punishment – both following judicial decisions and on an *ad hoc* basis. The implementation of judicial corporal punishment increased significantly following a 13 November 2022 tweet by the spokesperson for the *de facto* authorities, Zabihullah Mujahid, which stated that the Taliban Supreme Leader had met with judges and emphasized their obligations to apply Hudūd and Qisās punishments for offences when Sharia conditions for the implementation of such punishments are met.¹⁷

¹⁰ Art Cody and Dominique Day, “Afghanistan: Death Penalty at the Crossroads, Law Explorer: Criminal Law and Criminology”, 20 October 2015, at <https://lawexplores.com/afghanistan-death-penalty-at-the-crossroads/>.

¹¹ BBC, “Afghan judge whips man for drinking alcohol”, 1 June 2011. Available at: <https://www.bbc.com/news/world-south-asia-13620439>.

¹² Amnesty International, “Afghanistan: Abhorrent punishment of 100 lashes for ‘adultery’ must be investigated”, 2 September 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/09/afghanistan-abhorrent-punishment-of-100-lashes-for-adultery-must-be-investigated/>.

¹³ Human Rights Watch, “Afghanistan: Reject Proposal to Restore Stoning”, 25 November 2013. Available at: <https://www.hrw.org/news/2013/11/25/afghanistan-reject-proposal-restore-stoning>; Amnesty International, “Afghanistan: Reject stoning, flogging, amputation and other Taliban-era punishments”, 26 November 2013. Available at: <https://www.amnesty.org/en/latest/news/2013/11/afghanistan-reject-stoning-flogging-amputation-and-other-taliban-era-punishments/>.

¹⁴ Mullah Nooruddin Turabi served as Minister of Justice under the first Taliban regime and is currently the Deputy President of the Afghan Red Crescent Society. At the time of his interview with Associated Press, he was the Acting Director of the *de facto* Office of Prison Administration.

¹⁵ Associated Press, “Taliban official: Strict punishment, executions will return”, 23 September 2021. Available at: <https://apnews.com/article/religion-afghanistan-kabul-taliban-22f5107f1dbd19c8605b5b5435a9de54>.

¹⁶ *Zina* is an Arabic term used to describe the prohibition under Shari’a law of the act of fornication (engaging in sexual intercourse) outside of marriage. *Zina* is a Hudūd crime under Shari’a law, or a crime regarded as being against God’s commands, for which punishment is obligatory.

¹⁷ Zabihullah (ذبيح الله م.) (@Zabehulah_M33), Twitter, 13 November 2022, 8:37 pm. Available at:

Hudūd and Qisās are punishments derived from the Qu’ran and Hadith¹⁸ and can be both corporal¹⁹ and capital²⁰ punishments. In addition to being followed by a considerable increase in the implementation of judicial corporal punishment, Mujahid’s tweet was, on 7 December 2022, succeeded by the first recorded instance of judicially sanctioned execution since the Taliban takeover of Afghanistan.²¹ Despite the focus of the tweet on Hudūd and Qisās punishments, the majority of instances of corporal punishment implemented in its aftermath are reported to have been *Ta’zir* punishment.²²

https://twitter.com/Zabehulah_M33/status/1591824999870259200?s=20&t=DjIPIQqSmH78zWj4KjBFw (Pashto). Translated as: “His Excellency the Amir-ul-Momineen in a meeting with Qazis (judges): ‘You should examine well the dossiers (case files) of thieves, kidnappers, and those causing fitna (strife/sedition/conflict etc.) You are obligated to apply Hudud and Qisās (punishments) in those cases where all Shariah conditions for Hudud and Qisās are met because this is the order of Shariah, and my order and a religious obligation to implement them.’”

¹⁸ In the case of Qisās, the victims’ family decides the punishment (when the victim dies) - either retaliation in kind, blood money or to forgive the perpetrator. Hudud punishments are specific to certain crimes and are mandated under Islamic law.

¹⁹ Defined as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light’. See General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (2006), para. 11.

²⁰ A punitive measure in which a person is sentenced to death for their crime, also known as the death penalty.

²¹ Office of the High Commissioner for Human Rights, Comment by UN Human Rights Office spokesperson Jeremy Laurence on Afghanistan execution, 7 December 2022. Available at: [https://www.ohchr.org/en/press-releases/2022/12/comment-un-human-rights-office-spokesperson-jeremy-laurence-afghanistan#:~:text=The%20death%20penalty%20is%20incompatible,death%20penalty%20in%20its%20entirety;UNAMA_News_\[@UNAMANEWS\],](https://www.ohchr.org/en/press-releases/2022/12/comment-un-human-rights-office-spokesperson-jeremy-laurence-afghanistan#:~:text=The%20death%20penalty%20is%20incompatible,death%20penalty%20in%20its%20entirety;UNAMA_News_[@UNAMANEWS],) Twitter, 7 December 2022, 9:31 pm. Available at: <https://twitter.com/UNAMANEWS/status/1600536086496919553?s=20&t=BBcTWv4DfbHb2IMpw0q49A>.

²² In Islamic law, *Ta’zir* refers to punishments that – unlike Hudūd and Qisās - are not defined in the Quran or Sunna and are executed under the discretionary power of the judge (*Qadl*).



1 LEGAL FRAMEWORK

1.1 International legal framework

Afghanistan as a State continues to be bound by the obligations set out in the international human rights instruments to which it is a party.²³

Corporal punishment

Corporal punishment has been defined as: “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.²⁴ The Human Rights Committee has considered corporal punishment to include “excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure”²⁵ and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that corporal punishment commonly involves the intentional use of force against a person, with a component of degradation and/or humiliation of the victim.²⁶ The United Nations Commission on Human Rights²⁷ (predecessor to the Human Rights Council), human rights treaty bodies²⁸ and special procedures²⁹ have all stated that corporal punishment constitutes a form of torture or cruel, inhuman or degrading treatment or punishment, in contravention of international human rights standards, and have called for its abolition.³⁰

²³ *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (ratified 1 April 1987), *Optional Protocol to the Convention against Torture* (accession by Afghanistan 17 April 2018), *International Covenant on Civil and Political Rights* (accession by Afghanistan 24 January 1983), *Convention on the Elimination of All Forms of Discrimination against Women* (ratified 5 March 2003), *International Convention on the Elimination of All Forms of Racial Discrimination* (accession by Afghanistan 6 July 1983), *International Covenant on Economic, Social and Cultural Rights* (accession by Afghanistan 24 January 1983), *Convention on the Rights of the Child* (ratified 28 March 1994), *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (accession by Afghanistan 24 September 2003), *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (accession by Afghanistan 19 September 2002), *Convention on the Rights of Persons with Disabilities* (accession by Afghanistan 18 September 2012).

²⁴ UN Committee on the Rights of the Child, General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (2006), para. 11.

²⁵ UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. [5].

²⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 9 February 2010, A/HRC/13/39, para. [63].

²⁷ UN Commission on Human Rights, Torture and other cruel, inhuman or degrading treatment or punishment, Res. 1998/38, ESCOR Supp. (No. 3) at 134, E/CN.4/1998/38 (1998).

²⁸ UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. [5]; *George Osbourne v. Jamaica*, CCPR/C/68/D/759/1997, UN Human Rights Committee (HRC), 13 April 2000, para. [9.1]. See: *Official records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. II, annex IX, sect. FF, communication No. 928/2000, *Boodlal Sooklal v. Trinidad and Tobago*; vol. II, annex IX, sect. Q, communication No. 792/1998, *Higginson v. Jamaica*; *Official records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40), vol. II, annex IX, sect. B, communication No. 793/1998, *Pryce v. Jamaica*.

²⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 (B), 10 January 1997, E/CN.4/1997/7, para. [8]; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted pursuant to General Assembly resolution 59/182 and Commission on Human Rights resolution 2005/39, A/60/316, para. [26]-[28].

³⁰ Committee Against Torture, *Concluding observations on the initial report of Pakistan*, 1 June 2017, CAT/C/PAK/CO/1, para. [38]-[39]; Committee Against Torture, *Concluding observations on the third periodic report of Qatar*, 4 June 2018,

The prohibition of torture and cruel, inhuman or degrading treatment or punishment is considered a peremptory norm (*jus cogens*) – or fundamental principle – of international law. The obligation to prohibit such practices is non-derogable; meaning that there can never be any justification to resort to the use of torture and other cruel, inhuman or degrading treatment or punishment or to fail to observe the prohibition, even in times of emergency.³¹

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressly excludes from the definition of torture: “pain or suffering arising only from, inherent in or incidental to lawful sanctions”³². Human rights special procedures have not accepted the argument that corporal punishment constitutes a “lawful sanction” falling outside the prohibition on torture,³³ with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, stating in 2005 that: “States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment.”³⁴

Human rights treaty bodies and special procedures have also rejected religious law as a justification for the implementation of corporal punishment. In 2006, the Committee on the Rights of the Child stated that the freedom to manifest one’s religion may be limited to protect the fundamental rights and freedoms of others and found that corporal punishment “prescribed under certain interpretations of religious law... plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.”³⁵ The Special Rapporteur against torture and other cruel, inhuman and degrading treatment and punishment said in 1997 that “States applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice”.³⁶

The Human Rights Committee has noted that regulations regarding women’s clothing imposed by a State party may violate rights guaranteed by the International Covenant on Civil and Political Rights, including Article 7, which prohibits torture and cruel, inhuman or degrading treatment or punishment, “if corporal punishment is imposed in order to enforce such a regulation”.³⁷ In 2018, the Committee on the Elimination of Discrimination against Women recommended that Saudi Arabia ensure women’s rights to choose their dress, “including by taking effective measures to protect them from violence, threats or coercion by the religious police and male guardians.”³⁸

CAT/C/QAT/CO/3, para. [31]-[32]; Committee Against Torture, *Concluding observations on the initial report of the United Arab Emirates*, 22 August 2022, CAT/C/ARE/CO/13, para. [9]-[10].

³¹ Convention Against Torture, article 2(2); International Covenant on Civil and Political Rights, article 4(2).

³² Convention Against Torture, article 2(2); International Covenant on Civil and Political Rights, article 4(2).

³³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 (B), 10 January 1997, E/CN.4/1997/7, para. [8]; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted pursuant to General Assembly resolution 59/182 and Commission on Human Rights resolution 2005/39, A/60/316, para. [26]-[28].

³⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted pursuant to General Assembly resolution 59/182 and Commission on Human Rights resolution 2005/39, A/60/316, para. [26]-[28].

³⁵ UN Committee on the Rights of the Child, General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8, para. [29].

³⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 (B), 10 January 1997, E/CN.4/1997/7, para. [10].

³⁷ UN Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10, para. [13].

³⁸ CEDAW/C/SAU/CO/3-4;

Death penalty

While the death penalty is not prohibited under international human rights law, the International Covenant on Civil and Political Rights strictly limits its application by State parties which have not abolished its use.

The death penalty can only be imposed for the “most serious crimes”, interpreted by the Human Rights Committee as crimes of extreme gravity, involving intentional killing.³⁹ Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, drug and sexual offences, among others, can never serve as the basis for the imposition of the death penalty.⁴⁰

Mandatory death sentences are prohibited under international human rights law. The Human Rights Committee has held that in all cases involving the application of the death penalty, the individual circumstances of the offender and of the offence must be considered by the sentencing court. Mandatory death sentences that leave courts with no discretion as to whether to apply the death sentence are considered arbitrary.⁴¹

International standards make it clear that all accused persons must receive a fair trial. Respect for fair trial guarantees is particularly important in cases leading to the imposition of the death penalty. The Human Rights Committee has held that the imposition of the death sentence in circumstances where the fair trial rights of the accused have not been upheld constitutes an arbitrary deprivation of life.⁴² Violations of fair trial guarantees include: the use of forced confessions; lack of effective legal representation; general lack of fairness of the criminal process and lack of independence or impartiality of the court.

Any person sentenced to death has the right to seek pardon or commutation of their sentence.⁴³ States parties are required to ensure that pardons or commutations of the death penalty can be granted in appropriate circumstances.⁴⁴

International human rights law prohibits the imposition of the death penalty for crimes committed by persons under 18 at the time of the offence and⁴⁵ against pregnant women.⁴⁶

³⁹ Human Rights Committee, General Comment No. 36, Art. 6 (Right to life), 3 September 2019, CPR/C/GC/36, para. [35].

⁴⁰ The United Nations Special Rapporteur on summary executions has stated that under international law the death penalty is allowed only for “premeditated and deliberate acts with lethal consequences”. See: “UN human rights experts urge Singapore not to execute a Malaysian national”, Geneva, 18 May 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19988&LangID=E>.

⁴¹ UN Human Rights Committee, General Comment No. 36: Article 6 (Right to life), 2019, para. [37].

⁴² UN Human Rights Committee, General Comment No. 36: Article 6 (Right to life), 2019, para. [41]; UN Human Rights Committee, General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), 2007, para. 59. On fair trial standards, see also: Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁴³ International Covenant on Civil and Political Rights, Art. 6(4).

⁴⁴ Human Rights Committee, General Comment No. 36, Art. 6 (Right to life), 3 September 2019, CPR/C/GC/36, para. [47].

⁴⁵ International Covenant on Civil and Political Rights, Art. 6(5); Convention on the Rights of the Child Article 37; Human Rights Committee, General Comment No. 36, Article 6 (Right to life), 3 September 2019, CCPR/C/GC/36, paras. [48] – [49].

⁴⁶ International Covenant on Civil and Political Rights, Art. 6(5).

The Human Rights Committee has also noted that the death penalty should not be imposed on: persons whose serious psychosocial or intellectual disabilities impede their effective defence; persons who have limited moral culpability; persons who have a diminished ability to understand the reasons for their sentence; persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families (such as persons of advanced age and parents of very young or dependent children) and who have suffered serious human rights violations in the past.⁴⁷

Lastly, the death penalty must be carried out in a way which causes the least possible physical and mental suffering.⁴⁸ Methods of execution that violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment have been found to render an execution arbitrary in nature, and therefore constitute an arbitrary deprivation of life (prohibited under Article 6 of the International Covenant on Civil and Political Rights). Stoning and public executions have been determined to be among the methods of execution that are contrary to Article 7 of the International Covenant on Civil and Political Rights.⁴⁹

1.2 Domestic legal framework

The *de facto* authorities have purportedly suspended the Constitution⁵⁰ and initiated a review of laws passed under the Islamic Republic of Afghanistan to assess their compliance with Sharia and Afghan traditions.⁵¹ As of April 2023, the outcomes of the review – and therefore, the legal status of laws adopted by the Islamic Republic of Afghanistan – remain unknown. However, the *de facto* authorities have stated on numerous occasions that Sharia is the applicable legal framework in Afghanistan.⁵²

Although, as stated above, the *de facto* authorities have announced the suspension of the 2004 Constitution and laws established by the Islamic Republic of Afghanistan, this section also sets out as background the situation with regards to corporal punishment and the death penalty under the former laws of Afghanistan. Corporal punishment and the death penalty were lawful under the Constitution and Penal Code.

⁴⁷ Human Rights Committee, General Comment No. 36, Article 6 (Right to life), 3 September 2019, CPR/C/GC/36, para. [49].

⁴⁸ UN Human Rights Committee, General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 1992, para. 6.

⁴⁹ UN Human Rights Committee, General Comment No. 36: Article 6 (Right to life), 2019, para. 40. With regard to public executions, in resolution 2005/59, the Commission on Human Rights urged all States that still maintained the death penalty “to ensure that, where capital punishment still occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, (...)”. UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, 20 April 2005, E/CN.4/RES/2005/59, para. 7 (i). The prohibition was reaffirmed by the UN Secretary-General, see Report of the Secretary-General, Question of the death penalty, 14 September 2018, A/HRC/39/19, para. 38.

⁵⁰ At time of writing, the most recent public statements on the topic were made by the *de facto* Deputy Minister of Justice in a press conference, in which he stated that Afghanistan does not require a constitution and that Hanafi law can serve as a framework for resolving problems – including the Quran, Sunnah of Mohammad and jurisprudence. TOLO News, “Officials: Afghanistan Does Not Need a Constitution”, 4 September 2022. Available at: <https://tolonews.com/afghanistan-179697>.

⁵¹ *de facto* Ministry of Justice, “Minister of Justice Accentuated Upon the Expedition of Law Revision Process”, 10 April 2022. Available at: <https://moj.gov.af/en/minister-justice-accentuated-upon-expedition-law-revision-process>.

⁵² See, for example: Reuters, “Exclusive: Council may rule Afghanistan, Taliban to reach out to soldiers, pilots”, 19 August 2021. Available at: <https://www.reuters.com/world/asia-pacific/exclusive-council-may-rule-afghanistan-taliban-reach-out-soldiers-pilots-senior-2021-08-18/>; 23 September 2021. Available at: <https://apnews.com/article/religion-afghanistan-kabul-taliban-22f5107f1dbd19c8605b5b5435a9de54>; TOLO News, “Officials: Afghanistan Does Not Need a Constitution”, 4 September 2022. Available at: <https://tolonews.com/afghanistan-179697>; Associated Press, “Taliban official: Strict punishment, executions will return”, AP, “Afghan Taliban say group will stick to strict Islamic law”, 17 November 2022. Available at: <https://apnews.com/article/afghanistan-business-taliban-921f029801814736709d0445336a53cf>.

Article 3 of the Penal Code stated that its purpose was to regulate “principles, rules and provisions related to *Taziri* crimes and penalties”, and that perpetrators of Hudūd and Qisās would be “punished in accordance with the provisions of *Hanafi* jurisprudence of Islamic Sharia”.⁵³ Hudūd and Qisās punishments, (which, as previously noted, can be both corporal and capital punishment) were therefore allowed under the Penal Code, but not codified or defined therein. In 2010, the government of the Islamic Republic of Afghanistan confirmed that corporal punishment could be imposed for *zina*, stating that: “Article 427 of the Penal Code makes sexual intercourse outside the marriage (*zina*) or adultery punishable by ‘long term’ imprisonment...Article 426, however, provides that *zina* shall be punished under article 427 only if it is not punished as hudud [sic]. Hudud, not defined in the Penal Code, thereby refers to another source of law (Sharia Law) for the harshest punishment of *zina* (including whipping and stoning).”⁵⁴

The 2004 Constitution and the Penal Code both allowed for the imposition of the death penalty.⁵⁵ As with the punishment for *zina* discussed in the previous paragraph, the Penal Code states that *Ta’zir* punishments for murder were only to be applied in situations where the conditions for the application of a Qisās punishment were not available.⁵⁶

Article 170 of the Penal Code listed crimes for which the death penalty should be applied “unless otherwise stipulated in law”.⁵⁷ The listed crimes included: genocide, crimes against humanity, war crimes, crimes of aggression against state, assassination and explosion, kidnapping and taking hostage or highway robbery resulting in death of person(s); murder in conditions anticipated in the Penal Code; crimes causing territory of Afghanistan partly or entirely to fall under sovereignty of a foreign country or it harms the national sovereignty, territorial integrity, or independence of the country; gang rape of a female; gang rape of male that results in death.⁵⁸ The imposition of the death penalty for some of the crimes listed above, such as gang rape and harming the sovereignty and integrity of Afghanistan did not meet international standards which limit the application of the death penalty to the “most serious crimes”, being crimes of extreme gravity involving intentional killing.⁵⁹

With regards to children, the Penal Code explicitly provided that children⁶⁰ or persons under the age of 20⁶¹ could not be sentenced to death. These provisions did not fully comply with international standards, which prohibit the imposition of the death penalty for crimes committed by persons under 18 at the time of the offence.

The Penal Code explicitly provided for the consideration of mitigating circumstances by courts in determining the applicable punishment for an offence,⁶² therefore excluding mandatory capital punishment (which would involve the application of the death penalty in the absence of any consideration of mitigating circumstances).

⁵³ *Penal Code 2017*, Art. 3.

⁵⁴ UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Initial report of States parties due in 1996: Afghanistan*, 13 June 2010, CRC/C/AFG/1.

⁵⁵ *Constitution of Afghanistan 2004*, Art. 23.

⁵⁶ *Penal Code 2017*, Art. 546.

⁵⁷ *Penal Code 2017*, Art. 170.

⁵⁸ *Penal Code 2017*, Art. 170.

⁵⁹ Human Rights Committee, General Comment No. 36, Article 6 (Right to life), 3 September 2019, CPR/C/GC/36, para. [35].

⁶⁰ *Penal Code 2017*, Art. 99.

⁶¹ *Penal Code 2017*, Art. 114.

⁶² *Penal Code 2017*, Arts. 90, 208, 209, 211 and 213.

Although the Constitution stated that the President had the power to reduce and pardon penalties,⁶³ individuals did not have a specific right to seek pardon or commutation under the laws of the Islamic Republic of Afghanistan. In addition, pardons were not allowed – in any circumstances – for certain crimes.⁶⁴ The International Covenant on Civil and Political Rights requires that anyone sentenced to death has the right to seek clemency or pardon or commutation of the sentence and that pardons and commutations of sentences may be granted in all cases (i.e., there should be no limitation on the right to seek pardon or commutation of the death penalty for certain crimes).⁶⁵

1.3 Access to justice

Equal access to justice for all within the current legal system is a significant concern. While the *de facto* Ministry of Justice has confirmed that lawyers can continue to work, and has commenced issuing licences to defence lawyers, they have excluded women lawyers from the licensing process, effectively preventing them from practice and participation in the administration of justice. Defence lawyers also report difficulties accessing detention facilities and say they are often sidelined during court proceedings before *de facto* judges.

While, reportedly, some women lawyers have found ways to continue working, for example in “advisory” or “consulting” capacities rather than undertaking court appearances,⁶⁶ many have been forced to cease work due to the restrictions imposed by the *de facto* authorities and/or fears for their safety. Women judges have also been prevented from working since the Taliban takeover.

⁶³ *Constitution of Afghanistan 2004*, Article 64.18.

⁶⁴ *Criminal Procedure Code 2013*, Article 350.

⁶⁵ International Covenant on Civil and Political Rights, Article 6(4).

⁶⁶ International Legal Assistance Consortium, “Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover”, January 2023, p. 24. Available at: <https://ilacnet.org/new-ilac-report-surveys-justice-sector-under-taliban-rule-2/>.



2 CORPORAL PUNISHMENT

2.1 Corporal punishment documented since 15 August 2021

UNAMA has documented a range of forms of corporal punishment carried out by the *de facto* authorities since 15 August 2021,⁶⁷ including lashings/floggings, stoning, other types of beatings, forcing people to stand in cold water and forced head shaving.

Corporal punishment administered by the *de facto* authorities to date fall within three general categories:

1. **Judicial corporal punishment:** punishments carried out in accordance with a court decision.
2. **Corporal punishment handed down by non-judicial *de facto* entities:** punishments carried out following a formal decision announced by a non-judicial *de facto* authority member, i.e., a *de facto* Provincial Governor.
3. **Ad hoc corporal punishment:** punishments carried out by a non-judicial *de facto* authority member, in the absence of any formally announced decision i.e., *de facto* Police beating an accused person.

2.2 Judicial corporal punishment

All recorded instances of judicial corporal punishment to date have been lashings.

Prior to 13 November tweet by Zabiullah Mujahid⁶⁸ regarding the Supreme Leader's comments to judges

Between 15 August 2021 and 12 November 2022, UNAMA documented at least 18 instances of judicial corporal punishment carried out by *de facto* Provincial, District and Appeals Courts. Ghor province had the highest number of recorded instances of judicial corporal punishment (6) during this period.

Within the 18 documented instances, 33 men and 22 women were punished, including two children (both girls). The vast majority of punishments, for both men and women, related to zina, adultery or "running away from home" and all women and girls who were punished were reportedly convicted of such offences.

⁶⁷ UNAMA Human Rights Service report, *Human Rights in Afghanistan 15 August 2021 – 15 June 2022*, p. 18.

⁶⁸ Zabiullah (زياب الله م.) [Zabehulah_M33], Twitter, 13 November 2022, 8:37 pm. Available at: https://twitter.com/Zabehulah_M33/status/1591824999870259200?s=20&t=DjIPIQqSmH78zWj4KjBFw (Pashto).

Although details of the exact nature of these offences under the current system is not known, under the Islamic Republic of Afghanistan, women and girls were routinely arrested for “runaway” or “attempted zina” after leaving homes without permission of their mahram or without providing information to their families about their whereabouts.

In general, punishments consisted of 30-39 lashes for each convicted person. In some cases, however, as many as 80 to 100 lashes were given.

After 13 November tweet by the spokesperson for the de facto authorities regarding the Taliban Supreme Leader’s comments to judges

Following the 13 November tweet there was a significant increase in both the number and regularity of judicial corporal punishment carried out by the *de facto* authorities. Between 13 November 2022 and 30 April 2023, UNAMA documented at least 43 instances of judicial corporal punishment. Within the 43 instances, 58 women, 274 men and two male children were lashed for a variety of offences, including zina, “running away from home”, theft, homosexuality, consuming alcohol, fraud and drug trafficking. As before, the majority of punishments administered related to convictions of *zina*, adultery and “running away from home”.

In general, punishments consisted of 30-39 lashes per convicted person, however as many as 100 lashes were reportedly given in some cases.

In a number of incidents recorded during the period, punishments were publicly announced by the *de facto* authorities via social media platforms (namely the twitter accounts of the *de facto* Supreme Court, the spokesperson for the *de facto* authorities Zabihullah Mujahid and spokesperson for the *de facto* Provincial Governor of Kandahar).

Instances of judicial corporal punishment carried out prior to the spokesperson for the *de facto* authorities’ tweet were often conducted in *de facto* court buildings (though one was carried out in a public square in Uruzgan in January 2022 and another in a sports stadium in Ghor in August 2022) and tended to be administered to between two and five people at a time. After 13 November 2022, there was an observable increase in the number of people punished in a single gathering and in the public nature of punishments, with the *de facto* authorities favouring large capacity sports stadiums and drawing in significant crowds of local residents as spectators for punishments. For example: 14 people lashed in a football stadium Logar province on 23 November;⁶⁹ 21 people lashed in a courtroom of the *de facto* Primary Court in Kabul on 1 December; 27 people lashed in the sports stadium in Parwan on 8 December.⁷⁰

2.3 Corporal punishment cases decided and handed down by non-judicial entities

UNAMA has recorded a number of incidents in which sentences of corporal punishment were handed down and imposed based on decisions by non-judicial *de facto* authority members (including *de facto* District Governors, *de facto* Propagation of Virtue and Prevention of Vice officials, *de facto* Police and *de facto* General Directorate of Intelligence officials) appearing to exercise a quasi-judicial function. As with judicial corporal punishment, the most common crimes for which individuals were lashed were *zina* and “immoral acts”.

⁶⁹ UN Human Rights [UNHumanRights], Twitter, 25 November 2022, 6:23 pm. Available at: <https://twitter.com/UNHumanRights/status/1596140009777598464?s=20&t=DiJiPIQgSmH78zWj4KjBFw>.

⁷⁰ UNAMA News [UNAMANews], Twitter, 8 December 2022, 10:21 pm. Available at: https://twitter.com/UNAMANews/status/1600911066204028929?s=20&t=07d1PZuQc807_NB4l2qAgQ.

For example:

- On 27 December 2021 in Baghlan province, Freng district, Moradi village, a 16-year-old girl and 18-year-old man arrested for *zina* were lashed 50 times each, based on a decision by religious elders and *de facto* police.
- On 9 July 2022 in Takhar province, Taloqan city, *de facto* Propagation of Virtue and Prevention of Vice and *de facto* General Directorate of Intelligence personnel publicly lashed eight women and five men for “immoral acts”. The lashing was not preceded by any formal court verdict or decision.
- On 19 November 2022 in Nuristan province, Wama district, the *de facto* District Governor “convicted” a 17-year-old boy of stealing cooking oil and publicly lashed him 60 times. The decision was made following an interrogation of the boy, conducted in the presence of some *Ulema*.

2.4 *Ad hoc* corporal punishment

UNAMA has documented numerous cases of *ad hoc* corporal punishment, carried out by *de facto* authorities in the absence of any formal process or decision.

In most instances, these appear to be carried out by *de facto* officials of the Department for the Propagation of Virtue and Prevention of Vice (PVPV), against individuals accused of failing to observe various edicts, although instances of punishment perpetrated by other actors (such as *de facto* Police and *de facto* General Directorate of Intelligence officials) have also been recorded. The reasons for *ad hoc* punishments meted out by *de facto* officials of the Department for the Propagation of Virtue and Prevention of Vice vary according to gender. In cases concerning women, it is most frequently as a punishment for failing to wear Islamic *hijab* as interpreted by the *de facto* authorities and for leaving the house without a *mahram*⁷¹ – even where travelling less than the 78km specified by the *de facto* authorities in their *mahram* edict.⁷² In cases regarding men, punishments are often meted out against barbers who have trimmed men’s beards and/or men who have trimmed their beards, shopkeepers who allow women to shop in their store without *mahram* and men who fail to attend the mosque for prayers, as recommended by the *de facto* authorities.

For example:

- On 16 December 2022, in Baghlan province, Burka district, *de facto* military personnel lashed and beat two men with the butt of a gun, accusing them of gambling and using drugs.
- On 12 April 2022 in Helmand province, Lashkar Gah city, *de facto* PVPV officials slapped and kicked a group of shopkeepers, for allowing women to shop in their stores unaccompanied by *mahram*.
- On 13 August 2022, in Bamyan province, city area, *de facto* PVPV inspectors lashed two girls and one woman because they were not wearing burqas.

⁷¹ A women’s husband, or her immediate male relative (i.e., father, brother, paternal and maternal uncles and her nephews) with whom marriage is proscribed for her under Sharia law.

⁷² [MPVPV \[MOPVPE1\], Twitter, 31 December 2021, 4:45pm. Available at: https://twitter.com/MOPVPE1/status/1476889768357150729?s=20&t=7TuX4pPt6OQEvspvgZDDFA](https://twitter.com/MOPVPE1/status/1476889768357150729?s=20&t=7TuX4pPt6OQEvspvgZDDFA); Aljazeera, “No long-distance travel for women without male relative: Taliban”, 26 December 2021. Available at: <https://www.aljazeera.com/news/2021/12/26/afghanistan-long-distance-travel-women-without-male-escort-taliban>.

- On 6 November 2022 in Kabul city, *de facto* PVPV officials detained a group of six young women and beat them with sticks and cables on their legs, because their ankles were visible under their dresses.
- On 14 November 2022 in Helmand province, Lashkar Gah city, *de facto* Police stopped two adult men and beat them because they were playing music inside their car.

In one instance, from Samangan province, a lashing by *de facto* Police resulted in the death of a woman.

- On 30 November 2022 in Samangan province, Aybak city, *de facto* Police lashed a woman and a man who had been arrested on charges of adultery and “running away”. The woman died as a result of being beaten and her body was handed to her family the following day.



3 DEATH PENALTY

3. Death penalty

Since the Taliban takeover, UNAMA has recorded one instance of judicially sanctioned execution, which was conducted in public and in the presence of numerous, senior *de facto* officials:

On 7 December, spokesperson for the *de facto* authorities, Zabihullah Mujahid, announced on Twitter that earlier that day in Farah province, a man convicted of murder had been publicly executed.⁷³ The individual had been convicted of stabbing and killing a man in 2017. The tweet stated that the punishment was carried out following a complaint by the victim's family to the *de facto* authorities, and that the case progressed through all three judicial stages (Primary, Appeals and Supreme Courts) and that all three courts issued a Qisās punishment,⁷⁴ which was then agreed upon by the Taliban Supreme Leader. Senior *de facto* officials and local residents attended the execution, including: *de facto* Deputy Prime Minister Mullah Abdul Ghani Baradar, *de facto* Minister for the Propagation of Virtue and Prevention of Vice Mohammad Khalil Hanafi, *de facto* Minister of Interior Sirajuddin Haqqani, *de facto* Minister of Foreign Affairs Amir Khan Muttaqi, *de facto* Minister of Justice Mawlawi Abdul Hakim Sharai, *de facto* Minister of Education Habibullah Agha and spokesperson for the *de facto* authorities Zabihullah Mujahid. The man was reportedly shot three times by the murdered victim's father.⁷⁵

While the case had reportedly progressed through all three judicial stages, no information about other aspects of the process and respect for fair trial guarantees is available. Reportedly, the *de facto* authorities had asked the murdered man's mother to forgive the perpetrator, but she insisted on his execution.⁷⁶

⁷³ Zabihullah (ذبيح الله م.) (@Zabehulah_M33), Twitter, 7 December 2022, 1:21 pm. Available at: https://twitter.com/Zabehulah_M33/status/1600412615787675648?s=20&t=7RmnyJvjtrSQqa42ri0vA (Pashto).

⁷⁴ Qisās is a punishment decided by the victims' family, involving either retaliation in kind, blood money or forgiving the perpetrator.

⁷⁵ Office of the High Commissioner for Human Rights, Comment by UN Human Rights Office spokesperson Jeremy Laurence on Afghanistan execution, 7 December 2022. Available at: [@UNAMANews](https://www.ohchr.org/en/press-releases/2022/12/comment-un-human-rights-office-spokesperson-jeremy-laurence-afghanistan#:~:text=The%20death%20penalty%20is%20incompatible,death%20penalty%20in%20its%20entirety;UNAMA_News_), Twitter, 7 December 2022, 9:31 pm. Available at: <https://twitter.com/UNAMANews/status/1600536086496919553?s=20&t=BBcTWv4DfbHb2IMpw0q49A>.

⁷⁶ BBC News, "Murderer publicly executed by his victim's father, Taliban say", 7 December 2022. Available at: <https://www.bbc.com/news/world-asia-63884696>.

One other instance of execution ordered by non-judicial actors has been recorded by UNAMA. On 14 February, in Badakhshan province, Nusay district, the *de facto* District Governor ordered and implemented the stoning of a woman and man accused of adultery. The *de facto* District Governor reportedly gathered local residents, *Ulema* and other *de facto* authorities to participate in the stoning of the two individuals, who had been arrested the day before. He reportedly stated he carried out the punishment “in accordance with Sharia law”.

In March 2022, there were reports that *de facto* authorities in Kunduz intended to execute four males accused of killing a group of eight polio vaccinators a few weeks earlier. The execution was reported to be a Qisās punishment, carried out in accordance with the wishes of family members of the victims. At least three of the four accused were under the age of 18. Family members and defense lawyers were denied access to the accused, who were held by *de facto* General Directorate of Intelligence. The execution was not subsequently carried out.

UNAMA has also recorded instances of corpses of alleged criminals, killed by *de facto* security forces, being publicly displayed, mostly in Herat province. For example, on 16 March 2022, *de facto* General Directorate of Intelligence officials rescued a 6-year-old child who had allegedly been kidnapped, killing one of the accused kidnappers in the course of the operation. His body was hung in a square in the centre of the city. At least seven such instances have been recorded in Herat since 15 August 2021. International courts have taken the view in some cases that the suffering caused to family members as a result of the treatment of their relative’s corpse post-mortem may be regarded as reaching the threshold of inhuman or degrading treatment,⁷⁷ where the suffering caused is distinct in nature from the distress or sorrow caused by the death itself.⁷⁸

⁷⁷ IACtHR, *Moiwana Village v. Suriname*, 2005, paras 98–100; IACtHR, *Masacres de Río Negro v. Guatemala*, 2012, paras 151–165.

⁷⁸ ECtHR, *Akkum et al v. Turkey*, no. 21894/93, 2005, para. 258; *Khadzhaliyev et al v. Russia*, no. 3013/04, 2008, para. 121; IACtHR, *Nadege Dorzema v. Dominican Republic*, 2012, paras 117 and 252.

Conclusions

Corporal punishment, defined as: “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”⁷⁹, is a violation of the prohibition on torture and cruel, inhuman and degrading treatment or punishment, and therefore goes contrary not only to Afghanistan’s human rights obligations, but also to a fundamental principle of international law.

UNAMA has documented numerous instances of corporal punishment imposed for *zina*/adultery/“running away” and homosexuality. Women who are publicly punished for *zina* and other moral crimes may be at increased risk of violence from their families and communities after the punishment, due to extreme levels of stigma towards women accused of extramarital relationships, deemed illegal by the *de facto* authorities. The prosecution of women for *zina* is inconsistent with Afghanistan’s international human rights obligations as it discriminates against women particularly and is a serious violation of their rights to freedom of movement, privacy, and equality before the law.⁸⁰

LGBTIQ individuals punished for the offence of homosexuality are also likely to be at higher risk of harm if their punishment is known to their families and communities.⁸¹ All human beings, irrespective of their sexual orientation, are entitled to enjoy the protection of international human rights law.⁸²

Corporal punishment, in addition to being a violation of international human rights law, has the potential to inflict serious physical and mental harm on those who are subject to it. The political situation and humanitarian crisis facing Afghanistan have resulted in a decrease in funding for services providing medical and psychosocial support – meaning that individuals who experience harm as a result of corporal punishment are less likely to be able to access services. Under the first Taliban regime, humanitarian organizations such as the International Committee of the Red Cross and Médecins Sans Frontières were faced with situations in which individuals who had been subjected to amputation as a punishment were brought to their facilities for treatment.⁸³ These organisations were required to consider whether the provision of healthcare in such a situation would render them complicit in a practice that goes contrary to human rights.

The United Nations has repeatedly stated its strong opposition to the death penalty in all circumstances and has, together with human rights mechanisms, called on States which retain the death penalty to establish an immediate moratorium on executions with a view to abolition.⁸⁴ The UN Secretary-General has noted that the imposition of the death penalty is

⁷⁹ General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (2006), para. 11.

⁸⁰ Articles 2(f), 15(1) and 15(4), Convention on the Elimination of all Forms of Discrimination Against Women; Articles 2, 3, 12, 14, 17, International Covenant on Political and Civil Rights; United Nations Human Rights Committee, General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), CCPR/C/21/Rev.1/Add.10, 29 March 2009, paras. 14, 16. See also UNAMA/OHCHR, *A Way to Go: An Update on the Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, 2013; UNAMA/OHCHR, *Justice Through the Eyes of Afghan Women: Cases of Violence Against Women Addressed through Mediation and Court Adjudication*, 2015. Available at: <https://unama.unmissions.org/women%27s-rights-reports>.

⁸¹ Human Rights Watch, <https://www.hrw.org/report/2022/01/26/even-if-you-go-skies-well-find-you/lgbt-people-afghanistan-after-taliban-takeover>.

⁸² UN Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, 4 May 2015, A/HRC/29/23.

⁸³ Sharia punishment, treatment, and speaking out. BMJ. 1999 Aug 14; 319(7207):445-7. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1127048/#>.

⁸⁴ See, most recently: United Nations General Assembly, Secretary General’s report on a moratorium on the use of the death penalty, 8 August 2022, A/77/274.

increasingly regarded as being incompatible with the fundamental tenets of human rights, in particular the right to life and prohibition of torture.⁸⁵ The Human Rights Committee has stated that stoning and public executions are contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and therefore render the execution arbitrary in nature.⁸⁶

Pending the abolition of the death penalty, Afghanistan should limit the imposition of capital punishment to only the “most serious crimes” and ensure: that the death penalty is never used against persons under the age of 18 at the time of the alleged commission of the crimes, pregnant women, and persons with serious psycho-social or intellectual disabilities; strict respect for fair trial and due process guarantees, including the right to seek pardon and commutation; that the death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law; and that transparent and accurate information on the use of the death penalty is made available.

The legal system in Afghanistan is currently failing to safeguard minimum fair trial and due process guarantees, with defence lawyers reporting difficulties in meeting with clients, accessing places of detention and being sidelined in judicial processes. The *de facto* authorities’ refusal to grant licences to women defence lawyers and exclusion of women judges from the judicial system has a specific impact on women and girls’ ability to obtain legal representation, their equality before the law and access to justice.

⁸⁵ Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, Noon briefing by Stephanie Tremblay, Associate Spokesperson for the Secretary-General, 7 December 2022. Available at: <https://press.un.org/en/2022/db221207.doc.htm>; United Nations General Assembly, Secretary General’s report on a moratorium on the use of the death penalty, 8 August 2022, A/77/274.

⁸⁶ Human Rights Committee, General Comment No. 36: Article 6 (Right to life), 2019, para. 40. With regard to public executions, in resolution 2005/59, the Commission on Human Rights urged all States that still maintained the death penalty “to ensure that, where capital punishment still occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, (...)”. UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, 20 April 2005, E/CN.4/RES/2005/59, para. 7 (i). The prohibition was reaffirmed by the UN Secretary-General, see Report of the Secretary-General, Question of the death penalty, 14 September 2018, A/HRC/39/19, para. 38.

