**Please cite as:** EUAA, '4.1. Article 15(a) QD: death penalty or execution' in *Country Guidance: Afghanistan*, Mayo 2024.

# 4.1. Article 15(a) QD: death penalty or execution

COMMON ANALYSIS
Last update: May 2024

Article 15(a) QD

As noted in the chapter Refugee status, some profiles of applicants from Afghanistan may be at risk of death penalty or execution. In such cases, there would often be a nexus to a reason for persecution falling under the definition of a refugee (for example, 3.11. Individuals considered to have committed blasphemy and/or apostasy and 3.17. LGBTIQ persons), and those individuals would qualify for refugee status.

In cases where there is no nexus to a Convention ground, the need for subsidiary protection under Article 15(a) QD should be examined.

Death penalty is envisaged under Islamic law. The former Penal Code was reported to significantly limit the number of crimes punishable by the death penalty and the death penalty was rarely carried out in practice. Before the Taliban takeover, in the areas under their control, they imposed punishments through a parallel justice system, based on a strict interpretation of the *sharia*. This included instances of executions, including public executions by stoning and shooting [Criminal law and customary justice, 1.8., pp. 19, 21; 2.3.3., p. 27; Anti-government elements, 2.5., p. 21; Society-based targeting, 1.6., p. 22]. The justice system imposed following the Taliban takeover is based on *sharia*, and so are judgements and actions of judges and police officers in Afghanistan under Taliban rule [Targeting 2022, 1.1.4., p. 28]. Capital and corporal punishment are regarded as relevant punishments for certain crimes under *sharia* according to Taliban officials [Country Focus 2022, 1.5., p. 30].

The new Taliban justice system was affected by various measures, including the lack of a clear legal framework, the appointment of judges educated in *madrassas*, the exclusion of Shia jurisprudence, the reliance on informal justice mechanisms for civil and criminal issues, and the delegation of punishment enforcement to individual Taliban fighters and commanders 'on the spot' [Country Focus 2023, 1.2.3., pp. 25-26].

Initially after the takeover, there was reportedly a tendency among Taliban judges not to issue 'too harsh' punishments and there were only sporadic local reports on the use of corporal or capital punishments. There have been two cases of public executions being enforced since the Taliban takeover. On 14 November 2022, the Taliban supreme leader ordered all judges to fully

implement *sharia*, including *hudud* and *qisas* punishments that includes execution, stoning, flogging and amputation [Country Focus 2023, 1.2.3., pp. 25-26; 4.1.6., p. 63]. Corpses of alleged criminals killed during the de facto authorities' operations against them have also been put on display, mainly in Herat City but also in Mazar-e Sharif [Country Focus 2023, 1.2.3., p. 26].

As of June 2022, UNAMA had recorded extrajudicial killings of five women and two men accused of extramarital relationships [Targeting 2022, 1.1.4., p. 35]. According to *sharia*, *zina* is punished with stoning or lashing, depending on whether or not the perpetrators are married [Targeting 2022, 5.1.6., p. 94]. In February 2022, a woman and a man were stoned to death for alleged adultery in Badakhshan Province on order by a district judge. In addition, four people were reportedly stoned to death over rape accusation in Uruzgan in December 2021 [Targeting 2022, 1.1.4., p. 35].

As of 30 June 2023, UNAMA had recorded 218 killings against former civilian and military personnel carried out by the *de facto* authorities since the Taliban takeover [Country Focus 2023, 4.1.2., pp. 58-59]. According to a source, the reports of civilians being executed seemed to be part of a pattern where the Taliban failed to distinguish civilians from combatants, or resorted to collective punishments in areas of armed resistance [Country Focus 2023, 4.3.3., p. 69]. Various sources reported that, during 2022, the Taliban subjected civilians in Panjshir province to killings and other forms of reprisals that, according to the UN Special Rapporteur appeared to 'amount to collective punishment'. Also extrajudicial executions, including of groups of NRF fighters, were reportedly linked to the Taliban in 2022 [Country Focus 2023, 4.3.1., p. 66].

If there is a reasonable degree of likelihood of death penalty or execution, subsidiary protection under Article 15(a) QD shall be granted, unless the applicant is to be excluded in accordance with Article 17 QD.

In some cases, the death penalty would have been imposed for a serious crime committed by the applicant, or for other acts falling within the exclusion grounds (Article 17 QD). Therefore, although the criteria of Article 15(a) QD would be met, exclusion considerations should be examined (see 7. Exclusion).

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