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## 4.2.3. Arbitrary arrests and detentions, prison conditions and enforced disappearances

### COMMON ANALYSIS

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Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. Before the takeover, arbitrary arrests and illegal detention centres run by different actors (linked to the former government, to militias, to strongmen or to insurgent groups) have been widespread in Afghanistan. In general, human rights were not respected in these illegal detention facilities and persons who faced a real risk of being illegally detained could be in need of protection [[Country Focus 2023](#), 1.2.3.; [Country Focus 2022](#), 1.5.2; [Targeting 2022](#), 1.1.4.].

Soon after the takeover, the Taliban announced the release of 'all political detainees' throughout Afghanistan and released thousands of prisoners, *inter alia* from Kabul's main prison Pul-e Charkhi [[Country Focus 2022](#), 1.5.2., pp. 30-31]. Following releases in the first four months of 2022, the Taliban Office of Prison Administration claimed that the total detained population did not exceed 10 000 people. UNAMA reported that as of 19 June 2022, the overall prison population was 9 621 persons, of which 75 % were pre-trial detainees. The detained included both men and women, although men made up the vast majority [[Targeting 2022](#), 1.1.4., p. 32].

It was reported that people arrested for alleged crimes were imprisoned without any investigation or judgement. Even in cases of relatively serious crimes, there were no investigations because the *de facto* police lacked resources and competence [[Targeting 2022](#), 1.1.4., p. 30].

UNAMA reported that the Taliban issued a 'Code of Conduct on system reform relating to prisoners' instructing Taliban security officials that 'common-law' criminals should not be held for more than three days, after which their case needed to be handed over to a *de facto* court. However, the instructions also allowed for suspects to be held for one month or more if ordered by a *de facto* court. It also reportedly prohibited the use of torture 'at any point throughout arrest, transfer or detention' and provided punishments for those resorting to torture. In January 2022, the Taliban established a Taliban commission to inspect prisons and detention centres and to ensure innocent prisoners were released [[Targeting 2022](#), 1.1.4., pp. 32-33].

Nevertheless, UNAMA has documented human rights violations during arrests and subsequent detentions by the *de facto* authorities, including 18 deaths in custody. Torture and other cruel inhuman and degrading treatment or punishments constituted almost 50 % of cases recorded during the period 1 January 2022–31 July 2023. A source also reported that the majority of detainees had been subjected to torture and other forms of ill-treatment by the Taliban while in custody [[Country Focus 2023](#), 1.2.3., p. 28].

The USDOS described prison conditions per se as ‘life-threatening’ [[Country Focus 2023](#), 1.2.3., p. 28]. Also, according to OHCHR, the prison conditions in Afghanistan were below international standards before the Taliban takeover, and because of a general lack of funds the conditions worsened under Taliban rule. Shortages of food, medical care, clothing and heating were reported. There were also reportedly no funds to feed the prisoners, so most were quickly released. The prisoner's family could also be asked to provide food, but if they did not have the means (e.g. due to poverty), the prisoner was released. There were further reports of victims being asked to provide food for the perpetrator for an arrest to be made. Suspected ISKP affiliates were reportedly not released. The main prison in Herat City was described in February 2022 as ‘crammed full’, with around 40 men in each cell, and many of them had not been tried by a *de facto* court. It was claimed that many inmates were former government workers, imprisoned without trial or evidence. Children from 12 years of age were also reportedly imprisoned. UNAMA also reported on children being held in provincial prisons, sometimes alongside adults [[Targeting 2022](#), 1.1.4., pp. 33, 34]. There were reports indicating that inmates did not have access to legal counsel and suffered in cells, waiting a formal judicial system to be put in place. Female inmates reportedly lacked medical care in Kabul prison [[Country Focus 2022](#), 1.5.2., p. 31].

It was also reported that Taliban fighters have rounded up drug addicts across Afghanistan and brought them to clinics or prisons to receive treatment. However, the ensuing treatment lacked methadone and oftentimes counselling [[Targeting 2022](#), 1.1.4., pp. 34].

UNAMA recorded different forms of torture and ill-treatment by the Taliban GDI against detainees, and the most common methods included ‘kicking, punching and slapping, beatings with cables and pipes, and the use of mobile electric shock devices’ [[Targeting 2022](#), 1.1.4., p. 34].

Other incidents of reported torture by the Taliban refer to suspected NRF affiliates [[Country Focus 2023](#), 4.3.1., p. 66], journalists and media workers [[Country Focus 2023](#), 4.6., p. 91; [Targeting 2022](#), 7.2., p. 160], (women) activists and human rights defenders [[Country Focus 2023](#), 1.1.3., p. 20; 4.4.2., pp. 73-74; [Targeting 2022](#), 8.1., p. 166; 8.2., p. 168], protesters [[Targeting 2022](#), 1.2.2., p. 39], family members of former civilian and security personnel [[Country Focus 2023](#), 4.1.5., p. 63], persons formerly affiliated with foreign forces [[Country Focus 2023](#), 4.2., p.64], healthcare professionals [[Country Focus 2022](#), 2.8., p. 53], civilians in Panjshir [[Country Focus 2023](#), 4.3.1., p. 66; [Country Focus 2022](#), 3.2., p. 62], and musicians [[Country Focus 2023](#), 4.12.2., p. 102]. The Taliban have also been accused of committing human rights violations against alleged ISKP affiliates and former ANDSF and government officials [[Country Focus 2023](#), 4.3.2., p. 68; [Targeting 2022](#), 2.1., p. 57], including illegal detention and torture in Kunar [[Country Focus 2022](#), 2.5., p. 47]. Finally, arbitrary arrests and/or other forms of ill-treatment have been reported against former civilian and military personnel, women protesters,

perceived affiliated to armed groups, musicians [[Country Focus 2023](#), 4.1.2., p. 58; 4.3., p. 60; 4.4.2., p. 73; 4.12.2., p. 102].

Sources reported cases of enforced disappearances of civilian and military personnel, women protesters and suspected ISKP affiliates, as well as family members and individuals affiliated to such persons. Also, in view of the reports of Taliban threatening family members and individuals affiliated to disappeared or detained former civilian and military personnel, for example, not to approach media or human rights organisations, it was reported that this phenomenon has been 'completely underestimated' [[Country Focus 2023](#), 4.1.1., p. 62; 4.1.2., p. 58; 4.1.3., p. 60; 4.3.2., p. 68; 4.3.3., p. 70; 4.4.2., p. 73].

In cases where the prosecution or punishment is grossly unfair or disproportionate, or where a person is subjected to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur.

It should be highlighted that in some cases of individuals facing the risk of arrest or detention or enforced disappearance in Afghanistan, there would be a nexus to a reason for persecution falling under the definition of a refugee, and those individuals would qualify for refugee status. If nexus to a reason for persecution is not substantiated, Article 15(b) QD would apply.

[Exclusion](#) considerations may be relevant.

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