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5. Actors of protection

COMMON ANALYSIS

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[Article 7 QD](#)

After the takeover of the capital Kabul, the Taliban announced the reestablishment of the Islamic Emirate of Afghanistan, which was in power in Afghanistan between 1996 and 2001. Nevertheless, Taliban governance remained unclear in the first few weeks after the takeover [[Country Focus 2023](#), 1.1.2., p. 18].

The **Taliban** is currently the **sole entity exercising effective control** of all parts of Afghanistan through a *de facto* administration led by all-male and predominantly Taliban members. The *de facto* government considers itself a guiding body, having the clear and declared objective to ensure that the people live in accordance with *sharia* and to 'purify' the Afghan society. The *de facto* state administration has been described as working in arbitrary and unpredictable ways through repressive bodies, such as the GDI and the MPVPV, as well as a number of other *de facto* state institutions. Moreover, policy implementation and local governance varied across the country due to various interpretations of decrees issued by the central *de facto* government and the influence of local contexts and local stakeholders [[Country Focus 2023](#), 1.1.1., p. 18; 1.1.2., p. 19; 1.2.2., p. 24; 4.12.1., p. 101].

The Taliban used the **former government's state structures** but abolished some previous ministries, departments and commissions, such as those responsible for parliamentary affairs, elections, and overseeing human rights. Public servants of the previous administration were asked to return to work in August 2021, but many had already been evacuated or did not resume work due to non-payment of salaries [[Targeting 2022](#), 1.1.4.(c), pp. 26-27].

The Taliban have also started to build up **security institutions**. In September 2021, it was announced that the Taliban were working to form a regular army of 300 000 to 350 000 personnel on voluntary basis for both ministries of defence and interior. An intelligence service, the GDI, was also established. UNAMA recorded different forms of torture and ill-treatment by the Taliban GDI against detainees [[Targeting 2022](#), 1.1.4.(c), pp. 26-27; 1.1.4.(f), pp. 32-34; 13.1.1., p. 189].

The Taliban indicated also that they were planning to re-establish a **police force** and they appointed police chiefs in the provinces. However, Taliban's post-takeover efforts at policing the

country have been described as 'ad hoc at best'. Local Taliban units were compelled to take up new roles at checkpoints across Afghanistan and rural former insurgency members were faced with the task of governing and securing large 'unfamiliar urban centres' [[Security 2022](#), 1.2.2., pp. 28-29]. The Taliban reportedly trained new police officers. Persons serving in the de facto security institutions initially lacked uniforms, which made them difficult for the public to distinguish from persons with criminal intentions. As of June 2022, the new de facto police force was said to have retained 'some' former personnel 'but had largely inducted Taliban fighters' [[Targeting 2022](#), 1.1.4.(e), p. 28; 2.5., p. 69].

Sources reported on a lack of control from the Taliban leadership over their fighters and observed that Taliban fighters acted on their own initiative, subjecting civilians and journalists to violence, as well as conducting house-to-house searches and retaliation acts despite the general amnesty that was issued for all who served within the former government. It remained unclear whether such acts were sanctioned by the leadership or were caused by a lack of discipline or control in the chain of command. There was reportedly room for Taliban fighters to act on their own initiative, as they did not seem to face punishment or any consequences [[Country Focus 2022](#), 1.3., p. 25; [Targeting 2022](#), 1.1.4.(e), p. 32; 13.1.]. The Taliban also re-established the MPVPV, which has increased the enforcement of a wide range of directives related to extramarital relationships, dress code, attendance at prayers and music [[Targeting 2022](#), 1.3.1., pp. 41-42].

The Taliban gradually sought to 'resume the functioning of a countrywide **justice system** and courts under Islamic law'. Taliban appointments were made to the Taliban Ministry of Justice, the Taliban Supreme Court, their primary and appeal courts, and the Taliban Attorney General's Office. Provincial *de facto* judges were also appointed to all provinces as well as judicial workers across *de facto* provincial and district courts. The appointed *de facto* judges were mainly religious scholars and were reportedly 'empowered to lead their own investigations, without awaiting casefiles from Prosecution offices', and worked with little transparency [[Targeting 2022](#), 1.1.4.(d), pp. 27-28].

Under Taliban rule, Afghanistan's justice system lacks an official constitution and official laws. No official judicial system was announced, and *de facto* courts reportedly applied pre-existing laws, *sharia*, and new Taliban directives. *De facto* judges and police officers claimed that the basis of their judgements and actions was the *sharia*, however, the lack of a clear legal framework has left the interpretation of *sharia* to individual Taliban judges, which has caused great variations in verdicts. The administration of justice in the provinces was described as 'decentralised' and often done in consultation with religious scholars, elders and local communities. Structural, resource, and capacity constraints within the justice system, caused delays in *de facto* court proceedings, and increased detention numbers [[Country Focus 2023](#), 1.2.3., p. 25; [Targeting 2022](#), 1.1.4.(d), p. 28].

While in February 2022 it was reported that suspects were increasingly brought to *de facto* courts, at the same time another source had noted 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. The source further stated that people appointed to leading positions within the *de facto* police and

de facto prosecuting authorities did not have knowledge about investigative methods [[Targeting 2022](#), 1.1.4 e, p. 30].

According to UNAMA, a Taliban military court was established to have jurisdiction over Taliban security personnel and members of the Taliban ministries of defence and interior, and the GDI. There were, however, reports of civilians being tried in this court [[Targeting 2022](#), 1.1.4.(d), p. 28].

The Taliban also decided to re-establish *ulema* councils in all provinces. According to Ariana News, these Taliban councils were composed by religious scholars and elders with the mandate to oversee the functioning of the local government, advise on good governance, and handle legal disputes [[Targeting 2022](#), 1.1.4.(c), p. 26].

Initially after the Taliban 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**. On 14 November 2022, however, the Taliban supreme leader ordered all Taliban judges to fully implement *sharia*, and issue so called *hudud* and *qisas* punishments, where applicable, including punishments such as execution, stoning, flogging and the amputation of limbs. Several cases of public flogging followed across the whole country, and the first known public execution since the takeover was carried out in Farah Province on 7 December 2022 (of a man convicted of murder). Large crowds were invited to witness punishments in sport stadiums, a common practice during the previous Taliban rule. A second official execution took place in Laghman Province on 20 June 2023 (again of a man convicted of murder). Corpses of alleged criminals killed by the *de facto* authorities have also been put on public display, mainly in Herat City, but also in Mazar-e Sharif. Corporal punishments (lashings) have been documented by several sources [[Country Focus 2023](#), 1.2.3., pp. 26-27].

UNAMA recorded 63 cases of lashings issued by a *de facto* court in the period 15 August 2021–24 May 2023, while AW recorded 56 cases in the period October 2022–September 2023, and Rawadari reported 69 such cases in the first six months of 2023. Within the cases documented by UNAMA 394 victims (313 men and 81 women, including 2 boys and 2 girls), most cases related to *zina*, adultery or running away from home, but lashings were also issued for theft, homosexuality, consuming alcohol, fraud and drug trafficking. UNAMA reported that public corporal punishments had continued in the period July–September 2023. UNAMA also recorded lashings ordered by individuals exercising a 'quasi-judicial function' within the *de facto* administration, and *ad hoc* beatings and lashings carried out by, *inter alia*, members of the Taliban MPVPV and the *de facto* police against individuals not conforming with instructions on social codes and dress codes [[Country Focus 2023](#), 1.2.3., pp. 27-28].

Torture and other forms of ill-treatment have been reported as a common practice against people held in custody. 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 about torture and other forms of ill-treatment while in custody. The USDOS described prison conditions *per se* as 'life-threatening' [[Country Focus 2023](#), 1.2.3., p. 28].

Moreover, the new Taliban governance appears to be non-inclusive and discriminatory for the majority of the Afghan society. Human rights violations have been documented, for example, against [individuals affiliated with the security institutions of the former government](#) or [foreign forces](#), persons from Afghan civil society perceived as critical of the de facto government (see [3.7. Human rights defenders, activists and others perceived as critical of the Taliban](#)), and [individuals perceived to have transgressed moral and/or societal norms](#). A number of regulations and instructions have also been issued by the Taliban since 15 August 2021 impacting [women's and girls'](#) rights and freedoms. It has also been reported that the Taliban have engaged in discrimination against members of [ethnic and religious minority groups](#), including Hazara, Tajiks, and Salafis.

The lack of due process and the nature of the punishments would not qualify the justice mechanism operated by the Taliban as a legitimate form of protection. Further taking into account their record of human rights violations and discriminatory measures, it can be concluded that the Taliban do not qualify as an actor of protection who is able to provide effective, non-temporary and accessible protection.

No other actors are currently found to be in control of a significant part of the territory and able to provide protection within the meaning of Article 7 QD.

In case protection needs have been established in the home area, and in the absence of an actor who can provide protection in the meaning of Article 7 QD, the examination may continue with consideration of the applicability of IPA, if applicable in accordance with national legislation and practice.

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