



Afghanistan

Foreign Nationals and the Death Penalty

Death Penalty Overview

Afghanistan has been the site of protracted conflict for over 40 years. In the early 2000s, a new constitution and legal system was established. Although this marked a break from the draconian executions carried out by the Taliban prior to 2001, Afghanistan remains a retentionist state.

Capital punishment is legal and implemented especially in the face of high-profile mass atrocities and heinous crimes. Some of these crimes include terrorism, membership with terror organisations (such as ISIS or the Haqqani group), mass murder, and targeted assassinations. According to Amnesty International, from 2010 until 2020, there were developments with regard to the death penalty in Afghanistan. Amnesty figures show that 6 individuals were executed in 2016, 5 in 2017, 3 in 2018, and no death sentences were carried out in 2019 and 2020. In 2020 more than 4 new sentences were handed down by the courts, most imposed for terrorism-related offences. By the end of 2020, there were 976 individuals known to be under sentence of death in the Pul-e-Charkhi Prison in Kabul and the detention facility in Bagram. In 2021, two people were sentenced to death after the Kabul University attack in November 2020. These two individuals were charged for terrorism, membership of ISIS, and kidnapping, among other crimes.

According to Article 169 of the Afghan Penal Code, after a death sentence has passed through the Primary Court, Appeals Court and Supreme Court, it must then receive the President's official authorisation for it to be carried out. According to Article 170, the death penalty can be implemented for five types of offences: (1) Genocide, crimes against humanity, war crimes, crimes against the state, terrorism, and explosion, kidnapping and banditry all of which results in the death of a person or people; (2) Intentional homicide, within the remit of the law above; (3) Crime which results in bringing partially or totally the lands of the Islamic Republic of Afghanistan under the sovereignty of a foreign state, or if there is an assault to the national sovereignty, territorial integrity, or independence of the country; (4) The collective sexual assault of a woman; and (5) The collective assault of a man which causes the death of the victim.



Foreign Nationals on Death Row

As the authorisation of the execution (as well as relief from a capital sentence) legally requires the President's signature, individuals can remain on death row indefinitely. As such, although details of foreign nationals who are on death row in Afghanistan are not publicly available, according to a source in the Afghan government, foreign nationals on death row are serving long-term prison sentences (and are not being executed). The government's shift away from executions is in keeping with international norms pressure from donor countries to abolish the death penalty altogether, as well as efforts to remain distinct from the brutality of Taliban-sponsored executions. Afghanistan's judicial system has been criticised by the international community for not being able to provide fair and sound trials, as well as obtaining confessions using torture.

The Taliban, prior to 15 August 2021, controlled some regions of the country and used kangaroo courts under their own strict version of the Sharia law to sentence individuals to death and carry out executions. In 2021, the Taliban have been reported to have made numerous summary executions which made international news. In July 2021 alone, 22 Afghan fighters were executed, in Kandahar province local reports state that more than 100 people were executed based on their affiliation with the government, and a prominent Indian photojournalist, Danish Siddiqui, was also brutally executed. More detailed data on the ongoing executions by the Taliban is yet to be compiled. Taliban-instituted courts were condemned by the Afghan public as well as the government and international human rights organisations for having no legal basis.

Peace negotiations between the Afghan government, the Taliban, and the United States included prisoner release as one of the conditions of the negotiations. 5,000 Taliban prisoners and 1,000 government prisoners were released in 2020. 156 of the Taliban prisoners released were on death row, 105 accused of murder, 34 of kidnapping leading to murder, 51 of drug smuggling, and others of various other crimes.

Meanwhile, according to a 2021 report published by the United Nations Assistance Mission in Afghanistan (UNAMA), between 1 January and June 30 2021 there was a 47% increase in civilian casualties in Afghanistan with over 5,183 civilians killed, attributed mainly to the Taliban. Targeted killings using IEDs and shooting human rights defenders, media workers, religious elders, civilian government workers, and Hazaras by anti-government elements were of concern.



The Pul-e-Charki prison in Kabul, where most death row prisoners are held.

The Future for Afghanistan

After the Taliban took over in August 2021, most of the inmates from Pul-e-Charkhi prison were freed. According to the ICRC there had previously been more than 9,000 inmates, including detainees transferred from the Guantanamo Bay detention camp, and after the mass release only a few hundred remain in prison. Some former Taliban inmates were since reported to be in charge of the prison or serving as prison guards. Details of the prisoners freed and those left behind bars remains unknown.

There were several reports of reprisal killings and executions, especially in Panjshir, carried out by the Taliban across the county, yet no known monitoring has taken place by authoritative bodies. Given the rapidly changing political developments in Afghanistan, as well as the deteriorating human rights conditions at the hands of the Taliban, the future for foreign nationals in Afghanistan remains to be seen.

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