



# **The treatment of detainees in Afghanistan**

Respecting human rights: a factor for trust

September 2023



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Respecting human rights: a factor for trust

UNAMA Human Rights Service, 2023

UNAMA's Human Rights Service, which also represents the Office of the UN High Commissioner for Human Rights, leads the Mission's work in monitoring, reporting and advocating on the human rights situation in Afghanistan as mandated by the UN Security Council, and in particular UN Security Council Resolution 2678 of 16 March 2023.

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# Executive Summary

This report presents findings documented by the United Nations Assistance Mission in Afghanistan (UNAMA) on violations arising in places of detention under the *de facto* Ministry of Interior (MOI) (*de facto* police lock-ups) and *de facto* General Directorate of Intelligence (GDI), as well as provincial prisons of the *de facto* Office of Prison Administration (*de facto* OPA) during a period of 19 months, from 1 January 2022 to 31 July 2023.

In that period, UNAMA documented **over 1,600 human rights violations** by these *de facto* authorities relating to the arrest and subsequent detention of individuals, of which 11 per cent involved women. **Just under 50 percent of these comprised acts of torture and other cruel, inhuman or degrading treatment** or punishment (hereafter, ill-treatment). These occurred across 29 of Afghanistan's 34 provinces.

Of note, UNAMA documented **356 credible instances of violations during the course of arrest and transfer to a place of detention**, many of which amounted to torture or other forms of ill-treatment, with physical beatings and the blindfolding of those arrested. Of these, 177 were attributable to *de facto* police and 179 to *de facto* GDI. This is distinct from the approximately 200 instances documented by UNAMA of abuse, beatings and threats by *de facto* security authorities that occurred outside places of detention, for instance, during operational activities such as at checkpoints, while patrolling, or through unauthorized *ad hoc* enforcement of moral standards.

In relation to people held in custody of the *de facto* security and *de facto* prison authorities, UNAMA further documented **466 credible instances of torture and other forms of ill-treatment in custody**. Of these, 170 instances were attributed to *de facto* police, 291 instances were attributed to *de facto* GDI; and five to *de facto* prison authorities. These comprised:

- 259 instances involving **acts causing physical suffering**, which were routinely used to obtain forced confessions or other information. These acts include beatings, as well as instances of asphyxiation, suspension from the ceiling and electric shocks. Of these, 95 instances of torture were attributed to *de facto* police; 162 instances of torture to *de facto* GDI; two to *de facto* prison authorities<sup>1</sup>; and
- 207 instances involving **acts causing mental suffering** that in the circumstances of detention and coercive interrogations could amount to torture. These include threats to kill interviewees or their family members, and other acts, such as blindfolding and restraining detainees for extended periods during custody or throughout coercive questioning. Of these, there were 75 instances by *de facto* police, 129 instances by *de facto* GDI; and three attributable to *de facto* prison authorities.<sup>2</sup>

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<sup>1</sup> UNAMA documented an additional 34 instances where interviewees were unable to identify the responsible authority.

<sup>2</sup> UNAMA documented an additional 53 instances where interviewees were unable to identify the responsible authority.

UNAMA also documented the **deaths of 18 individuals in custody**, of which five were in *de facto* police custody, 11 in *de facto* GDI custody, and two in *de facto* prison custody (the latter two not attributable to torture or ill-treatment<sup>3</sup>). These are separate from the numerous instances of extra-judicial killings committed by *de facto* authorities, including by *de facto* security forces, occurring outside contexts of custodial detention. Of the 18 victims, six were former Afghan defence and security forces (ANDSF), six were (actual or perceived) members of armed groups (such as the self-identified National Resistance Front/NRF or self-identified Islamic State in Iraq and the Levant – Khorasan Province/ISKP), and six were persons unaffiliated with other groups of interest.

Concerning solitary confinement, UNAMA documented 19 instances of individuals being held in solitary confinement (three by *de facto* police; and 16 by *de facto* GDI), with one individual held in *de facto* GDI custody for a period of 50 days, raising serious concerns and constituting **prohibited prolonged solitary confinement and torture**.

With regards to procedural safeguards, UNAMA documented **widespread violations of interviewees' fundamental due process rights** while in detention. A violation of any due process right can increase the risk of undocumented torture and abuse and can negatively impact on the right to a fair trial before *de facto* courts. These included:

- 140 instances of violation of the right to be **informed of the reasons for arrest** at the time of apprehension (73 attributed to *de facto* police, and 67 to *de facto* GDI);
- no instances where an interviewee was **informed of his/her fundamental rights in detention** upon admission to detention;
- 271 instances where interviewees were not informed of their **right to access a lawyer** of one's choice, and had no **access to a lawyer or legal assistance** from the outset of arrest (128 attributed to *de facto*, 142 to *de facto* GDI and one to the *de facto* prison authorities);
- no instances where an interviewee in *de facto* police or *de facto* GDI custody had a **lawyer present during their interrogations**;
- 256 instances of violation of the right of **notification to, and contact with, families** (83 attributed to *de facto* police and 173 to *de facto* GDI);
- No instances where an interviewee, upon admission to, or prior to questioning in, *de facto* police or *de facto* GDI custody, underwent **any form of medical examination**, including a physical check;
- 83 instances of violation of the right to access independent medical personnel and **to receive adequate healthcare** while in detention (41 attributed to *de facto* police, 40 to *de facto* GDI, and two to *de facto* prison authorities);
- Only one instance of an interviewee **being presented to a judge promptly** after arrest; in no other instances were interviewees brought promptly before a *de facto* court or judge while in *de facto* police or *de facto* GDI custody to challenge the lawfulness of their detention;
- 82 instances of violation of the **right against forced confession**, where interviewees were forced under duress following questioning to sign documents,

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<sup>3</sup> UNAMA documented an additional three instances where interviewees were unable to identify the responsible authority.

often without knowing or being informed of the content of these documents (31 attributed to *de facto* police, and 51 to *de facto* GDI). In at least 40 of these instances, the documents were signed after interviewees were subjected to torture or ill-treatment during questioning. UNAMA documented no such instances concerning individuals in prison custody.

Notwithstanding the aforementioned body of documented violations, UNAMA considers that the extent of torture and other forms of ill-treatment of individuals in custody is widely under-reported, such that the figures presented in this report represent only a snapshot of the full scale of violations of the rights of individuals in detention across Afghanistan. The pervasive climate of surveillance, harassment and intimidation of all sectors of society, the threats to individuals not to speak of their experiences while in detention and being forced to provide guarantees by family members and other third parties for their release from custody, hampers the willingness of many individuals to raise complaints or to liaise freely with UNAMA, without fear of repercussions for themselves or their family. Documenting the full extent of the violations has been equally hampered by the lack of unrestricted access to places of detention, particularly those under the *de facto* MOI and *de facto* GDI, despite ongoing discussions with UNAMA.

Overall, UNAMA documented a higher number of violations attributable to the *de facto* GDI (955 instances, or 57 percent) than the *de facto* MOI (708 instances or 42 percent of the total). While the *de facto* MOI has jurisdiction over general law enforcement and public security, the *de facto* GDI, as Afghanistan's intelligence body, has jurisdiction over matters affecting internal and external security, which encompasses treason, espionage, terrorism and anti-government propaganda.

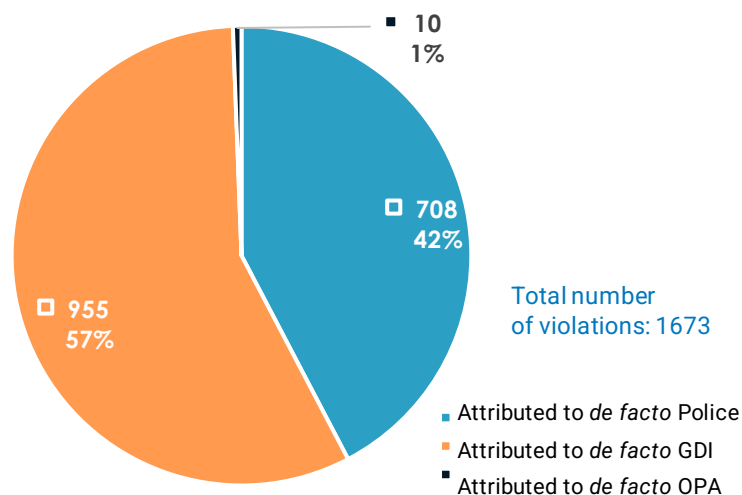
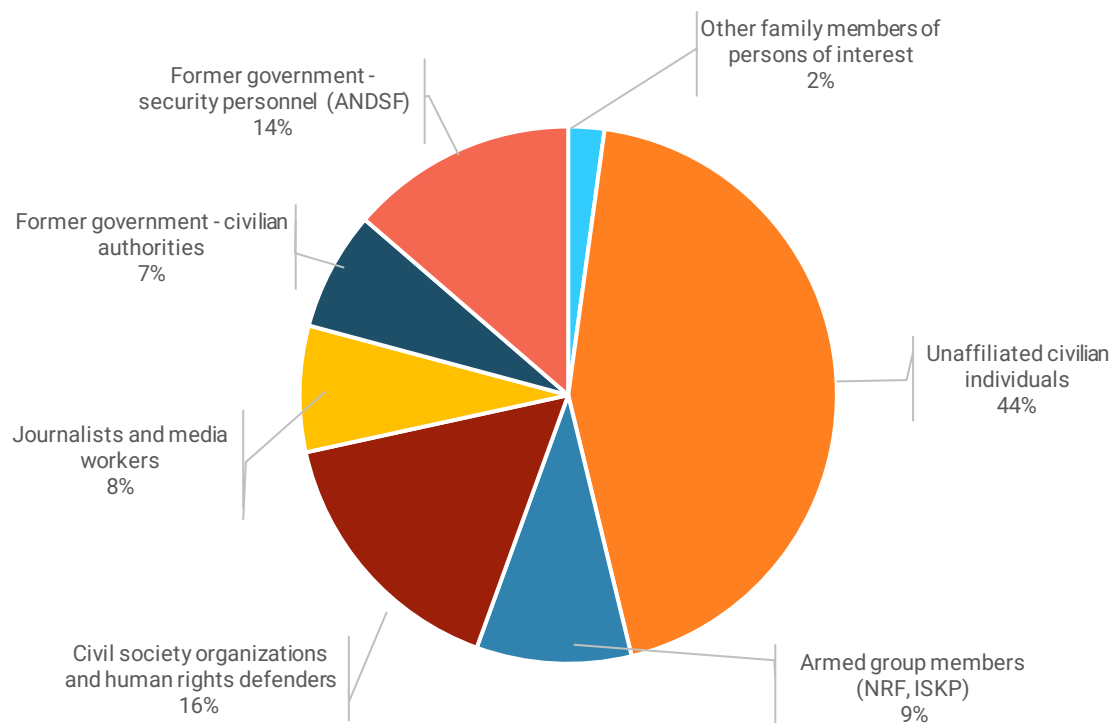


Figure 1: Instances of violations by institution

By corollary, a comparison of the profiles of those detained in *de facto* police and *de facto* GDI custody interviewed by UNAMA reveals that a higher proportion of individuals who are, or are perceived to be affiliated with, former officials of the government of the Islamic Republic of Afghanistan,<sup>4</sup> whether civilian or security, members of armed groups (self-identified NRF or ISKP), as well as those working in media were held in *de facto* GDI custody, as compared to *de facto* police custody.

<sup>4</sup> Hereafter, the term "former government officials" refers to officials and employees of the former government of the Islamic Republic of Afghanistan.

Notwithstanding, UNAMA observed that of those interviewed who claimed they had been subjected to torture or other forms of ill-treatment while deprived of their liberty, whether in either the custody of the *de facto* police or *de facto* GDI: 44 percent of interviewees were individuals with no particular affiliation; 24 percent were journalists and civil society activists; 21 percent were former government officials (seven percent civilians; and 14 percent, security and defence personnel) and nine percent were (actually or perceived to be) affiliated with armed groups (self-identified NRF or ISKP). Two percent of those detained, all by *de facto* GDI, were family members detained in order to extract information concerning other persons of interest.



**Figure 2: Breakdown by affiliation of victims who reported being subjected to torture or ill-treatment**

The approval by the Taliban leader of a “Code of Conduct on Reforming the Prisoners’ System” by Decree in January 2022 and similar *ad hoc* instructions to *de facto* security forces subsequently, suggests a commitment to addressing concerns of torture and ill-treatment of detainees by the *de facto* authorities in Afghanistan.

Since January 2022, the *de facto* MOI, *de facto* GDI and *de facto* OPA in Kabul have engaged in dialogue with UNAMA on allegations of human rights abuses brought to their attention by UNAMA, and on matters of detention, including torture prevention. The *de facto* police, GDI and prison authorities across the provinces equally engage with UNAMA, but with varying degrees of openness. Over the past year, UNAMA has conducted a number of awareness raising sessions on international standards for *de facto* heads and guards of places of detention on the prohibition of torture and prevention of mistreatment of detainees, and the use of force. These have been welcomed by *de facto* Chiefs of Police and the *de facto* OPA, acknowledging the need and utility of these sessions.



Further, the *de facto* MOI and *de facto* GDI have also maintained Human Rights Directorates that monitor places of detention and investigate allegations of abuse, although their impact to date in places of detention appears limited.

These internal inspection mechanisms must be endowed with sufficient autonomy and authority to be effective. While investigations are sometimes announced, UNAMA is unaware of the outcome of such investigations, or any action taken to hold personnel of *de facto* authorities accountable for violations of detainees' rights, whether resulting in dismissal and prosecution, or redress to victims.

Despite these initial steps to prevent the ill-treatment of detainees, only one entity to date, the *de facto* OPA, grants UNAMA access to prisons across Afghanistan and facilitates UNAMA engagements with *de facto* prison authorities in the provinces.

The change in mandate of the former Office of the *de facto* Attorney-General to the "High Directorate of Supervision and Prosecution of Decrees and Edicts" by decree issued in March 2023 appears aimed at ensuring oversight of, inter alia, the conduct of investigations of entities such as the *de facto* MOI and *de facto* GDI. The changed mandate includes monitoring the legality of summoning individuals and their subsequent detention, and the *de facto* Directorate is endowed with quasi-judicial powers with a right to reach determinations on the foregoing, and issue rulings to *de facto* entities on the release of detainees. They are equally mandated to prevent torture or ill-treatment and, where it arises, to investigate complaints, submit rulings "to the authoritative source" and reallocate casefiles to other investigators. While the *de facto* Directorate's wide-reaching mandate encompasses all "Emirate entities", military institutions and the private sector, including non-governmental organizations (NGOs), it is critical the Directorate prioritize oversight of the *de facto* MOI and *de facto* GDI to address the myriad of violations presented in this report as a means to address the pervasive and continued practice of torture and ill-treatment of individuals in custody.

The role of the *de facto* Supreme Court's military courts, which have jurisdiction to investigate complaints against *de facto* security authorities, is also critical in combatting impunity and ensuring accountability of *de facto* officials found responsible for acts of torture or ill-treatment of individuals.

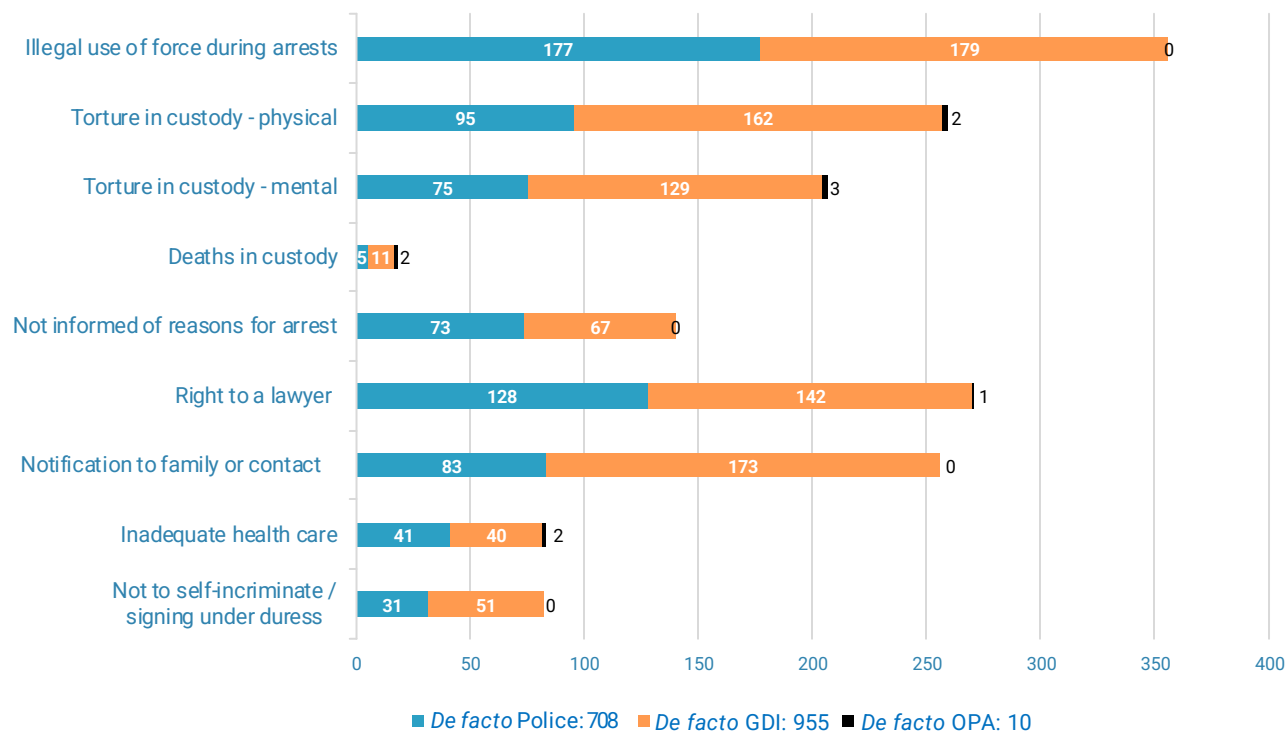
UNAMA welcomes further engagement with the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts, *de facto* MOI, *de facto* GDI and *de facto* OPA as well as the *de facto* Supreme Court, on all issues raised in this report.

Despite this, the continued commission of human rights violations of individuals in detention by *de facto* security authorities in contravention of international law undermines the credibility of all *de facto* authorities in the eyes of the population, creates fear and distrust, and demeans the dignity of people subjected to *de facto* criminal procedures.

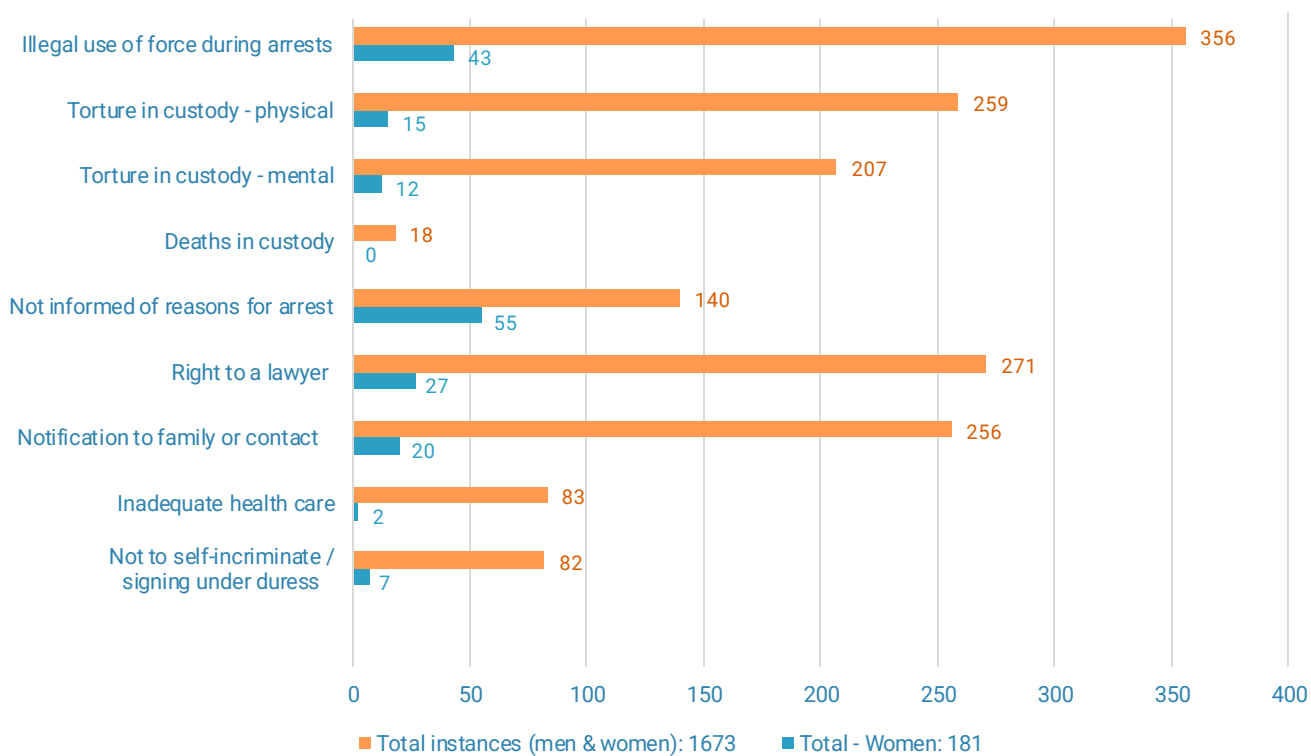
To address the issues raised in the report, the *de facto* Taliban leadership, including the *de facto* heads of its security authorities, should urgently consider implementing the recommendations presented at the conclusion of this report, and take all necessary steps towards ensuring a human-rights based approach to law enforcement.

# Overview of documented violations of fundamental rights throughout custody

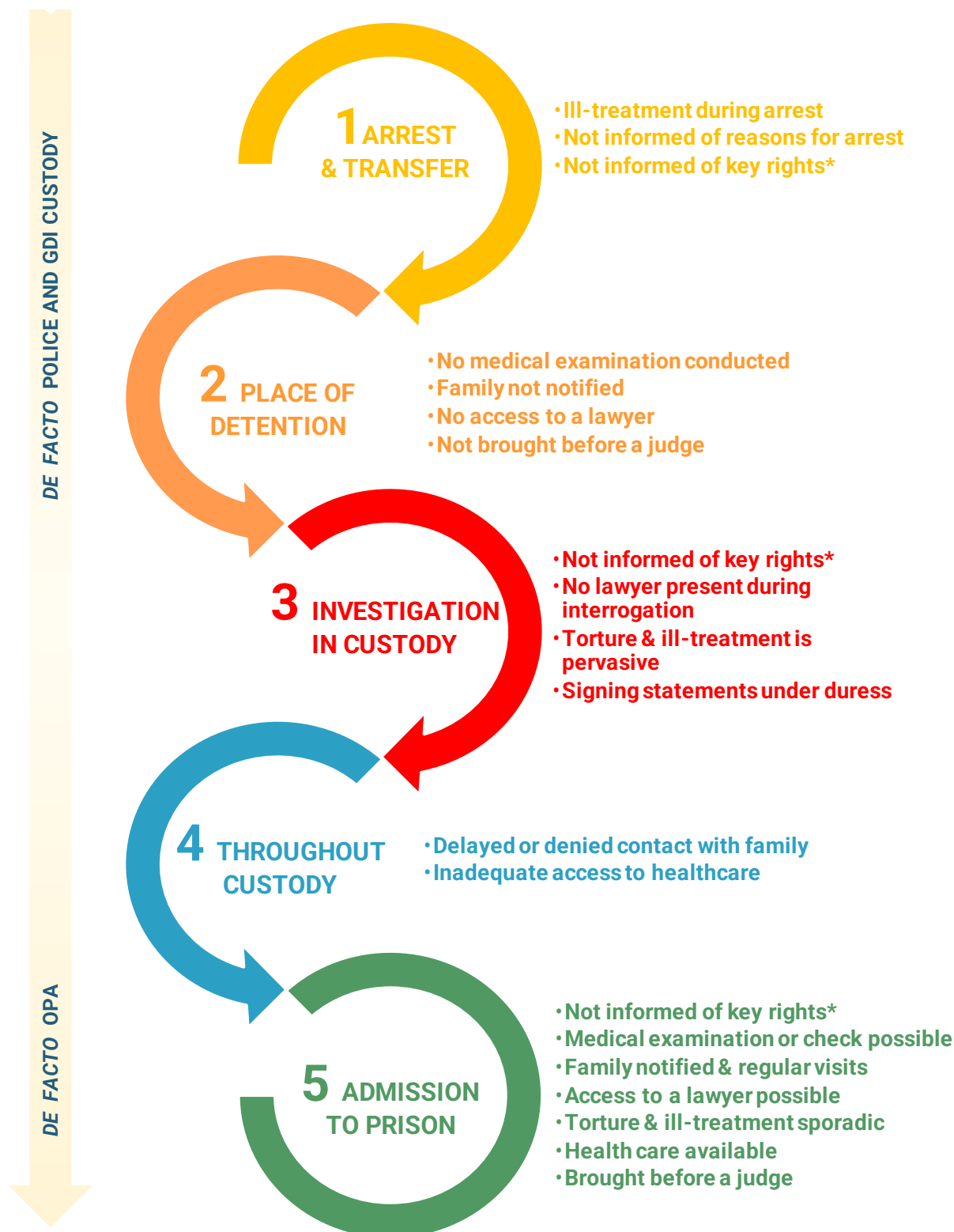
## Breakdown by institution



## Breakdown by gender



## Chronology of violations of fundamental rights throughout arrest and detention



\* Such as access to a lawyer, notification to family, to challenge detention, and to remain silent

# About the report

This report is part of a series of thematic studies on current human rights issues of concern to the people of Afghanistan, carried out by the United Nations Assistance Mission in Afghanistan's (UNAMA) Human Rights Service in the framework of Security Council Resolution 2626 (2022), which was extended by Resolution 2678 (2023). Resolution 2626 tasks UNAMA with engaging with "all stakeholders at the national and subnational levels and civil society and international non-governmental organizations in the protection and promotion of the human rights of all Afghans, [to] monitor, report and advocate with regard to the situation for civilians, [including on] the prevention of torture, monitoring of places of detention and the promotion of the rights of detainees", as well as to "promote, support and advise on Afghanistan's implementation of the provisions of instruments concerning human rights and fundamental freedoms to which Afghanistan is a State party and by which it is bound".<sup>5</sup> As part of this engagement, Afghanistan's *de facto* authorities were invited to provide factual comments on the content of the report and their response is annexed.

Since the *de facto* authorities took power on 15 August 2021, UNAMA has been documenting arbitrary arrests and detentions.<sup>6</sup> As of January 2022, UNAMA also began monitoring and documenting respect for the prohibition on torture and associated due process rights and procedural safeguards provided by international human rights law for those in custody of *de facto* authorities. Respect for the totality of those safeguards is critical for the prevention of torture and ill-treatment, as well as ensuring the respect and protection of fair trial rights before *de facto* courts.

This report presents UNAMA findings on human rights violations of individuals in the custody of the *de facto* authorities during a period of 19 months, from 1 January 2022 to 31 July 2023. This report specifically focuses on the treatment of detainees while in the custody of the *de facto* police which are under the direction of the *de facto* Ministry of Interior (MOI), the *de facto* General Directorate of Intelligence (GDI) (all combined referenced as *de facto* security personnel), and the *de facto* Office of Prison Administration (OPA). Documented violations that were unable to be attributed to a specific *de facto* entity are referenced where applicable.

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<sup>5</sup> Security Council resolution 2626 (2022), operational paragraph 5(e), and extended per Security Council resolution 2678 (2023).

<sup>6</sup> Arrests and detentions are considered arbitrary where they are: not in accordance with national laws, because they are not properly based on grounds established by law or not in accordance with procedures established by law; or otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable, or unnecessary in the circumstances. The arbitrariness of an arrest or detention is based on an individual assessment of the circumstances. Since there is no exhaustive list of criteria of arbitrariness, in the view of the Working Group on Arbitrary Detention "arbitrariness must be assessed in the light of all the relevant circumstances of a given detention." For example, if a person is detained with the goal of denying their human rights (such as expression of political opinions or peaceful demonstration) or it is based on discriminatory grounds. See UN Commission on Human Rights, Working Group on Arbitrary Detention, Deliberation No. 7, 1 December 2004, E/CN.4/2005/6, para. 54(b).

This is the seventh report issued by UNAMA on the treatment of persons deprived of their liberty in Afghanistan.<sup>7</sup> While most previous reports focused on detainees held for security- and terrorism-related offences, this report covers all detainees regardless of the reasons for detention. For context, the *de facto* MOI addresses common criminal cases, whereas the *de facto* GDI, as Afghanistan's intelligence body, has jurisdiction over cases impacting internal and external security. This encompasses treason, espionage, terrorism and anti-government propaganda.

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<sup>7</sup> All prior reports are available at <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody>.

# Methodology

With the Taliban takeover of Afghanistan on 15 August 2021, UNAMA was required to establish new relations with the *de facto* authorities. It no longer had unrestricted access to places of detention as under the Government of the Republic.

Discussions on unfettered access for UNAMA to detainees held in all places of detention by the *de facto* authorities is ongoing. To date, only the *de facto* OPA, has granted UNAMA access to several prisons across Afghanistan.

Accordingly, UNAMA has documented the violations reported below through its verifications of over 800 cases, including more than 130 in-depth interviews (of which 24 women) with individuals having been in the custody of *de facto* security and/or prison authorities, and its own discussions with relevant *de facto* authorities.

Cases in which accounts were not considered sufficiently credible and reliable are not included in figures in this report.<sup>8</sup>

Persons interviewed had either been held in one sole place of custody, questioned then released; or subsequently transferred to other places of detention, whether for further investigation or pre-trial detention pending their case being investigated and heard by a court. Accordingly, many individuals whom UNAMA interviewed had been held in the custody of multiple *de facto* authorities, and violations were correspondingly documented across multiple custody periods where these were reported to have occurred in each. Recurring violations that occurred in the custody of one sole authority, regardless of the duration of that custody, are recorded as one instance of a violation, for example, of torture or other cruel, inhuman or degrading treatment or punishment (hereafter, ill-treatment).

In the interests of protection, all references to interviewee experiences in custody omit the locations or other identifying factors, even where interviewees consented to UNAMA including their accounts in public reporting with identifying information.

UNAMA has documented violations in line with international law. In setting out the applicable legal framework, UNAMA has also included references to Afghan law, the status of which remains unclear while under continued review by *de facto* authorities, and instructions issued by the *de facto* leadership after 15 August 2021.<sup>9</sup>

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<sup>8</sup> This is in keeping with UNAMA methodology in its previous biennial reports on torture and detention.

<sup>9</sup> This is not an acknowledgment of the legality of such issuances but is intended as a frame of reference through which to analyse the violations recorded.



# Torture and other forms of ill-treatment

## Applicable framework

The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is considered a peremptory norm (*jus cogens*) of international law, applicable regardless of States' treaty obligations. Furthermore, several international treaties to which Afghanistan is a party and remains bound prohibit torture and other cruel inhuman or degrading treatment or punishment.<sup>10</sup> The obligation to respect the prohibition of such practices is absolute and non-derogable, meaning there can never be justification to resort to the use of torture or to fail to observe the prohibition, even in times of emergency.<sup>11</sup>

Torture comprises four elements. It describes any act which: causes severe pain or suffering, whether physical or mental; that is inflicted intentionally; committed for a specific purpose, such as extracting a confession, obtaining information, punishment, intimidation, humiliation, coercion or any reason based on discrimination; and involves a public official, either directly or indirectly.<sup>12</sup>

Physical acts causing severe pain or suffering which have been found to constitute torture, include, but are not limited to, severe beatings, punches and kicks,<sup>13</sup> and electric shocks.<sup>14</sup> Psychological torture should be interpreted to include all methods, techniques and circumstances which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering.<sup>15</sup> For instance, threats made by public officials or others acting at

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<sup>10</sup> The Universal Declaration of Human Rights (UDHR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, the Geneva Conventions of 1949, and the Rome Statute of the International Criminal Court. See also Security Council resolution 2626 (2022), para. 6(e) referencing Afghanistan's implementation of instruments concerning human rights and fundamental freedoms to which Afghanistan is a state party and remains bound. It is further enshrined in the Code of Conduct for Law Enforcement Officials, art. 5. See also General Assembly resolution on Torture and other cruel, inhuman or degrading treatment or punishment, 15 December 2022, A/Res/77/209.

<sup>11</sup> Convention Against Torture, art. 2(2); ICCPR, art. 4(2); and Code of Conduct for Law Enforcement Officials, art. 5.

<sup>12</sup> Convention Against Torture, art. 1; see also Report of the Special Rapporteur on Torture, Manfred Nowak, 9 February 2010, A/HRC/13/39/Add.5, paras. 30-39. The Human Rights Committee has held that States must "afford everyone protection ... against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity," and the prohibition on torture or ill-treatment extends to corporal punishment: see General Comment No. 20, 10 March 1992, paras. 2 and 5.

<sup>13</sup> See e.g., Committee against Torture, *Dimitrijevic v Serbia and Montenegro*, Communication No. 172/2000, 16 November 2005, paras. 2.1, 7.1; Committee against Torture, *Ali v Tunisia*, Communication No. 291/2006, 21 November 2008, paras. 2.4, 2.6, 15.4.

<sup>14</sup> Human Rights Committee, *Muteba v Zaire*, Communication No. 124/1982, 24 July 1984, para. 10.2 and 12; see also Committee against Torture, Concluding observations: report of Rwanda, 31 May 2012, CAT/C/RWA/CO/1, para. 10. See also Working Group on Enforced or Involuntary Disappearances, Opinion No. 66/2022 concerning Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom of Great Britain and Northern Ireland), 6 April 2023, A/HRC/WGAD/2022/66, paras. 10-11 and 102 on enhanced interrogation techniques constituting torture.

<sup>15</sup> Report of the Special Rapporteur on Torture, 20 March 2020, A/HRS/43/49, para. 19.

their behest or with their acquiescence of violence or death threats, including threats against family or friends, can also meet the threshold of severe mental suffering.<sup>16</sup> The infliction of torture also includes the failure to take action to stop or prevent torture.<sup>17</sup>

The Committee Against Torture recognises that the threshold between torture and ill-treatment is often unclear in practice.<sup>18</sup> Elements of distinction between torture and other cruel, inhuman or degrading treatment or punishment include: i) the severity/intensity of the act and duration; ii) the vulnerability and powerlessness of the victim; and iii) the purpose of the conduct.<sup>19</sup>

Additional human rights norms regulate the use of force by law enforcement officials. All law enforcement action shall respect the principles of legality, necessity, nondiscrimination, proportionality and humanity.<sup>20</sup> This entails that law enforcement officials are adequately trained to exercise the degree of discretion required to properly determine what degree of force is necessary and proportional in any given situation.

With regard to the laws of Afghanistan, the 2004 Constitution of the Islamic Republic of Afghanistan provided that “[n]o one shall be allowed to order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished” (art. 29), with compensation foreseen for those who had suffered such acts (art. 51).

The 2018 Penal Code criminalizes acts of torture, with a definition that broadly aligns with the elements provided under the Convention against Torture (art. 450), as does the 2018 Law on the Prohibition of Torture that provides there is no exception to this prohibition (art. 7). The Penal Code further criminalizes “violence” by a public official against any person, including offensive, abusive or degrading treatment (art. 448).

As the *de facto* authorities initiated in mid-2022 a review of all laws passed under the former Republic for Sharia compliance, which remains underway, the legal status of these texts and their individual protections is unclear. While parts of the Penal Code are reportedly considered contrary to Sharia, to date it is not clear which sections.

Further, in January 2022, the Taliban leader approved by decree a “Code of Conduct on Reforming the Prisoners’ System” with numerous articles that prohibit torture or ill-treatment of persons deprived of their liberty.<sup>21</sup> The Code of Conduct is clear that security officials, prisoners’ guards and prison personnel are prohibited from torturing, tormenting or punishing prisoners (art. 33). In particular, the Code instructs *de facto* security authorities to refrain from torture or ill-treatment which “contravenes Sharia principles, ethics and human dignity” of suspects or criminals, starting from the point of

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<sup>16</sup> See Human Rights Committee, *Estrella v Uruguay*, Communication No. 74/1980, 29 March 1983, paras. 1.6, 10; see also Report of the Special Rapporteur on Torture, Nigel S. Rodley, 3 July 2002, A/56/156, para. 8.

<sup>17</sup> Committee against Torture, General Comment No. 3, 13 December 2012, CAT/C/GC/3, paras. 3, 23 and 37.

<sup>18</sup> Committee against Torture, General Comment No. 2, 24 January 2008, CAT/C/GC/2, para. 3.

<sup>19</sup> Report of the Special Rapporteur on Torture, Manfred Nowak, 23 December 2005, E/CN.4/2006/6, para. 39 (“a thorough analysis of the *travaux préparatoires* of articles 1 and 16 of [UNCAT] as well as a systematic interpretation of both provisions in light of the practice of the Committee against Torture leads one to conclude that the decisive criteria for distinguishing torture [from cruel, inhuman or degrading treatment] may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted.”). The Special Rapporteur on Torture has elaborated on why torture should not be distinguished from ill-treatment solely by the intensity of suffering; see Report of the Special Rapporteur on Torture, Manfred Nowak, 9 February 2010, A/HRC/13/39/Add.5, paras. 187-188; and Report of the Special Rapporteur on Torture, Nils Melzer, on extra-custodial use of force and the prohibition of torture, 20 July 2017, A/72/178, para. 30.

<sup>20</sup> Code of Conduct for Law Enforcement Officials, arts. 2, 3, 5, 7 and 8; Principles on the Use of Force and Firearms by Law Enforcement Officials, preamble and principles 2, 4, 5, 9, 11, 13, 14, 15, 16, 24, 25 and 26.

<sup>21</sup> Decree regarding the approval of the Code of Conduct on Reforming the Prisoners’ System, No. 175, 17 January 2022.



arrest, through transfer (arts. 3, 5).<sup>22</sup> It cites as examples of behavior to be avoided, torturing or tormenting suspects, using foul or insulting language in front of people or relatives, and sitting on people's head or stomachs.

The Code of Conduct further provides that a detainee is “not to be tortured in any way during their detention and nor are confessions to be obtained through force or duress” (art. 36), and that security officials “shall not try to extract confessions from a suspect”, and shall “refrain from threatening, torturing, and videoing them because such a confession does not fall within the orbit of the court’s judgment” (art. 39).<sup>23</sup> The *de facto* Ministry of Foreign Affairs has affirmed that the use of forced confessions by means of threats, physical or mental torture has no legal or Sharia basis for proving a crime.<sup>24</sup>

In March 2022, the Taliban leader reiterated these instructions to security and intelligence authorities in his “Order on Detention of Accused persons during Investigation and duration of the detention”, reminding that “[d]uring detention, all types of torture shall be prohibited because only the court has the authority to take punitive decision. If someone other than the court punishes an individual, his action shall be considered injustice [...]”.<sup>25</sup>

There are also efforts by *de facto* ministries to implement these instructions. For instance, in February 2022, the *de facto* Acting Minister of Interior instructed the Security Department of the Kabul Police Command to “strictly avoid any kind of torture, harassment and insult” during pursuit and effecting arrests.<sup>26</sup>

## Torture, ill-treatment, and illegal use of force during arrests

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment not only protects persons deprived of their liberty, but also applies in extra-custodial settings. Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials, is an attack on human dignity, and amounts to cruel, inhuman or degrading treatment or punishment. Any extra-custodial use of force

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<sup>22</sup> Taliban leader’s Code of Conduct, article 3: “At the time of arrest, refrain from torturing or tormenting the suspect or criminal and from using foul and insulting language in front of people or relatives.” Article 5: “At the time of transfer, refrain from treatment of a prisoner which contravenes Shariah principles, ethics, and human dignity: for instance, one or more people sitting on the head or stomach of the detainee.”

<sup>23</sup> See further, the Taliban leader’s Code of Conduct:

- Art. 34. When disciplining prisoners or in their conduct towards them, officials are to refrain from excessiveness, cruelty, and ill-treatment. An official or member of personnel ill-treating a prisoner will be considered worthy of punishment or even removal from his/her post.

- Art. 35. During interrogation of a detained suspect, beating them is not permitted. A detainee will only be considered deserving of punishment pursuant to an order of the court.

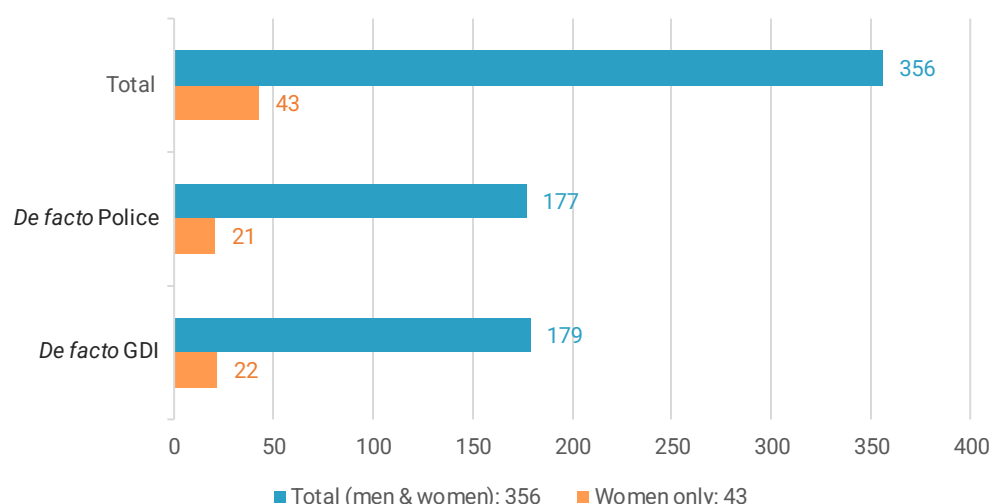
<sup>24</sup> UNAMA, Corporal Punishment and the Death Penalty, May 2023: Annex - Response of the *de facto* Ministry of Foreign Affairs, available at [https://unama.unmissions.org/file/21157/de\\_facto\\_MFA\\_Response](https://unama.unmissions.org/file/21157/de_facto_MFA_Response).

<sup>25</sup> Taliban leader, Order on Detention of Accused Persons during Investigation and Duration of the Detention, 15 March 2022, No. 29, which repeated issuances prior to the takeover on 15 August 2021, namely the Decree on authorisation for keeping suspects in custody for investigation and its duration, 4 November 2019. See also the Edict on Prevention of Punishments without a Court Decision and its Photographing, 20 November 2020: “No one is allowed to beat someone with a stick, whip or cable or to torture them in any other way without a court verdict. Whenever the Mujahideen capture someone, if they are political or criminal prisoners, they do not have the right to punish them without a court decision.” Under human rights law, court-ordered corporal punishments, such as flogging, whipping or amputations, constitute torture and ill-treatment and are included among those acts falling under the absolute and non-derogable prohibition on torture. See UNAMA report, Corporal Punishment and the Death Penalty, May 2023.

<sup>26</sup> Khalid Zadrán, Spokesman for Kabul Police Command, Ministry of Interior [@khalidzadrán01], Twitter, 22 February 2022, 7:31 pm. Available at: <https://twitter.com/khalidzadrán01/status/1496138106021498880?ext=HHwWqMCyhcfrMMpAAAA> (Pashto).

that is intended to inflict pain or suffering on a “powerless” person (that is, a person who is under direct physical or equivalent control and is unable to escape or resist) as a vehicle for achieving a particular purpose amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity and proportionality and irrespective of what else, if anything, might be required for such use of force to constitute torture under the respective treaty instruments.<sup>27</sup>

UNAMA documented 356 instances of physical aggressions and other violations by the *de facto* security authorities, largely occurring during the execution of arrests. Of those, 177 instances were attributable to *de facto* police (of which 21 instances against women); 179 instances to *de facto* GDI (of which 22 instances against women), starting from the point of arrest.<sup>28</sup>



**Figure 3: Breakdown of victims of torture and illegal use of force during arrest by institution and gender**

Numerous interviewee accounts relayed how arrests by *de facto* security officials were carried out forcefully, characterised with beatings and ill-treatment. Interviewees recounted how *de facto* security officials intruded in their places of work or home, or dragged them out of their cars, and beat individuals who did not immediately comply with orders. Many interviewees received beatings and kicks, including when they were already on the ground, and being struck with the butts of weapons.<sup>29</sup> In addition to insulting those under arrest, *de facto* security officials often restrained their hands, as well as blind-folded or hooded them, and forced individuals into vehicles to be

<sup>27</sup> Report of the Special Rapporteur on Torture Nils Melzer - Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, 20 July 2017, A/72/178, para. 36, 46 and 62.

<sup>28</sup> In an additional 41 instances documented by UNAMA interviewees were unable to identify the responsible authority.

<sup>29</sup> Interview of 2 January 2023 (“During the arrest, the district police beat me with the butt of their gun. Also, they punched and kicked me, then they tied up my hands at my back and brought me to the police district office”); Interview of 3 August 2022 (“They did not handcuff me on the way to the police station, but they beat me with the back of a gun. They slapped my face and head many times until we reached the [Police] compound. They kicked me to get off the car. Two pulled my hair and pushed me [causing me to fall] to the ground hard”); Interview of 23 February 2023 (“a group of district GDI force came to my home and arrested me; they started beating me very badly and putting me in the trunk of the ranger vehicle”); Interview of 15 March 2023 (an elderly interviewee described “There were around five armed men; they tied my hands, covered my head and picked me up to another car. They kicked and insulted me using many bad words while picking me up; I could not recognize their faces because they were covered with face masks.”).

transported elsewhere.<sup>30</sup> In four instances, interviewees recounted being forced into the trunk of the vehicle or the floor of the car, for transfer to the place of detention, while blindfolded and restrained.<sup>31</sup>

In almost none of these instances did *de facto* security officials conducting an arrest produce warrants, or clearly identify themselves or the unit to which they belonged; in some instances, they wore masks.<sup>32</sup> Most frequently, in the absence of distinct uniforms or other identification, it was only upon reaching the local *de facto* police or GDI office that interviewees became aware which *de facto* authority was arresting them. (For additional violations, see further section on [Information on reasons for arrest](#)).

Many experiences described, particularly those accompanied by beating, restraints and blindfolding or hooding, are akin to being kidnapped rather than arrested and would instill a justifiable fear in those detained of imminent harm or being killed, causing mental suffering which could meet the threshold of severity required to constitute torture or other forms of ill-treatment.

The force used by *de facto* security officials as described by interviewees during arrests, in many situations amount to blatant violations of international norms on the use of force by law enforcement authorities. These norms require law enforcement authorities to only use force as a measure of last resort and in compliance with the principles of legality, necessity, or proportionality.<sup>33</sup>

The numerous accounts described relating to physical aggressions also indicate a pattern of human rights abuses in the context of arrests, including excessive force, and ill treatment that may in some cases amount to torture. At a minimum, the accounts indicate a widespread disregard of international human rights standards in the context of carrying out arrests.

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<sup>30</sup> Interview of 15 November 2022 (a detainee arrested by *de facto* GDI at a checkpoint was blindfolded while his car was searched. One *de facto* GDI officer ordered the others to beat the individual after which others started beating him with the butt of their weapons and kicks to the head. The individual was then blindfolded, handcuffed and pulled into the *de facto* GDI's vehicle); Interview of 5 July 2022 ("a car with armed men parked in front of my house. The [police] men [identified me] and immediately handcuffed me, covered my eyes and placed me in a car without saying any word. My children were crying and begged the armed men to release me, but they did not pay attention. I asked the men who they were. But they simply told me: "Do not worry."); Interview of 15 March 2023 ("they [GDI] covered my head with a black bag so that I could not see; and tied my hands with a piece of plastic rope"); Interview of 22 March 2023 ("after we crossed the last police check post, the four GDI men handcuffed and blindfolded me and we travelled for several hours like that"); Interview of 20 April 2023 ("About 20 members of security services surrounded the house to arrest me; then cuffed and blindfolded me"); Interview of 14 May 2023 ("They put a blindfold over my eyes and took me to the GDI office, where I was kept blind-folded"); Interview of 20 June 2023 ("I was near the main road ...when a vehicle stopped, and GDI soldiers asked for my identification. Without any explanation, I was handcuffed, blindfolded, and thrown into the vehicle. I was driven around the city for 20 to 30 minutes before being taken outside the city for around half an hour. Throughout this time, my eyes were covered, and I had no idea where I was being taken").

<sup>31</sup> Interview of 9 January 2023 ("They tied my hands, blindfolded me/placed a hood over my head and put me in the trunk of a Hilux." Later, "they put me in a vehicle again... I think they took me to the GDI provincial department. For approximately one hour I was in the trunk. The engine was not switched off. It was very cold. ... I asked them if I could rest and stand up, my legs were hurting, but they didn't allow me to stand up. The armed men then put me in the back of the vehicle. My eyes were tied, I was blindfolded."); Interview of 23 February 2023 ("they [GDI] started beating me very badly and put me in the trunk of the ranger vehicle; they put hat on my head and tightened it, my eyes were blindfolded and my hands were cuffed at the back"); Interview of 25 May 2023 ("they took me from my [car], covered my eyes and put me in back of their car, under their feet. I was taken without explanation, they didn't say why I was being arrested; the three persons had their feet on me as they transported me to the detention place, a few kilometers away").

<sup>32</sup> For example, Interview of 15 March 2023 (concerning *de facto* police, "There were around five armed men. I could not recognize their faces because they were covered with face masks. They did not introduce themselves. My head was still covered, and my hands tied when we reached a location. When they talked on the telephone, I understood from the situation that it was PD-X police station.")

<sup>33</sup> All law enforcement action shall respect the principles of legality, necessity, nondiscrimination, proportionality and humanity. See Code of Conduct for Law Enforcement Officials, arts. 2, 3, 5, 7 and 8; Principles on the Use of Force and Firearms by Law Enforcement Officials, preamble and principles 2, 4, 5, 9, 11, 13, 14, 15, 16, 24, 25 and 26.

## Torture and other forms of ill-treatment in custody

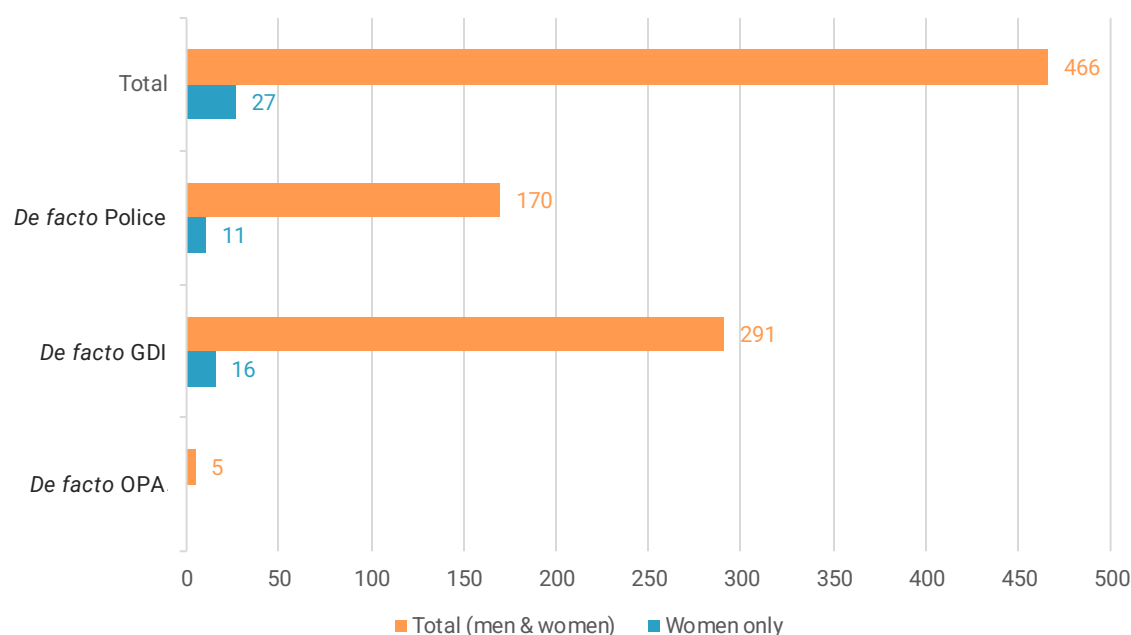
“The first 53 hours were the worst moments of my life. **I don't think it will leave my memory until I die. There I was subject to different types of torture.** At midnight they came and woke me up for investigation. They took me to a corridor. In the corridor I saw that two to three other suspects were hung to the ceiling and were being beaten. I also saw that they were putting water in their mouths through hoses to get information from the men. So, I came to that corridor and they started interrogating me and told me to say yes to whatever they wanted from me, otherwise they would treat me the same way. Within the first 53 hours I was treated badly and tortured, I couldn't sleep and my whole body ached. When I asked for medication and treatment and they told me they were going to kill me, so they wouldn't provide me medical treatment.”

| Interview of 8 September 2022, GDI custody

“I was interrogated seven times **I was beaten with plastic pipes and punches on my face, back, and thighs, and were pulling my hair, in order to force me to confess that I was a supporter of anti- government elements.** The main interrogator was very cruel. He tortured me severely and never showed mercy to me during the first three interrogations. He tried to make me confess and I did not say anything but again my fingers were placed on a piece of paper while I was blindfolded, and they took my fingerprints. ... Again, several teams came and asked me about any torture during interrogation and I said no because I was warned by that head interrogator that I did not have to say any word against him. However, during the last four interrogations, I was only asked questions but was not beaten or insulted.”

| Interview of 19 July 2022, GDI custody

As of 1 January 2022, UNAMA documented 466 instances of torture and other forms of ill-treatment in custody which were attributed to *de facto* security and *de facto* prison authorities, as follows:



**Figure 4: Breakdown of documented instances by institution and gender**

Of these, 259 instances were acts causing physical suffering, of which 95 instances of torture were attributed to *de facto* police (of which five instances against women); and 162 to *de facto* GDI (of which 10 against women), that occurred predominantly in connection with investigations or questioning (interrogations); and two instances by *de facto* prison authorities. In another 41 instances of torture interviewees were unable to identify the authority holding them.

UNAMA documented a range of acts described by interviewees deprived of their liberty, in connection with periods of questioning for the purposes of obtaining information, a confession, or for intimidation. These included:

- being beaten by numerous means, including being punched or kicked, struck with the butts of weapons, typically around head or shoulders, or with other instruments, such as piping or cables, to their backs or the soles of their feet, often while restrained. Some described the beatings as being so severe that they lost consciousness. Beatings comprised the overwhelming majority of physical aggressions, and were attributable to *de facto* police and GDI alike;
- receiving electric shocks to various parts of their body, causing some to lose consciousness (11 instances, four attributable to *de facto* police, and seven to *de facto* GDI<sup>34</sup>);

<sup>34</sup> Interview of 4 October 2023 ("I was blindfolded but felt three or four cables put on the top of the left foot; it was only applied to my feet. I received three different sessions of electric shocks; forcing me to give more information"); Interview of 5 July 2022 ("the Taliban police on the second day gave me an electricity shock. I lost consciousness during the electricity shock"); Interview of 17 October 2022 ("the police also gave me electric shocks"); Interview of 18 January 2023 ("During the two days, [GDI] gave me an electric shock on my neck. The shock was so powerful that when they put that equipment, I was unconscious on the spot"); Interview of 16 March 2023 ("they [GDI] put both my thumbs on a wire, I received electric shocks, and I went unconscious"); Interview of 27 February 2023 ("at GDI several persons, whose faces were covered, electrocuted me"); Interview of 19 December 2022 ("I saw [GDI] use electricity on the other prisoners");

- being choked or suffocated, including by hand or wire, or having a towel or plastic bags placed over their heads or faces (nine instances, one attributable to *de facto* police, and eight instances to *de facto* GDI<sup>35</sup>);
- being hung from the ceiling by their hands (four instances, all attributable to *de facto* GDI<sup>36</sup>) and cuffed in stress positions (three instances, attributable to *de facto* GDI<sup>37</sup>);
- having pipes with water forced in their mouths (five instances, three attributable to *de facto* police, and two to *de facto* GDI<sup>38</sup>);
- being put outside in cold weather, during winter for extended periods (two instances, both attributable to *de facto* GDI<sup>39</sup>); and
- seeing a *de facto* GDI member place a big stone on the stomach of another detainee whose hands were cuffed.<sup>40</sup>

UNAMA also documented 207 instances of acts causing mental suffering, including threats to physical or mental integrity. UNAMA documented 75 instances of threats by *de facto* police (of which six instances against women), and 129 instances by *de facto*

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Interview of 2 May 2023 (“Another Taliban soldier brought a power cable and gave me electricity shocks. At that point, I felt that I would die. They gave me electricity shocks three times”); Interview of 8 May 2023 (“they also used electric shocks on my body, including my chest and near my kidney”); Interview of 25 May 2023 (“after beating me with power cables and pipes, they [GDI] used a portable electric shock machine on me”); Interview of 6 July 2023 (“During the police investigation, the officers did not listen to us; as I did not accept the allegation they put on my injured hands wires with an electric shock”).

<sup>35</sup> Interview of 1 December 2022 (“They put a plastic bag around my neck to not breathe and tied it for some time”); Interview of 30 November 2022 (“During the interrogations, GDI blindfolded me and covered my head with plastic to suffocate me”; when I was transferred to another GDI facility, “they suffocated me by using a towel”); Interview of 18 April 2023 (“On two occasions, GDI interrogating officers placed a plastic bag around my head so I could not breathe. When I was about to lose consciousness, they would remove the bag and repeat the process. I prayed to Allah that they should just kill me to end my suffering.”); Interview of 22 March 2023 (“the men choked me using a piece of wire and also wrapping my head with a plastic bag”); Interview of 14 May 2023 (“I received three slaps by the GDI officer on the left side of my face, and another officer punched me twice on my left shoulder. ... Another GDI employee suffocated me, putting one hand around my throat, and screaming at me furiously”); Interview of 4 July 2023 (“later GDI covered my head and face with plastic bags which made it impossible to breathe. They tortured me in a way that left no physical scars”); Interview of 4 July 2023 (“the police beat me with plastic cables and covered my face and head with a plastic bag to suffocate me to force me to confess the allegation”).

<sup>36</sup> Interview of 30 November 2022 (“During the interrogations, GDI also hanged me by tying my hands to the ceiling. Sometimes I lost consciousness when suspended from the ceiling.” Upon transfer to another GDI entity: “GDI continued to interrogate me. During the interrogations, they also tortured me in many ways [including] they hung me upside down”); Interview of 1 December 2022 (“They were hanging me from both hands and started beating”. See also Interview of 22 August 2022 (“I was not tortured or physically ill-treated, but a GDI officer told me that I was the only person they treated respectfully. He showed me a photo of another detainee who was blindfolded, and hands were tied to his back by a rope from his arms, and his backbones were bent in an inhuman way”).

<sup>37</sup> Interview of 6 February 2023 (“On reaching GDI, they cuffed my hands behind my back so one arm was coming from above my shoulder and the other one from down below, which was very uncomfortable. So they beat me on my legs, as my hands were still handcuffed in a painful way behind my back.”); Interview of 1 August 2022 (“During the 16 days, I was interrogated several times, they used different methods of torture – they chained my hands one from front and another from behind”).

<sup>38</sup> Interview of 1 December 2022 (“They [GDI members] put water pipes in my mouth”); Interview of 3 August 2022 (“He slapped me many times and another Talib [police] inserted a water pipe inside my mouth. I then felt that I was dying. I felt that they were determined to kill me.”); Interview of 29 May 2023 (“there were about 16 of them [police] in the yard; they tightened my hands and my feet with scarves and kicked me five times; one brought a water pipe and pressed the pipe with too much pressure on my mouth. I lost consciousness”); Interview of 3 July 2023 (“At GDI they tortured me with watering. They put my head in a bucket full of water and kept it there”); Interview of 4 July 2023 (“the police also poured water into my mouth, and on my head to force me”). See also Interview of 8 September 2022 (“I also saw that they were putting water in their mouths through hoses to get information from the men”).

<sup>39</sup> Interview 5 July 2022 (“One of them slapped my face and head around ten times and kicked me in different parts of my body. He then instructed the others to put me in the cold weather outside all night and not to give me any food. The weather was very cold [in winter]. My hands and feet were tied. My head was covered. I was in cold weather for around six hours, and they put me back inside the container”); Interview of 2 October 2022 (“the weather was very cold at that time, it was winter, I was put in the snow outside in the freezing cold and forced to lie down”).

<sup>40</sup> Interview of 6 February 2023.



GDI (of which six instances against women), and three instances by *de facto* prison authorities.<sup>41</sup>

Most commonly, interviewees recounted that they were threatened that they would be subjected to the acts described above until they admitted their crimes, that they would be killed, or that their family members would be harmed or killed, or that they would never be released or return to their families. In two accounts, interviewees were threatened they would be stoned to death. Ill-treatment also frequently included screaming at and insulting interviewees, including calling women “prostitutes” and men frequently “infidels”, “bad” or “false” Muslims”, “dogs” or “sons of Americans”, as well as instances of shaving interviewees’ heads.

The presence of other *de facto* security officials during questioning was equally threatening, which included: a *de facto* security official standing by or behind the suspect holding a weapon ready to strike; and *de facto* security officials pointing a rifle at a suspect during questioning.<sup>42</sup> Two interviewees stated that the investigation room in which they were questioned was itself threatening, displaying the various instruments that could be used against them, and showing signs of blood.<sup>43</sup>

Most disturbingly, numerous interviewees were also blind-folded or hand-cuffed when taken from their cells, including for questioning, and stayed that way for the duration of their interrogations, rendering them unable to identify those questioning them.<sup>44</sup> In addition to the unjustified use of restraints rendering interviewees further vulnerable to abuse, the experience of hooding and being unable to see the interrogators would have heightened the fear, stress and sense of perceived threat.

While sensory deprivation of itself can cause psychological effects, including fear, anxiety, high levels of stress, disorientation, and a sense of powerlessness,<sup>45</sup> the

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<sup>41</sup> In another 49 instances of ill-treatment documented interviewees were unable to identify the responsible authority.

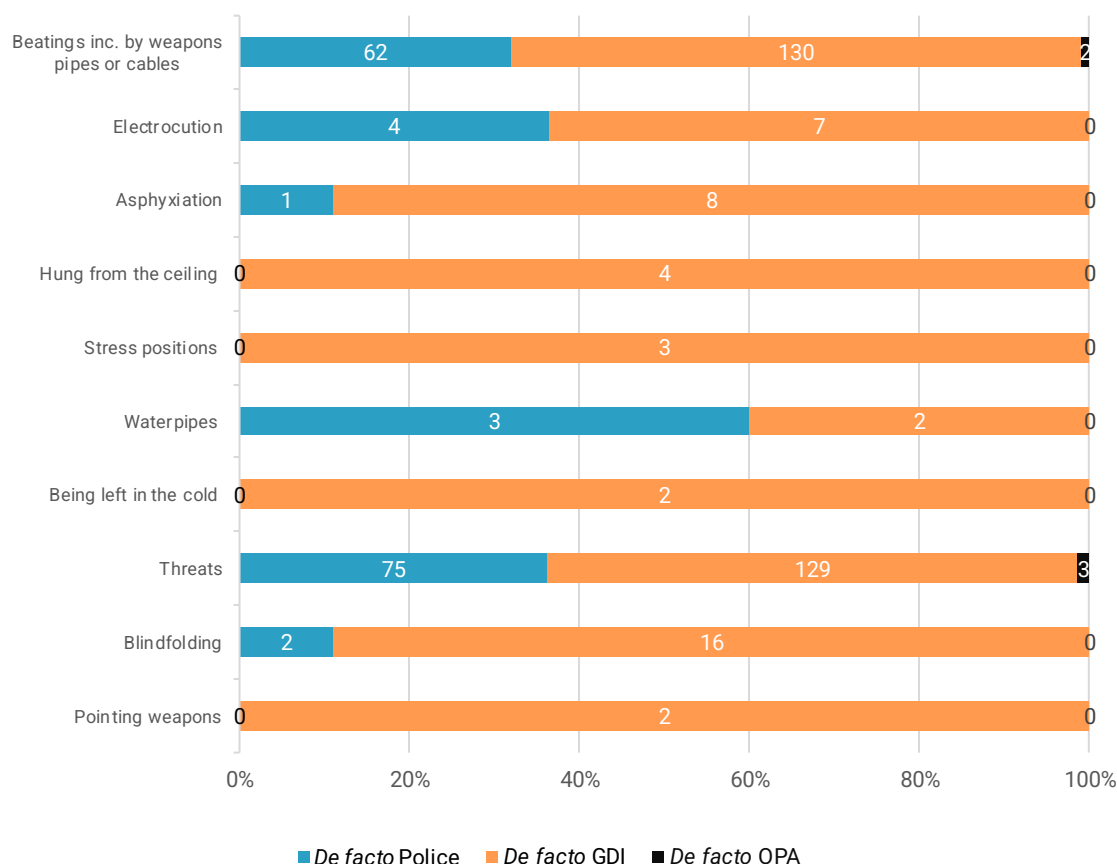
<sup>42</sup> Interview of 21 February 2023 (“In the [GDI] room there are two chairs and during the investigation two security are coming, one has pen sitting on the chair in front of you the other has a pipe or baton and is standing next to you”); Interview of 18 January 2023 (“They [GDI] threatened me with their weapons pointing at me, saying tell us the truth, otherwise, we will kill you”).

<sup>43</sup> Interview of 21 February 2023 (“the [GDI] investigation room has a hanging chain, water, pipes and sticks which clearly gives you a signal that you either accept [to confess] or being tortured”); Interview of 4 January 2023 (“The GDI took me to another room, it was full of blood, and there were instruments for torture. He showed me all these torture instruments. He told me that I would be killed there.”).

<sup>44</sup> For instance, Interview of 12 January 2023 (“the [GDI] officer sat in the chair in front of me, and I sat with my arms tied behind me and my eyes covered. He called others to bring sticks and electricity cables for my beating and giving me electric shock to confess my crimes. He threatened me to confess or he will force me with beating and electric shock but he didn’t do what he was warning me about”); Interview of 20 February 2023 (“Two GDI personnel came [to my cell], covered my eyes and handcuffed me [a second time] and told me to go with them to an investigation room. I was not informed why I was taken there. Someone started to question me while my eyes were blindfolded, and I was handcuffed”); Interview of 18 December 2022 (“Before starting each investigation the GDI’s personnel chained my hands, blindfolded me then took me to the investigating room.”); Interview of 19 July 2022 (“They [GDI] tried to [make me] confess that I was working for the anti-government elements, but I was denying. As I was blindfolded at the time of beating, they brought me a paper and asked me to put my inked fingers at the bottom of the page”); Interview of 13 March 2023 (“During the investigation, I was blindfolded, I could only hear the voice of the investigators and reply to them”); Interview of 16 March 2023 (at GDI, “they handcuffed and blindfolded me and I was brought to another room. Still blindfolded, I heard the voice of two or three persons, and they questioned me.”); Interview of 20 April 2023 (“I do not know for sure how many men were questioning me as I was still blindfolded for over an hour. They [GDI] removed the blindfold about two hours later when others arrived”); Interview of 10 May 2023 (“I was blindfolded from when I was arrested, and for the first several hours when I was at the GDI office; in the second GDI place, I was also hooded when they took me to the bathroom and to interrogation”); Interview of 14 May 2023 (“I was blindfolded from almost the whole time from when I was picked up, reached GDI and was put in a cell and throughout the questioning, with the exception of ablution; I was held approximately four hours”); Interview of 25 May 2023 (“when they [GDI] [would take] me to the other room for torture they covered my eyes so I didn’t see the stairs or the sky outside. They used a blindfold or put a sack on my head”).

<sup>45</sup> International Forensic Expert Group, “Statement on Hooding”, *Torture Journal*, vol. 21, issue no. 3 (2011), p. 188, available at: <https://irct.org/wp-content/uploads/2022/11/Volume-21-No.-3.pdf>

Committee Against Torture has found that questioning while applying “hooding under special conditions” constitutes torture, and this is particularly evident where hooding is used in combination with other coercive methods of questioning,<sup>46</sup> as described above. UNAMA has previously criticized the practice of blindfolding and hooding during arrest, questioning or detention and calls on the *de facto* authorities to explicitly prohibit this practice.<sup>47</sup>



**Figure 5: Breakdown of torture and ill-treatment by institution and type**

Interviewees described periods of questioning and accompanying torture or other forms of ill-treatment of varying duration, from ten minutes up to several hours. Similarly, while some interviewees experienced torture or ill-treatment on only one occasion of questioning, for others, this recurred over several consecutive days or nights while in the custody of one authority.

<sup>46</sup> Committee against Torture, Consideration of Special report of Israel, 1997, CAT/C/SR.297/Add.1, paras. 5 and 8(1).

<sup>47</sup> UNAMA, Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace, February 2021, pgs. 22-24, available at: [https://unama.unmissions.org/sites/Report on Treatment of conflict-related detainees\\_Feb.2021](https://unama.unmissions.org/sites/Report%20on%20Treatment%20of%20conflict-related%20detainees_Feb.2021).



While most reports concerned threats and physical beatings, many interviewees experienced a mix of several or all the foregoing methods outlined above, the totality of which arises to a level of severity constituting torture:

“For eight days, *I was tortured, it was always at night not during the day. I was taken to a room specifically for torture.* There were different methods of torture used on me. I was beaten four or five times and when I was becoming unconscious then they threw water on me to make me come around, be conscious. It was becoming cold at night. During the first two days they were beating my feet. I couldn't wear shoes as my feet were swollen. Then they beat me with power cables and pipes. Then they used a portable electric shock machine on me.” | Interview of 25 May 2023, *de facto* GDI custody

Beatings were on many occasions carried out upon the instruction of the *de facto* head of facility or investigator, and with the assistance of multiple people, e.g., with other *de facto* officials holding down hands or legs:

“He told his fighters to lay me down without giving me the chance to answer his questions. *They kicked me up to my head, and all parts of my body. Two of them took a piece of wood and beat me. I cried for help.* Four of them held my hands and feet, and one of them put his foot on my neck and pressured it that affected seriously my breathing. I felt that I would lose my life. After this they stopped torturing me.” | Interview of 9 November 2022, *de facto* Police custody

“Armed people were standing around waiting for his order to start beating me. Six to eight of them started beating and kicking me. They hit me on the head. My eye was injured. They broke two of my ribs. *They beat me very hard until I became unconscious.* I was lying on the floor. I do not know for how long I was unconscious, approximately for 15-20 minutes.” | Interview of 9 January 2023, *de facto* Police custody

UNAMA also documented two instances where *de facto* GDI officials purported to discipline interviewees with corporal punishment, including striking a detainee with a baton for talking at night, and using restraints and beating detainees who got into a fight,<sup>48</sup> both of which would equally constitute prohibited punishments and not justifiable even in exceptional circumstances. In prisons, the five instances UNAMA documented of torture or ill-treatment by *de facto* prison authorities, included instances of kicking a detainee<sup>49</sup>; physically pushing and striking detainees, including with cables in punishment<sup>50</sup>; pouring cold water on a detainee and making them stand in the cold<sup>51</sup>; and insulting and threatening an interviewee not to complain of the behaviour of

<sup>48</sup> Interview of 22 September 2022; Interview of 1 August 2022.

<sup>49</sup> Interview of 25 August 2022 (“Their treatment toward me and all detainees was insulting – they used bad words to detainees during food distribution and when we needed things; when I wanted to contact my family I was insulted and kicked”).

<sup>50</sup> Interview of 6 December 2022 (“The security guards here sometimes hit us with their hands; they sometimes use cables, like air conditioning cables; they put five or six together and hit us multiple times”).

<sup>51</sup> Interview of 24 August 2022; Interview of 24 October 2022.

*de facto* guards to their superiors.<sup>52</sup> UNAMA also documented two instances of unjustified use of restraints that equally constitute prohibited punishments.<sup>53</sup>

UNAMA acknowledges the small number of instances where interviewees stated that they were treated decently while in the custody of either the *de facto* MOI or *de facto* GDI facilities. Only a small handful of interviewees reported no ill-treatment while in custody, and this was usually in cases where they were only held by one entity.

Several interviewees who had been held and transferred to the custody of two or more entities (whether for follow-up investigations or detention) often relayed ill-treatment in the custody of one entity, but not necessarily others.

Overall, the number of interviewees with no complaints of ill-treatment in prison was greater. In official communication and engagements with UNAMA, the *de facto* Ministry of Foreign Affairs, as well as *de facto* heads of places of detention, and staff uniformly confirm the prohibition on the use of torture or ill-treatment in custody is enshrined in Sharia law.<sup>54</sup> Notwithstanding, several *de facto* Police and GDI officials have acknowledged to UNAMA that there are issues in handling detainees that may give rise to ill-treatment, and that methods used often include psychological threats to pressure suspects to tell the truth or secure confessions, which can constitute torture.

## Deaths in custody

The right to life is a fundamental human right and the State has particular responsibility for protecting the lives of persons in detention and for responding to any deaths in custody.<sup>55</sup> Deaths in custody are one of the most serious human rights violations.

When an individual dies in State custody in unnatural circumstances, there is a presumption of State responsibility.<sup>56</sup> The concerned authorities must immediately inform next of kin and open a full and impartial investigation to clarify the circumstances and establish responsibility for any wrongful acts.<sup>57</sup>

A death in custody is a human rights violation if it results from: torture or other forms of ill-treatment or punishment by public officials or others exercising State functions; or a failure by the detaining authorities to protect the life of a detained person, for example due to poor prison conditions or violence by fellow detainees.

UNAMA has documented 18 deaths of individuals in custody, of which five in *de facto* Police custody, 11 in *de facto* GDI custody, and two in *de facto* prison custody (of which the latter two were not attributable to torture or ill-treatment).

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<sup>52</sup> Interview of 6 December 2022 (“We are warned not to talk about the guards’ behaviours or they will know it was me, and we will get higher sentences”).

<sup>53</sup> Visit of 20 April 2022; Interview of 20 February 2023 (“the guards here are less nice; they beat some who wanted to escape with cables and pipe (like a hose), then shackled them in their rooms for a few hours”).

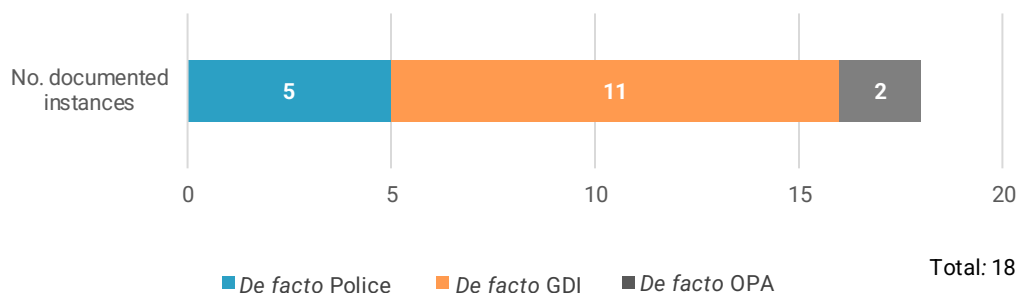
<sup>54</sup> For example, see UNAMA, Corporal Punishment and the Death Penalty, May 2023: Annex - Response of the *de facto* Ministry of Foreign Affairs: “the security organs of the Islamic Emirate carry out their activities strictly in line with its operational policies and are completely against the use of forced confessions by means of threats, physical or mental torture and consider this a crime.”

<sup>55</sup> See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/61/311, paras. 49-54.

<sup>56</sup> Human Rights Committee, General Comment No. 36: Article 6: right to life, 3 September 2019, CCPR/C/GC/36, para.29.

<sup>57</sup> ICCPR, art. 2, Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, principle 9; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter, Body of Principles for the Protection of Persons under Detention), principle 34; United Nations Standard Minimum Rules for the Treatment of Prisoners (hereafter, Mandela Rules), rules 69 and 71.

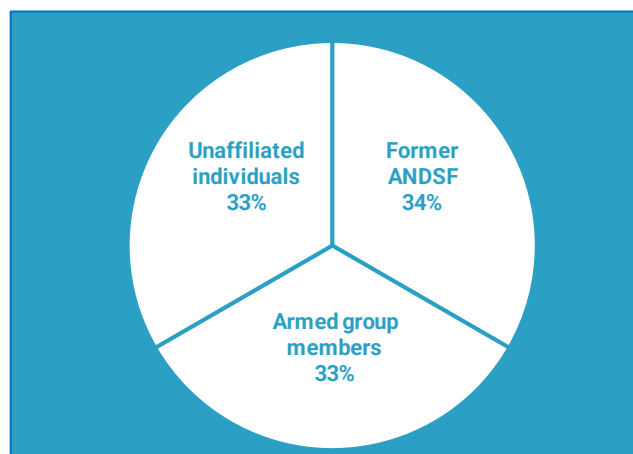
UNAMA documented an additional three deaths in custody where interviewees were unable to identify the responsible authority. These are separate from the numerous instances of extra-judicial killings committed by *de facto* authorities, including *de facto* security forces, occurring outside contexts of custodial detention. Most often *de facto* security authorities handed over the bodies of individuals to their families, with no explanation of the circumstances of the death.



**Figure 6: Documented instances of deaths in custody by institution**

Of the 18 victims, six were members of the former government’s defence and security forces (ANDSF), six were allegedly members of other armed groups (self-identified NRF and ISKP), and six persons were unaffiliated with other groups of interest.

UNAMA continues advocacy on these cases with relevant authorities to investigate and prosecute the alleged violations.



**Figure 7: Deaths in custody by affiliation**

## Use of solitary confinement

“On the third day, they took me out to [a different room], called the “punishment” room. A person entered and beat me a lot with a metal stick. I was left all alone there in the room for five more days. I heard a lot of shouts from people. There were around 30 “punishment” rooms there. After the five days in this room, the investigation started again. They brought me the five pages and told me that I accepted my crime. I had a long dialogue with them that I [do not accept the charges]. They then started beating me again. There was no part in my body that did not receive the metal pipe. I was very bad at that time. I don’t know when they took me back to the room, I was unconscious. I spent 25 days in total there. Then they put me in another room where I was still alone.”

| Interview of 1 December 2022, held in 3 different detention facilities

Solitary confinement is the physical and social isolation of a detainee or prisoner in a cell for 22 or more hours a day without meaningful human contact.<sup>58</sup> It usually involves the complete deprivation of contact with other detainees or prisoners, and limited contact with staff of the detention facility – even if the detainee is taken out of the cell for short periods, for example, to exercise. Solitary confinement is only permissible in exceptional circumstances,<sup>59</sup> as a last resort, and for a strictly limited time,<sup>60</sup> not exceeding 15 days,<sup>61</sup> and in due observance of safeguards and judicial review. Failing these conditions its use may amount to torture or ill-treatment.<sup>62</sup> Furthermore, the use of solitary confinement intentionally for the purposes of punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, can amount to torture.<sup>63</sup> Solitary confinement may only be used in accordance with a duly promulgated legal or regulatory framework.<sup>64</sup>

UNAMA documented 19 instances where interviewees were held alone in individual cells when admitted to the custody of *de facto* security officials, whether in a cell or

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<sup>58</sup> Mandela Rules, rule 44.

<sup>59</sup> For instance, where necessary to: avoid collusion among persons charged with a crime; or seek to prevent someone from frustrating the investigation of an offence. See Special Rapporteur on Torture, Juan Méndez - Reply to Questions Raised by Member States during the Interactive Dialogue at the 66th Session of the UN General Assembly, 18 October 2011, pp.1 and 8.

<sup>60</sup> Interim report of the Special Rapporteur on Torture, Juan Méndez, 2011, A/66/268, para. 89; Committee against Torture, Concluding observations: reports of the United States of America, 19 December 2014, CAT/C/USA/3-5, para. 20(a) (“Limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review”); Concluding observations: report of Japan, 28 June 2013, CAT/C/JPN/CO/2, para. 14(a); Concluding observations: reports of Bosnia and Herzegovina, 20 January 2011, CAT/C/BIH/CO/2-5, para. 19(d).

<sup>61</sup> Mandela Rules, rules 43(1)(b) and 44. This 15-day period has become standard with the revision of the Mandela Rules in 2015 and the views of multiple Special Rapporteurs. See Interim report of the Special Rapporteur on Torture, Juan Méndez, 2011, A/66/268, para. 26.

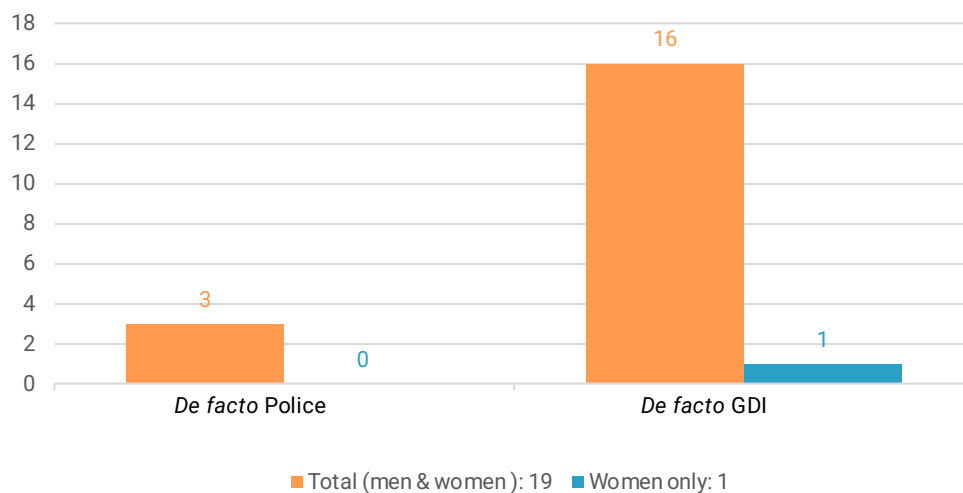
<sup>62</sup> Human Rights Committee, *Mukong v. Cameroon*, Communication No. 458/1991, 1994, para. 9.4; Interim report of the Special Rapporteur on Torture, Juan Méndez, 2011, A/66/268, paras. 75-76.

<sup>63</sup> Interim report of the Special Rapporteur on Torture, Juan Méndez, 9 August 2013, A/68/295, para. 60.

<sup>64</sup> Mandela Rules, rule 37(d) and 39(1); Committee against Torture, Concluding observations: reports of Luxembourg, 2002, CAT/C/CR/28/2, para. 6(b). The Mandela Rules are accepted as customary international law, and the Human Rights Committee has affirmed that compliance with the Mandela Rules is necessary to meet international detention standards, see Human Rights Committee, *McCallum v South Africa*, Communication No. 1818/2008, 25 October 2010, para. 6.8 (“[P]ersons deprived of liberty must be treated in accordance with, inter alia, the United Nations Standard Minimum Rules for the Treatment of Prisoners.”).

container. Of these, three instances were attributable to the *de facto* Police (ranging from one to 13 days), 16 instances to the *de facto* GDI (of which one instance concerning a woman). One instance of an individual held in *de facto* GDI custody for up to 50 days raises serious concerns insofar as it constitutes prohibited prolonged solitary confinement, as well as torture.

It is unclear whether the current use of solitary confinement is regulated by any law or legal framework, and by most accounts, it is not clear whether solitary confinement was intentional, i.e., for the purpose of the investigation. However, in several instances interviewees reported being moved from cells where they were held alone for periods of varying duration with limited human contact, to cells with other detainees after several days, which *prima facie* indicates a degree of intentional separation by *de facto* authorities.



**Figure 8: Documented instances of solitary confinement by institution**



# Procedural safeguards to prevent torture and ill-treatment

## Applicable framework

International human rights law enshrines a series of legal and procedural safeguards that protect persons deprived of their liberty against the risk of torture and other forms of ill-treatment and which are considered fundamental from the outset of arrest. These rights are equally essential to securing individuals' right to a fair trial and due process. These safeguards include the following rights:

- to be promptly informed of the reasons for detention and/or arrest and any charges against them (ICCPR, art. 9(2) and 14(3), and Mandela Rules, rule 119);
- to be informed promptly of their rights in a language they understand (ICCPR, art. 14(3); Mandela Rules, rules 54-55; Body of Principles for the Protection of Persons under Detention, principle 13);
- to access legal assistance (ICCPR, art. 14(3); Mandela Rules, rule 119(2));
- to have family members or a third party informed of their whereabouts following their arrest (Mandela Rules, rule 68);
- to be examined by a doctor or a medical professional upon arrest and receive specialised medical care whenever needed (Body of Principles for the Protection of Persons under Detention, principle 24; Mandela Rules, rules 24-35);
- to be brought promptly before a judicial authority and to challenge the legality of detention before a court (*habeas corpus*) (ICCPR, art. 9(3) and (4); Body of principles for the Protection of Persons under Detention, principles 9 and 11);
- to be presumed innocent until proved guilty according to a court of law and not to be compelled to testify against oneself or to confess guilt (UDHR, art. 11(1); ICCPR, art. 14(2) and (3)(g)), which encompasses the right to remain silent and the exclusion of statements made through coercion in judicial proceedings (ICCPR, art. 7).

All these procedural guarantees, moreover, must be “effectively available”, which means (a) provided by law and (b) functioning as they are intended. They, moreover, must be available for every detainee without discrimination and accessible for detainees in situations of vulnerability.

The 2004 Constitution provides the right to a defence attorney and of confidential communication with such a lawyer, the right to be notified of the accusation upon the arrest, and the right to timely appear before a court (art. 31). The Criminal Procedure

Code and other relevant laws also guarantee most of the rights deemed as critical safeguards against torture and ill-treatment.<sup>65</sup> For persons initially detained and deprived of their liberty, article 7 of the 2014 Criminal Procedure Code provides a series of rights guaranteed to suspects and accused persons, which include: article 7(1) to be informed of the charge and accusation, article 7(2) to be free from arbitrary arrest or detention and compensation for such treatment, article 7(3) to be free from torture and ill-treatment, article 7(4) to have family informed of the arrest, article 7(5) to freely give statements, article 7(6) to provide evidence and witnesses, article 7(7) to remain silent, article 7(8) to assign a defence lawyer or have a legal aid provider, article 7(13) to a judicial review of detention (habeas corpus), and article 7(14) to have free and confidential communication with legal counsel.<sup>66</sup>

As noted, the legal status of these texts and their individual protections is currently unclear while the review for compliance with Sharia law reportedly continues. References to other texts or instructions issued after 15 August 2021 will accordingly also be referenced per each right below, as relevant.

Undoubtedly, the implementation of these legal and procedural safeguards, from the outset of arrest, is key for an effective protection of persons against torture and other forms of ill-treatment. In addition, the availability of independent, accessible and effective complaints mechanisms to report abuse and the monitoring by independent bodies, provide increased protection against violations.

## Information on reasons for arrest

Anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest, and promptly informed of any charges against them.<sup>67</sup> This right is non-derogable even in a state of emergency.<sup>68</sup> The 2004 Constitution enshrines the same (art. 31). The Taliban leader's Code of Conduct on Reforming the Prisoners' System is silent on this point of notification.

The Human Rights Committee has held that the fact that an arresting official may believe that a person is aware of the reasons why s/he is being arrested does not absolve the official from the obligation to explain the reasons.<sup>69</sup>

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<sup>65</sup> In addition to the Criminal Procedure Code (2014), arts. 7 and 8; Military Criminal Procedure Code (2010), arts. 13, 14, and 21; Police Law (2009), art. 15(4); and Law on the Advocates (2007), art. 10.

<sup>66</sup> Article 7 of the 2014 Criminal Procedure Code provides for several additional rights that contribute further to ensuring a fair trial, but which fall outside the scope of this paper. Those include: (9) to comment on seized items and evidence, (10) to have an interpreter, (11) to access materials contained in the case file and to prepare defense, (12) to object to the criminal proceedings, (15) to be prosecuted without delay, (16) to a public trial, (17) to be present at trial, (18) to make closing statements at the court, (19) to examine witnesses, and (20) to object to the judge, prosecutor, defense counsel and experts.

<sup>67</sup> ICCPR, article 9(2) provides individuals are to be so informed at the time of arrest; Body of Principles for the Protection of Persons under Detention, principle 10.

<sup>68</sup> Human Rights Committee, General Comment No. 29 on Article 4 of the ICCPR (Derogations during a State of Emergency), 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 16; see also Commission on Human Rights, Working Group on Arbitrary Detention – Opinions adopted on Civil and Political Rights, including the question of torture and detention, Opinion No. 3/2004 (Israel), 19 November 2004, E/CN.4/2005/6/Add.1, para. 33; Human Rights Council resolution 15/18, A/HRC/RES/15/18, para. 4(e), Human Rights Committee, General Comment No. 8: Article 9 (Right to Liberty and Security of Persons), 30 June 1982, para. 4.

<sup>69</sup> Human Rights Committee, *Grant v Jamaica*, Communication No. 597/1994, 22 March 1996, CCPR/C/56/D/597/1994 (1996), para. 8.1 (a violation arose where the complainant was informed seven days after arrest).



UNAMA documented 140 instances where individuals were not informed of the reasons for their arrest, at the time of arrest. This concerned 73 instances of arrest by *de facto* police (of which 48 instances against women) and 67 instances of arrest by *de facto* GDI (of which seven instances against women).

Many interviewees described being arrested *in flagrante* or in contexts that render the reason for their arrest evident, such as being in possession of weapons or prohibited substances or participating in activities the *de facto* authorities consider illegal such as protests. Other interviewees were individually sought out by *de facto* security officials for arrest, whether upon

receipt of a complaint, execution of an arrest warrant or for additional information on a case. Even when *de facto* security officials sought out individuals for arrest at their places of residence or work, interviewees were not informed of the reasons at the time of arrest, nor shown any purported arrest warrant before being forcefully arrested. When individuals asked for reasons for their arrest, *de facto* security officials refused to answer, vaguely indicating “later” or “you will see”.<sup>70</sup> In other cases, interviewees were contacted by phone by *de facto* security authorities and asked to present themselves to the relevant office, where they were detained once they arrived.<sup>71</sup>

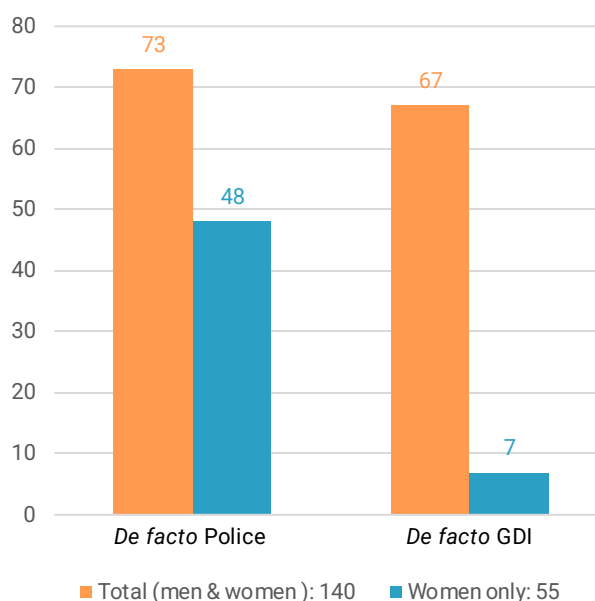


Figure 9: Documented instances where individuals were not informed of reasons for arrest

<sup>70</sup> E.g., Interview of 4 October 2022 (“They did not tell me about reasons for arrest. They said we are from MOI and told me ‘Let’s sit in the vehicle and we will continue talking there’”); Interview of 23 October 2022 (“I went to PD-X, to help my brother who was arrested; when I got there, they arrested me too and put me in the cell with him but did not say why. We were held for five hours, none of us were questioned or interviewed, then we were released”); Interview of 19 July 2022 (“they said that I must go with them. I asked them why. They said that they would tell me why later but not now. My children started to cry. But they still covered my eyes and head and put me in their car.”); Interview of 3 August 2022 (“several GDI men approached me and said that they were arresting me. I asked ‘Why are you arresting me? What have I done? Where are you taking me?’. They only said that they would bring me to [a facility] close-by and then they would inform me of the reason why they arrested me”); Interview of 3 August 2022 (“a group of armed Taliban fighters arrived at my home and knocked on the door. My son told me that I was not at home but they entered by force and found me hiding. They dragged me to their car. There were two police vehicles and around ten Taliban armed men were there. They did not tell me the reason for my arrest”); Interview of 8 August 2022 (“around ten armed Taliban arrived some wearing uniforms and some civilian. Two of them approached me and shouted at me that they wanted to bring me to their office. I asked them why and for what purpose. They refused to answer me. I asked them who they were and from which unit they came from. They also refused to reveal who they were. I was not informed of the reason of my arrest. Two Taliban placed me on handcuffs, then blindfolded me and forced me inside a vehicle”); Interview of 25 August 2022 (“I was arrested by about six Taliban armed men. One asked me to go with him. I told him where and why? He told me Chief of police wants to see you. They did not mention to me the reason of the arrest. When we reached to police office compound, they detained me. Everyone in detention was asking me the reason of my arrest. I told them I was brought to meet chief police”); Interview of 2 February 2023 (“A group of Taliban from police office arrested me by putting me in handcuffs and they covered my head. I asked them why they were arresting me. They told me that I would understand later the reason”); Interview of 15 November 2022 (“I was taken [by GDI] from my office and not give any reasons. It was not until the seventh night [in custody] that they questioned me properly and I realised what they wanted”).

<sup>71</sup> E.g., Interview of 25 July 2022 (“a GDI officer called rang me and asked me to come to the GDI office for investigation. When I arrived, they immediately placed me under arrest and put me inside the detention facility in GDI’s compound. They did not tell me why they were arresting me. In an interview room, they asked me about my past background”); Interview of 20 February 2023 (“I was summoned to GDI office, though I was in another region. I was not informed why I was requested to come but was detained when I got there for multiple days”);



Many interviewees only learned why they had been arrested at the place of first detention, albeit frequently hours if not days after being detained. Most often, the reasons only became clear during the first questioning, which could be up to several days after first being taken into custody. Even then, many individuals only deduced the reasons for their detention by the lines of questioning asked by the *de facto* security officials.<sup>72</sup> Notwithstanding the context of the arrest, the arresting authorities must always promptly inform the person of the charges against him/her, in a language they understand, to be able to contest the legality of detention.

## Information about rights

To be able to assert one's rights, a prerequisite is to be aware of them. Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for the arrest, detention or imprisonment, respectively with information on, and an explanation of, these rights and how to avail of such rights.<sup>73</sup> International human rights standards require that information about these fundamental rights be given from the outset of arrest, and be repeated prior to each questioning or interrogation, in a language that is understood and in a manner that takes into consideration different vulnerabilities.<sup>74</sup>

Per the law in Afghanistan, article 8 of the 2014 Criminal Procedure Code requires that "[t]he police at the time of arrest, the prosecutor prior to commencing the investigation and the judge before starting the trial, are obligated to inform the suspect and accused person and their legal representatives of the rights set forth in article 7 of this law, and to put them in the registry and to take his [sic] signature and fingerprints". Individual rights will be discussed in turn per each sub-section below.

As the (now defunct) *de facto* Attorney-General suspended the investigative role of prosecutors in August 2022, prosecutors no longer access places of detention, review casefiles prepared by police, or question detainees in custody. As outlined in the Taliban leader's Code of Conduct on Reforming the Prisoners' System, *de facto* police and GDI authorities are now solely responsible for conducting interviews and preparing casefiles for referral to *de facto* courts,<sup>75</sup> and by corollary, informing detainees of their rights.

To date, UNAMA has recorded no instances of detention where interviewees were informed by *de facto* police or GDI authorities generally of their key rights as outlined below either upon being arrested or being admitted to a place of detention by any authority, or how to raise complaints while in custody. UNAMA has recorded only one

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Interview of 22 March 2023 ("the District Chief of Police summoned me to his office. When I arrived, he instructed me to go with four [GDI] men who were waiting for me outside the police station, who had an official letter from GDI; they took me away").

<sup>72</sup> Interview of 5 July 2022 ("They arrested me from home, immediately placed me in handcuffs, covered my eyes and placed me in a car without saying any word. I asked the men who they were. But they simply told me: "Do not worry. You will soon understand." It was another several hours, and only when questioned at the police compound that he understood what they wanted, but still he did not understand what he had done wrong); Interview of 1 August 2022 (learned of the charges only three weeks after being arrested, when the investigation started); Interview of 15 November 2022 ("It was not until the seventh night [in custody] that they [GDI] questioned me properly and I realised what they wanted").

<sup>73</sup> Body of Principles for the Protection of Persons under Detention, principles 13 and 14; Mandela Rules, rules 54 and 55.

<sup>74</sup> Interim report of the Special Rapporteur on Torture, Juan Méndez, 5 August 2016, A/71/298, paras. 64-66.

<sup>75</sup> Decree regarding the approval of the Code of Conduct on Reforming the Prisoners' System, No. 175, 17 January 2022, article 39: "it is the task of security agencies to include in the dossier handed over to the court testimony, documentation and circumstantial evidence which evidence the accusations against the suspect, for example, presence at arrest and state of dress during the crime and authentication of the report."

instance where an interviewee was informed of at least two key rights prior to *de facto* security authorities commencing questioning.<sup>76</sup> For prisons, only two interviewees confirmed being informed of their rights upon admission to prison for pre-trial detention. While almost all interviewees admitted to prison for pre-trial detention confirmed they were not informed of their rights upon admission by *de facto* prison officials, they learned of their rights from fellow detainees and were generally available to avail of them, as discussed hereunder.

## Access to lawyers

The right of access to legal counsel applies to anyone immediately after arrest and throughout detention and criminal proceedings.<sup>77</sup> The right is specifically established as an essential fair trial guarantee<sup>78</sup> and is a deterrent against acts of torture and other forms of ill-treatment. Having unhindered access to a lawyer is crucial for those deprived of their liberty to be able to communicate on all aspects of their case, which includes information relating to ill-treatment while in custody impacting the process. (See further section on [Right to be promptly brought before an impartial judge and challenge the legality of detention](#)).

To that end, during all stages of criminal proceedings, starting from arrest and the initial stages of questioning by police, detainees should be given access to legal assistance, including of their own choosing.<sup>79</sup> Legal aid should be provided *ex officio* to persons accused or suspected of criminal offenses who cannot afford appointing a lawyer.<sup>80</sup> Detainees should also be allowed to communicate with their lawyers in confidentiality.<sup>81</sup> The right of access to a lawyer includes the corollary rights to a private discussion and to have the lawyer present at interrogations.

The 2004 Constitution provides the right of every individual to appoint a defence attorney upon arrest (art. 31). In case the suspect or accused is indigent, a legal aid provider shall be appointed with his or her consent.<sup>82</sup> The Criminal Procedure Code requires the prosecutor to request the suspect or accused to have a lawyer with him or her prior to the investigation (art. 152).

In November 2021, the *de facto* Ministry of Justice initiated a relicensing process for former lawyers that was open only to male lawyers.<sup>83</sup> Further, its Defense Lawyers Integration Procedure issued in April 2022<sup>84</sup> provides that “every person can, upon arrest, appoint a defense lawyer to defend the accusation or to prove his or her rights” (art. 4). Lawyers are authorized to participate in all stages of discovery, investigation, and trial on behalf of the client, and undertake communications with the client while they

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<sup>76</sup> Interview of 15 February 2023 (while in *de facto* Police custody with the Criminal Investigative Department).

<sup>77</sup> Interim report of the Special Rapporteur on Torture, Juan Méndez, 5 August 2016, A/71/298, para. 69.

<sup>78</sup> ICCPR, art. 14(3)(b); see also Rome Statute for the International Criminal Court, art. 67(1)(d).

<sup>79</sup> ICCPR, art. 14(3)(d); Human Rights Committee, Concluding observations: report of Georgia, April 1997, CCPR/C/79/Add.74, para. 28; Human Rights Committee, General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), 23 August 2007, CCPR/C/GC/32, paras. 10, 37-38.

<sup>80</sup> ICCPR, art. 14(3)(d); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012, A/RES/67/187, annex (28 March 2013).

<sup>81</sup> Mandela Rules, rule 61.

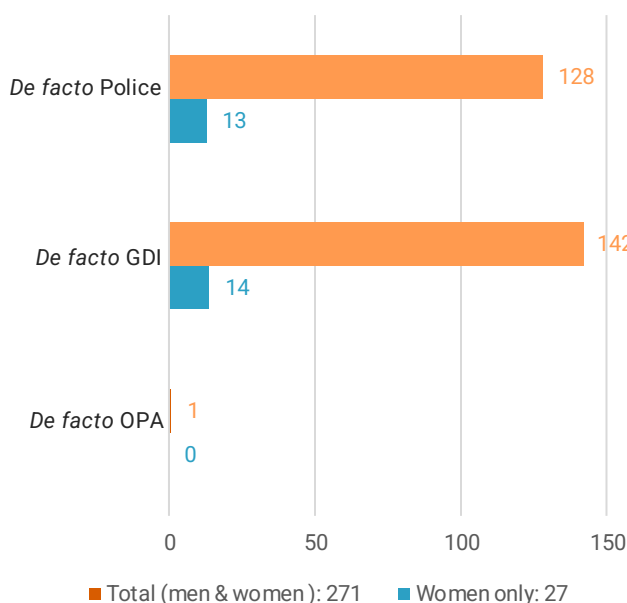
<sup>82</sup> The Constitution of the Islamic Republic of Afghanistan (2004), art. 31; Criminal Procedure Code (2014), art. 10.

<sup>83</sup> Despite continued advocacy by UNAMA, to date, female lawyers remain excluded from participating in the application and assessment process.

<sup>84</sup> Issued by the *de facto* Ministry of Justice in April 2022, Article 1 of the Procedure states it is enacted pursuant to Decree number 215 (vol 1) dated 6 February 2022 (04/07/1443 Lunar Hijri), and a decision of the cabinet of the *de facto* authorities of 15 November 2021 (Resolution No. 10 dated 24/8/1400).

are in custody or detention that take place in a secure and confidential setting, and participate in judicial sessions (arts. 21(4) and (7), 23(4)).<sup>85</sup>

Notwithstanding, UNAMA documented 270 instances where *de facto* security authorities failed to inform interviewees of their right to lawyer at any point while in their custody, or how to procure one through legal aid. This comprised 128 instances in the custody of *de facto* police (of which 13 involving women), and 142 instances in *de facto* GDI custody (of which 14 involving women). In contrast, UNAMA only documented two instances where an interviewee was informed of his right to a lawyer: one arose while in the custody of *de facto* GDI,<sup>86</sup> and the other *de facto* police,<sup>87</sup> although neither interviewee sought to engage a lawyer at that point.



**Figure 10: Number of instances where individuals were not informed/not given access to a lawyer**

Most significantly, UNAMA has not documented any case where a lawyer was present during questioning by *de facto* security officials. In one instance where an interviewee requested the presence of his lawyer while in *de facto* police custody, he was denied.<sup>88</sup>

Numerous lawyers have relayed to UNAMA that they are not permitted or have been denied access to places of detention under the *de facto* police and *de facto* GDI. Many others do not approach district level *de facto* police or GDI due to fears for their own safety. As such lawyers are never present when a client is being interviewed. Several *de facto* heads of police and GDI lockups confirmed to UNAMA that lawyers do not enter or visit detained suspects in lockups. One *de facto* head of police stated that lawyers are required to obtain permission from *de facto* provincial chief of police to visit detained suspects. The requirement of obtaining such permission has dissuaded some lawyers from trying to enter lockups.

In contrast, upon admission to a prison facility, interviewees in seven provincial prisons reported to UNAMA having obtained a lawyer after being admitted to pre-trial detention in a provincial prison, by which point their casefiles are sent to *de facto* judges for

<sup>85</sup> The first Taliban regime (1996 to 2001) also recognized the right to lawyers: see the Law on Regulating the Affairs of Defense Attorneys, Official Gazette No. 786, published 5 August 1999 (1420/04/22 A.P.), article 2 ("To defend his/her rights, every person may have a defense attorney."). See also the "Islamic Emirate's" Manual for Administration of Legal Procedures of Judicial Courts, published in May 2014, several articles of which reference the role of lawyers in court proceedings, arts. 17, 37, 194, 206 and 209.

<sup>86</sup> Interview of 18 December ("They [GDI] told me that I could access to have a lawyer, but I said, I am innocent and do not need any lawyer").

<sup>87</sup> Interview of 15 February 2023 (while in *de facto* Police custody with the Criminal Investigative Department).

<sup>88</sup> Interview of 15 March 2023 ("I told the police to allow me to call my family and defence lawyer to see my file, but they used bad words and insulted me." He was also not allowed in the second place of police custody).

additional investigation and adjudication. UNAMA documented several cases where interviewees had engaged private lawyers, whether to assist with the questioning before *de facto* judges or appeals from a first instance court decision.<sup>89</sup> Despite this, UNAMA has received consistent reports across provinces that in the majority of instances *de facto* judges reject the role of lawyers, denying them the right to represent individuals in court, in direct violation of the Defense Lawyers Integration Procedure, and often openly insulting and abusing lawyers in court.

The *de facto* OPA confirmed that it grants all detainees access to lawyers, in person and through calls, regardless of gender. Several interviewees confirmed having had private access to their lawyers, in person or by phone,<sup>90</sup> while others reported that requests for access depended on the guards.<sup>91</sup> In one instance an interviewee was denied access to their lawyer, being told that only “government-appointed” lawyers could enter, and not those who were privately engaged.<sup>92</sup> In some instances, *de facto* prison guards have remained present or near throughout a meeting between lawyer and the detainees, sometimes impacting the right to confidentiality between interviewees and their lawyers.<sup>93</sup>

Significantly, female lawyers have been excluded from applying to the new relicensing process to practice law that was introduced by the *de facto* Ministry of Justice in November 2021. Consequently, female detainees in pre-trial detention have in some instances been unable to receive in-person visits by male lawyers but have liaised with lawyers by phone. In a few instances where a husband and wife were both arrested and awaiting trial, female detainees reported that a lawyer engaged by their husband’s family was assisting them both.

In most cases where interviewees in prison did not have lawyers, they could not afford to engage one privately, or chose not to. While some interviewees in prison requested free legal assistance,<sup>94</sup> the *de facto* Ministry of Justice lacks the resources or personnel to meet even the minimum needs of detainees. While there are sporadic reports of lawyers from the *de facto* Department of Justice visiting prisons in some provinces to assist detainees, *de facto* authorities have acknowledged that *de facto* departments of justice are limited to one or two staff per province, which is insufficient to meet the needs of all those detained. UNAMA has documented only one instance where a *de facto* court ordered that a female detainee be assigned legal assistance, but UNAMA is unaware of the subsequent outcome of that order.

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<sup>89</sup> Interview of 5 September 2022 (“I also have a lawyer who visited me two times so far. I hired a lawyer after a prosecutor informed me during my first interrogation in this prison that I have a right to”); Interview of 4 October 2022 (“I hired this lawyer while I was in detention to help me on this case and when I appeared before the first court, but the Taliban judges beat him and said they were corrupt and shouldn’t be involved. My lawyer was not allowed to enter the court on any of these days, so then I stopped using a lawyer”); Interview of 15 March 2023 (“in prison I was allowed to contact a defence lawyer so I did”).

<sup>90</sup> Interview of 4 October 2022 (“I just spoke to him by phone because on visiting day it is so crowded [with other families] that it is hard for them come in”); Interview of 28 September 2022 (“My lawyer was first denied visitation because he is a male but I can and have spoken to him by phone”).

<sup>91</sup> Interview of 4 October 2022 (“I noticed that when other detainees asked for their lawyers to come, they weren’t permitted to enter. If a detainee had good relations with the guards it was allowed, but for most of us, no”).

<sup>92</sup> Interview of 6 December 2022 (“the lawyer wasn’t allowed in; they said only government assigned lawyers can come, not those that are paid privately”).

<sup>93</sup> Body of Principles for the Protection of Persons under Detention, principle 18(4): Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

<sup>94</sup> Interview of 6 December 2022 (“I asked for a lawyer and they said ok, but there has been no feedback since, so no one is following my case. Other people who have money can engage lawyers, but I can’t”); Interview of 5 September 2022 (“there is no lawyer, because my family is very poor”).

## Notification to, and contact with family

Persons deprived of their liberty have the right to have contact with the outside world.<sup>95</sup> Upon arrest and deprivation of liberty, the person has the right to notify a member of his/her family of the arrest and the place of detention. The families of detainees should receive full information about the fact of their detention and where they are held.<sup>96</sup> Thereafter, they have the right to communicate with and be visited by their family and friends, as well as others, at regular intervals.<sup>97</sup> This right is not to be denied for more than a matter of days.<sup>98</sup> The foregoing is essential to ensuring effective avenues through which people deprived of their liberty can communicate *inter alia*, allegations and evidence of ill-treatment.

Per the law in Afghanistan, the Criminal Procedure Code also provides for the right to have the family or a relative informed about the arrest by the arresting authorities (art. 7(4)). The 2018 Law Regulating Prison Affairs also provides that detainees and prisoners have the right to contact with their families (art. 20(1)).

When a person deprived of liberty is denied all contact with the outside world – whether their families, a lawyer, or access to a court – incommunicado detention occurs.<sup>99</sup> Prolonged incommunicado detention has also been regarded as a form of torture or ill-treatment.<sup>100</sup>

Incommunicado detention may also be considered as a crime of “enforced disappearance”, no matter how short, when the family is not notified about the detention location and thereafter remain unaware of the whereabouts, which places the person outside the protection of the law.<sup>101</sup> An arrest that is initially lawful may lead to an enforced disappearance if detaining authorities fail to acknowledge that a person is detained, or fail to provide information on his/her fate or whereabouts.<sup>102</sup> The Taliban leader’s Code of Conduct on Reforming the Prisoners’ System provides that “[a]t the time of arresting the suspect or criminal, the appointed organ is to introduce itself and indicate to the prisoner’s relatives the address where (s)he will [be] put into detention or imprisonment” (art. 4, emphasis added).

Further, it confirms that prisoners may meet their family and relatives up to three times per month (art. 23), provided that the names of those family members and relatives are registered in the relevant dossier (art. 24). The *de facto* GDI Human Rights Directorate in

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<sup>95</sup> ICCPR, art. 10 (shall be treated with humanity and with respect for the inherent dignity of the human person); Body of Principles for the Protection of Persons under detention, principle 19; Mandela Rules, rule 58.

<sup>96</sup> Body of Principles for the Protection of Persons under Detention, principle 12; Mandela Rules, rule 68.

<sup>97</sup> Body of Principles for the Protection of Persons under Detention, principle 15; Mandela Rules, rules 41(5), 58, 61 and 119.

<sup>98</sup> Body of Principles for the Protection of Persons under Detention, principle 15; Report by the Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights resolution 1985/33 (1986), E/CN.41/1986/15, para. 151.

<sup>99</sup> Report by the Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights resolution 1985/33 (1986), E/CN.41/1986/15, para. 109.

<sup>100</sup> Human Rights Committee, *El-Megreisi v. the Libyan Arab Jamahiriya*, Communication No. 440/1990, 24 March 1994, CCPR/C/50/D/440/1990, para. 5.4; *Arzuada Gilboa v. Uruguay*, Communication No. 147/1983, 1985, A/41/40 at 128 (1986), para. 14 (held incommunicado for 15 days); *Sharma v. Nepal*, Communication No. 1469/2006, 6 November 2008, CCPR/C/94/D/1469/2006, para. 7.2 (held incommunicado for 9 days); *Boucherf v. Algeria*, Communication No. 1196/2003, 27 April 2006, CCPR/C/86/D/1196/2003, para. 9.6.

<sup>101</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 31 July 2018, A/HRC/39/46, para. 143. See also Working Group on Enforced or Involuntary Disappearances, Opinion No. 66/2022 concerning Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom of Great Britain and Northern Ireland), 6 April 2023, A/HRC/WGAD/2022/66, para. 87.

<sup>102</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 10 January 2008, A/HRC/7/2, para. 26(7).

Kabul has confirmed to UNAMA that the Taliban leader has instructed them to inform family members about detainees' whereabouts.

UNAMA has documented 256 instances where interviewees in custody were both not informed of their right to contact their family, or when they asked to do so, were denied the right, particularly in the initial phase after admission. This occurred in 83 instances of *de facto* police custody (of which 11 involving women), and 173 instances in *de facto* GDI custody (of which nine involving women).<sup>103</sup>

One interviewee held by *de facto* GDI was moved to different facilities such that his family did not know of his whereabouts for almost two months; he managed to alert them via another detainee who passed them a message after the latter's release.<sup>104</sup> Many families have equally relayed to UNAMA instances of trying to contact detained family members when they knew where they were being held but being denied permission to speak to them.

Contrary to norms requiring such notification at or shortly after the time of arrest, interviewees report that *de facto* security officials allow notification to or contact with family seemingly only after conclusion of the investigation phase, which ranged from several days or up to 30 days, and was subject to the good-will of particular personnel.<sup>105</sup> A *de facto* police chief confirmed to UNAMA that detainees held on serious charges, such as terrorism or security-related allegations, abduction and robbery are normally allowed to see or have contact with visitors, but only after their investigation is completed. Only one interviewee stated that *de facto* GDI authorities had notified his family of his detention, albeit 15 days after he was detained, and was thereafter allowed to contact family weekly.<sup>106</sup> Two interviewees in *de facto* GDI custody, held for two and three months respectively in one facility, affirmed that after an initial period, the facility allowed families to visit once a week.

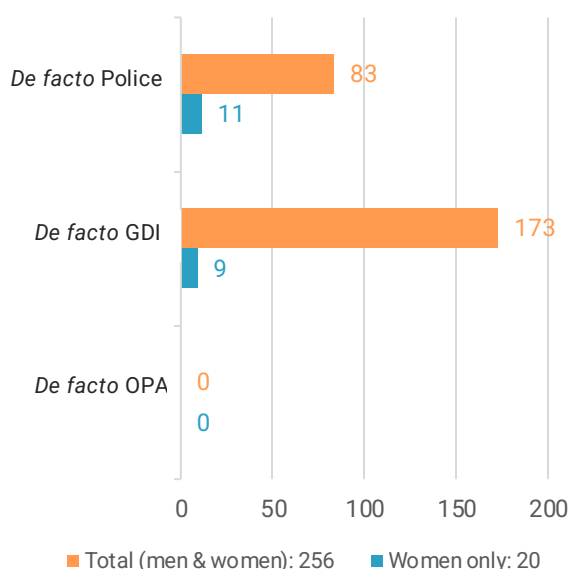


Figure 11: Documented instances where families were not informed/or person denied right to contact family

<sup>103</sup> In an additional 27 instances, interviewees could not identify the authorities detaining them.

<sup>104</sup> Interview of 22 September 2022 ("At GDI, I asked that they inform my family about my arrest but they refused to. Since I was arrested, my family was never notified by any authority").

<sup>105</sup> Interview of 4 October 2022 ("I was held for a month during which we were not allowed to contact our family. But after 30 days, 'after they finished the case', they allowed us to contact the family. Through digital telephone, they asked us to confirm and tell our families"); Interview of 18 December 2022 (In GDI, detainee was allowed to call his family to notify of his status. The detainee had contact with his family once a week, as the GDI's detention facility has visiting day (Sunday) once a week); Interview of 18 January 2023 ("After three days [in GDI], one member loaned me his phone so I could contact my family."); Interview of 13 March 2023 ("[In GDI], I requested many times for the Taliban personnel there to give me a chance to inform my family; finally after one month, they gave me a cell phone through which I informed my family that I was safe").

<sup>106</sup> Interview of 18 December 2022 ("my family was notified of my detention, but they were informed of my whereabouts 15 days after my detention through phone call .... I had the right of contacting family once a week, but ... I was not interested to be in touch with them to not make them worry").



Interviewees in eight provincial prisons confirmed that once they were transferred to prisons for pre-trial detention, they were allowed regular contact with families, which is facilitated by set visiting days and the presence of telephones for detainee use. One interviewee relayed that after almost two months without contact with his family while in *de facto* GDI custody, upon being transferred to a prison he immediately asked a *de facto* guard to call his family, who notified the family straight away.<sup>107</sup> In several instances documented in prisons, interviewees reported having had no contact with their family because they did not have phone numbers, did not have family to call in the area, or chose not to call to avoid shame or worry.

## Access to a doctor and timely medical examinations

Persons deprived of their liberty have the right to enjoy the standards of health care that are available in the wider community. This includes the right to prompt, independent, impartial, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter, possibly of own choosing.<sup>108</sup>

A proper medical examination should be undertaken as soon as persons deprived of their liberty are admitted to a place of detention.<sup>109</sup> The examination can identify existing physical or mental illness but is also key to identify any possible torture and ill-treatment which may have occurred upon first taking a person into custody. The right to adequate health care is a key element of the right of persons detained or imprisoned to be treated with humanity and with respect for their inherent dignity.<sup>110</sup> The failure to provide adequate medical care may itself constitute torture and ill-treatment. This right incorporates by corollary the right to have private medical examinations conducted out of sight and hearing of police and other non-medical staff. Records are to be kept of such medical examination, including in the registry of the detention facility.<sup>111</sup>

Per the law in Afghanistan, the 2018 Law Regulating Prison Affairs requires the Prisons Regulating “Authority” to provide free health services to prisoners (defined to include suspects) at on-site hospitals or clinics, or suitable hospitals outside if deemed necessary (art. 30). Further, the 2018 Law provides that upon entry into a detention facility, a file should be created for each person, including information about medical examination (art. 19).

The Taliban leader’s Code of Conduct on Reforming the Prisoners’ System does not provide for the conduct of prompt medical examination upon admission to a place of detention. It provides that first aid facilities/supplies must be available in prisons, and that necessary and timely steps are to be taken for the essential treatment of the

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<sup>107</sup> Interview of 22 September 2022. See also Interview of 18 April 2023 (“In the prison, no one informed me about my rights as a detainee, but a prison official allowed me to call my father to tell him my whereabouts”); Interview of 5 September 2022 (“prison officials did not inform my family about my whereabouts, but I contacted my family with the help of other detainees; I can meet with my family every week on the day for visitors”).

<sup>108</sup> Mandela Rules, rules 30, 34, 118; see in general rules 24 et seq. on health care service; Interim report of the Special Rapporteur on Torture, Juan Méndez, 5 August 2016, A/71/298, para. 88.

<sup>109</sup> Body of Principles for the Protection of Persons under Detention, principle 24; Mandela Rules, rule 30; Committee against Torture, Concluding observations: report of Switzerland, 27 November 1997, A/53/44, para. 96; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, art. 50.

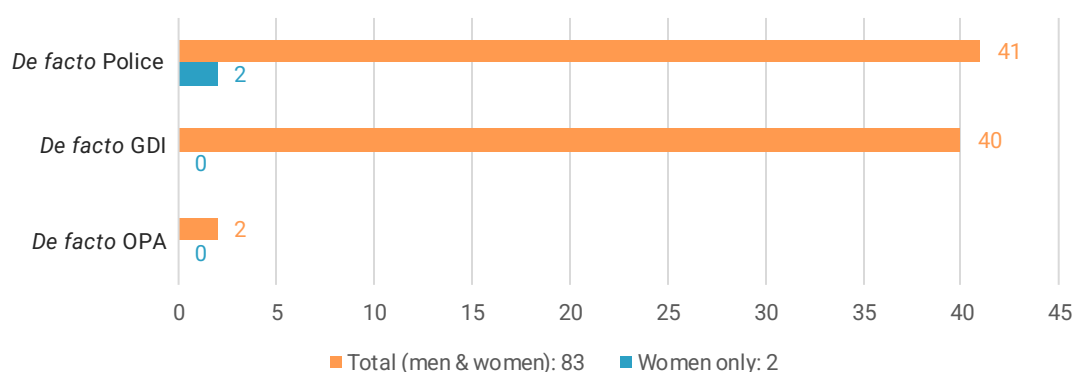
<sup>110</sup> ICCPR, art. 10(1). Human Rights Committee, *Pinto v Trinidad and Tobago*, Communication No. 232/1987, 20 July 1990, CCPR/C/39/D/232/1987 (1990), para. 12.7 (“The Committee reaffirms ... that the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention and that this obligation, obviously, extends to persons under the sentence of death.”). See Mandela Rules, rules 24-35; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 49-55.

<sup>111</sup> Body of Principles for the Protection of Persons under Detention, principle 26; Mandela Rules, rule 26.

seriously ill (art. 22). Several *de facto* police authorities confirmed to UNAMA that individuals are checked by a doctor prior to admission to police facilities and are sent to a hospital if needed. Further, throughout custody, health personnel of the police headquarters provide medicines, or take individuals to the provincial hospital for further medical treatment as needed and return them to custody.

UNAMA documented no instances where an interviewee admitted to the custody of *de facto* police or *de facto* GDI underwent any form of medical examination, including physical check, upon admission. Only one interviewee confirmed having undergone a medical examination on reaching a place of detention, though they were unable to identify by which *de facto* authority they were being held.<sup>112</sup> Similarly, UNAMA did not document any instances of an examination prior to questioning by either *de facto* authority. While recognizing that medical doctors may not always frequently be available at *de facto* police or *de facto* GDI facilities, especially in remote areas, initial or preliminary medical assessments may be performed by another qualified health-care professional reporting to a doctor.

Thereafter and during custody, UNAMA documented 83 instances where interviewees reported being denied adequate health care. This arose in 41 instances of *de facto* police custody (of which two involving women), and 40 instances of *de facto* GDI custody (of which none involving women) and two instances in prisons. Interviewees requested health care, sometimes in connection with preexisting medical conditions (three instances<sup>113</sup>), but most often after suffering ill-treatment during periods of questioning.<sup>114</sup> UNAMA noted accounts where interviewees were given basic medications such as pain relievers within the means possible at *de facto* police or GDI facilities. Reportedly one *de facto* GDI member responded to a request for medicine with “we are here to make healthy people sick, not to give you medicine.”<sup>115</sup>



**Figure 12: Documented instances of inadequate healthcare**

<sup>112</sup> Interview of 13 March 2023 (“I was immediately handcuffed and blindfolded and taken to an unknown place [where] I was subjected to a body search; a doctor examined me for any injuries I had or not”).

<sup>113</sup> For example, Interview of 1 March 2023 (“I asked for medicine for high blood pressure, but it was denied”); Interview of 4 January 2023 (“when I asked for medicine on the third day of detention because I felt pain I was denied. GDI told me they were there to make healthy people sick, not to give me medicine.”); Interview of 15 March 2023 (“I told them [police] I was suffering from a disease and that I needed to visit medical personnel, but they did not allow me to. There were no health personnel”. After being transferred to a prison, the interviewee was released for medical care).

<sup>114</sup> For example, Interview of 23 February 2023 (“I was in need and requested some drugs as my left shoulder was aching, and I had very bad time from my pain. The GDI detention staff just said that they do not have medicines”); Interview of 2 March 2023 (“I was not allowed to see a doctor after I was beaten. I asked for a doctor but there was none available. They laughed and said it is just a wound.”).

<sup>115</sup> Interview of 4 January 2023.



UNAMA considers that in most of those cases, medical personnel working in the clinics of either *de facto* police or GDI facilities must have been alerted by indications of ill-treatment by *de facto* officials having regard to the visible injuries of interviewees, which would have prompted their responsibility to report the same to the *de facto* heads of facility for investigation and discipline. Notwithstanding, even with access to doctors, one interviewee account sharply illustrates how even with the presence of doctors who acknowledge ill-treatment, the medical duty to report is tenuous where medical staff in turn fear repercussion.<sup>116</sup>

In contrast, provincial prisons have health clinics with permanent, albeit often limited, medical staff, some of which receive additional support from non-governmental organizations. Upon admission to prisons, the *de facto* Office of Prison Administration, as confirmed by some prisons, report that a medical examination or questioning of individuals is conducted to note the physical and mental condition of newly admitted individuals.

Of note, the *de facto* Director-General of OPA in mid-2022 reportedly instructed all prisons to document and report to the *de facto* OPA instances where individuals sought to be admitted to custody raise complaints or shows signs of ill-treatment upon admission, which several *de facto* prison directors have confirmed to UNAMA. The *de facto* OPA in Kabul states that it receives reports of one or two cases every month from provincial prisons of incoming detainees showing signs of ill-treatment by previous custodial authorities; and these instances are shared with the Taliban leader's office and the *de facto* MOI for investigation and follow-up. UNAMA is not aware of how many cases have been submitted to the *de facto* MOI or the outcome of these reports.

During detention, UNAMA documented two instances in the custody of prisons where interviewees reported being denied adequate healthcare.<sup>117</sup> In several instances interviewees confirmed having received treatment in prison and being taken to a hospital outside the prison when greater or more specialized care was needed than prison clinics were able to provide.<sup>118</sup>

As many prisons lack full-time female doctors or nurses, female doctors are called in when required, or visit periodically. When necessary, and upon recommendation of the head of a health clinic to the *de facto* prison director, female detainees requiring specialised gynecological or obstetric care are transferred to hospitals. In their engagements with UNAMA, almost all *de facto* directors of prisons acknowledge their limited ability to provide adequate healthcare due to limited resources such as medicines and equipment, and in particular for women.

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<sup>116</sup> Interview of 4 January 2023 (The interviewee relayed how a doctor "asked me to sign a document that I have not been tortured, although he told me before that we both know the reality").

<sup>117</sup> Interview of 18 April 2023 ("I asked for a doctor in the prison to examine my bruised body [from my treatment in GDI] and a nurse attended to me with some pain relievers. I asked to be brought to a hospital outside, but they did not allow it, so I recuperated inside the prison"); Interview of 5 May 2023 ("I was not allowed to see a doctor even though I asked and have a condition").

<sup>118</sup> Interview of 22 September 2022 ("I have issues with one limb; as the prison clinic didn't have treatment or medicine, they took me [outside] to a hospital, with other detainees with health issues"); Interview of 22 September 2022 ("Here [in prison] the treatment is good. If people ask to go the clinic, they get treated and are helped. I have been to the clinic twice for being sick and was treated"); Interview of 28 September 2022 ("first I got treatment in the prison, and when my health got worse because of too much stress, I was taken to the hospital"); Interview of 25 August 2022 ("The health personnel inside the prison provided good health services to detainees and the quality of medicine were very good. I got pain killer medicine and it removed the pain of my body and remove the signs of torture as well"); Interview of 15 March 2023 ("health personnel convinced the head of the prison to unofficially release me for a few days because of my health condition").

## Right to be promptly brought before an impartial judge and challenge the legality of detention

The requirement for an arrested person to be brought promptly before an impartial judge is one of the principal safeguards against arbitrary deprivation of liberty and allows the accused to challenge the basis of their detention, and a judge to determine whether pre-trial detention is necessary.<sup>119</sup> It also gives the judge the opportunity to enquire into the treatment the detainee received in custody. While the exact meaning of “promptly” may vary depending on objective circumstances, international law requires that delays should not exceed a few days from the time of arrest.<sup>120</sup>

Review of the legality of the detention should be conducted by a court to ensure a high degree of objectivity and independence. The court must have the power to conduct an effective review, including of the evidence on which the person is being held; and to order the release of the detained person if it finds the detention not to be in conformity with national or international law.<sup>121</sup>

Per the law in Afghanistan, the Criminal Procedure Code allowed security personnel to hold suspects for up to ten days to complete proceedings. It further allowed prosecutors, if there is sufficient incriminating evidence, to issue an order authorizing extending the detention of an arrested person for a period of up to 60 days to enable a formal investigation, depending on the nature of the offence.<sup>122</sup> UNAMA has criticized these provisions for breaching international law obligations insofar as a public prosecutor cannot replace judicial oversight, and holding suspects for up to 70 days without judicial oversight significantly exceeds the timeframe that the United Nations Human Rights Committee has assessed as reasonable under international law.<sup>123</sup>

The Taliban leader’s Code of Conduct on Reforming the Prisoners’ System of 17 January 2022 allowed *de facto* security personnel to hold suspects in cases of *Huquq-Allah* (crimes against God that pose a threat to security<sup>124</sup>), for up to three days, after which they were “to be handed over to the relevant authority (the court)”. Suspects could be held for up to one month if additional time was needed for investigation (art. 31), seemingly at the discretion of the detaining entity. Where more than one month was required for the investigation, a written order of extension was to be obtained from the relevant court. In cases of *Huqūq al-ʿIbād* (disputes involving the rights of individuals), individuals could be detained for up to three days, after which additional extension of time required an order of the court (art. 32). In March 2022, the Taliban leader revised the previous custody periods, ordering that the duration of detention with *de facto*

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<sup>119</sup> ICCPR, art. 9(4); Convention on the Rights of the Child, art. 37(d); Body of Principles for the Protection of Persons under Detention, principles 11(1) and 32; Human Rights Council resolution 15/18, para. 4(d).

<sup>120</sup> ICCPR, art. 9(3). “Promptly” means that “delays must not exceed a few days”; see Human Rights Committee, General Comment No. 8, para. 2; *Stephens v. Jamaica*, Communication No. 373/1989, 18 October 1995, CCPR/C/55/D/373/1989, para. 9.6.

<sup>121</sup> Body of Principles for the Protection of Persons under Detention, principle 11(3).

<sup>122</sup> See articles 5 and 6 of Annex 1 to the Criminal Procedure Code. A prosecutor may authorize further extension of detention of 30 days for misdemeanour and 60 days for felony crimes.

<sup>123</sup> UNAMA, Report on Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law, April 2019, p.10, available at: <https://unama.unmissions.org/Report-on-the-Treatment-of-conflict-related-detainees>, 17 April 2019.

<sup>124</sup> These include apostasy, attempted coup d’état, adultery, defamation (false accusations against another), theft, highway robbery, and alcohol drinking. These crimes have fixed punishments as provided for in the Quran.

security authorities to investigate shall not exceed ten days, after which extension shall be sought from the authorized court.<sup>125</sup>

UNAMA has documented only one instance where an interviewee reported being brought before a *de facto* judge on the second day of being detained by *de facto* GDI, who provided a letter for release. In the quasi-totality of arrests documented, there was no instance where a detainee in the custody of *de facto* MOI or *de facto* GDI had the chance to appear before a *de facto* judge, despite being held for extended periods, most frequently ranging up to one month (in almost three quarters of cases reviewed by UNAMA on file), but also for periods reaching up to six months without any independent judicial oversight.

UNAMA is unaware whether, as required by the Taliban leader's Order on Detention of Accused Persons, *de facto* security authorities seek authorization in practice from *de facto* judges for additional periods of detention beyond the prescribed custody periods even without presenting detainees, or whether *de facto* courts exercise any effective review, including of casefile evidence, *in absentia* if authorising extensions in custody.

Even at the point where *de facto* courts reportedly approve the subsequent admission of individuals to a prison facility for pre-trial detention by order, it is not apparent that *de facto* judges undertake any review of the lawfulness or merit of continued detention having regard to the content of investigations on the file. UNAMA has documented detentions of numerous individuals, including of minors, for extended periods for petty crimes, or crimes where they *prima facie* appeared to be the victim. In rare instances, family members were held in detention in lieu of the alleged perpetrator. In almost all cases, UNAMA considers that individuals are admitted to a prison facility to allow *de facto* judges to take over a casefile from *de facto* MOI or *de facto* GDI and continue the investigation into all individuals potentially involved in a case, regardless of the strength of the evidence in the casefile.

Accordingly, in all cases documented by UNAMA, it was only when detainees were admitted to a prison facility that interviewees reported finally appearing before a court for the first time since their arrest, albeit most usually several months after admission to the prison facility, and in almost all cases after significant periods since first being arrested.<sup>126</sup> In Kabul's Pul-i-Charkhi Prison, even after admission there were three instances of interviewees being held for periods up to six and eight months before being called to appear for questioning before a *de facto* court for the first time since their arrest by *de facto* police or *de facto* GDI authorities. In contrast, in some provinces that have a lower volume of pending cases with *de facto* judges, interviewees in pre-trial detention had their first appearance before a *de facto* judge within six weeks of admission to a prison facility.

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<sup>125</sup> Taliban leader, Order on Detention of Accused Persons During Investigation and Duration of the Detention, 15 March 2022, No. 29.

<sup>126</sup> Delays in dealing with the backlog of cases of those arrested post-15 August 2021 were further compounded by the suspension of prosecutors in August 2022, which saw then-pending investigations transferred to *de facto* judges for completion, many of whom then reconsidered the investigations on the case file and further conducted their own.

## Prolonged and arbitrary detention: challenging detention before *ad hoc* committees

Since early 2022, and in response to periods of increased volumes of detainees admitted, the *de facto* OPA has periodically advocated with the Taliban leader for measures to expedite the review of cases of individuals in pre-trial detention awaiting investigation, and to release detainees as appropriate.

This has periodically resulted in different initiatives to have *de facto* authorities assess the lawfulness of detention. This includes the creation of mixed committees - with representatives of the *de facto* Ministry of Justice, *de facto* MOI, *de facto* Supreme Court and *muftis* - serving as *ad hoc* mobile courts sitting in prisons with high volumes of detainees and reviewing case files, and ordering releases where casefiles lacked evidence or were considered incomplete. Other *ad hoc* committees, most often comprising *de facto* judicial and other *de facto* representatives that monitor conditions in places of detention, were also tasked to meet detainees, review their casefiles and assess whether continued detention was warranted. These joint committees also reportedly recommend the release of detainees due to a lack of evidence in casefiles or having regard to the less serious nature of the “crime”, and thus also contribute to ending prolonged arbitrary detention.<sup>127</sup>

At least two interviewees in *de facto* GDI custody confirmed to UNAMA having had the chance to raise their complaints about the unlawfulness and prolonged period of detention with different *de facto* authorities. The first interviewee described having met with a *de facto* GDI Director who was kind, listened to his complaints and after reviewing the case file, ordered his release for lack of evidence; another interviewee had the chance to present his case to a delegation led by the *de facto* deputy of GDI which met with each detainee, reviewing their casefiles. After pleading his case, he was also released for lack of evidence.<sup>128</sup>

While these *ad hoc* measures may be considered to serve as pseudo-independent review of the legality of detention, their review has always arisen to date months after the point of initial arrest. *Ad hoc* committees do not obviate the need for an independent authority to systematically assess the legality of detention in *de facto* police or *de facto* GDI custody promptly after arrest.

UNAMA notes that in March 2023, the former Office of the *de facto* Attorney-General became the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts by decree of the Taliban leader.<sup>129</sup> Aside from monitoring places of detention and the treatment of detainees, the *de facto* High Directorate is empowered to have an oversight role vis-à-vis the legality of activities of “detection agencies”, which includes monitoring the legality of the act of summoning individuals and their subsequent continued detention. The *de facto* High Directorate appears endowed with quasi-judicial powers with a right to review casefiles to reach determinations on the foregoing, and issue guidance or rulings to *de facto* entities concerning the release of detainees.<sup>130</sup>

Given the lack of capacity of existing *de facto* judicial authorities to ensure prompt, objective and independent oversight soon after arrest, in keeping with its reoriented mandate, the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts should ensure systematic oversight and prompt assessment of detainee casefiles and the lawfulness of detention of individuals, rather than conducting sporadic audits of places of detention (See further section on [Independent external mechanisms](#)).

<sup>127</sup> Again with further OPA advocacy, in September 2022 the Taliban leader ordered the *de facto* Supreme Court to appoint a panel of judicial authorities for every province to urgently assess casefiles to process to trial where appropriate, and providing guidance for release, such as those cases where the parties agree to conciliation, or where complainants do not pursue the case. The Taliban leader has also since issued a decree to courts with strict timelines for primary, appeal and high courts to examine cases. See Edict on Examining Casefiles in the Courts, 9/6/1444 (2 January 2023).

<sup>128</sup> Interview of 4 January 2023; Interview of 1 August 2022.

<sup>129</sup> Taliban leader, Decree on the Duties and Authorities of the High Directorate of Supervision and Prosecution of Decrees and Edicts, No. 32, 21 March 2023, art. 8. See also Decree on conversion of the title of Attorney General Office to the High Directorate of Supervision and Prosecution of Decrees and Edicts, No. 35, 7 May 2023, published in Official Gazette 1434 on 11 July 2023.

<sup>130</sup> Taliban leader, Decree on the Duties and Authorities of the High Directorate of Supervision and Prosecution of Decrees and Edicts, No. 32, 21 March 2023, arts. 7 and 8.

## Right to remain silent and the exclusion of coerced evidence from judicial proceedings

Every person has the right not to be compelled to testify against oneself or to confess guilt.<sup>131</sup> The right to remain silent is inherent to the presumption of innocence and a key guarantee against torture and ill-treatment. Persons arrested or detained on criminal charges must be informed of their right to remain silent during questioning, and at the beginning of every interview, as well as warned that any statements made could be used against them in criminal proceedings. Furthermore, the suspect's silence cannot be considered as an admission of guilt. This right "must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt".<sup>132</sup> Using torture or ill-treatment to extract a confession has been found to not only violate the prohibition against torture, but also the prohibition on self-incrimination and the right to a fair hearing.<sup>133</sup> The Convention against Torture requires all State Parties ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (art. 15).

Per the law in Afghanistan, the Criminal Procedure Code also enshrined the rights of suspects to freely give statements and reasons (art. 7(5)), as well as to remain silent and refuse to make comments (arts. 7(7) and 150(1)). The Criminal Procedure Code also requires that a statement taken from the suspect is to be recorded in writing with the suspect's signature but provides that a suspect may refuse to sign or thumbprint such a statement (art. 85(2) and (3)). The Criminal Procedure Code also prohibits the judicial police officer, prosecutor and court, themselves or through means of another person, in any case, forcing a suspect or accused to confess using misconduct, narcotics, duress, torture, hypnosis, threat, intimidation, or promising a benefit; and foresees that a statement made due to torture, duress, threats and intimidation is inadmissible as evidence (art. 22).

The Taliban leader's Code of Conduct on Reforming the Prisoners' System instructs that confessions are not to be obtained through force or duress (art. 36), thus indicating that all confessions shall be voluntary. Further, *de facto* security officials are prohibited from trying "to extract confessions from a suspect" and shall "refrain from threatening, torturing, and videoing them because such a confession does not fall within the orbit of the court's judgment" (art. 39). Most significantly, although "it is the task of security agencies to include in the dossier handed over to the court testimony, documentation and circumstantial evidence which evidence the accusations against the suspect," "[a] judge cannot pass judgement based on another's investigation, or testimony or confessions which the investigator or interrogator heard. Recourse requires that the

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<sup>131</sup> ICCPR, art. 14(3)(g); Rome Statute of the International Criminal Court, art. 55(1)(a).

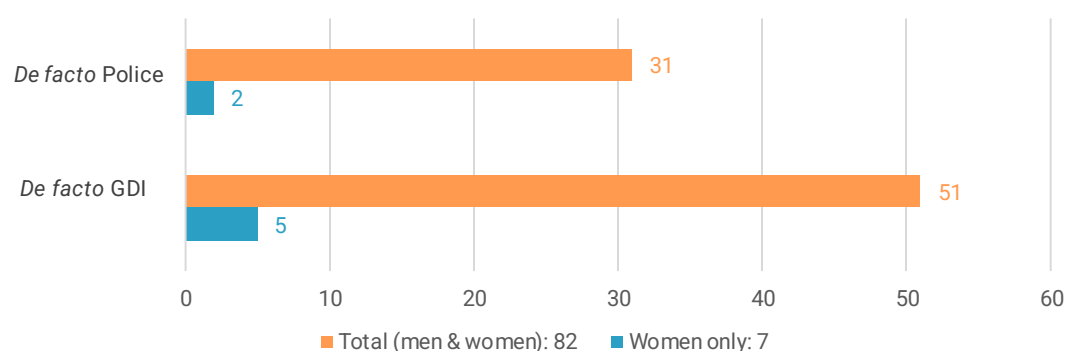
<sup>132</sup> Human Rights Committee, General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), 23 August 2007, CCPR/C/GC/32, para. 41. Also note the prohibition on taking undue advantage of persons who are detained or imprisoned for the purpose of compelling him/her to confess, to incriminate himself/herself or to testify against any person: Body of Principles for the Protection of Persons under Detention, principle 21.

<sup>133</sup> Human Rights Committee, *Tolipkhuzhaev v Uzbekistan*, Communication No. 1280/2004, 22 July 2009, CCPR/C/96/D/1280/2004, paras. 8.3-8.4. See also Human Rights Committee, *Bazarov v Uzbekistan*, Communication No. 959/2000, 14 July 2006, CCPR/C/87/D/959/2000 (2006), para. 8.3, where co-defendants were beaten and tortured during the investigation to the point that they gave false testimony incriminating the defendant leading to his conviction in violation of ICCPR art. 14(1).

judge hears the confession or witness evidence themselves, deems it admissible and bases their judgment upon it” (art. 39).

The September 2022 instruction by the Taliban leader to the *de facto* Supreme Court to establish judicial panels in each province, and annexing “a jury procedure”, also reiterated to assigned panel members that, per *de facto* Supreme Court ruling n°. 217, they should not make any decision or reach a verdict based solely on a confession from a defendant by the police or where the police gave a statement about an accused, noting such confession without evidence has no legal value unless done in front of the judge.

Notwithstanding the Taliban leader’s prohibition on coercing confessions, UNAMA documented 82 instances where interviewees signed documents purporting to be their statements under duress after periods of questioning. This arose in 31 instances in *de facto* police custody (of which two involving women), and 51 instances in *de facto* GDI custody (of which five involving women). In at least 40 of those instances, or just under half, interviewees signed documents after being subjected to torture and coercion during questioning.<sup>134</sup>



**Figure 13: Documented instances violating the right not to self-incriminate by institution**

In almost all instances, interviewees signed or thumb-printed documents without having read the documents or having had their content explained. In several instances where interviewees expressly asked to know the content, *de facto* security officials refused to let interviewees read the document or refused to read it aloud to blindfolded or illiterate interviewees.<sup>135</sup>

<sup>134</sup> For example, Interview of 17 October 2022 (“During interrogation, police forced me to confess and severely beat me by plastic cable. He also gave me electric shocks. After severe torture, I confessed & signed a confession”); Interview of 19 July 2022 (“I was interrogated seven times [in GDI]. I was beaten with plastic pipes and punches on my face, back, and thighs, and were pulling my hair, to force me to confess that I was a supporter of anti-government elements”); Interview of 21 February 2023 (“[in GDI] They tortured me to confess about my brother’s contacts [with groups of interest] and threatened to torture me even tougher if I do not confess. I told them if you need me to lie just bring the paper to sign it and I will confess what you are saying, because I can’t bear this lashing and torture”).

<sup>135</sup> Interview of 21 February 2023 (“we signed and confessed all they wanted. I don’t know what I signed”); Interview of 31 January 2023 (“at the police lockup they had prepared some documents that they wanted us to sign by force; they told me to put the finger on the document. When I asked what the content was, this question got me more beaten. I put my finger on it without having read the document, there was no choice.”); Interview of 2 March 2023 (“[in GDI] The beating happened before the investigation ... I fingerprinted a document during the investigation. I was not allowed to see it. I just did it, I was thinking of my life”); Interview of 20 February 2023 (“Someone [in GDI] took my finger and put it on several papers to stamp them without sharing or reading to me the content. The person told me that he had written what I said during the interrogation. I requested him to let me see with my eyes [as I was still blindfolded] but he refused, saying he is a Muslim and will not provide fake evidence against me.”);



Only two interviewees signed a statement knowing its content.<sup>136</sup> In several instances, interviewees recounted being forced to make a staged statement which was video-taped and where they were told what to say. One interviewee recounted how for several days he had to assist the *de facto* personnel in taking the statements of other detainees as the staff were illiterate.

The foregoing indicates a common practice among *de facto* security officials which raises serious concerns. UNAMA considers that these are further compounded by the complete absence of lawyers during questioning, in violation of the Defense Lawyers Integration Procedure<sup>137</sup> (art. 21(4)), who would assist with this step and safeguard a detainee's rights. Without reading or receiving an explanation about the content, detainees cannot ensure the accuracy of their statements or that they were not signing a confession. Both violate the individual's fundamental right not to self-incriminate themselves or confess guilt.

Further, in the vast majority of cases documented by UNAMA, the *de facto* MOI and *de facto* GDI authorities either release interviewees or transferred them to another *de facto* MOI or GDI facility for further investigation. For those transferred to a second facility, having given a confession in a first place of detention limited further investigation or questioning as the latter authorities considered no further action was warranted.<sup>138</sup> For those released by *de facto* MOI or *de facto* GDI, having signed a forced confession, particularly where coupled with a guarantee for non-repetition of the said offence signed by family or community members, poses a serious risk for both the individual and their guarantors in case of future allegations of breaching agreed conditions or non-repetition.

Where *de facto* security authorities transferred casefiles with these statements to *de facto* judges to approve admission of a detainee to a prison facility for pre-trial detention, and additional investigation or adjudication by a *de facto* court, the failure to know the content of these documents clearly impacts an individual's rights to liberty, presumption of innocence and fair trial before *de facto* courts. Notwithstanding that the Taliban leader's Code of Conduct foresees that forced confessions will not be considered by *de facto* judges, it is not clear how or whether such provisions are being applied. One interviewee who was sentenced to imprisonment, recounted having raised in court hearings that he had been tortured and ill-treated while in the custody of *de facto* GDI, and urged the *de facto* judge court to request a copy of the prison admission

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Interview of 15 March 2023 ("After around one hour, two [police] men came to my cell. They put my fingerprint on a paper while my head was covered. They did not read the file to me. I was not aware of the content of the file. I told them that I should read the file and then sign it, but they did not listen to me."); Interview of 6 February 2023 ("They [GDI] told me to put my fingerprint on my statement that was two to three pages long. They neither read the statement to me nor allowed me to read it"); Interview of 8 May 2023 ("After every interrogation, they [GDI] gave me a piece of paper where they had written what I had said during the interrogation. I was never allowed to read the paper, but they forced me to thumbprint it after every interrogation").

<sup>136</sup> Interview of 15 February 2023 (while in Police custody with the Criminal Investigative Department); Interview of 24 October 2022 ("At GDI they requested me to thumbprint something; one guard read for me what was on the piece of paper. It said something like, 'I intended to bring my friends to kill the victim'. I put a thumbprint although this was not true because I would otherwise be beaten up").

<sup>137</sup> Issued by the *de facto* Ministry of Justice in April 2022, pursuant to Decree number 215 (vol 1) dated 6 February 2022 and decision No. 10 of 15 November 2021 of the *de facto* cabinet of the 'Islamic Emirate of Afghanistan'.

<sup>138</sup> For example, Interview of 15 March 2023 (After signing documents without knowing their content in a first place of custody and being transferred, authorities at the second place of custody asked "why I had killed Talibs. I responded I did not and that it was a fake allegation. He stated that 'this is your file and you confessed that you had killed Talibs'. I said that I will not accept the allegation as it was baseless.").

sheet. This was denied by the *de facto* GDI officer who was present in the court hearing, and the *de facto* court took no further action on the allegation.<sup>139</sup>

UNAMA documented no instances of forced confessions or signing documents under duress while in the custody of *de facto* prison authorities. Although the role of prosecutors was formally suspended in August 2022, as of early 2022 preliminary investigations were already carried out only by *de facto* security authorities and transferred to *de facto* judges to complete, such that no questioning takes place in prison facilities. In contrast, with *de facto* judges now undertaking investigations, one interviewee reported that the *de facto* judges before whom he and his co-accused appeared were forcing them to confess.<sup>140</sup>

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<sup>139</sup> Interview of 11 June 2023.

<sup>140</sup> Interview of 6 December 2022 ("I was taken to the Court for investigation, by the *mullah*/ judges. There were two judges and they were forcing us to confess to the crimes we were accused of. They questioned each of us in turn for about two hours and were even striking the other [co-accused]").



## Systemic and illegal use of guarantees for release

Many detainees are released from *de facto* MOI or *de facto* GDI custody, often after prolonged periods, without any charges or ensuing case pending before *de facto* courts for additional investigation. Notwithstanding the lack of charges, numerous interviewees, in particular from *de facto* GDI custody, were released upon having signed forced confessions or only upon providing guarantees signed by family or other community members (guarantors), or often both. On many other occasions, UNAMA also notes individuals were released upon payment of money, and occasionally even after being forced to procure and hand over weapons for *de facto* security forces.

The 2014 Criminal Procedure Code (arts. 88, 105 and 110) provides for the temporary release of individuals in police custody. In such cases, prosecutors, overseen by courts can require the payment of bail and, where that cannot be paid, summons guarantees, as an assurance that accused individuals released temporarily from detention will present themselves at a later court hearing. Courts may also require bail, or a reliable guarantee after conviction, whether to postpone, or as an alternative to, immediate imprisonment, or for parole/early release, to assure continued observance of court-ordered post-release conditions (art. 305, 333 and 335). In all situations, the use of bail and guarantees is subject to independent judicial oversight.<sup>141</sup>

While aware that it occurs in practice, UNAMA is not aware of any legal basis for *de facto* security authorities to unilaterally require detainees to provide legal guarantees to be released from custody where there are no subsequent charges or judicial proceedings. It is also not clear to UNAMA that *de facto* courts are reviewing or approving the payment of money or all guarantees being provided by individuals in *de facto* police or GDI custody, particularly where there are no charges or any substantive judicial consideration of individual responsibility by a *de facto* court of the alleged offence.

UNAMA considers that the over-use of guarantees – irrespective whether endorsed by *de facto* courts – for release of individuals in the foregoing circumstances is intentionally coercive. Firstly, their use appears aimed at discouraging repetition of “criminal” acts or behaviours, which have not been adjudicated, with almost all guarantees accompanied by conditions of non-repetition – typically, not to speak out again against the *de facto* authorities, not to undermine the *de facto* authorities, not to speak with media, not to broadcast on certain topics, not to voice opinions on social media, not to meet again with international organizations, not to associate with former colleagues, not to undertake any “anti-Taliban activities”. Additional conditions attached to some guarantees for release prohibiting an individual’s movements, such as from travelling outside their city, province or country also violate freedom of movement, especially considering the absence of independent judicial adjudication on the alleged offences.<sup>142</sup>

Further, given that the signing of a guarantee entails legal obligations for the guarantors and can be legally enforced against signatories, their use also seems aimed to oblige guarantors – predominantly family members and community elders in wider society – to pressure and police individuals on behalf of the *de facto* security authorities for fear of their own arrest. In numerous cases, UNAMA is aware that multiple people have signed guarantees for the release of one person in *de facto* GDI custody, creating a web of legally constrained guarantors. In some instances, guarantors for released individuals even provided the legal documents for their homes or businesses for the release of individuals from custody. UNAMA is aware that many guarantors have been arrested in turn when concerned individuals reportedly break the conditions of their release from custody.

UNAMA calls on the *de facto* authorities to halt their illegal and systemic use of guarantees for release of individuals in *de facto* police or *de facto* GDI custody.

<sup>141</sup> See also the *de facto* authorities’ Manual for Administration of Legal Procedures of Judicial Courts, art. 81.

<sup>142</sup> See Criminal Procedure Code (2014), art. 110 on precautionary measures and possible limitations on movement by prosecutors or the court.



# Complaints, monitoring mechanisms, investigations and accountability

International human rights instruments enshrine the right of all persons deprived of their liberty to make complaints about their treatment, particularly with regard to cases of alleged torture, ill-treatment or inhuman conditions.<sup>143</sup> The right to lodge a complaint is a fundamental safeguard against acts of torture and other forms of ill-treatment, and the first step in ensuring the victims' right to redress and reparation. In addition, the efficient documentation of complaints allows the authorities to investigate credible allegations of torture and punish perpetrators, increasing the trust in the criminal justice system, and to analyse patterns of violations and introduce legal and institutional reforms, where needed.

The Mandela Rules accordingly provides for inspections of places of detention by both internal and external mechanisms.<sup>144</sup> All persons deprived of their liberty have the right to make a complaint to those inspecting prisons during their visits and the opportunity to speak to the inspector(s) without prison staff or management being present.<sup>145</sup> Persons deprived of liberty may also complain, "without censorship as to the substance", to the director of the prison, central prison administration, the courts or other authorities through proper channels.<sup>146</sup>

## Independent external mechanisms

Under international law, the access of independent and impartial organizations to serve as observers to persons deprived of their liberty is critical.

### International mechanisms

Independent organizations, such as the United Nations and the International Committee of the Red Cross, must be able to make regular, repeated visits to all places of detention where persons are deprived of their liberty, to visit individuals and speak with detainees freely, confidentially and without witnesses. External inspection also includes visits conducted by the United Nations Sub-Committee for the Prevention of Torture, under the

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<sup>143</sup> Convention Against Torture, arts. 12, 13, and 16; Committee against Torture, Concluding observations: reports of Poland, 8 November 2013, CAT/C/POL/CO/5-6, para. 11. See also Mandela Rules, rule 56; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 1975, General Assembly resolution 3452 (XXX), art. 8; Body of Principles for the Protection of Persons under Detention, principle 33 (referring to the right to submit a complaint to the authorities responsible for the institution and to higher authorities, and, when necessary to authorities vested with review/remedial powers); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 75-76. See also Human Rights Committee, General Comment No. 20, 10 March 1992, para. 14; Committee against Torture, General Comment No. 3, 13 December 2012, CAT/C/GC/3, paras. 23-28.

<sup>144</sup> Mandela Rules, rules 83-85.

<sup>145</sup> Mandela Rules, rule 56(2), and 84(1)(c).

<sup>146</sup> Mandela Rules, rule 56(3); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 73, 75-76.

Optional Protocol to the United Nations Convention against Torture, to which Afghanistan acceded on 17 April 2018.<sup>147</sup>

While the *de facto* MOI and *de facto* GDI have responded positively to engagement with UNAMA on human rights violations (see below), to date only one entity, the *de facto* Office of Prison Administration, grants UNAMA access to several prisons under their authority to exchange confidentially with detainees. UNAMA's discussions continue with the *de facto* MOI and *de facto* GDI in Kabul on cooperation on monitoring and granting UNAMA access to places of detention and detainees.

## National mechanisms

The Optional Protocol to the Convention Against Torture also provides for visits conducted by a country's national preventive mechanism. At a domestic level, prior to 15 August 2021, several national bodies were previously mandated to monitor places of detention and receive complaints of torture or ill-treatment. Those included the Afghanistan Independent Human Rights Commission (AIHRC), the Anti-Torture Committee of the Attorney General's Office and the Anti-Torture Commission (established under the 2018 Law on the Prohibition of Torture).

With the change in authorities in August 2021, the *de facto* authorities abolished the AIHRC in May 2022. Notwithstanding, several *de facto* authorities currently have detentions monitoring functions. Of note, the changed mandate issued in March 2023 for the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts maintains monitoring places of detention, engaging with detainees and hearing complaints, and further provides that it can make decisions on complaints, and liaise with authorities for the release of detainees found to be held in violation of decrees and orders.<sup>148</sup> The *de facto* High Directorate is equally empowered to prevent torture or ill-treatment and, where it arises, to investigate complaints, submit rulings on the responsibility of perpetrators, as well as reallocate casefiles to other investigators.<sup>149</sup> UNAMA has received some reports that staff of the new *de facto* High Directorate are visiting some prisons though UNAMA is unaware of the outcomes of such visits.

Additionally, a "Standing Committee" created by the Taliban leader in 2022 (date unclear) comprising *de facto* Supreme Court representatives and other *de facto* authorities is reportedly mandated to visit places of detention countrywide, exchange with detainees on complaints, and assess detention conditions.

Lastly, in the absence of a decree or formal instruction outlining their functions, the *de facto* Ministry of Propagation of Virtue and Prevention of Vice (MPVPV) defines its scope of work as including supervision and implementation of all orders of the Taliban leader,<sup>150</sup> and accepting complaints against any personnel of a *de facto* authority.

The *de facto* MPVPV in Kabul has confirmed it often participates in mixed committees that conduct inspections. Several departments of the *de facto* MPVPV (D-PVPV) at provincial level have confirmed to UNAMA that they visit places of detention of

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<sup>147</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the United Nations General Assembly on 18 December 2002, A/RES/57/199.

<sup>148</sup> Taliban leader, Decree on Duties and Authorities of the High Directorate of Supervision and Prosecution of Decrees and Edicts, No. 32, 21 March 2023, art. 8.

<sup>149</sup> Taliban leader, Decree on Duties and Authorities of the High Directorate of Supervision and Prosecution of Decrees and Edicts, No. 32, 21 March 2023, art. 7.

<sup>150</sup> Homepage of the MPVPV, accessed at: [ماموریت و دیدگاه | AfGOV \(mopvpv.gov.af\)](https://www.afgov.gov/mopvpv)

the *de facto* police, GDI and prisons, though this is not uniform throughout the country. According to MPVPV, their monitoring focuses on implementation of decrees with Sharia aspects, and thus reports indicate MPVPV monitoring in places of detention has focused on issues such as the quality of religious education dispensed with a view to future reintegration of detainees into society, and the length of beards of males. In some provinces, *de facto* D-PVPV reported undertaking visits to places of detention only if it receives complaints about the treatment of detainees and prisoners or regarding conditions of detention, under the self-appointed mission of the *de facto* MPVPV to “listen to people’s complaints”. To date UNAMA has no information on the outcomes of *de facto* MPVPV monitoring in places of detention under *de facto* MOI or *de facto* GDI authority, and less so on whether monitoring includes those instances of arbitrary detentions which UNAMA has documented by *de facto* MPVPV authorities.

## Internal mechanisms

The *de facto* MOI and *de facto* GDI have Human Rights Directorates tasked to monitor places of detention, conduct unannounced visits to facilities to engage with detainees and pursue allegations of torture or ill-treatment.

In Kabul, UNAMA engages with the *de facto* MOI, GDI and OPA, including with their respective Human Rights Directorates or Focal Point, with respect to allegations of human rights violations that include arbitrary arrests and detentions, torture and deaths in custody, as well as on detention monitoring issues which these bodies have noted in the course of their work. UNAMA also engages across provinces with the *de facto* heads of police and GDI lockups and *de facto* prison directors on issues arising in places of detention. The *de facto* GDI has also appointed *de facto* Zonal Representatives for Human Rights in provinces, with each representative covering four provinces, and having a direct reporting line to the *de facto* GDI Human Rights Directorate in Kabul. UNAMA engages with these *de facto* Zonal representatives on issues relating to monitoring.

Notwithstanding, it is not clear whether the *de facto* MOI and *de facto* GDI Human Rights Directorates are assured absolute independence. While the *de facto* GDI Human Rights Directorate relays having a direct reporting line to the *de facto* Director-General of GDI, the *de facto* MOI’s Human Rights Directorate lacks a direct line to the *de facto* Minister of Interior.

Further, the impact of the engagements of their personnel to date with detainees in places of detention appears limited. While UNAMA welcomed several accounts by interviewees of visits by *de facto* GDI Human Rights Officers to their respective places of detention,<sup>151</sup> initial reports indicate that the *de facto* Human Rights Officers require additional training in the exercise of their functions to ensure confidentiality in their work and build trust with detainees. Unsurprisingly, interviewees were hesitant and did not speak freely to those officers where the latter enquired about treatment in the presence of a *de facto* head of a lock-up. In another instance, an interviewee who reported ill-treatment to a visiting *de facto* GDI Human Rights Officer in the lockup, was further beaten by officials in the facility for having complained. In a third instance, a detainee

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<sup>151</sup> Interview of 1 December 2022 (“some monitors from GDI came and asked about the behaviour. I did not get a chance to speak to them”); Interview of 18 December 2022 (“Yes, GDI’s Human Rights Officer used to meet the detainee once a week to monitor the situation of the inmates inside the GDI detention facility.”); Interview of 6 February 2023 (“a GDI human rights representative came to me every day asking how I was being treated”).

who confirmed to different *de facto* authorities about having been ill-treated while in the preceding *de facto* GDI custody was told not to say such things.

In early 2022, the *de facto* OPA also established an internal monitoring committee in Kabul, comprising several personnel. The committee, often led by the *de facto* Director-General of OPA, has to date visited the majority of its 34 prisons across Afghanistan, reportedly to exchange with both *de facto* prison directors and management, and separately with detainees on conditions and treatment in detention. For the most part, the *de facto* OPA has also retained a human rights officer in each of its provincial prisons. UNAMA is not aware of detainees having raised complaints of ill-treatment with either the monitoring committee or with *de facto* prison human rights officers in provincial prisons, although several interviewees confirmed having engaged with *de facto* prison management on complaints about detention conditions, which the latter sought to address.

Of note, UNAMA documented two accounts by interviewees who raised concerns or complaints of torture with the *de facto* heads of their place of detention, that resulted in measures to protect them. In one case, upon the complaint of a detainee, *de facto* prison authorities transferred two *de facto* guards to another facility before any harm occurred; in the second case, a *de facto* GDI authority prevented further ill-treatment, by transferring an individual to a different facility for the individual's protection.<sup>152</sup> While it is not known whether further investigative or disciplinary action was taken in the latter case, UNAMA welcomes and strongly encourages this level of openness and engagement of *de facto* heads in the management of detainee complaints.

## Investigations and accountability

Where an individual complains or raises allegations of torture, the Convention Against Torture provides that state parties shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (art. 12). States must ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint, or evidence given (art. 13).

The duty to investigate and prosecute torture offenses requires swift action by States including in difficult security conditions. States should comply with minimum standards applicable to investigations, namely that an investigation be independent, impartial and subject to public scrutiny, that the competent authorities act with diligence and expediency and that victims are involved.<sup>153</sup> Investigations and documentation of torture allegations should comply with the Istanbul Protocol, the international guidelines on the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body.<sup>154</sup>

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<sup>152</sup> Interview of 22 September 2022 (the *de facto* head of detention reassigned two guards who posed a risk to the detainee due to family connections); Interview of 9 January 2023 (a mixed delegation led by the *de facto* head of GDI noted the interviewee had been beaten; the *de facto* head GDI chastised those responsible and ordered the individual be moved elsewhere for custody).

<sup>153</sup> Report of the Special Rapporteur on Torture, Dr. Alice Edwards, 16 February 2023, A/HRC/52/30, para. 61.

<sup>154</sup> The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 29 June 2002, available at: [https://www.ohchr.org/en/publications/Istanbul Protocol - Effective Investigation & Documentation of Torture & Ill-treatment](https://www.ohchr.org/en/publications/Istanbul%20Protocol%20-%20Effective%20Investigation%20&%20Documentation%20of%20Torture%20&%20Ill-treatment).

Each state party shall ensure that the victim of an act of torture obtains redress in its legal system and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation (Convention Against Torture, art. 14).

As set out in the section on [Applicable framework for torture](#), Afghan law criminalizes acts of torture. The Military Criminal Procedure Code (MCPC) provides that when (former) personnel of the Afghan National Defense and Security Forces, including Afghan National Police and the National Directorate of Security, are suspected of having committed a crime, the MCPC rather than the regular Criminal Procedure Code applies (MCPC, art. 3). Under the MCPC, a commander who is informed about an alleged criminal conduct committed by personnel under their command must promptly inform the Military Criminal Investigative Department for investigation (art. 18 (3)). The Criminal Procedure Code also allows a prosecutor to refer noted violations involving police and national security operatives to the concerned competent authority according to the circumstances (art. 91). With the transfer of investigative functions to *de facto* courts and removal of the role of prosecutors, such referrals are no longer possible.

Afghan Law also enshrines a right to compensation for victims in article 51 of the Constitution and the 2018 Law on the Prohibition of Torture, with a chapter on redress for victims of torture, which provides that the victim's claim for compensation is not dependent on the conclusion of a criminal proceeding.

Concerning accountability and prompt and impartial investigations into allegations of torture and ill-treatment, the Taliban leader's Code of Conduct on Reforming the Prisoners' System provides that an official or member of personnel ill-treating a prisoner will be considered worthy of punishment or even removal from their post (art. 34). Similarly, the Taliban Leader's March 2022 Order on Detention of Accused Persons During Investigation reiterates that torture in detention is prohibited and "an injustice" and that "the prevention of injustice is obligatory." Further, the Taliban leader's November 2022 Decree on the establishment, duties, and powers of the Security and Screening/Vetting Commission provides that an armed official of the Emirate who threatens and tortures people or commits other similar acts will be dismissed from the ranks and presented to the military court.<sup>155</sup> UNAMA is not aware of the *de facto* authorities recognizing a right to compensation for victims of torture by *de facto* security authorities.

Per the reported mandates of the *de facto* MOI and GDI Human Rights Directorates, the latter are to report and/or investigate allegations of torture or ill-treatment against *de facto* security officials to their respective leadership. The *de facto* GDI Human Rights Directorate reports having full investigative authority, and that in cases in which allegations are established, perpetrators are dealt with lawfully and punished in accordance with the instructions of GDI leadership. In contrast, the *de facto* MOI Human Rights Directorate reports referring allegations to MOI investigative departments for follow-up.

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<sup>155</sup> Taliban leader, Decree on the establishment, duties, and powers of the Security and Screening/Vetting Commission, No. 12, 22 November 2022, article 9. See also Decree on the amendment and addition to article 1 of Decree No. 12 of 22 November 2022, regarding the creation, duties, and powers of the Security and Purification Commission, 18 May 2023, amending the composition of the Commission.



While *de facto* authorities occasionally announce the opening of investigations into specific incidents,<sup>156</sup> UNAMA is not aware of any instances where the *de facto* heads of police lock-ups or GDI facilities, or other *de facto* authority with competence has ordered investigations for the purpose of accountability for violations by personnel of either *de facto* security institution, and less so that resulted in dismissal, or prosecution before a *de facto* military court.<sup>157</sup>

While *de facto* OPA reportedly refers to the *de facto* MOI and the Taliban leader's office cases where individuals for admission to prison facilities show signs of ill-treatment by previous custodial authorities, for investigation and follow-up, UNAMA is similarly not aware of how many cases have been submitted to the *de facto* MOI or the outcome of these reports, for perpetrators and victims alike.

*De facto* OPA exchanges with UNAMA on general updates on investigations into allegations of deaths, torture or ill-treatment arising in provincial prisons, including measures taken to investigate, detain and dismiss as appropriate *de facto* prison personnel, including prison guards.

As to which *de facto* entity is competent to adjudicate responsibility and punish perpetrators, complaints against *de facto* security authorities, including those of torture or ill-treatment, fall within the jurisdiction of the *de facto* military courts, as established in November 2021 and formally integrated into the Supreme Court hierarchy in May 2022.<sup>158</sup> With the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts also empowered since March 2023 to investigate complaints of torture or ill-treatment by *de facto* security authorities as well as to submit rulings on the responsibility of perpetrators "to the authoritative source", generally understood to refer to the Taliban leader, it remains to be seen how the *de facto* military courts and *de facto* High Directorate will delineate their respective jurisdictions.

UNAMA urges all *de facto* authorities at senior levels to ensure prompt investigation of all complaints of torture and ill-treatment and provide responses to those who submit the complaints, and welcomes further engagement with each of the *de facto* authorities concerned on the outcomes of their respective investigations and on subsequent measures ensuring accountability of perpetrators.

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<sup>156</sup> For example, in December 2021, the *de facto* Ministry of Interior spokesperson told the media that an investigation had been launched into a video depicting *de facto* security force members allegedly torturing a former ANDSF member and that the perpetrators would be arrested. Shia News Association, "Torture of a former soldier by the Taliban in Kabul" (Dari), 27 December 2021. Available at: <https://af.shafaqna.com/FA/494521>.

<sup>157</sup> The response of the *de facto* Ministry of Foreign Affairs to the UNAMA report on corporal punishment, states that 93 violations of torture or ill-treatment in the custody of *de facto* security organs were recorded and investigated, with some of the perpetrating employees dismissed from their duties and punished according to their crimes. No breakdown by responsible entity was specified or provided. See UNAMA, Corporal Punishment and the Death Penalty, May 2023: Annex - Response of the *de facto* Ministry of Foreign Affairs, available at: [https://unama.unmissions.org/file/21157/df\\_MFA\\_Response](https://unama.unmissions.org/file/21157/df_MFA_Response).

<sup>158</sup> Taliban leader, Decree on Determining the Jurisdiction of Military Courts Affairs, 28 November 2021, No. 19. The decree provides that *de facto* Military Tribunals have the authority to hear and investigate complaints and cases against officials of the *de facto* MOI, *de facto* GDI and *de facto* Ministry of Defense. That court became part of the Supreme Court judicial structure in May 2022. See Edict on the inclusion of military courts in the structure of the Supreme Court, 28 May 2022; Edict on dissolution of the military courts of the Ministry of Defense, 10 December 2022.



## Key findings and observations

Whether with regard to the framework provided in international human rights law, the law in Afghanistan, or the series of decrees and instructions issued by the Taliban leader or other *de facto* ministries relating to the use of force, the treatment of detainees, the prohibitions on torture and ill-treatment, or on the right to lawyers, **the current *de facto* authorities are falling short of implementing the obligations that Afghanistan has as a State** to ensure the rights of Afghans, who are deprived of their liberty.

This report highlights the **urgent need for the professionalisation of the *de facto* security and prison authorities** in executing their duties, whether in their engagement with the public, execution of arrests in accordance with norms regulating the use of force, and in undertaking investigations without resorting to torture or ill-treatment.

In contravention of international law and prohibitions on torture to which Afghanistan remains a party, existing Afghan law, and guidance by the Taliban leader, the **use of torture and ill-treatment by *de facto* officials is systemic** and violates Afghanistan's obligation to enforce an absolute prohibition of such treatment. Eradicating torture and ill-treatment and improving the treatment of persons deprived of liberty will increase trust of the population in the criminal justice system and more generally in the rule of law in Afghanistan.

It is critical that *de facto* Minister of Interior and *de facto* Director-General of the General Directorate of Intelligence ensure that they **uphold their obligations to protect the lives of persons in detention**, and to respond to allegations of torture, ill-treatment and any deaths in custody as a result of the actions of their personnel. They must **address the pervasive use of torture and ill-treatment** in places of detention, including in connection with interviewing and investigations. Criminal investigations and interviews must be conducted in a manner that upholds the fundamental principle of the prohibition of torture, complies with human rights, and places at its centre the right to dignity and physical and mental integrity of every person.

Further, these *de facto* institutions must **take urgent steps to address the systematic violations of detainee rights to access lawyers, their families, doctors and judges** independently empowered to review the legality of detentions during investigations, all of which systematically enable the continued commission of torture and other forms of ill-treatment, with no accountability. It is well-established that detainees who are held outside the protection of the law, for prolonged periods and with no access to lawyers, families or courts face increased risk of being subjected to torture or other forms of ill-treatment and signing forced confessions, with less chance of being able to report or prove allegations of torture.

Coupled with this, UNAMA found that the systematic violation of the detainee's right to access a lawyer, and to challenge the legality of detention before a court while in the custody of the *de facto* MOI and GDI resulted in **arbitrary and prolonged detention**, frequently concluding without charges and judicial process. Even when individuals were



admitted to prisons pending additional investigation, it is not evident that *de facto* judges undertook any degree of **independent review of the lawfulness or necessity of continued detention** of each individual potentially involved in a case.

In almost all cases, the first appearance before a judge to review the lawfulness of a detention occurred several months at best after the initial arrest, and only once individuals were transferred to a prison facility. Throughout 2022, on average approximately three-quarters of the detainee population in prisons were still awaiting a first court appearance since their initial arrest. Upon sustained advocacy of the *de facto* OPA, the *de facto* Supreme Court has established committees that contribute to ending arbitrary and prolonged detentions, and releasing individuals, although UNAMA observes these initiatives fall well short of the obligation to review the legality of detention promptly, or within a few days of arrest.

With the *de facto* court system unable to ensure prompt and independent review of the lawfulness of arrest of those in *de facto* police or GDI custody, the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts should serve as an independent and effective mechanism to systematically review the legality of detention of those in custody, as well as to investigate complaints of torture or ill-treatment in places of detention. It is essential that perpetrators be investigated by an independent body staffed with qualified personnel and that the suspected perpetrators and the superior officers responsible for ordering or tolerating these acts are duly tried by a *de facto* court of law, and sentenced.

As also noted, many detainees are released from *de facto* MOI or *de facto* GDI custody without any charges, in most instances having signed forced confessions and guarantees, or often both. UNAMA considers that the **quasi-systematic use of guarantees by *de facto* MOI and *de facto* GDI for release of individuals** - irrespective of whether such guarantees may have been endorsed by *de facto* courts - has no basis in law and serves no judicial purpose. The practice **is intentionally coercive** and intended to legally obligate the guarantors – predominantly family members and community elders in wider society - to police individuals of concern on behalf of the *de facto* MOI and *de facto* GDI for fear of their own arrest. Additional conditions attached to some guarantees prohibiting an individual's movements, such as from travelling outside their city, province or country are not only arbitrary, but also violate an individuals' freedom of movement. UNAMA calls on the *de facto* authorities to halt their illegal and systemic use of guarantees for the release of a detainee from *de facto* police or GDI custody.

Noting the detrimental effect on those detained arbitrarily for prolonged periods, including women and children, and that the *de facto* Office of Prison Administration lacks the resources to meet the basic needs or conditions of detention for the incarcerated population for prolonged periods, the *de facto* authorities must **consider developing guidelines providing for an alternative to detention pending investigation and trial**, for individuals, particularly for petty or non-violent offences.<sup>159</sup> Under international law, pre-trial detention, including for juveniles, should be used as a measure of last resort, and for as short as possible,<sup>160</sup> and only where strictly necessary.

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<sup>159</sup> Per United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 14 Dec. 1990, A/RES/45/110, Rule 6.1: Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim; Rule 6.2: alternatives to pre-trial detention shall be employed at as early a stage as possible.

<sup>160</sup> ICCPR, art. 9(3) provides: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement." See also United Nations Rules for the Protection of Juveniles Deprived of their Liberty, art. 2.



## Recommendations to the *de facto* authorities of Afghanistan

UNAMA strongly encourages the *de facto* authorities in Afghanistan to undertake serious efforts to eradicate torture and ill-treatment in places of detention, to investigate perpetrators, and provide redress for victims. The *de facto* authorities must equally take steps to address blockages in the criminal justice process caused by high volumes of arbitrary arrests with no effective judicial oversight, which gives rise to arbitrary and prolonged detention of individuals pending the completion of investigations by *de facto* courts and exposes individuals to an increased risk of abuse. In most cases, individuals pose no risk to public security requiring their continued prolonged detention while awaiting investigation by a *de facto* court.

To that end, UNAMA strongly urges the *de facto* authorities set out below to urgently consider and move to implement the following recommendations.

### ***De facto* Mol, *de facto* GDI and, as appropriate, *de facto* OPA**

- **Confirm and widely disseminate** to all relevant line institutions and personnel: a) the Taliban leader's Code of Conduct on Reforming the Prisoners' System, including the prohibition on torture and other forms of ill-treatment; and b) the *de facto* Ministry of Justice's Defense Lawyers Integration Procedure clarifying the right to a lawyer starting from the point of arrest, and the right of the lawyer to be present throughout interrogation, investigation and court hearings;
- **Issue instructions explicitly prohibiting** the use of methods aimed at **sensory deprivation** during arrest and detention, and in particular the practice of hooding and blindfolding;
- **Organize trainings or awareness-raising sessions** for personnel in accordance with international norms on the conduct of arrests and the use of force, on the conduct of investigations encompassing suspects victims and witnesses, and in particular on non-coercive investigative interviewing, and on the norms for the treatment of detainees in custody;
- **Instruct *de facto* heads and their deputies responsible for places of detention** under the authority of the *de facto* MOI and GDI **and their personnel, to:**
  - > notify family members of a detainee's arrest immediately or as soon as practicably possible, and permit family members to visit detainees;
  - > alternatively, set up practical arrangements to ensure that persons deprived of their liberty can contact a person of their choosing to inform them about their detention and whereabouts;

- > cease holding detainees incommunicado;
- > ensure that detainees can exercise their right to challenge, at any time during the period of detention, the legality or necessity of the detention before a judge or other authorized official, who can decide without delay on the lawfulness of detention and order release if detention is not lawful;
- > inform detainees of their fundamental rights while in custody, including informing detainees of their rights to access lawyers and medical professionals in confidential settings; notification to, and continuing contact with, family; and to submit complaints and engage freely with monitoring mechanisms;
- > ensure that interrogations take place in the presence of lawyers;
- > ensure lawyers have private and confidential access to detainees at all stages of detention, as well as proper access to documents relating to the investigations and questioning of clients;
- > cease the illegal practice of requiring bail or third-party guarantees for release of individuals in *de facto* police or *de facto* GDI custody, without charges or judicial review;
- [Ensure independent international organizations including UNAMA have access to, and can engage privately with detainees](#) in facilities under the authority of the *de facto* MOI, GDI, and OPA;

**On monitoring, investigations and accountability:**

- [Ensure investigations](#) into all allegations of torture, ill-treatment and deaths in places of detention under the authority of the *de facto* MOI, GDI and OPA and ensure the suspension or removal from post of concerned *de facto* officials for the duration of investigations, [and criminal accountability for those found responsible](#), including senior *de facto* heads and deputies of places of detention with command responsibility, and direct perpetrators;
- [Penalize any failure to document, report or investigate allegations](#) of torture or ill-treatment in custody;
- [Ensure the \*de facto\* MOI and GDI Human Rights Directorates and \*de facto\* OPA monitoring committee have the authority, independence and resources](#) necessary to effectively receive confidential complaints, and investigate allegations of abuse and to report the same directly to the respective *de facto* Ministers or Directors for appropriate measures;
- [Ensure training of personnel](#) working with the respective internal mechanisms monitoring detentions (Human Rights Directorates and officers, detention center heads, and monitors of the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts, respectively) on the conduct of monitoring functions, and to increase frequency of monitoring and reporting given the tight time limits concerning custody periods;

- Ensure that all relevant officials in all detention facilities, including medical personnel, are trained to identify, document and report on cases of torture and ill-treatment, in accordance with the Istanbul Protocol;
- Engage with UNAMA on the results of investigations and actions taken;

### **De facto Ministry of Justice:**

- Finalize the review of laws passed under the former government, and clarify the applicability of laws that offer essential procedural protections to all Afghans as foreseen by key texts, including the Constitution, the Penal Code, Criminal Procedure Code and the 2018 Law on the Prohibition of Torture;
- Increase transparency through publication and dissemination of new instructions of *de facto* authorities, whether purporting to amend existing Afghan laws or introducing new procedures, particularly where instructions impact individuals' rights;
- To address prolonged pre-trial detention, develop guidelines recognising that persons awaiting trial, including minors, shall not be detained as a general rule, and permitting alternatives to detention where possible taking into account the vulnerability of the individual, the nature and gravity of the offence, and the risk the individual poses to the public;
- Confirm and widely disseminate to all relevant institutions, including the *de facto* MOI, GDI and Supreme Court, the Defense Lawyers Integration Procedure on the right to a lawyer starting from the point of arrest, and the right of the lawyer to be present during interrogation, investigations and court hearings;
- Establish a legal aid framework through which legal services for persons in *de facto* police and *de facto* GDI custody and pre-trial detention, whether suspected, accused, or charged with a criminal offence, are guaranteed; where legal services are provided by several service providers including organizations, independent lawyers and legal clinics;
- Establish a standardized referral system between *de facto* security authorities and the *de facto* departments of justice in provinces so that all detainees have prompt access to private lawyers or legal aid providers;
- Scale up and continue the licensing of lawyers, including female lawyers, to ensure sufficient access to quality legal services are trained and available to visit places of detention and assist detainees;
- Ensure that ongoing licensing of lawyers is open to female lawyers;

### **De facto Supreme Court:**

- Issue clear instructions to *de facto* judges to ensure that any statement of an accused used in court has been made with full and informed consent, and to ensure that coerced or other unlawfully obtained statements are not admitted or relied upon under any circumstances as evidence in court proceedings;
- Issue clear instructions to *de facto* judges to ensure that any allegations that confessions were coerced or unlawfully obtained while in custody are fully investigated and those responsible are held to account;

- Issue clear instructions to *de facto* judges [to respect the Defense Lawyers Integration Procedure](#) which allows lawyers to be present throughout all stages of criminal proceedings and can represent clients, [and prohibiting ill-treatment or harassment of lawyers](#), and confirming both violations are a breach of professional judicial standards, subject to disciplinary action;

### **International community**

- [Support engagement with the \*de facto\* MOI, GDI and OPA](#) to provide appropriate advice and targeted awareness-raising sessions to increase knowledge and compliance of law enforcement actions with international norms, including on democratic policing, the use of force, the treatment of detainees and the conduct of investigations and questioning;
- [Support civil society organizations and NGOs](#) working in the areas of provision of legal advice/legal aid as well as medical care for improved capacity to support detainees in all places of detention.



# Annex I - References

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- Law on the Advocates (2007)
- Law on Regulating Prisons Affairs (2018)
- Military Criminal Procedure Code (2010)
- Penal Code (2018)
- Police Law (2009)



## Annex II – Response by the *de facto* Ministry of Foreign Affairs of the Islamic Emirate of Afghanistan to the Draft Report by UNAMA Human Rights Service Pertaining to the Treatment of Detainees in Afghanistan

The Directorate of Human Rights and Women's International Affairs of the Ministry of Foreign Affairs of the Islamic Emirate of Afghanistan shared UNAMA's draft Report on Treatment with Detainees with four members of the Inter-Ministerial Coordination and Technical Committee of the Islamic Emirate of Afghanistan for fact finding purposes and to present a response; after obtaining their inputs based on the objective facts and assessment and consolidation [of the responses] by the Directorate, the below is provided in response to the report of UNAMA's Human Rights Service:

### **Measures and Procedures of the Office of Prisons Administration:**

The Office of Prison Administration, for the purpose of preventing violation of Islamic and human rights of detainees, has taken the following measures, and is committed to respecting the rights of detainees:

- Fortunately, Sharia (Islamic religious, social, and cultural values), which have been approved to protect and respect fundamental and Islamic rights, prohibit the torture of people even for the purpose of obtaining the truth. In addition, pursuant to enforced laws and provisions of the country, depriving people of their freedom shall not abrogate their other rights and obligations. The Office of Prison Administration is committed to respecting such values. The Decree 175, Vol. 1 of *Amir-ul-Momenin* on regulating the affairs of prisons<sup>[161]</sup>, and the development of an operational plan and circulating it to all provinces confirms such commitment.
- The Office of Prison Administration is an independent civil organ that has been established to keep and protect detainees. The Office, being fully abreast of the importance of the Islamic and human rights of detainees, is focused on respecting the rights of detainees and preventing violation of their basic rights. Hence, the Office of Prison Administration has no role in the persecution and torture of individuals aimed at obtaining forced confessions. It is evident that managing detention centers in most countries is a challenging task and entails dissatisfaction, protests, and riots. So, adopting disciplinary measures is sometimes inevitable. But this administration has never allowed prison officials to torture or physically deal with prisoners.
- A Directorate of Monitoring Detention Centers has been established within the structure of the Office of Prison Administration. The Directorate, along with its provincial offices, is committed to regular and continuous monitoring of prisons aimed at identifying problems and collecting complaints of detainees and relaying them to the Leadership of the State through documented reports so that issues are addressed. Fortunately, no torture has been reported to the Office of Prison Administration as of yet. It is worth mentioning that detainees, at any time, may easily file complaints or share their problems with the

<sup>161</sup> UNAMA note: Decree regarding the approval of the Code of Conduct on Reforming the Prisoners' System, No. 175, 17 January 2022.

[OPA] leadership or Directorate of Monitoring Detention Centers. It is worth noting that there are multiple legislative documents pertaining to monitoring and ensuring the rights of detainees.

- Currently, a high-ranking commission and a committee comprised of heads [of directorates] of the Office are operating within the Office of Prison Administration to address the problems and challenges faced by detainees.
- For the purpose of improving the human rights situation of detainees and their access to basic services, the Office of Prison Administration has signed several bilateral agreements with national and international organizations in accordance with the law.
- The Office of Prison Administration has conducted training workshops for its employees in the capital and provinces on respecting and observing the human and Islamic rights of detainees; it has facilitated and organized awareness programs for detainees on their basic rights as well.
- The Office of Prison Administration has convened coordination meetings with judicial institutions on expediting [the process of] hearing and adjudicating cases of detainees. Such meetings, fortunately, have had tangible results and the cases of detainees are now heard and addressed expeditiously.
- The Office of Prison Administration has held several coordination meetings with the Ministry of Justice on assigning legal aid providers for indigent detainees and detainees' access to defense lawyers which has led to significant progress in this regard.
- The Department of Regulating Personal Files and Visitors of Detainees has drafted and prepared a procedure on the classification of detainees; the procedure is currently being enforced to classify and hold detainees based on some identified indicators. This, in part, plays considerable role in guaranteeing human rights and rehabilitation of detainees.
- The Office of Prison Administration has always facilitated the visit of national and international organizations including representatives of UNAMA to detention facilities and has considered their findings helpful for addressing and improving service delivery for detainees. We are pleased that UNAMA has appreciated the assistance of the Office in its report.
- Detainees have access to health services although health services in some provincial detention facilities are basic. If treatment of a detainee is not feasible in the detention center, health personnel of the relevant detention facility refer the detainee to a public or private health center outside the facility.
- Pursuant to Decree 175, Vol 1 dated 17 January 2022 of *Amir-ul-Momenin* on regulating the affairs of prisons that has been received by the Office, an implementation plan [of the decree] has been developed and circulated to departments in the capital and provinces. Similarly, Decree 29 dated 15 March 2022 of *Amir-ul-Momenin* provides for the authority of crime detection and prohibition of torture.

The Office of Prison Administration is obliged to observe the rights of detainees properly. Also, the Office is in favor of further and closer cooperation with UNAMA and given the Mission's important role and position, it requests the assistance of the Mission and other partners to collaborate with the Office with respect to detainees.

### **Inputs and Activities of the Ministry of Interior of the Islamic Emirate of Afghanistan:**

Decree 1521 and Decree 29 of *Amir-ul-Momenin* on the prohibition of corporal punishment and torture of detainees as well as the procedure prepared by the Ministry of Interior on the treatment and behavior of personnel of Police Chief Commands and police district stations with detainees have been circulated to all Police Chief Commands in the capital and provinces.

All police personnel are committed to enforcement of the above-mentioned decrees and procedures. All provincial and district police chief commands and police districts stations have received the procedure which defines the activities, authorities, approaches, and responsibilities of the said security units and prohibits punishment of individuals without a court decision. Casefiles of accused persons, after initial investigation, are prepared and referred to courts. The Human Rights Directorate of the Directorate General of Police Rights, which functions within the structure of the Ministry of Interior, is committed to its duties and regularly inspects and monitors custody centers and detention centers. Further, monitoring committees are dispatched from the capital to [ensure] no misuse by relevant personnel.

The Human Rights Directorate of the Directorate General of Police Rights of the Ministry of Interior, since the triumph and victory of the Islamic Emirate of Afghanistan, has dispatched a total of 16 monitoring committees who visited 60 police units in the capital and provinces; in addition, heads of human rights sub-offices continuously carry out their undertakings in relevant [police] units. Furthermore, for the purpose of

better enforcement of Decree 29 of *Amir-ul-Momenin*, the Ministry of Interior is currently working on drafting a procedure to prevent corporal punishment, persecution, and torture in detention centers in the capital and provinces.

The Human Rights Directorate of the Directorate General of Police Rights of the Ministry of Interior has identified 21 cases of human rights violations and referred them to investigative departments for follow-up. Similarly, for the purpose of preventing torture, the Human Rights Directorate of the Directorate General of Police Rights has organized one-day seminars under the title of “Code of Conduct of Police”.

### **Legislative Measures:**

With respect to legislative documents, Decree 9 of *Amir-ul-Momenin* published in the Official Gazette 1432 dated 22 May 2023 on the manner of processing legislative documents has obliged ministries and administrations of the Emirate to prepare a draft of their legislative documents by *Ulema*, experts and technical staff, and search and derive references from *Hanafi* jurisprudence for religious matters and refer the [legislative] documents to Ministry of Justice for religious assessment, scrutiny and in-depth evaluation. The Ministry of Justice will, after scrutiny and assessment, send the draft to the Independent Legislative Documents Review Commission for review, precise assessment and required correction. The commission will present the draft legislative document to *Amir-ul-Momenin*. As you know better, processing laws is time-consuming and requires more research until it is enforced as a legislative document.

Pertaining to the treatment of detainees and respecting human rights, a number of *Amir-ul-Momenin*’s decrees have been published in Official Gazette 1432 in the year 2022-23 as follows:

- Decree 49, Vol. 2 dated 7 May 2017 of *Amir-ul-Momenin* on obtaining approval of the leadership in enforcing *Hudud and Qisas* (Islamic prescribed) punishments after three instances of courts;
- Decree 8, Vol. 5 dated 5 November 2019 of *Amir-ul-Momenin* on authority to detain accused and the duration of detention;
- Decree 9, Vol. 5 dated 5 November 2019 of *Amir-ul-Momenin* on good behavior [the proper treatment] with detainees;
- Decree 65, Vol. 6 dated 2 November 2020 of *Amir-ul-Momenin* on prevention of punishment without a court decision and its photography;
- Decree 1820 dated 2 January 2023 of *Amir-ul-Momenin* on consideration of cases by courts;
- Decree 29 dated 15 March 2022 on authority to detain accused and the duration of detention.

It is worth mentioning that the Islamic Emirate of Afghanistan has approved and enforced the Advocates Procedure pursuant to which detainees or their legal representatives may access defense lawyers for their cases. Additionally, the Department of Legal Aid of the Ministry of Justice, as per the procedure, provides free legal assistance to indigent people during the detection, investigation, and trial phases.

In regard to the provision of legal services for detainees, the Ministry of Justice acts pursuant to Islamic provisions, decrees of His Excellency *Amir-ul-Momenin*, and policy of the Islamic Emirate of Afghanistan, and provides legal assistance through defense lawyers, and legal aid providers with the cooperation of other relevant institutions.

### **Inputs and Operational Procedure of the General Directorate of Intelligence of the Islamic Emirate of Afghanistan:**

- Some of the figures reflected in the draft UNAMA report contradict the truth (for instance, it is stated in the draft report that 40% of the detainees whose investigation is completed are not affiliated with any party, while 25% are journalists and civil society activists; this is absolutely incorrect and is not the fact). In order to verify actual figures, it is recommended that UNAMA shares with the GDI Human Rights Directorate the matters and its needs so that required assistance is provided and misunderstandings are avoided.
- [Information] in the report is provided in a way as if torture in GDI is carried out purposefully and as a means of obtaining confessions. However, according to the code of conduct of GDI, the above-said act is prohibited and in all cases of detainees’ torture, the offenders were treated strictly and in accordance with the policy.
- In the recommendation section of the draft report, respect for detainees’ rights such as visiting and/or telephone contact with members of the family was mentioned. As indicated earlier, the GDI policy does



not impose any such restrictions and all detainees have the right to visit or talk over the phone with family members. If UNAMA has received a case where the detainee was denied the right to contact family members, please share it with GDI so that the issue is addressed.

- With respect to keeping detainees whose crime is not certain and are detained without proper grounds, it was addressed in previous reports that an authorized commission is constantly working on reviewing the casefiles of detainees and most detainee files have been reviewed.
- It is stated in the recommendation section of the draft report that detainees do not have the right to complain about their prolonged detention or the legitimacy of detention. It should be noted that there is no limitation on the above matter and the majority of detainees' complaints have been registered and addressed by GDI Human Rights Directorate.
- Regarding providing information on the fundamental rights of detainees, supervisors of the Human Rights Directorate are obliged to provide the authorities of detention centers and detainees with necessary information on the fundamental rights of detainees.
- The GDI Human Rights Directorate of the Islamic Emirate of Afghanistan, as the institution monitoring the conditions of detainees in GDI detention centers, is assigned and has full authority to monitor the situation of detainees and investigate cases of torture and human rights violations of detainees. In case of violation, after investigating the cases, the violators will be dealt with legally and punished in accordance with the instructions of GDI leadership.

**End**

### **Response by the *de facto* Supreme Court of the Islamic Emirate of Afghanistan to the Draft Report by UNAMA Human Rights Service Pertaining to the Treatment of Detainees in Afghanistan**

I wish you success in your endeavors and hope this letter finds you well,

The Supreme Court of Islamic Emirate of Afghanistan appreciates efforts exerted by UNAMA. As you are aware we had a meeting in the past week. Among the agenda of which was the situation of Afghan detainees and how they are treated in the detention centers, you have prepared a report on the situation of detainees which has also been shared with us. As we went through the report, we encountered some points that we believe are far from reality, such as subjecting detainees to torture and their death as a result of this, or killing of previous administration's police officers and other employees, since such acts contravene the Islamic principles that no one will be detained or imprisoned but based on the order of the Court and nor are they to be subjected to torture or killed.

All agencies of the Islamic Emirate are bound by the Islamic principles and respect the rights of detainees. It is worth mentioning that the Supreme Court assigns various delegations to monitor the situation of detainees, and in addition to those delegations, detainees are called along with their dossiers to the respective courts once every week. Also, based on the instructions of His Excellency of the Supreme Court, the inspection team conducts trips to the provinces and monitors the situation of the detainees from a close quarter. Torturing of the detainees and imprisoning someone without the order of the court and similar points that were mentioned in your report, the Supreme Court of the Islamic Emirate of Afghanistan repudiates them.

We hope that in the future, you share your information with us while preparing your report for further wholeness of your report so that your report be founded on the reality and be acceptable to the people of Afghanistan.

**End**



