

# THE TALIBAN'S WAR ON WOMEN

The crime against humanity of  
gender persecution in Afghanistan





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# EXECUTIVE SUMMARY

After the Taliban seized control of Kabul in August 2021, the human rights situation of women and girls in Afghanistan deteriorated severely, despite the Taliban's initial promise to respect women's and girls' rights. The Taliban have been increasingly introducing new restrictions with the apparent aim of completely erasing women's and girls' presence from public arenas. Taliban policies have been further oppressing women and girls in almost all aspects of their lives. Any meaningful form of public or political participation by women and girls is now prohibited. Women are prevented from moving freely and dressing as they choose; they are banned from education beyond primary school; they are excluded from a wide range of professions, including from working with NGOs and the UN office in Afghanistan, and they are not granted political appointments or public positions.

The discriminatory restrictions the Taliban have imposed on women and girls violate human rights guarantees contained in numerous international treaties to which Afghanistan is a party, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, and the Convention on the Rights of the Child.

At the same time, resistance against these policies has been met with intimidation, persecution and violence by the Taliban de facto authorities. Women participating in protests have been subjected to arbitrary detention, enforced disappearance, and torture and other cruel, inhuman or degrading treatment or punishment. The protections available for women and girls have been essentially removed by the Taliban's decision to dissolve the institutional framework of support for survivors of gender-based violence that was previously in place.

While the Taliban have not been internationally recognized as the country's government, they are now the de facto authorities in control of Afghanistan's territory and have taken over the former government's structures, offices and personnel – although some government staff were dismissed or did not report to work because of their fear of the Taliban. This situation has enabled the Taliban to impose oppressive policies systematically and in a widespread manner, negatively affecting women and girls across the country.

The policies adopted by the Taliban de facto authorities severely curtail human rights, including the rights to education and work, and to freedom of movement, expression, association and peaceful assembly, as well as the rights to equality and non-discrimination. The Taliban's treatment of women protesters violates a number of rights, including in some instances the right to be free from torture and other cruel, inhuman and degrading treatment, the right to liberty and security, and the prohibition on enforced disappearances.

In addition, the Taliban's requirement that women travel with a *mahram*, or male chaperone, for long-distance journeys, a decree stipulating that women should stay at home unless necessary, and the Taliban's strict dress code violates women's freedom of movement and freedom to choose what to wear in public.

The restrictions meted out against women and girls in Afghanistan stem from directives, decisions and rulings adopted by the Taliban de facto authorities at the leadership level. These policies are enforced through a catalogue of oppressive acts, including the systematic use of imprisonment, torture and other ill-treatment, and enforced disappearance, acts which are carried out by the Taliban authorities using the former government's security apparatus, including structures that were dedicated to policing and public facilities such as detention centres. The Taliban have consistently targeted women and girls who have participated in peaceful protests by arbitrarily arresting, detaining, and, in some cases, forcibly disappearing them. While in detention women have been subjected to torture and other ill-treatment and forced to sign "confessions" or agreements in which they commit to not protesting again.

As this report explains, the weight of evidence suggests that these egregious human rights violations may amount to the crime against humanity of gender persecution. The incidents of arbitrary arrest and detention, torture and other ill-treatment committed against women and girls accused of so-called "moral offenses" or for their participation in peaceful protests or other exercise of their human rights may further amount to the crimes against humanity of imprisonment, enforced disappearance and torture.

This report covers the period from August 2021 to January 2023 and bases its analysis on a growing body of evidence collected by credible sources that include Amnesty International, civil society organisations and UN authorities. It provides a legal assessment of why women and girls fleeing persecution in Afghanistan should be presumptively considered refugees in need of international protection.

The International Commission of Jurists and Amnesty International therefore recommend the following:

**To the ICC, responsible UN agencies, donor countries to Afghanistan and the wider international community:**

- States, individually and collectively, including the countries surrounding Afghanistan, should effectively exercise universal jurisdiction or similar extraterritorial jurisdiction in respect of the Taliban leadership -- and others responsible for their discriminatory policies towards women and girls that qualify as crimes under international law -- whenever they travel outside of Afghanistan. This should send a clear message to Taliban leaders and members that their discriminatory policies against women and girls are not, and never will be, tolerated.
- The dire situation in Afghanistan and the crimes affecting women and girls warrant a robust response involving thorough, independent and effective investigations to lay the foundation for justice and accountability. While the resumption of the investigation by the International Criminal Court (ICC) into the situation in Afghanistan and the continuation of the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan are steps in the right direction, more needs to be done to ensure accountability, especially for women and girls whose human rights have been violated under Taliban rule.
- The Office of the Prosecutor of the ICC should ensure that its investigation and prosecution(s) fully cover cases and incidents entailing crimes allegedly committed by the Taliban against women and children, in line with its Policy on Gender Persecution and Policy on Children.

- Where Taliban members against whom there is clear evidence to suggest responsibility for a crime under international law fall under the jurisdiction of another state, that state should exercise its criminal jurisdiction and conduct an impartial and thorough investigation. The goal is to bring suspected perpetrators to justice, either in the national courts or via extraditing the person to another jurisdiction, such as an international criminal court or tribunal.
- States, international organisations, and civil society organisations should promote and support the exercise of universal or other extraterritorial jurisdiction at the national level with the aim of investigating and prosecuting crimes under international law committed by the Taliban since they seized power, including crimes committed against women and girls.
- The UN Human Rights Council should renew the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan at its 54th regular session in October 2023 and provide for additional recourses, as needed, in order to maintain scrutiny of the human rights situation in Afghanistan.
- The forthcoming joint report on the situation of women and girls in Afghanistan by the UN Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls should include the situation of access to justice, including effective remedies and reparations, for women facing gender-based violence, and child and early marriage in Afghanistan under the de facto Taliban authorities.
- The UN Human Rights Council should consider options to respond to gender persecution – a crime against humanity – and other related crimes against humanity in Afghanistan, at its 53<sup>rd</sup> session, during the upcoming enhanced interactive dialogue on the situation of women and girls in Afghanistan.
- The UN Human Rights Council should establish an independent international accountability mechanism in relation to Afghanistan with the mandate to investigate crimes under international law and other serious human rights violations, as well as to collect and preserve evidence with a view to supporting future accountability efforts, including prosecutions.
- The United Nations Assistance Mission in Afghanistan (UNAMA) should fully implement its mandate, in line with UNSCR 2679, including its activities related to the protection of the human rights of women and girls. The UN Country Team and Humanitarian Country Team, with support from UNAMA, should specifically highlight the crisis of gender-based violence in Afghanistan, including forced and child marriage, in its fact-finding and public reporting – highlighting in particular the impact of the Taliban's dismantling of legal avenues for protecting against, and ensuring accountability for, gender-based violence in the country.
- States should consider all Afghan women and girls fleeing Afghanistan as *prima facie* refugees under the 1951 Refugee Convention, due to the persecution they risk because of their sex and gender.
- States should reopen and re-examine *ex officio* all cases of Afghan women and girls whose asylum application had been previously rejected or whose protection status had not been renewed.

#### **To the de facto authorities (Taliban) in Afghanistan:**

- The de facto authorities must respect, protect, promote and fulfil all human rights of women and girls, including non-discrimination and equal protection, freedom of expression, association, religion, peaceful assembly, privacy, public participation.

- The de facto authorities must take immediate steps to guarantee the right to work, the right to movement, the right to political participation and other human rights that are currently being violated by members of the Taliban, including, but not limited to:
  - allowing peaceful demonstrations and protest;
  - ceasing the violence against human rights defenders, activists and journalists;
  - removing restrictions on travel for women and girls;
  - allowing women working for the government and elsewhere to return to work.
- The de facto authorities must respect women's and girls' right to education, including, in particular, by:
  - revoking the ban on girls' education beyond primary school;
  - working to ensure that education opportunities provided to women and girls are equal to those of men and boys.
- The de facto authorities must conduct an independent, transparent, and impartial investigation into all allegations of early and forced marriage – including where the Taliban members and officials are implicated. Those suspected of criminal responsibility must be brought to justice in fair trials before ordinary civilian courts.
- The de facto authorities must also develop a comprehensive strategy, with the support of the relevant UN agencies and non- governmental organizations, to address gender-based violence against women and girls, in line with obligations under human rights law and standards for prevention, protection, punishment and redress of GBV against women and girls, which is based on a survivor-centric approach and respects the agency and autonomy of women and girls.





# AIM OF THE REPORT

Following the Taliban's takeover of Afghanistan in August 2021, women and girls have been subjected to a litany of human rights violations and abuses. The Taliban's de facto authorities adopted a series of policies and measures aimed at "[t]he systematic exclusion of women and girls from virtually all aspects of life".<sup>1</sup> These discriminatory measures have been implemented through intimidation and violence, and the Taliban's policies are meant to affect women across the country. Dissent against, or failure to comply with, these discriminatory policies has often been met with unlawful use of force, arbitrary detention, enforced disappearance, and torture and other ill-treatment. The widespread and systematic subjugation of girls and women in Afghanistan is a flagrant violation of their human rights and fundamental freedoms.

In its investigative report "Death in Slow Motion: Women and Girls Under Taliban Rule", Amnesty International concluded that such practices violate a range of human rights protections guaranteed in international human rights treaties, including:

- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- the Convention on the Rights of the Child (CRC)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).<sup>2</sup>

Building in significant measure on Amnesty International's previous factual and legal assessment,<sup>3</sup> this report aims to assess and analyse whether the human rights violations stemming from the policies adopted by the Taliban de facto authorities against women and girls have reached the level of crimes under international law and, in particular, the crime against humanity of gender persecution under Article 7(1)(h) of the Rome Statute of the International Criminal Court.

<sup>1</sup> OHCHR, comment by UN High Commissioner for Human Rights Volker Türk on reported ban on women attending university in Afghanistan, 21 December 2022 (<https://www.ohchr.org/en/statements/2022/12/comment-un-high-commissioner-human-rights-volker-turk-reported-ban-women>).

<sup>2</sup> Amnesty International, *Death in Slow Motion: Women and Girls Under Taliban Rule*, ASA 11/5685/2022, 27 July 2022, pp. 10-11, 79-87.

<sup>3</sup> Amnesty International, *Death in Slow Motion*.

# METHODOLOGY

This report relies on available records relating to the situation of women and girls in Afghanistan, information that was compiled by an Afghan researcher in collaboration with consultants. Among its key sources is research carried out by Amnesty International between September 2021 and June 2022, which was set out in the report, “Death in Slow Motion: Women and Girls under Taliban Rule.”<sup>4</sup> Research for that report was based on interviews with 90 women and 10 girls who ranged from 14 to 74 years old and lived in 20 of Afghanistan’s 34 provinces. The 2022 report also relied on interviews with six current or former staff members of Taliban-run detention centres, 22 staff members of national and international non-governmental organisations (NGOs) and United Nations agencies and mechanisms, and 10 journalists and Afghan and international experts on the situation in Afghanistan. The present report is also based on information and analysis compiled by other sources, including UN agencies and mechanisms, states, civil society organisations and NGOs, academic and policy institutions, and the media.

The conclusions and recommendations in this report are based on analyses of information from sources considered credible by the International Commission of Jurists (ICJ) and Amnesty International. The report covers the period from August 2021 to the end of January 2023. It provides an incomplete look at the systematic human rights violations and abuses against women and girls in Afghanistan. The limited national and international scrutiny of the situation since the Taliban takeover suggests that the extent and impact of the violence committed against women and girls and the violations of their rights remain to be fully and independently investigated and reported.

On 3 May 2023, Amnesty International and the International Commission of Jurists shared a summary of this report’s findings and legal conclusions with the Taliban Ministry of Foreign Affairs via email, requesting a response, but no reply was received as of the date of publication.

<sup>4</sup> Amnesty International, *Death in Slow Motion*, pp. 10-11. The research for Amnesty International’s report was conducted through in-person interviews in Afghanistan, 4–20 March 2022, as well as through remote interviews.

# THE SITUATION OF WOMEN AND GIRLS IN AFGHANISTAN UNDER TALIBAN LEADERSHIP



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## A. BACKGROUND

Between May and August 2021, in the wake of the United States' announcement of the withdrawal of its military personnel from Afghanistan, the Taliban launched a nationwide armed offensive against the Afghan National Defense and Security Forces (ANDSF). The Taliban rapidly took control of the country. In early August, they seized 33 of 34 provincial capitals and, on 15 August 2021, took over Kabul and President Ashraf Ghani fled the country.<sup>5</sup> After two weeks of chaos at Kabul International Airport, international forces officially withdrew from Afghanistan on 30 August 2021.<sup>6</sup> On 6 September 2021, the Taliban captured Panjshir Province and declared that it had gained control over all of Afghanistan.<sup>7</sup> On 7 September, a caretaker cabinet led by Mohammad Hasan Akhund was established and became, effectively, the de facto authorities in Afghanistan.<sup>8</sup> Since August 2021, the Taliban has sought to secure their position in governance despite some internal divisions, while also trying to maintain support from the international community.<sup>9</sup> With the Taliban now having taken over the former government's administrative apparatus and effectively asserting power across the country, they are now in a position to create and enforce measures and policies that deprive women and girls of their human rights with unchecked power.

This report focuses on the human rights situation of women and girls in Afghanistan since the Taliban takeover. The report analyses whether human rights violations, some consisting of crimes under international law, have reached the level of crimes against humanity. Women and girls have been specifically affected by the Taliban's return to power. The egregious restrictions imposed on women and girls are preventing them from exercising their human rights and fundamental freedoms. This has restricted their ability to act in almost every area of their lives.

The information collected shows, however, that human rights violations inflicted by the Taliban on the Afghan population are not confined to women and girls. Since August 2021, UN OHCHR, civil society and monitoring groups have been collecting persistent reports of extrajudicial killings, arbitrary arrests and detention, enforced disappearances, and torture and other ill-treatment against individuals associated with the previous government. People subjected to these violations include former members of the ANDSF (from all levels of responsibility)<sup>10</sup> and individuals suspected to be members of, or associated with, the National Resistance Front (NRF) and other resistance or armed groups.<sup>11</sup> Afghan people accused of violating "moral rules" are often subjected to

<sup>5</sup> UN General Assembly and UN Security Council, Report of the Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security, A/76/328-S/2021/759, 2 September 2021 (2 September 2021 UN Secretary-General Report), paras. 4, 16-18, 22-24, 40; UN Security Council, Thirteenth Report of the Analytical Support and Sanctions Monitoring Team Submitted Pursuant to Resolution 2611 (2021) Concerning the Taliban and Other Associated Individuals and Entities Constituting a Threat to the Peace, Stability and Security of Afghanistan, S/2022/419, 26 May 2022, (2022 Sanctions Monitoring Team Report) paras. 2-5.

<sup>6</sup> United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights Service, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, July 2022 (UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022), p. 7; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Afghanistan, A/HRC/51/6, 9 September 2022 (2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan), para. 12.

<sup>7</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 12.

<sup>8</sup> Al Jazeera, Taliban announces new government in Afghanistan, 7 September 2021 (<https://www.aljazeera.com/news/2021/9/7/taliban-announce-acting-ministers-of-new-government/>). In this report the expression "de facto government" will be used to describe the government installed by the Taliban since the takeover of Afghanistan in August/September 2021 because it exercises effective control over almost all the country. However, the takeover has not been recognized by other states as a formal change of government.

<sup>9</sup> 2022 Sanctions Monitoring Team Report, paras. 7-31.

<sup>10</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 13-15, 18; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 51, 55-56; Amnesty International, The Rule of Taliban: A Year of Violence, Impunity and False Promises, August 2022 (Amnesty International, The Rule of Taliban: A Year of Violence, Impunity and False Promises) (<https://www.amnesty.org/en/documents/asa11/5914/2022/en/>), pp. 25-36; HRW, "No Forgiveness for People Like You": Executions and Enforced Disappearances under the Taliban in Afghanistan, November 2021 ([https://www.hrw.org/sites/default/files/media\\_2021/11/afghanistan1121\\_web.pdf](https://www.hrw.org/sites/default/files/media_2021/11/afghanistan1121_web.pdf)).

<sup>11</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 16; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para; 57; HRW, Afghanistan: Taliban Execute, 'Disappear' Alleged Militants, 7 July 2022 (<https://www.hrw.org/news/2022/07/07/afghanistan-taliban-execute-disappear-alleged-militants>); HRW, Afghanistan: Taliban Torture Civilians in Panjshir, 10 June 2022 (<https://www.hrw.org/news/2022/06/10/afghanistan-taliban-torture-civilians-panjshir>).



extrajudicial executions, torture and other ill-treatment including public flogging.<sup>12</sup> Journalists, members of the media, LGBTI people, human rights defenders and individuals from some ethnic minorities have also been specifically targeted by the Taliban.<sup>13</sup>

## B. RESTRICTIONS AND POLICIES IMPOSED ON WOMEN AND GIRLS BY THE TALIBAN

The systematic country-wide oppression of women and girls has been steadily increasing since the Taliban took power as de facto authorities. The most recent restrictions include banning women from working with the UN Offices in April 2023,<sup>14</sup> and from tertiary education and from working with NGOs, in December 2022.<sup>15</sup> Ahead of these restrictions, the Taliban had banned women from entering parks and gyms. These recent restrictions and practices, along with the other discriminatory policies examined in this report, are in contrast to statements by Taliban leaders in August 2021, immediately after their takeover of the country. At that time, they reiterated the commitment they made during peace negotiations to protect and guarantee women's rights, albeit within the limits of sharia law, and they stated that women and girls would be allowed to work, study and take active roles in society.<sup>16</sup> Despite these promises, the Taliban have systematically violated the rights of women, rapidly obliterating the substantial gains in rights protection that had been amassed over the past 20 years.

The deterioration of respect for the rights of women and girls has been engendered in part by the establishment of an intricate framework of measures, policies, decisions and guidelines aimed at erasing women and girls from public life and severely restricting their day-to-day activities in public places. These measures include requiring women to appear in public only with a *mahram*, a male chaperone who must be a close family member; requiring them to wear certain clothing; and blocking their access to education and work. Another key aspect has been the dismantling of existing initiatives aimed at protecting women and girls from gender-based violence.

Once in power, the Taliban announced that the country's governing authorities would comply with its interpretation of sharia law, including rules pertaining to women's rights.<sup>17</sup> On 7 September 2021, the Taliban, as de facto authorities, established an all-male "caretaker cabinet" that effectively excluded women from the national political decision-making process, an early sign of the all-out

<sup>12</sup> United Nations, Afghanistan: Taliban urged to halt public floggings and executions, 16 December 2022. [Afghanistan: Taliban urged to halt public floggings and executions | UN News](#), UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p.17.

<sup>13</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 26-29; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 77-85; Amnesty International, The Rule of Taliban: A Year of Violence, Impunity and False Promises, pp.18-20; HRW, Afghanistan: Taliban Severely Restrict Media, 1 October 2021 (<https://www.hrw.org/news/2021/10/01/afghanistan-taliban-severely-restrict-media>); Amnesty International, Public Statement, Afghanistan: Taliban Must Immediately Stop Arbitrary Arrests of Journalists, Civil Society Activists, Former Government Officials and those Who Dissent, 21 March 2022 (Amnesty International, Afghanistan: Taliban Must Immediately Stop Arbitrary Arrests) (<https://www.amnesty.org/en/documents/asa11/5369/2022/en/>); Amnesty International, Afghanistan: Taliban torture and execute Hazaras in targeted attack – new investigation, 15 September 2022 (<https://www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation/>); HRW and OutRight Action International, "Even If You Go to the Skies, We'll Find You"; LGBT People in Afghanistan After the Taliban Takeover, January 2022 ([afghanistan\\_lgbt0122\\_reportcover\\_8.5x11](#) [outrightinternational.org](#)).

<sup>14</sup> UNAMA, "UN Protests Order From Taliban De Facto Authorities Prohibiting Afghan Women From Working with the United Nations in Afghanistan", 5 April 2023. <https://unama.unmissions.org/un-protests-order-taliban-de-facto-authorities-prohibiting-afghan-women-working-united-nations>

<sup>15</sup> BBC News, Afghanistan: Taliban ban women from universities amid condemnation, 21 December 2022 (<https://www.bbc.com/news/world-asia-64045497>); OHCHR, Afghanistan, Banning women and girls from schools and workplace jeopardises entire country, UN committee condemns, 29 December 2022 (<https://www.ohchr.org/en/statements/2022/12/afghanistan-banning-women-and-girls-schools-and-workplace-jeopardises-entire>).

<sup>16</sup> Financial Times, "Taliban pledges to respect women's rights 'within framework of Islam'", 17 August 2021 (<https://www.ft.com/content/7f03429a-8d61-43df-9cd8-c9d9e9ba18c8>); Kingdom of the Netherlands, Ministry of Foreign Affairs, General Country of Origin Information Report – Afghanistan, March 2022 (The Netherlands, General Country of Origin Information Report – Afghanistan), pp. 80-81.

<sup>17</sup> Amnesty International, Death in Slow Motion, p. 14.

assault on women's rights that was to come under Taliban rule.<sup>18</sup> In addition, the Taliban rejected the 2004 Constitution of Afghanistan which, in Article 22, provided that women and men were guaranteed equal rights.<sup>19</sup> They also closed the Ministry of Women's Affairs and the ministry's former Kabul headquarters was repurposed to house the de facto authority's Ministry for the Propagation of Virtue and Prevention of Vice (Ministry of Virtue and Vice).<sup>20</sup>

On 3 December 2021, the Taliban issued a special decree calling for (1) prohibition of forced marriages, (2) recognition that women are not property and (3) recognition of women's right to inheritance and the right of widows to a dowry in a new marriage.<sup>21</sup> However, concurrently, the rights of women and girls to freedom of movement, education, access to work and other human rights have been steadily limited by a series of unlawful restrictions. The capacity to exercise the right to freedom of movement was limited by several decisions aimed at forcing women and girls to stay home or to be accompanied by a *mahram*, or *male chaperone* when outside, as well as at restricting their ability to perform outdoor activities or to obtain driving licences. Women and girls were enjoined to strictly observe Islamic Hijab and have been forced to wear a hijab that covers them from head to toe when in public. Girls' and women's access to education has been almost entirely restricted beyond primary school. Likewise, Taliban leaders progressively undermined the material ability of women to work in the public sector, directing women government employees to stay at home, except when they cannot be replaced by male colleagues in the health, education and security sectors. Access to the private and informal employment sectors has been hindered by the *mahram* requirement and clothing restrictions, among other restrictions.

It is apparent that, taken as a whole, these measures are aimed at creating a system of oppression of, and discrimination against women and girls, erasing their ability to participate in Afghan society at almost every level: civil, political, economic, social and cultural.

## 1. General restrictions on women's and girls' day-to-day lives

Following the Taliban takeover, the de facto authorities imposed a series of general restrictions on freedom of movement and clothing, which have disproportionately affected women and girls. In addition to their inherent discriminatory nature, these measures have severely hindered the ability of women and girls to attend schools and universities and to work.

### a. Freedom of movement and mahram restrictions

Since August 2021, the ability of women to exercise their right to freedom of movement has been limited by a cluster of decisions and decrees issued by Taliban leaders at the central and local level. For instance, on 7 May 2022 the Taliban Ministry of Virtue and Vice issued a decree requiring women not to leave their homes unless necessary and requiring them to cover their faces in public.<sup>22</sup> Additional specific measures have restricted women's access to all public parks across Afghanistan.<sup>23</sup> These limitations are further compounded by other restrictions adopted at the

<sup>18</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 31.

<sup>19</sup> Amnesty International, Death in Slow Motion, p. 14.

<sup>20</sup> Reuters, Taliban replaces women's ministry with ministry of virtue and vice, 17 September 2021, (<https://www.reuters.com/world/asia-pacific/taliban-replaces-womens-ministry-with-ministry-virtue-vice-2021-09-17/>).

<sup>21</sup> Special Decree issued by Amir-Al-Momenin on Women's Rights, 3 December 2021 (3 December 2021 Special Decree) (<https://www.moic.gov.af/en/special-decree-issued-amir-al-momenin-womens-rights#:~:text=1%20Adult%20women's%20consent%20is,and%20or%20to%20end%20animosity>).

<sup>22</sup> Ministry of Virtue and Vice, Decree of 7 May 2022; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 32-33.

<sup>23</sup> UN General Assembly – UN Security Council, The situation in Afghanistan and its implications for international peace and security, Report of the Secretary-General, A/77/636-S/2022/916, 7 December 2022 (December 2022 UN Secretary-General Report), para. 40; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 32.

local level, including those limiting women's access to gyms, bathhouses<sup>24</sup> and coffee shops;<sup>25</sup> and ordering driving instructors to cease giving driving lessons and licences to women.<sup>26</sup>

The most notable measure affecting women's freedom of movement is the imposition of the requirement that a *mahram* – a male chaperone – accompany a woman or girl in public. This requirement was introduced in December 2021 by the Ministry of Virtue and Vice. The announcement specifies that women may not undertake travel longer than 72 kilometres, cross the national border or travel by air without a *mahram*.<sup>27</sup> While originally a Taliban official had stated that the *mahram* restrictions were not supposed to apply to day-to-day activities,<sup>28</sup> there are growing indications that the rule effectively restricts any movement of women, regardless of the distance from their household.<sup>29</sup>

Direct evidence collected by Amnesty International and UNAMA reveals that any public appearance without a *mahram* exposes women to the risk of punishment.<sup>30</sup> Women are often harassed, arrested or beaten by Taliban agents for being without a *mahram*.<sup>31</sup> Anecdotal evidence further indicates that the concrete implementation of the *mahram* obligation has generally hindered women's autonomy and their ability to move freely. The fear of reprisals combined with the practical difficulties of being accompanied by a man for every outdoor activity has, in many cases, forced women to remain at home.<sup>32</sup>

### **b. Restrictions on clothing**

In the immediate aftermath of their takeover, the Taliban did not impose specific measures on women's clothing. The Taliban launched public campaigns "recommending" that women wear a hijab that covers them from head to toe. While not formally binding, these "recommendations" were nevertheless reported to be enforced by Taliban elements, including Taliban police, at checkpoints, during patrols, and at universities, hospitals and other locations.<sup>33</sup>

These "recommendations" were progressively formalized as a compulsory dress code in the public sphere. In December 2021, people driving cars were reportedly banned from transporting women passengers not wearing a hijab.<sup>34</sup> On 2 March 2022, the Taliban Ministry of Virtue and Vice issued a letter to all government departments specifying that women government employees must wear a hijab and that women visiting government offices without a hijab should not be allowed on the premises.<sup>35</sup> On 7 May 2022, the Ministry of Virtue and Vice issued a broader decree requiring all women in the country to wear a hijab or to otherwise cover their body entirely, except

<sup>24</sup> December 2022 UN Secretary-General Report, para. 40.

<sup>25</sup> Rukhshana Media, Taliban bans women without Mahram from entering cafes in Herat, 5 January 2022 (<https://rukhshana.com/en/taliban-bans-women-without-mahram-from-entering-cafes-in-herat>).

<sup>26</sup> Amnesty International, Death in Slow Motion, p. 33.

<sup>27</sup> Amnesty International, Death in Slow Motion, p. 33; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 32.

<sup>28</sup> Amnesty International, Death in Slow Motion, p. 33.

<sup>29</sup> Amnesty International, Death in Slow Motion, p. 33.

<sup>30</sup> Amnesty International, Death in Slow Motion, pp. 33-36; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 23. See also December 2022 UN Secretary-General Report, para. 41.

<sup>31</sup> Amnesty International, Death in Slow Motion, pp. 33-35.

<sup>32</sup> Amnesty International, Death in Slow Motion, pp. 33-35; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 32.

<sup>33</sup> Amnesty International, Death in Slow Motion, p. 37. See also The Netherlands, General Country of Origin Information Report – Afghanistan, p. 84.

<sup>34</sup> Republicworld.com, Afghanistan, Taliban Ban Drivers from Playing Music in Car, Having Women Passengers Without Hijab, 26 December 2021 ([Taliban ban drivers from playing music in cars, having women passengers without hijab | Rest of the World News \(republicworld.com\)](https://republicworld.com)).

<sup>35</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 32. See also Rukhshana Media, Taliban: Female government employees aren't allowed to go to work without hijab, 21 February 2022 ([Taliban: Female government employees aren't allowed to go to work without hijab – Rukhshana Media](https://rukhshana.com/en/taliban-female-government-employees-arent-allowed-to-go-to-work-without-hijab)).

their eyes, when in public. According to the decree, women working as civil servants who did not comply would be fired.<sup>36</sup>

Despite the supposed voluntary nature of these initiatives, Amnesty International and other monitoring groups have documented several cases in which women have been threatened and beaten when they did not respect the clothing restrictions.<sup>37</sup> A woman reported to Amnesty that in November 2021, when clothing restrictions had been conveyed simply as “recommendations”, she was beaten with an iron rod by a Taliban agent at a checkpoint for not wearing a black niqab or a burka.<sup>38</sup> In other incidents, women reported that the Taliban did not allow them to access universities or workplaces unless they complied with the clothing restrictions.<sup>39</sup> Likewise, UNAMA reported incidents of torture and other ill-treatment and arbitrary arrest or detention related to women’s failure to comply with dress codes.<sup>40</sup>

## 2. Restrictions on education

Currently, women and girls in Afghanistan are not allowed to access education beyond primary school.<sup>41</sup> The ban on women students from secondary and higher education was not the result of a single act or decision, but rather a series of measures and announcements issued by the Taliban central authority in 2021 and 2022 that progressively undermined women’s and girls’ access to education at schools and universities and thereby the ability to exercise their right to education, protected under international law.<sup>42</sup>

### a. Secondary schools

On 23 August 2021, the Taliban’s Education Commission announced the closure of all schools due to the Taliban takeover.<sup>43</sup> While the Taliban Education Commission clarified that the reopening of primary schools was set for 28 September 2021, it stressed that instructions about the reopening of secondary schools (beyond grade six, or age 12) would be provided later.<sup>44</sup>

On 17 September 2021, following on the August 2021 Education Commission announcement, the Taliban Minister of Education ordered the reopening of secondary schools and called for the return of male teachers and male students.<sup>45</sup> The lack of reference to women students and

<sup>36</sup> Amnesty International, *Death in Slow Motion*, p. 37; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 32. In addition, family members are deemed responsible for a woman’s compliance with the dress restrictions. Failure to comply could result in their suspension if they are government employees or in their detention. See above.

<sup>37</sup> Amnesty International, *Death in Slow Motion*, p. 38; United States Institute of Peace, *Taliban Escalate New Abuses Against Afghan Women, Girls*, (USIP, Taliban Escalate New Abuses Against Afghan Women) 27 October 2022 (<https://www.usip.org/publications/2022/10/taliban-escalate-new-abuses-against-afghan-women-girls>).

<sup>38</sup> Amnesty International, *Death in Slow Motion*, p. 38.

<sup>39</sup> Amnesty International, *Death in Slow Motion*, pp. 38-39.

<sup>40</sup> December 2022 UN Secretary-General Report, para. 40.

<sup>41</sup> OHCHR, *Afghanistan, Banning women and girls from schools and workplace jeopardises entire country, UN committee condemns*, 29 December 2022 (<https://www.ohchr.org/en/statements/2022/12/afghanistan-banning-women-and-girls-schools-and-workplace-jeopardises-entire>).

<sup>42</sup> Afghan Analysts Network, *The ban on older girls’ education: Taleban conservatives ascendant and a leadership in disarray*, 29 March 2022 (Afghan Analysts Network, *The ban on older girls’ education*) (<https://www.afghanistan-analysts.org/en/reports/rights-freedom/the-ban-on-older-girls-education-taleban-conservatives-ascendant-and-a-leadership-in-disarray/>); Amnesty International, *Death in Slow Motion*, pp. 18-27; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, pp. 31, 33; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 24-30; The Netherlands, *General Country of Origin Information Report – Afghanistan*, pp. 80-81; 14 September 2022 UN Secretary-General Report, paras. 3, 35.

<sup>43</sup> Amnesty International, *Death in Slow Motion*, p. 18; Afghan Analysts Network, *The ban on older girls’ education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80.

<sup>44</sup> Amnesty International, *Death in Slow Motion*, pp. 18-19; Afghan Analysts Network, *The ban on older girls’ education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80.

<sup>45</sup> Amnesty International, *Death in Slow Motion*, p. 19; Afghan Analysts Network, *The ban on older girls’ education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80.



teachers was widely understood as an implicit ban on girls accessing secondary education.<sup>46</sup> In December 2021, the Taliban Minister of Education in a BBC interview confirmed that Taliban leaders had no intention of granting access to secondary education to girls, at least until the issuance of new directives in this regard.<sup>47</sup>

On 17 January 2022, the de facto central authorities announced that girls would return to secondary school from the start of the spring semester in late March 2022.<sup>48</sup> On the morning of 23 March 2022, however, the Taliban Ministry of Education abruptly reversed this commitment and announced that secondary schools would remain closed to girls until an educational framework for girls was established in line with the Taliban's understanding of sharia and Afghan cultural norms.<sup>49</sup> The decision led to the closure of schools across Afghanistan, precluding access to secondary education for girls.<sup>50</sup> As of mid-April 2023, the ban on girls' secondary schools remained in place.<sup>51</sup>

Furthermore, it appears that this reversal also affected schools that had remained open to girls under the pressure of families and teachers or because of the support of the local leadership despite the policies of the de facto authorities.<sup>52</sup> Some of these schools closed after March 2022.<sup>53</sup> More recent attempts to reopen secondary schools continue to be frustrated by the de facto authorities. As documented by the UN Secretary-General, in September 2022 the de facto authorities forced the closure of high schools for girls in Paktia Province.<sup>54</sup> In other cases, women students were prohibited from taking their annual exams and automatically passed their year.<sup>55</sup> Even in the few areas where schools remained open to girls, families often kept them at home owing to fears of the Taliban's reaction.<sup>56</sup>

## **b. University**

On 20 December 2022, the de facto authorities ordered universities not to enrol women in their institutions.<sup>57</sup> Similar to the process that led to the de facto ban on secondary education for girls, the decision to fully curtail women's access to universities represents the climax of a series of progressive limitations and restrictions that Taliban leaders gradually imposed starting in 2021.<sup>58</sup>

<sup>46</sup> Amnesty International, *Death in Slow Motion*, p. 19; Afghan Analysts Network, *The ban on older girls' education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80.

<sup>47</sup> BBC, *Afghanistan, Girls' despair as Taliban confirms secondary school ban*, 8 December 2021 ("Officials have previously avoided confirming that this was an outright ban. But in an interview with the BBC, acting Deputy Education Minister Abdul Hakim Hemat confirmed that girls would not be allowed to attend secondary school until a new education policy was approved in the new year"), (<https://www.bbc.com/news/world-asia-59565558>).

<sup>48</sup> Amnesty International, *Death in Slow Motion*, p. 19; Afghan Analysts Network, *The ban on older girls' education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80.

<sup>49</sup> Amnesty International, *Death in Slow Motion*, p. 19; Afghan Analysts Network, *The ban on older girls' education*; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 26.

<sup>50</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 26.

<sup>51</sup> Amnesty International, *Public Statement, The Denial of Human Rights to Women and Girls by the Taliban is an Attempt to Erase Them from Afghan Society*, 5 October 2022 (Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*), p. 4 (<https://www.amnesty.org/en/documents/asa11/6063/2022/en/>).

<sup>52</sup> Afghan Analysts Network, *The ban on older girls' education*; Amnesty International, *Death in Slow Motion*, fn. 36.

<sup>53</sup> The Netherlands, *General Country of Origin Information Report – Afghanistan*, p.80; Amnesty International, *Death in Slow Motion*, fn. 36.

<sup>54</sup> December 2022 UN Secretary-General Report, para. 41.

<sup>55</sup> The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 81; Amnesty International, *Death in Slow Motion*, fn. 36.

<sup>56</sup> The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 81; Amnesty International, *Death in Slow Motion*, fn. 36.

<sup>57</sup> Amnesty International, *Afghanistan, UN Security Council meeting must focus on reversing the Taliban's mistreatment of women and girls*, 12 January 2023 (<https://www.amnesty.org/en/latest/news/2023/01/afghanistan-un-security-council-meeting-must-focus-on-reversing-the-talibans-mistreatment-of-women-and-girls/>); OHCHR, *Afghanistan, Banning women and girls from schools and workplace jeopardises entire country, UN committee condemns*, 29 December 2022 (<https://www.ohchr.org/en/statements/2022/12/afghanistan-banning-women-and-girls-schools-and-workplace-jeopardises-entire>).

<sup>58</sup> Amnesty International, *Death in Slow Motion*, p. 22; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 81.

Indeed, soon after universities reopened following the takeover in 2021,<sup>59</sup> Taliban authorities implemented strict gender segregation between women and men students attending universities, in effect limiting women's access to university education.<sup>60</sup> For instance, women students were required to be taught by women, were directed to use different entrances from men and had to attend classes in separate shifts. Such restrictions have been applied to the detriment of women students, severely constraining their ability to attend classes.<sup>61</sup> The lack of space and professors, and the time shifts required to maintain gender separation, have forced universities to exclude women from certain departments or curricula.<sup>62</sup>

These limitations were further compounded by the Taliban's general restrictions of movement and by women's constant fear of harassment and reprisals.<sup>63</sup> The practical difficulties in complying with *mahram*-related obligations have restricted women's attendance of classes, as well as women professors' ability to continue working.<sup>64</sup> A number of incidents reveal that Taliban agents closely monitored women attending universities, harassing them for purported violations of the dress code and behaviour restrictions.<sup>65</sup>

In October 2022, Taliban leaders decided to ban women from enrolment in certain university subjects. While the choice offered to women students varied depending on the university, subjects such as journalism, agriculture, veterinary medicine, engineering and economics were made largely or entirely inaccessible to women candidates.<sup>66</sup>

In December 2022, the Taliban banned tertiary education for women and girls until further notice, which in practice left access to no further education beyond primary school for women and girls across the country.<sup>67</sup>

### 3. Restrictions on work

The rights of women to work in Afghanistan have also been seriously impaired. While the de facto authorities have not issued a generalized "working ban" aimed at all women,<sup>68</sup> they have imposed measures that have substantially undermined employment opportunities for women through (1) policies adopted and implemented in the public sector; (2) specific bans relating to certain professions in the private sector; and (3) general restrictions related to the *mahram* and clothing. Additionally, on 24 December 2022 the de facto authorities announced an immediate, universal,

<sup>59</sup> Following the takeover, private institutions were allowed to reopen, while public universities, instead, restarted only in February 2022 as per the decision of the de facto central government. Amnesty International, *Death in Slow Motion*, p. 22.

<sup>60</sup> Amnesty International, *Death in Slow Motion*, p. 22; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 33.

<sup>61</sup> Amnesty International, *Death in Slow Motion*, p. 22; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan para. 27; 14 September 2022 UN Secretary-General Report, para. 35.

<sup>62</sup> Amnesty International, *Death in Slow Motion*, p. 21; Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p. 5.

<sup>63</sup> Amnesty International, *Death in Slow Motion*, pp. 22-23.

<sup>64</sup> Amnesty International, *Death in Slow Motion*, pp. 24-26.

<sup>65</sup> Amnesty International, *Death in Slow Motion*, pp. 23-24; USIP, *Taliban Escalate New Abuses Against Afghan Women*.

<sup>66</sup> BBC News, *Afghanistan, Taliban ban women from many university subjects*, 15 October 2022 (<https://www.bbc.com/news/world-asia-63219895>); USIP, *Taliban Escalate New Abuses Against Afghan Women*.

<sup>67</sup> BBC News, *Afghanistan: Taliban ban women from universities amid condemnation*, 21 December 2022 (<https://www.bbc.com/news/world-asia-64045497>).

<sup>68</sup> The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 80, referring to France 24, *Afghan women's groups eye uncertain future under vague 'Islamic framework'*, 26 August 2021 (<https://www.france24.com/en/asia-pacific/20210825-afghan-women-s-groups-eye-uncertain-future-under-vague-islamic-framework>); The New York Times, *The Taliban wants to forget the past, a leader tells The Times, but there will be some restrictions*, 25 August 2021 (<https://www.nytimes.com/2021/08/25/world/asia/taliban-spokesman-interview.html>).

countrywide ban on women working for NGOs in Afghanistan until further notice.<sup>69</sup> This ban deprives women of the ability to earn income for themselves and their families. It also further erases them from public society and puts at greater risk the individuals relying on humanitarian aid delivered by NGOs with women employees. However, women NGO staff working in the healthcare field were reported as an exception to this rule.<sup>70</sup>

As for policies adopted in the public sector, multiple sources indicate that women civil servants have been directed by the de facto authorities to stay at home, except where they cannot be replaced by male colleagues in the health, education and security sectors.<sup>71</sup> More specifically: (1) women judges, prosecutors and lawyers have been excluded from the justice sector in 32 of 34 Afghan provinces;<sup>72</sup> and (2) the Taliban Minister of Finance “recommended”, via Twitter, that women employees in the ministry nominate a male family member to replace them.<sup>73</sup> The UN Special Rapporteur on the situation of human rights in Afghanistan also reported instances in which women governmental employees had been directly instructed to stay at home or that they simply sign their attendance sheet in order to be paid but without going to work.<sup>74</sup> In parallel, similar restrictions occurred at the local level. On 19 September 2021, the de facto authorities for Kabul city announced that women officials should stay at home unless they could not be replaced by male employees.<sup>75</sup>

Limitations on the right to work have also pervaded the private sector. In particular, the *mahram*, clothing and behaviour requirements have in certain instances served to restrict women’s material ability to carry out their professions. The *mahram* requirement renders the employment of women extremely cumbersome, if not impossible, either because it compels a male family member “to essentially become a second unpaid worker”<sup>76</sup> or because in some cases, women do not even have family members available to act as a *mahram*.<sup>77</sup> Likewise, the obligation for women to cover their faces in public or not to have contact with men hinders their capacity to engage in certain professions, including in media and functions such as journalists or news presenters<sup>78</sup> or as

<sup>69</sup> Amnesty International, Afghanistan, UN Security Council meeting must focus on reversing the Taliban’s mistreatment of women and girls, 12 January 2023 (<https://www.amnesty.org/en/latest/news/2023/01/afghanistan-un-security-council-meeting-must-focus-on-reversing-the-talibans-mistreatment-of-women-and-girls/>); OHCHR, Afghanistan, End destructive, destabilizing policies against women, Türk urges, 27 December 2022 (<https://www.ohchr.org/en/press-releases/2022/12/afghanistan-end-destructive-destabilizing-policies-against-women-turk-urges>); OHCHR, Afghanistan, Banning women and girls from schools and workplace jeopardises entire country, UN committee condemns, 29 December 2022 (<https://www.ohchr.org/en/statements/2022/12/afghanistan-banning-women-and-girls-schools-and-workplace-jeopardises-entire>).

<sup>70</sup> Aljazeera, “NGOs resume some Afghan operations with women workers” 17 January 2023. <https://www.aljazeera.com/news/2023/1/17/ngos-resume-some-operations-with-women-in-afghanistan>

<sup>71</sup> Amnesty International, *Death in Slow Motion*, p. 28; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 33.

<sup>72</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 39. See also December 2022 UN Secretary-General Report, para. 12.

<sup>73</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 39.

<sup>74</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 39.

<sup>75</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 80, referring to The Guardian, *Kabul government’s female workers told to stay at home by Taliban*, 19 September 2021 (<https://www.theguardian.com/world/2021/sep/19/kabul-governments-female-workers-told-to-stay-at-home-by-taliban>).

<sup>76</sup> Human Rights Watch, *Afghanistan, Taliban Blocking Female Aid Workers*, 4 November 2021 (HRW, *Afghanistan: Taliban Blocking Female Aid Workers*) (<https://www.hrw.org/news/2021/11/04/afghanistan-taliban-blocking-female-aid-workers>).

<sup>77</sup> Amnesty International, *Death in Slow Motion*, p. 30.

<sup>78</sup> Amnesty International, *Death in Slow Motion*, pp. 29-30. See also UNDP, *One year in Review, Afghanistan since August 2021, a socio-economic snapshot*, September 2022 (UNDP September 2022 Report) ([One Year in Review-Afghanistan since August 2021 | United Nations Development Programme \[undp.org\]](https://www.undp.org/publications/one-year-in-review-afghanistan-since-august-2021)), p. 28 (by early December 2021, some 43% of media outlets had closed and 84% of women journalists and media workers (compared with 52% of men in the sector) had stopped working amid an environment of harassment, violence and censorship. The number of women journalists had shrunk to 410 [compared with 3,950 men] from a total of 2,490 [compared with 8,290 men] six months earlier). See also December 2022 UN Secretary-General Report, para. 39. The number of women journalists continued to decline owing to restricting directives targeting them and reported threats and intimidation. Research by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) identified a preference by media outlets to retain men over women as journalists out of fear of repercussions for non-compliance with the de facto authorities’ broader restrictions. Furthermore, in the current economic environment, the financial loss associated with the risk of being shut down negatively affects outlets’ decision to retain female media workers.

healthcare providers.<sup>79</sup> With specific respect to healthcare providers, the UN Secretary-General reported that “[g]ender segregation of health workers in medical facilities is now institutionalized, with women health workers only attending to women, while women patients without a *mahram* were being turned away.”<sup>80</sup> According to Human Rights Watch, these restrictions also apply to women aid workers in many Afghan provinces, where women are required to work with a *mahram* (in at least 16 provinces) or are excluded from food and first necessities distribution (in at least 11 provinces).<sup>81</sup> Likewise, from June to December 2022, UNAMA reported 42 cases of threats and intimidation of women humanitarian staff by local de facto authorities.<sup>82</sup> Movement limitations and the closure of many women’s markets also exclude women from the informal sector, including their ability to take their products to markets.<sup>83</sup>

According to the UN Special Rapporteur on the situation of human rights in Afghanistan, the Taliban’s policies and restrictions on women’s right to work “are disproportionately affecting their ability to sustain themselves.”<sup>84</sup> Most of the working population of women is now excluded from income-generating activities. When women manage to keep their jobs, they are often at risk of abuse by Taliban members monitoring workplaces.<sup>85</sup> Initial figures have shown that by March 2022, 61% of women had lost their jobs, resulting in an economic loss for the country estimated between \$600 million and \$1 billion.<sup>86</sup> Evidence collected by Amnesty International further reflects that women’s exclusion from workplaces threw some families into severe poverty when women were the sole wage-earners. These families experience a desperate economic situation without access to food and other necessities.<sup>87</sup>

#### 4. Dissolution of the support network for survivors of gender-based violence

Another decisive factor that has contributed to the deterioration of women’s and girls’ rights in Afghanistan is the dissolution of the institutional framework of support for survivors of gender-based violence. That framework was established in 2009 by the Elimination of Violence against Women Law (EVAW Law).<sup>88</sup>

The EVAW Law introduced 22 specific sexual and gender-based crimes, including, among others, rape,<sup>89</sup> beating<sup>90</sup> and forced and underage marriage.<sup>91</sup> The law criminalized specific violations of women’s rights, such as violations of the right to education, work and access to health services.<sup>92</sup> At the same time, the EVAW Law provided a mechanism for submitting and processing criminal

<sup>79</sup> Amnesty International, *Death in Slow Motion*, p. 30.

<sup>80</sup> December 2022 UN Secretary-General Report, para. 41.

<sup>81</sup> HRW, *Afghanistan, Taliban Blocking Female Aid Workers*.

<sup>82</sup> December 2022 UN Secretary-General Report, para. 39.

<sup>83</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 38; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 33.

<sup>84</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 38.

<sup>85</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 38.

<sup>86</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 38; Amnesty International, *Death in Slow Motion*, pp. 28-29. See also UNDP September 2022 Report, p.27. The move to restrict women from work was estimated to cost Afghanistan’s economy up to \$1 billion, or 5% of its GDP.

<sup>87</sup> Amnesty International, *Death in Slow Motion*, pp. 30-31 <https://www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/>

<sup>88</sup> Islamic Republic of Afghanistan, Ministry of Justice, *Official Gazette, Law on Elimination of Violence against Women*, Issue No. 989, 1 August 2009 (<https://www.refworld.org/pdfid/5486d1a34.pdf>). See also Human Rights Watch, “I Thought Our Life Might Get Better”: Implementing Afghanistan’s Elimination of Violence against Women Law ([https://www.hrw.org/sites/default/files/media\\_2021/07/afghanistan0821\\_web.pdf](https://www.hrw.org/sites/default/files/media_2021/07/afghanistan0821_web.pdf)).

<sup>89</sup> EVAW Law, Article 17 (Sexual assault).

<sup>90</sup> EVAW Law, Article 23 (Beating).

<sup>91</sup> EVAW Law, Articles 24 (Selling and buying women for the purpose of or on the pretext of marriage), 25 (Giving Baad), 26 (Forced marriage), 28 (Underage marriage).

<sup>92</sup> EVAW Law, Article 35 (Violations of the right to education, work, and access to health services). See also EVAW Law, Articles 33 (Depriving from inheritance), 34 (Prohibiting to access personal property).

complaints through government bodies, including civil law offices, the police and specialized investigative units within the local prosecutor's office ("EVAW units").<sup>93</sup> While EVAW units were mandated to investigate sexual and gender-related crimes, the provincial offices of the Ministry of Women's Affairs were required to maintain contact with the survivor and the relevant prosecuting authority. In addition, the EVAW Law stipulated the provision of several services for survivors of violence, including free healthcare, legal aid and access to shelters.<sup>94</sup>

Following their takeover, the Taliban dismantled the Ministry of Women's Affairs and abandoned the framework instituted by the EVAW Law.<sup>95</sup> Shelters for women and girls were closed, in some cases before the Taliban's takeover out of fear for how the Taliban would treat staff and residents.<sup>96</sup> As shelters closed, staff were forced to send many survivors back to their families. Other survivors were forced to live with shelter staff members, on the street or in other unsustainable situations.<sup>97</sup> Many survivors provided direct evidence to Amnesty International that soon after they left a shelter, they were hunted by their former abusers and other family members and/or were at risk of abuse, killing<sup>98</sup> or having their children forcibly taken away.<sup>99</sup>

The risks faced by survivors of gender-based violence and by people employed in the institutional framework established by the EVAW Law – including shelter staff, psychologists, doctors, lawyers, judges, employees of the Ministry of Women's Affairs and others – have been compounded by the fact that during their offensive, the Taliban released detainees from prisons, leading to freeing perpetrators of gender-based violence, many of whom targeted their former victims with threats, harassment, and abuses.<sup>100</sup> Staff members also reported receiving threats from and being harassed by Taliban members, family members of survivors and others.<sup>101</sup>

## C. REPRESSION OF WOMEN'S PEACEFUL PROTESTS

Facing increasing restrictions of their rights by the Taliban and despite risks to their safety, Afghan women and girls have been at the forefront of the resistance to Taliban rule. Since the Taliban takeover, women have very often led the non-violent protests regularly taking place across Afghanistan, including in Kabul, Faizabad, Herat, Mazar-i-Sharif and elsewhere.<sup>102</sup>

Immediately after the Taliban takeover – in August and early September 2021 – women and girls in Afghanistan carried out several protests to defend their rights, including their rights to education, work and political participation.<sup>103</sup> On 8 September 2021, facing escalating protests, the Taliban Ministry of the Interior announced, in contravention of international law protecting freedom of

<sup>93</sup> EVAW Law, Article 7.

<sup>94</sup> EVAW Law, Article 6.

<sup>95</sup> Amnesty International, *Death in Slow Motion*, pp. 42-43; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 33-34; The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 81-83, 96; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 34.

<sup>96</sup> The New Yorker, "The Afghan Women Left Behind", August 24, 2022. [The Afghan Women Left Behind | The New Yorker](https://www.newyorker.com/magazine/2022/08/21/afghan-women-left-behind)

<sup>97</sup> Amnesty International, *Death in Slow Motion*, pp. 42-44; The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 97-98.

<sup>98</sup> Amnesty International, *Death in Slow Motion*, pp. 43-44.

<sup>99</sup> Amnesty International, *Death in Slow Motion*, p. 44.

<sup>100</sup> Amnesty International, *Death in Slow Motion*, pp. 42-43, 45; The Netherlands, General Country of Origin Information Report – Afghanistan, p. 98.

<sup>101</sup> Amnesty International, *Death in Slow Motion*, pp. 42, 45.

<sup>102</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 115; FIDH, *Broken promises: Civil society under siege after 100 days of Taliban takeover*, 23 November 2021 (FIDH, *Broken promises: Civil society under siege*) (<https://www.fidh.org/en/region/asia/afghanistan/broken-promises-civil-society-under-siege-after-100-days-of-taliban>); UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 24.

<sup>103</sup> Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p. 3.



peaceful assembly, that express permission would need to be granted by the Taliban Ministry of Justice for any rally to be allowed.<sup>104</sup> These limitations did not put an end to actions by women asserting their rights. The restrictions imposed in December 2021 on women's freedom of movement led to an increase in protests by women in Kabul and the northern provinces. These demonstrations were violently repressed by the Taliban, which involved numerous cases of unnecessary and excessive use of force and arbitrary arrests and detention of women protesters.<sup>105</sup> While women's protests continued regularly through 2022, a crackdown by Taliban agents, as well as the fear of detention and reprisals, reduced the number of public protests and led to women resorting to creative ways of protesting indoors or by relying on social media.<sup>106</sup>

The Taliban have been persistently using unnecessary and excessive force and other acts of repression against women's peaceful protests. During demonstrations, women have been subjected to insults, harassment, intimidation and threats by armed Taliban agents, who greatly outnumber the protesters.<sup>107</sup> Taliban agents usually destroy banners, leaflets or other material of women protesters. On occasion, they have confiscated phones from protesters or journalists to prevent photos and videos being taken. Some journalists have been arbitrarily arrested and ill-treated for covering the protests.<sup>108</sup> Taliban agents regularly opened fire causing panic among protesters.<sup>109</sup>

According to the UN Secretary-General, between 23 August 2022 and 7 December 2022 "[o]ver half of the 20 peaceful protests recorded in Kabul and other cities, mainly organized by women, were dispersed by unnecessary or disproportionate use of force by the de facto authorities."<sup>110</sup> The generalized use of unlawful force during peaceful protests has also been attested by independent experts of the UN Human Rights Council, who concluded that "[w]omen human rights defenders peacefully protesting against increased restrictions on women and girls have for months been increasingly targeted, beaten, and arrested."<sup>111</sup>

Amnesty International interviewed a number of women protesters who described the physical violence Taliban agents subjected them to during non-violent protests. In several cases, their treatment amounting to torture or to cruel, inhuman or degrading treatment, proscribed under international law. Violent methods used against women during protests include beating with pipes, whips or stocks of weapons; shocks with electroshock weapons; and directing tear gas

<sup>104</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 24 referring to Tweeter @Zabehulah\_M33 ((1) Zabihullah (مه ل ل ل ا ح س ب د)) on Twitter: "Special Decree Issued by Amir al-Momenin on Women's Rights <https://t.co/OEZYqiCE7R> <https://t.co/Y4xdq0glQa>" / Twitter).

<sup>105</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 24.

<sup>106</sup> Amnesty International, The Denial of Human Rights to Women and Girls by the Taliban, pp. 1, 4; The Washington Post, How Afghan women took on the Taliban, as told through their text messages, 26 August 2022 ([How Afghan women took on the Taliban - Washington Post](https://www.washingtonpost.com/news/afghanistan/wp/2022/08/26/how-afghan-women-took-on-the-taliban-as-told-through-their-text-messages/)).

<sup>107</sup> Amnesty International, Death in Slow Motion, p. 70; FIDH, Broken promises: Civil society under siege; Human Rights Watch, Taliban Use Harsh Tactics to Crush Afghan Women's Rights Protest, 18 January 2022 ([Taliban Use Harsh Tactics to Crush Afghan Women's Rights Protest | Human Rights Watch | hrw.org](https://www.hrw.org/news/2022/01/18/taliban-use-harsh-tactics-to-crush-afghan-women-s-rights-protest)).

<sup>108</sup> Amnesty International, Death in Slow Motion, pp. 70, 72; Amnesty International, The Denial of Human Rights to Women and Girls by the Taliban, pp. 1, 4; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 83; The Netherlands, General Country of Origin Information Report – Afghanistan, p. 55; FIDH, Broken promises: Civil society under siege; UN News, Taliban response to protests increasingly violent, warns OHCHR, 10 September 2021 (UN News, Taliban response to protests increasingly violent) ([Taliban response to protests increasingly violent, warns OHCHR | UN News](https://www.un.org/press/en/2021/210910-taliban-response-to-protests-increasingly-violent-warns-ohchr-11-un-news/)).

<sup>109</sup> Amnesty International, Death in Slow Motion, p. 72; Amnesty International, The Denial of Human Rights to Women and Girls by the Taliban, p. 1; The Netherlands, General Country of Origin Information Report – Afghanistan, p. 115 referring to RFE/RL, Taliban Reportedly Opens Fire On Women Protesting Against Restrictions, 28 December 2021 (<https://www.1lurer.am/en/2021/12/28/Taliban-reportedly-opens-fire-on-women-protesting-against-restrictions/633467/>); VOA News, Witnesses: Taliban Fire Warning Shots on Afghan Female Protesters, 28 December 2021 (<https://www.voanews.com/a/afghan-women-call-for-rights-to-education-work-6372511.html>).

<sup>110</sup> December 2022 UN Secretary-General Report, para. 37.

<sup>111</sup> OHCHR, Afghanistan, Latest Taliban treatment of women and girls may be crime against humanity, say UN experts, 25 November 2022 (<https://www.ohchr.org/en/statements/2022/11/afghanistan-latest-taliban-treatment-women-and-girls-may-be-crime-against>).

and other chemical sprays at protesters. The use of such practices has been confirmed by a number of sources.<sup>112</sup>

Taliban agents have arbitrarily arrested some women during demonstrations.<sup>113</sup> The Taliban de facto authorities have also attempted to follow women after protests or tried to locate them days or weeks later to arrest them.<sup>114</sup> Several women have been arrested at gunpoint in their homes or in safe houses, often violently. Some of the women's male relatives were also severely beaten by Taliban elements at the time of the arrests. Women arrested have been detained incommunicado and subjected to torture or other ill-treatment for several weeks.<sup>115</sup> According to information collected by Amnesty International and UNAMA, by February 2022 more than 30 women had been arbitrarily arrested and detained in the country because of their participation in peaceful protests.<sup>116</sup> In June 2022, based on information published by local and international media, Rukhshana Media estimated 188 women had been detained for political reasons since the Taliban took over in August 2021.<sup>117</sup> More recently, in November 2022, several women human rights defenders and their colleagues were arrested for their participation in a press conference.<sup>118</sup>

According to the testimonies of several women who have been detained as a consequence of their participation in peaceful protests, in order to be released they were made to sign documents promising they would never protest again or speak out about conditions of detention. On some occasions, members of the detainee's family had to sign similar documents or had to submit official personal documents such as work licences, land/house deeds or identification documents for women protesters to be released.<sup>119</sup>

Not all protests have been banned or violently repressed by Taliban elements. In particular, as reported by UNAMA, protests against foreign governments or supporting policies of the de facto government do not seem to face the same restrictions or crackdowns.<sup>120</sup>

<sup>112</sup> Amnesty International, *Death in Slow Motion*, pp. 70, 72; Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p. 4. See also UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 24; Human Rights Watch, *Afghanistan Women Protest Against Taliban Restrictions*, 7 September 2021 ([Afghan Women Protest Against Taliban Restrictions | Human Rights Watch \[hrw.org\]](https://www.hrw.org/news/2021/09/07/afghanistan-women-protest-against-taliban-restrictions)); Human Rights Watch, *Taliban Use Harsh Tactics to Crush Afghan Women's Rights Protest*, 18 January 2022 ([Taliban Use Harsh Tactics to Crush Afghan Women's Rights Protest | Human Rights Watch \[hrw.org\]](https://www.hrw.org/news/2022/01/18/taliban-use-harsh-tactics-to-crush-afghan-women-s-rights-protest)); UN News, *Taliban response to protests increasingly violent*.

<sup>113</sup> Amnesty International, *Afghanistan, Women human rights defenders arrested by the Taliban must be immediately released*, 14 November 2022 (<https://www.amnesty.org/en/latest/news/2022/11/afghanistan-women-human-rights-defenders-arrested-by-the-taliban-must-be-immediately-released/>); OHCHR, *Afghanistan: NGO arrests*, 4 November 2022 (<https://www.ohchr.org/en/press-briefing-notes/2022/11/afghanistan-ngo-arrests>).

<sup>114</sup> Amnesty International, *Death in Slow Motion*, pp. 72-73; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32.

<sup>115</sup> Amnesty International, *Death in Slow Motion*, pp. 72-73; Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p. 4; Human Rights Watch, *Afghanistan, Women Protesters Detail Taliban Abuse*, 20 October 2022 (HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*) ([Afghanistan: Women Protesters Detail Taliban Abuse | Human Rights Watch \[hrw.org\]](https://www.hrw.org/news/2022/10/20/afghanistan-women-protesters-detail-taliban-abuse)); The Guardian, *Taliban launch raids on homes of Afghan women's rights activists*, 20 January 2022 ([Taliban launch raids on homes of Afghan women's rights activists | Women's rights and gender equality | The Guardian](https://www.theguardian.com/world/2022/jan/20/taliban-launch-raids-on-homes-of-afghan-women-s-rights-activists)); 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 83; The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 45; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, pp. 24-25; The New York Times, *Threatened and Beaten, Afghan Women Defy Taliban With Protests*, 26 January 2022 ([Threatened and Beaten, Afghan Women Defy Taliban With Protests - The New York Times \[nytimes.com\]](https://www.nytimes.com/2022/01/26/world/asia/afghanistan-women-protest-taliban.html)). For more details on detention see section below on Arbitrary arrest, detention, torture and corporal punishment. On some occasions, family members of women protesters have also been arrested by Taliban elements to pressure them to stop any subversive activities. See Amnesty International, *Death in Slow Motion*, p. 77; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>116</sup> Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p. 4. See also Amnesty International, *Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests*, p. 2. See also UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, p. 25.

<sup>117</sup> Rukhshana Media, *Taliban detained 1,247 critics and former government soldiers since August*, 23 June 2022 ([Taliban detained 1,247 critics and former government soldiers since August – Rukhshana Media](https://www.rukhshana.com/news/2022/06/23/taliban-detained-1247-critics-and-former-government-soldiers-since-august)).

<sup>118</sup> Amnesty International, *Afghanistan, Women human rights defenders arrested by the Taliban must be immediately released*, 14 November 2022 (<https://www.amnesty.org/en/latest/news/2022/11/afghanistan-women-human-rights-defenders-arrested-by-the-taliban-must-be-immediately-released/>).

<sup>119</sup> Amnesty International, *Death in Slow Motion*, p. 77; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>120</sup> UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, pp. 24-25. See also, The Netherlands, *General Country of Origin Information Report – Afghanistan*, p. 115; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 84.

## D. ARBITRARY ARREST, DETENTION, TORTURE AND ILL-TREATMENT, INCLUDING CORPORAL PUNISHMENT

Afghan women and girls have been arbitrarily arrested and detained by Taliban members for their participation in peaceful demonstrations or for their alleged infringements of the de facto authorities' *mahram* restrictions.<sup>121</sup> According to prison staff members interviewed by Amnesty International, there has been a sharp increase in the number of women arrested and detained for appearing in public without a *mahram* or with a man who does not qualify as a *mahram*. These detained women and girls are being held in at least two detention centres in Afghanistan. Those arrested for these reasons are usually charged with "moral corruption" and/or "attempted *zina*" (attempting to engage in sex outside marriage).

While the detention of women and girls for "moral crimes" such as *zina* has long been a problem in Afghanistan, arrests and detention for *mahram* restrictions were not common before the Taliban took control. The extent to which similar patterns of arbitrary detention of women have been occurring in other detention centres across the country is not yet known, and further investigation is required to understand the scale of the practice. Some survivors of gender-based violence who were living in shelters before the Taliban takeover are also now being held in detention centres.<sup>122</sup>

Women and girls arrested because of their participation in peaceful protests or for violation of *mahram* restrictions have routinely been detained in isolation and incommunicado, without access to lawyers, family members or, where needed, medical personnel.<sup>123</sup> Such practices necessarily amount to torture or other cruel, inhuman or degrading treatment or punishment, prohibited under international law. In some cases, these practices amounted to similarly proscribed enforced disappearance, with the Taliban denying to women's families knowing about their whereabouts and that they were being detained.<sup>124</sup>

According to testimonies collected by Amnesty International, women and girls detained for violations of *mahram* restrictions are often subjected to insults and to torture or other ill-treatment, such as being chained or tied up and beaten with cables, chains or water hoses; receiving electric shocks to their bodies and being threatened with death. This violence most commonly occurs during interrogation or just after women arrive at a detention centre.<sup>125</sup> Taliban elements are also using methods such as forcibly separating women from their children.<sup>126</sup>

Women and girls are detained in poor conditions, violating international law and standards governing conditions of detention. Evidence available suggests overcrowded cells; lack of heating and blankets; inadequate quantity and quality of food; and lack of hygiene, access to toilets and beds. Infestation with scabies and lice is common for women and girls in prison. Access to healthcare is inadequate.<sup>127</sup>

<sup>121</sup> *Zina* is an Arabic term used to describe sexual intercourse between individuals who are not married to one another. Amnesty International, *Death in Slow Motion*, pp. 48, 73-74.

<sup>122</sup> Amnesty International, *Death in Slow Motion*, pp. 49, 50-51.

<sup>123</sup> Amnesty International, *Death in Slow Motion*, pp. 8, 52, 76.

<sup>124</sup> Amnesty International, *Death in Slow Motion*, p. 76; Amnesty International, *Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests*, p. 1; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>125</sup> Amnesty International, *Death in Slow Motion*, pp. 51-52, 76; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32.

<sup>126</sup> Amnesty International, *Death in Slow Motion*, pp. 51-52, 76.

<sup>127</sup> Amnesty International, *Death in Slow Motion*, pp. 52-53, 76; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*. See also 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 62.



The situation of women and girls detained by Taliban elements contravenes the requirements of the Code of Conduct on System Reform Relating to Prisoners issued in January 2022 by the de facto authorities, as well as international law and standards. Among the key standards relating to the treatment of detainees contained in this code is the absolute prohibition of torture and, by alignment, the Nelson Mandela Rules concerning food, accommodation, health, notification and family visits.<sup>128</sup> According to the UN Special Rapporteur on the situation of human rights in Afghanistan, “while torture was prevalent in Afghanistan prior to the takeover by the Taliban, the number of incidents and types of torture appear to have worsened under the Taliban.”<sup>129</sup>

Women and girls in detention do not benefit from procedural guarantees and have been denied access to lawyers, in contravention of the right to liberty and to a fair trial.<sup>130</sup> They are not brought before a court within a reasonable time and very few cases are even sent to prosecutors. The length of time spent in detention can depend on how many influential contacts a person has or how much of a bribe they can pay, rather than on any predictable legal or procedural guarantees. In at least two detention centres, some women were reported to have been forcibly married to a member of the Taliban or others to be released from detention.<sup>131</sup> UNAMA has verified a number of cases of women (and men) accused of moral offences being sentenced to corporal punishment, sometimes following some form of quasi-judicial process, in contravention of international law and standards. Corporal punishment documented includes flogging, stoning to death, mutilation and summary execution.<sup>132</sup>

In Afghan society, the stigma attached to women who have been detained is extremely high. Stigmatization for having been held in detention can last for the rest of a woman’s life and affect not only her but also her family and relatives in the community, often leading to her exclusion from society and public life.<sup>133</sup>

<sup>128</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 37, referring to UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly Resolution, 70/175, 8 January 2016.

<sup>129</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 60.

<sup>130</sup> For the current law see, UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, p. 36, which explain that in January 2022 a “Code of Conduct on System Reform Relating to Prisoners” was issued. Among other things, it limits the initial detention by de facto security officials to three days, after which suspected individuals should be handed over to a court. In criminal cases, detention of suspects can be extended up to a month if additional investigation is required. Beyond a month, detention needs to be ordered by a court.

<sup>131</sup> Amnesty International, *Death in Slow Motion*, pp.52-54, 75; Amnesty International, *Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests*, p. 2; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>132</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 17-18; 14 September 2022 UN Secretary-General Report para. 29.

<sup>133</sup> Amnesty International, *Death in Slow Motion*, pp. 53-54.

## WOMEN'S AND GIRLS' MARRIAGES

On 3 December 2021, the de facto authorities issued a Special Decree on women's rights. The Decree prescribes, among other things, that women must consent to their marriage and that no one may force, coerce or pressure women to marry.<sup>134</sup> Information collected since August 2021 suggests, however, quite a different reality for women and girls in Afghanistan.<sup>135</sup>

Marriage of women and girls without their consent was already a widespread practice in Afghanistan before the Taliban takeover. Nevertheless, international and local protection workers currently operating in Afghanistan have been warning that the number of child, early and forced marriages of women and girls (at as young as seven or eight years old) has been rising sharply since August 2021.<sup>136</sup>

One of the explanations provided for this spike in forced marriage of women and girls is the economic and humanitarian crisis the country currently faces. The crisis has been leading more families to marry off their daughters for the "bride price" they receive.<sup>137</sup> As one woman told Amnesty International, "If I give my granddaughter to another family, I will get the money I need, and she will find a better place."<sup>138</sup> Other drivers of the practice are linked to the de facto authorities' discriminatory policies on education and work for women and girls. Those policies are strongly reducing women's and girls' educational and professional opportunities.<sup>139</sup> The de facto authorities' discriminatory practices contribute to the exclusion of women from public life and to the degradation of women's and girls' status in society. What is considered socially acceptable behaviour for women and girls is changing rapidly. The discriminatory policies renew or increase the perception that child and forced marriage is acceptable.<sup>140</sup>

Amnesty International documented cases of women and girls being married to Taliban agents, or attempts being made to marry them, without their consent, with and without the agreement of their families. Women and girls who refused the marriage reported being subjected to abduction, intimidation, threats and torture or other forms of ill-treatment by their families or Taliban elements.<sup>141</sup> Instances documented by Amnesty International include the following:

- Two women were forced to marry Taliban members in order to be released from detention.
- In August 2021, a 15-year-old girl was forced to marry a Taliban member despite her family's opposition, soon after the Taliban took over the province of Takhar.
- In September 2021, a 33-year-old journalist and social activist was forced to marry a Taliban commander despite her own and her family's opposition.<sup>142</sup>

<sup>134</sup> 3 December 2021 Special Decree.

<sup>135</sup> For the purpose of this report, marriage of girls includes the marriage of minors as defined by both international standards, setting the age of minors as 18 years, and Afghanistan's legislation defining female minors for marriage as those under age 16.

<sup>136</sup> Amnesty International, *Death in Slow Motion*, p. 57; UNICEF, Statement by UNICEF Executive Director Henrietta Fore, *Girls increasingly at risk of child marriage in Afghanistan*, 12 November 2021 (<https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan>); Confidential Report from an NGO; Confidential Report from an International Organization. For more details on marriage practices in Afghanistan, see Afghanistan Analysts Network, "The Bride Price: The Afghan tradition of paying for wives", 25 October 2016, [afghanistan-analysts.org/en/reports/context-culture/the-bride-price-the-afghan-tradition-of-paying-for-wives/](http://afghanistan-analysts.org/en/reports/context-culture/the-bride-price-the-afghan-tradition-of-paying-for-wives/).

<sup>137</sup> Amnesty International, *Death in Slow Motion*, pp. 58-60; The Netherlands, General Country of Origin Information Report – Afghanistan, p. 90.

<sup>138</sup> Amnesty International, *Death in Slow Motion*, pp. 58-60; The Netherlands, General Country of Origin Information Report – Afghanistan, p. 90.

<sup>139</sup> See above, Section IV. B.2. and Section IV. B.3.

<sup>140</sup> Confidential Report from an International Organization.

<sup>141</sup> Amnesty International, *Death in Slow Motion*, pp. 64-66.

<sup>142</sup> Amnesty International, *Death in Slow Motion*, pp. 54, 65-66.

UNAMA has documented instances in which the de facto authorities, in particular the courts, have been involved in upholding forced marriages or detaining women who refused the marriage planned for them by their family. For instance, on 15 February 2022, in Uruzgan Province, a woman and her brother were summoned to court regarding an offer of marriage the woman refused. They were both severely beaten for refusing the Judge of the Primary Court's order to accept the marriage. The woman eventually escaped, but her brother was detained in an attempt to force her to accept the marriage.<sup>143</sup>

The extent to which Taliban members are using their influence or power to coerce women and girls into marriage is unknown, as is the extent to which the de facto authorities are involved in upholding forced marriages. Organizations documenting and reporting forced marriage in Afghanistan acknowledge that there are limitations in capacity to report such cases.<sup>144</sup>

Since the Taliban takeover, there have been allegations reported in the media implicating the Taliban members, including their high-ranking officials, are forcibly marrying women and girls.

The reports on involvement of the Taliban de facto authorities in the phenomenon of forced marriage calls into question the sincerity of the 3 December 2021 Special Decree on women's rights. Independent, impartial and thorough investigations are required to understand the scope of any potential support encouragement or involvement of the de facto authorities in the harmful practice of forced marriage of women and girls.<sup>145</sup>



PHOTO: MARCUS YAM VIA GETTY IMAGES

<sup>143</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 31-32.

<sup>144</sup> Amnesty International, *Death in Slow Motion*, p. 65. Reports also indicate that women and girls are sometimes forcibly married by their families out of fear that their daughters could be forced to marry a Taliban member, showing that this prospect is more than a mere possibility. Amnesty International, *Death in Slow Motion*, pp. 63-64.

<sup>145</sup> See for examples, NPR, *What it's like being a woman in Afghanistan today: 'death in slow motion'*, 27 July 2022 (<https://www.npr.org/sections/goatsandsoda/2022/07/27/1114033369/what-its-like-being-a-woman-in-afghanistan-today-death-in-slow-motion>); Hasht-E Subh, *Taliban Members Force Young Girls to Marry Their Fighters in Faryab Province*, 17 September 2022 (<https://8am.media/eng/taliban-members-force-young-girls-to-marry-their-fighters-in-faryab-province/>); Hasht-E Subh, *A Taliban Member Abducts 17-Year-Old Girl in Bamyan*, 7 September 2022 (<https://8am.media/eng/a-taliban-member-abducts-17-year-old-girl-in-bamyan/>); The Diplomat, *The Taliban's Forced Marriages*, 12 October 2021 (<https://thediplomat.com/2021/10/the-talibans-forced-marriages/>).



# LEGAL QUALIFICATION (CRIMES UNDER INTERNATIONAL LAW)

A photograph of a person holding a large, rectangular sign made of brown cardboard. The sign has the words "PROTECT AFGHAN WOMEN" written on it in large, black, hand-drawn capital letters. The person holding the sign has bright yellow nail polish. They are wearing a green and red patterned garment. The background is slightly blurred, showing other people at what appears to be a protest or public gathering.

PROTECT  
AFGHAN  
WOMEN

PHOTO: PRADEEPAJURS VIA SHUTTERSOCK



## A. INTRODUCTION

This section sets out a legal analysis of the relevant information available since August 2021 to determine whether the conduct of Taliban leaders towards women and girls amounts to crimes under international law, with a particular focus on crimes against humanity.

Because Afghanistan is party to the Rome Statute and because an ICC investigation of the situation in Afghanistan is ongoing,<sup>146</sup> this report focuses primarily on whether such acts and conduct may amount to crimes against humanity under Article 7 of the Rome Statute, namely persecution on the ground of gender, imprisonment, torture enforced disappearance and other inhumane acts, when committed on a widespread or systematic basis. Specifically, with respect to the assessment of gender persecution under Article 7(1)(h) of the Rome Statute, the analysis relies on Amnesty International's conclusions contained in the report "Death in Slow Motion". That report concluded that the gender segregation and systematic discrimination originating from the policies and decisions of the Taliban de facto authorities against women and girls, and the ensuing violence and abuses carried out during protests and in detention, amount to severe human rights violations.<sup>147</sup>

This report also addresses whether these specific acts and conduct may amount to other crimes under international law, including torture and enforced disappearance. The report does not address other crimes under international law that may have been committed, such as extrajudicial execution.

To ensure the credibility and integrity of this report, all conclusions in this section are based on the "reasonable basis to believe" evidentiary standard, which is the standard of proof required under Article 15 of the Rome Statute<sup>148</sup> to initiate an ICC investigation.<sup>149</sup> It is the standard relied on by most UN commissions of inquiry and other fact-finding missions in assessing crimes under international law.<sup>150</sup>

## B. CRIMES AGAINST HUMANITY

Under Article 7 of the Rome Statute, crimes against humanity include any of the acts listed under Article 7(1) (including, among others, murder, torture, imprisonment and persecution) when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Establishing whether acts amount to crimes against humanity in terms of the Rome Statute thus requires an analysis of whether:

1. the conduct fulfils the elements of the underlying acts listed under Article 7(1)(a)-(k);
2. the conduct is part of an attack, namely "a course of conduct involving the multiple commission of acts", directed against a civilian population;
3. the attack was committed pursuant to or in furtherance of a state or organizational policy;
4. the attack was widespread or systematic in nature;
5. the conduct was committed with the knowledge of such an attack.

<sup>146</sup> See below, Section VI.

<sup>147</sup> Amnesty International, *Death in Slow Motion*, pp. 79-86.

<sup>148</sup> Rome Statute of the International Criminal Court, 2187 UNTS 3 (17 July 1998) (<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>).

<sup>149</sup> See Article 53 of the ICC Statute.

<sup>150</sup> See e.g., Report of the International Commission of Inquiry for Mali, S/2020/1332, 29 January 2021, para. 24; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/39/65, 9 August 2018, para. 3; Report of the independent international fact-finding mission on Myanmar A/HRC/39/64, 12 September 2018, para. 6.

The sections below analyse whether the indications of violations and abuses committed against women and girls by the Taliban sufficient to satisfy these criteria and therefore may amount to crimes against humanity.

## 1. The conduct fulfils elements of the underlying acts

### a. Imprisonment

The information available suggests that the Taliban's arbitrary arrests and detention of women and girls for their participation in demonstrations or on charges related to "moral corruption" may amount to the crime against humanity of imprisonment or other severe deprivation of physical liberty.<sup>151</sup> Under Article 7(1)(e) of the Rome Statute, imprisonment or other severe deprivation of physical liberty requires that "The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty," and that "[t]he gravity of the conduct was such that it was in violation of fundamental rules of international law."<sup>152</sup>

According to ICC jurisprudence, "imprisonment" encompasses "unlawful captivity of a person in an enclosed environment, such as a prison or psychiatric institution," while severe deprivation of physical liberty denotes the unlawful restriction of movement to a specific area, such as a ghetto, camp or house.<sup>153</sup> The fact that the duration of captivity or restriction of movement may have been brief does not necessarily mean the deprivation was not sufficiently severe. In this regard, the Rome Statute does not require the imprisonment or the deprivation of liberty to be for a prolonged period.<sup>154</sup>

In the case of deprivation of physical liberty, ICC jurisprudence requires that the deprivation of liberty be unlawful. In other words, it must be "in violation of fundamental rules of international law"<sup>155</sup> – for example, where the deprivation of liberty occurs without due process of law or is carried out without a sufficient legal basis, or if the victim is denied any procedural rights.<sup>156</sup> This may also include circumstances in which the deprivation of liberty is prompted by the victims' exercise of the rights and freedoms guaranteed by human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR).<sup>157</sup>

In the present case, the evidence suggest that the restrictions of liberty imposed on Afghan women and girls by the Taliban meets the criteria of "imprisonment" under Article 7(1)(e) of the Rome Statute.<sup>158</sup> Reports available indicate that women and girls arrested during demonstrations and/or on charges of "moral corruption" are imprisoned in detention centres or in facilities of the de facto Ministry of the Interior.<sup>159</sup> Survivors provided accounts to Amnesty International of being detained in prison-like conditions following their arrest.<sup>160</sup> Further, prison staff confirmed to Amnesty that women are being increasingly arrested and detained for appearing in public without

<sup>151</sup> See above, Section IV.D.

<sup>152</sup> For the elements of the crime against humanity of imprisonment see International Criminal Court: The Elements of Crimes, Article 7(1)(e), [www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf](http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf).

<sup>153</sup> ICC, "Situation in the Republic of Burundi", Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi," ICC-01/17-X-9-US-Exp, 25 October 2017, ICC-01/17-9-Red, 9 November 2017, (Burundi Article 15 Authorization Decision), para. 68.

<sup>154</sup> Burundi Article 15 Authorization Decision, para. 68.

<sup>155</sup> Burundi Article 15 Authorization Decision, para. 68.

<sup>156</sup> Burundi Article 15 Authorization Decision, para. 68.

<sup>157</sup> Christopher K. Hall, Carsten Stahn, "Article 7 Crimes against humanity" in O. Triffterer and K. Ambos (eds.) *The Rome Statute of the International Criminal Court. A Commentary*, 3rd Ed., 2016, p. 200.

<sup>158</sup> Burundi Article 15 Authorization Decision, para. 68.

<sup>159</sup> Amnesty International, *Death in Slow Motion*, pp. 48, 73-74; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*. See also Amnesty International, *Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests*, p. 1; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 30-32; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>160</sup> Amnesty International, *Death in Slow Motion*, pp. 48-54, 73-78.

a *mahram*, or with a man who does not qualify as a *mahram*, in at least two detention centres.<sup>161</sup> Arbitrary arrests and detention of women, and especially of protesters and human rights defenders, have also been reported by the UN Special Rapporteur on human rights in Afghanistan.<sup>162</sup>

The information available reflects that the detention of women is “inconsistent with fundamental rules of international law.”<sup>163</sup> Women are being detained in inhuman conditions and have been abused and tortured by Taliban members. Such detentions have been carried out without legal basis and in the absence of the required procedural guarantees under international human rights law.<sup>164</sup>

- **Absence of legal basis or justification under international law for the detentions.** The detention of women and girls is inconsistent with “fundamental rules of international law” given that, in cases of charges for so-called “moral offences” or participation in protests, the deprivation of liberty was based on their legitimate exercise of their human rights set forth in the Universal Declaration of Human Rights (UDHR) and the ICCPR, namely the rights to freedom of expression,<sup>165</sup> association,<sup>166</sup> assembly,<sup>167</sup> public participation,<sup>168</sup> equal protection and non-discrimination<sup>169</sup> and privacy.<sup>170</sup> Specifically, the Human Rights Committee concluded that detention based on these grounds violates<sup>171</sup> Article 9 of the ICCPR (liberty and security of persons) and thus is impermissible under international law.
- **Inhuman conditions of detention.** Direct evidence collected by Amnesty International confirms that women arrested have been detained in deplorable conditions. A woman detained for violating *mahram* restrictions reported to Amnesty that she had no space to lie down to sleep because of overcrowding in the cell. The cell was cold, without a proper heating system, and the blanket she was given was not large enough to cover her entire body. She also described a woman detained in the same cell with her two daughters, who was forced to sleep in the corner of the bathroom on the water-covered floor.<sup>172</sup>

Likewise, women arrested during peaceful protests provided evidence of inhuman conditions of detention. They were accommodated in cells with little or no ventilation, receiving little food or water and without proper access to water and sanitary products.<sup>173</sup> A woman detained with her children reported to Amnesty International that people in the cell vomited and fainted “all the time” and they had to beg for the window of the cell to be opened to have ventilation.<sup>174</sup> According to the witness, even after their release, her two children could not breathe properly.<sup>175</sup>

<sup>161</sup> Amnesty International, *Death in Slow Motion*, pp. 49-50.

<sup>162</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 62.

<sup>163</sup> Compare with Burundi Article 15 Authorization Decision, para. 68.

<sup>164</sup> Compare with Burundi Article 15 Authorization Decision, para. 68.

<sup>165</sup> Article 19 of the ICCPR; Article 19 UDHR.

<sup>166</sup> Article 22 of the ICCPR ; Article 20 UDHR.

<sup>167</sup> Article 21 of the ICCPR; Article 20 UDHR

<sup>168</sup> Article 25 of the ICCPR

<sup>169</sup> Articles 2(1) and 26 of the ICCPR ; Article 7 UDHR.

<sup>170</sup> Article 17 of the ICCPR; Article 12 UDHR.

<sup>171</sup> UN Human Rights Committee, CCPR/C/GC/35, General Comment 35, 16 December 2014, para. 17 (“Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17)”) (footnotes omitted).

<sup>172</sup> Amnesty International, *Death in Slow Motion*, p. 53.

<sup>173</sup> Amnesty International, *Death in Slow Motion*, pp. 76-77.

<sup>174</sup> Amnesty International, *Death in Slow Motion*, p. 76.

<sup>175</sup> Amnesty International, *Death in Slow Motion*, p. 76.



- **Conditions of detention confirmed by prison staff.** Four prison staff members provided insider evidence that women and girls charged with “moral offenses” were detained in overcrowded spaces, with inadequate food and access to basic hygiene supplies, lacking beds and blankets, and without proper heating in the winter.<sup>176</sup> They also reported that women and girls were denied proper medical care and are affected by scabies and lice as a result of the poor conditions of detention.<sup>177</sup>
- **Torture and other ill-treatment during detention.** Women arrested for alleged so-called “moral offences” or because of their participation in protests have been subjected to torture and other ill-treatment while in detention. Evidence collected from survivors and prison staff indicates that women are routinely subjected to serious mental and physical mistreatment, including beatings and electric shocks for prolonged periods,<sup>178</sup> as a means of punishment or to coerce “confessions”.<sup>179</sup> Taliban officials overseeing the facilities further abuse women by forcibly separating them from their children and ensuring that women can hear the torture or other ill-treatment being inflicted on others.<sup>180</sup> Moreover, detainees reported being denied medical care when injured as a result of torture or other ill-treatment.<sup>181</sup>
- **Lack of pre-trial and judicial guarantees during detention.** For detention to be lawful and not arbitrary under international law, a number of minimum guarantees must be met, consistent with Article 9 of the ICCPR. Detainees must have access to legal counsel, they must be promptly charged with a recognizable criminal offense or released, they must be brought to a judicial body to confirm any charges, and they must have access to a court at all times through habeas corpus or equivalent procedures to challenge the basis for their detention or complain about torture or other ill-treatment.<sup>182</sup> Records collected show that the arrest and detention of women are carried out without these minimum judicial guarantees.

Arrests and detentions are typically carried out by the Taliban in violation of international human rights standards. Women provided evidence to Amnesty International that Taliban members entered their houses without an arrest warrant and used unnecessary and excessive force to arrest them, violating UN principles regarding the use of force by law enforcement officials.<sup>183</sup> Women have been detained incommunicado, and their families denied information about their whereabouts. Women have been denied access to lawyers and were not informed of the charges against them or brought before a judge.<sup>184</sup> In most cases, instead of a formal trial, their release from detention was contingent on their ability to call on influential contacts, on paying bribes to the de facto authorities or on their willingness to sign “agreements” committing to refraining from protest or speaking publicly of their detention.<sup>185</sup> UNAMA attested that in some instances, women charged with so-called “moral offences” were sentenced to corporal punishment,

<sup>176</sup> Amnesty International, *Death in Slow Motion*, pp. 52-53.

<sup>177</sup> Amnesty International, *Death in Slow Motion*, p. 53.

<sup>178</sup> See above, Section IV.D.. See also Amnesty International, *Death in Slow Motion*, pp. 51-53, 75-76.

<sup>179</sup> See above, Section IV.D.. See also Amnesty International, *Death in Slow Motion*, pp. 51-52, 76.

<sup>180</sup> See above, Section IV.D.. Amnesty International, *Death in Slow Motion*, pp. 51-52, 76.

<sup>181</sup> See above, Section IV.D.. See also Amnesty International: *Death in Slow Motion*, pp. 53, 76.

<sup>182</sup> Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras. 15, 18, 21, 24, 29-30, 32-36, 39, 41, 44, 46, 56, 58-59.

<sup>183</sup> Amnesty International, *Death in Slow Motion*, pp. 74-76; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990 (<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>).

<sup>184</sup> Amnesty International, *Death in Slow Motion*, pp. 74-76, 84; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32.

<sup>185</sup> Amnesty International, *Death in Slow Motion*, p. 84; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 25.

including lashes, stoning to death, mutilations or summary execution,<sup>186</sup> violating international human rights law.<sup>187</sup>

Overall, there is a reasonable basis to believe the detention of women and girls on the basis of so-called “moral offenses” or for participation in peaceful protests meets the requirements of imprisonment as a crime against humanity under Article 7(1)(e) of the Rome Statute.

A similar pattern of arbitrary arrest and detention of people affiliated with the former government or other dissidents shows that such acts are being perpetrated widely under the Taliban. For instance, UNAMA reported that between 15 August 2021 and 15 June 2022, Taliban members were involved in carrying out 178 arbitrary arrests and detentions, 23 incommunicado detentions and 56 instances of torture or ill-treatment of former Afghan National Defense and Security Forces and governmental officials.<sup>188</sup> Likewise, Taliban members have been connected to arbitrary or incommunicado detention and ill-treatment of “large groups of civilians” suspected of being connected with the National Resistance Front.<sup>189</sup> The UN Special Rapporteur on the situation of human rights in Afghanistan and the UN Secretary-General have confirmed the widespread use of arbitrary detention and torture against perceived dissidents, members of minority groups, human rights defenders and journalists.<sup>190</sup> This information shows that there is a discernible pattern of widespread imprisonment that could amount to a crime against humanity under the Rome Statute.

### **b. Torture**

Available evidence suggests that women and girls detained for alleged so-called “moral offences” or for their participation in peaceful protests are subjected to torture as a crime against humanity. Under the Rome Statute, torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.<sup>191</sup>

Amnesty International collected direct testimonies from survivors and other witnesses indicating that women and girls in detention are routinely subjected to torture, resulting in a high degree of physical or mental pain and suffering. Women and girls reported being physically restrained in stress positions and beaten with water hoses, electrocuted on various parts of their bodies, and receiving constant threats against them and their family members.<sup>192</sup> Other means used by the Taliban included forcing detainees to listen to the screams of other people being tortured, including their next of kin or other relatives.<sup>193</sup>

<sup>186</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 17-18; 14 September 2022 UN Secretary-General Report para. 29.

<sup>187</sup> See ICC, *The Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, *Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, 13 November 2019 (“*Al Hassan Confirmation Decision*”), paras. 242, 245.

<sup>188</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 14-16.

<sup>189</sup> UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 16-17.

<sup>190</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 51-54, 58-62, 64-65, 78; 15 June 2022 UN Secretary-General Report, paras. 33, 36-37; 14 September 2022 UN Secretary-General Report, paras. 28, 33, 62.

<sup>191</sup> Rome Statute, Article 7(1)(f) and 7(2)(e); for the elements of the crime against humanity of torture see International Criminal Court, *The Elements of Crimes*, Article 7(1)(f), [www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf](http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf). ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15, Trial Judgment, 4 February 2021 (*Ongwen Trial Judgment*), paras. 2700-2703; *Al Hassan Confirmation Decision*, para. 230; *The Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009 (*Bemba Confirmation Decision*), para. 193. It is not necessary to establish that the pain or suffering caused specific physical injury, impairment of a bodily function or death. The consequences of torture do not have to be visible, nor must the injury be permanent. See *Ongwen Trial Judgment*, para. 2701; *Al Hassan Confirmation Decision*, para. 231. As for the requisite subjective element, the crime of torture requires that the perpetrator intended the conduct that caused the severe pain or suffering. *Ongwen Trial Judgment*, para. 2703. It is not necessary to prove any specific intent behind the act of the perpetrator or that he was aware that the pain or injury inflicted was severe. *Ongwen Trial Judgment*, para. 2703; *Bemba Confirmation Decision*, para. 194.

<sup>192</sup> Amnesty International, *Death in Slow Motion*, pp. 51, 52, 75-76.

<sup>193</sup> Amnesty International, *Death in Slow Motion*, p. 76.

These accounts were corroborated by four prison staff members who testified that women are systematically beaten and whipped to extract information and to force “confessions”.<sup>194</sup> Prison staff also referred to the use of serious psychological ill-treatment. In one instance, Taliban agents punished a woman by separating her from her seven-month-old baby, who was placed in a different cell. Detained in a dark cell without a window, the woman was not allowed to breastfeed or see her baby.<sup>195</sup> Additional information from the UN Special Rapporteur on the situation of human rights in Afghanistan and from civil society organizations confirms the acts of torture committed against women and girls.<sup>196</sup>

The reported torture of women and girls in detention is consistent with the findings of a number of UN official reports that indicate widespread torture and ill-treatment in Afghanistan detention centres. In addition to women and girls, other individuals subjected to torture include those critical of the Taliban (or perceived to be), including former ANDSF and governmental officials, NRF members or assimilated civilians, individuals from some ethnic minorities, journalists and human rights defenders.<sup>197</sup>

### **c. Enforced disappearance of persons**

Under Articles 7(1)(i) and 7(2)(i) of the Rome Statute, enforced disappearance of persons consists of three key elements: (1) arrest, detention and abduction by, or with the acquiescence of, a state or political organization, followed or accompanied by (2) refusal by that organization to acknowledge the deprivation of freedom or give information of the whereabouts of the persons, with (3) the specific intent of removing the victims from the protection of the law for a prolonged period.<sup>198</sup>

An increasing number of reports indicate that the Taliban are resorting to a campaign of enforced disappearance against women participating in protests against Taliban rule.<sup>199</sup> In February 2022, the UN Secretary-General publicly raised concerns with the Taliban “about the well-being of missing women activists in Afghanistan”, observing that “[s]everal have ‘disappeared,’ some not heard from in weeks”.<sup>200</sup>

Amnesty International and Human Rights Watch obtained accounts from survivors attesting that once in detention, detainees were not allowed to contact or notify their next of kin.<sup>201</sup> Further, Taliban agents repeatedly denied to detainees’ family members that they were in custody.<sup>202</sup> For instance, human rights activists Tamana Zaryab and Parwana Ibrahimkhel were forcibly disappeared on 19 January 2022.<sup>203</sup> For a time, the Taliban denied detaining them to their family

<sup>194</sup> Amnesty International, *Death in Slow Motion*, pp. 51-52.

<sup>195</sup> Amnesty International, *Death in Slow Motion*, p. 52.

<sup>196</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 62; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>197</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 51-54, 58-62, 64-65, 78; 15 June 2022, UN Secretary-General Report, paras. 33, 36-37; 14 September 2022 UN Secretary-General Report, paras. 28, 33, 62; UNAMA, *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, pp. 14-17.

<sup>198</sup> For the elements of the crime against humanity of enforced disappearance of persons see International Criminal Court, *The Elements of Crimes*, Article 7(1)(i), [www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf](https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf).

<sup>199</sup> Amnesty International, *Death in Slow Motion*, p. 75; Amnesty International, *Afghanistan: Taliban Must Immediately Stop Arbitrary Arrests*, p. 1; Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises*, pp. 31-32; HRW, *Afghanistan: Women Protesters Detail Taliban Abuse*.

<sup>200</sup> Twitter, Antonio Guterres @antonioguterres, 10 February 2022, “I am increasingly concerned about the well-being of missing women activists in Afghanistan. Several have ‘disappeared,’ some not heard from in weeks. I strongly urge the Taliban to ensure their safety so that they can return home.” (<https://twitter.com/antonioguterres/status/1491608359673368579?lang=en>).

<sup>201</sup> Amnesty International, *Death in Slow Motion*, p. 75; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>202</sup> Amnesty International, *Death in Slow Motion*, p. 75; HRW, *Afghanistan, Women Protesters Detail Taliban Abuse*.

<sup>203</sup> Amnesty International, *The Denial of Human Rights to Women and Girls by the Taliban*, p.5; OHCHR, *Press briefing notes on Afghanistan*, 8 February 2022 (<https://www.ohchr.org/en/press-briefing-notes/2022/02/press-briefing-notes-afghanistan-0>).

members, until their release on 13 February 2022.<sup>204</sup> In February 2022, some 20 women's rights activists were abducted by the Taliban in connection with their participation in peaceful protests, and forcibly disappeared.<sup>205</sup> Alia Azizi, a senior prison official in Herat, has been missing since October 2021 after reporting for work. The last known person she spoke with was a member of the Taliban and head of the Herat Prison.<sup>206</sup> Her family and civil society organizations, including Amnesty International, have alleged that Azizi was forcibly disappeared and have repeatedly asked Taliban leaders to reveal her whereabouts.<sup>207</sup>

Such examples align with the elements of the definition of enforced disappearance under the Rome Statute, namely arrest, detention and abduction of individuals by a political organization – the Taliban – coupled with failure or refusal by the Taliban to acknowledge the deprivation of their liberty or to provide information on their whereabouts. These circumstances, together with the fact that women protesters and those critical of the Taliban are continually facing arbitrary arrests, enforced disappearances and unlawful detention, support the conclusion that there is a reasonable basis to believe that the perpetrators acted with the specific intent of removing these women from the protection of the law for a prolonged period.

The Taliban has adopted a similar approach to harass and attack people who hold views perceived to be in opposition to the views of the Taliban. Former members of the ANDSF, governmental officials, NRF members, individuals belonging to some ethnic minorities, journalists and human rights defenders have also reportedly been subjected to enforced disappearance.<sup>208</sup>

#### **d. Gender persecution**

Available evidence suggests that women and girls in Afghanistan are subjected to persecution on the basis of gender as a crime against humanity. Under Articles 7(1)(h) and 7(2)(g) of the Rome Statute, persecution is defined as:

1. the intentional and severe deprivation of fundamental rights contrary to international law;
2. against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
3. by reason of the identity of the group or collectivity; and
4. in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.<sup>209</sup>

The available information indicates that the restrictions the Taliban has imposed on women and girls constitute severe deprivations of human rights that, taken together with the previously described acts of imprisonment, torture and/or enforced disappearance could amount to the crime against humanity of persecution. The Taliban commits these acts targeting the victims,

<sup>204</sup> Amnesty International, Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests, p. 2. OHCHR, Press briefing notes on Afghanistan, 8 February 2022.

<sup>205</sup> Amnesty International, Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests, p. 1.

<sup>206</sup> Amnesty International, The Denial of Human Rights to Women and Girls by the Taliban; Amnesty International, Afghanistan, Taliban Must Immediately Stop Arbitrary Arrests, p. 2.

<sup>207</sup> Amnesty International, Afghanistan, Taliban authorities must reveal Alia Azizi's whereabouts, 21 January 2022 (<https://www.amnesty.org/en/latest/news/2022/01/afghanistan-taliban-authorities-must-reveal-alia-azizis-whereabouts/>); Human Rights Watch, Afghanistan, Herat Women's Prison Head Missing 6 Months, 20 April 2022 (<https://www.hrw.org/news/2022/04/20/afghanistan-herat-womens-prison-head-missing-6-months>).

<sup>208</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 51-54, 58-62, 64-65, 78; 15 June 2022, UN Secretary-General Report, paras. 33, 36-37; 14 September 2022 UN Secretary-General Report, paras. 28, 33, 62; UNAMA, Human Rights in Afghanistan: 15 August 2021 to 15 June 2022, pp. 14-17.

<sup>209</sup> *Ongwen* Trial Judgment, para. 2733-2738; *Ntaganda* Trial Judgment, paras. 988, 991-994, 1009-1011, 1023-1024. For the elements of the crime against humanity of persecution, see ICC The Elements of Crimes <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

Afghan women and girls, because of their gender.<sup>210</sup> These conclusions are in line with the 25 November 2022 statement of the UN Special Rapporteur on the situation of human rights in Afghanistan that the human rights violations and restrictions targeting women and girls may amount to gender persecution, a crime against humanity.<sup>211</sup> Accordingly, as detailed below, the weight of the evidence suggests that persecution as a crime against humanity appear to be met in the present case.

**1. The perpetrator severely deprived one or more persons of human rights in violation of fundamental rules of international law.** Human rights guarantees relating to non-discrimination and gender are set out in all nine principal international human rights treaties and their optional protocols and in many declarative instruments, including the following:

- the UDHR
- the ICCPR
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Rights of the Child (CRC)

Other human rights instruments and international humanitarian law treaties also guarantee these rights.<sup>212</sup> According to ICC jurisprudence, severe deprivation of “fundamental rights” includes, at minimum, such violations as those to the right to life,<sup>213</sup> the right to personal liberty,<sup>214</sup> the prohibition of slavery or servitude,<sup>215</sup> the prohibition of torture or cruel treatment and inhuman or degrading treatment,<sup>216</sup> the right to private property,<sup>217</sup> the right to liberty and freedom of movement,<sup>218</sup> the right to freedom of expression and assembly<sup>219</sup> and the right to education.<sup>220</sup>

The severity of the human rights violation is assessed case by case and considers the context and cumulative effect of the relevant acts and conduct.<sup>221</sup> Importantly, acts of persecution are not confined to the underlying acts contained in by Article 7(1). They may not necessarily require the use of physical violence; relevant elements of the crime may be met with the infringement of individual freedoms or the destruction or seizure of property.<sup>222</sup>

The discriminatory restrictions the Taliban has imposed on women and girls amount to violations of human rights guaranteed in numerous treaties, including the ICCPR, ICESCR, the CEDAW and the CRC.

<sup>210</sup> See ICC, OTP Policy on the Crime of Gender Persecution, paras. 91 (“Thus, gender persecution may be evidenced, inter alia, when: i. Acts or crimes are committed as punishments for deviating from gender criteria imposed by the perpetrators. For example, women or girls who violate dress regulations by not wearing gloves at the market, could be met with corporal punishment. [...] ii. Acts or crimes evidence the perpetrators’ effort to show their ability to enforce gender regulations.”), 95 (“Types of evidence of discriminatory intent can include the acts or statements of the direct perpetrators, legislation, policies or regulations promulgated by the perpetrator group or other authorities”).

<sup>211</sup> OHCHR, Afghanistan: Latest Taliban treatment of women and girls may be crime against humanity, say UN experts, 25 November 2022 (<https://www.ohchr.org/en/statements/2022/11/afghanistan-latest-taliban-treatment-women-and-girls-may-be-crime-against>).

<sup>212</sup> ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Judgment, 8 July 2019 (*Ntaganda* Trial Judgment), para. 991; *Al Hassan* Confirmation Decision, para. 664. ICC, Office of the Prosecution, Policy on the Crime of Gender Persecution, 7 December 2022 (ICC, OTP Policy on the Crime of Gender Persecution), para. 37. Persecution may cover violations of derogable and non-derogable rights. See *Al Hassan* Confirmation Decision, para. 664; ICC, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/ Republic of the Union of Myanmar, 14 November 2019, para. 101.

<sup>213</sup> *Ntaganda* Trial Judgment, para. 991; *Ongwen* Trial Judgment, para. 2733; *Al Hassan* Confirmation Decision, para. 664; Burundi Article 15 Authorization Decision, para. 132.

<sup>214</sup> *Ntaganda* Trial Judgment, para.991; *Al Hassan* Confirmation Decision, para. 664.

<sup>215</sup> *Ntaganda* Trial Judgment, para.991; *Ongwen* Trial Judgment, para. 2733; *Al Hassan* Confirmation Decision, para. 664; Burundi Article 15 Authorization Decision, para. 132.

<sup>216</sup> *Ntaganda* Trial Judgment, para.991; *Ongwen* Trial Judgement, para. 2733; *Al Hassan* Confirmation Decision, para. 664; Burundi Article 15 Authorization Decision, para. 132.

<sup>217</sup> *Ntaganda* Trial Judgment, para.991; *Ongwen* Trial Judgement, para. 2733; *Al Hassan* Confirmation Decision, para. 664; Burundi Article 15 Authorization Decision, para. 132.

<sup>218</sup> *Ntaganda* Trial Judgment, para. 991; *Al Hassan* Confirmation Decision, para. 664.

<sup>219</sup> *Ntaganda* Trial Judgment, para. 991; *Al Hassan* Confirmation Decision, para. 664; Burundi Article 15 Authorization Decision, para. 132.

<sup>220</sup> *Al Hassan* Confirmation Decision, para. 664.

<sup>221</sup> *Ntaganda* Trial Judgment, para. 992.

<sup>222</sup> *Al Hassan* Confirmation Decision, para. 668.

The imposition of the *mahram* requirements and the limitation on the possibility for women to obtain a driving licence, travel abroad and access parks and other public places constitute a clear infringement of freedom of movement stipulated under Article 12(1) of the ICCPR.<sup>223</sup> Additionally, such general restrictions have a broader impact, negatively affecting women's rights to health, work and education,<sup>224</sup> and violating the prohibition of discrimination under Articles 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR.<sup>225</sup> UN authorities, including the High Commissioner for Human Rights and the Human Rights Council's Special Rapporteur on the situation of human rights in Afghanistan, have supported these conclusions, having found that such discriminatory policies negatively affect women's human rights.<sup>226</sup> The Committee on the Elimination of Discrimination against Women also found the Taliban's imposition of the *mahram* and other restrictions to the freedom of movement to be inconsistent with the principle of equality established under Articles 2(f) and 5(a) of the CEDAW.<sup>227</sup>

Likewise, restrictions on women's and girls' access to education beyond the primary level<sup>228</sup> are inconsistent with the right to education as reflected in the CRC, the ICESCR and the CEDAW.<sup>229</sup> Specifically, the de facto ban on women and girls obtaining education beyond primary school is in direct contravention of the general obligations under the CRC, which requires states to ensure access to educational systems (Article 28) and prohibits any discrimination on the basis of gender (Article 2).<sup>230</sup> Discrimination based on gender as it relates to access to the secondary and university level is also in direct breach of Article 10 of the CEDAW and Articles 13(2)(b) and (c) of the ICESCR, which require states to make secondary and higher education equally accessible to all,<sup>231</sup> including with respect to curricula.<sup>232</sup> In its first report, the UN Special Rapporteur on the situation of human rights in Afghanistan reached similar conclusions.<sup>233</sup>

<sup>223</sup> Article 12(1) of the ICCPR (“[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”). See Amnesty International, *Death in Slow Motion*, p. 81.

<sup>224</sup> Amnesty International, *Death in Slow Motion*, p. 81.

<sup>225</sup> Amnesty International, *Death in Slow Motion*, p. 81.

<sup>226</sup> Human Rights Council, *Situation of Human Rights in Afghanistan*, A/HRC/49/24, Report of the United Nations High Commissioner for Human Rights, 4 March 2022, paras. 2, 36-39; 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 24, 97(c).

<sup>227</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/SAU/CO/2, 8 April 2008, Concluding comments of the Committee on the Elimination of Discrimination against Women, Saudi Arabia, paras. 15-16.

<sup>228</sup> See above, Section IV.B.2.

<sup>229</sup> Amnesty International, *Death in Slow Motion*, pp. 79-80.

<sup>230</sup> Committee on the Rights of the Child, General Comment No. 1: The Aims of Education, UN Doc CRC/GC/2001/1, 17 April 2001, paras. 9-10.

<sup>231</sup> Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), UN Doc E/C.12/1999/10, 8 December 1999 (CESCR General Comment No. 13), paras. 6(b), 11-13, 17-19.

<sup>232</sup> See Article 10 of CEDAW (“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: [...] Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality”). According to CESCR General Comment No. 13, while Article 13 of the ICESCR does not make reference to “gender equality”, this is implicit in, and reflects a contemporary interpretation of, Article 13. CESCR General Comment No. 13, para. 5 (“The Committee notes that since the General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that States parties are required to ensure that education conforms to the aims and objectives identified in article 13 (1), as interpreted in the light of the World Declaration on Education for All (Jomtien, Thailand, 1990) (art. 1), the Convention on the Rights of the Child (art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para. 80) and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2). *While all these texts closely correspond to article 13 (1) of the Covenant, they also include elements which are not expressly provided for in article 13 (1), such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of article 13 (1). The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world*”) (emphasis added).

<sup>233</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 26-29 (“legislation discriminating against individuals or groups on any prohibited ground, including sex, in the field of education violates article 10 of the Convention on the Elimination of All Forms of Discrimination against Women and article 13 of the International Covenant on Economic, Social and Cultural Rights, by which the de facto authorities are bound”). See also para. 66 (“The imposition of restrictive gender norms, practices and formal limitations has had serious adverse impacts on the rights of women and girls, including the freedom of movement and access to health, education, adequate standards of living and social protection. Former laws and institutions for the advancement of gender equality and women's rights have been dismantled, leaving women and girls, particularly more vulnerable. The participation of women in political and economic life has been largely curtailed.”).



In addition to the countrywide ban of women and girls working with NGOs except in sectors such as healthcare, Taliban policies aimed at restricting women's ability to work in both the public and private sectors further undermine their right to work and to equal access to public services. These policies violate the international law principle of non-discrimination.<sup>234</sup> As noted above,<sup>235</sup> in the public sector women workers have been directed to stay at home and/or have been replaced by male family members. A glaring example of this practice concerns the exclusion of women from the justice sector, including women judges, prosecutors and lawyers.<sup>236</sup> Such restrictions violate Articles 2 and 6 of the ICESCR and Article 11(a) of the CEDAW prohibiting the denial of access to work based on, among other things, sex or gender.<sup>237</sup>

In addition, the exclusion of women from aspects of public life such as civil service, senior government positions and the cabinet further amounts to a violation of:

- Articles 7 (b)-(c) and 8 of the CEDAW, which oblige states to eliminate discrimination in political and public life and in the representation of the government; and
- Article 25(a) and (c) of the ICCPR providing for the rights to conduct public affairs and to have access to public service on general terms of equality.

In addition, to the extent that the imposition of *mahram* and clothing restrictions also negatively affects women's general ability to likewise access the private working sector,<sup>238</sup> the restrictions violate Articles 2 and 6 of the ICESCR and Article 11(a) of the CEDAW.

The Taliban's litany of abuses and ill-treatment of women during peaceful demonstrations clearly violate Articles 19, 21 and 22 of the ICCPR, which guarantee freedom of expression and information, association and peaceful assembly.<sup>239</sup> As noted above, women participating in demonstrations against the de facto authorities are systematically subjected to harassment, beatings and shocks from electroshock weapons solely for participating in the protests.<sup>240</sup> The clothing restrictions<sup>241</sup> also appear to violate the right to privacy under Article 17 of the ICCPR.<sup>242</sup>

<sup>234</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 37-38; Amnesty International, *Death in Slow Motion*, p. 81.

<sup>235</sup> See above, Section IV.B.3.

<sup>236</sup> See above, Section IV.B.3.

<sup>237</sup> With respect to ICESCR's obligations, see, for instance, Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18, 24 November 2005, UN Doc E/C.12/GC/186, para. 33 ("Violations of the obligation to respect the right to work include laws, policies and actions that contravene the standards laid down in article 6 of the Covenant. In particular, any discrimination in access to the labour market or to means and entitlements for obtaining employment on the grounds of race, color, sex, language, age, religion, political or other opinion, national or social origin, property, birth or any other situation with the aim of impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. The principle of non-discrimination mentioned in article 2, paragraph 2, of the Covenant is immediately applicable and is neither subject to progressive implementation nor dependent on available resources. It is directly applicable to all aspects of the right to work. The failure of States parties to take into account their legal obligations regarding the right to work when entering into bilateral or multilateral agreements with other States, international organizations and other entities such as multinational entities constitutes a violation of their obligation to respect the right to work."). Importantly, under the ICESCR retrogressive measures in relation to the right to work qualify as a direct violation of the convention. See also para. 34 of that instrument. With respect to CEDAW, see Article 11(a) ("States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings"). In addition, the Taliban's restrictions vis-à-vis access to work is inconsistent with Article 26 of the ICCPR which prohibits any discrimination based on "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

<sup>238</sup> See above, Section IV.B.1.

<sup>239</sup> Amnesty International, *Death in Slow Motion*, p. 82.

<sup>240</sup> See above, Section IV.C.

<sup>241</sup> See above, Section IV.B.1.b.

<sup>242</sup> See for instance, Amnesty International, *Death in Slow Motion*, p. 82; Amnesty International, *Women's Right to Choose Their Dress, Free of Coercion*, statement submitted to the 55th session of the UN Commission on the Status of Women, 22 February 2011, ([https://www.amnesty.nl/content/uploads/2017/02/womens\\_right\\_to\\_dress\\_boerkaverbod\\_3.pdf?x68187](https://www.amnesty.nl/content/uploads/2017/02/womens_right_to_dress_boerkaverbod_3.pdf?x68187)).

Moreover, none of these restrictions are or can be justified under the applicable human rights instruments. For instance, while certain ICCPR rights, including the freedoms of expression, movement, association and peaceful assembly, may be subject to limitations, this can occur only in narrow circumstances and for specified legitimate purposes.<sup>243</sup> Permissible limitations to these guarantees may apply in relation to grounds of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.<sup>244</sup> Any restrictive measure must be provided for in law and meet the conditions of legality.<sup>245</sup> They must be strictly necessary to meet the legitimate purpose and proportionate in reach, meaning they must be the least restrictive means of achieving the objective.<sup>246</sup> In the present case, it is clear that the restrictions on movement imposed on women and girls, as well as the use of force, intimidation and harassment during peaceful protests, meet none of these conditions.<sup>247</sup> They serve no legitimate purpose and are discriminatory in nature, are not provided for in law and are unnecessary for and disproportionate to any legitimate objective.

Beyond the above, the acts amounting to arbitrary detention, enforced disappearances, torture and other ill-treatment that women endured in connection to alleged so-called “moral offenses” or because of their participation in protests against the Taliban<sup>248</sup> – as addressed above and below separately – qualify as serious violations of one or more human rights protected in various international instruments. These including Articles 7 and 10 of the ICCPR; Articles 1, 2 and 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); and Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).<sup>249</sup>

Individually or as a whole, the restrictions imposed by the Taliban against women qualify as severe violations of human rights. Under the relevant case law of the ICC and other international tribunals, similar violations of the rights to freedom of movement, to education, to work and to peaceful assembly have previously been qualified as acts of persecution.<sup>250</sup> Likewise, the Nuremberg Tribunal concluded that restrictions on movement to certain places,<sup>251</sup> as well as exclusion from certain professions, imposed against a group could amount to persecution.<sup>252</sup>

<sup>243</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011 (General Comment No. 34), paras. 21-36; Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, 17 September 2020 (General Comment No. 37), paras. 36-69; Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, 2 November 1999 (General Comment No. 12), paras. 11-18.

<sup>244</sup> General Comment No. 34, paras. 21, 23, 28, 29-32; General Comment No. 37, paras. 36, 41-59; General Comment No. 12), para. 11.

<sup>245</sup> General Comment No. 34, paras. 24-27; General Comment No. 37, paras. 36, 39; General Comment No. 12, paras. 12-13, 16.

<sup>246</sup> General Comment No. 34, paras. 22, 33-35; General Comment No. 37, paras. 36-38, 40, 69; General Comment No. 12, paras. 14-16, 18.

<sup>247</sup> Amnesty International, *Death in Slow Motion*, pp. 81-82.

<sup>248</sup> See above, Section IV.C.

<sup>249</sup> Amnesty International, *Death in Slow Motion*, pp. 84-86.

<sup>250</sup> *Al Hassan* Confirmation Decision, paras. 683, 685. For instance, in the *Al Hassan* case, Pre-Trial Chamber I found that analogous restrictions fit within the category of severe violations of human rights within the meaning of Article 7(1)(h), namely the prohibition of mixed classes, closure of public schools providing non-religious education, imposition of religious-based education, prohibition of public assemblies, and the prohibition of movement to circulate freely. *Al Hassan* Confirmation Decision, paras. 683, 685. In addition, in the *Al Hassan* case, the ICC prosecutor argues that clothing restrictions fall within the notion of persecutory acts. See ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-819-Red, Prosecution Trial Brief, Annex A to the Public redacted version of “Submission of Prosecution Trial Brief”, 13 July 2020, para.286 p. 117 (“Control of other individual freedoms: [...] Dress code: women had to wear a veil, gloves, and socks”). See also ICC, OTP Policy on the Crime of Gender Persecution, para. 24 (“Gender persecution severely deprives a person or persons of the fundamental right to be free from discrimination in connection with other fundamental rights deprivations, contrary to international law. For example, it may deprive a person of the right: to life; to be free from torture or other inhumane or degrading treatment or punishment; to be free from slavery or the slave trade, servitude and retroactive application of penal law; to freedom of assembly, opinion, expression, movement and religion, including the right to be free from religion; rights to equality, dignity, bodily integrity, family, privacy, security, education, employment, property, political or cultural participation, to access to justice or health care. Human rights violations can constitute a severe deprivation of fundamental rights on their own or when considered cumulatively. The deprivation of fundamental rights may be enforced by means of violence or destruction, or occur via the imposition of regulations that can impact persons in every aspect of life. This may include, for example, their reproductive and family options, who they can marry, whether they can attend school, where they can work, how they can dress and whether they are simply allowed to exist.”)

<sup>251</sup> *International Military Tribunal*, Judgment and Sentences, 1 October 1946 (Nuremberg Judgment), p.76.

<sup>252</sup> Nuremberg Judgment, pp. 76, 119.



This conclusion is further strengthened when such discriminatory measures are considered from a holistic and dynamic perspective. The Nuremberg Tribunal established that the exclusion of members of a group from national life falls within the definition of the crime of persecution.<sup>253</sup> While there may be differences in enforcement in some places at a local level, the Taliban has essentially put in place a framework of restrictions meant to impose obligations on women and girls across the country relating to most of their daily activities, marginalizing them across the country. Women have been excluded from political functions and from most previous jobs in the public and civil sector; their access to university education has been greatly limited. In addition, women's and girls' exclusion from education beyond primary schools will prevent them from continuing their studies at the university level, further restricting their professional opportunities. With the recommendation to stay home unless going out is strictly necessary, their movements and outdoor activities are severely limited. Girls' and women's freedom to choose what to wear in public is being violated by the Taliban's strict dress codes.<sup>254</sup> Any form of dissent against such policies through protest or demonstration is quelled by force. Taken as a whole, these measures reflect a policy of segregation aimed at obliterating women's role in the public space. The weight of the evidence thus suggests that such impositions satisfy the elements of gender persecution under the Rome Statute.

**2 & 3. Women and girls have been targeted because of their gender.** In terms of subjective element, the persecution act must be carried out with the specific intent to discriminate against the targeted persons on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.<sup>255</sup> Thus, the perpetrator must have targeted the person or persons because of their identity as a member of a group or collectivity or targeted the group or collectivity as such.<sup>256</sup> With specific reference to gender persecution, the ICC Statute defines the term "gender" as "the two sexes, male and female, within the context of society."<sup>257</sup> Differently from the term sex that refers to physical and biological features of females and males, *gender* has been used to indicate observed differences between women and men based on socially assigned roles.<sup>258</sup>

It is clear from the evidence that women and girls have been targeted based on their gender as defined in Article 7(3) of the Rome Statute. All of the aforementioned severe violations of fundamental human rights stemmed from policies that explicitly identify women as the group targeted by such limitations and restrictions.

The circumstances surrounding the acts of persecution under discussion indicate that the alleged perpetrators, as part of the Taliban leadership, acted with the specific intent to target Afghan women and girls on the basis of their gender. The restrictions against women and girls clearly target them, violating their human rights, including the right to public participation, given their general exclusion from participation in society and their right to equality and non-discrimination

<sup>253</sup> Nuremberg Judgment, pp. 76, 119. ICC, OTP Policy on the Crime of Gender Persecution, para. 91; see also para. 24.

<sup>254</sup> See above, Section IV.

<sup>255</sup> *Ntaganda* Trial Judgment, para. 1009; *Ongwen* Trial Judgment, para. 2739; *Al Hassan* Confirmation Decision, para. 671.

<sup>256</sup> *Al Hassan* Confirmation Decision, para. 668. This intent may be inferred from the general behaviour of the perpetrator as well as the circumstances surrounding the commission of the crime. *Ongwen* Trial Judgment, para. 2739; *Al Hassan* Confirmation Decision, para. 671.

<sup>257</sup> In general terms, the targeted group can be defined both in a positive or a negative manner (i.e., the members of the group are targeted for being part of the group as such or because they did not belong to a certain collectivity). In addition, according to the *Ongwen* Trial Judgment, "the subjective perception of belonging of both the perpetrator and the victim" is a subjective element that can be used to assess the alleged status of a collectivity as a protected group, together with particular political, social, and cultural features. *Ongwen* Trial Judgment, para. 2736.

<sup>258</sup> UN, Report of the Secretary-General, A/51/322, Implementation of the Outcome of the 4th World Conference on Women, 3 September 1996, para. 9. The ICC Office of the Prosecutor appears to have taken a similar approach as it defined "gender-based crimes" as those "committed against persons, whether male or female, because of their sex and/or socially constructed gender roles". ICC, Office of the Prosecutor, Policy Paper on Sexual and Gender-Based Crimes, June 2014, para. 3.

because of their gender. The discriminatory nature of such policies is unquestionable. The specific intent to target Afghan women and girls on the basis of gender is further evidenced by the banning of women and girls from education beyond the primary level, by the dissolution of the institutional framework of support for survivors of gender-based violence established in 2009 by the EVAW Law. The bans on women attending university and working for UN Offices and NGOs also provide evidence of gender discrimination, as does the requirement that women travel with a *mahram*.<sup>259</sup>

At the same time, women and girls who protested or otherwise voiced their dissent against the Taliban's abusive and restrictive policies faced imprisonment, torture and enforced disappearance. These acts are strictly correlated to Taliban policies – the acts are fundamental to ensuring women's and girls' compliance with the policies. Violence is also applied to quell possible real or perceived dissent or critical opinions and expressions, including through protests and other manifestations. Women are the main, if not the sole, target of these violent acts.<sup>260</sup> Against this background, the available information supports the conclusion that these underlying acts were directed at women and girls *because they are women and girls*.<sup>261</sup>

**4. The conduct was committed in connection with other underlying acts under Article 7(1) of the Statute.** To constitute crimes against humanity, the acts of persecution must be committed in connection with any act referred to in Article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.<sup>262</sup> There is a clear link between the severe violations of human rights stemming from the Taliban's policies and restrictions against women and other international crimes falling within the jurisdiction of the Court, in particular imprisonment – Article 7(1); torture – Article 7(1)(f) and enforced disappearances – Article 7(1)(i), as crimes against humanity. These crimes are instrumental in enforcing the limitations and restrictions imposed on women and girls as well as in suppressing any form of opposition against Taliban policies, including protests and demonstrations.<sup>263</sup> The evidence of the correlation between such underlying acts and the Taliban's directives against women suggests that the connection element required by Article 7(1)(h) of the Rome Statute is met.

<sup>259</sup> See above, Section IV B.1.a.; Section IV.B.2.; Section IV.B.3.

<sup>260</sup> Cf. ICC, OTP Policy on the Crime of Gender Persecution, para. 50 (“Discriminatory intent may be evidenced in the disproportionate use of a persecutory act against one group based on gender. Or it may be evidenced through the use of the same persecutory act committed against multiple groups based on gender.”).

<sup>261</sup> ICTY, *Prosecutor v. Blaskic*, IT-95-14-T, Judgment, 3 March 2000, para. 235 (“It is the specific intent to cause injury to a human being because he belongs to a particular community or group, rather than the means employed to achieve it, that bestows on it its individual nature and gravity and which justifies its being able to constitute criminal acts which might appear in themselves not to infringe directly upon the most elementary rights of a human being, for example, attacks on property. In other words, the perpetrator of the acts of persecution does not initially target the individual but rather membership in a specific racial, religious or political group.”) (footnotes omitted).

<sup>262</sup> *Ongwen* Trial Judgment, para. 2739; *Ntaganda* Trial Judgment, para. 1023; *Al Hassan* Confirmation Decision, para. 669; Burundi Article 15 Authorization Decision, para. 131.

<sup>263</sup> See above, Section IV.C.

## FORCED MARRIAGE AS AN INHUMANE ACT

Women and girls in Afghanistan may also be subject to inhumane acts in the form of forced marriage.<sup>264</sup> Listed in Article 7(1)(k) of the Rome Statute, “other inhumane acts” is a residual category of crimes against humanity.<sup>265</sup> Such acts include those (1) that result in great suffering, or serious injury to the body or to mental or physical health, by means of an inhumane act, and (2) of a nature and gravity similar to the other underlying acts enumerated in Article 7(1).<sup>266</sup>

ICC jurisprudence has clarified that other inhumane acts encompass acts that amount to serious violations of “fundamental” human rights under customary international law.<sup>267</sup> Following this principle, the ICC<sup>268</sup> and other international criminal courts and tribunals<sup>269</sup> have found that the act of forced marriage, when committed as part of a widespread or systematic attacks against a civilian population fulfils the elements of other inhumane acts as a crime against humanity. In reaching this conclusion, the ICC Appeals Chamber, in the *Ongwen* case, observed that forced marriage:

- amounts to a violation of a “fundamental right” “to enter a marriage only with the free and full consent of another person”<sup>270</sup>;
- reflects the imposition on the victim of duty associated with the marriage, including in terms of exclusivity of the conjugal union imposed on the victim, and the consequent social stigma, which has a serious impact on the victim’s bodily and mental condition<sup>271</sup>; and
- “is not necessarily sexual in nature but entails a “gendered harm”, which is essentially the imposition on the victim of socially constructed gendered expectations and roles attached to ‘wife’ or ‘husband’.”<sup>272</sup>

As noted, despite the 3 December 2021 Special Decree of the de facto authorities banning forced marriages, Amnesty International, as well as UN and civil society reports, identified a number of instances in which Taliban elements as de facto authorities were implicated in such offences.<sup>273</sup> Regular allegations suggest that Taliban elements (including high-ranking members) are using their position of influence or power to marry women and girls against their will.<sup>274</sup> As Amnesty International has documented, in some instances women and girls have been forced to marry Taliban members in order to be released from detention.<sup>275</sup> Amnesty also reported the case of a 15-year-old girl being forced to marry a Taliban member despite her family’s opposition, and the case of a 33-year-old journalist and social activist being forced to marry a Taliban commander despite her own and her family’s opposition.<sup>276</sup> These instances of forced marriages should be investigated further to determine whether they form part of the broader attack on women and girls rights in Afghanistan.

<sup>264</sup> See above, Section IV.E.

<sup>265</sup> ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15-2022-Red, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, 15 December 2022 (*Ongwen* Appeal Judgment), para. 1017; *Ongwen* Trial Judgment, para. 2745.

<sup>266</sup> *Ongwen* Appeal Judgment, para. 1018; *Ongwen* Trial Judgment, paras. 2743, 2747, referring to ICC Elements of Crimes, Article 7(1)(k).

<sup>267</sup> ICC, *The Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, 30 September 2008, para. 448; *Ongwen* Trial Judgment, para. 2748; *Ongwen* Appeal Judgment, para. 2021 ICC, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, ICC-RoC46(3)-01/18-37, 6 September 2018, para. 77. The identification of the conduct as a human rights violation is a starting point to assess whether conduct can fall within the parameters of Article 7(1)(k). See C.K. Hall and C. Stahn, “Article 7(1)(k): other inhumane acts”, in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, 3rd Ed. (München/Oxford/Baden: C.H. Beck/Hart/Nomos, 2016), p. 238.

<sup>268</sup> *Ongwen* Appeal Judgment, para. 1024 (“The Appeals Chamber therefore considers that forced marriage describes a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment”); *Ongwen* Trial Judgment, paras. 2748-2753.

<sup>269</sup> See, e.g., ECCC, *Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007-ECCC/TC, Judgment, 16 November 2018, paras. 740-749; SCSL, *Prosecutor v. Alex Tamba Brima et al.*, SCSL-2004-16-A, Judgment, 22 February 2008, paras. 197-201.

<sup>270</sup> *Ongwen* Appeal Judgment, paras 1021, 1682; *Ongwen* Trial Judgment, para. 2748.

<sup>271</sup> *Ongwen* Appeal Judgment, paras 1022-1023, 1028, 1682; *Ongwen* Trial Judgment, para. 2748.

<sup>272</sup> *Ongwen* Appeal Judgment, paras 1682

<sup>273</sup> See above, Section IV.E.

<sup>274</sup> See above, Section IV.E.

<sup>275</sup> See above, Section IV.E].

<sup>276</sup> Amnesty International, *Death in Slow Motion*, pp. 54, 65-66.

## 2. The attack was widespread or systematic

An attack can be characterized as “widespread” in light of its large-scale nature and the number of targeted persons.<sup>277</sup> Systematicity reflects the organized and repeated nature – with the Taliban now Afghanistan’s de facto authorities – of the acts of violence, or the existence of a pattern of crimes and the improbability of their random occurrence.<sup>278</sup>

In the present case, the evidence indicates that the attack has been committed by the Taliban on a perpetual, widespread and systematic basis and in its capacity of a de facto authority. For instance, the persecution against women and girls has been implemented across the country, affecting the majority of women and girls in Afghanistan. This persecution has been implemented by the Taliban through a series of national and/or local restrictions aimed at infringing on the human rights of girls and women. The practical implementation of such policies can vary given the diversity and volatile situation in the country – particularly in rural Afghanistan, owing to people’s reliance on traditional work such as farming and with less direct Taliban surveillance. This situation has changed and intensified as the Taliban have tightened their grip on power. As local media have reported on occasions local Taliban officials have tried to introduce additional restrictions against women and girls at the local levels in Afghanistan. For instance, once the Taliban authorities in Herat, who initially banned women and men eating together at restaurants, but then reversed this policy.<sup>279</sup> However, these impositions have been framed directly by Taliban leadership and have a common denominator: to discriminate against women and girls.

The same can be said for the acts of imprisonment, enforced disappearance and torture that have been used to quell any form of dissent against the restrictions on the rights of women and girls. To the extent that these acts are connected to, and used to implement, the Taliban’s persecution against women and girls by the Taliban, they fall within the attack also in terms of its systematic nature.

In addition, available information concerning the manner in which the alleged crimes are committed evinces not only their organized nature but also that the Taliban are committing them in the capacity of de facto authorities using national state resources. This is particularly apparent with respect to the violence and offences committed in response or connection to peaceful demonstrations against the de facto authorities. The regular use of unnecessary, disproportionate or indiscriminate force against women protesters; subsequent raids, arrests or abductions of the individuals involved<sup>280</sup>; and arbitrary detention and torture to obtain “confessions” and other information or acquiescence from the victims all form part of a pattern of coordinated criminal conduct, indicating the systematic character of the attacks the Taliban has carried out.

Further, the similarities between this pattern of conduct and the conduct used against other individuals also perceived as non-aligned with the Taliban leadership, who have likewise been subjected to arbitrary arrests and detention, enforced disappearance and torture,<sup>281</sup> reinforce the conclusion regarding the systematic nature of the attack.

The same applies to the other underlying acts, including imprisonment, torture and enforced disappearances of women and girls dissenting against the Taliban’s discriminatory and abusive policies. Rather than being sporadic and isolated, such acts appear to follow a clear pattern of

<sup>277</sup> *Ongwen* Trial Judgment, para. 2681; *Ntaganda* Trial Judgment, para. 691; *Katanga* Trial Judgment, para. 1123.

<sup>278</sup> *Ongwen* Trial Judgment, para. 2682; *Ntaganda* Trial Judgment, para. 692; *Katanga* Trial Judgment, para. 1123.

<sup>279</sup> Radio Azadi, “The new restrictions of the Taliban in heart: Men and women should not eat together in a restaurant,” 13 May 2022. <https://da.azadiradio.com/a/31847389.html>; VOA, “Families in Herat are allowed to eat together in a restaurant,” 14 May 2022. <https://www.darivoa.com/a/families-in-herat-are-allowed-to-eat-at-your-restaurant/6571544.html>

<sup>280</sup> See above, Section IV.C.

<sup>281</sup> See above, Section IV.D.

behaviour in which the Taliban continue to arbitrarily arrest, forcibly disappear and unlawfully detain women and girls who dissent. People are targeted because of their participation in the protests and arrested or abducted in the following days or months. While in detention they are subjected to torture and other ill-treatment and forced to sign “confessions” or agreements in which they commit to not protesting again.<sup>282</sup> The information gathered reveals clear common features of the relevant acts as well as their systematic character.

### 3. The conduct is part of an attack directed against a civilian population

There is a reasonable basis to believe that the underlying acts described above – namely, continued imprisonment, torture, enforced disappearances, persecution on the grounds of gender and – form part of an attack directed against a civilian population. Under Article 7(2)(a) of the ICC Statute, “attack” consists of a “course of conduct involving the multiple commission of acts referred to in [Article 7(1)]”.<sup>283</sup> To prove the existence of the course of conduct, it must be demonstrated that the acts were not “a mere aggregate of random or isolated acts”, but rather show a series or pattern of behaviour, namely a series or overall flow of events.<sup>284</sup> The acts must have common features and characteristics.

As described above, the denial of human rights and the acts of violence by the Taliban have been inflicted in an organized, widespread, and repeated manner. These acts involve the same category of perpetrators: the Taliban de facto authorities, including their political and security leaders and operatives. The acts have targeted the same category of people, namely women and girls, and/or people who have dissented, or are perceived to have dissented against, the Taliban's abusive policies. Both the restrictions which violate the rights of women and girls as well as the widespread use of imprisonment, torture and enforced disappearances constitute a pattern of behaviour amounting to an “attack” as defined in the Rome Statute.

Moreover, the manner in which offences are committed closely mirrors similar conduct and allegations concerning the targeting of Taliban opponents or perceived opponents, including former members of the ANDSF and governmental officials, NRF members, individuals from some ethnic minorities, journalists and human rights defenders. They are all reported to have been subjected to arbitrary imprisonment, torture and enforced disappearance following a method similar to the one used on Afghan women and girls.<sup>285</sup> These common features reflect the existence of a single organized policy or system that acts according to a pattern of behaviour that meets the requirements of an attack as provided under Article 7 of the Statute.

It is also significant that the Taliban had already engaged in similar acts and conduct, including persecution on the basis of gender, before 15 August 2021.<sup>286</sup> In the areas under their control before the takeover, the Taliban imposed similar restrictions against women and girls in terms of the right to education (mostly beyond primary education),<sup>287</sup> work,<sup>288</sup> freedom of movement (the

<sup>282</sup> See above, Section IV.D.

<sup>283</sup> *Ongwen* Trial Judgment, para. 2674. The “multiple commission of acts” reflects a quantitative threshold that requires a certain number of acts as part of the course of conduct. See *Ongwen* Trial Judgment, para. 2674; *Ntaganda* Trial Judgment, para. 668; ICC, *The Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to Article 74, 7 March 2014 (*Katanga* Trial Judgment), para. 1104.

<sup>284</sup> *Ongwen* Trial Judgment, para. 2674; *Ntaganda* Trial Judgment, para. 662.

<sup>285</sup> See above, Section IV.D.

<sup>286</sup> See ICC, Situation in the Islamic Republic of Afghanistan, Public redacted version of “Request for authorisation of an investigation pursuant to article 15”, ICC-02/17-7-Conf-Exp, 20 November 2017 (Afghanistan Article 15 Authorization Request), ICC-02/17-7-Red, paras. 115-122; The Netherlands, General Country of Origin Information Report – Afghanistan.

<sup>287</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 79.

<sup>288</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 85.

*mahram* requirement)<sup>289</sup> and dress code.<sup>290</sup> In addition, between 2003 and 2017, the Taliban reportedly targeted and attacked (1) women and girls to prevent them from “studying, teaching, working or participating in public affairs, through intimidation, death threats, abductions and killings”<sup>291</sup>; (2) civilian members of the Afghan government; and (3) more broadly, individuals perceived to oppose the Taliban’s rules and ideology.<sup>292</sup>

The ICC has previously considered these offenses to form part of an attack within the meaning of Article 7(2)(1) of the ICC Statute, under the “reasonable basis to believe” standard.<sup>293</sup> In light of the similarities in the method and in the types of victims and perpetrators, acts committed by Taliban agents after August 2021 represent the mere continuation of the same attacks allegedly conducted before the takeover.

In addition, this course of conduct is directed against a *civilian population*. According to ICC jurisprudence, the decisive element in assessing this requirement is whether “the attack targeted the civilian population”,<sup>294</sup> without any requirement that civilians be “the main aim or object of the relevant acts”.<sup>295</sup> In the present case, the overwhelming majority of the acts are carried out by the Taliban on civilians, including women and girls, former members of the ANDSF and governmental officials, individuals from certain historically targeted ethno-religious minorities, journalists and human rights defenders. In this regard, the fact that these people do not necessarily share common features or identities is irrelevant. The civilian population requirement is not limited to populations defined by common nationality, ethnicity or other similar distinguishing features.<sup>296</sup> It is sufficient, as in the present case, that the individuals targeted by the attack constitute a segment of the population.<sup>297</sup>

#### 4. The attack was committed pursuant to or in furtherance of a state or organizational policy

To amount to crimes against humanity, the underlying acts under Article 7(1)(a)-(k) must have been committed pursuant to or in furtherance of a state or organizational policy. In essence, the function of this requirement is to filter out unconnected crimes by diverse individuals.<sup>298</sup>

<sup>289</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 88-89.

<sup>290</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 83.

<sup>291</sup> Afghanistan Article 15 Authorization Request, paras. 108-122; The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 44-45, 85.

<sup>292</sup> Afghanistan Article 15 Authorization Request, paras. 74, 89-91, 97, 111; The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 48-53.

<sup>293</sup> Compare Afghanistan Article 15 Authorization Request, paras. 74-75 with ICC, Situation in the Islamic Republic of Afghanistan, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, ICC-02/17, 12 April 2019 (Pre-Trial Chamber’s Decision on Afghanistan Article 15 Authorization Request), para. 48. See also ICC, Situation in the Islamic Republic of Afghanistan, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, 5 March 2020 (Appeal’s Decision on Afghanistan Article 15 Authorization Request), para. 54.

<sup>294</sup> ICC, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled “Judgment”, ICC-01/04-02/06 A A2, 30 March 2021, (*Ntaganda* Appeal Judgment), para. 424.

<sup>295</sup> *Ntaganda* Appeal Judgment, para. 424.

<sup>296</sup> ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016, (*Bemba* Trial Judgment), para. 155.

<sup>297</sup> *Bemba* Trial Judgment, para. 155; Situation in the Republic of the Philippines, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, ICC-01/21-12, 15 September 2021, para. 87 (holding that the targeting of “persons allegedly associated with the use and trafficking of illegal drugs” satisfies the civilian population criteria).

<sup>298</sup> Cf. *Ongwen* Trial Judgment, para. 2678; *Bemba* Trial Judgment, para. 161.



The policy element requires the active promotion or encouragement of an attack against the civilian population.<sup>299</sup> While it may consist of a pre-established plan or design,<sup>300</sup> a policy does not need to be formalized.<sup>301</sup>

ICC jurisprudence clarifies that “organization” within the meaning of Article 7(2)(a) means a structure that has sufficient capacities, resources and means to carry out “the course of conduct or the operation involving the multiple commission of acts referred to in Article 7(2)(a) of the Statute”.<sup>302</sup>

Even before its 15 August 2021 takeover, the Taliban and affiliated armed groups had been qualified by the ICC as an organization within the meaning of Article 7 of the Rome Statute.<sup>303</sup> This determination, based on evidence collected before 2017, appears to have been predicated on, among other things:

- the number of individuals “working for them”, at the time estimated at around 80,000–100,000<sup>304</sup>;
- the existence of a structured political and military leadership based across the country<sup>305</sup>;
- the set-up of quasi-judicial services<sup>306</sup>;
- the consistency of the annual income available to the organization and its ability to collect taxes in the areas under its control.<sup>307</sup>

The events that followed the Taliban's takeover in 2021 reinforce the conclusion that the Taliban meet the organizational requirement. Following the offensive, the Taliban became a quasi-state organization, exercising the administrative functions of a public authority with effective territorial and political control across Afghanistan. Taliban leaders set up a “caretaker government” of de facto authorities<sup>308</sup> and exercised power and authority across the country, appointing Taliban members at the provincial and district levels.<sup>309</sup> Likewise, Taliban leaders are in charge of a security apparatus that includes the armed forces,<sup>310</sup> the police<sup>311</sup> and intelligence services.<sup>312</sup>

Further, the manner of commission, the context and the purpose of the crimes demonstrate that the attack – that is, the course of conduct involving multiple commissions of acts – has been carried out in furtherance of or pursuant to a policy developed by the Taliban.<sup>313</sup> The acts relating

<sup>299</sup> Elements of Crimes, Introduction to Article 7, para. 3; *Ongwen* Trial Judgment, para. 2676; *Ntaganda* Appeal Judgement, para. 1119; *Bemba* Trial Judgment, para. 159.

<sup>300</sup> *Ongwen* Trial Judgment, para. 2679.

<sup>301</sup> *Ongwen* Trial Judgment, para. 2679; *Ntaganda* Trial Judgment, para. 674; *Katanga* Trial Judgment, para. 1110. At the evidentiary level, the policy may be inferred from a variety of factors, including (1) the organized nature of the attack; (2) a recurrent pattern of violence; (3) the use of public or private resources; (4) the involvement of the state or organizational forces in the commission of crimes; (5) statements, instructions or documentation attributable to the state or the organization condoning or encouraging the commission of crimes; and/or (6) an underlying motivation. *Ntaganda* Trial Judgment, para. 674; *Katanga* Trial Judgment, paras. 1108-1110.

<sup>302</sup> *Ntaganda* Appeal Judgment, para. 1119. See also *Bemba* Trial Judgment, para. 158 (holding that *organization* may be defined as “an organized body of people with a particular purpose.”) To meet these requirements, it is sufficient that the organization has a set of structures/mechanisms able to ensure the coordination necessary to carry out an attack directed against a civilian population. *Ongwen* Trial Judgment, para. 2677; *Ntaganda* Appeal Judgment, para. 1119.

<sup>303</sup> Compare Afghanistan Article 15 Authorization Request, paras. 76-86 with Pre-Trial Chamber's Decision on Afghanistan Article 15 Authorization Request, para. 48. See also Appeal's Decision on Afghanistan Article 15 Authorization Request, para. 54.

<sup>304</sup> Afghanistan Article 15 Authorization Request, para. 77.

<sup>305</sup> Afghanistan Article 15 Authorization Request, paras. 78-82.

<sup>306</sup> Afghanistan Article 15 Authorization Request, para. 83.

<sup>307</sup> Afghanistan Article 15 Authorization Request, para. 84.

<sup>308</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 11-14.

<sup>309</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 13.

<sup>310</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 25-26, 27.

<sup>311</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, pp. 11-14.

<sup>312</sup> The Netherlands, General Country of Origin Information Report – Afghanistan, p. 28.

<sup>313</sup> *Ntaganda* Trial Judgment, para. 674 (“The existence of a policy may be inferred from a number of factors, including: (1) the fact that the attack was planned or directed; (2) the existence of a recurrent pattern of violence, for example, repeated actions occurring according to a same sequence; (3) the use of public or private resources to further the policy; (4) the involvement of the State or organisational forces in the commission of crimes; (5) statements, instructions, or documentation attributable to the State or the organisation

to restrictions against women and girls are planned, directed and organized; stem from directives, decisions and legislative acts created under Taliban procedure; and are undertaken by de facto authorities at the leadership level.<sup>314</sup> These decisions are enforced through imprisonment, torture or other ill-treatment, and enforced disappearances carried out by Taliban authorities, including police and elements of the armed forces, following a similar method and using public resources, such as detention facilities. The use of public assets, as well as the involvement of organizational forces in the commission of the crimes, reveals a high degree of organization.

In addition, a similar and recurrent pattern of violence has been employed against other individuals perceived as opponents of the de facto authorities, such as former members of the ANDSF and government officials, individuals from some ethno-religious minorities, journalists and human rights defenders.<sup>315</sup>

It is also noteworthy that the ICC considers, at least to the “reasonable basis” standard, similar crimes committed by Taliban members before the takeover to have been supported by an underlying policy to target, among others, “civilians perceived to support the Afghan government and/or civilians perceived to support foreign entities, or civilians perceived to oppose the Taliban leadership, including women and girls who worked, took part in public affairs, and attended school past the age of puberty” to enable the Taliban to seize power.<sup>316</sup> As noted, the underlying acts committed by the Taliban following the takeover have been carried out in the same way and in the capacity of de facto authorities targeting similar types of individuals, namely women and girls and other categories of people who do not support or agree with the Taliban’s rule.<sup>317</sup> This consideration appears to confirm that the attack carried out following the takeover stems from a similar policy aimed at consolidating Taliban authority and imposing its ideology over the country.

## 5. The conduct was committed with knowledge of such an attack

While the present analysis does not focus on the details of the conduct of specific individuals, the information available suggests that many of the alleged perpetrators were aware that their conduct was part of an attack against a civilian population.<sup>318</sup> The widespread and systematic nature of the alleged crimes analysed above strongly reduce the possibility that the perpetrators may have acted without knowledge of the wider context of the recurring abuses. Accounts provided by detention staff to Amnesty International that detained women were systematically tortured and ill-treated confirm that conclusion.<sup>319</sup>

## 6. Conclusion

Information collected by Amnesty International and other civil society organizations, as well by UN authorities, supports the conclusion that there is a reasonable basis to believe that many of the violations committed against women and girls in Afghanistan by the Taliban may amount to crimes against humanity.

Specifically, the widespread and systematic incidents use of arbitrary arrest and detention, torture and other ill-treatment against women and girls accused of so called “moral offenses” or due to

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condoning or encouraging the commission of crimes; (6) an underlying motivation; and (7) the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation”).

<sup>314</sup> See above, Section IV.B.1.

<sup>315</sup> See above, Section IV.

<sup>316</sup> Compare Afghanistan Article 15 Authorization Request, para. 88 with Pre-Trial Chamber’s Decision on Afghanistan Article 15 Authorization Request, para. 48. See also Appeal’s Decision on Afghanistan Article 15 Authorization Request, para. 54.

<sup>317</sup> See above, Section IV.

<sup>318</sup> *Ongwen* Trial Judgment, para. 2691.

<sup>319</sup> See above, Section IV.D.

their participation in peaceful protests or other exercise of their human rights amount to imprisonment, enforced disappearance and torture as crimes against humanity under Articles 7(1)(e), (f), (i) of the Rome Statute. Within addition the severe deprivation of “fundamental” human rights resulting from the restrictions imposed on women and girls, these offenses also may qualify as gender persecution as a crime against humanity under Article 7(1)(h) of the ICC Statute.

These underlying acts overall appear to be part of an attack committed against the civilian population in a continued, widespread manner in the sense that any protest or voiced dissent is met by repression, arbitrary arrests, detention or enforced disappearances. In addition to being widespread, the attack also appears to be systematic within the meaning and scope of Article 7 of the Rome Statute.

## C. OTHER CRIMES UNDER INTERNATIONAL LAW

### 1. Torture

Torture is strictly prohibited in any circumstance by treaties and customary international law. The prohibition against torture is provided for in the ICCPR under Article 7 and the CAT under Article 2. The prohibition of torture is also part of *jus cogens*, meaning it is a peremptory rule of international law that overrides any conflicting international law.<sup>320</sup> Afghanistan is a party to both treaties.<sup>321</sup> In addition, the treaties’ obligations apply to members of the Taliban as the de facto authorities in Afghanistan.<sup>322</sup>

Torture and many other forms of ill-treatment are also crimes under international law. States are obligated to criminalize torture and to investigate and prosecute the conduct of torture by any person who falls within the jurisdiction of the state, or to extradite the person to another state or international authority having such jurisdiction.<sup>323</sup>

Torture is defined by Article 1 of the CAT.<sup>324</sup> Torture entails (1) the infliction of severe pain or suffering, whether physical or mental for a particular purpose, which is not a consequence of lawful sanctions, under both national and international law<sup>325</sup>; and (2) that it be committed, instigated or consented to by a public official or other person acting in an official capacity.<sup>326</sup>

<sup>320</sup> UNGA Resolution 77/209 of 15 December 2022, UN Doc A/RES/77/209 ICJ, *Questions Relating to the Obligation to Prosecute or Extradite, Belgium v. Senegal*, 20 July 2012, para. 99; ICTY, *Prosecutor v. Anto Furundzija*, IT-95-17/1-T, Judgment, 10 December 1998, paras. 144, 153, 155. See also International Law Commission, draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, A/CN.4/SER.A/2001/Add.1 (Part 2), p. 85 (“Those peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.”); Human Rights Committee, General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 8; Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, UN Doc. CAT/C/GC/2, 24 January 2008, paras. 1, 3.

<sup>321</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 20. Specifically, Afghanistan became a party to the ICCPR through accession. See United Nation Treaty Collection, Chapter IV, Human Rights ([https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en)).

<sup>322</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 19.

<sup>323</sup> CAT, Articles 4-9. See also Human Rights Committee, General Comment 31, The Nature of the General Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004 (General Comment 31), para. 18.

<sup>324</sup> CAT, Article 1 (“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”)

<sup>325</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/60/316, 30 August 2005, paras. 26-28.

<sup>326</sup> CAT, Article 1.

Under the CAT, the (non-exhaustive) list of purposes for which the act is committed includes obtaining information or a confession from the victim or a third person, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind:

As noted in the Crimes against Humanity section,<sup>327</sup> while in detention in Afghanistan, women have been subjected to severe physical and mental pain inflicted through various forms of ill-treatment, including severe beatings, whipping and electrocutions.<sup>328</sup> The Taliban carried out these acts as a form of punishment of women for alleged moral crimes or for their participation in demonstrations against the Taliban's restrictions.<sup>329</sup> In this regard, it is important to note that the Committee against Torture clarified that the notion of "public officials or other persons acting in an official capacity" contained in Article 1 also covers members of non-state actors; the Taliban, now as de facto authorities, exercise "prerogatives that are comparable to those normally exercised by legitimate governments."<sup>330</sup>

The Taliban authorities are also responsible for acts of torture and other ill-treatment committed by non-state actors, where they have failed to exercise due diligence to prevent, investigate, prosecute and punish such acts. The Taliban authorities have dismantled the systems that were in place to respond to GBV and protect those at risk of it, bring perpetrators to justice, and ensure access to justice and remedy to survivors. As such, when GBV is perpetrated against women and girls by non-state actors, including community or family members, the Taliban authorities are also responsible for these acts of torture or other ill-treatment under human rights law.

## 2. Enforced disappearance

Enforced disappearance is prohibited by treaty, including the ICCPR and ICPPED, and by customary international law. While the ICCPR does not contain an express prohibition, acts of enforced disappearance violate Articles 6, 7, 9 and 16 of the ICCPR,<sup>331</sup> as well as the CAT. The Declaration on the Protection of All Persons from Enforced Disappearance adopted in 1992 by the UN General Assembly (1992 Declaration) was the first instrument containing express prohibitions enforced disappearance at the international level. In 2006, the prohibition of enforced disappearance was codified in the ICPPED. Afghanistan is not yet party to the ICPPED. Nevertheless, the prohibition of enforced disappearance, in addition to engaging the ICCPR and the CAT, is part of customary international law, and a rule of *jus cogens*.<sup>332</sup>

Article 2 of the ICPPED defines enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.<sup>333</sup> The Working Group on Enforced and Involuntary Disappearances identified three cumulative minimum elements to the definition:

<sup>327</sup> See above, Section V.B.1.b.

<sup>328</sup> See above, Section IV.D.

<sup>329</sup> See above, Section IV.D.

<sup>330</sup> See Committee Against Torture, *Sadiq Shek Elmi v Australia*, Communication No. 120/1998, U.N. Doc. CAT/C/22/D/120/1998, 14 May 1999, para.6.5.

<sup>331</sup> Human Rights Committee, General Comment 31, para. 18.

<sup>332</sup> IACHR, *Goiburú et al. v. Paraguay*, Series C No. 153, Judgment, 22 September 2006, paras. 93, 128; IACtHR, *Radilla-Pacheco v. Mexico*, Series C No. 209, Judgment, 3 November 2009, para. 139.

<sup>333</sup> ICPPED, Article 2. The definition is drawn in large part from the 1992 Declaration, which defines enforced disappearance in its preamble (persons "arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.")

- (1) deprivation of liberty (whether otherwise legal or illegal) against the will of the person concerned,
- (2) the involvement of government officials, directly or indirectly by acquiescence, and
- (3) refusal by them to disclose the fate and whereabouts of the person concerned.<sup>334</sup>

Detention that is initially lawful can become enforced disappearance if state officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all.<sup>335</sup> Enforced disappearance qualifies as a continuous crime because the violation continues until the fate or whereabouts of the person has been revealed.<sup>336</sup>

As noted above with respect to torture, the Taliban de facto authorities remain responsible for discharging human rights obligations of Afghanistan, as they have effective control over the country.<sup>337</sup>

As noted above, the Taliban have resorted to a campaign of arrests and abductions against women participating in protests against the Taliban's rule or policies. There are specific instances in which the Taliban, following the abduction or arrest of Afghan women because of their participation in protests, declined to disclose the women's whereabouts to their family for days, weeks or months.<sup>338</sup> This conduct amounts to enforced disappearance within the meaning of the ICPPED.



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<sup>334</sup> Report of the Working Group on Enforced or Involuntary Disappearances – Addendum: Best practices on enforced disappearances in domestic criminal legislation, UN Doc. A/HRC/16/48/Add.3, 28 December 2010, para. 21.

<sup>335</sup> Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008, para. 26.

<sup>336</sup> See e.g., Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, in Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/16/48, 2010, para. 39, sub-para. 1; ECHR, *Varnava and Others. v. Turkey*, Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment, 18 September 2009, paras. 136-148.

<sup>337</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, paras. 19-20

<sup>338</sup> See above Section IVC. and Section IV.D





# AVENUES FOR ACCOUNTABILITY



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One year after the Taliban returned to power, a group of UN independent experts stated that “nowhere else in the world has there been as wide-spread, systematic and all-encompassing an attack on the rights of women and girls – every aspect of their lives is being restricted under the guise of morality and through the instrumentalization of religion.”<sup>339</sup>

This report offers only a glimpse of the horrendous human rights situation faced by women and girls in Afghanistan since August 2021. However, this overview serves to demonstrate that there is a reasonable basis to believe that Taliban agents are committing crimes under international law, including possible crimes against humanity, torture and other ill-treatment, and enforced disappearances, against women and girls in Afghanistan. Specifically, the evidence suggests that women and girls have been subjected to a widespread, systematic campaign of gender persecution as a crime against humanity. That campaign includes arbitrary detention, torture, enforced disappearances and other violations of their human rights, particularly if they dissent against the Taliban’s repressive policies. The international community must send an unambiguous message to Taliban leaders that their discriminatory policies towards women and girls qualify as crimes under international law and are not, and never will be, tolerated.

The dire situation in Afghanistan and the crimes affecting women and girls – warrant a robust response involving thorough, independent and effective investigations to lay the foundation for justice and accountability. While the resumption of the ICC’s investigation into the situation in Afghanistan and the renewal of the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan are steps in the right direction, more needs to be done to ensure accountability, including justice, truth and reparation for the women and girls whose rights have been systematically violated by the Taliban.

The Taliban as de facto authorities have shown inaction, inactivity, unwillingness and inability to carry out investigations, prosecutions and adjudications of these crimes. The government deposed by the Taliban had filed a deferral request to the ICC aiming to show that it was able to address crimes domestically. Since the Taliban takeover, however, as noted by ICC Pre-Trial Chamber II, “Afghanistan is not presently carrying out genuine investigations and [...] has not acted in a manner that shows an interest in pursuing the Deferral Request.”<sup>340</sup> This is particularly true for the crimes committed since August 2021, including possible gender persecution, since most of the alleged perpetrators are the Taliban as the de facto authorities. The resumption of the ICC’s investigation in Afghanistan in October 2022 is thus a positive step towards accountability and justice and reparation for victims.

Afghanistan has been a state party to the ICC since 2003.<sup>341</sup> On 20 November 2017, the ICC prosecutor requested that judges grant authorization to initiate an investigation into possible war crimes and crimes against humanity committed in Afghanistan since 1 May 2003.<sup>342</sup> On 5 March 2020, the Appeals Chamber authorized the prosecutor to proceed with its investigation.<sup>343</sup> On 26 March 2020, the Government of Afghanistan requested a deferral of the investigation to the national level pursuant to Article 18(2) of the ICC Statute.<sup>344</sup> The prosecutor was still assessing that request when the Taliban took over the country.

<sup>339</sup> OHCHR, Statements, Afghanistan: UN human rights experts warn of bleak future without massive turnaround, 12 August 2022 (<https://www.ohchr.org/en/statements/2022/08/afghanistan-un-human-rights-experts-warn-bleak-future-without-massive-turnaround>)

<sup>340</sup> ICC, Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber II, Decision pursuant to article 18(2) of the Statute authorizing the Prosecution to resume investigation, ICC-02/17-196, 31 October 2022 (Pre-Trial Chamber Decision pursuant to article 18(2) of the Statute), para. 58.

<sup>341</sup> ICC, Assembly of States Parties to the Rome Statute, The States Parties to the ICC Statute (<https://asp.icc-cpi.int/states-parties/asian-states/afghanistan>). Afghanistan deposited its instrument of accession to the ICC Statute on 10 February 2003. The ICC may thus exercise its jurisdiction from 1 May 2003 onwards.

<sup>342</sup> Afghanistan Article 15 Authorization Request.

<sup>343</sup> Appeal’s Decision on Afghanistan Article 15 Authorization Request.

<sup>344</sup> ICC, Situation in the Islamic Republic of Afghanistan, Notification to the Pre-Trial Chamber of the Islamic Republic of Afghanistan’s letter concerning article 18(2) of the Statute, ICC-02/17-139, 15 April 2021.

Given the change in circumstances, the prosecutor requested that the Pre-Trial Chamber authorize the resumption of its investigation in Afghanistan on 27 September 2021.<sup>345</sup> This request was granted and as a result the ICC investigation in Afghanistan resumed on 31 October 2022.<sup>346</sup> To the extent that the alleged crimes against humanity the Taliban has committed against women and girls since August 2021 are related to the situation and conflict that existed at the time of the decision authorizing the investigation, the prosecutor of the ICC can and must investigate them.<sup>347</sup> Support for and cooperation with the ICC investigation should be a priority for states. The Assembly of States Parties should ensure adequate resources to enable the prosecutor to meaningfully investigate all alleged crimes under international law committed in Afghanistan.

In addition, initiatives undertaken by the justice sectors of other states, relying on universal or other extraterritorial jurisdiction, need to be promoted and supported to bolster justice for survivors, and their families, of crimes under international law committed in Afghanistan. Moreover, besides their qualification as possible crimes against humanity, these violations also amount to individual acts of torture and enforced disappearance as defined by the CAT and the ICPPED. Based on the principle of universal jurisdiction, any state can, and where an alleged perpetrator is on its territory must, investigate and prosecute these offences as discrete crimes without having to establish the relevant contextual elements of crimes against humanity.

The UN Human Rights Council should step up its contribution to the fight against impunity in Afghanistan and provide a stronger response to the crimes Taliban agents are alleged to have committed against women and girls. On 7 October 2021, the Human Rights Council established the UN Special Rapporteur on the situation of human rights in Afghanistan.<sup>348</sup> Richard Bennett was appointed to that mandate and assumed his duties in May 2022.<sup>349</sup> At the 51st regular session of the Human Rights Council in October 2022, the Special Rapporteur's mandate was renewed for another year.<sup>350</sup>

For this second term, the mandate of the Special Rapporteur was expanded to include the responsibility to document and preserve information relating to human rights violations and abuses.<sup>351</sup> The UN Special Rapporteur on the situation of human rights in Afghanistan plays an essential role in monitoring, documenting and reporting on the human rights situation. The UN Human Rights Council should renew this mandate again. The UN Special Rapporteur is expected to present to the 53rd session of the Council a report on the situation of women and girls in Afghanistan prepared jointly with the Working Group on Discrimination against Women and Girls, as well as certain other Special Procedure mandate holders.

At its 51st session the Council also mandated the Office of the High Commissioner for Human Rights (OHCHR) to enhance its monitoring and reporting on the overall situation in Afghanistan. The first such report will be presented to the 54th session of the Council later in 2023. This is an important development. The OHCHR should address the situation of women and girls in its monitoring and include information and documentation carried out by UNAMA in its reporting.

While these steps taken by the UN Human Rights Council are critical and welcome, the Council is yet to address the continuing need for an international accountability mechanism tasked specifically with conducting in-depth investigations to establish the facts and circumstances

<sup>345</sup> Prosecutor's Request for resumption of investigation under article 18(2) of the Statute.

<sup>346</sup> Pre-Trial Chamber Decision pursuant to article 18(2) of the Statute.

<sup>347</sup> Pre-Trial Chamber Decision pursuant to article 18(2) of the Statute, para. 59.

<sup>348</sup> UN Human Rights Council, Resolution adopted by the Human Rights Council on 7 October 2021, 13 October 2021, A/HRC/RES/48/1.

<sup>349</sup> OHCHR, UN Special Rapporteur on the situation of human rights in Afghanistan (<https://www.ohchr.org/en/special-procedures/sr-afghanistan#:~:text=Richard%20Bennett%20was%20appointed%20as,duties%20on%201%20May%202022>).

<sup>350</sup> UN Human Rights Council, Resolution adopted by the Human Rights Council on 7 October 2022, A/HRC/RES/51/20 (HRC Resolution 51/20).

<sup>351</sup> HRC Resolution 51/20, para. 20.

related to violations and abuses and to identify those responsible for such violations and abuses. The Council should also further address the need to collect and preserve evidence with a view to support future accountability efforts including prosecution.

The Human Rights Council and UN member states are responsible for providing an appropriate response to ensure accountability for human rights violations and abuses including possible crimes under international law committed in Afghanistan. On several occasions since August 2021, civil society organizations have called for the establishment of an international accountability mechanism to complement the work of the mandate of the Special Rapporteur. The establishment of such a mechanism is also part of the recommendations formulated by the UN Special Rapporteur on the situation of human rights in Afghanistan in his first report.<sup>352</sup>

Amnesty International's and International Commission of Jurists (ICJ) recommends the strengthening of options for justice and accountability for crimes under international law and other serious human rights violations: To this end – the UN Human Rights Council should urgently establish – an independent international accountability mechanism to investigate crimes under international law and other serious human rights violations as well as to collect and preserve evidence of such violations with a view to support future accountability efforts including prosecution in fair trials. Such a mechanism should have the specific mandate to:

- independently investigate all alleged crimes amounting to crimes under international law and other serious human rights violations in Afghanistan, including against women and girls;
- collect, consolidate and analyse evidence of such violations and abuses, including their gender dimension, and systematically record and preserve all information and evidence consistent with international law and standards – with a view to support future accountability efforts including prosecutions. By future prosecutorial and judicial mechanism;
- monitor, document and verify relevant information and evidence, including through field engagement, and cooperate with judicial and other entities, national and international, as appropriate;
- identify, where possible, those individuals and entities suspected of responsibility for all alleged violations and abuses.
- be staffed with independent international experts, including those with expertise in international human rights law, international criminal law, security forces command structure, sexual and other gender-based violence, children's rights, the rights of people with disabilities, video and image verification, and forensic analysis.
- have sufficient resources, including financial and technical, to carry out its mandate; and
- be mandated to report to the Human Rights Council and the UNGA on findings and to brief other relevant UN bodies and entities.

<sup>352</sup> 2022 Report of the Special Rapporteur on the situation of human rights in Afghanistan, p. 17.



# GENDER-RELATED PERSECUTION WITHIN THE MEANING OF THE REFUGEE CONVENTION



PHOTO: MARCUS YAM VIA GETTY IMAGES

It is Amnesty International's and ICJ's view that all women and girls in Afghanistan are at risk of persecution due to their sex and gender.<sup>353</sup> Furthermore, many women and girls fleeing Afghanistan may also have a well-founded fear of persecution for other reasons, including religion or political opinion, or a combination of reasons.

Women and girls in Afghanistan are not only at risk of persecution on account of their sex and gender, but are also exposed to specific gendered forms of persecution as a result of the policies and actions of the Taliban's de facto authorities.

Information and evidence that Amnesty International has collected show that the human rights violations against women and girls in Afghanistan are of such magnitude and gravity, and of such a systematic nature, that cumulatively they form a system of repression that discriminates against women and girls in Afghanistan in almost every aspect of their lives.<sup>354</sup> Because of the gravity and systematic nature of the restrictions and prohibitions women and girls face in Afghanistan, it can be concluded that all women and girls fleeing Afghanistan need international protection<sup>355</sup> and should be considered prima facie refugees.<sup>356</sup>

## A. THE RIGHT TO SEEK ASYLUM AND THE REFUGEE DEFINITION

This section provides legal analysis supporting the conclusion that women and girls fleeing Afghanistan should presumptively be considered refugees. International law recognizes everyone's right to seek asylum<sup>357</sup> and defines who is a refugee.<sup>358</sup> According to Article 1A(2) of the 1951 Convention Relating to the Status of Refugees (the Refugee Convention), the main elements of the refugee definition are:

1. A well-founded fear of persecution;
2. A causal link between the fear of persecution and the following grounds: race, religion, nationality, membership of a particular social group or political opinion;
3. The individual being outside their country of origin or nationality, or, if stateless, their country of last habitual residence, and being unwilling or unable to avail themselves of the protection of that country or to return due to that fear.

While sex and gender are not explicitly mentioned in the definition laid out in Article 1A(2) of the Refugee Convention, gender-related persecution constitutes an internationally accepted basis for being recognized as a refugee, within the meaning of Article 1A(2) of the Refugee Convention.<sup>359</sup> As stated by the United Nations High Commissioner for Refugees (UNHCR), "the refugee definition,

<sup>353</sup> Amnesty International, *Death in Slow Motion*.

<sup>354</sup> Amnesty International, *Death in Slow Motion*, p. 5

<sup>355</sup> This is also the case of Afghan women and girls who fled Afghanistan or were outside the country before 15 August 2021. Their need for international protection may have arisen after they left Afghanistan, on the basis of the risks they would face following the Taliban takeover and the change of circumstances in the country.

<sup>356</sup> According to UNHCR, "a *prima facie* approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin [...] A *prima facie* approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition". UNHCR, *Guidelines on International Protection No.11, Prima Facie Recognition of Refugee Status*, 2015, (HCR/GIP/15/11).

<sup>357</sup> Article 14 of the Universal Declaration of Human Rights.

<sup>358</sup> Convention Relating to the Status of Refugees, 1951.

<sup>359</sup> CEDAW, *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and stateless of women*, 14 November 2014 (CEDAW/C/GC/32); Council of Europe Convention on Preventing and Combating Violence against Women, 2011 (Istanbul Convention), art. 30-40 and 60, (CETS No. 210).



properly interpreted, covers gender related claims.”<sup>360</sup> The UNHCR and CEDAW have indicated that gender claims should be assessed in refugee determination procedures through a gender-sensitive interpretation of each of the protection grounds of the Refugee Convention<sup>361</sup> and as falling under the grounds of membership of a social group.<sup>362</sup> Some countries have also expanded the refugee definition and specifically enshrined gender and sex as grounds for international protection in national legislation.<sup>363</sup>

## 1. Well-founded fear of persecution

Persecution has been considered to include the following:

- threats to life or freedoms and serious violations of human rights<sup>364</sup>;
- different forms of discrimination on cumulative grounds, or discrimination leading to severe adverse consequences, such as serious restrictions on the right to earn a livelihood<sup>365</sup>;
- failure to provide equal protection to individuals from the harm inflicted by private actors.<sup>366</sup>

In that sense, discrimination, either in practice or as a matter of policy, in protection against serious harm by private actors afforded to women and girls by the state constitutes gender-based persecution.<sup>367</sup>

Experiences of persecution vary depending on gender. Women and girls face gender-specific forms of persecution, which refer to particular forms of serious harm related to their sex.<sup>368</sup> Serious harm inflicting severe pain, such as rape and other forms of sexual violence, domestic violence and forced marriage, can amount to persecution.<sup>369</sup>

Laws and practices can be persecutory per se. Penalties or punishments for lack of compliance with laws or lack of conformity with traditional norms can constitute persecution if they are severe and have a gender dimension. As stated by the UNHCR, “Severe punishment for women who, by breaching a law, transgress social mores in a society could, therefore, amount to persecution.”<sup>370</sup>

Amnesty International and the ICJ maintain that Taliban actions and policies amount to persecution. As Amnesty has documented, the Taliban have subjected women and girls to severe restrictions and prohibitions that violate their rights to education, work, public participation and freedom of

<sup>360</sup> UNHCR, *Guidelines on international protection No.1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 6 (HCR/GIP/02/01). <https://www.refworld.org/docid/3d36f1c64.html>. For UNHCR both men and women can bring gender claims, as gender-related persecution includes all claims in which gender is a relevant factor in the determination of refugee status. See also UNHCR, *Guidelines on international protection No.2, “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugee* (HCR/GIP/02/02) <https://www.refworld.org/docid/3d36f23f4.html>. CEDAW has defined gender-based forms of persecution as those that are directed against a woman because she is a woman or that affect women disproportionately.

<sup>361</sup> UNHCR, *Guidelines on international protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. CEDAW, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014 (CEDAW/C/GC/32).

<sup>362</sup> UNHCR, *Guidelines on international protection No.2, “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugee*.

<sup>363</sup> For instance, Costa Rica, the Czech Republic, Ecuador, El Salvador, Honduras, Kenya, Mexico, Nicaragua, Panama, Paraguay, Spain, Uruguay, Venezuela, South Sudan and Uganda.

<sup>364</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para.51, 2019. <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>

<sup>365</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para.53-54, 2019.

<sup>366</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para.53-54, 2019.

<sup>367</sup> CEDAW, GC no. 32, para. 27.

<sup>368</sup> Gender-specific violations do not necessarily constitute persecution because of gender.

<sup>369</sup> UNHCR, *Guidelines on international protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 9; CEDAW, GC No32, para. 15.

<sup>370</sup> UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 12.

movement. They have also arbitrarily arrested women and girls for lack of compliance with discriminatory policies, such as the rules against appearing in public without a *mahram*, and charged them with the crime of so called “moral corruption”. Women and girls arbitrarily arrested have been subject to torture and other ill-treatment, including gendered tactics such as forcibly separating women from their children.<sup>371</sup>

Moreover, the cumulative effects of the Taliban’s discriminatory policies, legislation and practices have resulted in severe limitations of women’s and girls’ rights, hampering their ability to earn a living and affecting almost all dimensions of their lives.<sup>372</sup>

Similarly, the Taliban’s de facto authorities have failed to exercise their due diligence obligation to prevent gender-based violence and to protect women and girls from it, as well as from child, early and forced marriage, in breach of their international obligations. As documented by Amnesty International, the Taliban have dismantled the system intended to combat gender-based violence against women, threatening service providers. Men convicted of gender-based violence offences were released with the Taliban takeover of Afghanistan in August 2021, and the Taliban arbitrarily arrested and detained survivors of gender-based violence and subjected them to torture and other ill-treatment. Moreover, evidence Amnesty has collected demonstrates that the Taliban have forced women to enter into marriages without full and free consent. What is more, Taliban restrictions on education, movement and work are contributing to a surge in child, early and forced marriages.<sup>373</sup>

## 2. Link between fear of, and grounds for, persecution

Gender claims can be considered in refugee determination procedures through a gender-sensitive interpretation of each of the grounds laid down in the Refugee Convention, or claims may be considered under the ground of membership of a social group. Women and girls may have a well-founded fear of persecution due to one or more grounds at the same time.

According to the UNHCR, a particular social group is a group of persons who share a common characteristic or who are perceived as a group by society.<sup>374</sup> The common characteristic is usually innate, unchangeable or fundamental to their identity, conscience or the exercise of human rights.<sup>375</sup> As acknowledged by the UNHCR, “women are a social subset defined by innate and immutable characteristics”.<sup>376</sup>

The actions, laws and practices implemented by the Taliban target women and girls because of their gender and sex. The web of restrictions and prohibitions imposed on women and girls deny them access to secondary and university education, prevent them from working, and severely limit their freedom of movement, expression, association and peaceful assembly. The Taliban’s actions and policies exclude women and girls from positions in politics and public administration and from participating in society, essentially confining them to their homes. Taken together, these policies and actions constitute a form of segregation based on sex and gender.

In addition to their membership of a social group, women and girls from Afghanistan flee persecution for other reasons, including their real or perceived political opinions or religious beliefs. The Taliban’s imposition of sharia law as they interpret it and a strict dress code, coupled

<sup>371</sup> Amnesty International, *Death in Slow Motion*, p. 51.

<sup>372</sup> Amnesty International, *Death in Slow Motion*, p. 5.

<sup>373</sup> Amnesty International, *Death in Slow Motion*.

<sup>374</sup> UNHCR, *Guidelines on International Protection No.2: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 11.

<sup>375</sup> UNHCR, *Guidelines on International Protection No.2: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para 11.

<sup>376</sup> UNHCR, *Guidelines on International Protection No.1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 30.

with the severe punishments for women and girls who transgress religious “norms”, amount to persecution on the grounds of religion and/or political opinion.

This is the case for women human rights defenders and women who provided protection services for survivors of gender-based violence before the Taliban takeover in August 2021. The Taliban has targeted them for their legitimate activities in favour of women’s and girl’s rights, which the Taliban perceives as a transgression of traditional norms. As a result, these women risk severe punishment.

The same is true of women and girl protesters in Afghanistan, who have been subjected to arbitrary arrest and detention, enforced disappearance, and torture and other ill-treatment solely for the peaceful exercise of their rights to freedom of expression, association, peaceful assembly, public participation and religion.

### 3. Inability or unwillingness to return to the country of origin due to fear of persecution

A refugee is an individual who cannot return to their country of origin or residence because of fear of persecution based on race, nationality, political opinion, religion or membership of a social group.

Article 33 of the Refugee Convention prohibits states from returning or expelling a refugee, in any manner whatsoever, to a place where their life or freedoms could be at risk. This obligation, known as the principle of non-refoulement, is a cornerstone of the refugee protection regime and a rule of customary consuetudinary norm of international law. Other international treaties have expanded the scope of the non-refoulement obligation to protect any individual, no matter their status, from any transfer to a place where the individual could be exposed to torture and other ill-treatment, irreparable harm or enforced disappearance.<sup>377</sup>

On 16 August 2021, the UNHCR issued a non-return advice for Afghanistan, calling on states to suspend forcible returns to Afghanistan and respect the principle of non-refoulement.<sup>378</sup> Since then, the human rights situation has deteriorated for Afghans.

It is clear that Afghan women and girls cannot return to Afghanistan because they would risk persecution based on their gender or sex, combined with other persecution grounds, such as their real or perceived political opinion or religion. Women and girls would be exposed to the discriminatory laws and policies implemented by the Taliban. Survivors of gender violence would risk harm by private actors as a result of the lack of effective protection by the state and the prevailing impunity for perpetrators. Women and girls would risk being forced into marriage. Women and girl protesters and human rights defenders would be at risk of arbitrary arrest and detention, torture and other ill-treatment and enforced disappearance.

## B. RECENT DECISIONS BY ASYLUM AUTHORITIES

Recent decisions by asylum authorities in several countries, and the authoritative positions of other bodies, such as the UNHCR, support the view that women and girls in Afghanistan are at risk of

<sup>377</sup> Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>; General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (CAT/C/GC/4), 2018, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskvE%2BTuw1mw%2FKU18dCyrYrZBES0pgkG84G5A46LqLcmLJHtrYXeRG%2Bf61gKEGS8nqisg8GX0mEaii3cKhtDQ0S8gsDbxo5zN8qhZtEsxiTFI>; International Convention for the Protection of All Persons from Enforced Disappearances, 2010, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

<sup>378</sup> UNHCR, Position on Returns to Afghanistan, August 2021, <https://www.refworld.org/docid/611a4c5c4.html>. In July 2021, France suspended deportations to Afghanistan. Denmark, Germany and the Netherlands did so in August 2021. Amnesty International, *Like an obstacle course: Few routes for Afghans trying to flee their country*, October 2021.

persecution because of their sex and gender, and that those fleeing the country should be recognized as refugees.

In December 2022, the Swedish Immigration Agency issued a decision concluding that Afghan women risked persecution in Afghanistan because of their sex and announced that being a woman from Afghanistan constituted sufficient basis to receive international protection in Sweden.<sup>379</sup> Swedish authorities stated that the restrictions imposed by the Taliban affected women's rights to freedom of movement and access to public spaces, negatively affecting their ability to access care, education and protection from violence.<sup>380</sup>

In December 2022, following the decision by Sweden, Danish asylum authorities decided to lower the threshold to consider individual women Afghan asylum seekers to be at risk of persecution. The Danish Refugee Board noted in its decision that the Taliban had been suppressing the rights of women and girls with decrees that are themselves discriminatory or implemented in a discriminatory way.<sup>381</sup>

In January 2023, the European Union Agency for Asylum published a new Country Guidance on Afghanistan, concluding that the Taliban's policy and implementation of sharia put women and girls at risk of persecution in Afghanistan.<sup>382</sup>

Following the European Union Agency for Asylum Country Guidance on Afghanistan, Danish authorities reviewed their practice again. On 30 January, the Danish Board of Appeals announced that women and girls from Afghanistan would be granted asylum solely because of their gender. Moreover, the Board of Appeals decided to reopen all cases of Afghan women and girls whose asylum application had been rejected between 16 August 2021 and January 2023.<sup>383</sup>

In February 2023 the Finnish Immigration Service announced that since December 2022, all Afghan women and girls had been granted refugee status in Finland and that gender was sufficient grounds to receive international protection. Finnish authorities concluded that all Afghan women are at risk of persecution in Afghanistan because of the "combined effect of the implementation of sharia law and other Taliban actions".<sup>384</sup>

In February 2023, the UNHCR updated its Guidance Note on the International Protection Needs of People Fleeing Afghanistan.<sup>385</sup> The Guidance Note states that "In light of the wide range of increasingly restrictive measures imposed by the de facto authorities on women and girls in Afghanistan in violation of their human rights, UNHCR considers Afghan women and girls are likely to be in need of international protection under the 1951 Refugee Convention".<sup>386</sup>

<sup>379</sup> Swedish Migration Agency, *Being a woman from Afghanistan is enough to get protection*, 7 December 2022, <http://migrationsverket.se/English/About-the-Migration-Agency/For-press/News-archive/News-archive-2022/2022-12-07-Being-a-woman-from-Afghanistan-is-enough-to-get-protection.html>

<sup>380</sup> Swedish Migration Agency, *Being a woman from Afghanistan is enough to get protection*, 7 December 2022, <https://migrationsverket.se/English/About-the-Migration-Agency/For-press/News-archive/News-archive-2022/2022-12-07-Being-a-woman-from-Afghanistan-is-enough-to-get-protection.html>

<sup>381</sup> Danish Refugee Board Coordination Committee, *Lempet bevisvurdering ved Flygtningenævnets behandling af asylansøgninger fra kvinder og piger fra Afghanistan*, 15 December 2022, <https://fln.dk/da/Nyheder/15122022>

<sup>382</sup> European Union agency for Asylum, *Country Guidance: Afghanistan*, 25 January 2023, [https://euaa.europa.eu/sites/default/files/publications/2023-01/2023\\_Country\\_Guidance\\_Afghanistan\\_EN.pdf](https://euaa.europa.eu/sites/default/files/publications/2023-01/2023_Country_Guidance_Afghanistan_EN.pdf)

<sup>383</sup> Danish Refugee Board, *Flygtningenævnet giver asyl til kvinder og piger fra Afghanistan*, 30 January 2023, <https://fln.dk/da/Nyheder/Nyhedsarkiv/2023/30012023>

<sup>384</sup> Finnish Immigration Service, *Refugee status to Afghan women and girls*, 15 February 2023, [https://migri.fi/-/afganistanilaisille-naisille-ja-tytoille-pakolaisasema?languageId=en\\_US](https://migri.fi/-/afganistanilaisille-naisille-ja-tytoille-pakolaisasema?languageId=en_US)

<sup>385</sup> UNHCR, *Guidance Note on the International Protection Needs of People Fleeing Afghanistan – Update I*, February 2023, <https://www.refworld.org/pdfid/63e0cb714.pdf>

<sup>386</sup> UNHCR, *Guidance Note on the International Protection Needs of People Fleeing Afghanistan – Update I*, para. 9.



# RECOMMENDATIONS



PHOTO: GYULA BUJDOSO VIA SHUTTERSTOCK

## TO THE ICC, RESPONSIBLE UN AGENCIES, DONOR COUNTRIES TO AFGHANISTAN AND THE WIDER INTERNATIONAL COMMUNITY

In light of all the above, the International Commission of Jurists and Amnesty International make the following recommendations:

- The Office of the Prosecutor of the ICC should ensure that its investigation and any prosecution(s) fully cover cases and incidents entailing crimes allegedly committed by the Taliban against women and children, in line with its Policy on Gender Persecution and Policy on Children.
- States, individually and collectively, including the countries surrounding Afghanistan, should effectively exercise universal jurisdiction or similar extraterritorial jurisdiction in respect of the Taliban leadership and others responsible for their discriminatory policies towards women and girls that qualify as crimes under international law whenever they travel outside of Afghanistan. This should send a clear message to Taliban leaders and members that their discriminatory policies against women and girls are not, and never will be, tolerated.
- The dire situation in Afghanistan and the crimes affecting women and girls warrant a robust response involving thorough, independent and effective investigations to lay the foundation for justice and accountability. While the resumption of the investigation by the International Criminal Court (ICC) into the situation in Afghanistan and the continuation of the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan are steps in the right direction, more needs to be done to ensure accountability, especially for women and girls whose human rights have been violated under Taliban rule.
- Where members of the Taliban against whom there is clear evidence to suggest responsibility for a crime under international law fall under the jurisdiction of another state, that state should exercise criminal jurisdiction and conduct an impartial and thorough investigation. The goal is to bring suspected perpetrators to justice, either in the national courts or via extraditing the person to another jurisdiction, such as an international criminal court or tribunal.
- States, international organisations and civil society organisations should promote and support the exercise of universal or other extraterritorial jurisdiction at the national level aimed at investigating and prosecuting those suspected of criminal responsibility for crimes under international law committed by the Taliban since they seized power, including crimes committed against women and girls.
- The Human Rights Council should renew the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan at its 54th regular session in October 2023 and provide for additional resources, as needed, in order to maintain scrutiny on the human rights situation in Afghanistan.
- The forthcoming report on the situation of women and girls in Afghanistan by the UN Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls should include the situation of access to justice, including to an effective remedy and reparation, for women facing gender-based violence, forced, child and early marriage in Afghanistan under the de facto Taliban authorities.
- The UN Human Rights Council should consider options to respond to gender persecution – a crime against humanity - and other related crimes against humanity in Afghanistan, at its 53rd session, during the upcoming enhanced interactive dialogue on the situation of women and girls in Afghanistan.



- The Human Rights Council should establish an independent international accountability mechanism in relation to Afghanistan with the mandate to investigate crimes under international law and other serious human rights violations as well as to collect and preserve evidence with a view to supporting future accountability efforts, including prosecutions.
- The United Nations Assistance Mission in Afghanistan (UNAMA) should fully implement its mandate, in line with UNSCR 2679, including its activities related to the protection of the human rights of women and girls. The UN Country Team and Humanitarian Country Team, with support from UNAMA, should specifically highlight the crisis of gender-based violence in Afghanistan, including forced and child marriage, in its fact-finding and public reporting – highlighting in particular the impact of the Taliban's dismantling of legal avenues for protecting against, and ensuring accountability for, gender-based violence in the country.
- The Special Coordinator appointed by the UN Secretary-General to conduct an independent assessment on how the international community should respond to the challenges faced by Afghanistan (as mandated by UN Security Council resolution 2679) should ensure that the assessment explicitly and meaningfully address the widespread and systematic violations of the human rights of women and girls at the hands of the Taliban and how the deprivation of the enjoyment of their rights contributes to the multi-faceted crisis facing the country.
- States should consider all Afghan women and girls fleeing Afghanistan as *prima facie* refugees under the 1951 Refugee Convention, due to the persecution they risk because of their sex and gender.
- States should reopen and re-examine *ex officio* all cases of Afghan women and girls whose asylum application had been previously rejected or whose protection status had not been renewed.

## TO THE DE FACTO AUTHORITIES (TALIBAN) IN AFGHANISTAN

- The de facto authorities must respect, protect, promote and fulfil all human rights of women and girls, including non-discrimination and equal protection, freedom of expression, association, religion, peaceful assembly, privacy, public participation.
- The de facto authorities must take immediate steps to guarantee the right to work, the right to movement, the right to political participation and other human rights that are currently being violated by members of the Taliban, including, but not limited to:
  - allowing peaceful demonstrations and protest;
  - ceasing the violence against human rights defenders, activists and journalists;
  - removing restrictions on travel for women and girls;
  - allowing women working for the government and elsewhere to return to work.
- The de facto authorities must respect women's and girls' right to education, including, in particular, by:
  - revoking the ban on girls' education beyond primary school;
  - working to ensure that education opportunities provided to women and girls are equal to those of men and boys.
- The de facto authorities must conduct an independent, transparent, and impartial investigation into all allegations of early and forced marriage – including where the Taliban members and officials are implicated. Those suspected of criminal responsibility must be brought to justice in fair trials before ordinary civilian courts.
- The de facto authorities must also develop a comprehensive strategy, with the support of the relevant UN agencies and non- governmental organizations, to address gender-based violence against women and girls, in line with obligations under human rights law and standards for prevention, protection, punishment and redress of GBV against women and girls, which is based on a survivor-centric approach and respects the agency and autonomy of women and girls.

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