

Accountability for Human Rights Violations and Violations of International Humanitarian Law in Afghanistan: An Assessment

Executive Summary and Recommendations

Strategic Study
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Executive Summary

Afghanistan was in a near continuous state of armed conflict between 1978 and 2021. Grave human rights violations and violations of international humanitarian law marked these years, including atrocities on an enormous scale. This was not one war, but a series of conflicts with some recurring political actors alternately in power or in opposition. As with any conflict, the roots of Afghanistan's wars reach back decades, and the historical legacy of severe abuses going back to the 19th century continues to affect Afghanistan's current human rights crisis.

Since the Taliban takeover of the country in August 2021, grave human rights violations have continued, particularly against women and girls. Through dozens of decrees the Taliban have systematically banned or limited Afghan women and girls' rights to education, right to work, and freedom of movement and assembly. Other abuses under the Taliban include arbitrary detention, torture, and enforced disappearances—all of which have a long history in Afghanistan.

Throughout all this time, there has been almost complete impunity for all state actors—of varied ideologies—that have held power, and for all armed forces, including those of foreign states, that took part in the conflict. Cycles of violence have fed off each other, particularly in the post-1978 years, as those in power have replicated many of the same patterns of abuse and retribution against their foes as they had experienced when out of power, ensuring unstable transitions and fuelling grievances that have led to further violence.

The aims of this report are to provide a survivor-centered and gender-focused approach to an analysis of previous and ongoing efforts to achieve accountability, including a variety of international mechanisms, to analyse why they failed, and propose ways that some progress could be achieved. Its specific objectives are:

- to assess the current legal and institutional frameworks promoting accountability in Afghanistan, on the national and international levels;
- to identify challenges and obstacles hindering effective accountability mechanisms;
- and to propose recommendations for strengthening accountability structures and find a path forward.

The report begins with a discussion of previous efforts at transitional justice and accountability, the politics that lay behind them, and why they largely failed. It then provides a summary of key human rights issues that have marked Afghanistan's modern history and continue to have an impact on perceptions of injustice. This historical account does not delve into every perceived violation but instead outlines the major patterns and how they resonate today.

The report discusses Afghanistan's obligations under international law, and then explores the range of accountability options outside Afghanistan, including the International Criminal Court, International Court of Justice, various UN procedures, universal jurisdiction, investigations undertaken in various national jurisdictions, and other mechanisms.

In addition, the report includes a more detailed discussion of accountability options specifically for violations against women and girls. Throughout the course of the Afghan conflict since 1978, Afghan

women have been utilised as weapons of war. The report also discusses specific accountability approaches focused on women and girls, including investigations of the crime of gender persecution, and calls for the recognition of gender apartheid as a crime against humanity. Under international human rights law, Taliban as the authorities maintaining effective control of the country has obligation to all international treaties which Afghanistan is party. The report also examines the limited possibilities for accountability under the current Taliban de facto authorities.

States are obligated to investigate, prosecute, and punish perpetrators of acts defined as crimes under international law by its officials and armed forces. International mechanisms such as the International Criminal Court, the International Court of Justice, and various UN bodies can provide some measure of accountability, but have some limitations including jurisdiction, lack of capacity, and political unwillingness. Moreover, as they are unable to address the totality of the widespread and largescale crimes and abuses, spanning decades, other informal, restorative, bottom-up, civil-society led efforts may fill the gap. This report looks into a range of transitional justice processes that might provide some measure of accountability, including reparations and compensation; documentation, memorializing, and oral history; and people's tribunals.

The pursuit of justice and accountability for the grave human rights violations and atrocity crimes committed in Afghanistan over decades remains a critical concern for Afghan survivors, affected communities, and the relatives of victims. As the human rights situation in Afghanistan continues to deteriorate under the de facto rule of the Taliban—one of the alleged perpetrators who have committed numerous severe human rights violations with impunity over the last three decades—exploring accountability mechanisms outside the country is increasingly vital.

Recommendations

To Member States:

- Support—both politically and financially—a UN-mandated international investigation and accountability mechanism for past and current human rights violations and abuses by all parties to the conflict in Afghanistan, including for gender persecution and other gender-specific crimes; abuses against ethnic and religious communities; violations of international humanitarian law; and economic and financial crimes in Afghanistan, including corruption and land grabbing, that have contributed to substantial human rights abuses. The focus of these investigations should include Afghan and international actors who were involved in Afghanistan since 1978. Any such mechanism should include the participation of diverse groups (victims and survivors of human rights abuses and IHL violations from every period, women, children, minorities, marginalized communities, older people, people with disabilities, internally displaced people) in order to ensure that they reflect the affected population’s needs.
- Collaborate with and support the work of the International Criminal Court and ensure that it has the resources and cooperation needed to investigate and prosecute those responsible for war crimes and crimes against humanity, including persecution on the grounds of gender;
- Ensure the full funding of the work of the Special Rapporteur on the Situation of Human Rights in Afghanistan, including sufficient dedicated resources geared toward documentation and analysis of allegations of human rights abuses;
- Support documentation efforts by UNAMA, whose mandate is essential for monitoring human rights abuses in Afghanistan and preserving a critical record of abuses.
- Initiate and collaborate with accountability processes involving national forces in domestic jurisdictions. Such investigations should include outreach to Afghan survivors and witnesses and reparations for victims; the US, UK, Australia, and other countries who have fought in Afghanistan and have been found responsible for IHL violations or other misconduct should provide or expand compensation schemes to victims and survivors.
- Support and enforce universal or other extraterritorial jurisdiction at the state level in order to investigate and prosecute crimes under international law committed by all sides in the Afghan conflict, including gender-based crimes as well as financial and economic crimes;
- Support efforts by member states to bring a case before the International Court of Justice for gender-based crimes under the Taliban Afghanistan’s failure to uphold its CEDAW obligations under their rule;
- Support the recognition of gender apartheid and its codification as a crime against humanity;

- Support truth-telling, memorialization, and other non-judicial forms of justice in Afghanistan, whether led by civil society organizations or national entities, as crucial components of a holistic justice and reconciliation process, ensuring that all aspects of the past are addressed;
- In providing humanitarian assistance, adopt special measures to address the needs of those most affected by the conflict, including internally displaced women, war widows, children, and disabled people;
- Urge that national processes examining the war in Afghanistan, such as the US Afghanistan War Commission, include questions on accountability in their investigations of the involvement of foreign military forces in Afghanistan for the past 20 years;

To the United Nations:

- Mandate an international investigation and accountability mechanism for past and current violations by all parties to the conflict in Afghanistan, including for gender persecution and other gender-specific crimes; abuses against ethnic and religious communities; violations of international humanitarian law; and economic and financial crimes in Afghanistan, including corruption and land grabbing, that have contributed to substantial human rights abuses. The focus of any such investigation should include Afghan and international actors who were involved in Afghanistan since 1978;
- Enhance UNAMA's monitoring and reporting function; ensure UNAMA's cooperation with other mechanisms, including the ICC, particularly with regard to information on abuses contained in its database.
- Make public the 2005 OHCHR report mapping pre-2002 human rights abuses. The report includes information about perpetrators, the conditions and causes of the violations, and their impact on affected populations. Its release is important for shedding light on past abuses, promoting transparency, and validating and recognizing the experiences of victims.
- Support truth-telling, memorialization, and other non-judicial forms of justice, whether led by civil society organizations or national entities, as crucial components of a holistic justice and reconciliation process, ensuring that all aspects of the past are addressed.
- Conduct a comprehensive study, utilizing an intersectional approach, on the impact of decades of violent conflict on Afghan women and girls. This should include conflict analysis through a gender lens (the lived experiences of Afghan women and girls); investigation of Sexual and Gender-based Crimes (SGBC) through various phases of the Afghan conflicts; an analysis of Afghan women's homegrown resistance; women-led awareness raising program on SGBV; and ways forward to advance gender justice in Afghanistan;
- Maintain or impose targeted sanctions such as travel bans and asset freezes on individuals responsible for grave human rights abuses or IHL violations. Refrain from broad economic

sanctions that would worsen Afghanistan's economic crisis; find ways to ease current sanctions-related harm to banking and liquidity.

To the International Criminal Court:

- Expedite the Afghanistan investigation and avoid further delays. Reaffirm the court's mandate to address the most serious abuses by all parties to the conflict and reverse the decision to deprioritize certain alleged crimes or lines of inquiry pursued in the preliminary examination and widen the scope of the investigation to include the former government of the Afghan Republic and US military and CIA forces.
- Determine the eligibility of the Afghanistan situation for support from the ICC's Trust Fund for Victims and press for it to be prioritised accordingly.
- Enhance outreach to and communication with Afghan survivors and families of victims.

To International and Afghan Civil Society Organizations:

- Explore the possibility of publishing the AIHRC conflict mapping report documenting alleged crimes committed between 1978 and 2001. This report likely includes information about perpetrators, the conditions and causes of violations, and their impact on affected populations. Its release is important for shedding light on past abuses, promoting transparency, and validating and recognizing the experiences of victims.
- Collaborate to expand on the AIHRC report to document alleged crimes from the 2001-2024+ period;
- Establish an online registry system for war victims in Afghanistan whereby Afghans inside and outside the country can access, submit information and register as war victims.
- Continue to monitor the human rights situation and document abuses according to international standards and share information with mandated bodies including the ICC and the Special Rapporteur on the situation of human rights in Afghanistan.
- Undertake and publish research on thematic issues related to human rights and accountability in Afghanistan.