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The Taliban and women's human rights in Afghanistan: the way forward

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ABSTRACT

The recent Taliban's seizing of power in Afghanistan has raised serious concerns among women's human rights advocates within Afghanistan and abroad. The Taliban, who previously ruled Afghanistan from 1996 to 2001, are notorious for their severe abuses and gross violations of women's human rights. Their 2021 takeover has revived traumatic experiences to many who witnessed their ruthless rule in the 1990s. Afghanistan has signed multiple human rights treaties that address various aspects of women's lives, including their political participation, education, employment, health, and equality before the law, and is obligated to adhere to these treaties. The central question of this article is, what will happen to the human rights of Afghan women and girls now that the Taliban are back in power? This article aims to answer this question by examining (a) the Taliban origin and the factors that led to their rise in the 1990s and resurgence in 2021 and (b) the human rights obligations of the Taliban regime concerning women. This article argues that the Taliban's policies and practices are in direct contradiction with their obligations to uphold the human rights of women and girls in Afghanistan and concludes with practical recommendations to mitigate their suffering.

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1. Introduction

The Taliban's swift takeover of Afghanistan within weeks of the withdrawal of US coalition forces has raised severe concerns within Afghanistan and around the world. The Taliban previously ruled Afghanistan from 1996 to 2001. During their reign, women experienced the worst human rights violations. They were denied access to fundamental human rights such as employment, education, healthcare, and political participation. Women's day-to-day lives were restricted and mainly limited to domestic tasks out of the public eye. Women were only allowed to leave home if only chaperoned by a male relative. Those women who disobeyed strict rules were punished ruthlessly and publicly with berating, beatings, and executions.[1] The Taliban takeover of Afghanistan

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on 15 August 2021 triggered traumatic memories for many who witnessed their ruthless reign in the 1990s.

The Taliban claim they have progressed and modernised and are prepared to adopt more moderate views towards women and girls within Afghanistan. The Taliban assure that women will be granted their *Sharia*-compliant rights and freedoms.[2] However, since the Taliban have come to power, they have severely restricted women and girls' rights to education, employment, political participation and freedom of movement (among others), which has prompted continuous and widespread protesting by Afghan women in various cities in Afghanistan.[3] Nonetheless, these women-led protests were met with violence from the Taliban forces. They were beaten and detained in dangerous conditions. UN Special Rapporteur on Afghanistan and a group of UN independent experts noted 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'.[4]

Afghanistan is a party to several human rights treaties, including *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),[5] which covers many aspects of women's lives relating to political participation, education, employment, health, housing, marriage, family relations and equality before the law. All States that have signed CEDAW commit to taking all appropriate measures, including legislation, to ensure women's full development and advancement to guarantee them the exercise and enjoyment of human rights and fundamental freedoms based on equality with men (Art 3).[6] As the *de facto* authority in Afghanistan, the Taliban are obliged to observe Afghanistan's international women and girls' human rights obligations.

The central question of this article is, what will happen to the human rights of Afghan women and girls now that the Taliban are back in power? This article aims to answer this question by examining (a) the Taliban origin and the factors that led to their rise in the 1990s and resurgence in 2021 and (b) he human rights obligations of the Taliban regime concerning women. This paper then concludes with some practical recommendations to alleviate the plight of Afghan women and girls under the Taliban regime.

Below is a brief overview of Afghan women's status during different regimes in Afghanistan.

2. Afghan women during different regimes: 1924 to mid-1990s (the emergence of the Taliban)

The history of women's rights in Afghanistan has been tumultuous. Throughout the history of Afghanistan, approaches to women's human rights varied from one government to another, contingent on the leadership, conflicts, geopolitics, and religious and cultural complexities.[7]

There were few radical modernisation periods where Afghan women enjoyed substantial rights. The first radical attempt was carried out by King Amanullah Khan between 1924 and 1928.[8] King Amanullah Khan enacted a new constitution to guarantee civil rights for all, made elementary education mandatory for both men and women, sent female students abroad, banned strict traditional dress codes, and prohibited polygamy.[9] King Amanullah's radical modernisations were not welcomed by the tribal and religious leaders, eventually leading to his fall in 1929.[10]

In the mid-1950s, although not as radical as King Amanullah Khan's era, Afghanistan underwent modest modernisation, where Afghan women could become more publicly active. In this period, Afghan women were economically involved; many became doctors, lawyers, engineers, judges, teachers, and nurses.[11] This was followed by the enactment of the 1964 Constitution, introduced by King Mohammed Zahir Shah, which contained ground-breaking provisions concerning women's rights.[12] The 1964 constitution, while upholding the Islamic roots of the country, also ensured equality between men and women. In that era, women's participation in Afghan society was far greater than in many countries in the region. Women held 15% of the legislative posts in Afghanistan, worked in government posts, and had voting rights and access to education.[13]

Following the collapse of the monarchy in 1973, similar ambitious reforms to that of King Amanullah Khan were introduced by Mohammed Daoud Khan, the first President of Afghanistan.[14] In the 1970s, Afghanistan underwent growth in women's education, university faculty, and Parliament representatives.[15] Daoud Khan's presidency was short-lived following the coup by the People's Democratic Party of Afghanistan (PDPA) in 1978 and the subsequent invasion of the Soviet Union in 1979.[16] Although Afghanistan plunged into civil war during the Soviet Union's era in the 1980s in Afghanistan, women's equal rights in terms of employment and education were guaranteed,[17] and they were afforded the right to healthcare and travel. Women also held many government posts and worked in many professions in this era.[18] The effect of the 1978 communist coup was, however, devastating to the Afghan people. Only between 1978 and 1979, the Afghan communist party known as *Khalqi*, led by Taraki and then Amin, 'killed 50,000 to 100,000 in purges of potential opponents'.[19]

It was in this era that Afghanistan started engaging with CEDAW. On 14 August 1980, the then-president of Afghanistan, Babrak Karmal, signed CEDAW and committed to conduct an internal review for the ratification of the *Convention*. Afghanistan committed not to undermine the *Convention*'s spirit until the *Convention* has been fully ratified. However, years of civil war in the 1980s and 1990s sabotaged the ratification process of CEDAW.[20]

The Soviet Union eventually withdrew from Afghanistan in 1989. They continued their support to the then-President, Dr Najibullah. However, the Soviet Union collapsed in December 1991, and their support ended for the Soviet-backed government in Afghanistan. Dr Najibullah was ousted in 1992, and the reign of *Mujahideen* began (1992–1996).[21] The *Mujahideen* government was formed subsequent to the Peshawar Accord in 1992, which aimed to establish a transition government under the leadership of prominent Tajik leader Burhanuddin Rabbani, Gulbuddin Hekmatyar as the Prime Minister and Ahmad Shah Masoud as the Defence Minister. However, Gulbuddin Hekmatyar, as a prominent *Mujahedin* Pashtun leader, opposed this agreement and parted ways, leading to massive 'ethnic struggles' within Afghanistan.[22] The failure of the Peshawar Accord paved the way for the Taliban, which had a strong foothold within the Pashtuns, to resurrect and take complete control of Afghanistan by 1996.[23] However, before the Taliban takeover in 1996, women and girls had far greater rights when compared to the Taliban era between 1996 and 2001. John J Schulz and Linda Schulz write that in this era,

> prior to the Taliban takeover of Kabul, 60% of Kabul University teachers were women, as were nearly half the students; women constituted 50% of civilian government workers (in

> Kabul, 70% of the 130,000 civil servants), 70% of the school teachers, and 40% of the doctors … .Women served in parliament and in rural areas, worked in the fields alongside men, doing jobs that would have been impossible in a burqa or other restrictive clothing.[24]

While the power and the ethnic struggles in Afghanistan continued from 1992 to 1996, a few months before the complete takeover of Afghanistan by the Taliban, Rabbani and Hekmatyar signed another power-sharing agreement known as *Mahipar* Accord once again offering Hekmatyar the Prime Minister position. However, this agreement was short-lived as Hekmatyar did not enjoy the same level of influence as he once had among Pashtuns, and many Rabbani supporters were furious with this agreement.[25] Eventually, the *Mujahedeen* government fell in September 1996. The collapse of the *Mujahedeen* government and the Taliban[26] takeover began a dreadful chapter for Afghans filled with horror, terror, and intimidation. The Taliban mandated and imposed stringent policies that relentlessly restricted women's freedom of movement, association, and expression.[27]

3. Geography: the diversity and complexity of Afghanistan

Afghanistan is a complex country, and a brief discussion of the socio-demographic background and the dynamics of its society would be helpful to conceptualise the issues specifically pertaining to women in Afghanistan properly.

Afghanistan is a landlocked country in central Asia with an area of 652,230 square kilometres, approximately the size of Texas.[28] The 'emergence' of Afghanistan as we know it today can be traced back to 1747 with the rule of Ahmad Shah Durrani. Afghanistan then later assimilated some attributes of a modern State from 1880 to 1901 when Abdul Rahman Khan ruled the country, achieving its full independence in 1919.[29]

Afghanistan has a border with Iran, Pakistan, Turkmenistan, Uzbekistan, and Tajikistan. Afghanistan also shares a small border with China on its eastern side.[30]

There are no reliable reports on the exact population of Afghanistan, but it is estimated to be around 43.4 million as of 2024.[31] Afghans are predominantly Muslim, with 99.7% of its population being reported to consist of this group.[32] The two prominent religious sects in Afghanistan are *Sunni* and *Shia* Muslims. Although there are also no reliable statistics, *Shia* Muslims are believed to be between 10 and 15% of the population, predominantly consisting of Hazara ethnic groups.[33] The other 0.3% consist of other religious groups such as 'Hindus, Sikhs, Baha'is, and Christians'.[34]

There are many varieties of ethnic groups in Afghanistan. Still, the two major ethnic groups are Pashtuns and Tajiks, which is why the country's official language is Pashtu and Dari (Farsi). It was reported that half of the population speaks Dari, while around 35% speak Pashtu.[35] Overall, it has been reported that as many as 40 different languages exist in Afghanistan. Since ethnicity plays a vital role in shaping the social-political and cultural phenomena in Afghanistan, to date, the composition of ethnic groups in Afghanistan is still disputed.[36] The other large ethnic groups are the Hazaras and the Uzbeks. There are also some minor ethnic groups: Aimak, the Turkmen, and the Baloch.[37] Each of these ethnic groups has its distinct cultural characteristics and beliefs, which has made Afghanistan a melting pot of different cultures.[38]

Unfortunately, these cultural, ethnic, and religious diversities have never been a unifying force in Afghanistan. These differences have contributed to the 'ethnicisation of

Afghan politics'.[39] The ethnic interpretation of power dates back to 1929 when the Tajik Habibullah seized power from King Amanullah. Schetter sees this as the 'first time that the king's family saw its 'natural' supremacy, which went back to 1747, jeopardised. Under the rule of Nadir (1930–1933) and his son Zahir Shah (1933–1973), a Pashtun-biased nationalism gained contours that aimed to underscore the king's family's legitimate right to power.[40] Such ethnicisation of politics in Afghanistan was used as a war strategy in the 1990s, under which severe atrocities such as ethnic cleansing were committed in Afghanistan.[41]

Even post-2001, the Taliban continuously used the ethnic card to regain power in Afghanistan by arguing that 'the Afghan government was dominated by 'Tajik rule' and that Karzai was no more than a puppet in the hands of the Panjshiris'.[42] As Rubin correctly summarised, 'the resulting Kingdom of Afghanistan was and remained ethnically, linguistically, and religiously diverse'.[43]

4. The Taliban: origin and ideology

The recent Taliban takeover of Afghanistan in 2021 along with their emergence in the 1990s has led many to question who the Taliban are and what is their driving force. In the subsections below, this article delves into brief historical factors to shed light on the emergence of this group in the 1990s and its re-emergence in 2021. This section also analyses how women were treated during the Taliban's reign from 1996 to 2001.

4.1. The emergence of the Taliban (the 1990s)

Multifaceted factors led to the first emergence of the Taliban in the 1990s. Some perceive the Taliban as a Pashtun tribal movement, while others characterise this group as an extremist Islamic movement.[44] Depending on the changing circumstances of the times, the Taliban have used both ethnic as well as religious cards to manipulate its supporters and recruit new members.[45]

The Taliban as we know it today mainly emerged in the 1990s; however, the origin of the Taliban could be traced back to late 1979 as a result of the Cold War when the Soviet Union invaded Afghanistan. To confront the Soviet Union in Afghanistan, the United States began to heavily fund the Taliban as part of the then *Mujahedeen* (freedom fighters) movement to defeat the Soviets. As noted by Hartman, 'the rise of the Taliban can be directly attributed to this process and America's so-called 'War on Terrorism'.[46] Eventually, this led to the Soviet Union's withdrawal from Afghanistan in 1989 after a decade of war and devastation and, finally, the fall of the Moscow-backed Afghan government in 1992. Following 1992 *Mujahedeen* government was formed, but fractions and power struggles emerged, which led to deadly civil wars in the 1990s and the subsequent formal formation of the Taliban, eventually leading to their rise to power in 1996.

Second, many scholars also attribute the rise of the Taliban to the role that played by Pakistan. Fair, for instance, attributes the root causes of the Taliban's emergence to Pakistan's support for this group.[47] Saikal similarly calls Naseerullah Babar, Pakistan's then Minister of the Interior, the 'godfather' of the Taliban who actively recruited and trained former Pashtun *Mujahideen* fighters.[48] Other Taliban fighters came from among young Afghan refugees in Pakistani refugee camps and even from among

Pakistani students who studied in *Madrasas* (Islamic religious schools), who were recruited and trained by Inter-Services Intelligence[49] and used them to intensify fighting in the 1990s[50] and post-2001 in Afghanistan. Pakistan's support for empowering the Taliban has been attributed to a protracted border dispute between Afghanistan and Pakistan known as the Durand Line, which has remained a contentious issue in Afghanistan–Pakistan for decades. Since Pakistan's independence in 1947, Pakistan has inherited territorial disputes with Afghanistan and India. The demarcation of the Durand Line was concluded in 1893 before Pakistan was formed as a country. The Durand Line was drawn by a British Commission, the British Indian Foreign Secretary, Sir Mortimer Durand, and the line determined Afghanistan's contemporary eastern and southern borders arbitrarily by dividing the Pashtun tribes. It also defined the responsibilities of the British and Afghans in the Pashtun area. This border dispute has led to a prolonged conflict between Afghanistan and British India and subsequently with Pakistan since 1947, as all the Afghan governments refused to recognise this demarcation.[51] The legality of the Durand Line lapsed in 1993 as stipulated to be 100 years after the agreement.[52] Therefore, Qassemi argues that:

> an important reason for the continuing instability lies in the fact that the international effort has failed to address longstanding disagreements between Afghanistan and Pakistan – the Durand Line border dispute and the Pashtunistan issue – which in turn impairs the two countries' cooperative capacity in the anti-Taliban campaign.[53]

As Rubin noted, it was 'Pakistan that backed radical Islamists to protect itself from Afghan nationalist claims on Pakistani territory, which Islamabad feared, might pull apart the country'.[54]

Ironically, the origin of the Taliban in the 1990s has been attributed to a 'Robin Hood' like story.[55] After their emergence in 1994, the Taliban pledged to establish law and order and bring peace and stability to Afghanistan. They also pledged to rule Afghanistan based on *Sharia* (their version of *Sharia*).[56] The Taliban eventually began by gaining swift control of Afghanistan's southern and western regions. Finally, they seized power in Afghanistan by marching into Kabul in September 1996.[57]

The Taliban's rise to power brought lots of misery to Afghanistan. Maley describes them as a:

> motley, pathogenic, anti-modernist force, drawn overwhelmingly from the Pushtun ethnic group and instrumentalised by irresponsible components of the Pakistani state, the Taliban offered repression without hope of recovery from Afghanistan's travails, and weirdly painted the desert over which they presided as a model of Islamic rectitude.[58]

Women in this era faced the most horrific human rights abuses at the hands of the Taliban, which are discussed below.

4.2. The Taliban's treatment of women from 1996 to 2001

The worst human rights abuses, particularly against women, took place during the Taliban regime in 1996–2001.[59] The Taliban policies and practices affected the entire population of Afghanistan, particularly women who were actively involved in public life before the Taliban takeover, who worked in varieties of professions and had their share in the government.[60]

The severe women's human rights violation is reflected in a statement of a Taliban representative from the office of the Attorney General in Kabul: 'The face of a woman is a source of corruption for men who are not related to them'.[61] Women were banished to the private sphere, and their rights to employment, education, freedom of movement and association and even health care were severely restricted.[62] Even though some female health professionals were allowed to work under strict guidelines, as Amnesty International reported, the 'Taleban's policies relating to the segregation of female patients and workers has resulted in women's access to healthcare – which was already inadequate – being further reduced'.[63]

The Taliban enforced their ideologies ruthlessly. Any disobedience shown by women was responded to with 'whipping', 'public stoning' and execution.[64] Women were even publicly punished for ludicrous reasons, such as wearing white socks, as was the symbol of the Taliban's flag.[65]

This is why the Taliban consolidation of power in 1996 was known as 'gender apartheid'.[66] Women such as doctors, lawyers, and teachers were confined in their homes and could not leave unless accompanied by a male companion. These rules included painting house windows black so that no one would see them, and women were prohibited from wearing shoes that would make noise and attract attention.[67] The Taliban announced that women were forbidden from working and directed foreign agencies to stop employing Afghan women. In 'Kabul alone, women's employment rate dropped from 62% before the Taliban takeover to 20%'.[68] Banning women from working was more catastrophic for widows, as there were 50,000 of them in Kabul alone due to years of conflict. Therefore, many of them resorted to begging as their only chance of survival.[69] The late Haron Amin, former Afghanistan's diplomat in the United Nations, once said that women in the Taliban era 'have become selfless physical nonbeings that must live. They have become nonbeings, yet they exist. They exist. They breathe, but it's a life full of torture'.[70]

In terms of education, the illiteracy rate of women during the Taliban regime reached as high as 90%, one of the highest in the world.[71] The Taliban closed schools because they perceived it to be 'un-Islamic'.[72] Humanitarian organisations and women activists established private home-schooling for children to encounter this challenge. However, until 1998, they closed more than 100 secret home schools. One member of the Revolutionary Association of Women of Afghanistan (RAWA)[73] said, 'Our teachers have to give secret lessons in people's homes. We'll have a copy of the Koran on the table, and if the Taliban arrive, we immediately hide the textbooks. That way, we can say we're studying the Koran'.[74]

The Taliban also instructed the male doctors not to offer treatment to women not accompanied by a *mahram* (a male relative) and closed 'home-visit midwife and widow's health schemes',[75] which took a heavy toll on women's health. For instance, there was a sharp rise in the death of pregnant women and newborn babies[76] and women's mental health,[77] with ninety-seven per cent of them exhibiting significant signs of depression.[78] This led to increased suicide among Afghan women, an uncommon phenomenon in Afghan culture.[79]

The Taliban never received international recognition because of its denial of international law and horrific human rights record, leading to its fall in 2001.[80] Only a

handful of countries, such as Pakistan, Saudi Arabia and the United Arab Emirates, recognised the Taliban regime.[81]

5. Women's status in the post-Taliban era between 2001 and 2021

The Taliban regime collapsed in 2001 after the 9/11 terror attack and the Taliban's failure to turn over the Al-Qaeda leader Osama Bin Laden. Following that, the US-led coalition invaded Afghanistan and toppled the Taliban regime. This mission also aimed to allow Afghans to form their government through democratic processes and enable Afghan women to prosper.[82] However, some perceive that the United States and the Western allies also instrumentalised women's agenda for geostrategic foreign policy.[83] For instance, when American policymakers decided to overthrow the Taliban in 2001, suddenly, the issue of Taliban's women human rights abuses was used as a pretext to invade Afghanistan and launch the 'global war on terror'.[84]

In an early effort to strengthen women's rights in Afghanistan as part of the 'nation-building' process and in a bid to promote women's rights, the international community pushed for the advancement and entrenchment of two important UN documents, i.e. CEDAW and the United Nations Security Council Resolution 1325 on Women, Peace and Security.[85]

Women shortly after the fall of the Taliban regime, women were able to participate politically in Afghanistan and have a say in their future. From being one of the most oppressed groups in the world during the Taliban, Afghan women began a promising chapter in the post-Taliban era.[86]

Afghanistan ratified CEDAW without reservations on 5 March 2003.[87] The CEDAW ratification was timely when Afghanistan was amid the rafting of a new Constitution, which was promulgated in 2004. The ratification of CEDAW allowed women's rights advocates to include provisions within the 2004 Constitution that guaranteed and respected women's rights.[88] Although such women's rights movements were opposed, it eventually led to the drafting of a constitution that moderately guaranteed women's rights and offered more rights to women compared to many countries in the region. A significant and instrumental piece of legislation known as the Law *on Elimination of Violence against Women* (EVAW) was also issued through a presidential decree in 2009 to address the issue of violence against women in Afghanistan.[89] The Afghan government also established the Afghan Independent Human Rights Commission (AIHRC) and the Ministry of Women's Affairs (MoWA) as part of the institutional building capacity to address issues about women and girls.[90]

In this era, Afghan women experienced substantial accomplishments in different aspects of life regarding economic and social development and political participation. Figures by the Afghanistan Women's Chamber of Commerce and Industries (AWCCI) indicated that over the past two decades (since 2001), as many as 1150 women entrepreneurs have invested in various business sectors in Afghanistan, amounting to more than $77 million. It is also reported that recently (before the Taliban takeover in 2021), 300 women entrepreneurs started their businesses, which provided jobs for 77,000 people around the country.[91]

One of the biggest success stories in post-2001 Afghanistan is access to education for women and girls. Afghanistan gained substantial achievements in providing education to

this vulnerable group.[92] The right to education for all Afghan citizens was also guaranteed through Articles 43 and 44 of the 2004 constitution. By 2020, it was reported that of 10 million children enrolled in schools in Afghanistan, 40% of them were girls. In contrast to 2001, only 1 million were enrolled in schools, all of which women also substantially participated in higher education.[93] For instance, the Ministry of Higher Education (MoHE) reported that while 'gender disparity' in higher education in 2009 was 44% for female and 56% for male students, this figure decreased in certain provinces. For instance, in Herat, female participation in the national university entry exam rose to 53% in 2019.[94]

Afghanistan scored higher in terms of women's participation in government at the national and subnational levels than Pakistan, Bangladesh, and Nepal. This is because the 2004 Afghan constitution reserved 27% of the parliament seats for women (68 out of 250).[95] The World Bank reported that by 2020, 21% of civil servants in Afghanistan were comprised of Afghan women were women with 16% of them holding senior management roles.[96] In addition, as of 2019, nearly 50% of members of elected community development council members were added; as of mid-2019, there were roughly 4500 women in the Afghan Defense Forces.[97] Women also showed their presence in artistic and creative fields, contending for an Oscar, Street Art, and kickboxing.[98]

The Afghan society's perception of women's rights to vote increased from 87.7% in 2018 to 89.3% in 2019. There was an increase in support for equal access of women to education (84.0% in 2018 to 86.6% in 2019).[99]

In 2001, Afghan women's life expectancy was 56 years, which increased to 66 in 2017.[100] Afghan women's mortality rate during childbirth also drastically fell from '1,100 to 396 deaths per 100,000 live births from 2000 to 2015'.[101]

Indeed, these success stories were not always the case for Afghan women and girls living in rural areas. For instance, girls' access to education in rural areas was restricted due to 'lack of adequate facilities and teachers', the Taliban's attacks on schools and even due to harmful cultural practices that 'girls belong at home'. Therefore, women and girls who lived in rural areas experienced higher illiteracy rates and gender disparity and lower development and employment opportunities. Women and girls also experience a higher rate of violence cases due to a lack of access to justice and harmful cultural practices.[102]

However, now that the Taliban have taken over Afghanistan, these progresses seem futile considering their history of severe women's human rights abuses in Afghanistan.

6. The factors contributing to the re-emergence of the Taliban in 2021

Following the full takeover of Afghanistan by the Taliban in August 2021, this group claim that they have changed and are adopting more moderate approaches towards women,[103] but what the Taliban perceive as moderate is ambiguous. They also offered guarantees that women's human rights would be respected.[104] Many were sceptical of the Taliban's statements and saw them as mere public relations campaigns.[105] Reports have emerged that the Taliban have asked the communities to turn over their unmarried women to become the Taliban fighters' wives.[106]

The re-emergence of the Taliban to power has given rise to serious concerns about women's future in Afghanistan. The Taliban initially announced that they would implement the 1964 constitution temporarily. The Taliban Ministry of Justice said,

'The Islamic Emirate (Afghanistan under Taliban rule) will implement the constitutional law of the former King Mohammad Zahir Shah for a temporary period without any content that contradicts Islamic law and the principles of the Islamic Emirate'.[107] However, this is yet to materialise. Moreover, the building that once was the Women's Affairs Ministry has been replaced with the 'Ministry for Preaching and Guidance and the Propagation of Virtue and the Prevention of Vice'. During the Taliban rule in the 1990s, this Department enforced the Taliban's harsh laws mercilessly and was responsible for severe women's human rights violations.[108]

Michelle Bachelet, the U.N. high commissioner for human rights, recently reported that since the Taliban seized power in Afghanistan, they have committed various human rights violations, including 'summary executions of civilians and members of the security forces'.[109] Bachelet added that:

> a fundamental red line would be the Taliban's treatment of women and girls and respect for their rights to liberty, freedom of movement, education, self-expression, and employment, guided by international human rights norms. In particular, ensuring access to quality secondary education for girls will be an essential indicator of commitment to human rights.[110]

Like their previous reign, the Taliban is led by an *ameer-ul-momineen* (commander of the faithful) equivalent to the head of State. Unlike the last time when the Taliban were headed by Mullah Omar, this time around, they are being led by Hibatullah Akhundzada. There are other well-known figures such as Abdul Ghani Baradar, the political figure of the Taliban and the person who signed the Doha Deal on behalf of the Taliban with the United States and Sirajuddin Haqqani, the son of Jalaluddin Haqqani and the leader of the Haqqani network responsible for the deadliest suicide bombings in Afghanistan. Mullah Yaqoob, the son of Mullah Omar, is the military chief of the Taliban and is another important figure.[111]

While there are multifaceted factors that led to the re-emergence of the Taliban, an in-depth analysis of what factors led to their re-emergence would be outside the scope of this paper as it would require a standalone study on that. However, we have briefly broken down the main factors that led to the re-emergence of the Taliban into six key factors (among others). These include (a) the Taliban's sanctuary in Pakistan and the support that they received from Pakistani military and intelligence services; (b) the existence of US-funded unscrupulous, corrupt Afghan regimes engulfed with rampant corruption, which made it easier for the Taliban to recruit and rise to power; (c) US-funded abuses and ignoring human rights violations also led to failures in Afghanistan which emboldened Taliban's movement; (d) the Taliban also found support in rural areas as well as predominantly among Pashtuns (it must be noted that although the Taliban often are identified as Pashtuns, this does not mean that they represent the broad Pashtun ethnicity); (e) the western-backed Afghan government's democratic agendas were not compatible with 'societal values in Afghanistan, and this made the country "ungovernable"';[112] and (f) the Taliban evolved from an unorganised guerrilla organisation in the early years of the insurgency to an organised military and political movement.

In analysing the first factor regarding the Taliban's sanctuary in Pakistan, Hassan Abbas, the author of the book 'The Taliban Revival' states that one of the most critical enabling factors in Taliban re-emergence is the Taliban's safe sanctuary in Pakistan.[113] He observes that the 'terrorist sanctuary in Pakistan's tribal belt was a critical enabling

factor for the Taliban insurgency in Afghanistan'.[114] Since its independence in 1947, Pakistan has used non-state proxies against Afghanistan because Pakistan sees them as instrumental to its internal security.[115] Pakistan was concerned about the increasing influence of some other regional players in Afghanistan.[116] The Taliban's safe sanctuary in Pakistan, therefore, caused serious concerns about Pakistan's genuine approach to targeting terrorist groups in its territory.[117]

Second, another essential factor which paved the way for the Taliban's re-emergence is the rampant corruption within the Afghan government, which made it easier for the Taliban to recruit. There were always talks of 'good governance' in Afghanistan, but it never materialised. Instead, corruption was widespread at every level of the government, which created a corrupt and highly centralised regime led by Hamid Karzai and, subsequently, by Ashraf Ghani, who misappropriated resources and failed to implement policies. As Moghadam notes, Afghan 'politics was dominated by individuals willing to rent themselves out to the highest bidder'.[118] This provided an excellent opportunity for the Taliban propaganda machine to actively use the widespread corruption within the Afghan government to recruit supporters and push forward their agenda.[119]

Third, US-funded abuses and ignoring human rights violations also led to failures in Afghanistan, which emboldened the Taliban's movement.[120] The United States has generally seen human rights more as a hindrance than as a necessary factor in addressing Afghanistan's problems.[121] For instance, following the possible investigation of war crimes in Afghanistan by the International Criminal Court (ICC) against US citizens, the United States decided to impose visa bans on ICC staff.[122] Richard Dicker, international justice director at Human Rights Watch (HRW), said, 'The US decision to put visa bans on ICC staff is an outrageous effort to bully the court and deter scrutiny of US conduct'.[123] Such actions seriously undermined Afghanistan's military and political abilities, making it significantly easier for the Taliban to advance.[124] The United States and the Western allies also instrumentalised women's agenda. When American policymakers decided to overthrow the Taliban in 2001, suddenly, the issue of Taliban's women's human rights abuse was used as a pretext to invade Afghanistan and launch the 'global war on terror'.[125] Pacwa notes that gendered discourse and politicised representations of Afghan women worked to gain domestic support for the U.S.-led occupation in Afghanistan.[126]

Fourth, as stated above, the fourth reason behind the resurgence of the Taliban was that they found support in rural areas and predominantly among Pashtuns. A survey was conducted in 2009, and it was stated that the Taliban had many sympathisers, mostly among Pashtuns and rural Afghans.[127] Dorronsoro rightly observed this by saying, 'In all my visits to Afghanistan since 1988, I have never seen as high a level of distrust and hostility between Pashtuns and other ethnic groups as I witnessed during April 2009'.[128] The Taliban cleverly used the racial tension to their advantage through the ethnicisation of their movement, eventually leading to Kabul's fall in 2021.

Fifth, Murtazashvili also attributes the collapse of Afghanistan to the Western-backed Afghan government's democratic agendas that were not compatible with 'societal values in Afghanistan, and this made the country 'ungovernable'.[129] A perfect example is pushing Afghanistan to ratify CEDAW on 05 March 2003 without reservation, making Afghanistan the first Muslim country to ratify CEDAW without reservation.[130] A great deal of the provisions of CEDAW have been deemed to be contrary to Islamic rules

and principles, which is why many Muslim countries have ratified CEDAW with reservations to certain provisions.[131] The most contentious CEDAW provisions include 'article four on special measures, article five on sex role stereotyping and prejudice, article six on prostitution, article nine on nationality, article fifteen on law and article sixteen on marriage and family life'.[132] It was indeed such a surprising move that how could a country with ultraconservative values ever fulfil its obligations under CEDAW? As a result, many Afghans perceived CEDAW 'as a western-imperialist imposition that will abruptly modernise and secularise Afghanistan's cultural and religious traditions'.[133] Later, it was noted that Afghanistan only ratified CEDAW without reservations to appease donors since they pressured the Afghan government.[134] Therefore, the Western-backed Afghan government was never able to adequately address the societal values and religious and cultural sensitivities in their policy-making and practices.

At last, the Taliban evolved from an unorganised guerrilla organisation in the early years of the insurgency to an organised military and political movement. Dorronsoro, in 2009, noted that the Taliban are often misunderstood as being an 'unorganised' guerrilla movement. Still, he suggested otherwise. He pointed out that the Taliban's 'structure and strategy of the insurgency reveals a resilient adversary, engaged in strategic planning and coordinated action'.[135] He noted that 'the Taliban have a strategy and a coherent organisation to implement it, and they have been successful so far'.[136] Jackson and Amiri also supported this notion and noted that the Taliban should be given credit for establishing an 'extensive' and 'complex' 'parallel political order' after their fall in 2001, leading them to rise to power again in 2021. Jackson and Amiri note that 'few insurgencies exhibit this level of organisation, hierarchical decision making, and policy coherence'.[137] The Taliban began in its early stages as an unorganised guerrilla movement but later evolved into an organised political and military action that toppled the Afghan government. Jackson and Amiri attributed such evolution to three key factors,[138] which include (a) 'territorial presence' from 2005 to 2009; (b) increased territorial control and military presence in post-2009; and (c) the US military 'drawdown' in 2014, which led The Taliban to expand 'significant territorial influence' and to build 'increasingly sophisticated and coherent governing systems and policies'.[139] This is why Maley rightly summarises that the 'Taliban's success in persuading Western policymakers and observers that the earlier Taliban had been succeeded by a 'Taliban 2.0' was also quite an achievement, although it may have been more a matter of telling the audience something it was already desperate to hear'.[140]

Therefore, all the significant factors discussed above effectively allowed the Taliban to regain a strong foothold following their fall in 2001 and re-emerge to power in 2021.

7. Women and girls under the current Taliban regime

In this section, we will analyse the Taliban's impacts on women and girls since it took over Afghanistan in August 2021. Then, in the later part, we will explore how the Taliban policies and practices have been in blatant violations of the human rights obligations of the Taliban as the *de facto* authority in Afghanistan.

Recently, Human Rights Watch (HRW) noted that the 'Taliban rule has had a devastating impact on Afghan women and girls'.[141] The Taliban have 'obliterated' women's rights.[142] In addition, international organisations such as the United Nations Assistance

Mission in Afghanistan (UNAMA) have documented numerous human rights violations.[143] For instance, the Public flogging of women has returned to Afghanistan since the Taliban took over.[144] The Taliban accuse these women of different crimes, particularly moral crimes. Still, since there are no proper judicial mechanisms under the Taliban regime, it has been more cumbersome to determine how they have reached such verdicts and why. Such practices violate the prohibition of torture and other ill-treatment under international law.[145]

Another concern is that since the Taliban have taken over Afghanistan, the risk of violence against women has increased substantially since women are bashed in the 'private sphere'. Since the Taliban have dismantled all the laws and institutions that respond to the cases of violence against women (VAW), it is unfortunate that VAW victims are left hopeless.[146] Although the Taliban persistently promised that women's right to work and education would not be curtailed, women and girls have experienced the complete reversal of their fundamental human rights by the Taliban.[147]

Below are some of the key Taliban policies and practices that have severely affected women and girls in Afghanistan. These include the curtailment of women and girls' rights to (a) education, (b) employment and women's political participation, (c) restriction on movement, and (d) detention and beating of women peaceful protesters.

7.1. Education

Since the Taliban takeover of Afghanistan, equal access to education has been limited. For instance, girls past sixth grade have been banned from attending secondary school.[148] Therefore, female students do not have access to the same opportunities as male students. It is also reported that the issue is not limited to female schoolchildren; university-level education has also been restricted to women.[149] Therefore, educational opportunities have been denied at all levels to both women and girls.[150]

In addition, they are also not allowing female students to leave the country to study abroad.[151] As per the latest report, 19 students were prohibited from leaving the country for that intention.[152]

The Taliban have been giving contradictory statements about when they will open secondary schools to female students. After almost a year of promises, the Taliban announced in March of 2022 that they are unable to open secondary schools to female students due to 'technical issues' since the current system is not in line with 'Afghan customs, culture and sharia'.[153]

The Taliban also expelled girls who wanted to take their exams,[154] opened gunshots and water on girls who wanted to enter school in Herat,[155] and have beaten girls who wanted to enter a state school in Badakhshan.[156]

The hypocritical attitudes of the Taliban are evident when reports have emerged of the Taliban leaders sending their daughters overseas to study medicine and play football while education is severely restricted to women and girls in Afghanistan.[157] These include the top Taliban leaders such as Health Minister Qalandar Ebad, Deputy Foreign Minister Sher Mohammad Abbas Stanikzai, and spokesperson Suhail Shaheen.[158]

Therefore, the Taliban policies and practices have severely affected women's and girls' rights to education.

7.2. Employment and women's political participation

The calamities that befall women in Afghanistan are not only limited to access to education but also include their current lack of access to work and political participation. International Labour Organisation (ILO) reported that female employment in Afghanistan fell by 25% in 2022 compared to the preceding year.[159]

This sharp decline in women's employment is because the Taliban have effectively prevented women across the country from working.[160] Most female government employees are being told to stay at home.[161] As HRW noted, the Taliban have deprived women of livelihoods.[162] This is hugely problematic, specifically for Afghan women, as many have lost their husbands and their family's breadwinners due to years of war and the Taliban's suicide bombing tactics in public and civilian places for the last two decades.

There is also not a single woman within the Taliban's cabinet or at the provincial level;[163] therefore, they have severely restricted women's political participation.[164] For instance, the Taliban and its provincial directorates have been abolished.[165]

The Taliban also further restricted women's right to employment by banning them from working in local and foreign aid organisations.[166] In response to this ban, several NGOs suspended their operations in Afghanistan. Following this and the pressure from the international community, the Taliban offered some assurances that women could work in some limited sectors such as health and some NGOs resumed their operations although in limited capacity.[167]

Thus, the Taliban's policies and practices have severely impacted women's employment and political participation rights.

7.3. Restriction of women's freedom of movement

The Taliban have also restricted women's freedom of movement without a male companion (*mahram*).[168] Amnesty International reported that female students and teachers have been facing difficulties in attending schools due to the male companion requirement.[169]

This also encompasses women's attempts to study abroad as well. Several young girls have been sent out of airplanes before their flights to Qatar where they wanted to study, mostly students at the American University of Afghanistan.[170]

Additionally, reports show that the Taliban have ordered Taxi drivers not to take unaccompanied women without a male companion beyond 72 kilometres.[171]

Therefore, unfortunately, the Taliban have severely limited women's freedom of women.

7.4. Detention and beating of peaceful female protesters

Since the fall of Afghanistan in August 2021, in a bid to demand their fundamental rights, women have been organising peaceful protests, which the Taliban forces have brutally confronted.[172]

Amnesty International reports that many female protesters have been 'threatened, arrested, detained, tortured, and forcibly disappeared'.[173] They have also been kept in 'dangerous conditions of confinement, denial of due process, abusive conditions of

release, and other abuses'.[174] Many videos and images show the Taliban using excessive force to disperse female protesters.[175]

The extraordinary courage of these and other Afghan women protesting against Taliban abuses cannot be overstated. The stories of these women illustrate the profound threat the Taliban perceive in their actions and the extreme measures they take to silence them.[176]

Some of the well-known protestors who were detained and beaten by the Taliban included Parwana Ibrahimkhil and Tamana Paryani. For instance, the Taliban raided Tamana Paryani's apartment on 19 January 2022 and detained her along with her three sisters once she was identified to have attended the women's rights protest in Kabul. Taman Paryani posted a video online from her apartment moments prior to her abduction by the Taliban forces Additionally, in a separate operation, Ibrahimkhil was also arrested in another part of Kabul.[177] Both of these women human rights activists were eventually released following pressure from the international community.[178]

Therefore, the Taliban have demonstrated zero tolerance towards peaceful protests, especially when organised by women.

8. Taliban's policies and practices towards women and girls and other Islamic countries

While the Taliban claim that their treatment of women and girls is in line with Islamic principles, there are, in fact, no Islamic countries that have ever imposed such strict treatment of women. This was also the case in the Taliban's previous reign between 1996 and 2001, where it was noted by a Physicians for Human Rights executive director that:

> we are not aware of any place in the world in recent history where women have so systematically been deprived of every opportunity to survive in the society-from working to getting an education to walking on the street to getting health care.[179]

These actions of the Taliban even 'shocked' the Islamic countries.[180]

Since the emergence of the Taliban, Qatar has been one of the Muslim countries that have criticised the Taliban and expressed its 'disappointment' over the Taliban's human rights abuses, particularly towards women and girls. The Qatari Foreign Minister, Sheikh Mohammad bin Abdulrahman Al Thani, stated that 'we need to keep engaging them and urging them not to take such actions, and we have also been trying to demonstrate for the Taliban how Muslim countries can conduct their laws, how they can deal with the women's issues'. He added that 'one of the examples is the State of Qatar, which is a Muslim country; our system is an Islamic system (but) we have women outnumbering men in workforces in government and in higher education'.[181]

In addition, the Organization of Islamic Cooperation (OIC) and the religious councils of many Muslim countries have opposed the Taliban's treatment of women and girls. The OIC tweeted on March 24 that 'following the decision by the de facto government of Afghanistan to maintain an earlier ban on girls' schools, the General Secretariat of the Organization of Islamic Cooperation expresses its deep disappointment over this unexpected decision'.[182] The Grand Imam of Egypt's Al-Azhar mosque and University, Sheikh Ahmed al-Tayeb, also noted that 'Islam liberated women from ignorant customs that robbed them of their rights and saw them as imperfect human beings

that lack free will'.[183] He added, 'On the International Day of the Girl, we call for all necessary measures to guarantee girls and young women their Islamically protected rights to education and dignity'.[184] In addition, according to Daisy Khan, the founder and executive director of Women's Islamic Initiative in Spirituality and Equality, 'Islam places great emphasis on the pursuit of knowledge' and banning girls from attending schools has no justification under Islam.[185]

9. Application of international law

Afghanistan is party to many international human rights instruments, which include the *International Covenant on Civil and Political Rights* (ICCPR), *International Covenant of Economic, Social and Cultural Rights* (ICESCR), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), *Convention on the Rights of the Child* (CRC), and the CEDAW. The Taliban, as the *de facto* authorities of Afghanistan, are bound by customary international law and the human rights treaties listed above.

Now that the Taliban have taken over, it is unclear what will become of Afghanistan's international obligations, particularly those of women under the Taliban regime. Since Afghanistan is a party to several international human rights instruments,[186] the Taliban are obliged to guarantee that women have sufficient access to legal protection and are not differentiated and discriminated against under the law.[187]

The Taliban have not withdrawn (at least yet) from any of the following human rights treaties and pledged to respect Afghanistan's international human rights obligations.[188] To maintain Afghanistan's membership in human rights treaty obligations, the Taliban must continue to respect international human rights laws concerning women.

The Special Rapporteur on the Situation of Human Rights in Afghanistan noted that:

> the de facto authorities [the Taliban] have effective control over the country and therefore are responsible for fulfilling the obligations emanating from the international human rights and humanitarian treaties to which Afghanistan is a party, regardless of whether there is recognition of a formal change of government.[189]

Therefore, Afghanistan's obligations concerning women emanate from these international human rights instruments, and because the Afghan government has ratified them, the Taliban, as the *de facto* authority, is obliged to observe them.

9.1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

In this section, we will analyse how the Taliban's policies and practices contradict its obligations under CEDAW. CEDAW is a critical human rights instrument that directly addresses women's issues. Afghanistan ratified CEDAW on 05 Mar 2003 without reservation; hence, the country has agreed to adhere to its obligations under this instrument.[190] Afghanistan pledged to fulfil:

> incorporating the principles of equality between men and women in its legal system, abolishing and replacing all discriminatory laws, establishing public institutions and tribunals to safeguard women against discrimination and eliminating all discriminatory acts against women by persons, organisations, and enterprises.[191]

As a party to the CEDAW, a state must refrain from taking actions that would undermine the treaty's objectives and purposes from the time it has signed the treaty or exchanged documents forming the treaty, pending ratification, acceptance, or approval, until it has explicitly provided its intention not to join the treaty.[192]

CEDAW articulates the meaning and nature of sex-based discrimination[193] and obliges states to eliminate discrimination and establish equality between men and women.[194] It further addresses issues about female trafficking (Art 6), exceptional attention to women in rural women (Art 14) and essential matters that may jeopardise the full enjoyment of women's freedoms (Art 3). The CEDAW Committee has also stressed that by ratifying CEDAW, States are obliged to eliminate VAW.[195]

An important provision is Article 2 of CEDAW, which provides the appropriate measures and guidelines for discrimination against women. It provides that State Parties must (a) ensure the principle of gender equality is embedded in national constitutions or appropriate legislation and is practically realised; (b) impose legislative and other measures, including sanctions, to prevent all forms of discrimination against women; (c) offer legal protection of women's rights on an equal basis with men and ensure effective protection against discrimination through national tribunals and public institutions; (d) eliminate any discriminatory practices against women and guarantee that public authorities and institutions comply with this obligation. (e) adopt all necessary measures to eliminate discrimination against women by individuals, organisations, or enterprises; (f) implement measures, including legislation, to change or abolish laws, regulations, customs, and practices that discriminate against women; and (g) repeal all national penal provisions that discriminate against women.[196]

As demonstrated above, many of the Taliban practices are discriminatory towards women. Articles 1, 2, 3 and 7 particularly address the elimination of particular practices that are discriminatory towards women and that women's political and public life are ensured, which are severely restricted under the Taliban.

In terms of the right to education, CEDAW requires that the State Parties to 'take all appropriate measures to eliminate discrimination against women 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'.[197] Therefore, the Taliban clearly violated Article 10 of CEDAW by limiting the girls' access to education past the secondary school level, as discussed above. It is discriminatory since girls do not have the same educational access as boys, which could constitute a clear violation of CEDAW.[198]

Articles 11[199] and 13, respectively, uphold women's employment and economic and social activities, which the Taliban clearly violate. Article 7(d) also guaranteed freedom of association, which the Taliban also restrict.

9.2. International Covenant on Civil and Political Rights (ICCPR)

Another key instrument which Afghanistan has ratified without reservations is the ICCPR.[200] The ICCPR prohibits sex-based discrimination (Art. 2) and ensures that both men and women enjoy the same rights provided in the *Covenant* (Art. 3). The ICCPR also obliges Afghanistan to ensure the rights of everyone (particularly women) to liberty and security (Art. 9), privacy (Art. 17), freedom of thought (Art. 18), marriage (Art. 23), political rights (Arts. 1, 2, 3, 26). ICCPR also prohibits torture (Art. 7).

As noted above, many of the Taliban's policies and practices are discriminatory towards women and girls, which could clearly violate Article 2, which prohibits sex-based discrimination.

The ICCPR also embeds the right to freedom of movement under Article 12(1).[201] While this right could be restricted in certain exceptional circumstances such as 'to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others' as per 12 (3), they must 'be provided for in law, and must be proportionate, non-discriminatory and consistent with other human rights'.[202] As noted above, the Taliban have severely restricted women's freedom of movement since coming to power, which is a blatant violation of Article 12 of the ICCPR. The Taliban's policies and practices are unlawful and do not fall within any exceptions stated in Article 12(3) of the ICCPR.

In terms of the rights to freedom of expression, peaceful assembly, and association are expressly guaranteed under Articles 21 and 22 of the ICCPR.[203] Similarly, if there are any restrictions imposed by the States, they must be lawful and must be 'necessary to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'.[204] The actions of the Taliban to arrest and detain the female peaceful protesters are in clear violation of Articles 21, 22 and even 7 (prohibition of torture) under ICCPR. As noted by Amnesty International, 'these attacks, and the fear of such attacks, denies or undermines free expression, association and peaceful assembly. The Taliban have no grounds under international law for invoking any restrictions on women protesters' rights to freedom of expression, association and peaceful assembly. As such, these rights are being violated.[205]

9.3. International Covenant on Economic, Social and Cultural Rights (ICESCR)

Afghanistan ratified the ICESCR on 24 January 1983. Failure to observe the ICESCR by the Taliban as the *de facto* authority, particularly with respect to the prevention of sex discrimination as outlined in Articles 2 and 3, can make the negligent State accountable under this instrument.[206]

ICESCR also ensures the right to work (Art 6), the right to form trade unions (Art 8), and the right to an acceptable standard of living (Art 11). Article 13 of the Covenant also enshrined the right to education and was acknowledged by the ICESCR Committee.[207] This means that the Taliban are clearly violating Article 13 of the ICESCR by adopting discriminatory policies and practices towards women and girls in terms of restricting their access to education. The ICESCR requires states to ensure that secondary education is accessible and available to everyone, irrespective of sex (Art. 13 (2)(b)). Higher education must also be equally accessible to all, on the basis of capacity and by every appropriate means, with progress toward ensuring it is free (Art. 13 (2)(c)).[208] The Committee on ICESCR describes that 'education is both a human right in itself and an indispensable means of realising other human rights'. It clarifies that 'education has a vital role in empowering women'.[209]

As noted, ICESCR also recognises the right to work (Art. 6), which includes the right of every individual to have the opportunity to earn a living through work they freely choose or accept, and will take necessary measures to protect this right.[210] As highlighted,

women's right to work has been severely affected by the Taliban, which could constitute a violation of Article 6.

In terms of the freedom of movement, Amnesty International notes that 'the *mahram* restrictions can hurt women's and girls' ability to access education and work and therefore also constitute a violation of their economic, social and cultural rights'.[211] Therefore, the Taliban are clearly violating various provisions of ICESCR as demonestarted in this section.

9.4. Convention of the Rights of the Child (CRC)

CRC is another important treaty that Afghanistan is a party to. CRC expressly prohibits discrimination based on sex.[212]

CRC also clearly recognised the right to education. Article 28(1) states that the 'States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity … '[213] The CRC Committee states that restricting this right for a child has the possibility to undermine or even eliminate the child's ability to make use of educational opportunities. CRC Committee further asserts that gender discrimination can be exacerbated by structures that decrease the benefits available to girls from these educational opportunities and by environments that are unsafe or unwelcoming, which can discourage girls from participating.[214]

Therefore, the Taliban have clearly violated Articles 2 and 28 of the CRC by implementing discriminatory policies and practices based on sex as well as curtailing women's and girls' rights to education and the measures put forward by the CRC Committee, respectively.

9.5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Another important Convention which prohibits torture and other cruel, inhuman or degrading treatment or punishment is the CAT. [215] Afghanistan signed this Convention on 4 February 1985 and ratified it on 1 April 1987.[216]

The CAT defines torture (Art. 1) as:

> any 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 a 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.[217]

In addition, irrespective of membership to the CAT, the Taliban, as the de facto authority, must prohibit torture as it is a peremptory norm of international law, which States cannot deny under any circumstances.[218] The arbitrary arrest and beating of the female protesters clearly violate CAT, which amounts to both torture and ill-treatment.[219] Men have also been tortured in many cases, including members of the National Resistance Front and also for defending women's rights.[220]

CAT also states that political instability should not be used to justify torture (Art 2).

It is evident that the Taliban's detention and beating of women peaceful protesters clearly constitute a violation of Article 1, which prohibits torture, cruel, inhuman or degrading treatment or punishment of women. As also noted above, women protesters were also kept in severe conditions of confinement, which could also potentially give rise to torture, cruel, inhuman or degrading treatment or punishment.

10. Recommendations to improve the future of Afghan women and girls

Following the above analysis concerning the Taliban's discriminatory policies and practices towards women and girls and how they could give rise to liability under international human rights law, the fundamental question is, what could be done now to assist the plight of Afghan women under the Taliban regime? Although it is unlikely that Afghan women and girls would enjoy considerable rights under the Taliban regime, the following recommendations/suggestions can be used to improve the plight of Afghan women and girls.

10.1. Establishing enhanced accountability mechanisms

Following the takeover of Afghanistan by the Taliban, the Human Rights Council (HRC) adopted resolution 48/1 on 7 October 2021 to establish the mandate of a Special Rapporteur pertaining to the situation of human rights in Afghanistan. This was followed by the appointment of Mr Richard Bennett on 1 April 2022 as the Special Rapporteur on the situation of human rights in Afghanistan, and he officially assumed duties on 1 May 2022.[221]

As per this resolution, the Special Rapporteur is mandated 'to monitor the situation of human rights as it develops in Afghanistan, with the following mandate: (a) To report on the developing situation of human rights, and to make recommendations to improve it; (b) To assist in fulfilling the human rights obligations arising from international treaties that Afghanistan has ratified; (c) To offer support and advice to civil society; (d) To seek, receive, examine and act on information from all relevant stakeholders pertaining to the situation of human rights in Afghanistan; (e) To integrate a gender perspective and a survivor-centred approach throughout the work of the mandate; (f) To present a written report to the Human Rights Council at its fifty-first session and to the General Assembly at its seventy-seventh session, by their respective programmes of work'.[222] Recently, the HRC also extended the mandate of the Special Rapporteur for one year in light of the deteriorating human rights situation in Afghanistan.[223]

Although the appointment of the Special Rapporteur has been a positive step, it has been noted that the human rights situation in Afghanistan, specifically pertaining to women and girls, requires a more robust approach in terms of the accountability of the Taliban. It has been noted that the Special Rapporteur 'currently has neither the staffing, resources, nor mandate to undertake such in depth investigations'.[224] Hence, while having a Special Rapporteur on the situation of human rights in Afghanistan is a positive step, this article offers two additional recommendations below for establishing enhanced accountability towards the Taliban.

10.1.1. Establishing an independent human rights monitoring mechanism

In response to the severe women's human rights abuses by the Taliban since their takeover of Afghanistan on 15 August 2021, there is a need for enhanced accountability

mechanisms to hold the Taliban accountable for their lack of respect for women and girls' basic human rights. Therefore, in addition to the appointment of the Special Rapporteur which was discussed above, there is a need to establish a parallel independent human rights monitoring mechanism in Afghanistan to investigate and document women's rights abuses for enhanced accountability of the Taliban under the international human rights law.[225] It has been suggested that the mandate of the independent human rights monitoring mechanism should include:

> -to investigate all alleged violations and abuses of human rights law amounting to crimes under international law in Afghanistan, including against women and girls; – to collect, consolidate and analyse evidence of such violations and abuses, including their gender dimension, and to systematically record and preserve all information, documentation and evidence consistent with international law standards, in view of any future legal proceedings; – to document and verify relevant information and evidence, including through field engagement, and to cooperate with judicial and other entities, national and international, as appropriate; – to identify, where possible, those individuals and entities responsible for all alleged violations and abuses.[226]

Therefore, this parallel independent human rights monitoring mechanism would be useful to address some of the issues that the Special Rapporteur face, such as staffing, resources and the lack of mandate to conduct such thorough investigations pertaining to women and girls' human rights violations by the Taliban.

10.1.2. Prosecution of the Taliban by International Criminal Court (ICC) for gender-based violence

Another key suggestion to address the women and girls' human rights violations by the Taliban is for the ICC to play an enhanced and complementary role in prosecuting the Taliban for gender-based violence. Following preliminary investigations by the ICC prosecutor since 2017,[227] currently, the Taliban are under formal investigation for crimes against humanity and war crimes by the ICC when the Appeals Chamber of the ICC on 5 March 2020 unanimously authorised the ICC Prosecutor to begin an investigation into these alleged crimes.[228]

It is noteworthy that the Office of the Prosecutor (OTP) already argues that the Taliban have committed the crime against humanity of persecution on gender grounds (Article 7(1)(h) of the *Rome Statute*). The OTP noted that:

> on the basis of the information available, there is a reasonable basis to believe that after 1 May 2003, members of the Taliban and affiliated armed groups have committed the crime against humanity of persecution against identifiable groups of civilians on political grounds and gender grounds under article 7(1)(h).[229]

The OTP added that:

> pursuant to the ideology and rules of the Taliban, women and girls have been deliberately attacked by the Taliban and affiliated armed groups to prevent them from studying, teaching, working or participating in public affairs, through intimidation, death threats, abductions and killings. As a result of such attacks, countless other women and girls have reportedly stopped going to school or working due to the attendant climate of fear.[230]

As such, such parallel investigations are significant to ensuring that the Taliban are being held accountable for gender-based violence under the ICC. Since the Taliban are now

under formal investigation by the ICC, it is hoped that the ICC pays particular attention to the crimes against humanity of persecution on gender grounds in Afghanistan. It is also desirable if the OTP could work closely with the Special Rapporteur on the situation of human rights in Afghanistan in terms of women and girls' human rights abuses by the Taliban. Close coordination between the ICC and the Special Rapporteur would be helpful in holding the Taliban accountable for their severe women and girls' human rights abuses.

10.2. Travel bans being imposed on Taliban leaders

In addition to the enhanced accountability recommendation provided above, here and below offer some other policy recommendations, hoping that they would somehow influence the attitudes of the Taliban towards women and girls.

Although as many as 135 Taliban are subject to a travel ban by the United Nations Security Council, 15 were granted travel exemptions to travel abroad and facilitate peace talks in Afghanistan. [231] Of the 15, two were removed from the list due to their women's human rights abuses.[232]

Since the Taliban have reversed many of their promises concerning women's human rights, it is suggested to reimpose a travel ban on the 13 Taliban leaders. Amnesty International and HRW both also support such recommendations, which they perceive as crucial in holding the Taliban accountable not for fulfilling their promises pertaining and women and girls.[233] It is hoped that it could put extra pressure on the Taliban to reverse their discriminatory policies and practices toward women and girls.[234]

However, reimposing the travel ban on the Taliban leaders could have implications. It could affect dialogue and diplomacy with this group. In addition, it could also increase the poverty level in Afghanistan and further radicalise the Taliban.[235] Accordingly, in reimposing the travel ban measure, the above factors must be carefully considered, specifically not increasing the plight of the Afghan population and deepening the existing crises. This might include exempting a few Taliban senior officials from travel ban to continue dialogue and diplomacy with this group pertaining to women and girls' right to education, employment, etc. While it would be doubtful that such a measure would have any immediate effects, it is hopeful that it would decrease the plight of Afghan women and girls.

10.3. Condition-based recognition of the Taliban

The Taliban takeover of Afghanistan has been chaotic. They have come to the realisation (at least they claim) that they cannot run Afghanistan without international recognition. In their first press conference, spokesman Zabihullah Mujahid said that the Taliban desires to have a diplomatic relation 'with all countries of the world'. He added that 'we want good relations, we want a good economy, we want good trading, we want good diplomacy'.[236]

As the Taliban regime is seeking international legitimacy, the regional and international players can play a significant role in ensuring that the Taliban respects and fulfils its women's human rights obligations. The recognition of the Taliban government by the international community must be conditional. The Taliban must, in practice (and

not just in words), fulfil their human rights obligation to Afghan women. As Saul noted, 'the Taliban, and consequential economic and other benefits, should be universally conditioned on meeting benchmarks of counter-terrorism progress, alongside other international policy goals (such as inclusive governance and respect for human rights)'.[237] Therefore, while it would be doubtful that such a measure would have any immediate effects, its effectiveness must also not be underestimated.

10.4. Prioritisation of Afghan women and girls' rights in humanitarian aid

In light of the growing oppression of women and girls in Afghanistan, some have called for the conditionality of any humanitarian aid to the Taliban; such recommendations come with their repercussions.[238] Following the Taliban takeover, there are indications that the Afghan economy is crumbling under the Taliban regime. The poverty rate is soaring, and public services are near to collapse. The United States seized 7 billion from the Afghanistan Central Bank and continued sanctions against the Taliban, and the sudden withdrawal of most humanitarian aid has left many Afghans hungry and in need of urgent assistance.[239]

Although there are debates regarding the effectiveness of aid conditionality, some call for imposing such measures on the Taliban by prioritising women's and girls' human rights in Afghanistan.[240] Some studies highlighted the relative successes of the 'gender focus humanitarian aid' in Afghanistan in the last two decades.[241]

Since the Taliban came to power, it has been reported that the Taliban have received 1.593 billion dollars from the international community. It is unclear where the Taliban have spent much of this money as poverty and unemployment rates have skyrocketed.[242] This means that the Taliban are not distributing the money efficiently.[243] In addition, while the Taliban continue to receive substantial aid packages, this has no way changed their attitude towards women and girls.

The Taliban have consistently recognised that they cannot run the country without aid from the international community. This means the international community has some leverage over the Taliban. However, as noted, the international community should not 'overestimate' the aid leverage over the Taliban as the Taliban can still find revenue through opium and from some Taliban-friendly countries.[244] This overestimation of leverage over aid conditionality was also supported by Atmar, who characterised the conditionality of humanitarian assistance during the previous reign of the Taliban from 1996 to 2001 as 'ineffective'.[245] This was also the case when the UN in 1998 adopted the 'Strategic Framework for Afghanistan' to align humanitarian aid with the political objectives in Afghanistan. This strategic framework was eventually considered a failure, as claimed the 'conditionalities did little to change the Taliban'.[246] The Taliban in the 1990s continued to impose severe restrictions on women and girls (as demonstrated particularly in section 4.2) regardless of the existence of aid conditionality measures at that time.

Indeed, humanitarian aid should prioritise women's and girls' rights (of course, along with children) in Afghanistan as they are one of the most vulnerable groups within the country.[247] It must be highlighted that any aid conditionality must be carried out with caution and should not be conditioned at the expense of humanitarian and medical services to the Afghan population and deprive them of their livelihood.

10.5. The importance of Afghan women and girls' civil protests against the Taliban

Powerful images and videos have emerged from across Afghanistan as women take to the streets to demand their rights and protest against the Taliban. These women-led movements have proven effective as they quickly caught international attention and received substantial coverage.[248]

I demonstrated above that some of the well-known women right's protestors, such as Parwana Ibrahimkhil and Tamana Paryani were detained and beaten by the Taliban, but their struggle did not go unnoticed and received widespread international coverage and attention. Wahida Amiri is another well-known women's human rights activist who worked as a librarian prior to the Taliban takeover of Afghanistan, and now she is one of the leading voices against the Taliban.[249] As noted by Amiri, 'we have not given up despite all the adversities. We refuse to accept being jailed in our homes, we refuse to be discriminated against, we refused to be repressed!'.[250]

Although these women-led protests can be met with violence from the Taliban forces, such protests and campaigns should continue as safely as possible to continue to receive wide international coverage and attention, which keeps the Taliban accountable. Two objectives can be achieved. First, it sends a message to the Taliban that they cannot silence women as they did in their previous reign from 1996 to 2001. This widespread social media coverage has ensured that Afghan women have been able to share their experiences under the new Taliban. Second, as the Taliban is seeking international legitimacy, this will ensure that they cannot achieve such an objective unless women's and girls' rights to education, employment, etc, are respected and guaranteed.

10.6. Evacuating women at risk of targeted killings by the Taliban

The targeted Taliban's killing and detention of those (particularly women) who worked with the previous administration is already emerging from Afghanistan.[251] It blatantly opposes the Taliban's promise of national amnesty in not taking revenge against its opponents, such as ex-military personnel and those who worked with the previous government.[252]

Recently, the BBC reported that a policewoman named Banu Negar was shot dead by the Taliban militants in a provincial city. She was shot dead in front of her family in Firozkoh, the capital of central Ghor province.[253] At the time of her execution, Banu Negar was 8 Months Pregnant.[254]

These women should be afforded their right to safety and life within Afghanistan. However, reports from Afghanistan indicate a deteriorating security threat to Afghan women ex-military personnel, ex-politicians and women's rights advocates.[255] Many international countries have given refugee status to vulnerable women due to their imminent and serious risk of harm. At the very least, the Taliban should allow women who choose to leave Afghanistan safe passage and permission to do so and not impede evacuations.

10.7. Engaging Afghan and international religious figures to advocate for women and girls' rights

Throughout the history of Afghanistan, religious figures (*Ulama*) have had considerable influence within Afghanistan. That influence has been even now more prominent since

the Taliban takeover. The Taliban's cabinet is comprised of mostly religious and tribal figures.

Waheedullah Hashimi, a senior Taliban leader, said, 'our ulema (scholars) will decide whether girls are allowed to go to school or not'.[256] He told Reuters that 'They will decide whether they should wear hijab, burqa, or only (a) veil plus abaya or something, or not. That is up to them'.[257]

Years of war and fighting have devastatingly radicalised the Taliban, who have had limited contact and interaction with women during the war. The *Ulama* from within Afghanistan and other Muslim countries can use this opportunity to play a role in de-radicalising the Taliban and reshaping their views towards women. As Afghanistan remains a deeply traditional country (it will be even more now that the Taliban have taken over), people turn to *Ulama* and tribal leaders in their day-to-day lives.

The top-down approaches to propagating and enforcing women's rights have never worked in Afghanistan's history. For instance, radial women's human rights reforms began by King Amnullah in the 1930s. Queen Suraya, King Amanullah's wife, made a public appearance without a veil which caused religious and tribal elders' dissatisfaction. The King was eventually ousted. A similar pattern was followed during the communist era, which caused many to join the *Mujahideen*. Even in the previous administration, the EVAW law was vehemently opposed as it was deemed Islamic.[258]

It is therefore advisable that *Ulama,* who have credibility among large segments of the Afghan public, engage with the Taliban and use their platforms through mosques to disseminate and safeguard women's human rights. As stated above, many cultural norms and ideologies that are particularly adopted by the Taliban that normalise women's human rights violations are contrary to the principles of Islam.

It is also recommended that *Ulama* from progressive Muslim societies such as Malaysia, Indonesia, Turkey etc., where Muslim women enjoy substantial rights, engage with the Taliban and persuade them to give up their extremist views toward women. For instance, the prominent Islamic party in Malaysia, such as Parti Islam Se-Malaysia (PAS), stated its readiness to engage and convince the Taliban to respect human rights.[259] It is hopeful that such initiatives by the Muslim countries and respected *Ulama* would positively impact humanising Afghan women and reducing their suffering at the hands of the Taliban.

11. Conclusion

The Taliban takeover of Afghanistan has had serious adverse impacts on women and girls. The Taliban's takeover of Afghanistan is resurfacing their history of vicious treatment of women during their reign in the 1990s. This has caused serious concerns among human rights activists within Afghanistan and abroad. The Taliban, during their time in power from 1996 to 2001, committed severe human rights violations, specifically towards women. These included denial of women's access to education, healthcare, employment, and freedom to access the community and participate in public life. Women were also subjected to forced marriages, forced covering of their appearance with head-to-toe, and were only allowed to leave home if a male relative accompanied them. They imposed their rules ruthlessly through public lashings, stoning, and execution.

The central question of this article was, what will happen to the human rights of Afghan women and girls now that the Taliban are back in power? Since Afghanistan is a party to several human rights instruments, including CEDAW, we analysed how the Taliban's policies and practices are in contradiction with Afghanistan's international human rights law obligations. As the Taliban are the de facto authority in Afghanistan, they must observe these obligations. This article demonestrated thatthat similar to their previous reign in the 1990s, the Taliban have, since August 2021 completely banished women from the public sphere by severely curtailing women and girls' rights to education, employment and political participation, and freedom of movement (among others). The authors demonstrated that such actions are clearly contradicting women and the human rights of women under ICCPR, ICESCR, CRC, CEDAW and CAT which Afghanistan is a signatory.

This article concluded with serval recommendations hoping to improve women's and girls' human rights situations in Afghanistan. These included (among others) establishing enhanced accountability mechanisms to hold the Taliban accountable for their gender-based violence. This article offered some other recommendations which we noted might not have immediate effects in changing the Taliban's policies and practices towards women and girls but are worth considering and might be useful in reducing the plight of women and girls in Afghanistan.

Notes

1. See generally Elaheh Rostami Povey, 'Women in Afghanistan: Passive Victims of the Borga or Active Social Participants?' *Development in Practice* 13, nos. 2–3 (2003): 266; Rosemarie Skaine, *The Women of Afghanistan under the Taliban* (McFarland, 2010); Hafizullah Emadi, *Repression, Resistance, and Women in Afghanistan* (Greenwood Publishing Group, 2002); L.R. Reddy, *Inside Afghanistan: End of the Taliban Era?* (APH Publishing, 2002).
2. Emma Graham-Harrison, 'Taliban Claim They Have Changed … but all the Signs Suggest It's Only for Show', *The Guardian* (online, 2021). https://www.theguardian.com/world/2021/aug/22/taliban-offer-restraint-but-all-the-signs-suggest-that-its-only-for-show.
3. Peter Beaumont, 'Afghan Women to Be Banned from Playing Sport, Taliban Say', *The Guardian* (online, 2021). https://www.theguardian.com/world/2021/sep/08/afghan-women-to-be-banned-from-playing-sport-taliban-say?fbclid=IwAR1Gz-GhLkApnqPRAAPBqTctmPmJMzqhoL8EQIIOQ9XWhCySsl3RKDLZZPo.
4. International Federation for Human Rights (FIDH), 'Afghanistan: Need for Stonger Accountability Measures in the United Nations Human Rights Council' (2022).
5. *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 (entered into force 3 September 1981).
6. Ibid., art 3.
7. Meredith B. English, 'A Decade's Legacy: Dashed Hopes for Gender Equality and the Status of Afghan Women in Light of the Ensuing Drawdown', *Scholar* 16 (2013): 805.
8. Deniz Kandiyoti, 'Old Dilemmas or New Challenges? The Politics of Gender and Reconstruction in Afghanistan', *Development and Change* 38, no. 2 (2007): 169, 171.
9. Sayed Hassan Akhlaq, 'The Crisis of National and Religious Identity in Afghanistan Today' (2015) available at: Rosa Brooks, *Failed States or the State as Failure* (2005), 4–5.
10. Astri Suhrke, 'Reconstruction as Modernisation: The 'Post-Conflict'Project in Afghanistan', *Third World Quarterly* 28, no. 7 (2007): 1291.
11. Susan Forooqi, 'Misogyny and Lawlessness in Afghanistan: The Women's Fight for Equal Rights', *Journal of Civil Rights and Economy Development* 32 (2018): 105, 108–9.

12. *Constitution of Afghanistan* (1964), art 25. Article 3 of the 1964 constitution stated that 'the people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law'.
13. Caroline B. Fleming, 'Even in Dreams, They Are Coming: Islamic Fundamentalism and the Education of Women in Afghanistan', *William & Mary Journal of Race, Gender, and Social Justice* 11 (2004): 597, 598–9.
14. Suhrke, 'Reconstruction as Modernisation'.
15. Huma Ahmed-Ghosh, 'A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan', *Journal of international Women's Studies* 4, no. 3 (2003): 1, 6.
16. Kandiyoti, 'Old Dilemmas or New Challenges?', 171.
17. Shannon A. Middleton, 'Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan', *Indiana International & Comparative Law Review* 11 (2000): 421, 423.
18. Benazeer Roshan, 'The More Things Change, the More They Stay the Same: The Plight of Afghan Women Two Years after the Overthrow of the Taliban' (HeinOnline, 2004), 271–2.
19. Mark A. Drumbl, 'Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan', *Columbia Journal of Transnational Law* 42 (2003): 349, 357.
20. Cheshmak Farhoumand-Sims, 'CEDAW and Afghanistan', *Journal of International Women's Studies* 11, no. 1 (2009): 136, 141–2.
21. Michael Bhatia, 'The Future of the Mujahideen: Legitimacy, Legacy and Demobilization in Post-Bonn Afghanistan', *International Peacekeeping* 14, no. 1 (2007): 90, 90.
22. Muhammad Waqas, Mian Muhammad Saleem and Zahoor Rahman, 'Conflict Resolution in Afghanistan: A Legal-Anthropological Approach to the Applicability of Peshawar Accords and Bonn Agreement', *Pakistan Journal of Social Sciences* 39, no. 1 (2019): 9.
23. Ibid.
24. John J. Schulz and Linda Schulz, 'The Darkest of Ages: Afghan Women under the Taliban', *Peace and Conflict* 5, no. 3 (1999): 237, 244.
25. William Maley, *The Afghanistan Wars* (New York: Palgrave Macmillan, 2002).
26. Telesetsky writes: 'The Taliban emerged as an army of 25,000 soldiers of mostly Pashtun heritage. Most of the members were graduates of Islamic fundamentalist schools established in Pakistan by Afghani refugees from the Soviet conflict. The religious schools were funded by the Saudis. The Taliban's particular social and cultural characteristics have been influenced by both tribalism and Islam. [T]he Taliban have strict codes of conduct which dominate social relations, including marriage and divorce. The patriarchal tradition of the Pashtun ignores Islamic laws of inheritance and denies women the right to property and the right to consent to marriage. Religion has always been a unifying force and a component of leadership in Afghanistan. Ninety-nine percent of Afghanistan is Muslim and follow the teachings of Islam. Anastasia Telesetsky, 'In the Shadows and behind the Veil: Women in Afghanistan under the Taliban Rule' (HeinOnline, 1998), 293–4.
27. Amnesty International, *Women in Afghanistan: Pawns in Men's Power Struggles* (1999). https://www.refworld.org/docid/3ae6a99513.html.
28. Lindsay Maizland, 'The Taliban in Afghanistan', *Council on Foreign Relations* (2022).
29. William Maley, *Rescuing Afghanistan* (UNSW Press, 2006).
30. L. Runion Meredith, *The History of Afghanistan* (Greenwood Press, 2007).
31. United Nations Populations Fund, 'World Population Dashboard Afghanistan' (2024). https://www.unfpa.org/data/world-population/AF.
32. Ibid.
33. US State Department, *2019 Report on International Religious Freedom: Afghanistan* (2019).
34. Ibid.
35. Meredith, *The History of Afghanistan*, 6.
36. NATO CFC, 'Afghan Ethnic Groups: A Brief Investigation' (2011).
37. Meredith, *The History of Afghanistan*, 7.
38. Ibid.

39. Conrad Schetter, 'Playing the Ethnic Card: On the Ethnicization of Afghan Politics', *Studies in Ethnicity and Nationalism* 16, no. 3 (2016): 460.
40. Ibid., 461.
41. Ibid., 462–3.
42. Ibid., 470.
43. Michael Rubin, 'Who Is Responsible for the Taliban', *Middle East Review of International Affairs* 6, no. 1 (2002): 1.
44. Anchita Borthakur and Angana Kotokey, 'Ethnicity or Religion? The Genesis of the Taliban Movement in Afghanistan', *Asian Affairs* 51, no. 4 (2020): 817, 1.
45. Borthakur and Kotokey, 'Ethnicity or Religion?'.
46. Andrew Hartman, '"The Red Template": Us Policy in Soviet-Occupied Afghanistan', *Third World Quarterly* 23, no. 3 (2002): 467, 467.
47. Ijaz Ahmad Khan, 'Understanding Pakistan's Pro-Taliban Afghan Policy', *Pakistan Horizon* 60, no. 2 (2007): 141, 113.
48. Saikal Amin, 'Modern Afghanistan: A History of Struggle and Survival', (2004) *London-New York*.
49. Amin Saikal, *Islam and the West* (Palgrave Macmillan, 2003), 101.
50. Aabha Dixit, 'The Afghan Civil War: Emergence of the Taliban as Power Broker', *South Asian Survey* 2, no. 1 (1995): 111, 112.
51. Amin, 'Modern Afghanistan', 28.
52. Ahmad Shayeq Qassem, 'Afghanistan–Pakistan Relations: Border Controversies as Counter-Terrorist Impediments' *Australian Journal of International Affairs* 61, no. 1 (2007): 65.
53. Ibid.
54. Rubin, 'Who Is Responsible for the Taliban', 1.
55. Alia Brahimi, *The Taliban's Evolving Ideology* (LSE Global Governance, 2010), 3. The story goes by like this: 'On 20 September 1994, a Herati family, while on its way to Kandahar from Herat, was stopped at a check point ninety kilometres short of Kandahar by local mujahideen bandits. The men and women were separated. The boys were taken away and molested. The girls were repeatedly raped until they became unconscious. Later all of them were killed and their bodies partially burnt. It was Mullah Omar (sometimes referred to as Mullah Mujahid) who was the first to arrive on the scene. He is reported to have gathered some talibs who helped him in collecting the bodies. These were washed and given a decent burial. He then gathered the [religious] students and pledged to start a campaign to get rid of such criminals … The Taliban movement had begun'.
56. Ahmed Rashid, 'The Taliban: Exporting Extremism', *Foreign Affairs* (1999): 22, 24.
57. Fleming, 'Even in Dreams, They Are Coming', 600.
58. Maley, *Rescuing Afghanistan*, 1.
59. Eve McCabe, 'The Inadequacy of International Human Rights Law to Protect the Rights of Women as Illustrated by the Crisis in Afghanistan', *UCLA Journal of International Law and Foreign Affairs* (2000): 419, 455.
60. Marjon E. Ghasemi, 'Islam, International Human Rights & (and) Women's Equality: Afghan Women under Taliban Rule', '*Southern California Review of Law and Social Justice* 8 (1998): 445, 499.
61. Amnesty International, *Women in Afghanistan: The Violations Continue* (1997), 2.
62. Ghasemi, 'Islam, International Human Rights', 446.
63. Amnesty International, *Women in Afghanistan*.
64. Roshan, 'The More Things Change, the More They Stay', 273.
65. Juan R.I. Cole, 'The Taliban, Women, and the Hegelian Private Sphere', *Social Research: An International Quarterly* 70, no. 3 (2003): 771, 782.
66. English, 'A Decade's Legacy', 814.
67. Ibid.
68. Roshan, 'The More Things Change, the More They Stay', 274.

69. Julie Mertus and Judy A. Benjamin, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo, and Afghanistan* (Bloomfield, CT: Kumarian Press, 2000), 53.
70. Skaine, *The Women of Afghanistan under the Taliban*, 64.
71. Cole, 'The Taliban, Women, and the Hegelian Private Sphere', 777.
72. Fleming, 'Even in Dreams, They Are Coming', 611.
73. The Revolutionary Afghan Women's Association (Anjoman-i-Enqilabi-i-Zanan-i-Afghanistan) which is known as RAWA, was founded in 1977. When the Taliban seized power in 1996, RAW actively opposed them. Amnesty International, WITNESS and RAW, *Rise! Revolutionary Women Reenvisioning Afghanistan* (2002). https://www.amnestyusa.org/files/pdfs/rawalessonguide.pdf.
74. Fleming, 'Even in Dreams, They Are Coming', 612.
75. McCabe, 'The Inadequacy of International Human Rights Law', 452.
76. Ibid.
77. Schulz and Schulz, 'The Darkest of Ages', 248.
78. McCabe, 'The Inadequacy of International Human Rights Law', 452.
79. Schulz and Schulz, 'The Darkest of Ages', 248.
80. Ghasemi, 'Islam, International Human Rights', 445.
81. Schulz and Schulz, 'The Darkest of Ages', 252.
82. Skaine, *The Women of Afghanistan under the Taliban*.
83. Amy J. Davies, 'How Does Violence Against Women Manifest? The Case of Post-Conflict Afghanistan', *E-International Relations* (2016): 1.
84. Jessica Pacwa, 'War on Terror as a "Fight for the Rights and Dignity of Women": A Discourse Analysis of the U.S. 'Liberation' Campaign for Afghan Women' (theses and dissertations, 2019. 1101) 1 https://digitalcommons.pepperdine.edu/etd/1101.
85. Farhoumand-Sims, 'CEDAW and Afghanistan', 142.
86. Stephanie W. Hampton, 'Obstacles within the International Community: The Exercise of Afghan Women's Agency for Peace in Post-Conflict Reconstruction', *Journal of Diplomacy and International Relations* 5 (2004): 37, 37.
87. United Nations Human RIghts Treaty Bodies, 'Ratification Status for Afghanistan' (2021). https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN.
88. Farhoumand-Sims, 'CEDAW and Afghanistan', 142.
89. For a detailed discussion of EVAW, please see Mehdi J. Hakimi, 'Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan's Law on Elimination of Violence against Women', *Northwestern Journal of Human Rights* 18 (2020): 52.
90. Sebghatullah Qazi Zada, 'Legislative, Institutional and Policy Reforms to Combat Violence against Women in Afghanistan', *Indian Journal of International Law* 59, no. 1 (2021): 257; Sebghatullah Qazi Zada, 'Breach of Afghanistan's International Obligations Using the Due Diligence Standard to Combat Violence against Women', *The International Journal of Human Rights*.
91. 'AWCCI Releases Figures on Women Entrepreneurs', *Tolo News* (2019). https://tolonews.com/business/awcci-releases-figures-women-entrepreneurs.
92. Laiq Zirack, 'Women's Education: Afghanistan's Biggest Success Story Now at Risk', *The Diplomat* (2021).
93. Ibid.
94. Ibid.
95. Jelena Bjelica and Rohullah Sorush, 'Afghanistan Elections Conundrum (20): Women Candidates Going against the Grain', *Afghan Analyst Network* (2018): 1.
96. The World Bank, 'Afghanistan's Developmental Gains: Progress and Challenges', January 2020, p. 12. https://doi-org.brookings.idm.oclc.org/10.1596/33209.
97. The Asia Foundation. *A Survey of the Afghan People: Afghanistan in 2019*. (2019), 199. https://asiafoundation.org/wp-content/uploads/2019/12/2019_Afghan_Survey_Full-Report_.pdf.
98. Ibid.

99. The Asia Foundation, *A Survey of the Afghan People*.
100. The World Bank. *Life Expectancy at Birth, Female (Years) – Afghanistan* https://data.worldbank.org/indicator/SP.DYN.LE00.FE.IN?end=2017&locations=AF&most_recent_value_desc=true&start=2001 (accessed 17 March 2020).
101. The World Bank. 'Progress in the Face of Insecurity: Improving Health Outcomes', March 6, 2018, p. 7. http://documents.worldbank.org/curated/en/330491520002103598/pdf/123809-WP-PUBLIC-MARCH6-530AM-14846-WB-Afghanistan-Policy-Brief-WEB.pdf.
102. United Nations Assistance Mission in Afghanistan (UNAMA) and United Nations Office of the High Commissioner for Human Rights (OHCHR), *Injustice and Impunity Mediation of Criminal Offences of Violence against Women* (Report, May 2018). https://unama.unmissions.org/sites/default/files/unama_ohchr_evaw_report_2018_injustice_and_impunity_29_may_2018.pdf (accessed 15 January 2019).
103. Graham-Harrison, 'Taliban Claim They Have Changed'.
104. The Taliban said it would respect women's rights. Then it abolished the Ministry of Women's Affairs by Miriam Berger https://www.washingtonpost.com/world/2021/09/24/afghanistan-ministry-women-affairs-rights-taliban/.
105. CNN, 'Bush-Era Official: Taliban 2.0 Are like Taliban 1.0. — but with a Better Public Relations Campaign' (2021). https://edition.cnn.com/world/live-news/afghanistan-taliban-us-news-08-16-21/h_828db972188e7b8c94f478d9c2b2c4d1.
106. Saeed Shah, 'Afghans Tell of Executions, Forced "Marriages" in Taliban-Held Areas', *The Wall Street Journal* (2021). https://www.wsj.com/articles/afghans-tell-of-executions-forced-marriages-in-taliban-held-areas-11628780820.
107. TRT World, 'Taliban to "temporarily" Enact Monarch-Era Constitution in Afghanistan' (2021).
108. Kathy Gannon, 'Taliban Replace Ministry for Women with "Virtue" Authorities', *AP News* (online, 2021). https://apnews.com/article/middle-east-afghanistan-womens-rights-kabul-taliban-eee5a8c73dd5d58acfda008582ef77bb.
109. United Nations, 'Afghanistan Women's Rights Are "Red Line", UN Rights Chief Tells States' (2021). https://news.un.org/en/story/2021/08/1098322.
110. Ibid.
111. Anchal Vohra, 'What Diversity Means for the Taliban', *Foreign Policy*. https://foreignpolicy.com/2021/08/30/what-diversity-means-for-the-taliban/.
112. Jennifer Brick Murtazashvili, 'The Collapse of Afghanistan', *Journal of Democracy* 33, no. 1 (2022): 40.
113. Hassan Abbas, *The Taliban Revival* (Yale University Press, 2014), 116.
114. Ibid.
115. Tricia Bacon, 'Slipping the Leash? Pakistan's Relationship with the Afghan Taliban', *Survival* 60, no. 5 (2018): 159, 162.
116. Safiullah Taye and Zahid Shahab Ahmed, 'Dynamics of Trust and Mistrust in the Afghanistan–Pakistan Relationship', *Asian Studies Review* (2021): 1, 2.
117. Abbas, *The Taliban Revival*.
118. Conor Keane, *US Nation Building in Afghanistan* (Taylor & Francis, 2016), 7.
119. Gilles Dorronsoro, *The Taliban's Winning Strategy in Afghanistan* (CEIP: Carnegie Endowment for International Peace, 2009).
120. Patricia Gossman, *How US-Funded Abuses Led to Failure in Afghanistan* (2021). Patricia Gossman, an associate director for the Asia division of the Human Rights Watch writes that: 'I have spent much of these past 20 years talking to Afghans about the consequences of counterterrorism gone wrong – the civilian deaths and injuries that never made it into the Pentagon's airstrike death count; the night raids that turned into summary executions targeting people who had the bad luck to live in a contested district; the torture of people in custody that destroyed lives and motivated revenge. I have also talked to many Afghans about the unforeseen consequences of these actions – the Taliban resurgence abetted by Afghan government abuses and corruption; the grievances and disillusionment that drove people to lose faith that post-2001 Afghanistan would be better; and the rise of

the Islamic State (ISIS) in Afghanistan, an offspring of Pakistan pandering to Islamist extremism and Afghan warlords' mis-governance in Afghanistan's east'.
121. Ibid.
122. Human Rights Watch, 'US Threatens International Criminal Court' (2019). https://www.hrw.org/news/2019/03/15/us-threatens-international-criminal-court.
123. Ibid.
124. Gossman, *How US-Funded Abuses Led to Failure*.
125. Jessica Pacwa, 'War on Terror as a 'Fight for the Rights and Dignity of Women': A Discourse Analysis of the U.S. 'Liberation' Campaign for Afghan Women' (theses and dissertations, 2019. 1101), 1. https://digitalcommons.pepperdine.edu/etd/1101.
126. Ibid., 2.
127. Maizland, 'The Taliban in Afghanistan'.
128. Dorronsoro, *The Taliban's Winning Strategy in Afghanistan*, 13.
129. Murtazashvili, 'The Collapse of Afghanistan', 40.
130. Farhoumand-Sims, 'CEDAW and Afghanistan', 142.
131. For a detailed discussion please see Qazi Zada, 'Legislative, Institutional and Policy Reforms'; Zada, 'Breach of Afghanistan's International Obligations'.
132. Farhoumand-Sims, 'CEDAW and Afghanistan', 147.
133. Ibid., 145.
134. Afghanistan Independent Human Rights Commission (AIHRC), Violence Against Women In Afghanistan, 6 January 2013, 11 (Biannual report 1391), available at: https://www.refworld.org/docid/529744454.html (accessed 28 October 2021).
135. Dorronsoro, *The Taliban's Winning Strategy in Afghanistan*.
136. Ibid.
137. Ashley Jackson and Rahmatullah Amiri, *Insurgent Bureaucracy: How the Taliban Makes Policy* (United States Institute of Peace, 2019), 37.
138. Ibid. 6.
139. Ibid., 6–7.
140. William Maley, 'The Public Relations of the Taliban: Then and Now', International Centre for Counter-Terrorism (ICCT) (2022). https://icct.nl/publication/the-public-relations-of-the-taliban-then-and-now/.
141. Human Rights Watch, *Afghanistan: Taliban Deprive Women of Livelihoods, Identity* (2022).
142. Maizland, 'The Taliban in Afghanistan'.
143. United Nations Assistance Mission Afghanistan (UNAMA), 'UN Releases Report on Human Rights in Afghanistan Since the Taliban Takeover' (2022).
144. Amnesty International, 'Afghanistan: Taliban's Cruel Return to Hardline Practices with Public Floggings Must Be Halted Immediately' (2022).
145. Ibid.
146. UN Women, *Women's Rights in Afghanistan: Where Are We Now?* (2021).
147. Ibid.
148. United Nations, 'Secretary-General's Statement on Afghanistan' (2022).
149. UN Women, *Women's Rights in Afghanistan*.
150. Amnesty International, *Death in Slow Motion: Women and Girls Under Taliban Rule* (2022).
151. *Time News*, 'Afghan Women Students, Ban on Women Going Abroad to Study: Government Action Order! – Taliban Prohibits Female Students from Leaving Kabul to Study Abroad' (2022).
152. BBC Persian, 'The Taliban Prevent 19 Female Students to Leave the Country without Male Companions' (2022).
153. Amnesty International, *Death in Slow Motion*.
154. Ayaz Gul, 'Taliban Ban Afghan Girls from University Entrance Exam', *VOA News* (2023) https://www.voanews.com/a/taliban-ban-afghan-girls-from-university-entrance-exam-/6938220.html.
155. BBC News, 'Afghanistan Protests: Taliban Use Water Cannon on Women Opposing University Ban' (2022). https://www.bbc.com/news/world-asia-64086257.

156. *The Free Press Journal*, 'ON CAMERA: Taliban Beats up Female Students Wanting to Attend College; Not Allowed to Enter Campus' (2022). https://www.freepressjournal.in/education/afghanistan-taliban-beat-female-students-outside-university-stop-them-from-entering-campus.
157. Preveen Swam, 'School Ban for Afghan Girls, but Taliban Leaders' Daughters Play Football, Study Medicine Abroad', *ThePrint* (2022). Kate Dennet, 'Taliban Elite Educate Their Daughters Abroad While Millions of Girls in Afghanistan Being Banned from Classrooms and Face Widespread Starvation', *Daily Mail UK* (2022).
158. Swam, 'School Ban for Afghan Girls'.
159. International Labour Organisation, 'Women Bear Brunt of Afghanistan Job Losses' (2023) https://www.ilo.org/asia/media-centre/news/WCMS_869891/lang--en/index.htm#:~:text= In the fourth quarter of, have contributed to the decline.
160. Amnesty International, *Death in Slow Motion*.
161. Ibid.
162. Human Rights Watch, *Afghanistan: Taliban Deprive Women of Livelihoods, Identity* (n 141).
163. Amnesty International, *Death in Slow Motion*.
164. Human Rights Watch, *Afghanistan: Taliban Deprive Women of Livelihoods, Identity* (n 141).
165. UN Women, *Women's Rights in Afghanistan*.
166. Jessie Tu, 'Female NGO Staff Return to Work in Afghanistan despite Taliban's Ban' (2023). https://womensagenda.com.au/latest/female-ngo-staff-return-to-work-in-afghanistan-despite-talibans-ban/.
167. Aljazeera, 'NGOs Resume Some Afghan Operations with Women Workers' (2023). https://www.aljazeera.com/news/2023/1/17/ngos-resume-some-operations-with-women-in-afghanistan.
168. UN Women, *Women's Rights in Afghanistan*.
169. Amnesty International, *Death in Slow Motion*.
170. Ali M Latifi, 'Afghanistan: Taliban Stops Scores of Female Students from Flying to Qatar', Middle East Eye (2022). https://www.middleeasteye.net/news/afghanistan-taliban-female-students-scores-stopped-qatar.
171. Deutsche Welle (DW), 'Taliban Clamp down on Women's Taxi Use' (2021).
172. The Guardian, 'Female Protesters Beaten by Taliban Fighters during Rare Kabul Rally' (2022).
173. Amnesty International, *Death in Slow Motion*.
174. Human Rights Watch, *Afghanistan: Women Protesters Detail Taliban Abuse* (2022).
175. Gandhara, '"Beaten and Humiliated": Taliban Cracks Down on Afghan Universities in Bid to Curb Women's Protests' (2022).
176. Human Rights Watch, *Afghanistan: Women Protesters Detail Taliban Abuse* (n 174).
177. Sudarsan Raghavan, 'Faced with Disappearances, Beatings and Intimidation, Afghanistan's Women's Rights Activists Go Quiet on the Streets', *Washington Post* (2022). https://www.washingtonpost.com/world/2022/02/08/afghanistan-taliban-women-protests/.
178. *Aljazeera*, 'Missing Afghan Women Activists Released: UN' (2022). https://www.aljazeera.com/news/2022/2/13/four-missing-afghan-women-activists-released-by-authorities.
179. Ghasemi, 'Islam, International Human Rights', 458.
180. Ibid.
181. Daily Sabah, 'Qatar Disappointed by Taliban's Human Rights Abuses in Afghanistan' (2021).
182. Voice of America (VOA), 'Muslim Scholars, Activists: Taliban Ban on Girls' Education Not Justified' (2022).
183. Tooba Neda Safi, 'Afghanistan: The Only Country That Bans Girls' Education', *Geneva Solution* (2022).
184. Ibid.
185. VOA, 'Muslim Scholars, Activists'.
186. Including the *International Covenant on Civil and Political Rights* (ICCPR) (Afghanistan ratified on 24 January 1983 without any reservations); *International Covenant on Economic,*

Social and Cultural Rights (ICESCR) (Afghanistan ratified on 24 January 1983 with reservations to Article 26); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) (Afghanistan signed on 14 August 1980 and ratified on 5 March 2003); *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT) (Afghanistan signed on 4 February 1985 January and ratified on 1 April 1987 with reservations to Article 20 and 30); and *Convention on the Rights of the Child*[186] *and its Optional Protocols on the Sale of Children, Child Prostitution, and Child Pornography and Involvement of Children in Armed Conflict* (Afghanistan ratified on 27 April 1994). Office of the United Nations High Commissioner for Human Rights, *Ratification Status for Afghanistan* (Web Page, 2019). https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN (accessed 10 February 2019).

187. Jennifer Kristen Lee, 'Legal Reform to Advance the Rights of Women in Afghanistan within the Framework of Islam', *Santa Clara Law Review* 49 (2009): 531, 533.
188. Human Righst Watch, 'Afghanistan: Taliban Rights Pledges Raise Concerns' (2021). https://www.hrw.org/news/2021/08/18/afghanistan-taliban-rights-pledges-raise-concerns.
189. Human Rights Council, *A/HRC/51/6: Situation of Human Rights in Afghanistan – Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan* (2022).
190. Laura Belkner, 'The Secular and Religious Legal Framework of Afghanistan as Compared to Western Notions of Equal Protection and Human Rights Treaties: Is Afghanistan's Legal Code Facially Consistent with Sex Equality', *Cardozo Journal of International and Comparative Law* (2011) 20: 501.
191. Farhoumand-Sims, 'CEDAW and Afghanistan', 142.
192. Vienna Convention on the Law of Treaties, Jan. 27, 1988, art. 18, 1155 U.N.T.S. 331.
193. CEDAW (n 20) preamble and art 1. The CEDAW defines discrimination as: 'Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.
194. Ibid., art 2.
195. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against Women*, UN Doc. A/47/38 (1992), para. 4.
196. CEDAW (n 20) art 2.
197. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UN Doc A/34/46, Article 10. This Article adds that: (a) The same conditions … for access to studies and the achievement of diplomas in educational establishments of all categories … [and] (b) 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'.
198. Amnesty International, *Death in Slow Motion*.
199. Article 11 of CEDAW notes: '1. 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 … … '.
200. *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force 23 March 1976).
201. International Covenant on Civil and Political Rights (ICCPR), Article 12(1).
202. ICCPR, Article 12(3).
203. ICCPR, Articles 21 and 22.
204. Ibid.
205. Amnesty International, *Death in Slow Motion*.
206. *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force 3 January 1976), arts 7 and 3.

207. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, UN Doc E/C.12/1999/10.
208. ICESCR, Article 13(2).
209. 7 Committee on Economic, Social and Cultural Rights (ICESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, UN Doc E/C.12/1999/10, para. 1.
210. ICESCR, art 6.
211. ICESCR, arts 6 and 12.
212. *Convention on the Rights of the Child*, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (entered into force 2 September 1990) art 2.
213. CRC Art 28(1). See also Committee on the Rights of the Child, General Comment No. 1: The Aims of Education, 17 April 2001, UN Doc CRC/GC/2001/1.
214. Committee on the Rights of the Child, General Comment No. 1: The Aims of Education, 17 April 2001, UN Doc CRC/GC/2001/1, para. 10.
215. *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, Dec. 10, 1984, part I, art. I. para. 1, 1988 U.S.T. 202, 55 [hereinafter CAT].
216. United Nations Human RIghts Treaty Bodies, 'Ratification Status for Afghanistan'.
217. CAT (n 223) Art 1.
218. Amnesty International, *Death in Slow Motion*.
219. Ibid.
220. RadioFreeEurope, '"Teach Everyone or No One": Afghan Men Join In Protests Against Taliban's Ban On Women's Education' (2023). https://www.rferl.org/a/afghanistan-taliban-ban-women-university-protests-men/32199112.html.
221. Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Special Rapporteur on Afghanistan' (2022).
222. Resolution adopted by the Human Rights Council on 7 October 2021, 48/1. Situation of human rights in Afghanistan (13 October 2021).
223. Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Human Rights Council Adopts Six Resolutions, Appoints Special Rapporteur on Situation of Human Rights in Russian Federation, Extends Mandates on Afghanistan and Right to Health' (2022). HRC also decided to include in his mandate 'a child's rights perspective and the responsibility to document and preserve information relating to human rights violations and abuses. It further requested the Special Rapporteur and the Working Group on discrimination against women and girls to prepare a report on the situation of women and girls in Afghanistan. The Council decided to extend the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for a further period of three years'. Ibid.
224. FIDH, 'Afghanistan: Need for Stonger Accountability Measures'.
225. UN Women, *Women's Rights in Afghanistan*.
226. FIDH, 'Afghanistan: Need for Stonger Accountability Measures'.
227. International Criminal Court (ICC), 'ICC Judges Reject Opening of an Investigation Regarding Afghanistan Situation' (2017).
228. International Criminal Court, 'Afghanistan: ICC Appeals Chamber Authorises the Opening of an Investigation' (2020). https://www.icc-cpi.int/Pages/item.aspx?name=pr1516.
229. International Criminal Court (ICC), 'ICC Judges Reject Opening of an Investigation Regarding Afghanistan Situation' (2017) para. 12.
230. Ibid., para. 16.
231. Aljazeera, 'UN Fails to Reach Agreement to Extend Taliban Travel Ban Waiver' (2022).
232. Ibid.
233. Amnesty International, *Afghanistan: Taliban's 'Suffocating Crackdown' Destroying Lives of Women and Girls – New Report* (2022).
234. Amnesty International, *Death in Slow Motion*.

235. Yaz Gul, 'Taliban Say Travel Ban Hurts Diplomacy and Dialogue With World', *VOA News*. https://www.voanews.com/a/taliban-say-foreign-travel-ban-hurdle-to-settling-issues-through-peaceful-means-/6716112.html; Amu TV, 'Analysts Explain Implications of Travel Ban on Taliban Leaders' (2022). https://amu.tv/en/15419/.
236. Tracey Shelton, 'The Taliban Wants to Be Recognised by the World. Should Western Countries Engage with It?', *ABC News* (online, 2021). https://www.abc.net.au/news/2021-08-27/should-the-west-engage-with-the-taliban-afghanistan/100393560.
237. Ben Saul, '"Recognition" and the Taliban's International Legal Status', International Centre for Counter-Terrorism (ICCT) (2022). https://icct.nl/publication/recognition-talibans-international-legal-status/.
238. Lynne O'Donnell, 'The Taliban Are Abusing Western Aid' (2022) *Foreign Policy*.
239. BBC, 'Afghanistan: More than $1bn Pledged for Afghanistan' (2021). https://www.bbc.com/news/world-asia-58542451.
240. Tonje M. Viken (Conow) and Ian Kaplan (NAC), 'Afghan voices on aid and conditionality', (Norwegian Afghan Committee (NAC), Discussion note) 2021.
241. Astrid Aitomäki, 'Is Help Really Helping?: A Case Study on the Gender-Equality in Afghanistan during the Years of Increased Humanitarian Aid' (Uppsala University, 2019).
242. Hasht-E Subh Daily, 'Taliban Receives More than One Billion USD as Humanitarian Aid, But the People Starve Due to Poverty' (2022). https://8am.media/eng/taliban-receives-more-than-one-billion-usd-as-humanitarian-aid-but-the-people-starve-due-to-poverty/.
243. Afghanistan International, 'Taliban-controlled Central Bank Receives Another USD 40 Million Aid Package', (2022). https://www.afintl.com/en/202211088392.
244. Viken (n 251) 19.
245. Ibid., 327.
246. James K. Boyce, 'Aid, Conditionality, and War Economies', Working Paper, No. 2004-05, (2004) University of Massachusetts, Department of Economics, Amherst, MA., 14.
247. Human Rights Watch, 'Afghanistan: UN Assessment Should Prioritize Rights' (2023). https://www.hrw.org/news/2023/07/26/afghanistan-un-assessment-should-prioritize-rights#:~:text= (New York) – A United,special coordinator leading the assessment.
248. Tim Lister and Lauren Said-Moorhouse Celine Alkhaldi, Sam Kiley, Rob Iddiols, 'Women's Protest in Taliban-Controlled Kabul Turns Violent', *CNN* (2021). https://edition.cnn.com/2021/09/04/asia/afghanistan-saturday-intl/index.html; 'Afghanistan: Taliban Break up Women's Rights Protest in Kabul', *BBC News* (2021); 'Taliban Special Forces Bring Abrupt End to Women's Protest', *AP News* (2021). https://apnews.com/article/taliban-special-forces-1fa9a87c8fde6e7c947944212bb80241; 'Armed Afghan Women Take to Streets in Show of Defiance against Taliban', *The Guardian* (2021). https://www.theguardian.com/world/2021/jul/07/armed-afghan-women-take-to-streets-in-show-of-defiance-against-taliban.
249. BBC News, 'The Librarian Who Defied the Taliban' (2022). https://www.bbc.com/news/world-asia-62441553.
250. Wahida Amiri, 'Women, Protest and Power- Confronting the Taliban' (2023) https://www.amnesty.org/en/latest/campaigns/2023/03/women-protest-and-power-confronting-the-taliban/.
251. 'Targeted Killings by Taliban Reported in Afghanistan as US Pledges to Get All Americans Out', *ABC News* (2021). https://www.abc.net.au/news/2021-08-21/joe-biden-speech-taliban-afghanistan-us-withdrawal-chaos/100395980.
252. The Gaurdian, 'Afghanistan Reports of Torture and Killing Contradict Taliban's Promises' (2021). https://www.theguardian.com/world/2021/aug/20/afghanistan-reports-of-torture-and-killing-contradict-taliban-promises.
253. 'Afghanistan: Taliban Accused of Killing Pregnant Police Officer', *BBC* (2021). https://www.bbc.com/news/world-asia-58455826.
254. A.J. McDougall, 'Taliban Accused of Executing Police Officer, 8 Months Pregnant, in Front of Husband and Children', *The daily beast* (2021). https://www.thedailybeast.com/pregnant-afghan-police-officer-allegedly-killed-by-taliban-in-her-home.

255. International Crisis Group, Afghanistan's Security Challenges under the Taliban (2022). https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistans-security-challenges-under-taliban.
256. 'Islamic Scholars to Decide Role of Women in Afghanistan-Senior Taliban Member', *Reuters* (2021). https://www.reuters.com/world/asia-pacific/islamic-scholars-decide-role-women-afghanistan-senior-taliban-member-2021-08-18/.
257. Ibid.
258. Palwasha L. Kakar, 'Engaging Afghan Religious Leaders for Women's Rights', *United States Institute of Peace* (2014). https://www.usip.org/publications/2014/06/engaging-afghan-religious-leaders-womens-rights.
259. Syaza Shukri, 'The Different Sides of Malaysia's Response to the Taliban', *Stratsea* (2021). https://stratsea.com/the-different-sides-of-malaysias-response-to-the-taliban/.

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