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## Shrinking Civic Space for Human Rights Defenders in Afghanistan Following the U.S. Military Drawdown in 2014

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## **Shrinking Civic Space for Human Rights Defenders in Afghanistan Following the U.S. Military Drawdown in 2014**

### **Abstract**

Civic space, an imperative to a democratic society where citizens can exercise their basic rights, is now under attack in Afghanistan. The fall of the Islamic Emirate in 2001 by a coalition of the U.S.-led military intervention grounded the rise of a vibrant environment for civil society and human rights defenders (HRDs). Promoting and safeguarding democratic values, mainly freedom of speech, assembly, and association, enshrined within a progressive constitutional framework, had turned to the topic of the day. The heavy presence of foreign troops with the money influx put strong support behind the nascent Afghan CSOs, HRDs, and democracy advocates to speak up for the many repressed Afghans.

However, the drawdown of foreign troops proceeded by protracted political infighting between Afghan leaders over power-sharing, shaped a grim milestone for civic space and human rights in 2014. The Afghan security forces had learned but not enough to take full security responsibility. Meanwhile, the Afghan leaders were wrestling over power in Kabul while an emboldened Taliban was threatening civic space by making more territorial gains in provinces. Consequently, the security situation deteriorated dramatically, triggering widespread public protests. To respond, the government resorted to the use of force against protesters, and democratic advocates and introduced legal restrictions to prevent any prospective unrest. Finally, the U.S. military withdrawal has doubled concerns over the loss of the rights under civic space. Therefore, the United States should stay, not forever, but until the Afghan peace negotiations succeed.

### **Acknowledgements**

I would like to take this opportunity to express my very great appreciation to several sophisticated experts and researchers, both in and out of Afghanistan, who dedicated their time and granted me interviews, especially during the Covid-19 restrictions, in regard to their corresponding areas of expertise and provided me a great deal of information.

## Introduction

Civic space is the environment in which citizens, both individually and collectively, “are able to freely, effectively, and without any discrimination can exercise their basic rights.”<sup>1</sup> As a substratum of an open and democratic society, civic space allows citizens to claim their rights and influence the policies that impact their lives. Yet, by holding its duty, the government is responsible to respect this right and facilitate the condition in which everyone can organize, participate, and express themselves without any fear of repression. Recently, however, the rise of populism, insecurity, and illiberal political figures in various parts of the world has begun to shrink the civic environment dramatically. From the post-Soviet states in eastern Europe and Central Asia to South Asia and Afghanistan, civil society organizations (CSO) and human rights defenders (HRD), who play critical roles in promoting democratic values, now experience growing frustration, instability, and conflict.

After the collapse of the Taliban regime in 2001, a relatively propitious ground for civil society and human rights emerged in Afghanistan. Despite massive challenges of general insecurity, civil society, and human rights institutions embarked on their journey to assess the status of rights of various sections of society. The nascent civil society started working with a legal, albeit deficient, base enshrined in the Constitution of 2004. Under the Constitution, the Afghan government has the duty to “form a civil society void of oppression.”<sup>2</sup> In practice, however, the civic environment remains highly precarious for HRDs in the country.

In 2001, the new transitional government drafted the Protest, Assemblies, and Strike Law, which guaranteed the mechanisms for peaceful protest. Subsequently, in 2009, the elected government ratified the Mass Media Law, which provided the population to speak up for their rights publicly. As a highly conservative society, old-fashioned, traditional values, and informal social structures have always taken precedence over formal politics and statutory laws in Afghanistan. Longstanding cultural impunity and weak government have and continue to undermine the country's existing legal frameworks. The perpetrators of violence against HRDs and journalists trespass the laws. Despite legal protection, both state and nonstate actors, government officials, illegal armed groups, politicians, security forces, and mafia groups continue to ride roughshod over civil rights.

The international community's heavy military and political presence following the fall of the Taliban gave new momentum to civil activities. More than 130,000 (including 100,000 U.S. service members) engaged in a counterinsurgency campaign and began providing training and advice to the Afghan security forces.<sup>3</sup> However, after more than a decade, the number got down to 20,000 by the end of 2014.<sup>4</sup> The United States-led North Atlantic Treaty Organization (NATO) coalition started the security transition process to the Afghan National Defense and Security Forces (ANDSF) in early 2011 and completed it in late 2014, the process which took only three years. Nevertheless, the extensive military reduction of foreign troops created a severe security gap amid the spike in violence and political instability. The political disputes over the result of the presidential election, held in 2014, further exacerbated the situation. The two forerunners, Ashraf Ghani and Abdullah Abdullah overturned the results of the presidential elections, which ultimately led to the formation of an unfaltering power-sharing structure known as the National Unity Government (NUG).

Five years of NUG was fraught with public discontent, protests, and security degradation with further erosion of the environment for the work of journalists, HRDs, and democracy advocates. During this time, several mass civilian protests took place in the capital Kabul and provinces, including the so-called *Tabasum* Movement in 2015, Enlightenment Movement in 2016, and the Uprising for Change Movement in 2017. The protests defied the central government's capacity in managing the demonstrations, which followed by the security forces' crackdown on protesters, leaving several casualties in place. As a result, it forced the government to mull over reconsidering the legal foundations, finding a way to restrict public protests, freedom of expression, and the press. Therefore, this article aims at exploring the civic space for the work of CSOs, mainly in post-2014, and how the military reduction of international troops created a security vacuum, which led to shrinking civic space for CSOs in Afghanistan. This article answers the question, how have legal and political measures of the NUG proceeded by the United States-led military reduction in 2014 impacted civic space for HRDs and CSOs in Afghanistan?

In response, the research has used qualitative methods, combining content analysis and in-depth interviews. The literature involved exploring research reports, journals, books, and Afghanistan's legal documents. In addition, in-depth interviews with the local CSOs and

international experts have generated expertise-based insights and a rich understanding of the environment for HRDs in Afghanistan.

Given that, the research will first consider the legal context whereby civic space has flourished and the subsequent limitations it posed after 2014 in Afghanistan. It will then look at the practical challenges, including economic, funding, political, and security dilemma following the impetuous reduction in foreign troops after one and half decade since 2001. The article will then reflect on how the U.S. military exit in September 2021 would impact civic space for the work of Afghan HRDs and CSOs. Finally, the article concludes by providing policy recommendations to the international donors for their strategic support from Afghan HRDs and CSOs, especially in the context of a Taliban takeover of the entire country.

## Civic Space: Legal and Practical Challenges

After the fall of the Taliban in 2001, Afghanistan's new political order provided room for CSOs, as an integral element of a fragile democracy. The rise of HRDs and social activists advocating for promoting democratic values is an important achievement of the past twenty years of international presence. With all its shortcomings, the establishment of the legal system provided the foundation to regulate civic and human rights interventions. In the meanwhile, the process has neither been smooth nor gone unchallenged throughout this period. Legal hurdles, economic challenges, security, and political implications have and continue to impact civic space in Afghanistan.

## Legal Challenges

### *Constitutional Context*

The 2004 Constitution recognizes the CSOs as the main factor of an open society, in which citizens can express their thoughts freely and openly. According to the Constitution, “the people of Afghanistan can form a civil society void of oppression, atrocity, discrimination as well as violence, based on the rule of law, social justice, protecting the integrity and human rights, and attaining people's freedoms and fundamental rights.”<sup>5</sup> Article 34 also stipulates that “freedom of expression is inviolable and every Afghan has the right to express his thought through speech, writing, illustration, or other means, by observing the provision of the constitution.”<sup>6</sup> Additionally, Article seven further underpins the

rights to freedom of expression, which requires the government to abide by the international conventions to which Afghanistan is a signatory, and the Universal Declaration of Human Rights (UDHR) alike.<sup>7</sup>

Although the Constitution appears to be progressive, it remains cautiously and paradoxically conservative. While it requires the government to observe all the international human rights treaties and charters to which it is a state party, Article three of the Constitution resists any law that “contravenes the tenets and provisions of the holy religion of Islam.”<sup>8</sup> The term tenets of Islam are a general and ambiguous legal phrase, creating leeway and being open to misinterpretations. Similarly, Articles seven and 34 ensure the rights to freedom of expression; however, the third Article prohibits any thought that comes at odds with principles of Islam. Even though the Afghan government has committed itself to observe the UDHR, Article three is in direct conflict with Article 18 of the Declaration, which endows individuals with “freedom of thought and religion.”<sup>9</sup> Moreover, Article six of the Constitution requires the government to protect human rights, yet, no protection mechanism exists to safeguard the lives of HRDs who advocate for promoting human rights values and democracy. Many observers believe that “as the government is entangled with other challenges, protection of HRDs is not a priority.”<sup>10</sup> Therefore, the contradictions in the Constitution and its failure to protect individual's rights to freedom of expression, religion, and belief have undermined the position of HRDs and the state of openness in Afghanistan.

### *Mass Media Law*

As part of the unfolding democratic development, the exponential rise of media in Afghanistan is a significant achievement of the post-2001 state building efforts. From limited or no media outlets prior to 2001, the country now hosts hundreds of private radio and TV stations, with a panoply of magazines and newspapers circulating regularly. The media outlets play a critical role in facilitating public debate and shaping public opinions on different aspects of life.

In 2009, the Afghan parliament approved the country's first-ever Mass Media Law (hereafter Media Law), a promising step toward consolidating freedom of expression. Nevertheless, restrictive clauses and ambiguous terms in the law have increased concerns about squeezing the rights to freedom of expression. For instance, the introduction part places emphasis on the role of religion by recalling

Article three of the Constitution, which makes it impossible for any law to contradict the principles of Islam.<sup>11</sup> Also, Chapter 19 of the law prohibits the publication of certain materials that contain ambiguities and limitations. For example, legal phrases such as “contrary to the principles of Islam” and “promoting religion other than Islam” are not only in conflict with the spirit of the UDHR but also contradict Article 19 of the International Covenant on Civil and Political Rights, which endows everyone with the right to “hold opinions without interference.”<sup>12</sup> In practice, it provides the law enforcement agencies the latitude to interpret this Article to restrict freedom of expression and the press.

Moreover, due to widespread culture of impunity and weak law enforcement, any allusion to sensitive issues, including corruption, land grabbing, violence against women, and human rights violations, becomes life-threatening enough to force journalists into self-censorship.<sup>13</sup> Although the stated purpose of Mass Media Law is to guarantee citizens' right to freedom of thought and expression, those who strive to promote this right are not safe. It is especially true when the Law lacks a particular mechanism to protect journalists and media activists by safeguarding conditions for the free operations of mass media.

The 2009 Mass Media Law also included a provision for establishing the Media Complaint Commission within the Ministry of Information and Culture. Chaired by the minister, the commission primarily served as a cudgel to intimidate the press and control the media streams under the pretext of violating media regulations.<sup>14</sup> In 2015, following a growing concern and anger among journalists and media outlets across the country, the government decided grudgingly to dissolve the commission.

### *Non-Governmental Organization Law*

After 2001, a wide array of non-governmental organizations (NGOs) emerged to strengthen democratic values and support development programs in Afghanistan. In 2005, the Afghan government passed a law on NGOs to promote professionalism and accountability and legalize NGOs' activities.<sup>15</sup> In 2017, however, the government attempted to amend the enacted NGOs law by introducing several provisions, draconian enough to restrict the beneficiaries. The decision faced criticism and opposition from CSOs and human rights activists, calling

the new amendment highly restrictive and problematic.<sup>16</sup> The modifications below are emblematic of a massive change in the law.

- All NGOs shall reregister their organizations every three years.
- The government shall refuse to (re) register an organization for technical reasons.
- When holding their annual general assembly, CSOs must invite the representative of the Ministry of Economy of Afghanistan.<sup>17</sup>

The proposed changes are not only unclear but also do provide grounds for misinterpretation. In addition to the burdensome bureaucratic process, the reregistration clause allows the government to deregister a CSO that will lead to its automatic removal. Especially, those CSOs who are critical of the government policies concerning human rights issues will not be able to operate independently. Similarly, the phrase “technical reasons” is vague and authorizes the government to avoid registering organizations that criticize the government on similar topics.

Finally, the proposed changes allow the government to grip an eye on the work of CSOs and maintain undue influence on their activities. For CSOs particularly to operate in Afghanistan, they should have a registration certificate from the Ministry of Economy of Afghanistan. They must pay tax to the government and report their activities and register each new project with the Ministry of Economy and other sectoral Ministries. Therefore, the more restrictive the NGOs law, the more challenging CSOs activities would become, imposing long back and forth bureaucratic processes.

### *Access to Information Law*

Public access to information from government institutions has always been a challenge. Public institutions and their spokespersons were denying journalists, dependent, and independent researchers access to official documents and information, an issue which has undermined the government's obligation to ensure transparency and accountability. However, in an unprecedented move, in 2018, the Afghan parliament passed the bill of Access to Information Law as a promising step forward to boosting transparency and accountability. While previously many Afghan journalists, CSOs, and HRDs were facing difficulties to access information from public bureaucrats and officials, the enactment of Access to Information is a given legal breakthrough in consolidating

freedom of expression and the press. Article five of the law requires all institutions to “provide information to applicants and the public.”<sup>18</sup>

In practice, however, the law remains incomplete and far from implementation. Most government officials avoid providing information by circumventing the law. They threaten and intimidate journalists and individuals who research sensitive cases of corruption, human rights violations, and allegations of sexual abuse by state actors.<sup>19</sup> Therefore, the government's severe restrictions on state-owned information have and continue to be a problem. The law safeguards individuals who disclose sensitive cases related to corruption and violations of human rights, yet, it fails to outline mechanisms to protect those whistle-blowers, which is a sign of discouragement against speaking out. Another challenge to the effective implementation of the Access to Information Law is the lack of public awareness of the existence of such law. Many people have little or no idea of an enforced law as such to push the authorities to provide them with the requested information. Lack of public awareness about the law has prevented the citizens from exercising their legal rights. The government has also failed to conduct public awareness programs about the importance of the law and the mechanism by which the citizens would solicit information from state and private institutions.

### *The Law on Gathering, Strikes, and Demonstrations*

In 2003, the United States-funded political dispensation in Kabul endorsed Afghanistan's new Law on Gathering, Strikes, and Demonstrations—hereinafter, Assembly Law. The Assembly Law was in accordance with Article 36 of Afghanistan's 2004 Constitution, which endows all citizens with the right to freedom of assembly and association to express their demands and concerns peacefully.<sup>20</sup> It was a promising step toward promoting human rights and a space of openness, which allowed the oppressed Afghan public to hold peaceful protests to speak up for their rights. In the meantime, the Assembly Law embodies articles, which practically restrict citizens' rights to peaceful demonstration. For example, according to Article 14 of the Assembly Law, security forces are authorized to ban protest for security reasons and resort to force if protesters act otherwise.<sup>21</sup> The term security reason is open to multiple interpretations that provide the security apparatus the upper hand to restrict protest any time under the banner of an unfriendly security situation. Resorting to force by police is also at direct odds with the principle of international human rights documents, to

which Afghanistan is a state party. Similarly, Article 21 of the Assembly Law reiterates that “nobody shall organize gatherings, demonstrations, and strikes during the state of emergency.”<sup>22</sup> Yet, the law does not define the term state of emergency that remains vague and open to exploitation.

During the NUG from 2014 to 2019, four nationwide mass protests occurred in the capital Kabul and across provinces, which portrayed the government's failure in peaceful management of the demonstrations. The Farkhunda demonstration in March 2015, the so-called Babassum protest in 2015, two mass protests of the Enlightenment Movement in 2016, and the Uprising for Change protest in 2017 defied the government's capacity to manage demonstration. Many heavily armed security forces and riot police poured on streets, blocking all intersections leading to major squares and centers. Security forces blocked the main roads, using military equipment and night-shipped containers to stop protesters from demanding justice, ending corruption, and improving human rights. During these protests, police cracked down on protesters, killing and wounding dozens of them.<sup>23</sup> The picture below shows the Afghan police clashing with protesters in June 2017 in Kabul.<sup>24</sup>

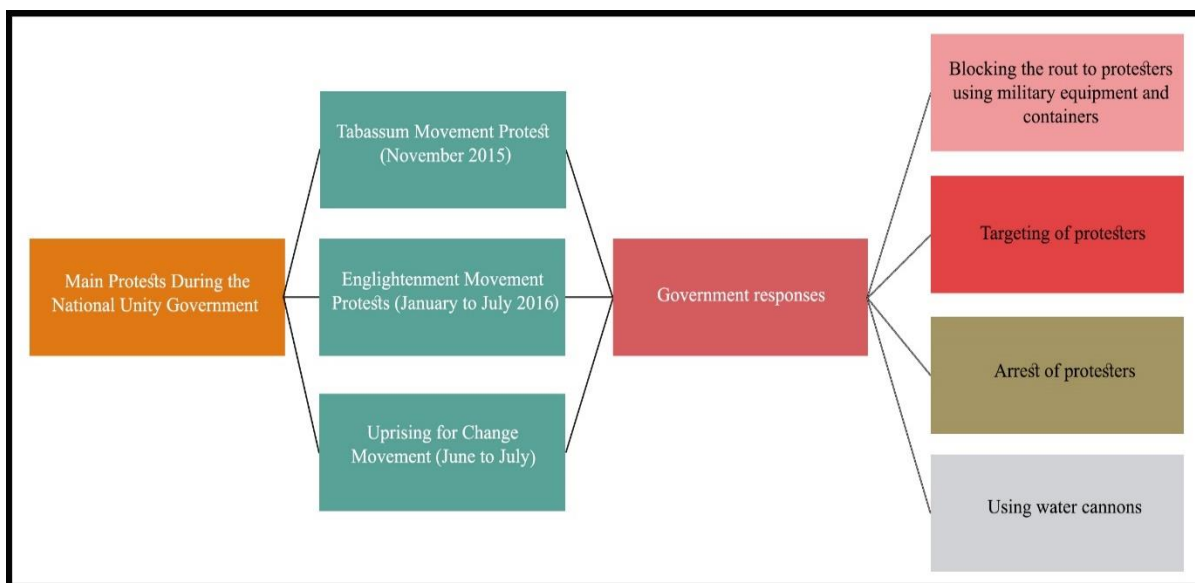
Picture 1.1. Afghan Riot Police Clash with Protesters in Kabul in June 2017



Note: United States Institute of Peace/ Photographed by Mohammad Ismail/ Reuters

In a similar protest in May 2020, the police killed at least four civilians, including one journalist, and injured fourteen others in central Ghor province.<sup>25</sup> The incident took place after dozens of civilians had gathered outside the provincial governor's office to protest the negligence of the local administration towards poverty-stricken families during the Covid-19 pandemic.

Figure 1.1. Three Protest Movements and the Police Response



Source: Author

The protests forced the Afghan National Security Council to mull over changing the Assembly Law. As a result, in 2017, President Ashraf Ghani approved amendments to the Assembly Law, making it impossible for citizens to hold protests. According to the amendments, police reserve the right to harness technical barriers to block the route to demonstrators. Also, the new law prohibits demonstrations that create traffic jams near the government buildings, and in an unusual move, it restricts any gatherings or sit-ins based on ethnic and religious sentiments.<sup>26</sup> In democracies, ethnic, religious, and other marginalized segments of society reserve the right to question the government's discriminatory policies by holding protests or sit-ins to raise their legitimate voice peacefully. However, the new amendments restrict the country's minorities such as Hindu, Sikh, Kyrgyz, and other small ethnoreligious groups, to a large extent, to raise their concerns by holding gatherings and protests. The measure goes against Afghanistan's national and international human rights obligations. The decision faced pushbacks from different Afghan CSOs, Independent Human Rights Commission, and international donor organizations. Zia Moballegh, a

high-profile Afghan human rights activist, described the situation as such:

Given unforgettable lessons from the horrific history of Afghanistan, people do not accept such repressive laws. Freedom of expression and the press, and civic participation are values that guarantee the current republican system and protect the elected government. Any attempts to confront citizens by resorting to any means, especially restricting civic space, are the early stage of political decline. It will highly likely lead to the formation of an absolute dictatorship or fall into a possible civil war.<sup>27</sup>

## Practical Challenges to Civic Space

### *Economic Environment*

With an influx of reconstruction funding in Afghanistan, the country received a tremendous amount of money in foreign aid, spent in different state and private sectors. Following the new United States-backed political dispensation in Kabul, many international philanthropic organizations, and foreign embassies, along with the UN-affiliated entities, began donating to and supporting the Afghan CSOs. Their support ranges across financial largess, political, and capacity building packages.<sup>28</sup> As a result, Afghan CSOs have played critical roles in promoting human rights values, women empowerment, peacebuilding, capacity building, advocacy, and governance. And yet, concerns over the challenges facing by CSOs are mounting. Since their installation in the post-2001 era, the embryonic Afghan CSOs, as the government itself, have been heavily dependent on foreign aid. Thus, with the international community's military drawdown and the security responsibility transition to local security forces in 2014, there were fears of reducing foreign aid to Afghanistan, holding back many CSOs, and printing media operating across the country.<sup>29</sup>

Over the last two decades, international donors have followed two different aid provision mechanisms for Afghanistan

- 1) on-budget and
- 2) off-budget spending programs.<sup>30</sup>

Based on the former mechanism, the international community spent the donated financial largess through the Afghan government budgetary programs, while the latter channeled through the development partners other than the Afghan government, such as the UN agencies and NGOs operating within the country. Since 2014, however, the shrinking of foreign aid to Afghanistan and the trend to move a large proportion of off-budget to on-budget has put Afghan CSOs in financial crisis.<sup>31</sup> Given the nature of dependency on foreign aid and project-driven income, fluctuation in external aid also impacted the performance and position of CSOs in Afghanistan.

The reduction in foreign aid has defied the NUG's capacity in financing its bureaucracies and payments of security servicemen. On the other side, political instability, security deterioration, and the national currency depreciation against the U.S. dollar all precipitated a fiscal crisis toward the end of 2014. To fill the financial deficiency, President Ashraf Ghani introduced new tax measures in 2015. Among others, these measures included “doubling the Business Receipts Tax, from two to four percent, increased levies on imported fuel and gas, a ten percent tax on mobile phone top-ups, and an increase in the overflight fee for commercial airlines.”<sup>32</sup> The measures also included an increase of tax on NGOs, shops, supermarkets, and other internal resources that could generate income as an alternative for external financial compensation.

Consequently, heavy taxation on NGOs, mainly on media with little government support at the time, crippled many private TV and radio stations and print media operating primarily in the countryside. As of August 2017, more than two hundred media outlets terminated their services due to a financial crisis.<sup>33</sup> Afghan journalists called on the government to fulfill its constitutional obligation by supporting the media with a tax exemption or tax reduction, as most of the print media, in particular, have little or no permanent source of income.<sup>34</sup> Meanwhile, most CSOs and institutions either downsized the intervention or closed altogether.<sup>35</sup> The continued trend left negative implications on freedom of expression in the absence of substantial assistance.

While enmeshed in financial crisis, the outbreak of the novel Covid-19, with the first positive case documented on February 22, 2020, in western Herat province of Afghanistan, further squeezed the fragile Afghan CSOs and society. The pandemic disrupted all aspects of life, as the phenomenon coincided with ongoing political, economic, and social

crises in Afghanistan. The novel coronavirus tested the fragile Afghan governance, socioeconomic structures with a critical question raised concerning how it would affect the conflict dynamics and the prospects for intra-Afghan peace negotiations. All local NGOs faced “unprecedented operational, technical, financial, and safety challenges.”<sup>36</sup> As most NGOs, with CSOs, are dependent entirely on external donor funding, Covid-19 challenged NGOs to tweak their daily activities and secure the required financial budget for doing so.<sup>37</sup> Months of lockdown across the major cities restricted physical interaction and undermined the operational capacities of NGOs. Accordingly, many lesser-funded NGOs, with little support from the government and international community during the pandemic, shut down their offices and or are now on the brink of collapse. To minimize the impact of the pandemic on the private sector, NGOs have requested the Afghan government to support them through specific mechanisms such as tax adjustments; however, the government did not take practical measures.<sup>38</sup>

### *Political Environment*

Given the political situation, civil society activists and HRDs enjoy little support from the state apparatuses, which continues to be a major problem affecting the enabling environment. In the last two decades, Afghanistan has proved an unfavorable environment for civil society and human rights activists.<sup>39</sup> Journalists, civil society activists, and HRDs have been under constant threats from Afghan officials, powerholders, members of parliament, influential leaders, illegal armed and mafia groups, such as the Taliban and Islamic State (IS) affiliates. Lack of government support and financial constraints exacerbated by security deterioration, mainly in the post-U.S. military drawdown in 2014, have been among the most pressing challenges civil society has faced.<sup>40</sup>

Although freedom of expression has been a pivotal achievement of the last two decades, the growing threats against journalists and media workers jeopardize this gain. With that in mind, freedom of expression and the press are currently in a downward spiral with increasing intimidation and violence from state and nonstate actors amid waning international assistance.<sup>41</sup> Many believe that the Afghan government is now afraid of an open environment as it provides an enabling space for citizens to expose what political leaders are doing. Politicians make constant efforts to mask their corruption scandals, land grabbing,

human rights abuses, and other malfeasance by restricting the civic environment. As one civil activist described the situation as such:

Human rights defenders put forward sensitive topics, and civil society functions as a watchdog to monitor the government's performance. Therefore, the danger, of course, will come from anyone whose vested interests are at risk, including government officials, religious figures, cultural and political leaders, along with mafia groups.<sup>42</sup>

As mentioned, civilian protests that took place in Kabul and beyond exposed the NUG's failure to manage them peacefully. It forced the executive branch to put in place legal and political restrictions to prevent civilian gatherings in the future. Introducing new amendments to the country's Assembly Law, deploying forces mobilized with heavy military equipment into streets, using water cannons, and shooting the protesters were among the measures, which effectively controlled the peaceful demonstrations. In an unprecedented move, the government banned WhatsApp and Telegram messaging services for twenty days in 2017 during protests by the Uprising for Change Movement in Kabul. The government labeled it a security measure to stop the Taliban and other insurgent groups from these encrypted messaging services.<sup>43</sup> This restriction, however, stirred up growing concerns over censorship of freedom of expression by the NUG. The politically motivated measure saw widespread pushback from CSOs and human rights activists, and the government lifted the messaging restrictions as a result.

In 2009, police in Kabul arrested Ali Mohaqiq Nasab, a magazine editor, and sentenced him to two years imprisonment. The court in Kabul had convicted Nasab of blasphemy to Islam. In his Article, Nasab had criticized punishing adultery with 100 lashes and had called for gender equality under Islamic principles.<sup>44</sup> Similarly, in 2012, a court in Kabul gave Zaman Ahmadi, a writer, and activist, twenty years jail sentence for his unpublished Article about Islam.<sup>45</sup> In Afghanistan, an ultra-conservative society, it would be a life-threatening undertaking to promote and institutionalize freedom of expression.

Over nearly four decades of armed conflict, a deeply ingrained culture of impunity has emerged, crippling the country's already ineffective judiciary and legal system. Law enforcement bodies are either incapable of executing the law or unwilling to do so. Increased violent attacks and threats against HRDs, civil society activists, and journalists go

uninvestigated. Consequently, self-censorship has become a means of survival, both literally and figuratively. Many journalists prefer not to report on sensitive topics such as corruption, land grabbing, and human rights abuses to minimize risks.<sup>46</sup> In 2018, an assessment report characterized the civic space as risky for the work of CSOs, and the United Nations Universal Periodic Review (UPR) had requested the Afghan government to take practical steps toward improving the situation. However, the government failed to implement the UPR recommendations.<sup>47</sup> The failures included the inability to ensure effective investigation and accountability of killing, intimidation, threats, and violations against journalists, HRDs, and media workers due to a high level of impunity.<sup>48</sup> As a result, the report rated civic space in Afghanistan as repressed, reflecting tremendous constraints on civil society's fundamental freedoms.<sup>49</sup>

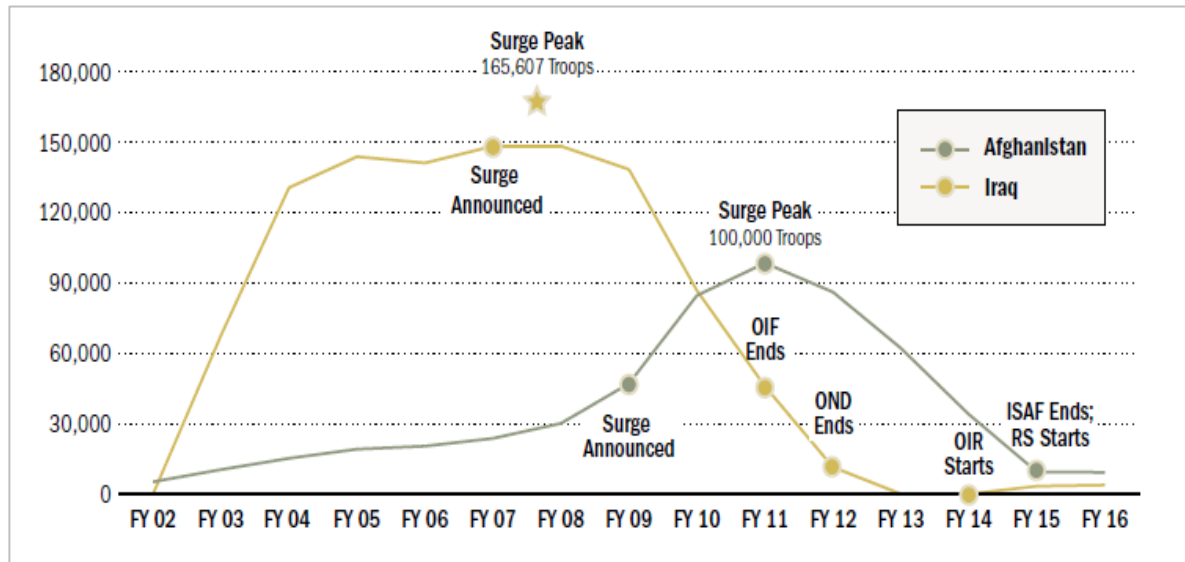
### *Security Environment: From Military Surge to Drawdown*

Aside from the regulatory and political constraints, lack of security remains a crucial challenge for CSOs and HRDs operating in Afghanistan. They face constant threats, intimidation, harassment, kidnapping, and killing, for which both state and nonstate actors are responsible. Following a short period of partial security across the country, the United States-led military drawdown in 2014 turned the security prospects the other way around. Eroding security, political instability, along with a grim prospect for intra-Afghan peace talks, define the post-2014 Afghanistan.

In August 2009, General Stanley McChrystal, the newly appointed United States and International Security Assistance Force commander, sent out a situation analysis of Afghanistan. Describing the situation as severe and deteriorating, the General “recommended a complete overhaul in strategy to a comprehensive and fully resourced counterinsurgency” to overcome the security erosion.<sup>50</sup> After much deliberation, the Pentagon ultimately agreed on an international surge of around 30,000 additional military and civilian personnel, as well as a considerable increase in the size of the ANDSF.<sup>51</sup> The additional deployment increased the U.S. forces' strength from 67,000 to over 100,000, stepping up the total number of United States-led coalition to more than 130,000 on the ground. The forces were primarily responsible for advancing counterinsurgency campaigns on the one hand and enhancing the capacity of the ANDSF, on the other hand, making them ready for the mid-2011 transition phase.<sup>52</sup> Figure 2 below

shows the surge in foreign troops and a dramatic decline stage in Afghanistan and Iraq.<sup>53</sup>

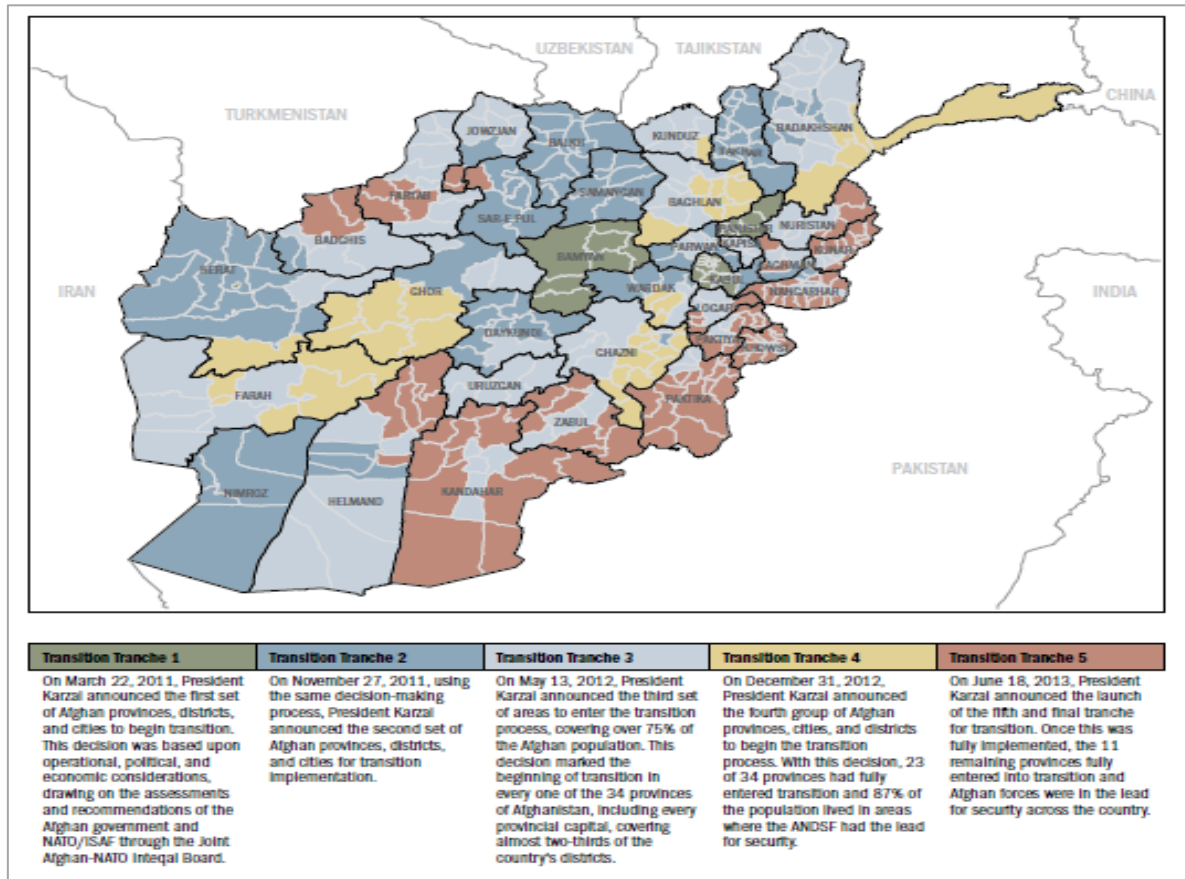
Figure 1.2. Average U.S. Forces in Afghanistan and Iraq, Fiscal Years 2002-2016



Note: Congressional Research Service, Troop Levels in the Afghan, and Iraq Wars, FY2001-FY2012: Cost and other Potential Issues, July 2, 2009, p.9; Congressional Research Service, Department of Defense Contractor and Troop Levels in Iraq and Afghanistan: 2007-2017, April 28, 2017, pp.4-11; Congressional Research Service, Overseas Contingency Operations Funding: Background and Status, February 7, 2017, p. 19

In July 2010, the United States and its Afghan counterparts created the Joint Afghan-NATO *Inteqal* (Transition) Board as a mechanism to provide a geographical assessment of security, political, and economic dynamics across districts and provinces.<sup>54</sup> Both parties agreed on a condition-based transition that started in March 2011, taking place in five transition tranches. The transition of security responsibility to ANDSF ended in December 2013 and took the local forces to take full security responsibility by the end of 2014.

Figure 1.3. NATO Transition Tranches in Afghanistan



Note: SIGAR, Quarterly Report to the United States Congress, January 30, 2013; NATO, *Inteqal*: Transition to Afghan Lead, January 7, 2015.

Nevertheless, the security situation experienced erosion with a dramatic decline in 2014. The security transition provided the Taliban fighters an opportunity to intensify their raids by shifting their tactics from rural to urban centers. In 2015, the Taliban fighters jostled with the government forces in Kunduz province, overrunning the city center for weeks. During their takeover of Kunduz's capital, Taliban militiamen conducted house-to-house searches, using a "hit list" to track down their targets, including journalists, women activists, civil servants, and NGOs' staff.<sup>55</sup> In May 2018, the group captured the capital of Farah province, and three months later, in August, the center of Ghazni province fell under the control of the Taliban. Following the United States-Taliban peace deal signed in early 2020, the group took control of Lashkargah, the capital of Helmand province, killing and injuring dozens of civilians.<sup>56</sup>

Yet, several factors have contributed to security deterioration. In the first place, the transition took place at a time when the ANDSF were not prepared to fill the vacuum created because of the drawdown of foreign troops. Lack of adequate training programs, short terming, insufficient trainers, along with the absence of long-term military strategy by the international community for building the capacity of ANDSF produced a naive local force without readiness to carry out counterinsurgency independently. The transition within three years further exacerbated the preparedness of ANDSF in taking security responsibility and could have provided favorable outcomes otherwise.

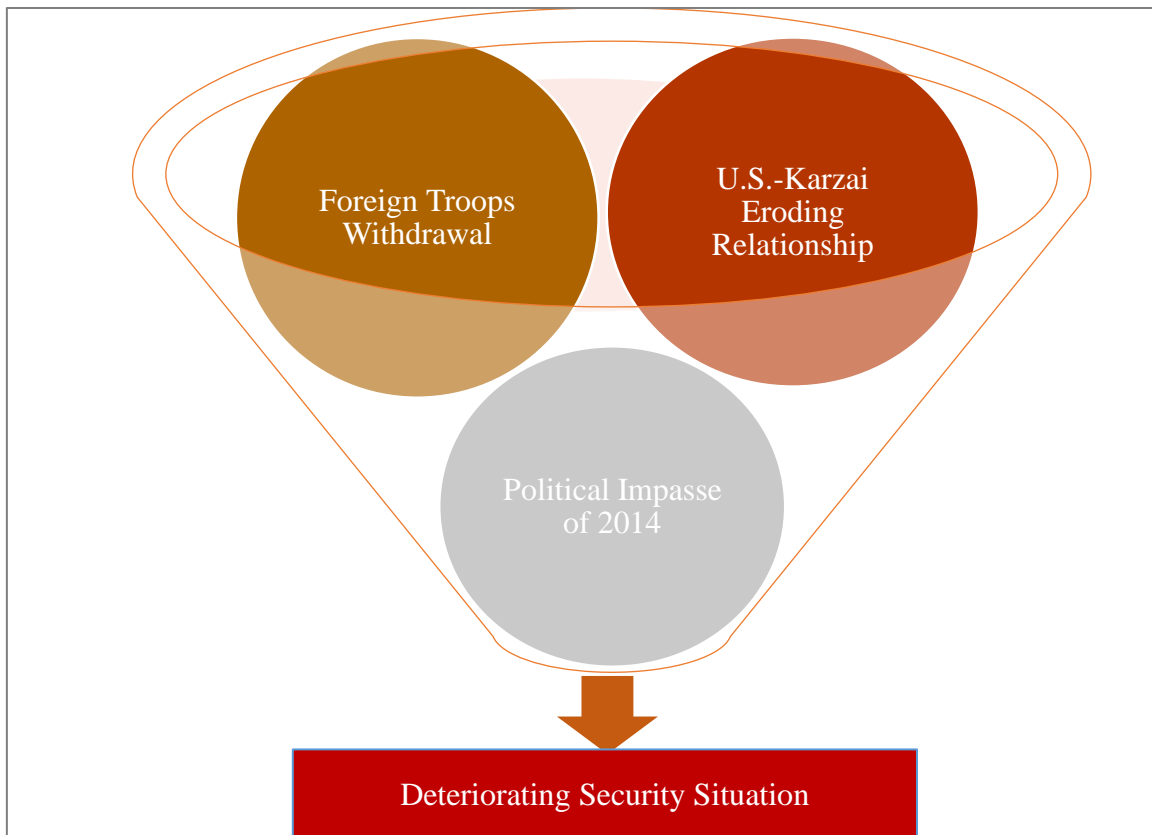
Meanwhile, the U.S. political relations with then-President Hamid Karzai deteriorated, with a growing hostility during Obama's first administration. President Karzai was criticizing the United States for increasing civilian casualties and not chasing terrorists in their sanctuaries in Pakistan rather than Afghanistan.<sup>57</sup> However, the Karzai government's huge dependency on the U.S. military and financial assistance had always put him at an unbalanced political rivalry. Karzai's only concrete response was his stubborn resistance to signing the United States-Afghanistan Strategic Partnership agreement, the mission his successor, President Ashraf Ghani completed.

In 2009, Karl Eikenberry, the former U.S. ambassador to Afghanistan, labeled President Karzai as a leader with “deep-seated insecurity and non-reliable partner.”<sup>58</sup> Given that, the question intriguing one's mind is which partner has been non-reliable to the other? The disputes between the United States and Karzai remained unresolved until his final presidential day in September 2014. The United States was considering Karzai “as more of a problem than a solution while the President was feeling undermined by his partners in Washington.”<sup>59</sup>

In addition, the transition proceeded by a contested political instability over the result of the 2014 presidential elections in Afghanistan. The two forerunners, President Ghani and his strident challenger Abdullah Abdullah disagreed on the result of the elections, which left tremendous political, security, and economic implications. The two contenders rejected the result of the elections due to allegations of fraud. The political deadlock ended when the former U.S. Secretary of State, John Kerry, stepped in, offering a way out of the electoral standoff, which plunged the country into a near civil war.<sup>60</sup> Kerry's mediation resulted in the formation of the NUG, gripped with constant obstructions from both leaders with widespread security backdrops for journalists, HRDs, and

civil activists on the ground. Both leaders, Ghani as president and Abdullah as the chief executive of the NUG, remained two political opponents rather than two political partners within a decaying structure.

Figure 1.4. Triangle of Security Decline Factors in the Post-2014 Afghanistan



Source: Author

Consequently, the Taliban gained momentum, and the IS emerged, a new grim landscape for the work of CSOs. Besides state-imposed restrictions, the Taliban and IS affiliates began targeting journalists and HRDs. According to reports, more than fifteen journalists lost their lives in 2018 in Afghanistan.<sup>61</sup> Similarly, reports confirmed the casualties of twenty-five journalists, political and civil activists in 2019 for which the Taliban, IS, and unknown gunmen have been responsible.<sup>62</sup> Afghan journalists and activists face constant threats. The Taliban have warned them repeatedly to cease broadcasting news against the group or face death. For example, in 2016, the Taliban targeted a bus carrying employees of the *TOLO TV* network in Kabul, killing seven journalists. The group called the attack a retaliation against news aired by *TOLO TV* in favor of the Afghan government and its international allies but against the Taliban.<sup>63</sup> The situation further deteriorated following the United States-Taliban peace agreement signed in early 2020. The Taliban

resorted to a high spate of targeted killings and assassination of CSOs, journalists, democracy advocates, physicians, and government officials by adopting a new strategy.

Over the last twenty years into the conflict, the Taliban have engaged in guerrilla warfare and indiscriminate suicide bombings. However, after signing a peace agreement with the United States in February 2020, the group reduced its conventional suicide attacks; instead, it devised a new tactic of targeted killings, using homemade sticky bombs placed beneath the vehicles with a remote-control adjustment capability. Curiously, the question comes to mind is what makes the Taliban's new tactic special?

Sticky bombs are magnetic improvised explosive devices that stick to the metal with placement capability beneath the vehicle, becoming an effective assassination tool during the United States presence in Iraq and now in Afghanistan.<sup>64</sup> Sticky bombs are easy to access, powerful enough to blow up armored vehicles, lethal, cheap, simple, and with remote-control and placement capability.<sup>65</sup> Packing in a small box with a magnet and mobile phone, the bomb-maker “programs a number into the phone and dials it, with the last digit setting off the blast once he is clear of the targeted car.”<sup>66</sup> Therefore, replacing suicide bombings with this new tactic provided the Taliban with an optimizing tactical approach to sow terror among Afghans, fueling public discontent by projecting the government's inability to protect civilians. Moreover, observers believe that the Taliban seek to leverage their position in the ongoing intra-Afghan peace talks, using sticky bombs and minimizing the government's vulnerability.<sup>67</sup> Similarly, by targeting CSOs, the Taliban try to remove the “vanguards of freedom of expression, a vital stratum of Afghan society that is resisting the Taliban’s return.”<sup>68</sup>

## What Does the United States Withdrawal Mean for Core Civic Space Rights in Afghanistan?

In 2010, the United States agreed on a condition-based military drawdown, but now, the country is leaving in September 2021, based on a timeline set by the Biden Administration. The so-called United States counterinsurgency in Afghanistan has experienced many ebbs and flows. The mission started with a coalition in 2001, continued with a surge in 2009, fluctuated with drawdown five years later, and now, it is going to end by September 2021. Whatever the United States and its Western allies achieved or lost in Afghanistan, the question now is what their

September farewell means for democratic gains amid a bleak political horizon looming over the country.

In February 2020, when many countries around the world were struggling with the side-effects of the novel Covid-19, the United States signed a peace agreement with the Taliban to forge a political settlement in Afghanistan. The United States-Taliban peace agreement provided “a 14-month withdrawal timeline of all the U.S. troops conditioned on the Taliban preventing all terrorist groups from using Afghan territory to threaten the United States and its allies.”<sup>69</sup> The deal also urged the Taliban to join in direct talks with the United States-backed government in Kabul while not binding the group to take down the level of violence and or recognize the Kabul government as a legitimate dispensation.

Although the Taliban stopped attacking foreign troops, the killing of Afghan officials, journalists, and CSOs members became a central point. Shortly after his inauguration in January 2021, President Joe Biden undertook the review of the U.S. engagement strategy in Afghanistan. Initially, his electoral success had restored the waning aspirations of Afghan leaders over the new possible U.S. strategy to Afghanistan. Because Trump's set timeline of the United States withdrawal in May 2021 had created growing frustrations over an irresponsible exit, which President Biden should have fixed it. However, in March 2021, President Biden outlined a three-part peace contour for Afghanistan, with a delayed complete military withdrawal from May 1 exit deadline that the then-President Trump had negotiated, to September 2021.<sup>70</sup>

Nevertheless, fears are growing among Afghans over a Taliban takeover or a possible civil war if the fragile intra-Afghan peace negotiations do not provide favorable outcomes. While the intra-Afghan peace talks kicked off in September 2020, the Afghan government and the Taliban have not yet made tangible progress. Multiple sticking points, such as the nature of the future political structure, an agreed-upon constitution, minorities, and women's civil, political, and economic participation, have remained unresolved on the table. The Taliban have constantly placed emphasis on the formation of an Islamic system; however, the group has not yet defined what that means as the current Afghan government is following the Islamic principles enshrined in the Constitution.<sup>71</sup> Twenty years since the collapse of the Islamic Emirate of Taliban have provided enormous opportunities, especially in promoting core civic space rights such as the rights to freedom of association, freedom of peaceful assembly, and freedom of expression, all defined

within a progressive constitutional framework. Human rights of minorities and women improved unprecedentedly with the latter making 21 percent of the labor force and holding 69 seats out of the total 250 seats in the parliament.<sup>72</sup>

Picture 1.2. Afghan Female Members of Parliament



Note: 8AM Newspaper/ Photographed by the Afghan Parliament Media Department

Yet, observers argue that with the United States complete withdrawal in September 2021, if the intra-Afghan peace talks fail to result in an inclusive and sustainable peace, democratic gains will vanish, and Afghanistan will plunge into another conflict.<sup>73</sup> This major concern is because the Taliban would take advantage of the security vacuum after the U.S. military withdrawal, trying to re-establish a similar theocratic Islamic regime as the group imposed in the 1990s. The Taliban are still psychologically vindictive, mentally radical, and behaviorally brutal as their practices in the areas they controls do not inspire confidence that the groups' views on human rights have evolved since the 1990s.<sup>74</sup>

## Conclusion

Following the new political establishment in 2011, there was growing hope for creating a conducive civic space for the work of civil society and

human rights organizations in Afghanistan. This hope came into being with the financial and political support of the international community to the nascent Afghan CSOs. The heavy military presence of the United States-led coalition improved the security situation, a critical prop up for the practical intervention of CSOs in upholding democratic values. However, the shrink of international troops and their financial assistance in 2014 led to a grim milestone for CSOs and heralded a deteriorating security posture impacting the state of openness for human rights activists.

Apart from that, protracted political infighting between President Ashraf Ghani and his formidable electoral challenger, Abdullah Abdullah, further exacerbated the situation, which provided a recipe for the Taliban's exploitation of the situation. The group started seizing more territories while the Afghan political leaders were wrestling over power sharing; the political bargaining, which was domestically destructive and strategically crippling enough. The government trapped in a mazelike crossroad. On the one hand, the government had to resolve its internal conflict, and on the other hand, should it respond to growing violence, which was escalating because of a considerable drawdown of foreign troops. However, the government failed to manage either. As a result, the situation prompted widespread public discontent that led to mass protests against the government in Kabul and beyond. In response, the government undertook a crackdown on civilian gatherings and amended the legislation with a temporary ban on social media to prevent any social unrest in the future.

In addition, the security vacuum fed the emboldened Taliban, and an emerging IS, along with other illegal armed groups, extending their geographical areas by pushing back the government forces. The fall of Kunduz, Ghazni, Farah, and Helmand provinces are emblematic of broader territorial gains by the Taliban, who dismantled NGO offices, arrested, and killed dozens of human rights activists, HRDs, and civil employees while besieging the cities. Therefore, the ANDSF are bogged down in a war of attrition, which according to President Ghani, "more than 45,000 Afghan security forces have lost their lives since 2014."<sup>75</sup>

The ongoing sluggish intra-Afghan peace talks have increased concerns over Afghanistan's loss of democratic gains. If the peace process preserves human rights values, such as women's rights, freedom of expression, media, civil society, and civil and political participation for all, and for women, in particular, would be a step forward and would

relapse into another conflict otherwise. The United States complete military withdrawal by September 2021 has further exacerbated hopes for sustainable peace. The United States should stay, not forever, but until the intra-Afghan peace negotiations come to a success. Otherwise, the fundamental rights such as freedom of speech, assembly, and rights to association guaranteed under civic space will go in vain, resulting in a loss of all democratic achievements gained over the last twenty years.

Second, the international community should make all its assistance to Afghanistan conditional on the preservation of civic space, human rights, civil society, and women's social and political participation. Third, the international community, mainly the United States, should put pressure on the Taliban to deescalate violence and halt the killing of CSOs and democracy advocates. Fourth, the international community should require the Taliban to respect human rights, those of women and minorities under the areas of their control as proof of the group's claims to have changed on human rights issues. Finally, the international community should hold the Afghan government, as a duty bearer, to comply with its international obligations by ameliorating the legal and practical situations for the work of CSOs in Afghanistan. Only then, the rights under civic space and other democratic values would sustain for years to come in Afghanistan.

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