

The never-ending women rights chokehold among the shifts of power in Afghanistan – What changes under the Taliban regime?

The Taliban shift takeover in Afghanistan and the fall of Kabul the 15 August 2021, after the flee of the president **Ghani** followed to a long series of scathing attacks and crimes, is looming a catastrophe in terms of the protection of human rights in general and the rights of women in detail.

A series of four coordinated terrorist attacks against the US that took place the 9/11, 2001, plotted by Bin Laden's Al-Qaeda, in which four commercial airliners traveling from the northeastern U.S. to California were hijacked mid-flight by 19 terrorists, causing mass casualties (3000 dead and 2500 injured)¹ and partial or complete destruction of targeted buildings (two of the planes hit the Twin Towers of the World Trade Center; a third hit the west side of the Pentagon; a fourth plane missed the target of Washington, D.C., crashing instead into a field near Shanksville, Pennsylvania) started the War on Terror² and the longest war in US history, surpassing just that fought in Vietnam by approximately five months.

These accidents prompted US President George W. Bush to ask the Taliban, *de facto* ruling Afghanistan, to extradite Osama bin Laden. In response to the Taliban's refusal to do so USA and the Northern Alliance decided to invade their country in order to defeat and expel this extremist Islamic political movement and military organization in a counter-terrorism strategy. In an intricate, relentless man-hunt, the US and a coalition of over 40 countries, including all NATO members, remained in the country and formed a UN security mission called International Security Assistance Force (ISAF) in order to consolidate a new democratic authority in Afghanistan and to prevent the return of the Taliban and al-Qaeda to power. After Enduring Freedom operation began and the new Afghan leaders elected Karzai to head the Afghan Interim Authority, took place the 2001 **Bonn Conference**, organized by the US Secretary of State Colin Powell at the behest of the President G.W. Bush and in which sat down together USA, Iran, Russia, Pakistan, India and representatives of Northern Alliance. The 2001 **Bonn Agreement** established the Afghan Independent Human Rights Commission (AIHRC) as a national human rights institution to protect and promote human rights and to investigate on abuses and war crimes. The provisions of this agreement were entrenched in the Afghanistan Constitution of 2004. While the ongoing tug of war, wave of violence and reconstruction efforts often makes difficult to get an accurate sense of what is going on, various NGOs are keeping to report gross human rights violations perpetrated not only by Afghan government but also by American soldiers on civilians, enduring torture and inhumane treatments.

¹ [September 11 attacks: What happened on 9/11? - BBC News](#)

² [The War on Terror - Timeline & Facts - HISTORY](#)

Although that, the Taliban rose from the ashes and reshaped its strength under Mullah Omar, launching in 2003 an harsh rebellion against the new Afghan government, waging an asymmetric warfare with guerrilla raids spiralling escalating to a point where large parts of Afghanistan had been reconquered by Taliban by 2007. ISAF counter-attacked by massively deploying troops reaching in 2011 a peak of 140,000 foreign soldiers operating under ISAF and US command in Afghanistan³.

After the final killing of Osama bin Laden in this year, NATO leaders began withdrawing their forces until the December 28, 2014 also ended ISAF combat operations, officially transferring full security responsibility to the Afghan government. Incapable of militarily erasing Taliban, the members of coalition and separately the government of president Ghani drifted to diplomacy in order to quench the conflict. These efforts culminated in February 2020, when the US and the Taliban signed a conditional peace deal in Doha setting at US troops withdraw by April 2021. The Taliban, in return, pledged to prevent any group in the territory of Afghanistan from attacking the US and its allies in the future. The Afghan government was not a party to the deal and rejected its terms regarding release of prisoners.

The **Doha Agreement**⁴, also known as the **Agreement for Bringing Peace to Afghanistan**, is a four pages document, supported by US, China, Russia, India and Pakistan and unanimously endorsed by the UNSC⁵, concluded on February 29, 2020 in order to stop the war. The Agreement set out the withdrawal of all NATO forces from Afghanistan in return for a Taliban pledge to prevent al-Qaeda from operating in areas under Taliban control and to start intra-Afghan dialogue for “a permanent and comprehensive ceasefire” to start on March 10.

Trump’s administration agreed to an initial reduction of its forces from 13,000 to 8,600 by July 2020, followed by a full withdrawal within 14 months, if the Taliban would have fulfilled their commitments. The US also pledged to close five military bases within 135 days, and expressed its intent to end economic sanctions on the Taliban by August 27, 2020.

On 15 August 2021, after taking control of a vast majority of Afghan territory, the Taliban began capturing the capital city of Kabul, and many civilians, government officials and foreign diplomats were evacuated. President Ghani fled Afghanistan the same day⁶. The day after, an unofficial Coordination Council led was in the process of coordinating the transfer of the state institutions of the Islamic Republic of Afghanistan to the Taliban. Saleh proclaimed himself the caretaker President of Afghanistan and announced the formation of an anti-Taliban front along with Massoud but on 6 September the Taliban took control of most of the Panjshir province, pushing both to flee to neighboring Tajikistan, causing the proclamation of the Islamic Emirate of

³ The foreign troops left in Afghanistan, BBC News, 15 October 2015

⁴ [Afghanistan’s Taliban, US sign agreement aimed at ending war | Taliban News | Al Jazeera](#);

⁵ [Security Council resolution endorses moves towards long-sought Afghanistan peace | | UN News](#)

⁶ ["President Ashraf Ghani Flees Afghanistan, Taliban Take Over Kabul: Report". NDTV.com., 2021.](#)

Afghanistan, under the supreme leader Akhunzada and the Prime Minister Akhund, A new, all-male cabinet was formed, abolishing the Ministry of Women's Affairs⁷.

On 20 September 2021, UN Secretary-General António Guterres received a letter from acting minister of Foreign Affairs Muttaqi to formally claim Afghanistan's seat as a member state and asked to address the UNGA.

The US withdrawals was completed on August 30, 2021, along with the end of the over-the-horizon counterterrorist attacks, term anticipated by Biden administration as he declared to have no interest to procrastinate the permanence in the country until the 20th anniversary of 9/11 attacks, although the shift of power⁸.

Western nations have suspended most humanitarian aids to Afghanistan following the Taliban's takeover of the country in August 2021 and the WB and IMF also halted payments. According to *Human Rights Watch* in October 2021, more than half of Afghanistan's 39 million people faced famine and starvation due to an economic and banking crisis⁹.

According to the *Costs of War Project*¹⁰ the war killed 176,000 people in Afghanistan; 46,319 civilians, 69,095 military and police and at least 52,893 opposition fighters. According to the UN, after the 2001 invasion, more than 5.7 million former refugees returned to Afghanistan. However, since the renewed Taliban offensive of 2021, 2.6 million Afghans remain refugees or have fled, mostly to Pakistan and Iran, and another 4 million Afghans remain IDPs within the country.

After the withdrawal of US and Nato forces last 31 August, the Islamic Republic of Afghanistan, in fact, has been left in the hands of Taliban that since the midst of time has never actualized, on the contrary has kept on abusing, women rights, confining the role of women and girls, relegating their space and forms of expression in society and forbidding them a significant access in society other than a full participation in public life. Moreover, during last months, we have witnessed all the same a sequence of dramatic events even if well hindered under the plague of disinformation, being independent journalism criminalized, due to a dichotomic repression of the freedom of press and of dissent both from government and civil society. This remarkably impacted on the human rights soundly acclaimed as the main achievements of the last twenty years reforms and in order to understand if the overall situation is improved or deteriorated, beyond the apparent renewed profile of this country in the international community, it should be proper a step-by-step overview of the

⁷ ["Hardliners get key posts in new Taliban government"](#). *BBC News*. 7 September 2021

⁸ [Last plane carrying Americans from Afghanistan departs as longest U.S. war concludes \(nbcnews.com\)](#)

⁹⁹ ["Afghanistan Facing Famine: UN, World Bank, US Should Adjust Sanctions, Economic Policies"](#). *Human Rights Watch*. 11 November 2021.

¹⁰ The "Costs of War Project" is a nonpartisan research project, established in 2010, based at the Watson Institute for International and Public Affairs at Brown University that seeks to document the direct and indirect human and financial costs of U.S. wars in Iraq and Afghanistan and related counterterrorism efforts.

main legal changes occurred, their practice and their customs as the Taliban, in power since 1996, imposed tough restrictions on women and perpetrated gross violations.

First of all, Afghanistan has been a signatory to all major international human rights conventions and treaties, especially the UN Convention against Torture (CAT) since April 1987, which prevents the state from inflicting torture on any individual, and, although that, a UN study in 2011 reported on interviews with 379 detainees found those held by police or intelligence services were subjected to beatings, removal of toenails and electric shocks¹¹. Some members of Afghanistan's National Directorate of Security (NDS), the Afghanistan national intelligence and security service, called to investigate cases involving "national treason, espionage, terrorism, sabotage, propaganda against the Government, war propaganda, assisting enemy forces, and organised activity against internal and external security"¹², have been accused of running their own prisons, torturing suspects, and harassing journalists, of deliberately killing civilians during government raids. The security forces of local militias, which also have their own prisons, have been accused of torture and arbitrary killings; warlords in the north have used property destruction, rape, and murder to discourage displaced Pashtuns from reclaiming their homes; child and human trafficking remain common outside Kabul; civilians have been killed frequently in battles between warlord forces. Poor conditions in the overcrowded prisons have contributed to illness and death amongst prisoners and, to stop it, a prison rehabilitation program began in 2003.

. A radical change seemed to have been introduced by the promulgation of the **2004 Constitution**, officially signed by Karzai, approved by consensus after the 2003 loya jirga and consisting of 162 articles, proclaiming the Islamic Republic of Afghanistan. It is a text fundamentally based on Islam that seemed to innovate for the recognition of the principle of equality, protection and implementation of human rights, at least on the paper, including women's rights, minority rights, freedom of expression and assembly and so on. Under the new constitution, at least two females shall be the elected members of the House of People from each province. (Art. 83)¹³. Article 22 stated, "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, *man and woman*, have equal rights and duties before the law". Although that, Georgetown Institute for Women, Peace and Security ranks Afghanistan as one of the worst countries for women¹⁴. A bill of rights was enshrined in chapter two of the Constitution of Afghanistan. The right to life and liberty were constitutionally protected as were the right to a

¹¹ Afghanistan officials 'systematically tortured' detainees, says UN report | Afghanistan | The Guardian

¹² United Nations Assistance Mission in Afghanistan; UN Office of the High Commissioner for Human Rights (October 2011). [Treatment of Conflict-Related Detainees in Afghan Custody](#) (PDF). *United Nations Assistance Mission in Afghanistan* (Report). Kabul. pp. 14–15.

¹³ constitutions.unwomen.org/en/countries/asia/Afghanistan

¹⁴ "Index Country Rankings" (PDF). Georgetown Institute for Women, Peace and Security, 2017

fair trial and the presumption of innocence for all persons, giving the Republic a strong human rights framework that is guaranteed to all citizens. The constitution provides for an elected President and National Assembly and divides Afghanistan in 34 provinces, each one governed by a provincial council, with members elected for four-year terms, and a Provincial Governor appointed by the president. Afghanistan has two dominant justice systems: the formal state system and the informal traditional system. Despite existence of ordinary judicial system e.g. Supreme Court, National Security Court (dealing with terrorism related cases), first and second instance courts, "jirga" and "shura", traditional institutions, are operating. In the absence of an effective national judicial system, the right to judicial protection has been compromised as uneven local standards have prevailed in criminal trials.

In **2003**, Afghanistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁵, adopted by the UNGA the 18th of December 1979. The Convention also has a provision obliging its member states to carry out certain legislative changes, including establishing gender equality in law, abolishing discriminatory laws and creating further institutions (tribunals and public bodies) protecting women against all forms of discrimination and violence. In addition to that, art. 18 of the Convention specify that member states produce an annual report on the establishment of the Convention in their country.

The come into force of CEDAW in Afghanistan affected 2004 Constitution, so that gender equality is more clearly defined by law and the government also recognises its duty to protect mothers and children. The Convention also contains provisions obliging its member states to carry out certain legislative changes concerning gender equality, abolishment of discriminatory laws and the creation of institutions (tribunals and public bodies) protecting women against all forms of discrimination and violence. Women constitutionally have equal rights to men, rights that have been severely restricted in the previous Taliban regime. According to the Constitution women are permitted to work outside home, to engage in political activities, and each political party has to nominate a certain number of female candidates.

The **Elimination of Violence Against Women Law** was enacted in 2009 to offer legal and Sharia-based protection for women and to satisfy victims' demands for justice. A wide-scale national strategy has been put in place to protect women's rights. A law eliminating violence towards women is now in force, toughening the sanctions against those who commit such crimes; a quota system has given women a role in the government and in new institutions such as the Public Prosecution Office; was also created the High Commission for the elimination of violence against women. Nevertheless, in March 2009, Afghan President Karzai signed into law an internationally

¹⁵ [Convention on the Elimination of All Forms of Discrimination against Women \(un.org\)](http://www.un.org)

condemned "**Shia Family Law**" which condones apparent spousal rape (Art.132), child marriage and imposes *pardah* on married Afghan women. By keeping women indoors, the Taliban claimed to be keeping them safe from harm. Although the offending legislation is said to have been dormant for a year, President Karzai tried to gain the support of Afghan northern Shia legislators and the neighbouring Islamic Republic of Iran, which are more integralist.

Thus, as a matter of fact, the Convention has brought no visible instantaneous practical changes and the institutional and legislative aspects of the law are being put in place progressively, so that in years to come a turnaround in women's status in society is hoped to be a real possibility.

Therefore, despite various promises from the government to implement **UNSCR 1325** (2000), were faced many hurdles in its implementation.

Another significant step forward seemed to be the law passed on 18 September 2020, according which Ghani intended to include mothers' names on their children's birth certificates and identification cards, a dream come true for many activist campaigners.

The Interim government followed the flee of Ghani and the exit of US forces from Afghanistan has not been recognized internationally, since the international community linked recognition to respect for women's and minority rights. Despite repeated assurances by the Taliban, severe restrictions in facts have been placed on their access to education and work. Education in lower grades resumed only in classes segregated by gender. In higher grades (7 through 12) and at the university level, classes for girls and women have been suspended. On 27 September, the new chancellor of Kabul University, Ghairat, announced that women were not allowed to return to university to either study or work¹⁶. The Taliban cited security concerns as the reason for these measures, however, did not specify under which conditions girls would be allowed to return to school.¹⁷

The new Taliban interim cabinet does not include any women as either ministers or deputy ministers. Because of the abolishment of the Ministry of Women's Affairs, many protests led by women, especially in Kabul, have met violence by the Taliban security forces.

Many women in Afghanistan experience at least one form of abuse. In 2015, the WHO reported that 46% of women in Afghanistan had experienced at least one form of domestic violence from intimate partner, ranging from verbal and psychological to physical abuse and unlawful killing, often glossed over and tolerated by the community as widely practiced.¹⁸

From infancy, girls and women are under the authority of their fathers or husbands. Their freedom of movement is restricted since childhood and also their choice of husbands is restricted. Women

¹⁶ Engelbrecht and Hassan. "[New Taliban Chancellor Bars Women From Kabul University](#)". *The New York Times*, 30 September 2021.

¹⁷ Limaye and Thapar. "[Afghanistan: Women beaten for demanding their rights](#)". BBC, 30 September 2021.

¹⁸ [Data \(srhr.org\)](#)

and girls are deprived of education and denied economic liberty. In their pre-marriage and post-marriage relationships, their ability to assert their economic and social independence is limited by their families. Most married Afghan females are faced with the stark reality that they are forced to endure abuse. If they try to extricate themselves from the situation of abuse, they invariably face social stigma, isolation, persecution for leaving their homes by the authorities and honor killings by their relatives.

With centuries-old patriarchal rules prevailing by customs and traditions and illiteracy, the issue of violence against women is not only pronounced but also generally accepted. In order to reverse this trend was created in 2009 by multiple organizations which were assisted by prominent women's rights activists in Kabul, namely Unifem, Rights & Democracy, Afghan Women's Network, the Women's Commission in the Parliament and the Afghan Ministry of Women's Affairs, the Elimination of Violence Against Women Law. Nowadays, Amnesty International reported that violence against women was perpetrated by both state and non-state actors.¹⁹

In April 2020, HRW reported that in Afghanistan, women with disabilities face all forms of discrimination and sexual harassment while they are accessing government assistance, health care and schools.²⁰ Unicef has recently employed mobile health teams across Afghanistan to address the health issues of Afghan women and children. These teams will travel around the country to provide health services to those women and children who cannot access the services and will be equipped with urgent nutritional packages. Earlier, Unicef had estimated nearly half of the Afghan children to be facing malnutrition in 2022. On the other hand, the UN has estimated over 24 million people of Afghanistan to be on the verge of starvation as the country is going through the worst humanitarian disaster on earth²¹.

In 2020, the UNAMA concluded that the vast majority of the perpetrators of honor killings were not punished.²² Monitoring conducted by the Human Rights Service of the UNAMA and the Office of the OHCHR from September 2018 to February 2020 indicates that while the response by the justice sector to violence against women and girls, criminalized under the ERAW Law, continues to improve, the system also fails women and girls in a number of respects. Over an 18-month period, UNAMA documented 303 reports of crimes of violence against women and girls. The purpose of the documentation was to monitor the judicial processing of reported crimes and to understand what redress was provided by the justice system to women and girls, specifically by three State institutions mandated to ensure women's access to justice in relation to such crimes: Departments of

¹⁹ [Amnesty International Report 2020/21](#)

²⁰ ["Afghanistan: Women with Disabilities Face Systemic Abuse"](#). *Human Rights Watch*, 28 April 2020.

²¹ [Mobile health teams employed for Afghan women and children: UNICEF - The Khaama Press News Agency](#)

²² [in_search_of_justice_for_crimes_of_violence_against_women_and_girls.pdf\(unmissions.org\)](#)

Women's Affairs, ERAW prosecutors, and the Family Response Units of the Afghanistan National Police (ANP). Out of the 303 cases documented by UNAMA, only half progressed through the full justice chain to adjudication by a primary court; 31% were not resolved by the justice system for a variety of other reasons, such as failure to arrest the alleged perpetrator; while in other cases the response of the justice sector fails in a number of respects. UNAMA found that ERAW institutions registered so-called "moral crimes", such as "running away" from home or attempted *zina*²³, despite the former not being a codified crime. It also documented 40 cases of women being forced into suicide or self-immolation due to violence as in many cases women had sought, but failed, to receive assistance from their families or communities and distrusted the justice system. While information collected by UNAMA indicates that conviction rates for cases of murder of women and girls have increased, cases of so-called "honour killings"²⁴ continue to occur and result in a much lower rate of conviction. Among the reported crimes of violence against women and girls, the 48,8 % were resolved by a primary court, the 17,2% were withdrawn or lacked of compliance, 15,8% failed to arrest, 3% mediated, 12,5% not resolved for other reasons, 2,6% were still in progress.

UNAMA monitored ERAW institutions' response to crimes reported under the ERAW Law as well as murder, which is criminalized in the Penal Code, 2018. Perpetrators were arrested in only 31.8% of "honour killings", as compared to a 60.8% arrest rate for murders unrelated to "honour".

So-called "running away" is not a crime in Afghanistan. However, when women and girls leave their homes without permission from their *mahram* (a women's husband, or her immediate male relative), or without providing information to their families about their whereabouts, they are sometimes arrested for "running away" from home and charged with attempted *zina*. Attempt to commit *zina* is not a codified crime in the Penal Code but is likely charged through a combination of Art. 643(1) and Art. 47, which proscribes attempts to commit crimes with running away. Detaining or prosecuting women for "running away" or attempted *zina* is a serious violation of women's human rights. UNAMA documented 22 cases of murder perpetrated for reasons of so-called "honour". In 15 of these cases, the alleged perpetrator was a close male family member. Honour is no longer a mitigating factor for murder cases under the Penal Code, which is a welcome development. However, the continuing practice indicates a persistent belief among some members of the community that women may be subjected to punishment in order to preserve or restore the integrity of cultural, traditional, or religious norms and social mores. UNAMA documented 16

²³ Zina is an Arabic term used to describe the prohibition under Shari'a law of the act of fornication (engaging in sexual intercourse) outside of marriage. Zina is a Hudood crime under Shari'a law, or a crime regarded as being against God's commands for which punishment is obligatory.

²⁴ As "Honour killings" are intended men homicides of their wife or a female in order to defend their honour, legitimized by Afghanistan's 1976 Penal Code. The 2018 Penal Code no longer includes "honour" as a legitimate defence to murder.

cases of child marriage. Art. 28 of the EVAW Law prohibits the marriage of a woman who has not reached the legal age of marriage without considering the provisions of Art. 71 of the Civil Code, 1977. The EVAW Law does not define the legal age of marriage. However, Art. 70(1) of the Civil Code provides that girls have the legal capacity to marry once they attain 16 years of age; art. 71(1) provides that a girl who has not reached 16 years old may be married by her father or a competent court; and art. 71(2) prohibits the marriage of a girl under 15 years old. UNAMA also found that the vast majority of child marriages are arranged or condoned by the girls' families. It is unrealistic to expect that the girls themselves, who are generally vulnerable and without resources, will be in a position to register a complaint with justice authorities or to withstand familial and societal pressure to maintain a complaint throughout the full course of the criminal justice chain. Given the severe physical and psychological harm of child marriage, this crime should be subject to *ex officio* prosecution. In many rape cases documented by UNAMA, the survivors were sent for a medical examination after reporting the crime to an EVAW institution. Such examinations should be conducted according to the Ministry of Public Health's Gender-Based Violence Treatment Protocol²⁵. Women are often expected to undergo these examinations after reporting sexual violence, without providing fully informed consent. It is not the role of the healthcare provider to make any interpretation about whether sexual violence took place, and identifiable injuries may not be evident in many cases of sexual violence. In at least eight cases of rape documented by UNAMA, the survivor's report of rape was assessed by the prosecution or primary court as being a case of consensual extramarital sexual relations (*zina*). In many of these cases, the survivors were then prosecuted pursuant to Art. 643(1) of the Penal Code. The very possibility of being charged with a crime is likely to have a chilling effect on survivors' willingness to report sexual violence.

A significant number of Afghan women served as members of parliament until the fall of Kabul in early 2021. Several women also took positions as ministers, as governor and as Afghan ambassador to the US. In September 2020, Afghanistan has secured a seat on the U.N. Commission on the Status of Women for the first time, an achievement that is seen as a "sign of progress for a country once notorious for the oppression of women".²⁶

In 2019, women made up 21,2% of the labor force in Afghanistan.²⁷ In terms of percentage, women rank high in the fields of medicine and media, and are slowly working their way into the field of justice. Because women are still highly encouraged to consult a female physician when they go to the hospital, nearly 50% of all Afghans in the medical profession are women. The number of women having professions in the media is also rising. It was reported in 2008 that nearly a dozen

²⁵ [Gender-based Violence Treatment Protocol for Healthcare Providers in Afghanistan - Afghanistan | ReliefWeb](#)

²⁶ Saif, Shadi Khan, "Afghanistan's first female U.N. envoy warns over women's rights". *Reuters*, 2020

²⁷ [Labor force, female \(% of total labor force\) - Afghanistan | Data \(worldbank.org\)](#)

of television stations had all-female anchors as well as female producers. As women are given more opportunities in education and the workforce, more of them are turning towards careers in medicine, media, and justice²⁸.

However, even the women that are given the opportunity to have careers have to struggle to balance their home life with their work life, as household tasks are seen as primarily female duties. Education in Afghanistan has gradually improved in the last decade but much more has to be done to bring it to the international standard.²⁹ The literacy rate for females is merely 24.2%. There are around 9 million students in the country, whose, about 60% are males and 40% females. Over 174,000 students are enrolled in different universities around the country and about 21% of these are females. In the early twentieth century, education for women was extremely rare due to the lack of schools for girls. Occasionally girls were able to receive an education on the primary level but they never moved past the secondary level. Kabul University was opened to girls in 1947 and by 1973 there were an estimated 150,000 girls in schools across Afghanistan. Unfortunately, marriage at a young age added to the high drop out rate but more and more girls were entering professions that were once viewed as only being for men. Women were being given new opportunities to earn better lives for both themselves and their families. However, after the civil war and the takeover by the Taliban, women were stripped of these opportunities and sent back to lives where they were to stay at home and be controlled by their husbands and fathers. During the Taliban regime, many women who had previously been teachers began secretly giving an education to young girls in their neighborhoods, teaching from ten to sixty children at a time. The homes of these women became community homes for students, and were entirely financed and managed by women. Each day young girls would hide all their school supplies, such as books, notebooks and pencils, underneath their burqas to go to school. At these schools, young females were taught basic literary and numeracy skills, and various other subjects such as biology, chemistry, English, Quranic Studies, cooking, sewing, and knitting. Many women involved in teaching were caught by the Taliban and persecuted, jailed, and tortured.³⁰ In 2015, the Kabul University began the first master's degree course in gender and women's studies in Afghanistan³¹.

In the last decade, Afghan women have participated to many sports, such as football, basketball and skiing. In 2015, for the first time Afghanistan held its first marathon and also a woman participated

²⁸ Skaine, Rosemarie, *Women of Afghanistan In The Post-Taliban Era: How Lives Have Changed and Where They Stand Today*, McFarland, 2008

²⁹ [Kabul's American university students defiant despite violence](#). *Al Jazeera English*, 2019.

³⁰ Rostami-Povey, Elaheh, *Afghan Women: Identity and Invasion*, Zed Books, 2007

³¹ FaithWorld "[Kabul University unlikely host for first Afghan women's studies programme](http://blogs.reuters.com)". <http://blogs.reuters.com> , 2015

in that for the first time³² and always for the first time, in 2004 Afghanistan sent women athletes to the Olympics.

Marriages in Afghanistan are usually in accordance with Islam and the culture of Afghanistan. The nation is a patriarchal society where it is commonly believed that elder men are entitled to make decisions for their families. A man can divorce his wife without the need of her agreement, whereas the opposite is not the case.

The birth rate is 36.08 births/1,000 population as of 2021; the total fertility rate is 4.72 children born/woman (2021 est.) on a population of 37.5 million (July 2021 est.) and a Population Growth 2.34% (2021 est.)³³.

Arranged marriages and forced marriages are reported in Afghanistan. After a marriage is arranged, the two families sign a contract, which both parties are socially and culturally obligated to honor. Among low-income families, it is common for the groom to pay a bride price to the bride's family. The price is only negotiated among the parents. The bride price is viewed as compensation for the money that the bride's family has had to spend on her care and upbringing. In almost 50% of cases, the bride is younger than 18 and in 15% of marriages, the bride is younger than 15. Sometimes women resort to suicide to escape these marriages.

In certain areas, females are sometimes bartered in a method of dispute resolution which is called a *baad*, a method of settlement and compensation whereby a female from a criminal's family is given to the victim's family as a servant or a bride. Although *baad* is illegal under Afghan law, many of the victims do not know their rights.

Under the Afghan law, "if a woman seeks a divorce then she has to have the approval of her husband and needs witnesses who can testify in court that the divorce is justified. While it is legal for male citizens to marry foreign non-Muslims, it is illegal for female citizens to do so, and Afghan law considers all Afghan citizens Muslims."³⁴

Homosexuality and cross-dressing were capital crimes under the Taliban, but have been reduced to crimes punished by long prison sentences. Members of the Lgbt community are forced to keep their gender identity and sexual orientation a secret in fear of harassment, intimidation, persecution, and death. The religious nature of the nation has limited any opportunity for public discussion, being homosexuality deemed taboo.

The Constitution of Afghanistan establishes the prominence of Sharia law as a precursor to all other laws, policies, and regulations, allowing for religious interpretations by the State in prohibiting all

³² "[Feminist Daily News 10/29/2015: Afghan Woman Runs in Country's First Marathon](#)". Feminist.org, 29 October 2015

³³ "[Afghanistan](#)". *The World Factbook*. www.cia.gov, 2021

³⁴ "[U.S. Embassy in Afghanistan](#)". *U.S. Embassy in Afghanistan*, 19 March 2019.

forms of same-sex sexual activity. Although the Penal Code of 1976 was reinstated after the American invasion of 2001, the country's new Penal Code of 2018 has outlined and prohibited specific activities of a sexual nature, disproportionately affecting Lgbt community.

Thus, it is possible for Lgbt people in Afghanistan to be charged with violating Sharia law. This could happen in lieu of, or in addition to charges being brought under the penal code. Sharia law based punishment is more likely to occur in isolated, rural communities where private citizens and vigilant groups strictly follow Islamic morals. In the cities, persons convicted of homosexuality are generally sentenced to prison. All sexual behavior outside of a lawful Islamic marriage is illegal, with the maximum punishment being death. When the Taliban gained control of the country in the 1990s they criminalized all sexual relationships outside of the heterosexual marriage, and would often publicly execute men and women for committing fornication and adultery and for engaging in sodomy.

The **Afghanistan Law of Marriages (1971)**³⁵ stipulates that a legal marriage must be between two Muslim adults of the opposite sex, and that it must meet the rules of Islamic law. While the law does not explicitly address the issue of same-sex couples, Art. 41 of the Marriage Law stipulates that where the law is silent on a particular issue, it shall be decided based on the principles of Sharia. Hence, Afghanistan family law does not recognize same-sex marriages, civil unions or domestic partnerships. No law exists to address discrimination or harassment on the basis of sexual orientation or gender identity. The Afghan Social Democratic Party stated that it favored an international effort to fight the Aids-Hiv pandemic, but that homosexuality and same-sex marriages are opposed by all great religions. No political party or interest group has expressed support for Lgbt rights. Afghanistan law currently prohibits a political party, interest group or social club from advocating anything that is in opposition to Islamic morality. Absent a change in the law, it is unlikely that a political or social organization advocating Lgbt rights will be permitted.

Afghanistan's population is over 99% Muslim, and Islam is the only official religion. Homosexuality is often linked with prostitution and pedophilia and the level of awareness about sexual orientation or gender identity is limited. In 2012, Nemat Sadat, a human rights activist and former professor of political science at the American University of Afghanistan, mobilized a Lgbt movement and on August 22, 2013, he became the first public figure to come out as gay and campaign for Lgbt rights, gender freedom, and sexual liberation³⁶.

³⁵ [Law on Marriage - 1971 - Official Gazette No. 190, published 1971/08/08 \(1350/05/17 A.P.\) \(asianlii.org\)](#)

³⁶ Allen, Paddy; Jackson, Nicole, "[Over the rainbow: what is it like to be gay around the world?](#)". *The Guardian*, 2015.

The application of the principles concerning gender affairs in Afghanistan may vary from group to group. Contradictions arise between traditional customary practices and the dictates of Islam are themselves subject to diverse interpretation among reformists and Islamists.

All agree that differences between men and women exist and are best preserved through recognized standards of behavior. The practice of *purdah*, a Persian word standing for “curtain”, a current spread form of seclusion, including veiling, is the most visible manifestation of this attitude. Such restrictions are deemed necessary by conservative males because they consider women socially immature, with less moral control and physical restraint. According to the most conservative perspectives, women are untrustworthy and their isolation is paramount.

After **15 September 2021 Afghanistan’s international human rights obligations**, according to UN Human Rights experts, concerns about all women’s full participation in Afghanistan’s public and political life as a guarantee of their fundamental human rights.

As a State party to the CEDAW since 2003, Afghanistan is required to eliminate discrimination against women in the political and public life of the country, and to ensure to women, on equal terms with men, the right to participate in the formulation and implementation of government policy, the right to hold public office and perform public functions at all levels of government including executive, judicial, administrative and other governing and key decision-making bodies. Ensuring women’s right to equal participation in political and public life in Afghanistan serves as a guarantee for a future for Afghan women and girls free of discrimination and violence. UN Human Rights expert³⁷ are concerned about the imposition of restrictions on women in public spaces. The Taliban’s assurances that women will be permitted to work in lower levels of government and in specific sectors fall far short of their equal rights guaranteed under international law. They condemn the marginalization of women in Afghanistan, although the significant progress of the past two decades. Such backsliding is **harmful to the overall peace-building and development process of the country.**

The international commitments have made abundantly clear that peace and sustainable development is linked to equality between men and women, as stated in the **Beijing Platform for Action** and underlined in the **2030 SDGs**.

Afghan women have demonstrated that they are not passive bystanders or only victims or targets, but active agents in peace-building and recovery processes, as human rights defenders, journalists, political

³⁷ **Statement by United Nations Human Rights Experts, OHCHR | Statement by United Nations Human Rights Experts, 15 Sept 2021**

activists, and public figures. Women's full and equal participation must be seen as a guarantee of their fundamental human rights, including their right to work, education, housing, health, to freedom of expression and to participate in cultural life without discrimination, and essential to addressing the multiple crises confronting the country, with the spread of COVID-19, internal displacement, food insecurity and political instability. It is important to understand that women are not just one more vulnerable group. They are half or more of the population in every sub-group and face very specific risks, from targeted violence to deprivation of liberty, education, livelihood and health care including right to reproductive health and services, and heightened threats of underage and forced marriage. Their situation is aggravated by multiple forms of discrimination based on different grounds, including but not limited to, their age, ethnicity, religion or belief, geographic location and status as displaced persons or refugees.

The Working Group on discrimination against women and girls has observed in its work on Afghan political transitions that the impact on gender equality in public and political life is related not only to the nature of regime change but also to the political will to guarantee women rights, including those to equal representation. Furthermore, the Special Rapporteur on violence against women noted in her report on violence against women in politics that in Afghanistan women are targeted because of their gender with the aim of discouraging and restricting their political participation. This flagrant exclusion of women in the public and political life of Afghanistan must be urgently rectified at this critical moment. UN experts recall the international commitment made in the Vienna Declaration and Programme of Action in **1993** that recognized the primacy of women's human right to equality, stating, *"The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community."*

International human rights mechanisms have also made clear that women's human right to equality and non-discrimination must prevail in any claimed clash with what are purported to be "traditional", historical, religious interpretations or cultural attitudes that are inconsistent with their human rights. Many countries with diverse cultural and religious traditions have committed to respecting women's right to equality. Moreover, cultures are not static but dynamic and contested. Women's inequality before the law intersects with all other prohibited grounds of discrimination and contributes to the perpetuation of all forms of historical inequality that constitute the root causes of violent conflicts. Peace-building and conflict transformation processes present unique opportunities for the elimination of discrimination against women in law and practice.

While significant achievements were made on women's rights in the past two decades, particularly in urban centres, many women continued to be marginalized, discriminated and at high risk of being subjected to violence. International human rights mechanisms include the Working Group on Discrimination against Women and Girls, the Special Rapporteur on Violence against Women, and the CEDAW Committee called on Afghanistan to eliminate discrimination against women and girls that work on removing impacting discriminatory provisions from the Civil Code, the Criminal Code and the Shia Personal Status Law such as provisions allowing child marriage for girls, polygamy, discrimination against women in the family, and the criminalization of adultery. UN Experts also claim a further strengthening of the Constitution by including specific grounds of discrimination, the amendment of the Criminal Code that include provisions criminalizing all forms of gender-based violence against women. While the 2009 promulgation of the Law on the Elimination of Violence against Women by presidential decree was an important step forward, it has now been rolled back and women have been left with no access to justice. The protection of women's and girls' human rights must be central to all laws, policies, political processes and institutional practice and the allocation of resources must be aligned with their priorities which include freedom from violence, freedom of movement and of expression, access to education and health care including reproductive health care, equal participation in cultural life, the right to work, and safe passage for those who want to leave the country. Therefore, according to them, the international community must immediately call for the immediate cessation of violence by state and non-state actors in Afghanistan and compliance with international human rights law; support the renewal of the mandate of UNAMA and ensure the continued implementation of its mandate with a gendered lens; call for reinstating the Ministry of Women's Affairs that was vital to ensuring the access of women and girls to services across the country and ensure that women participate fully in the management and distribution of humanitarian assistance that Afghans are in urgent need of, and that they are able to access that assistance without any impediment; ensure independent fact-finding and accountability mechanism to document and investigate past and ongoing human rights violations and international crimes by state and non-state actors in Afghanistan ; promote and protect the voices and fundamental human rights of Afghan women's civil society and human rights defenders through continued financial and political investment and support. In facts, in order to satisfy victims' demands for justice, important national policy papers, initiatives, and action plans, such as the **UNSCR 1325**, the **Afghanistan National Development Strategy (ANDS)**, the **National Action Plan for Afghan Women** all supported women's legal status. However, due to prevailing corruption, insecurity and conservative societal practices, such laws and policies faced significant challenges in practice.

International organizations, national governments and civil society efforts resulted in the Women, Peace and Security Agenda through the adoption of UNSCR 1325 on peace and security that in October 2020 celebrated its 20th anniversary.

In 2000, the UNSC formally acknowledged through this resolution the changing nature of warfare, in which civilians are increasingly targeted, and women continue to be excluded from participation in peace processes. The resolution specifically addresses how women and girls are disproportionately impacted by violent conflict and war and recognizes the critical role that women can play in peacebuilding efforts. The Resolution urges all actors to increase the participation of women and incorporate gender perspectives in all UN peace and security efforts. Parties engaged in conflict must take special measures to protect women and girls from all forms of gender-based violence, especially rape and other forms of sexual violence. Each of its mandates falls into one UNSCR 1325's four basic pillars: participation, protection, prevention and relief and recovery. First of all, calls for increased participation of women at all levels of decision-making, including in national, regional, and international institutions; in mechanisms for the prevention, management and resolution of conflict; in peace negotiations; secondly, calls specifically for the protection of women and girls from sexual and gender-based violence, including in emergency and humanitarian situations, such as in refugee camps; thirdly, calls for improving intervention strategies in the prevention of violence against women, including by prosecuting those responsible for violations of international law; strengthening women's rights under national law and supporting local women's peace initiatives and conflict resolution processes; finally, calls for advancement of relief and recovery measures to address international crises through a gendered lens, including by respecting the civilian and humanitarian nature of refugee camps, and considering the needs of women and girls in the design of refugee camps and settlements.

The experiences of men and women in war are different. In these differences, women offer a vital perspective in the analysis of conflict as well as providing strategies toward peacebuilding that focus on creating ties across opposing factions and increasing the inclusiveness, transparency, and sustainability of peace processes. In alignment with the Resolution, international criminal courts and laws have adopted new standards and set clear precedent through the prosecution of sexual violence as a crime against humanity and war crime. Peaceful masculinities is a complementary approach to Women, Peace and Security that examines how men's identity is often connected to the use of violence to solve conflict and seeks to develop a more peaceful, nonviolent approach to solving conflict.

Resolution 1325 was a landmark resolution in that it was the first to address the issue of women's inclusion in peace and security matters. It also though launched what became a series of resolutions, each addressing a unique concern regarding the protection of women and girls during conflict, and their participation in decision-making processes. In 2008, the Government of Afghanistan released its vision for poverty reduction in the form of the ANDS, attracting over \$20 billion in aid pledges from international donors earmarked for its implementation. Although coordinated by the Afghan government, the development of ANDS was in many ways highly skewed towards meeting the goals and deadlines of international donors, due in part to its potential to be an internationally approved Poverty Reduction Strategy Paper (PRSP).

The ANDS, formally approved by President Karzai on April 21, 2008, is the document that outlines the Government of Afghanistan's strategies for security, governance, economic growth and poverty reduction. Started as an interim report in 2005, it is the product of intensive consultations between the Afghan government and a wide array of stakeholders including tribal and religious leaders, the private sector, NGOs, and the international community. The ANDS lays out the following goals: security, Governance, Rule of Law and Human Rights, Economic and Social Development. Along with the ANDS, the Afghanistan Compact serves as the primary mechanism for coordinating future Afghan and international reconstruction. Launched on January 31, 2006 at the London Conference for Afghanistan, the Afghanistan Compact marked the formal end of the Bonn Process.

Afghanistan adopted its first National Action Plan (NAP) in 2015, for the period 2015-2018 and 2019-2022, to be implemented in two phases. The NAP was developed by the Ministry of Foreign Affairs, which serves as the head of the Steering Committee that will work in collaboration with government agencies, civil society, and international organisations for its implementation and monitoring. The NAP was developed to address the challenges women face in the aftermath of war and conflict in Afghanistan, and is organised under the primary pillars of **S/RES/1325 (2000)**. Nevertheless, it does not address disarmament issues, nor does it connect the proliferation of weapons with women's insecurity. There have been numerous difficulties in terms of resourcing the NAP implementation.

Capacity building of points for NAP completed with technical assistance from UNWOMEN. Ministry of Women's Affairs (MoWA) reported that there is a roster of 66 women covering 34 provinces in Afghanistan, participating in peace negotiations.

In 2019, Afghanistan was among the top 15 countries in the world with the biggest increase in their military expenditure it has ratified in 2020 the arms trade treaty and had until 2019 a military expenditure of \$ 227 million out of a GDP, estimated in 2020 of \$77.04 billion³⁸

³⁸ [AF-summary.pdf \(cia.gov\)](#)

The development of the NAP was initiated in coordination with civil society, and conducted through the establishment of the following structures: Steering Committee with the Minister of Foreign Affairs as the Chairperson Member; Technical Working Group representatives from international organizations and foreign diplomatic missions in Kabul; Drafting Committee; Coordination Committee.

Under the Strategic Objective "Enhancing Women's meaningful participation in the reconciliation, negotiation, and reintegration at all levels", civil society organisations are assigned the action of "Establish a national roster of potential women negotiators from all 34 provinces". The government recognises the important role of civil society as an independent monitoring and evaluation body for the successful implementation of the NAP, along with a separate Monitoring and Evaluation (M&E) Plan, including annual monitoring, mid-term (after two years) and final review (Evaluation) in the fourth year. The M&E Plan will include tracking and monitoring of financing for the NAP to ensure transparent and effective implementation, for which the Steering Committee is responsible.

The Taliban's policies on rights and freedoms are not always clear, and **their actions sometimes contradict their rhetoric**. The overall situation about the implementation of Human Rights in Afghanistan seems to be deteriorated rather than improved. On the one hand, on several occasions they have stated that women can do what is permissible within the confines of an Islamic and Sharia framework. In practice, when boys' high schools opened a few weeks ago, **girls' did not**³⁹, and Kabul University's newly appointed chancellor has forbidden women from enrolling in the country's largest and oldest public university. **Women have also been ordered not to return to work** in some public offices, whereas in others they have resumed their work. This situation is compounded by a **major humanitarian crisis** that is looming in Afghanistan. The IDPs has surpassed 3.5 million, with more than 600,000 people displaced this year, of which 80% constitute women and children. They are in dire need of shelter, food, medication and heating facilities for Afghanistan's harsh winter. In addition, **chronic poverty, the COVID-19 pandemic, a severe drought, a failing health system, and an economy on the verge of collapse** have had a significant impact on millions of Afghans. The UN Human Rights Council has recently **appointed a Special Rapporteur on October 2021 to monitor human rights situation in Afghanistan**. While it is critical to take immediate and coordinated action to prevent further human rights violations, it is

³⁹ Huma Saeed, *The Unending Cycle of Violence and Human Rights Violations in Afghanistan*, 11 October 2021, Ispi Publications

also imperative not to let this urgency preclude **justice to victims of Afghanistan's war**, who account for nearly 70% of the total population.

In conclusion, aberrant is the ongoing treatment of women under Taliban regime, despite the attempts of adaptations and implementations of UN resolutions, directives and negotiations and the NAPs. The internationally hailed principles on the protection of their human rights and prevention of crimes are not incontrovertible truths and realms but objects of the changing, swinging interpretations of the Sharia. More and more marginalized in every aspect of private and public life, Afghan women are de facto still secluded and isolated not for sake of protection but to be abused and destroyed in any of their needs and aspirations to live alike animals with reproductive functions, completely subordinated to the undebated will of authoritarian men in a patriarchal society that leave them a well luring social perspective of famine, starvation, ignorance, unemployment, terror and lack of financial and medical resources. This is the result of the implementation of their god will, currently refraining even the most powerful international organizations to provide concrete help and to facilitate the resurgence of the destiny of what is still considered to be the frail sex. As a matter of facts, women in this country don't have even the possibility to live as a "normal" human being, and talking about a full and integrated participation in public life and a boosting of leadership appear to be a long-distant utopia. These are the sceneries offered to them by their conception of Islam and useless have been the attempts of civilization and democratization by the international community that finally has frozen financial aids, being the greatest part spent in weapons, and that they even dare to reject, in the name of a war against the US that has always relentlessly tried to find acceptable solutions for an enhanced cooperation in humanitarian, economical and health terms with zero tolerance against violence, terrorism, indiscriminate injustices and social discrepancies. Thus, in this case, we are in front of an overt inequality despite the unhelpful attempts made by the International community to sensitize their obtuse and intransigent cultures, to make the mentalities progress and adapt themselves to the evolution of time, to educate to the respect of the normal need of each human being and to the tolerance towards the other, to open up and take advantage to an international actors that don't provide perfect solutions, sight unseen, but that always try in the compromise and the mediation to design new opportunities in the spirit of solidarity that could be forged in the shape of their realities, even if different, unwelcoming and degraded, in the name of the dignity of each human being, especially women, other than girls, that represents the core essence and the most fragile soul of the society, a veil, a litmus paper that takes back mirroring the destiny of the communities in which they live and in which the feminine principles should be the true masters. They get what they sow as the woman and the values she embodies and symbolizes are the cornerstones of the unique way for the realization of a more pacific world, in which a real

progress is possible and for all. It should be necessary instead focusing the attention on the fact that these men that are born from the womb of women to destroy their placenta and repudiate them haven't understood that if there isn't any respect and prospect for women, there isn't either one for humanity and this world won't have a future, will die sterile and will stumble in its willing of power itself, spreading out destruction and death in a war for supremacy.

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