

Mandates of the Working Group on discrimination against women and girls, the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur in the field of cultural rights

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as the Working Group on discrimination against women and girls; Special Rapporteur in the field of cultural rights; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/6, 46/9 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the lack of meaningful participation of women in the recent rounds of Afghanistan peace negotiations.

According to the information received:

On 18 March 2021, at a regular meeting of the extended "Troika" held in Moscow, which focused on making progress in the intra-Afghan process to reach a negotiated settlement and a permanent and comprehensive ceasefire, the 12-member Afghan government delegation included only one woman, and the 10-person Taliban delegation was exclusively male, as in the past.

At the intra-Afghan peace negotiations that began in Doha on 12 September 2020, the Afghan Government delegation included just four women among the 21 members. There was no woman in the Taliban delegation.

We are concerned about this serious lack of meaningful participation of women at these recent peace talks. We wish to underline the fundamental importance of ensuring women's meaningful participation in all of the processes related to the peace negotiations, peace building and political transition. The meaningful participation of women will require their equal participation, as members of the negotiating parties and as part of civil society. It will be a key step to ensure that women's and girls' human rights are fully integrated in all aspects of a comprehensive peace agreement and recognized as a central component.

We would like to remind your Excellency's Government that a comprehensive peace agreement that reflects the concerns, needs and aspirations of Afghan women must be based on a broad normative framework that is gender-responsive and intersectional, in recognition of the multiple forms of discrimination that impact Afghan women based on a range of circumstances and grounds, including but not limited to their age, ethnicity, geographic location, marital status and as victims or survivors of sexual and/or gender-based violence. This framework includes, inter alia, UN Security Council Resolution 1325 and subsequent resolutions on women, peace and security, the CEDAW Convention and relevant General Recommendations, the work of Special Procedures, most notably, the Working Group on discrimination against women and girls, the Special Rapporteur on violence against women, the Special Rapporteur in the field of cultural rights, and other relevant UN Human rights

mechanisms. Further guidance can be found in relevant provisions of the 2030 Sustainable Development Goals, and the Beijing Platform for Action.

We wish to recall that the UN Security Council in its historic resolution 1325 establishes a framework for women, peace and security, in which Member States are urged to ensure the increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict. It further calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective and to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.

The Convention on the Elimination of All Forms of Discrimination against Women, which Afghanistan ratified in 2003, commits States parties 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 of government policy (article 7). Furthermore, the CEDAW Committee, in its General Recommendation 30 on “women in conflict prevention, conflict and post-conflict situations” reiterates the need for a concerted and integrated approach that places the implementation of the Security Council agenda on women, peace and security into the broader framework of the implementation of the Convention and its Optional Protocol. Afghanistan as a State party to the Convention is requested to ensure that the implementation of Security Council commitments reflects a model of substantive equality and takes into account the impact of conflict and post-conflict contexts on all the rights enshrined in the Convention, in addition to those violations concerning conflict-related gender-based violence, including sexual violence. The CEDAW Committee further noted that women are not passive bystanders or only victims or targets. They have historically had and continue to have a role as combatants, as part of organized civil society, as human rights defenders, as members of resistance movements and as active agents in both formal and informal peacebuilding and recovery processes. Despite having many such roles, their representation and participation in peace negotiations and peace-building processes has been lacking. States parties must address all aspects of their obligations under the Convention to eliminate discrimination against women.

We wish to highlight the important interconnectedness of peace and the women’s rights agenda, as recognized in the Beijing Platform for Action: “peace is inextricably linked to equality between men and women and development”. We recall that gender equality is both a distinct goal and mainstreamed in all of the 2030 Sustainable Development Goals, which also includes a goal on promoting just, peaceful and inclusive societies.

The Working Group in its thematic report on eliminating discrimination against women in political and public life (A/HRC/23/50) observes that the impact of political transitions on gender equality in public and political life is inherently related not only to the nature of regime change but also to the political will of the incoming Government to guarantee women’s human rights, including the right to equal representation. This requires a responsive political leadership with respect to gender equality concerns, including as raised by autonomous women’s movements.

The Working Group notes the urgency for women's equal and full participation in peace negotiations and in decision-making in all transitional authorities, mechanisms and processes. The Working Group has documented the heightened risk of backsliding and even regression on women's rights in post-conflict political settlements and political transitions, especially when they are excluded. When women's voices and the issue of women's human rights are absent from the political negotiations and from public discourse, even in democratic environments, pre-existing guarantees of gender equality in the law, including in national constitutions, can be challenged and new discriminatory provisions can be introduced in the legal framework at national and/or subnational levels.

Following the mandate's three visits to Afghanistan, which took place in 1999, 2005 and 2014, the Special Rapporteur on violence against women noted the impacts of the conflict on the rights of women and girls. After the first visit, the Special Rapporteur called for an end to the armed conflict, and stressed the need for women's involvement in the political and peace process (E/CN.4/2000/68/Add.4). In the second country report (E/CN.4/2006/61/Add.5), the mandate holder acknowledged that efforts to improve the status of women had been closely linked to the challenge of multiple political and economic transitions confronting Afghan society, called for urgent measures to protect women and girls from violence and reiterated the need to build a strong democratic inclusive State. In 2015, the Special Rapporteur noted that while political commitments to protect and promote human rights continued to be highlighted through political processes, they had not translated into concrete improvements in the lives of the majority of women, who remained marginalized, discriminated against and at high risk of being subjected to violence. She recommended that the Government strengthen the practice of participatory democracy, especially through more effective consultation processes in the law-making sphere (A/HRC/29/27/Add.3).

The Special Rapporteur on violence against women, in her thematic report to the General Assembly on violence against women in politics (A/73/301), reminded that women's right to participate in political and public life, including in elections as voters or as candidates for elections, on equal terms with men, is explicitly protected under international human rights law, as enshrined in articles 7 and 8 of the Convention on the Elimination of All Forms of Discrimination against Women. She also stressed that violence against women in politics constitutes a serious violation of women's human rights and an obstacle to achieving gender equality, having an impact not only on the victims but on society as a whole. States, therefore, have a duty to eradicate and prevent acts of violence against women in politics. To do so effectively, according to the Special Rapporteur, it is essential to design, adopt and enforce general laws and policies combating and preventing violence against women, inclusive of political violence, and to guarantee the equal participation of women in political and public life, in compliance with international human rights law that covers all forms of gender-based violence against women and protects their right to equal political participation.

We note with great concern the recent surge in violence, particularly targeted attacks especially affecting women and girls, and members of minorities. The consequence of persistent violence and conflict have been particularly devastating for women and girls. We wish to stress that it is essential to address the root causes of violence and conflicts as an integral part of the peace and security agenda in order to overcome the vicious cycles of conflict and achieve sustainable peace. 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. Peacebuilding and conflict transformation processes present unique opportunities for the elimination of discrimination against women in law and practice.

Ensuring the full and meaningful participation and diverse representation of women in building sustainable peace and security requires concrete steps to eliminate gender stereotypes and discriminatory legal, including in relation to personal laws; laws on property, labor and nationality; the criminal code and procedural laws affecting gender-responsiveness in the administration of justice. The Working Group has brought to the attention of your Excellency's Government information concerning the persistence of legislation which directly or indirectly discriminate against women and girls including communications of 31 October 2014 (AFG 1/2014), 9 June 2015 (AFG 2/2015) and 15 November 2017 (AFG 2/2017). These communications concern discriminatory legal provisions allowing for child marriage for girls and polygamy, discrimination against women in the family, and the discriminatory impact on women of the criminalization of adultery. Regrettably, we have not received a reply from your Excellency's Government to these communications.

Concerns about discriminatory legal provisions were also raised by the CEDAW Committee in its Concluding Observations of 10 March 2020 (CEDAW/C/AFG/CO/3). The Committee recommended the removal of provisions that are discriminatory towards women and girls from the Civil Code, the Criminal Code and the Shia Personal Status Law and urged Afghanistan to amend its Constitution to include specific grounds of discrimination, including sex and gender. The Committee further recommended the revision of the draft law on conciliation of civil disputes to ensure that cases of gender-based violence and discrimination against women are adjudicated by the ordinary courts rather than informal justice mechanisms such as *jirgas* and *shuras*. The Committee also recommended that the State ensure that conflict-related sexual violence is promptly investigated and prosecuted, that perpetrators are held accountable and that women's right to a remedy, including adequate and effective reparations for violations, is upheld.

The Committee specifically expressed concerns about the fact that Afghan women are systematically excluded from formal peace negotiations and recommended that the State party work with representatives of women's civil society organizations from the different provinces to ensure that women, including those belonging to ethnic and religious minorities, can participate meaningfully in peace, transitional justice and reconciliation processes, such as formal and informal peace talks, and in the implementation of the national action plan and monitoring progress in that regard.

In her thematic report on fundamentalism, extremism and the cultural rights of women (A/72/155), the Special Rapporteur in the field of cultural rights has expressed concern about "widespread targeting of girls' schools by fundamentalist armed groups in Afghanistan" (para. 92). She has also expressed concern that, "Frequently, women are not invited to the table to discuss how to combat extremism or to assess its impact. In their absence, women's rights are most likely to be a bargaining chip negotiated away or set aside in pursuit of peace with extremist and fundamentalist groups." She has warned based on numerous examples, that "Giving in to the social demands of fundamentalists and extremists, especially as regards women, only exacerbates the human rights situation and leads to escalating claims." (para. 33). The Special

Rapporteur recommended States to “act in accordance with due diligence standards to ensure that non-State actors engaging in fundamentalist and extremist abuses of women’s cultural rights are prosecuted and punished according to international norms; ensure that all women victims of fundamentalist or extremist abuses, including in the cultural rights area, have access to adequate remedy, reparation and compensation; in consultation with women human rights defenders and affected groups, develop plans of action to protect women, including those from religious, ethnic and sexual minorities, from extremism and fundamentalism; and implement urgent action policies when such groups are targets of fundamentalist and extremist threats or violence; and involve women human rights defenders, with relevant expertise, in all programmes and policy discussions regarding combating fundamentalism and extremism, including at international conferences and negotiations” (para 98).

In light of all the above, we note with concern the serious lack of meaningful women’s participation at the recent peace talks held in Moscow and in Doha and would like to request your Excellency’s Government to take every measure to ensure the equal and effective participation of women, as an essential condition, for holding peace negotiations. The urgent need for this is heightened by the fact that one of the parties to the current peace negotiations has in the past systematically resorted to the use of tactics involving a range of extreme forms of sex- and gender-based discrimination and violence against Afghan woman and girls, to enforce their political views and consolidate their political power. We further request your Excellency’s Government to ensure the formal and meaningful inclusion of women in all the mechanisms and structures of peace building and transition phases and make the protection of women’s and girls’ rights central to all peace negotiations and agreements and their implementation. The inclusion of women in these processes must be accompanied by the provision of adequate tools, resources, and authority for them to effectively execute their roles as well as safeguards to protect them against violence and/or retaliation. We further recommend strengthening the capacity of national human rights institutions, in particular the Afghanistan Independent Human Rights Commission, in protecting women’s human rights, ensuring effective remedy for violations of their rights and monitoring processes of law making.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned matter.
2. Please provide information on the measures taken or planned to ensure the full and meaningful participation of women in the peace negotiations process, including the adoption of temporary special measures, as recommended by the CEDAW Committee, and a central place for the protection of women’s and girls’ human rights in the peace negotiations, agreement and implementation plan.

3. Please provide information on the steps being taken to ensure the outcomes of the negotiations do not undermine the human rights of women and girls, and guarantees the equality of and rights of women and girls, such as through the use of benchmarks and monitoring of the conduct of all parties with regard to the fulfillment of women's civil, cultural, economic, political and social rights.
4. Please provide information on concrete steps taken or planned in eliminating laws or provisions in the law that are discriminatory against women and girls as necessary conditions for ensuring the full and meaningful participation and diverse representation of women in building sustainable peace and security, in accordance with international human rights standards and as urged by international human rights mechanisms.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the full and meaningful participation of women in any ongoing peace negotiations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that copies of this letter will be shared with the United States, the Special Representative of the Secretary-General for Afghanistan and the President of the Security Council.

Please accept, Excellency, the assurances of our highest consideration.

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