

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues and the Special Rapporteur on violence against women, its causes and consequences

Ref.: AL AFG 3/2021
(Please use this reference in your reply)

4 November 2021

Dear Mr. Khan Muttaqi,

We are writing in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 44/5, 43/8 and 41/17.

In this connection, we would like to bring to your attention information we have received concerning **a number of institutional policies and practices that disproportionately discriminate against women and girls, preventing them from enjoying their human rights and fundamental freedoms. Taken together, these result in collective punishment of women and girls, based on their gender as well as in the institutionalization of a system of large scale and systematic and life-threatening gender-based violence. We also bring to your attention allegations of attacks targeting the religious and ethnic minority of the Hazara.**

According to information received:

Recent events in Afghanistan, especially since 15 August 2021, have led to multiple serious alleged violations of human rights, particularly those of women and girls, as well as ethnic and religious minorities. These allegations are detailed below:

Equal participation of women and girls in the political, economic and social life

Reports about women being barred from their workplaces or sent home have surfaced from different parts of the country. In early July, as Taliban fighters began to take control of parts of the city of Kandahar, nine women were ordered to leave their offices at Azizi Bank; they were escorted home and told that they would be replaced by their male relatives. The same happened at Bank Milli in Herat a few days later. In Herat, soon after the city was claimed by Taliban forces on 12 August, many women were barred from their workplace.

On 24 August 2021, a spokesperson of the Taliban told reporters that women should refrain from showing up to work until “proper systems” were put in place to “ensure their safety,” claiming it was a “very temporary procedure”, without giving any further details.

On 11 September, it was reported that all male employees of the Ministry of Finance were to report to work, and female employees were to stay at home until “a proper work environment is provided”, without providing further details. Some women had been able to continue working, but others were

physically barred from entering their workplace by Taliban fighters.

On 5 October, women working in the passport section of the Ministry of Interior were ordered to go back to work to cater to female clients. However, the order on women to stay home appears to be largely in place in many parts of the country.

The restrictions to women's access to work have impacted the country's media outlets. Reports indicate that 33% of women journalists are concerned about their jobs, and nearly 70% of media outlets have halted their activities due to economic challenges.

Furthermore, the right of participation of women in the justice sector is under severe threat. Approximately 250 female Afghan judges were in hiding in fear of retribution from the Taliban. They also fear retribution from the men whose cases they have previously presided over owing to gender-based violence against women, including domestic violence, rape, torture or murder. This fear is intensified by the fact that, since the Taliban took over, many convicted criminals were released from prison as under the Taliban regime their crimes might not be regarded as such.

Reports have emerged since August 2021 that women were being barred in practice by Taliban forces to leave their houses without a male guardian. In the province of Herat, although no official announcements were made, women were told by Taliban forces in September 2021 that women would be allowed to travel by themselves for up to 3 days; however, women have been barred from boarding planes and entering public facilities if they were unaccompanied.

Restrictions on female staff of humanitarian organizations have also been reportedly imposed in some parts of the country. These are having a negative impact on their work, particularly in activities directed to women and children, as the needs assessments, accountability mechanisms and services provided cannot be appropriately gender sensitive. If women humanitarians are unable to work, response efforts will not meet the needs of diverse women and girls across the country. Although female health staff have been able to continue to work without restrictions, female users of these services have restricted access to them as women are largely confined at home in many regions. Lack of participation and inclusion of women in decision-making and allocation of humanitarian aid has also been reported.

Freedom of association and peaceful assembly

Protests have been held in Herat, Kabul, Badakhshan, Balkh, and other cities throughout Afghanistan, against these policies regarding women. Organizers and protesters were calling for the respect of their rights, to live without fear of reprisal against them and their family members; and to be able to continue their employment, among other requests. While some protests were allowed to continue peacefully, some were violently repressed, including by beating female protestors, and assaulting media reporting on the protests.

On 4 September 2021, around a hundred women protested in Kabul demanding the inclusion of women in the new government, and for the Taliban to respect women's rights by carrying banners and chanting slogans for an equal society. The protest was dispersed by your special forces, who fired into the air and reportedly fired tear gas. Taliban security forces stopped women and beat at least ten of them. At least one protester suffered a head injury, on her forehead above her right eye. Others were beaten, including by electric tasers and the magazines of guns.

On 8 September 2021, in a protest held in Badakhshan, Taleban fighters allegedly used whips against women protesters asking for the rights to work and to education to be upheld.

In early October 2021, it was announced that impromptu demonstrations were banned, and that those wanting to hold demonstrations needed to seek authorization providing information on time, place, and slogans. This has made it practically impossible, especially for women, to protest.

Equal access of women and girls to education

On 29 August 2021, Mr. Abdul Baqi Haqqani stated that “the people of Afghanistan will continue their higher education in the light of Sharia law in safety without being in a mixed male and female environment.”

On 5 September 2021, a decree was issued imposing that all female students, teachers and staff at colleges and universities wear an Islamic black *abaya* robe and *niqab* covering the hair, body, and most of the face, as well as gloves. The decree also formalized the Mr. Abdul Baqi Haqqani's 29 August announcement regarding the ban on co-education, specifying that classes must be segregated by gender, and female students only taught by women when possible, or separated by a curtain.

On 17 September 2021, a statement was issued announcing the start of secondary school, high school, and religious school, instructing only male teachers and students to attend their educational institutions.

It should also be noted that in areas that were already under Taliban control prior to 15 August 2021, many schools were either destroyed by your forces, or girls were prohibited from attending school past grade six. In Herat, gunmen under your command have guarded university gates and barred female students and instructors from entering campus. In other cities, girls' schools have been closed since the Taliban seized control of them in November 2020.

Institutional capacity to identify, support and assist victims of gender-based violence

On 18 September 2021, the Ministry of Women's Affairs was shut down in Kabul. In response, and on the same day, the Afghanistan Independent Human Rights Commission (AIHRC) called upon you to respect the independence of the Commission and its staff. In its statement, the Commission noted that their buildings have been occupied by you and cited its inability to monitor human

rights violations, including monitoring, collecting and documenting cases of gender-based violence against women.

Since August 2021, various service providers which previously supported survivors of gender-based violence (GBV) across the country shut down as did many women's shelters, for fear of retribution and even death. In practice, this means that the women in the shelters had to return to their families, where they initially experienced violence. Some shelters have remained open, without accepting any new cases. You have not reassured these shelters of their ability to operate in safety and security.

The situation of women human rights defenders

The above-mentioned restrictions imposed on the access of women to their places of work, as well as on their freedom of movement, their right to freedom of assembly and the weakening of institutions combatting gender-based violence have severely undermined the space for women human rights defenders in all regions of the country to carry out their work.

This includes women protecting and promoting human rights as members of human rights organizations, the offices of whom have been raided and closed in multiple provinces, with lists of employees seized by your forces. Women human rights defenders included among these lists have subsequently been ordered to appear before the police and been sought out by Taliban members through visits to their homes and the interrogation of their family members in cases where women defenders have already gone into hiding. Where phone numbers have been included on these lists, women human rights defenders have received threats via phone, including gender-specific threats aimed at single women. Where the addresses of women human rights defenders are located, women defenders report being followed when leaving their homes.

Women who had been supporting survivors of gender-based violence have been threatened with prosecution on spurious charges, with the accusations against them based solely on their legitimate work promoting and protecting the rights of women. Female prosecution lawyers who had been involved in the prosecution of the perpetrators of gender-based violence who have now been released find themselves at particularly high risk of retaliation.

The protection of religious and ethnic minorities in Afghanistan

On 8 May 2021, the *Sayed ul Shuhada* High School in West Kabul frequented mainly by young girls belonging to the Hazara minority was targeted by three bombs, killing 85 people and wounding over 140, most of whom were young girl students.

Between 4 and 6 July 2021, nine minority Hazara men were killed by your forces in Ghazni province. Three of the victims were tortured to death, and the other six were shot. According to witnesses, your fighters justified the killings as part of the war.

On 30 August 2021, thirteen minority Hazaras were reportedly executed by Taliban forces in Kahor village. Eleven of the victims were members of

security forces of the former Government who had already surrendered; two victims were civilians, including a 17-year-old girl, killed as Taliban forces opened fire on a crowd of people.

On 23 September, around 3,000 families (approximately 21,000 individuals) of the Hazara minority in Daykundi province were given nine days to leave their homes by Taliban forces, who consider that land to be rightly claimed by persons that were ethnic Pashtun. In the days that followed, Taliban forces were employed to enforce evictions, resulting in the displacement of almost 500 families (approximately 3,500 individuals). While the action was stopped after orders by your chief of police in Daykundi, the houses of the displaced persons have been occupied or were burned, making it impossible for them to return. While the forced evictions and displacement have now stopped, you announced that the issue will be pursued in the summer of 2022 by which time you expect to have a system in place to decide lover and disputes.

On 8 October 2021, an attack was reportedly carried out by the Islamic State Khorasan on a Shiite Mosque in Kunduz that left 43 dead and 140 wounded. This was followed by another attack on the 15 October 2021, specifically on the Shiite Mosque Bibi Fatima in Kandahar left 62 persons dead and 100 wounded. Most of them were from the Hazara ethnic minority. No one claimed responsibility for this attack. Other forced evictions were reported to have taken place in other provinces such as Helmand, Uruzgan and Kandahar, as well as in Balkh, affected hundreds of Afghans of Hazara ethnicity.

Without prejudging the accuracy of these allegations, we express our deep concern at measures deliberately taken to decrease the support capacity for women's rights and gender equality shown by shutting down the Ministry of Women's Affairs and replacing it with the de facto "Ministry for the propagation of virtue and the prevention of vice", exemplifying unequal regard for women and girls. Furthermore, we are deeply concerned about measures taken and the climate of fear imposed, which have led to the limited operation of service providers and shelters for women victims of gender-based violence, including domestic and intimate partner violence. The closing of shelters has meant, in practice, women returning to their families, where they experienced violence to begin with, and where they will be at a high risk of further violence and threats to their lives.

We are also disturbed about the policies and practices introduced regarding women's access to employment and livelihood, and to education. Without access to employment or education, women and girls will be further marginalized and are at high risk of poverty, exploitation, violence, and abuse. Furthermore, excluding all women from public positions and violently repressing demonstrations for women's rights show contempt for women's right to participate in public and political life, as well as for their rights to peaceful assembly and association and freedom of opinion and expression. Moreover, we are deeply concerned for the safety of women judges, among other women human rights defenders. They were defenders of the law and sought justice for the most marginalized and are now themselves at risk of threats, harassment, violence, and death for upholding human rights.

The sum of the above allegations demonstrates a clear disregard for the rights of women and girls and contributes to a climate of acquiescence of gender-based violence against women, with policies and practices disproportionately affecting

women's and girls' lives and futures and increasing their vulnerability to violence. Moreover, the allegations reveal a stark retrogression on the human rights of women, which is contrary to Afghanistan's international human rights obligations.

We are also extremely disturbed by the reports of extrajudicial killings and forced displacement of ethnic and religious minorities, such as the Hazara, as well as by the reported attacks against their places of worship, which would suggest deliberate efforts to ban and even eliminate them from the country, in direct contrast with Afghanistan's obligations to protect the existence and identity of minorities within its territory.

In connection with the above alleged facts and concerns, please refer to the first annex on Reference to international human rights and humanitarian law attached to this letter, which cites international human rights norms and standards relevant to these allegations. They constitute the primary set of international duties that any governing authority has to respect. The second annex cites corresponding references to Islamic principles inspired by *Sharia* as highlighted by authoritative Muslim jurists and scholars and demonstrated in State practice. The purpose of the second annex is to highlight areas of convergence between international human rights standards and religious principles.

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 any comment you may have on the above-mentioned allegations.
2. Please provide reasons for restricting women's access to gainful employment, work, and livelihood, and how these restrictions are compatible with your commitments made during the peace talks to respect the rights of women, including to work and education.
3. Please provide reasons for the shutting down of the Ministry of Women's Affairs and the restriction of the activities of the Afghanistan Independent Human Rights Commission.
4. Please provide reasons and grounds for excluding women from public positions.
5. Please provide information on the steps taken to investigate the use of violence and for the repression to peaceful protest and assembly, particularly those led and/or organized by women, or in defense of their rights.
6. Please provide details on the basis for the ban of all demonstrations without prior authorization of early October, and please explain how this is compatible with your responsibility to respect the right to freedom of assembly without discrimination.

7. Please explain how the measures mentioned in questions 2 to 5 are compatible with Afghanistan's human rights commitments, and particularly with those laid out in the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Afghanistan in 2003.
8. Please indicate how you will respect girls' human right to education.
9. Please elaborate on the measures you intend to put in place to reinstate equal access of women and girls to the economic, political, and social rights.
10. Please elaborate on the measures you intend to put in place to cease all acts of gender-based violence against women and girls to protect their lives, safety and wellbeing as well as ensure that victims of such violence can access justice, receive reparations, and be properly assisted.
11. Please elaborate on the measures being taken to ensure that women can participate in the decision-making and allocation of humanitarian aid.
12. Please provide information on how human rights defenders, in particular women human rights defenders, can carry out their legitimate and peaceful work promoting and protecting human rights, and what is being done to provide an enabling environment for civil society as a whole.
13. Provide any additional information and any comment you may have on the above-mentioned allegations regarding the killings, evictions and forced displacement of members belonging to the Hazara minority, including any enquire undertaken into the incident. Please explain what measures will be taken to ensure that the rights of members of ethnic and religious minorities are adequately fulfilled.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received will be made public via the communications reporting [website](#), as per standard operating procedures. 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 halt the alleged violations and prevent their re-occurrence. We urge you to refrain from implementing further measures that discriminate against women and minorities, and to take urgent measures to ensure that discriminatory policies that have been implemented are promptly reversed.

We may also express our concerns publicly prior to receiving your reply. Should any press release be issued regarding the above-mentioned allegations, we will indicate that we have been in contact with you to clarify the issues in question.

Furthermore, we are prepared to engage in a conversation around the international standards around your commitments and the steps that need to be

adopted to uphold them.

Finally, we stress that this letter does not in any way imply the expression of opinion concerning the legal status of any territory in Afghanistan, city, or area, or of its authorities.

Please accept the assurances of our highest consideration.

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Fernand de Varennes
Special Rapporteur on minority issues

Reem Alsalem
Special Rapporteur on violence against women, its causes and consequences

Annex I

Reference to International Human Rights and Humanitarian Law

Any authority exercising effective control over parts of the Afghan territory and/or persons has the obligation to abide by Afghanistan's international commitments including treaties and human rights agreements, such as the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Civil, Economic Social, and Cultural Rights (ICESCR) which were ratified by Afghanistan on 24 January 1983; and the Convention on the Elimination of Discrimination against Women, signed on 14 August 1980 and ratified on 5 March 2003 without any reservations.

With regard to allegations of systematic and serious gender-based discrimination in all walks of life, we wish to recall the Convention on the Elimination of All Forms of Discrimination against Women 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 rights to participate in the formulation of government policy (article 7).

Ensuring the full and meaningful participation of women requires concrete steps in eliminating laws or provisions in the law that are discriminatory against women, 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 on Discrimination against Women and Girls has brought to the attention of Afghanistan'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 of criminalization of adultery on women.

We also wish to recall that the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of CEDAW, whether perpetrated by a State official or a private citizen, in public or private life. Moreover, we would like to recall the Declaration on the Elimination of Violence against Women, which states that violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.

Such systematic acts of discrimination also run counter to articles 6, 19 and 21, and 22 respectively the right to life, the rights to freedom of expression and freedom of assembly and of association, of the ICCPR. The CEDAW Committee, in its 2020 concluding observations on Afghanistan (CEDAW/C/AFG/CO/3), shared its concerns regarding extremely high levels of gender-based violence against women, including conflict-related sexual violence, and about the lack of protection for victims and the impunity enjoyed by perpetrators of such acts. Moreover, the Committee

noted that the level of women's labour force participation remains low and that women are concentrated in the informal economy, especially in agriculture, domestic work and unpaid care work, and have no access to social protection. It also highlighted discrimination against women and girls when it comes to marriage and family relations, noting the fact that girls under the age of 15 years may be married in Afghanistan.

With regard to women's participation in social, economic and political life, we would like to remind you of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Afghanistan on 5 March 2003, in particular its article 7 on the equality of women in political and public life, article 10 on the equality of women in access to education, article 11 on the equality of women in access to work, and article 16 on the equality of women related to marriage and family life.

We would also like to remind you of the United Nations Declaration on the Elimination of Violence against Women, which notes that States should recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national, and regional levels.

The Working Group on discrimination against women and girls 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 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. 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.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association further noted in a report that "measures adopted by States to promote the rights to freedom of peaceful assembly and of association should address the

intersecting forms of discrimination against women, examining the social, economic, and political factors that prevent particular groups of women from participating in public life”. He further called for “immediate action by States and other relevant stakeholders to fulfil women’s rights to freedom of peaceful assembly and of association” stating that women’s full and equal enjoyment of the rights to freedom of peaceful assembly and of association depends on ensuring systemic transformation of economic and social structures, institutions and norms that perpetuate gender inequality in the world of work. States should therefore mobilize resources and political will to ensure their effective implementation, namely by: (1) taking immediate action to identify and repeal laws that discriminate (directly or indirectly) against women in all spheres of life; (2) establishing effective policies, public campaigns and educational programmes to combat discriminatory social norms, attitudes and harmful stereotypes; and (3) accelerating efforts to eliminate all forms of violence against women, including domestic violence, sexual harassment, rape and online violence, and other acts of persecution, intimidation or reprisals.

We would also like to recall that any restrictions to the exercise of the rights to freedom of peaceful assembly and of association, as guaranteed by articles 21 and 22 ICCPR, must be provided by law and be necessary and proportionate to the aim pursued (ICCPR, arts. 19 (3) and 21). States must therefore “refrain from imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups” (A/HRC/RES/12/16, para. 5 (p) (i)).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association further wishes to highlight that “[n]otification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal” (A/HRC/31/66 para.21). In addition, we refer to a report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association which indicated that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Law enforcement authorities should not resort to force during peaceful assemblies and ensure that, ‘where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force’ (A/HRC/RES/19/35, para. 6)” (A/HRC/20/27, para. 89). We wish to remind you of a report of the Special Rapporteur on Torture which explains that “(a)ny extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment” (A/72/178, para. 62(c)). We would also like to draw your attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provides that, “[I]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.”

Further, General comment No. 37 (2020) on the right to peaceful assembly as provided for in article 21 of the ICCPR, reiterated the State’s responsibility under

international law “for the actions and omissions of its law enforcement agencies” (para. 89). The General Comment 37 further states that “States should consistently promote a culture of accountability for law enforcement officials during assemblies”, while also providing that State’s intentional and negligent action or inaction can amount to a violation of human rights. The same General Comment notes that “States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies,” and that “individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims” (para. 90).

We would like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves.

In her report on violence against women journalists (A/HRC/44/52), the Special Rapporteur on violence against women highlighted the gendered manifestation of violence affecting women journalists in their work, and particularly the risks of rape and sexual violence they face while reporting or detained. In that sense, she recommended that States fully apply international human rights standards on the freedom of expression and the protection of journalists, as well as women’s rights instruments related to the prohibition of discrimination and gender-based violence against women, using the synergies between them to ensure the safety of women journalists working in independent news media and government-affiliated media entities, freelancers and other news media workers.

With regard to women’s and girls’ equal access to education, we wish to refer you to the Convention on the Rights of the Child which declares in article 28 that State Parties recognize the right of the child to education and commit themselves to take the necessary measures in order to make primary, secondary and higher education available and accessible to all.

Article 26 of the Universal Declaration of Human Rights, as well as article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by Afghanistan in 1983, consecrate everyone’s right to education. General Comment No. 13 of the Committee on Economic, Social and Cultural Rights recognizes that availability and accessibility are among four interrelated and essential features of the right to education that must be ensured by States. The Committee also stated that the obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education and that the obligation to fulfil requires them to take positive measures that enable and assist individuals to enjoy the right to education.

With regard to the treatment of ethnic and religious minorities, Article 2 (1) of the International Covenant on Civil and Political Rights (ICCPR) requires State parties to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]. Therefore, we would like to stress that no one, including Muslim minorities, such as the Hazaras, and other minorities, should be discriminated against based on the religious or belief identity.

Article 27 of the ICCPR protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves. Moreover, Article 26 of the ICCPR contains a general right to equality without discrimination on grounds such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law.

Article 18 of the ICCPR guarantees the right of freedom of thought, conscience, religion or belief and protects against any coercion which would impair one's freedom to have or to adopt a religion or belief of his choice. Moreover, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of the General Assembly in its Article 2 (1) stressed that "No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief." In Article 4 (1) of the 1981 Declaration, it further encouraged that "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life." In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

Additionally, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1). It further recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2.1) as well as to participate effectively in cultural, religious, social, economic and public life (article 2.2 and A/HRC/40/58, annex II, commitment VI). States are required to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1 of the 1992 Declaration).

Moreover, international law guarantees to everyone the right to freedom of religion or belief, and to manifest such belief, either alone or in community with others, and in public or private, through worship, observance, preaching and practice, as well as the right to self-define and self-identify with beliefs without a need for prior recognition by the State. Thus, the protection of equal citizenship and non-discrimination applies to all citizens of whatever belief, as expressly supported by the 1981 UN Declaration adopted by the consensus support of all states, including members of the Organization of Islamic States (OIC).

With regard to human rights defenders, we would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and:

article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

article 5 (c), which provides for the right to communicate with non-governmental or intergovernmental organizations; and

article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

With regard to the laws governing armed conflict, we wish to draw your attention also to the provisions of international humanitarian law. According to customary international humanitarian law applicable in non-international armed conflict, attacks must not be directed against civilians (see ICRC Study on Customary International Humanitarian Law, Rule 1). Civilians only lose their protection against attack when, and for such time as, they take a direct part in hostilities (see Rule 6). Indiscriminate attacks are prohibited (see Rule 11). In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects (Rule 15). Attacks against persons *hors de combat* is prohibited, including anyone in the power of an adverse party and anyone who expresses an intention to surrender (Rule 47). The following acts, among others, are also prohibited: murder (Rule 89, Common article 3 to the Geneva Conventions, to which Afghanistan is a party, and article 4(2)(a) of Additional Protocol II to the Geneva Conventions ratified by Afghanistan on 10 November 2009, rape and other forms of sexual violence (Rule 93, Common article 3 and article 4(2)(e) of Additional Protocol II), arbitrary deprivation of liberty (Rule 99), pillage (Rule 52 and article 4(2)(g) of Additional Protocol II), and attacks against objects indispensable to the survival of the population such as foodstuff, agricultural areas for the production of foodstuff, crops, livestock, drinking water installations and supplies (Rule 54, and article 14 of Additional Protocol II). Ordering the displacement of the civilian population, in whole or in part, for reasons related to the conflict is prohibited, unless the security of the civilians involved or imperative military reasons so demand; and the parties to a conflict have the duty to prevent displacement caused by their own acts, such as terrorizing the civilian population or carrying out indiscriminate attacks (Rule 129 and article 17 of Additional Protocol II). This includes of ethnic cleansing which aims to change to change the demographic composition of a territory through the displacement of civilian population and/or other acts such as attacks against civilians, murder, and sexual violence.

International humanitarian law also provides that, in case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health and safety and nutrition (Rule

131 and Additional Protocol II article 17). Displaced persons have a right to return and their property rights must be respected (Rules 132 and 133). Women and children are entitled to special protection (Rules 134 and 135). Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces (Rule 139) and States must investigate war crimes allegedly committed by their nationals or armed forces and prosecute the suspected (Rule 158)

Finally, with regard to any governing authority's responsibility to uphold these responsibilities under international law, Article 6 of the ICCPR provides that every individual has the right to life and security of the person, and that this right shall be protected by law and that no person shall be arbitrarily deprived of his or her life. This right constitutes pre-emptory norm (jus cogens) and cannot be derogated from (CCPR/C/21/Rev.1/Add.6) and continues to apply in situations of armed conflict to which the rules of international humanitarian law are applicable, including the conduct of hostilities (CCPR/C/GC/36).

Annex II

References to relevant Islamic Principles that converge with International Human Rights and Humanitarian Law Obligations

At the outset of your effective control over the country, you have indicated on multiple occasions that you would rule according to the *Sharia*. You also stated that women would enjoy their rights and be able to participate in society as long as these were in accordance with *Sharia*.

This annex refers to the Islamic principles, *Sharia* and gender-sensitive *fiqh* that converge with international human rights and humanitarian law standards that Afghanistan as well as any authority or *de facto* authority is bound by. It should therefore be read in conjunction with Annex I listing the international human rights and humanitarian law standards that constitute the primary set of international obligations that any governing authority has to respect. In this respect, we wish to recall and reassert the principle enshrined in Article 27 of the 1969 Vienna Convention on the Law of Treaties which states that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.¹ This principle is also stressed by the Human Rights Committee in General Comment 31 para. 4 on the supremacy of international human rights obligations over domestic law. It is also repeated in article 5 of the 1993 Vienna Declaration of the Program of Action (VDPA) which states that:

While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.²

At the same time, we wish to assert the right of Afghans, including Afghan women to exercise their own spirituality and religion. International law grants them the right to shape their own religious views and not just to belong or to leave.

Furthermore, we have also alluded to the diversity of interpretations by a range of Muslim jurists and scholars, and the practice of a number of Organization of Islamic Cooperation (OIC) states, which illustrate many points of convergence between Islamic teachings and understandings and human rights obligations of states. In doing so, we have drawn on the support of eight trained Sunni female and male Islamic jurists living in six different countries.

Assertions that Islamic law is ‘stable and invariable’ often offer no space for intra-religious dialogue that could advance the enjoyment of human rights within a framework consistent with the freedom of religion or belief. However, the interpretations of *sharia* highlighted in this Annex, attest to the diversity of practices drawn from *sharia*, especially those that support convergence between *sharia* and human rights law. We believe this Annex can serve to supplement the capacity of all stakeholders to engage in dialogue to consolidate the observance of the international

¹ UN Treaty Collection, Vienna Convention on the Law of Treaties, 1969, <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm>

² OHCHR, Vienna Declaration and Program of Action, 1993, https://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_English.pdf

human rights obligations of Afghanistan, in line with the “Beirut Declaration and its 18 Commitments on Faith for Rights” and article 5 of the VDPA quoted above.

We also wish to clarify the meaning of *Sharia* and *fiqh* and their use throughout this document:

Sharia (literally 'the way', the path to a water source) is generally regarded by Muslims as the ‘divine message’, the sum of religious values and principles, drawn from the Quran and the Sunnah of Prophet Muhammad as a guide to believers on how to lead their life. Moreover, Muslims believe *Sharia* to be sacred, eternal, and normatively relevant for all aspects of their lives

However, we also note the observance of the principles and values of *sharia* relies on deriving specific rules of conduct from the primary sources of *sharia*, namely the Quran and the Sunnah, through a process of human interpretation undertaken by qualified *mujtahids*, resulting in *fiqh* (jurisprudence), which is distinct from *sharia* and, unlike *sharia*, is not regarded by any *mujtahid* as either immutable or infallible. We further note that according to *fuqaha*, all rulings of *fiqh* that deal with social interactions are context specific, in recognition of the diversity of circumstances that requires to be considered to ensure the specific rulings of *fiqh* actualize the ‘higher objectives’ or the ideals of *sharia*. We observe that this diversity of *fiqh* is also manifested in the practice of Muslim-majority State parties to international human rights treaties, as regards, amongst others, of the acceptance, with or without reservations, of specific provisions of treaties, and in the subsequent modification or withdrawal of reservations entered in the name of religious teachings. Thus, both the epistemology of Islamic law (*fiqh*) and its practice demonstrate a diversity of practices which have varied across time and space. In this context, we assume therefore that what you are referring to is humanly constructed *fiqh* rather than a ‘divine’ and immutable *Sharia* as the guiding operational framework for your action.

In this connection, we would like to note that according to many scholars of Islamic law, *Sharia* and international human rights obligations converge in defending the same values of equal human dignity, justice, solidarity, and freedom. The same can be said of gender-sensitive and human-rights centered *fiqh* that regards women as equals to men with full dignity, is also consistent with these international obligations (as opposed to part of *fiqh* interpretations that discriminate against women, treating them unequally, which are manifestly inconsistent with human rights standards). It is in this respect that this annex will refer to relevant *Sharia* principles and gender-sensitive *fiqh* interpretations without prejudice to the supremacy of the applicable international human rights standards and obligations in all situations.

With regard to your international human rights obligation to refrain from systematic and serious gender-based discrimination in all walks of life, we also recall what many Muslim scholars emphasize as being part and parcel of *Sharia*’s principles and the duties of Muslims:

1. The inherent dignity of all humans, regardless of gender: This principle is emphasized in all original sources of Islam. It must therefore be protected, and all measures must be taken to uphold it.

2. The inherent equality of men and women in front of God: This principle is unequivocally articulated in the *Quran*, which states that men and women were created from one soul. They are also addressed together and mentioned equally when God speaks of those who will be rewarded in the Afterlife (Quran verses 4:1, 9:71, 33: 35). This principle is also confirmed in the *Sunnah* of the Prophet.

With regard to your international human rights obligation to ensure women's participation in social, economic and political life, the right to full and equal participation is evident in verse 42:38 of the *Quran*. Additionally, verse 9:71 of the *Quran* describes male and female believers to be *Awliya* of each other (i.e., allies to each other) which according to many Muslim scholars signifies a close working relationship. Numerous accounts from the Prophet's life contain references to political events in which women played a prominent role, the first being *Khadija*, his first wife. One such account is the report that the Prophet was not satisfied with the pledge of allegiance (*bayi'a*) to the men when he wanted to migrate to Medina (*hijra*), so he requested the pledge of allegiance from the women too (*Quran* verse 60:12). Authoritative sources report that the Prophet's wife *Umm Salama* was his legal and political advisor and advised him during the Treaty of *Hudaybiyya* as well as during the conquest of Mecca. Moreover, there are no reports whatsoever attributed to the Prophet's Companions or the Caliphs that a woman's opinion was belittled or prevented from participating in politics because she is a woman. Rather, according to the *Sunnah*, women's opinions were always valued and appreciated. Furthermore, there is no information that points out to men and women have been segregated as a precondition for women's participation in social, economic, and political life from the early period of Islam in Mecca and Medina, including not proof of barriers separating women from men at public places, including mosques, or separate entry places. Moreover, it is an established principle of Islamic law, that in interpreting the practice of the Prophet and his Companions, jurists must distinguish between and what is normative for Muslims for all times and what was the contextual norm for 7th century Arabia.

We note that State practice amongst the 56 member States of the Organization of Islamic Cooperation (OIC) also provides many examples of the acceptance of international obligations to respect their equal rights of women, without reservation, including countries where specific positive measures are taken to increase women's participation in public life. Many of these states identify Islam as the their 'official religion' or 'state religion' and/or declare that sharia is 'the source' or 'source' of their legislation.

With regard to your international human rights obligation to ensure the access of women and girls' to education, we note that Sharia also upholds these duties. The principles of justice and gender equality mean that women and girls are entitled to seek and access education on an equal footing as men and boys. According to Muslim tradition, suppression of the rights of girls and women was a defining feature of pre-Islamic Arab society, the so-called *Jahiliyya* ('Ignorance') and advancing the rights of girls and women is foundational to Islam while, many sources report that, Islam's first convert and first martyr were women (*Khadija* and *Sumayyah* respectively). Muslim scholars record that the first verses of the *Quran* that were revealed to the Prophet commanded all human beings, both males and females to "learn, read" (*Iqra'*) (*Quran* verses 96:1-5) and to seek knowledge (*Quran* verses 16:78; 17:85, and 20:114). Furthermore, several *Hadiths*, call on men and women to

seek knowledge (e.g. "Seek knowledge from the cradle to the grave", and "seek knowledge even [if it is found as far as] in China"). Many women contemporaries of the Prophet were narrators of the *Hadith*, which pointed to the acceptance of their status as sources of knowledge. Since the early days of Islam, many Muslims, men, and women, in many different periods and countries contributed to producing knowledge in different fields. In fact, since the early days of Islam, many Muslims, men and women in many different periods and countries contributed to producing knowledge in different fields. The world's oldest University, the University of Karueein in Fez, was established by a woman, Fatima al-Fihri. Many delegates from Muslim-majority states contributed to the development of international human rights law, especially on provisions asserting social and economic rights. Records show that women delegates from Muslim states proposed and insisted on including the common article 3 in the two covenants declaring that all human rights apply equally to all women and men.³

Moreover, article 6 c) of the Cairo Declaration of the OIC states that women and the girl child "shall be protected against all forms of discrimination, violence, abuse and harmful traditional practices. The State and society shall ensure such protection." In fact, across the OIC, states have either achieved or are actively pursuing gender equality in education.

Furthermore, Abdelfattah Amor, former Special Rapporteur on freedom of religion or belief, stressed that in several members states of the OIC, the testimony of a woman has the same value as that of a man, which "shows that religious texts are not closed texts and that cultural practices, even at the State level, can be reshaped according to the requirements of modern life, as with original Islam at the time of its revelation." (E/CN.4/2002/73/Add.2, para. 138).

With regard to your international human rights obligation to protect the rights of ethnic and religious minorities, we recognise that *ijma* (consensus) is also regarded as a source of Islamic law and an examination of the Constitutions of the states of the OIC shows that equality of citizenship of all communities is asserted. Under classical Islamic jurisprudence, some of the minority groups may be considered *dhimmis*, or *ahl al dhimma* (i.e., permanent non-Muslim residents of the Islamic State). The terms refer to non-Muslim civilians that accept to live under Muslim rule based on an agreement, whereby they would have their life, dignity and property protected; be allowed to continue to practice their faith and rituals. The protection they are entitled to includes protection from wrongdoing and abuse. Furthermore, they have a right to earn a living, work, hold public offices and entitled to welfare services discharged by the state. While accounts of the actual treatment enjoyed by minorities under imperial Islam highlight periods of equal protection to exploitation, the normative obligation to treat all, regardless of religion or belief, with respect for equal dignity is clear. The letter from Caliph Ali to his governor in Egypt, Malik Ashtar stated that:

"Remember that the citizens of the state are of two categories. They are either your brethren in religion or your brethren in kind. They are subject to infirmities and liable to commit mistakes. Some indeed do commit mistakes. But forgive them even as you would like God to forgive you".⁴

³ Susan E Waltz, "Universal Human Rights: The Contribution of Muslim States", *Human Rights Quarterly* v 26 no 4 (2004):799-844 <https://muse.jhu.edu/article/174743/pdf>

⁴ Almerja: Truth and Knowledge, <https://almerja.com/en/more.php?pid=427>

Under classical imperial Islamic law, non-Muslims temporarily entering Muslim land also enjoyed protection under the protection regime of *Aman*, which upheld and guaranteed the right to life and property of any member of the community. This regime allows any member of the Muslim community to offer protection to non-Muslims. It is an indication of the Muslim *umma*'s recognition of freedom of movement and the creation of a safe haven, not only for visitors or persons passing through, but also for refugees and others entering Muslim-ruled territory because they are fleeing for their lives.⁵

We wish to draw your attention to the efforts made by eminent Muslim scholars to develop a *fiqh* of citizenship that upholds equal civil and political rights for non-Muslims by re-asserting the foundational principles of sharia. In doing so, they base themselves on the concept of *muwatana* – an identity characterized by “belonging and neighbourliness” and shared by all citizens regardless of their religious affiliation. They based themselves on their reading of the “Constitution of *Medina*” ratified between Muslims and non-Muslims in the first year of Hijra, granting individuals of both Muslim and Jewish tribes the same political rights and duties. In this sense, the constitution was seen as a political and not a religious arrangement, in which the inhabitants of *Medina* formed one society based on mutual solidarity and support.⁶ To mention one example, the *dhimmis* system was gradually abolished by the late Ottoman Empire, the seat of the Caliphate, in the modernization efforts of the late 19th century. This trajectory reached its pinnacle in December 1876, when the Ottoman Empire declared an egalitarian constitution. “Every Ottoman enjoys personal liberty on condition of non-interfering with the liberty of others, it read “without distinction whatever faith they profess.”⁷

Furthermore, the Cairo Declaration of the OIC on Human Rights (as revised in 2020) stresses that all human beings are equal in dignity, rights, and obligations, without any discrimination on the grounds of religion, sect, or other status (article 1 a). Most importantly, beyond scholars’ views and writings in this direction, the undeniable fact is that the practice of all member states of the OIC and their constitutions establish citizenship, regardless of religion, as the main and only criteria for deserving rights and assuming responsibilities on equal footing. The foundations of this unanimous Muslim-country practice are to be found in *Quran*, which is referred to in the constitution of Muslim countries as the “state religion” (verse 2:256 and 49:13).

Moreover, Muslims following non-*Sunni* branches of Islam are considered Muslims based on the hadith by the Prophet that defines Muslims as anyone who testifies that there is only one God, and that Muhammad is his Prophet. As the *Quran* states in verse 64:4 “He knows what is in the heavens and earth; He knows what you conceal and what you reveal; God knows fully what is in every heart”. In this respect, the practice of the OIC also reflects this, in its treatment of Sunni, Shia and Ibadi communities (among others) as Muslim communities and its rejection of *Takfirism*. The *Quran* further protects the right of all humans with regards to thought and belief, most notably in verse 2:256 “Let there be no compulsion in religion. Truth stands out

⁵ If for any reason, the *aman*, agreement ceases to apply, the governing authority is expected to escort the beneficiary of that protection to a place of safety outside of Muslim lands.

⁶ For example, Article 2 and 40 of the *Medina* Constitution state that they “are one community to the exclusion of all others and that “*Yathrib (Medina)* will be a sanctuary for the people mentioned in this document. The Jewish tribes of Medina were described as an “*umma ma’a al-mu’minun*”, i.e., a community with the believers. (<https://www.anayasa.gen.tr/1876constitution.htm>)

clear from error”. Other verses of the *Quran* have confirmed this principle (verse 109:1-3,6; 18:29; 88: 21-22).

With regard to your international human rights and humanitarian law obligations in times of armed conflict, the contribution of Muslim teachings to the development of laws of armed conflict is well recognized. The *Quran* underlines the sanctity of life in peace and in war. It ordered humans not to take life, which God has made sacred, except by way of justice and wisdom (6:151) and emphasized that “any one slew a person – unless it be for murder or for spreading mischief in the land – it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people.” (*Quran* verse 5:3). This principle is also to be respected vis-à-vis persons belonging to other faiths.

Islamic regulations on the conduct of hostilities and war sought to humanize armed conflict. They make it abundantly clear that civilians and other non-combatants must not be deliberately harmed during hostilities, in alignment with the international humanitarian law. Five categories of people are specifically mentioned in the Hadith of the Prophet Muhammad as examples of civilians that are protected from attack: Women, children, the elderly, the clergy, and the *usafa* (persons performing certain services for the enemy on the battlefield but who do not take part in the hostilities).⁸ As is the case for civilians under International Humanitarian Law, members of these categories will lose their protection from attack if they take part in hostilities.⁹

Moreover, and from the Quranic prohibition against killing another human, come rulings prohibiting means or methods of warfare that cause incidental harm to protected people and objects and which would be excessive in relation to the anticipated military advantage. The wanton destruction of enemy property is also strictly prohibited as it constitutes the criminal act described metaphorically in the *Quran* as *farad fi-al-ard* (literally “destruction of the land”) (*Quran* verse 5:33).

Finally, with regard to your international responsibility to uphold your international law obligations, as the 2016 *Marrakesh* Declaration issued by 300 Sunni and Shiite leaders points out, Islam law insists that contracts, pledges, and agreements are honored, and it quotes the *Quran*’s verses 5:1; and 16:91. It is the established practice of the governments of Muslim-majority countries to abide by international agreements. This may reflect the emphasis of Islam’s legal traditions on the duty to respect pacts and agreements, in addition to the commitment of these states to norms of international law.

Muslim scholars are generally emphatic that *Sharia* imposes upon Muslims the duty to uphold justice - both *'adl* and *qist*: *'Adl* is the general term for justice which today incorporates nuances of equality. *Qist* refers specifically to a consciousness of the deep systemic and structural injustices that occur in any society and to gaining justice for those affected by them, including women. Few commandments have been repeated in the *Quran* as often as this one (e.g., verses 4:135, 5:8, and 16:90). In the same vein, *tatfif* (unequal treatment and discrimination) is strongly condemned in the *Qur'an* (verses 83:1-6).

⁸ Their equivalence in the context of modern warfare would be civilians accompanying the armed forces who do not take part in actual hostilities and who therefore cannot be targeted.

⁹ See for example Zuhdja Hasanovic (ed) “Islamic Law and International Humanitarian Law; Proceedings” published by the Faculty of Islamic Studies of the University of Sarajevo and the ICRC, Sarajevo 2020.