

Mandates of the Special Rapporteur on the situation of human rights in Afghanistan; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: OL OTH 33/2026

(Please use this reference in your reply)

10 April 2026

Dear Mr. Muttaqi,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Afghanistan; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 60/2, 53/4, 59/4, 53/12, 52/5, 58/5, 59/5, 51/15, 52/7, 53/9, 59/20 and 59/14.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the Special Procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular

Taliban

group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of the de facto authority information we have received concerning Decree Number 12 (“the decree”), the so-called “criminal rules of courts” (the rules).

This letter analyses some of the most concerning sections of the rules with the purpose of assisting the Taliban (hereafter referred to as the de facto authority in Afghanistan) to bring them in line with Afghanistan’s international human rights obligations, including the Universal Declaration of Human Rights (UDHR), as well as in particular, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW), all of which Afghanistan has ratified, and by which the de facto authority continues to be bound. A careful assessment of these amendments raises significant concerns regarding their compatibility with human rights law, recalling that, in addition to its obligations under international humanitarian law, the Taliban, as the *de facto* authority in the territory concerned, is responsible for ensuring the human rights of all individuals under their effective control.

These observations highlight the need for any reforms to the statutory framework governing the judiciary in areas under the control of de facto authorities to be carefully considered and implemented in a manner that respects and upholds all international human rights standards, in particular those concerning the independence of the judiciary, and the right to a fair trial in matters related to the courts and criminal proceedings, as indicated in this Decree.

We stand ready to provide the de facto authority with any further technical advice it may require, and we will monitor closely the way in which the rules are implemented and their impact on the human rights of Afghans.

Legal framework

The rules, dated 15/7/1447 AH (05/01/2026), entered into force upon being signed by the Taliban leader on 18/07/1447 (08/01/2026). The law appears to contain no reference to the Constitution of Afghanistan, nor does it rely on Decree No. 9 of October 2022 which outlines the process for approving legislative documents. We note that the legislative process, including any consultation outside the de facto authority, is unknown.

We understand that the de facto authorities have justified the rules purportedly based on their interpretation of Sharia. We have consulted Sharia law experts who have generally expressed critical views about the rules’ compliance with Sharia, and some have published their views. However, in this letter we limit ourselves to assessing the rules’ compliance with international human rights law.

Compliance with the principle of legality

We emphasize that vague and overbroad definitions are prone to both unintended consequences and deliberate abuse, often leading to violations of other rights. The principle of legality under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, including the targeting of civil society, including human rights defenders, members of a specific gender, or other marginalized members of society, and to suppress the exercise of fundamental rights and freedoms. This may lead to disproportionate impacts on vulnerable groups.

The rules appear to have been issued only in Pashto, without an official version in Dari, Afghanistan's other official language. Given that Dari is widely understood and spoken across many provinces, the absence of a Dari version may impede consistent understanding and application by judicial and administrative authorities and undermine legal certainty. In addition, certain provisions cite *Sharia* sources in Arabic. This may limit accessibility for both de facto judicial authorities and ordinary people as many do not speak Arabic, impede understanding of legal obligations, and restrict affected individuals' ability to foresee consequences or meaningfully challenge implementation.

Right to equality before the law

Under ICCPR article 2, everyone is entitled to rights without distinction including on the grounds of race, religion, social origin, sex, property, and birth, under article 14, all persons shall be equal before the courts and tribunals, and under article 26, everyone is equal before the law and is entitled without any discrimination to the equal protection of the law.

Article 9 of the rules appears to codify a social hierarchy of four classes (*ulama* (religious scholars), *Ashraf* (elites, dignitaries, tribal elders), middle class, and lower class), which on its face is discriminatory, based on which an individual is afforded differentiated treatment by the courts. This provision appears to link the nature or severity of punishment to an individual's social status, rather than to the conduct and culpability associated with the underlying offence, with lower ranks receiving "lashings" and upper ranks receiving little or no punishment. There is no prescribed way in which a person's status is determined meaning that judges are afforded a wide discretion to decide how a person should be treated and punished, which may also be based on discrimination, and may have disproportionate impacts against marginalized groups. This social hierarchy also implies a degree of differential treatment on the basis of gender, given the exclusion of women from particular forms of social, political, and governmental leadership roles within society.

Some provisions of the rules mention "slaves" and "slave owners", authorizing the latter to impose discretionary punishments in article 4, while individuals are categorized as "free" and "slave" concerning criminal liability in article 15. The prohibition against slavery is a *jus cogens* principle of international law as well as being prohibited under ICCPR article 8 and article 4 of the UDHR. Such distinctions also violate the right to equality before the law and equal protection of the law under

article 26 of the ICCPR. We note that the meaning of these references is unclear and request clarification from the de facto authorities.

Further, concerns arise from the imposition of mandatory sentences, since these may be an infringement of the independence of the judiciary. By removing judicial and prosecutorial discretion, they prevent a court from considering the individual circumstances, including mitigating factors, and from imposing a proportionate sentence that fits the crime. International standards provide that the “judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.¹

Right to a fair trial

ICCPR article 14 provides everyone with the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. International standards on judicial independence require that the judiciary be free from political influence or interference by the executive or legislative branches, and that judges be appointed on the basis of objective criteria related to competence, integrity, and qualifications.²

The Human Rights Committee has clarified that the requirement of independence refers to “the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature”.³ The decree does not contain provisions on the manner of appointment for judges or their security of tenure, elements that would guarantee their independence.

Recalling that one of the main purposes of an independent judiciary is to protect human rights and check power that would violate such rights, a situation such as the one set out in the decree “where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal”.⁴

Furthermore, in its general comment No. 32 (2007) on article 14 of the ICCPR, the Human Rights Committee emphasized that the right to equality before courts and tribunals and to a fair trial is key to the protection of human rights and serves as a procedural means to safeguard the rule of law.⁵ Article 14 provides procedural equality and fairness, the presumption of innocence, the right to a defence and protection from

¹ Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

² Basic Principles on the Independence of the Judiciary, principle 10, A/HRC/44/47/ADD.2 (2 June 2020), para. 104, A/HRC/11/41 (24 March 2009), para. 27, A/HRC/50/36/ADD.1 (11 May 2022), para. 112.

³ CCPR/C/GC/32, para. 19.

⁴ Ibid.

⁵ CCPR/C/GC/32, paragraph 2.

forced confession. The Decree does not appear to include an enumeration of an accused person's rights, nor any procedural guarantees to protect them.

The provisions included in articles 49 to 40 appear to set out punishments for conduct on court premises and may touch upon some procedural aspects related to confessions, evidence, and false testimony. However, they are not in line with international standards and insufficient. Some provisions appear to deal with evidentiary standards and witnesses, including noting that one man or two women may give evidence in a tazir case, however only one man may give evidence in hudud cases.⁶

We recall the right to equality before the law and the prohibition of discrimination, as well as that under CEDAW article 5(a), practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women should be eliminated. Furthermore, article 15 of CEDAW states that "State Parties shall accord to women equality with men before the law" which means that women have to be given the same legal standing, rights and protections as men in all legal contexts without discrimination based on sex.

Article 49 includes a punishment for the judge, to be sentenced to imprisonment if a decision is issued without a Sharia-based excuse. This provision as it stands would violate the principle that judges can only be dismissed for serious reasons of misconduct or incompetence, and in accordance with fair procedures guaranteeing objectivity and impartiality provided for by the constitution or law. International standards provide that judges cannot be sanctioned for the content of their decisions or rulings.

The procedural guarantees set out in article 14 of the ICCPR play an important role in all human rights protection and must be taken into account in the context of determining criminal charges and the rights and obligations of an individual during legal proceedings. These guarantees can never be subject to measures of derogation that would circumvent the protection of non-derogable rights, and derogation from "the fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times."⁷

The right to an effective remedy is also protected in both the ICCPR and the UDHR. Article 2(3)(a) of the ICCPR guarantees that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Article 8 of the UDHR declares that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 4(1) of the rules states that hudud crimes⁸ must be established beyond doubt, however in article 4(2), crimes with tazir punishments⁹ (most of those listed in

⁶ See the footnotes to article 7.

⁷ CCPR/C/GC/32, paragraph 6.

⁸ Under Sharia, Hadd (singular) or Hudud (plural) refers to a class of punishments for specific, serious crimes deemed to be "against God" or "limits of God" (hududullah). These punishments are considered divinely ordained, meaning they are fixed in the Quran or Hadith and cannot be added to, subtracted from, or pardoned by individuals or the state.

⁹ Under Sharia, refers to discretionary punishment for offenses not defined or having fixed penalties in the Qur'an or Hadith. It is one of the three main categories of sharia punishment – distinct from hudud (fixed, severe penalties)

the rules) can be established despite doubt. We note that these provisions go against the the presumption of innocence, which requires that guilt is found only when the charge has been proved beyond reasonable doubt (see CCPR/C/GC/32 para. 30). The provisions therefore negate an important procedural protection for accused persons.

The rules appear to authorize private persons to carry out tazir punishment of other members of society, apparently without trials having been carried out. Both the “husband and the slavemaster” may administer tazir punishments under article 4(5), as well as “any Muslim who witnesses” the commission of offences framed as implicating “divine right”¹⁰ under article 4(6). Furthermore, tazir punishments are allowed to be carried out by private persons in the public interest, even if a crime has not been committed, and apparently without a trial being carried out, under article 48. The right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed, in particular in relation to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity (see CCPR/C/GC/32 para. 15).

As it relates to fair trial, the decree is silent on the role of prosecutors and lawyers, both important functions in the administration of justice and in ensuring the right to a fair trial and due process. Prosecutors play a crucial role in the administration of justice, mainly in the proper performance of their role in combating criminality, and ensuring compliance with the right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them; and to have access to the file to prepare a defense. Further, as it relates to lawyers, accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. Adequate facilities must include “access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory”.¹¹

Finally, we recall that international standards are clear on the right of appeal and judicial review,¹² both of which are not included in the provisions of the decree. The right to have a conviction and sentence reviewed by a higher tribunal imposes on the State party a duty to ensure the substantive review of any conviction and sentence by an impartial tribunal.

Right to life

ICCPR article 6(2) allows the death penalty as an exception to the right to life only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and only pursuant to final judgment by a competent court, which the Human Rights Committee has clarified must be interpreted restrictively and limited only to crimes of extreme gravity involving intentional killing (HRC, general comment No. 36, paras 33 and 35). Any death penalty must also comply with the full

and qisas (retaliation) – and is applied at the judge’s (qadi) discretion to correct, rehabilitate, and deter.

¹⁰ Defined in article 2(1) as a right the benefit of which is common to all the people, and which is not particular to any individual. Due to the grand status and inclusivity of all people in this right, it has been attributed to Allah (the divine entity).

¹¹ Guidelines on the Role of Prosecutors, and CCPR/C/GC/32, paragraphs 31-33.

¹² CCPR/C/GC/32, paragraphs 48-50.

range of fair trial guarantees, including trial before a competent, independent and impartial tribunal, adequate legal assistance, the right to appeal, and the right to seek pardon or commutation. In addition, the death penalty may not be imposed on the basis of vague or overly broad criminal provisions, and under article 37(a) of the CRC, it is prohibited for persons under 18 at the time of the crime.

The rules state that the death penalty is awarded as a punishment in two contexts: first, under the discretion of the judge in relation to crimes for which an individual has been convicted including “sodomy” (article 60), blasphemy, insulting or disrespecting the prophets (article 16), and abducting and killing a person (article 42(2)), and second, where the death is to “safeguard the public interest” or for “public expediency” (article 14), which are both undefined. Under international human rights law, the death penalty may never be imposed for conduct whose criminalization itself violates the Covenant, including freedom from discrimination, freedom of expression and freedom of religion or belief.

In relation to the “public interest” and “public expediency” contexts, it is not clear whether a person accused of these offences faces trial by a court, or if they are deemed to have committed them by “the Imam”, which may mean the Taliban leader. As above, under the ICCPR, all persons have a right to a fair trial and to the right to be presumed innocent. In cases involving the death penalty, any sentence imposed without trial, including pursuant to a religious edict, would violate articles 6 and 14 of the ICCPR (general comment No. 36, para. 45), and any violation of fair trial guarantees in proceedings resulting in the death penalty would render the sentence arbitrary and contrary to article 6 (general comment No. 36, para. 41).

We are concerned that with the exception of murder with a heavy object (article 14(1)(3)) and repeated murder by strangling (article 14(2)(3)), the offences are not the most serious crimes, and may not encompass criminal conduct, for example persisting in or promoting corruption, apologist or person who calls others for reportedly false beliefs in opposition to Islam, a sorcerer, or a heretic and a person who repeatedly engages in sexual intercourse in organs other than the vagina, sodomy and theft (article 14(1)). The Human Rights Committee has made clear that offences not resulting directly and intentionally in death, including sexual offences, corruption, abduction and other non-lethal conduct, can never serve as the basis for the imposition of the death penalty. As above, the principle of legality requires offences be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. The offences are not elaborated or defined, leaving them broadly open to interpretation and abuse, as described earlier, with impacts on the right to freedom of expression and the right to freedom of religion. In this respect, the Human Rights Committee has further stated that the death penalty can never be imposed on the basis of vaguely defined criminal provisions whose application depends on subjective or discriminatory interpretation (general comment No. 36, para. 38). Marginalised persons, especially women, girls, and lesbian, gay, bisexual, trans and other gender-diverse (LGBT) persons, as well as minority groups, especially religious minorities and those who hold no religious beliefs, can face disproportionate impacts. The Human Rights Committee has also emphasized that the death penalty must not be imposed in a discriminatory manner contrary to articles 2(1) and 26 of the ICCPR.

We further recall that public executions and other painful or humiliating methods of execution are contrary to article 7 of the ICCPR (general comment No. 36, para. 40).

Prohibition against torture or to cruel, inhuman or degrading treatment or punishment

ICCPR article 7 and CAT article 1, 2, 4, 12, 13, 14, 15 and 16 provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, requiring among other actions, the establishment of the offence of torture in national law, investigations and prosecution of acts of torture, and penalties commensurate with the gravity of the offence, and the right to a remedy for victims. Many offences listed in the criminal rules are punished with lashings at the discretion of the judge, often in addition to terms of imprisonment.

We recall that both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment (see Official Records of the General Assembly, Fiftieth Session, supplement No. 40 (A/50/40), para. 467, and *ibid.*, Fifty-second Session, supplement No. 44 (A/52/44), para. 250, respectively). Indeed, in paragraph 5 of general comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment under article 7 of the ICCPR must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure (see also A/60/316).

Accordingly, it is accepted in international law that any form of corporal punishment is contrary to the prohibition of torture and/or other cruel, inhuman or degrading treatment or punishment. This means that provisions of domestic law cannot be invoked to justify the violation of human rights obligations under international law, including the prohibition of corporal punishment (A/60/316).

We also wish to emphasize that the inadmissibility of evidence obtained through torture or other ill-treatment constitutes an essential component of the general and absolute prohibition of torture and other ill-treatment (A/HRC/25/60) and is an explicit treaty obligation in article 15 CAT. It is both a fundamental safeguard against torture or ill-treatment (article 2 CAT), and a cornerstone of the right to a fair trial (article 10 of the UDHR and 14 of the ICCPR).

The Declaration on the Elimination of Violence against Women of 1993 further explicitly refers to the prohibition of torture in its article 3, and reference is also made to CEDAW general recommendation Nos. 35(2017) and 19(1992).

In addition to authorising lashings as a punishment awarded by the court, article 48 of the rules explicitly authorise private individuals to punish or discipline other persons. As noted above, criminal offences must be subject to a fair and public hearing by a competent, independent and impartial tribunal established by law, in particular in relation to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity (see CCPR/C/GC/32 para. 15). The prohibition on torture and other cruel, inhuman or degrading treatment or punishment includes conduct inflicted

by people acting in their official capacity, outside their official capacity or in a private capacity (see CCPR/C/GC/20 para. 2; CEDAW/C/GC/35, para. 29(c)(ii)).

Duty to ensure equality of women and girl

CEDAW defines discrimination against women as any distinction, exclusion, or restriction based on sex that impairs women's equal enjoyment of human rights and fundamental freedoms in any sphere of life. It obliges States parties to pursue, without delay, policies to eliminate such discrimination (article 2). States must take all appropriate measures – including legislation – to abolish discriminatory laws, regulations, customs, and practices; refrain from discriminatory acts; ensure public authorities comply with these obligations; and address discrimination by private actors. Moreover, article 5(1) of CEDAW also obliges States parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. In this regard, CEDAW requires states to tackle harmful gender stereotypes by modifying social and cultural patterns that reinforce inequality. The CEDAW Committee has affirmed that violence against women and girls constitutes the most severe form of discrimination.¹³ Articles 32 to 34 of the rules appear to allow overt and abhorrent violations of the human rights of women and girls.

Under article 32 of the rules, violence against women is permitted – criminal liability for physical violence against a wife arises only if the husband subjects her to “severe beating” that results in “a fracture, a wound, or bruising” becoming apparent on her body. The provision implicitly tolerates other forms of intimate partner or family violence, including psychological and sexual violence. The burden is placed on the wife to prove her claim before a judge. The punishment for a husband is limited to just 15 days, signaling that violence against women is considered a minor offence.

Under article 34 of the rules, a husband is explicitly authorized to impose tazir punishment on his wife if she repeatedly visits her father's or relatives' home without his permission or Sharia-based justification. The wife's family members are liable if they do not “hand her over” to her husband after a judge's decision. Both the wife and the relatives are considered offenders and face a sentence of three months' imprisonment.

Article 33 of the rules criminalises refusal to perform li'an¹⁴ which interferes with marital decision-making, undermining the equal rights and responsibilities of spouses during marriage guaranteed in article 23(3) of the ICCPR which states no marriage shall be entered into without the free and full consent of the intending spouses. Furthermore, article 16 of CEDAW prohibits the discrimination against women in marriage and family relations.

¹³ Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 (2017), updating General Recommendation No. 19 (1992).

¹⁴ Li'an ("mutual cursing" or "imprecation"): In Sharia, is a specific, Quranically mandated legal procedure used to resolve a case where a husband accuses his wife of adultery (zina) or denies the paternity of a child, but lacks the required four witnesses to prove it.

The rules do not recognize nor criminalize many forms of violence against women and girls and which may be physical, sexual or psychological, despite the fact that Afghanistan is a signatory of CEDAW. Sexual violence can take the form of rape (including vaginally), trafficking exploitation of prostitution of women – amongst others. States parties to CEDAW are required in accordance with article 2(b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. They are also required under article 2 (e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

Children's rights

Under article 1 of the CRC, a child is anyone under 18 years of age, and under article 19, children are protected from all kinds of physical and mental violence. Article 30 of the rules permit physical punishment of children, imposing sanctions on teachers or instructors only when such punishment results in broken bones, skin injuries or visible bruising. Dismissal appears to be the sole consequence, with no additional legal or criminal sanctions, falling short of what would be expected to protect children from physical punishment, as well as that CRC article 28(2) requires that school discipline respect the child's human dignity, and article 37(a) prohibits cruel, inhuman or degrading treatment or punishment.

Furthermore, article 48 of the rules provide as an example that a father may impose tazir on a 10-year-old child for "public interest" reasons such as "negligence to pray or similar matter". This provision appears inconsistent with Afghanistan's obligations under articles 19 and 37(a) of the CRC, which includes corporal or degrading punishment within the family environment, and the vague phrase of "similar matters", coupled with the broad invocation of "public interest", creates overbroad parental control and discretion. Such ambiguity risks legitimizing punitive practices that may amount to violence, coercion, or degrading treatment.

There is no recognition that the sexual exploitation of children and their abuse can take place in different ways, including through vaginal intercourse and should therefore be prohibited and punished. Children cannot consent to sexual abuse and exploitation. Article 34 of the CRC requires States Parties to undertake to protect the child from all forms of sexual exploitation and sexual abuse, including the inducement or coercion of a child to engage in any unlawful sexual activity. The Optional Protocol to the CRC, signed by Afghanistan further clarifies that a child can never consent to sale, sexual exploitation or sexual abuse.

Survivors of sexual and gender-based violence

Article 60 of the rules punish sodomy with two years' imprisonment, and article 14(2) punishes "repeated sexual intercourse in a non-vaginal manner" and repeated "sodomy" with the death penalty. There is no distinction between consensual and non-consensual sexual intercourse, thereby prescribing identical punishment for potential perpetrators and victims.

The criminalization of same-sex sexual relations between consenting adults has been identified by UN treaty-monitoring bodies as violating international human rights

norms enshrined in the ICCPR, CAT, and CEDAW. Human rights treaty bodies and the High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41). The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including based on sexual orientation and gender identity, is per se arbitrary, and violates the ICCPR (CCPR/C/GC/35, A/HRC/22/44 and opinion No. 14/2017 of the Working Group on Arbitrary Detention).

On the basis of those and other international human rights norms and standards and the work of the UN human rights treaty bodies and Special Procedures, in 2015 the UN High Commissioner for Human Rights emphasized that States have an obligation to, among other things, revise criminal laws to remove offences relating to consensual same-sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression; protect individuals from violence, torture and discrimination based on their sexual orientation and gender identity; provide redress to victims; and, provide training to law enforcement personnel and judges on gender-sensitive approaches to addressing violations related to sexual orientation and gender identity. In addition, the High Commissioner for Human Rights recommended that States ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78 and 79).

Freedom of religion or belief

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion, which includes the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. Further, no one shall be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice, and the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Furthermore, ICCPR article 2 protects against discrimination on the ground of religion or belief.

Article 2(8) of the rules define Muslims exclusively as adherents of the *Hanafi* jurisprudence, while designating *Shi'a* and non-Muslims, those who differ from it, as *mubtadi'ah* ("heretical"). This term carries negative doctrinal and social connotations. Furthermore, article 26 of the rules restrict Hanafi followers' freedom to change one's school of thought (madhhab) away from the Hanafi school, with a penalty of up to two years' imprisonment if their abandonment is proven before a judge. While Hanafi followers are explicitly prohibited from changing affiliation, the rules remain silent regarding other Muslim schools of thought (madhhab) and religious groups, including followers of the non-Hanafi school such as Ja'fari and Ismaili (Shi'a) schools, as well as non-Muslim minorities such as Hindus and Sikhs, and people who do not hold any religious beliefs. The rules raise concerns that discrimination against minority groups and people who do not hold any religious beliefs is permitted.

The Human Rights Committee has made clear that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are

incompatible with the ICCPR, except in the specific circumstances envisaged in article 20(2). Furthermore, it is impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.¹⁵

Under article 16 of the rules, blasphemy is listed as a crime, subject to death or imprisonment six years depending on repentance. There is separate crime in article 58 for an “apostate woman” which is punished by life imprisonment and ten lashes every three days until she “accepts Islam”. These provisions raise concerns about rights to freedom of religion and belief and freedom of expression, as well as protections against torture and other cruel, inhuman, or degrading treatment.

Lesbian, gay, bisexual, trans and other gender-diverse (LGBT) persons

Article 2(11) of the rules characterizes individuals accused of “sodomy” as “persistent corrupters” (“Saa’i bil-Fasad”), stating that they are not deterred “except by death” and prescribes the death penalty in the public interest for “repeated sexual intercourse in a non-vaginal manner and repeated sodomy” in article 14(2). Article 60 also provides tazir punishment for those found to have committed sodomy. These provisions impose severe criminal sanctions that disproportionately and affect LGBT persons.

United Nations human rights treaty bodies have consistently emphasized that laws criminalizing same-sex relations are unlawful and must be abolished, including because they violate rights to privacy, equality, non-discrimination, health, and freedom from torture, while also legitimizing violence and preventing access to justice and essential services. They have further underscored that such criminalization entrenches stigma, exposes people to ill-treatment, and obstructs public health and human rights obligations, requiring States to repeal any such discriminatory and unlawful provisions. (See, e.g.: CAT/C/CMR/CO/5, CAT/C/UGA/CO/2, CAT/C/JAM/CO/2, CRC/GC/2003/4, CRC/C/GC/15, CEDAW/C/83/D/146/2020, E/C.12/2000/4, E/C.12/GC/20, CCPR/C/50/D/488/1992.)

Right to freedom of expression

Article 19 of the ICCPR provides that everyone shall have the right to hold opinions without interference, and everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds. The right to freedom of expression may be subject to certain restrictions, but these shall only be such as are provided by law, serve a legitimate aim explicitly provided in international human rights law, namely to protect the rights or reputations of others, national security, public order (*ordre public*), public health or public morals, and are necessary and proportionate to achieve the specific legitimate aim. States can only impose the least restrictive measures required to achieve any of the above protective aims and any restrictions must not be overbroad. The Human Rights Committee has said that the mere fact that forms of expression are considered to be

¹⁵ CCPR/C/GC/34 paragraph 48.

insulting to a public figure is not sufficient to justify the imposition of penalties. The Committee has expressed concern about laws that provide severe penalties based on the identity of the person that may have been impugned. States parties should not prohibit criticism of state institutions.¹⁶

Articles 16-18, 23, 31, 36 of the rules provide broad restrictions on expression, including a wide range of criticism or perceived “insulting” of religious figures, rituals, scholars and the Imam, “disrespect” toward public officials and courts, and prescribe tazir for dancing or watching dancing (article 59). Article 2(8) defines “mubtadih (heretic)”¹⁷ by reference to beliefs “contrary” to Ahl al-Sunnah wa al-Jama‘ah.¹⁸ Article 2(11) defines “Saa’i bil-Fasad (persistent corruptor)”¹⁹ in sweeping terms.

Right to freedom of association and assembly

Article 21 of the ICCPR guarantees the right of free assembly, and article 22 the right of freedom of association. As with the right to freedom of expression, restrictions on the rights to freedom of association and peaceful assembly, however, any such restrictions are only permissible if they are, provided by law; imposed for the purpose of protecting certain public interests (national security or public safety, public order, protection of public health or morals) or the rights and freedoms of others; and demonstrably necessary and proportionate for that purpose.

Article 40 of the rules criminalize mere presence in “places of suspicion” and sitting with “profligates”, neither of which term is defined, without requiring intent or any unlawful act being carried out. As above, the principle of legality requires precision to guard against broad and arbitrary application, and impacts on vulnerable groups.

Right to privacy and private life

Article 17 of the ICCPR protects against arbitrary or unlawful interference with privacy, family, home or correspondence, and provides everyone has the right to the protection of the law against such interference or attacks. Under this provision, every person has the right to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. That right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons, and the State is required to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.²⁰

Articles 24, 25, 33, 37 and 38 of the rules provide broad controls over aspects of private life, family and other personal relations, and the home. Individuals are

¹⁶ CCPR/C/GC/34 paragraph 38.

¹⁷ In Islam, this refers to an “innovator”, “heretical” or someone who introduces, practices, or promotes bid'ah—newly invented, unsubstantiated practices or beliefs in religious matters that contradict the Quran and Sunnah. It defines someone who deviates from the established principles of Ahl al-Sunnah.

¹⁸ Defines the vast majority of Muslims who adhere strictly to the Quran, the Sunnah (teachings, actions, and sayings) of Prophet Muhammad, and the consensus of his Companions. They represent the orthodox, mainstream body of Islam, prioritizing unity and following the authentic, non-innovated path of the early generations (Salaf).

¹⁹ An Arabic phrase often used in Islamic jurisprudence (Fiqh), which translates roughly to “one who strives to create/spread corruption” or “one who acts to cause mischief/disorder.”

²⁰ CCPR/C/GC/16 paragraph 1.

effectively compelled to inform on others for broadly framed “subversive” meetings in article 24. Providing “shelter” to broad, undefined categories of persons, “combatants (muharibīn), thieves, insurgents, or other corruptors (mufsidīn)” is criminalized under article 25. Intimate and everyday interactions are regulated, including “illicit communication with non-mahram woman,” “improper relationship,” and “looking at neighboring women” under articles 37 and 38. As above, imprecise and vague drafting can permit broad arbitrary interference in everyday life, and regarding these particular provisions, disproportionately affecting women.

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 describe the legislative process, including any consultation outside the de facto authority, that was undertaken to prepare the rules. It appears that Decree Number 9 was not followed, please explain why not.
2. Are there plans to publish the rules in Dari?
3. As there appear to be risks of broad or arbitrary application of the law, please describe any safeguards or other guarantees to ensure due process and procedural fairness.
4. Please provide information about protections and/or safeguards to ensure that women and members of marginalised groups, including members of minorities, LGBT persons, members of civil society and human rights defenders, children are not disproportionately impacted by the rules.
5. Please explain how article 9 of the rules complies with the rights to non-discrimination, equality before the law and equality before courts and tribunals.
6. Please clarify the meaning of the references to “slaves” and “slave owners” in articles 4 and 15 of the rules, and how they comply with the prohibition of slavery in article 8 of the ICCPR.
7. Please explain how the rules provide for the rights to due process and a fair trial under the ICCPR.
8. Please clarify how the authorization to private persons to carry out tazir punishments meets human rights obligations and standards, in particular the prohibition against torture.
9. Please explain what is meant by executions to “safeguard the public interest” or for “public expediency” and how these fulfil the requirements of the exception to the right to life in article 6(2) of the ICCPR.

10. Please describe what protections are in place to ensure that children are not subject to the death penalty. Please also clarify what the definition of “child” is under the rules.
11. Please provide definitions of the following terms in article 14(1) of the rules and expand on their compatibility with human rights obligations:
 - a. persisting in or promoting corruption;
 - b. apologist or person who calls others for false beliefs in opposition to Islam;
 - c. a sorcerer;
 - d. a heretic; and
 - e. sodomy.
12. Please provide the measures previewed to abolish lashings, recognizing they are a prohibited form of criminal punishment in violation of the absolute prohibition against torture and cruel, inhuman or degrading treatment or punishment.
13. Please provide information regarding how the international rule against the non-admissibility (exclusion) of torture evidence in any proceedings except those to prove torture (article 15 of CAT) is secured in law and practice in Afghanistan.
14. Please clarify how articles 16-18, 23, 31, 36 and 59 comply with the right to freedom of expression in article 19 of the ICCPR.
15. Please clarify how articles 16-18, 23, 31, 36 and 59 comply with the right to freedom of religion and belief in article 18 of the ICCPR
16. Please clarify what criminal conduct and intent is required in article 40 of the rules and how the provision complies with ICCPR articles 21 and 22.
17. Please explain how articles 24, 25, 33, 37 and 38 comply with the right to privacy in article 17 of the ICCPR.
18. Please explain how articles 32, 33, 34 comply with article 23(3) of the ICCPR and CEDAW article 16(1), and the prohibition of discrimination against women as defined in CEDAW article 1.
19. How does article 30 of the rules fulfil Afghanistan’s obligations under article 19 of the CRC to protect children from all kinds of physical and mental violence?
20. Please clarify whether both consensual and non-consensual sexual intercourse, including among adults are criminalized in article 14(2) and 60. Please also explain what safeguards are in place to ensure that survivors are not subject to prosecution and may safely report abuse.

21. Please explain how articles 2(8) and 26 comply with the right to freedom of religion or belief in article 18 of the ICCPR and how women and religious minorities are protected against discrimination on the ground of sex and religion in accordance with article 2 of the ICCPR.
22. Please describe how article 16 of the rules accords with the rights to freedom of religion or belief in article 18 and the right to freedom of expression in article 19 of the ICCPR.
23. Please explain how articles 2(11), 14(2) and 60 protect LGBT persons from discrimination and disproportionate criminal sanctions.
24. We invite your comments on any other matters raised in this letter.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from you will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on this subject matter has also been sent to the Permanent Mission of Afghanistan to international organisations in Geneva.

Please accept, Mr. Muttaqi, the assurances of our highest consideration.

Richard Bennett
Special Rapporteur on the situation of human rights in Afghanistan

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

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Nicolas Levrat
Special Rapporteur on minority issues

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Graeme Reid
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Claudia Flores

Chair-Rapporteur of the Working Group on discrimination against women and girls