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**Submission of the International Bar Association's Human Rights Institute to the 91st  
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**Afghanistan**

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## I. Introduction

1. This submission, prepared by the International Bar Association's Human Rights Institute (IBAHRI), focuses on some of the restrictions introduced by the Taliban, the *de facto* authorities, upon women and girls in Afghanistan, which are a violation the provisions of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). The Taliban reversed all the progress made in the Afghan Republic in relation to women's rights, as recognised during the last CEDAW review. Two decades after Afghanistan ratified the CEDAW, the Taliban turned the country into a system violating all provisions of CEDAW, creating a situation for women and girls without parallel anywhere in the world - referred to by Afghan women and international experts as gender apartheid.<sup>1</sup>
2. Established in 1947, the International Bar Association (IBA) is the world's leading international organisation of legal practitioners, bar associations and law societies. The IBAHRI works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. The IBA established its Human Rights Institute (IBAHRI) in 1995, under the honorary presidency of Nelson Mandela, to promote and protect human rights and the independence of the legal profession under a just rule of law.

## II. The Situation of Women and Girls in Afghanistan since August 2021

3. Following the Taliban's recapture of Kabul on 15 August 2021, and the Taliban taking over Afghanistan, most of the progress made in relation to women's rights under the Afghan Republic was ultimately reversed. The Taliban revoked the 2004 Constitution, which recognised gender equality and shut the Ministry of Women's Affairs, replacing it with a Ministry of Promotion of Virtue and Vice in charge of the enforcement of a strict interpretation of the Sharia law.<sup>2</sup>
4. Since the Taliban's takeover, over a hundred edicts were issued restricting the rights of women and girls, including:<sup>3</sup>
  - 18 September 2021: restricting education for girls beyond grade six;

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<sup>1</sup> See: End Gender Apartheid Campaign <https://endgenderapartheid.today/>. See also: <https://news.un.org/en/story/2024/06/1151146>.

<sup>2</sup> European Parliament, 'Women's Rights in Afghanistan: An Ongoing Battle' (April 2023). Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS\\_BRI\(2023\)747084\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS_BRI(2023)747084_EN.pdf).

<sup>3</sup> Human Rights Council, 'Report of the Special Rapporteur on The Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023). Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>. A detailed list of decrees and edicts affecting women's rights can be found here: <https://www.usip.org/tracking-talibans-Mistreatment-women>.

- 23 December 2021: instructing drivers (men) not to accept driving women without a ‘proper hijab’ or women without a mahram for travel more than 72 kilometres;
  - 27 March 2022: limiting access of women and girls to parks, banning women from boarding domestic and international flights without a mahram;
  - 23 August 2022: asking women government workers to stay home;
  - 22 December 2022: banning all forms of education for girls beyond grade 6;
  - 24 December 2022: suspending women from working for national and international non-governmental organisations;
  - 4 April 2023: banning Afghan women from working in the United Nations.
5. On 21 August 2024, the Taliban published its new law on ‘promoting virtue and eliminating vice’ that sets up rules for everyday life and adds to the litany of restrictions on women. Article 13 of the law makes it mandatory for a woman to veil her body at all times in public. A face covering is said to be essential. Women are to cover themselves in front of non-Muslim males and females. A woman’s voice is deemed intimate, and as such, women are not to be heard singing, reciting, or reading aloud in public. Women are not allowed to look at men they are not related to by blood or marriage, and vice versa.
  6. The result of these edicts is a legal framework which removes all rights for women and girls, in violation of every article of CEDAW. The dismantling of the legal system prevents any attempt by women to seek justice for this. This necessitates the implementation of a social system which seeks to erase women and girls from public life, and confine them to their homes, where even still their rights are strictly prohibited.
  7. The following comments are on some of the restrictions seen since August 2021.

### **Article 15 - Freedom of Movement**

8. In December 2021, the Taliban imposed a requirement on women and girls to be accompanied by a male chaperone, a *mahram*, for distances of more than 72 km, which in practice is enforced for much shorter distances.<sup>4</sup> Amnesty International and UNAMA reported that women seen in public without the presence of a mahram are subjected to punishment such as arrest, detention and beatings by the Taliban.<sup>5</sup> Amnesty International reported a case of an Afghan woman who was beaten by the Taliban after she tried to cross the Iranian border without a *mahram*. She is said to have been slapped in the face by a

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<sup>4</sup> Amnesty International, 'Death in Slow Motion' (2022) 33. Available at: <https://www.amnesty.org.uk/resources/afghanistan-death-slow-motion-2022>.

<sup>5</sup> Amnesty International, 'Death in Slow Motion' (2022); UNAMA, ‘Human Rights in Afghanistan: 15 August 2021 to 15 June 2022’ (2022). Available at: [https://unama.unmissions.org/sites/default/files/unama\\_human\\_rights\\_in\\_afghanistan\\_report\\_-\\_june\\_2022\\_english.pdf](https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf).

member of the Taliban and then taken into a room where two Taliban members tore out her hair and beat her with a chain and a wire until she passed out.<sup>6</sup>

9. In May 2022, the Taliban Ministry of Virtue and Vice ordered women not to leave their homes unless necessary and to cover their faces in public.<sup>7</sup>
10. The women's movement is further affected by the strict dress code imposed by the Taliban. The Taliban's restrictions on women's clothing were first communicated through 'recommendations' to wear the burqa or a long black veil covering the body from face to toe. In December 2021, the Taliban banned drivers from transporting female passengers not wear a hijab.<sup>8</sup> In March 2022, a letter was sent to all ministerial departments requiring women who work for the *de facto* authorities to wear a hijab and women visiting their offices without a burqa to be denied in.<sup>9</sup> In May 2022, the Ministry of Vice and Virtue issued a decree requiring women to wear a burqa, stating that '*the best way to observe the sharia hijab*' was for women to stay at home, and making male family members responsible for complying with such restrictions.<sup>10</sup>

#### **Article 10 - The Right to Education**

11. After the Taliban takeover in 2021, the right to education of women and girls was removed step by step. The Taliban's *de facto* ban on girls attending school started in August 2021, when the Taliban Ministry of Education announced the closure of all schools and subsequently ordered the return of male teachers and male students in September 2021, without the mention of female students and teachers. In January 2022, the Taliban announced that girls would return to school in the Spring of 2022. However, in March 2022, the Taliban Ministry of Education reversed this commitment and announced that secondary schools would remain closed for girls.<sup>11</sup> In December 2022, the Ministry of Higher Education ordered universities not to enrol women.<sup>12</sup>

#### **Article 11 - The Right to Work**

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<sup>6</sup> Amnesty International, 'Death in Slow Motion' (2022) 35.

<sup>7</sup> Ministry of Virtue and Vice, Decree of 7 May 2022; UNAMA, 'Human Rights in Afghanistan: 15 August 2021 to 15 June 2022' (2022).

<sup>8</sup> Republicworld.com, 'Afghanistan: Taliban Ban Drivers from Playing Music in Car, Having Women Passengers Without Hijab' (December 2021).

<sup>9</sup> UNAMA, 'Human Rights in Afghanistan: 15 August 2021 to 15 June 2022' (2022).

<sup>10</sup> Amnesty International, 'Death in Slow Motion' (2022).

<sup>11</sup> Amnesty International, 'Afghanistan: Taliban's War on Women' (2023) 13. Available at: <https://www.amnesty.org/en/documents/asa11/6789/2023/en/>.

<sup>12</sup> Ibid.

12. Although no nationwide policy has been issued regarding women's right to work since the Taliban takeover, women have been told to stay at home, with the exception of those working in certain sectors such as health care.<sup>13</sup>
13. In August 2021, the Ministry of Foreign Affairs announced that women were banned from occupying top leadership positions in the Taliban *de facto* authorities. This had a serious impact on women as they have been excluded from the national political decision-making process.<sup>14</sup>
14. Women's ability to work is also strongly hindered by the *mahram* requirement, making it extremely difficult to get to and from their place of work, for those working in the last remaining jobs for women, such as health.<sup>15</sup>
15. In December 2022, the Taliban also banned women from working in non-governmental organisations. Their exclusion from this work jeopardised the delivery of crucial humanitarian aid, especially to women. The Taliban expanded this ban to women working for UN missions in the country in April 2023.<sup>16</sup>
16. The Taliban have also effectively suspended the legal practice licences of women lawyers after requiring all lawyers to renew their licences but opening the process only to men.<sup>17</sup> Hundreds of women lawyers and prosecutors were effectively banned from participating in the legal system.<sup>18</sup> The exclusion of women from the judiciary, as well as the abolishment of the Elimination of Violence against Women (EVAW) Law, the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission, and the closing of specialised prosecution units and courts for gender-based violence, have strongly hindered women's ability to access and seek justice.<sup>19</sup>

## Article 12 - Access to Healthcare

17. In 2022, UN Women reported that only 10% of women said they could access basic medical assistance with the available services, compared to 23% of men.<sup>20</sup> In addition to the inadequacy of medical facilities due to insufficient funding, women's access to

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<sup>13</sup> Amnesty International, 'Death in Slow Motion' (2022).

<sup>14</sup> Human Rights Council, 'Report of the Special Rapporteur on The Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023).

<sup>15</sup> Amnesty International, 'Afghanistan: Taliban's War on Women' (2023) 15-16.

<sup>16</sup> Human Rights Council, 'Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023).

<sup>17</sup> Ibid.

<sup>18</sup> OHCHR, 'UN experts : legal professionals in Afghanistan face extreme risks, need urgent international support' (January 2023).

<sup>19</sup> Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls' (June 2023).

<sup>20</sup> UN Women, 'Gender Alert: Women's Rights in Afghanistan One Year After the Taliban Takeover', 2022.

healthcare has been hindered by the requirement for women to be accompanied by a male relative to consult a male health professional, and the lack of female health workers.<sup>21</sup>

18. In November 2022, the Taliban imposed a ban on women going to gyms, funfairs, public parks and public bathhouses (hammams). The ban on women from public baths had a negative impact on women's menstrual hygiene and health, as public baths were, for many, the only way to access clean water.<sup>22</sup>

## General Recommendation 19 - Gender-Based Violence

19. Before 2021, survivors of gender-based violence had access to shelters and services, including legal representation, medical care and psychological support. However, these mechanisms collapsed after the Taliban took control of Afghanistan, as many shelters were closed down, and staff were harassed, threatened and forced to send many women and girls back to their families. Two of the main referral points for protection from gender-based violence, the Ministry of Women's Affairs and the Afghanistan Human Rights Commission, are no longer in operation. The *mahram* requirement has also made it very difficult for survivors to seek help.<sup>23</sup>
20. The UN Special Rapporteur on the situation of human rights in Afghanistan has highlighted that *'the lack of a clear and uniform, coherent and predictable legal system in Afghanistan under Taliban rule contributes to the perpetuation of violence against women and an absence of accountability for perpetrators. Without an adequate legal framework, there can be no prevention of, protection against or prosecution for gender-based violence.'*<sup>24</sup> Indeed, the EVAW Law was abolished by the Taliban *de facto* authorities after their takeover.<sup>25</sup> Moreover, perpetrators of gender-based violence were released from prison, many of whom targeted their former victims.<sup>26</sup>
21. The issue of gender-based violence is further exacerbated by the fact that women seeking a divorce are faced with many obstacles, making it almost impossible for them to flee abusive domestic situations. Women seeking divorce have reportedly been told by the judges to get their husband's consent first and that they probably 'deserved to get beaten', that they 'should not complain' and that 'such matters are private and should remain in the

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<sup>21</sup> European Parliament, 'Women's Rights in Afghanistan: An Ongoing Battle' (April 2023). Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS\\_BRI\(2023\)747084\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS_BRI(2023)747084_EN.pdf).

<sup>22</sup> Human Rights Council, 'Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023).

<sup>23</sup> Amnesty International, 'Death in Slow Motion', 2022, 42-43.

<sup>24</sup> Human Rights Council, 'Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023).

<sup>25</sup> Ibid.

<sup>26</sup> Amnesty International, 'Death in slow motion', 2022, 42-43.

family.<sup>27</sup> Moreover, an edict communicated by the Taliban has allowed all divorce cases settled under the Afghan Republic to be reviewed by a judge of the ‘Islamic Emirate of Afghanistan.’ As a result, women may be forced back into situations of domestic violence.<sup>28</sup>

22. Amnesty International reported that the Taliban arbitrarily detained women and girls for not respecting the Taliban’s edicts, often on charges of ‘*moral corruption*.’ These women and girls were denied access to lawyers and subjected to torture and other ill-treatment in detention, most commonly during their interrogations or soon after they arrived in a detention centre. The ill-treatment that they were subjected to during their interrogations included degrading insults, beatings, electric shocks, and lashes, among others. Women were also subjected to inhumane conditions in detention, such as ‘*overcrowding, lack of heating in the winter, inadequate quantity and quality of food, inadequate access to showers and a lack of hygiene products such as sanitary pads, shampoo and soap, and a lack of beds and blankets*.’<sup>29</sup> Women detainees were forced into marriage with members of the Taliban or others, as a way for them to be released from prison.<sup>30</sup>
23. In December 2021, the Taliban issued a decree expressing their opposition to forced marriage, which stated that ‘no one can force women to marry by coercion or pressure.’<sup>31</sup> Nonetheless, the rates of forced marriages, also child and early marriages, have surged after the Taliban takeover, including due to the economic and humanitarian crises, and the lack of education for girls.<sup>32</sup> The practice of forced marriage includes ‘*the betrothal of girls, polygamy, the exchange of unmarried daughters between families and baad, whereby girls are exchanged to settle debts or family disputes*.’<sup>33</sup> Women and girls who refused forced marriage were subjected to intimidation, threats and forms of ill-treatment by their family members or the Taliban. For instance, Amnesty International reported the cases of a woman who was threatened and beaten by a Taliban member for refusing a marriage proposal and another woman whose 15-year-old daughter was taken by a Taliban member and forced to

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<sup>27</sup> Human Rights Council, 'Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination Against Women and Girls' (2023).

<sup>28</sup> Ibid.

<sup>29</sup> Amnesty International, 'Death in slow motion', (2022) 51-52.

<sup>30</sup> Ibid.

<sup>31</sup> Ministry of Information and Culture, ‘Special decree issued By Amir Al-Momenin on women’s rights’, (3 December 2021).

<sup>32</sup> Amnesty International, 'Death in slow motion' (2022) 56; UNICEF, 'Girls increasingly at risk of child marriage in Afghanistan', (12 November 2021). Available at: <https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan#:~:text=Statement%20by%20UNICEF%20Executive%20Director%20Henrietta%20Fore&text=NEW%20YORK%20KATHMANDU%20KABUL%2C,in%20return%20for%20a%20dowry>.

<sup>33</sup> Völkerrechtsblog, 'Forced Marriage of Afghan Girls and the Bifurcated Approach for Defining Persecution' (26 June 2023). Available at: <https://voelkerrechtsblog.org/forced-marriage-of-afghan-girls-and-the-bifurcated-approach-for-defining-persecution/>

marry him.<sup>34</sup> The courts have also been involved in upholding forced marriages and detaining women who refused proposals. For instance, in February 2022, a woman and her brother were summoned to court for refusing an offer of marriage that had been made to her. They were both beaten for refusing the judge's order to accept the proposal. The woman was forced to flee her home, while her brother was detained in an attempt to force her to accept the marriage.<sup>35</sup>

### **The Issue of Gender Persecution, Religious Persecution, and Intersectionality**

24. The above-summarised restrictions were imposed by the Taliban upon all women and girls. However, some women and girls would experience additional challenges in addition to those because of their gender. Among others, women from ethnic and minority communities face double vulnerability and are targeted because of their gender and because of their ethnic and/or religious identity. Among them, the Hazara women and girls have been specifically targeted because of their ethnic identity and because of their Shia religious identity. Similarly, women and girls with disabilities face additional discrimination and marginalisation. This issue of intersectionality requires further urgent attention.
25. In the case of Afghanistan, we see a clear example of gender persecution being also religious persecution - the Taliban impose an extreme interpretation of Islam upon the population and use it to suppress the rights of women and girls. In Afghanistan, anyone who does not conform to the interpretation of Islam prescribed by the Taliban is at risk. However, the situation of women and girls is particularly challenging, with women and girls being effectively removed from society. The Taliban has been using religion to justify the restrictions imposed upon women and girls. As such, the issue of religious persecution, in addition to gender persecution, requires attention.
26. International experts, including former UN Special Rapporteurs on Freedom of Religion or Belief, have been raising the fact that religion cannot be used to justify the restriction of women's rights.
27. In 2010, the late UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, wrote in her report to the General Assembly that the mandate needs to continue highlighting discriminatory practices that women have had to suffer over centuries and continue to do so, sometimes in the name of religion or within their religious community. As she emphasised:

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<sup>34</sup> Amnesty International, 'Death in Slow Motion' (2022) 65-66.

<sup>35</sup> UNAMA, 'Human Rights in Afghanistan: 15 August 2021 to 15 June 2022' (July 2022) 31-32. Available at: [https://unama.unmissions.org/sites/default/files/unama\\_human\\_rights\\_in\\_afghanistan\\_report\\_-\\_june\\_2022\\_english.pdf](https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf).

It can no longer be taboo to demand that women's rights take priority over intolerant beliefs that are used to justify gender discrimination. During the Special Rapporteur's missions and interaction with religious leaders, she has been repeatedly told that most religions recognise gender equality. Yet, religious zealots and their followers often launch campaigns to discriminate against women rather than support gender equality. Many women are denied basic rights of equality within the most fundamental social unit, the family. In a number of countries, such denial of their rights is supported by discriminatory legislation and justified in the name of religion or tradition. There can never be true gender equality in the public arena if women continue to be oppressed by the weight of discrimination within their homes, all too often in the name of divine sanction.<sup>36</sup>

28. Over a decade later, this is the case in many places globally. However, the persecution of women and girls in Afghanistan is without parallel in the world. In Afghanistan, the Taliban use an extreme interpretation of Islam to justify the restrictions imposed on women and girls.

29. As emphasised by the former UN Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls:

(...) such harmful practices as female genital mutilation, forced marriage, honour killings, enforced ritual prostitution or denying girls their rights to education are defended in the name of religious traditions. Such defence is frequently controversial within the various religious communities themselves, and many followers of the respective communities (possibly their overwhelming majority) may be heavily opposed to such practices and also voice their opposition publicly. If those still performing harmful practices try to invoke religious freedom for their actions, this must become a case for restricting the freedom to manifest one's religion or belief. (...) Indeed, as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls.<sup>37</sup>

30. Similarly, in his 2020 report, former UN Special Rapporteur on Freedom of Religion or Belief Ahmed Shaheed rejected 'any claim that religious beliefs can be invoked as a legitimate "justification" for violence or discrimination against women and girls or against

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<sup>36</sup> UN Special Rapporteur on Freedom of Religion or Belief, A/65/207, 29 July 2010. Available at: <https://docs.un.org/en/A/65/207>.

<sup>37</sup> UN Special Rapporteur on Freedom of Religion or Belief, Interim Report, UN Doc A/68/290, 7 August 2013. See: <https://docs.un.org/en/A/68/290>, 30.

people on the basis of their sexual orientation or gender identity.’<sup>38</sup> He further added that ‘*International law is clear that the manifestation of religion or belief may be limited by States, in full conformity with the criteria outlined in article 18 (3) of the International Covenant on Civil and Political Rights, to protect the fundamental rights of others, including the right to non-discrimination and equality, a principle upon which all human rights, including the right to freedom of religion or belief, depends.*’<sup>39</sup>

31. Scholars have been raising how the treatment of women and girls by the Taliban is incompatible with Islam.<sup>40</sup> As such, they show that the Taliban cannot credibly rely on religious justification for the inhuman treatment of women and girls, as seen since the Taliban takeover of Afghanistan. The issue requires further attention.

## **VI. Recommendations**

32. In view of the above, the IBAHRI submits that the CEDAW Committee make the following recommendations to the *de facto* authorities in Afghanistan:

- Ensure that all rights enshrined in CEDAW (and also other international treaties) are guaranteed for women and girls in Afghanistan, as a matter of urgency, and in particular, in relation to their participation in public, political and private life and ensure equality before the law.
- Reverse all decrees, laws and policies that violate CEDAW and other international treaties that Afghanistan is bound by.
- Ensure women and girls equal access to the legal system to seek protection through reinstating their legal personhood.
- Reinstatement of legal prohibitions for gender-based violence and, through implementation of Article 2, Article 5 and Article 6, in line with General Recommendation 19, uphold their obligations to investigate and punish instances of gender-based violence.
- Reintroduce measures providing assistance to women and girls, especially where they are victims of gender-based violence, including shelters and services such as legal representation, medical care and psychological support.

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<sup>38</sup> UN Special Rapporteur on Freedom of Religion or Belief, Interim Report, UN Doc A/HRC/43/48, 24 August 2020, 69.

<sup>39</sup> Ibid.

<sup>40</sup> See for example: Yesbol Omirzhanov, Marwa Ghyasi, Binur Bertayev, ‘Taliban's Misconception of Islamic Law in Treatment with Women Rights’ (2023) Saudi Journal of Humanities and Social Sciences 122.