

Advance unedited version

Distr.: General
11 September 2023

Original: English

Human Rights Council

Fifty-fourth session

11 September–6 October 2023

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Situation of human rights in Afghanistan

Report of the Office of the High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution A/HRC/RES/51/20, requesting the Office of the United Nations High Commissioner for Human Rights to submit a comprehensive report to the Council at its fifty-fourth session on the overall situation of human rights in Afghanistan, including an analysis and recommendations on the institutional protection of human rights.

* The present report was submitted after the deadline to include the most recent information available.

I. Introduction and methodology

1. The present report is prepared pursuant to Human Rights Council resolution A/HRC/RES/51/20, requesting the Office of the High Commissioner for Human Rights (OHCHR) to submit a comprehensive report to the Council at its fifty-fourth session on the overall situation of human rights in Afghanistan, including an analysis and recommendations on the institutional protection of human rights.
2. This report was prepared in cooperation with the Human Rights Service of the United Nations Assistance Mission in Afghanistan (UNAMA). On 16 March 2023, by its resolution 2678, the Security Council extended the mandate of UNAMA until 17 March 2024.
3. Since January 2022, in accordance with its mandate,¹ UNAMA has engaged with the *de facto* authorities in Kabul and at provincial and district levels on individual cases of human rights violations and on the international human rights obligations of Afghanistan. UNAMA has had ongoing cooperation with the Directorate of Human Rights and International Women's Affairs within the *de facto* Ministry of Foreign Affairs (MOFA). UNAMA has published four public reports based on its human rights monitoring in since the last report of the High Commissioner.² In mid-2022, the *de facto* MOFA established an inter-ministerial committee tasked with responding to reports concerning human rights in Afghanistan, including those prepared by UNAMA. With regards to access to places of detention, to date only the *de facto* Office of Prison Administration has formally granted UNAMA access to prisons in numerous provinces.
4. The present report is focused on the period from March 2022 until August 2023. It provides an analysis and recommendations with regards to institutional protections for human rights in Afghanistan, examined through the lens of the principal areas of work of UNAMA's Human Rights Service as identified in Security Council resolution 2626 (2022). These are the situation for women and girls, including sexual and gender-based violence; the protection of civilians; violations of the right to life, liberty and physical integrity; the prevention of torture and promotion of respect for procedural safeguards, civic space and fundamental freedoms.

II. The State of Afghanistan and its human rights obligations

5. Afghanistan as a State remains bound by the international human rights obligations stemming from the treaties to which it is a party.³ The *de facto* authorities have responsibility for upholding these obligations by respecting, protecting and fulfilling human rights in Afghanistan.⁴ This includes respecting human rights and responding to violations, but also protecting against violations by third parties and creating an environment where human rights are respected. At a fundamental level, this obligation requires institutions that protect human rights and the rule of law; laws and policies that promote – rather than curtail – the enjoyment of human rights; and positive measures to prevent human rights violations and hold perpetrators accountable.
6. Prior to the Taliban takeover on 15 August 2021, Afghanistan faced significant human rights challenges. Women and girls who had experienced crimes of violence faced significant barriers to accessing justice;⁵ allegations of torture and ill-treatment and violations of procedural rights in places of detention were high;⁶ civilians suffered decades of harm as a result of protracted armed conflict, with limited efforts towards accountability and

¹ UN Security Council resolution 2626 (2022), para 5(e).

² The four thematic reports are available at: HUMAN RIGHTS MONITORING AND REPORTING | UNAMA (unmissions.org).

³ See ratification status of Afghanistan:
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN.

⁴ UN Security Council resolution 2626 (2022), para 5(e).

⁵ See prior reports, at: <https://unama.unmissions.org/women%27s-rights-reports>.

⁶ See prior reports, at <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody>.

reparations;⁷ and human rights defenders and media workers were the targets of violence.⁸ There were, however, significant steps taken by the Government of the former Islamic Republic of Afghanistan aimed at the protection and promotion of human rights. Among these were the 2004 Constitution, which enshrined a bill of rights, a commitment to uphold the international human rights treaties and conventions to which Afghanistan is a State party and the establishment of the Afghanistan Independent Human Rights Commission.⁹ Other measures included: the creation of a Ministry of Women's Affairs, the introduction of the 2009 Elimination of Violence Against Women (EVAW) Law, the adoption and steps towards implementation of a National Policy on Civilian Casualty Prevention and Mitigation, and the establishment, in February 2018, of an International Crimes Directorate within the Attorney-General's Office.

7. Throughout the period covered by this report, actions taken by the *de facto* authorities have undermined human rights protections at all levels. External consultation on the development of legislation and parliamentary oversight have effectively been removed from the law-making process and the administration of justice underwent a number of changes. Key institutions such as the Afghanistan Independent Human Rights Commission, the Afghanistan Independent Bar Association, EVAW prosecution offices and courts and the former Attorney-General's Office have been successively abolished. The *de facto* authorities have promulgated edicts and other pronouncements which actively discriminate against women and girls and curtail the fundamental freedoms of the population. Human rights violations are prevalent, with a lack of accountability for perpetrators. The prevailing, dire economic and humanitarian situation facing Afghanistan has severely compromised economic, social and cultural rights.

8. This report provides an analysis of the status of human rights in Afghanistan since March 2022.¹⁰ The report also makes recommendations regarding the immediate steps that should be taken by the *de facto* authorities in order to uphold the international human rights obligations that continue to bind Afghanistan as a state. Swift action is critical to change the trajectory of human rights in Afghanistan and to lay the foundations for a peaceful, prosperous and inclusive future for all those who live in the country.

III. Humanitarian and economic situation

9. State parties to the International Covenant on Economic, Social and Cultural rights are required to meet what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights". The Committee has also stressed the "essential role" of international cooperation and assistance in the fulfilment of rights under the Convention.¹¹ Throughout the period, the humanitarian and economic crisis facing Afghanistan continued to seriously impact the enjoyment of economic, social and cultural rights.

10. Following the Taliban takeover, the economy went into freefall due to the disruption to markets, financial and trade mechanisms, the freezing of US\$9.5 billion in central bank reserves, loans and the sudden suspension of direct development aid to Afghanistan.¹² In 2023, 28.3 million people – two thirds of Afghanistan's population – are in need of urgent

⁷ See prior reports, at: <https://unama.unmissions.org/protection-of-civilians-reports>.

⁸ See prior reports, at: <https://unama.unmissions.org/people%27s-dialogue-on-peace>.

⁹ Constitution of Afghanistan 2004, Chapter 2: Fundamental Rights and Duties of Citizens, also Articles 6, 7, 58.

¹⁰ Report of the United Nations High Commissioner for Human Rights A/HRC/49/24 covered the period until February 2022 and is read in conjunction with A/HRC/49/24.

¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, para. [10].

¹² See Humanitarian Needs Overview 2023 at: <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-needs-overview-2023-january-2023>

humanitarian assistance, and despite the dire situation, the Humanitarian Response Plan for 2023 had received only 9 per cent of the total required funding as of 2 June 2023.¹³

11. The restrictions imposed on women and girls' rights to work, education and freedom of movement by the *de facto* authorities have compounded existing pressures and created new ones. The United Nations Development Programme has estimated a \$1 billion reduction in GDP as a result of the *de facto* authorities' decisions to curb women's access to work, noting that this can have a broader impact on poverty and humanitarian needs country wide.¹⁴ The bans on women working for international and national NGOs and the United Nations have adversely affected the ability of Afghan women to participate in the humanitarian response, jeopardizing the ability of humanitarian assistance to effectively reach women and girls.¹⁵ While humanitarian actors have strived to continue their work and negotiate exemptions and local authorizations,¹⁶ the overall environment remains extremely challenging.

IV. The administration of justice

12. Strong rule of law and administration of justice are fundamental to the protection of human rights. Rule of law requires a system of certain and foreseeable law, which permits individuals to regulate their conduct in conformity to legislation that is formulated with sufficient precision and clarity, consistent with international human rights norms and standards, and where laws are publicly promulgated, equally enforced and independently adjudicated.

13. During the reporting period, the *de facto* authorities introduced a number of changes impacting the administration of justice and rule of law. These changes have generated ambiguity in relation to the domestic legal framework, as well as inconsistent practices within the justice system, and have curtailed the role of lawyers and the participation of women lawyers and judges in the legal system.

A. Domestic legal framework

14. Following their takeover of Afghanistan, the *de facto* authorities suspended the Constitution,¹⁷ and initiated a review of laws passed under the Islamic Republic of Afghanistan in November 2021 to assess their compliance with Sharia and Afghan traditions.¹⁸ The Spokesperson of the *de facto* authorities stated in October 2022 and April 2023 that a commission tasked with the development of a new Constitution had been appointed.¹⁹ As of August 2023, no information on the work of the commission or the outcomes of the review of laws adopted by the Islamic Republic of Afghanistan has been shared. In parallel, the *de facto* authorities have stated on numerous occasions that Sharia is the applicable legal framework in Afghanistan.²⁰

¹³ Secretary-General report on the Situation in Afghanistan A/77/914 S/2023/453.

¹⁴ UNDP, One year in review - Afghanistan since August 2021: A socioeconomic snapshot, p 28. <https://www.undp.org/afghanistan/publications/one-year-review-afghanistan-august-2021>.

¹⁵ See Afghanistan: Revised Humanitarian Response Plan (Jun - Dec 2023) - Afghanistan | ReliefWeb (12 June 2023)

¹⁶ Ibid.

¹⁷ See, TOLO News, "Officials: Afghanistan Does Not Need a Constitution," 4 September 2022. Available at: <https://tolonews.com/afghanistan-179697>.

¹⁸ De facto Ministry of Justice, "Minister of Justice Accentuated Upon the Expedition of Law Revision Process", 10 April 2022. Available at: <https://moj.gov.af/en/minister-justice-accentuated-upon-expedition-law-revision-process>.

¹⁹ TOLO News, "Efforts underway to form new Constitution: Mujahid", 22 October 2022. Available at: <https://tolonews.com/afghanistan-180415>. TOLO News, "Mujahid: Writing of constitution ongoing", 26 April 2023. Available at: <https://tolonews.com/afghanistan-183102>.

²⁰ See, Reuters, "Exclusive: Council may rule Afghanistan, Taliban to reach out to soldiers, pilots" 19 August 2021. Available at: <https://www.reuters.com/world/asia-pacific/exclusive-council-may-rule>

15. The domestic legal framework has been further complicated by the issuance of decrees and edicts by the Taliban leader, which govern a range of administrative, legal and judicial matters. Many legal texts, whether new laws, procedures, or instructions, are successively announced on official web pages or social media accounts of various *de facto* ministries. Notwithstanding the *ad hoc* nature of such announcements, the publication by the *de facto* Ministry of Justice of three official gazettes has contributed to some increased clarity on the law and matters of governance. The official gazette of 22 May 2023 published a collection of 65 decrees, 20 of which had been issued by the Taliban prior to their takeover of Afghanistan.

B. Judicial system and role of prosecutors

16. During the reporting period, the formal judicial system continued functioning countrywide staffed with new, all-male, judicial personnel, including muftis and scholars to advise *de facto* judges. No judges appointed under the government of the Islamic Republic of Afghanistan were retained. The *de facto* authorities maintain the three levels of courts that previously existed, with a right of appeal from primary courts, to appeal courts, and the Supreme Court.

17. Since February 2022, the *de facto* Supreme Court has allowed *de facto* police to refer criminal cases directly to *de facto* courts for investigation, bypassing prosecutors. This was followed in August 2022 by an announcement by the former *de facto* Attorney-General of the suspension of the role of prosecutors and the handover of pending investigations to *de facto* judges. In March 2023, a decree was issued establishing the *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts which formally terminated the role and functions of the *de facto* Attorney-General's Office.

18. With the transfer of investigative functions to *de facto* judges, numerous complaints highlight that many newly appointed judges lack legal education and experience in administering justice, and in leading and resolving investigations. This has given rise to reports of unfairness, abuses and corruption, as well as violations of due process and fair trial rights, including the presumption of innocence, the right to legal representation, the right to silence, and the rights not to be compelled to testify against oneself or to confess guilt. Furthermore, as *de facto* judges resumed investigations into pending case files transferred from prosecution offices, the judicial system experienced a backlog in the processing of cases, causing prolonged pre-trial detention for the several thousand detainees in prisons across Afghanistan.

19. Given the growing numbers of individuals in prolonged pre-trial detention and the limited capacity of the *de facto* Office of Prison Administration to support the incarcerated population for extended periods, in September 2022, the Taliban leader instructed the *de facto* Supreme Court to appoint additional panels of judges to expedite processing of cases. Further, the *de facto* Supreme Court, upon the recommendation of committees made up of mixed *de facto* entities, pardoned and released thousands of detainees on the occasion of Ramadan and Eid holidays. Delegations from the *de facto* Supreme Court in Kabul also periodically visit courts countrywide, instructing them to promptly investigate disputes and adjudicate cases with a view to minimizing prolonged pre-trial detention. Notwithstanding these efforts, the majority of detained individuals are subjected to arbitrary and prolonged pre-trial detention. The judicial system faces ongoing capacity challenges as the volume of pending cases continues to increase and arrested suspects are continuously admitted to prisons pending judicial investigation.

20. On 30 March 2023, the *de facto* authorities reportedly issued an order allowing parties to request re-examination of cases adjudicated under the former government of the Islamic Republic of Afghanistan, including criminal and divorce cases, claiming that those decisions were tainted by corruption and contrary to Sharia. This raises serious concerns about breaches

afghanistan-taliban-reachout-soldiers-pilots-senior-2021-08-18/; 23 September 2021. Available at: <https://apnews.com/article/religionafghanistan-kabul-taliban-22f5107f1dbd19c8605b5b5435a9de54>.

of the principles of legality, the retroactive application of new “laws”, double jeopardy and finality of litigation.

C. Role of lawyers

21. The role of lawyers in the criminal justice process continues to be contentious. After the *de facto* Ministry of Justice seized authority from the Afghanistan Independent Bar Association to issue licences to lawyers in November 2021, it initiated a process that has to date only permitted the relicensing of male lawyers. As of 4 July 2023, 1,479 male defense lawyers had been re-licensed. Lawyers are almost uniformly denied access to detainees in the custody of *de facto* police or General Directorate of Intelligence, and *de facto* judges in courts reportedly persist in rejecting the role of lawyers in proceedings, often abusing, threatening and sidelining them.

22. The *de facto* Ministry of Justice reports that indigent suspects and accused persons or their relatives, as well as indigent women and orphaned children in family cases, are entitled to request legal assistance from the *de facto* Department of Legal Aid to defend their rights, including before judicial institutions. Despite this, *de facto* Departments of Justice in the provinces have insufficient staffing to meet the needs of all those detained.

23. Women lawyers and judges have been altogether excluded from working or practicing by the *de facto* authorities, negatively impacting women and girls’ ability to obtain legal representation, their equality before the law and access to justice. Many non-governmental organizations that previously worked to provide legal aid have also ceased their activities.

V. Institutions for the promotion and protection of human rights

24. National human rights institutions play a crucial role in promoting and monitoring the effective implementation of international human rights norms and standards at the national level. Shortly after their takeover of the country, the *de facto* authorities seized control of the premises of the Afghanistan Independent Human Rights Commission, which they purported to abolish by decree in May 2022. Other institutions, such as specialized Elimination of Violence Against Women prosecution units and courts, and the Ministry of Women’s Affairs and its departments across provinces, have also been dismantled. While no analogous institutions have been created to take over or provide similar functions to support accountability for human rights violations or women’s access to justice, the *de facto* authorities have taken some steps to establish institutions with mandates that purport to deal with some of these matters.

25. The *de facto* Ministry for the Propagation of Virtue and Prevention of Vice (MPVPV), a new ministry established by the *de facto* authorities after 15 August 2021, defines its scope of work as the implementation of orders of the Taliban leader that entail elements of Sharia.²¹ It reportedly also accepts all complaints from the public against any personnel of a *de facto* authority or ministry. The *de facto* MPVPV comprises three directorates, which respectively seek to receive and mediate cases between parties, undertake further investigations into complaints by parties, and where resolution is not possible, refer disputed cases to be adjudicated by *de facto* Military Courts. In some provinces, *de facto* Departments of the MPVPV reportedly also visit places of detention where complaints are received from individuals, such as family members, about the treatment of detainees or regarding conditions of detention.

26. The former *de facto* Attorney-General’s office was abolished in March 2023 and reorientated to a *de facto* High Directorate of Supervision and Prosecution of Decrees and Edicts. This created a body mandated with certain oversight functions within the criminal justice system. In addition to the function of monitoring places of detention and the treatment of detainees, the *de facto* High Directorate is empowered with oversight vis-à-vis the legality

²¹ Homepage of the MPVPV, at: mopvpe.gov.af.

of activities of “detection agencies”, which includes monitoring the legality of arrests and detentions and exercising quasi-judicial powers in this regard. It is equally mandated to prevent torture or ill-treatment and, where it arises, to investigate complaints, submit rulings “to the authoritative source” and reallocate casefiles to other investigators. To date, it is not clear whether the Directorate has commenced these lines of work.

27. With regards to sexual and gender-based violence, in accordance with the Decree on Women’s Rights issued on 3 December 2021,²² the *de facto* Supreme Court instructed courts to adjudicate cases related to the violation of women’s rights. Throughout the period, at least 324 cases of violence against women and girls, including murders, so-called “honour killings”, forced and child marriages, beatings and domestic violence resulting in self-immolation or suicide, were documented by UNAMA. Despite the Decree, cases of gender-based violence are handled inconsistently by the *de facto* authorities and are, in many instances, resolved through informal means such as mediation.

28. Parliaments also play a key national role in the protection and realization of human rights, as they are instrumental in translating human rights obligations into national legislation and policies and ensuring their implementation. With the parliamentary legislative process effectively abolished in October 2022, the new law-making process effectively entrusts law-making to an *ulema* of experts within the *de facto* Ministry of Justice for submission to an independent commission before seeking final approval of the Taliban leader. There is no apparent consultation process or input from external bodies, including civil society, in the development of legislation.

VI. Policies affecting the enjoyment of human rights

29. State parties are obliged to create an enabling environment for the fulfilment of human rights, which can include the promulgation of laws and policies that promote and protect human rights. They are also required to avoid curtailing the human rights of the population.

30. Since their takeover of Afghanistan and throughout the reporting period, the *de facto* authorities have introduced a series of edicts and pronouncements which directly infringe upon human rights and fundamental freedoms. The impact on women and girls – in all aspects of life – has been particularly severe, with a raft of discriminatory measures announced and implemented which deny their rights to participation in public life, freedom of movement, health, work, education and to attain an adequate standard of living, and effectively confine them to the home.

A. Discrimination against women and girls

31. Decrees and edicts announced throughout the period compounded previously introduced restrictions on the human rights and fundamental freedoms of Afghan women and girls across all areas of life, notably:

- On 23 March 2022, despite public pronouncements to the contrary, the *de facto* Ministry of Education announced that girls’ secondary schools, which had been closed since the Taliban takeover, would remain closed pending the development of a plan for their reopening, in line with Sharia and Afghan tradition and culture.²³
- On 7 May 2022, the *de facto* MPVPV introduced a regulation which rendered the observance of the *hijab* mandatory for women in public places.²⁴ The regulation

²² Zabihullah (ذبيح الله م.) [Zabehulah_M33], Twitter, 3 December 2021, 11:31 am. Available at: https://twitter.com/Zabehulah_M33/status/1466663907750256642?s=20&t=OSIB1ZasfMSJXFjMESiE-A.

²³ BNA Pashto, March 23, 2022. Available at: <https://twitter.com/bnapashto/status/1506480143275069440?s=20>

²⁴ MPVPV [MOPVPE1], X (formerly Twitter), 7 May 2022. Available at <https://twitter.com/MOPVPE1/status/1522882293718818816?s=20&t=sshqCD9cwGCRkJbt8HL3LQ>

established a set of disciplinary actions applicable to the male relatives of women deemed non-compliant, involving a warning for a first instance of non-compliance, followed by the imprisonment of the male relative and possible prosecution in court for further infractions. The regulation further recommended that the “best form of observance of the Sharia *hijab*” was for women to avoid leaving the house unless absolutely necessary.

- On 10 November 2022, the *de facto* MPVPV announced that women were prohibited from the use of parks, gyms and public baths,²⁵ with the Spokesperson for the *de facto* MPVPV stating that the prohibition was necessary due to the “violation of rules” regarding segregation between men and women and observance of *hijab*.
- On 20 December 2022, the *de facto* Ministry of Higher Education suspended higher education for female students until further notice.²⁶
- On 24 December 2022, the *de facto* Ministry of Economy issued an order prohibiting Afghan female staff from working for domestic and international NGOs.²⁷ On 4 April 2023, this prohibition was extended to include Afghan female staff working for the United Nations, communicated verbally to the United Nations by the *de facto* MOFA.²⁸
- On 26 June 2023, the *de facto* MPVPV issued a letter ordering all women’s beauty salons to close by 25 July 2023. The spokesperson for the *de facto* Ministry stated that the ban was necessary because beauty salons offer services forbidden by Islam and cause economic hardship for groom’s families during wedding festivities.²⁹

32. In addition to the restrictions imposed by the policies themselves, their implementation has involved further violations of human rights. Instances of women being harassed or beaten at checkpoints for failures to observe Islamic *hijab*, as interpreted by the *de facto* authorities, or ordered to return home from the market because they were shopping without a *mahram* are frequently documented.

B. Curtailment of freedom of opinion and expression

33. States have a duty to create an enabling environment for the free exercise of the right to freedom of opinion and expression. This right has been severely curtailed in Afghanistan since the Taliban takeover, with increasing restrictions introduced during the reporting period. Key challenges for the media sector include lack of access to information, legal uncertainty created by the suspension, pending a review, of the Media Law passed by the government of the Islamic Republic of Afghanistan and the introduction of policies which directly restrict freedom of expression and opinion and the independence of the media. Media outlets have also experienced financial difficulties due to the withdrawal of significant donor funding following the Taliban takeover, and some have been forced to close as a result.

34. Guidelines issued between August 2021 and March 2022 to media outlets by the *de facto* Government Media and Information Centre and *de facto* MPVPV remained in place. The guidelines include requirements to abstain from: publishing content contrary to the Islamic religion and Sharia; disrespecting national and influential figures in reporting;

(Pashto).

²⁵ MPVPV [@MOPVPE], X (formerly Twitter), 10 November 2022. Available at: <https://twitter.com/MOPVPE1/status/1590768823971368960> (Pashto).

²⁶ ضياء الله هاشمي (Ziaullah) de facto Minister of Higher Education [@HafizZeiya], X (formerly Twitter), 20 Dec 2022. Available at: <https://twitter.com/HafizZeiya/status/1605227230648483842>.

²⁷ The letter, on social media, was confirmed by the Spokesperson of the *de facto* Ministry of Economy. See: <https://www.reuters.com/world/asia-pacific/taliban-orders-ngos-ban-female-employees-coming-work-2022-12-24/>.

²⁸ UN protests order from Taliban de facto authorities prohibiting Afghan women from working with the United Nations in Afghanistan | UNAMA (unmissions.org).

²⁹ MPVPV [@MOPVPE], X (formerly Twitter) 05 July 2023: <https://twitter.com/MOPVPE1/status/1676588150682992641?s=20>.

screening films or soap operas featuring women actors and foreign films that are contrary to Afghan or Islamic values and playing music. In addition, women and men are prohibited from appearing together in programs and women journalists are required to cover their faces while broadcasting.³⁰

35. The *de facto* authorities have taken steps to halt the operations of numerous media outlets, including blocking or suspending access to the websites of some outlets, including Zawia News, Hasht-e-Subh, Voice of America and Azadi Radio. On 30 November 2022, the *de facto* Ministry of Information and Culture ordered the Voice of America and Radio Azadi to cease their FM broadcast due to alleged violations of guidelines issued to journalists.

36. The *de facto* Ministry of Information and Culture established a Media Violations Commission on 23 August 2022. While the exact mandate of the Commission has not been formally announced, the former government of the Islamic Republic of Afghanistan had established a similar commission under its Mass Media Law.³¹ While the Commission's membership during its first year was comprised predominantly of members of the *de facto* authorities and some representatives from journalist support organizations, including the Afghan Journalists Safety Committee; as of 12 August 2023 it had expanded to include an increased number of representatives from media outlets, academia, media unions and journalist support organizations. No women, however, are members of the Commission.

C. Regulation of daily and cultural life

37. The *de facto* authorities have introduced a series of measures that regulate the private lives of people living in Afghanistan, curtailing their enjoyment of various human rights and fundamental freedoms, including their rights to privacy and to participate in cultural life. The majority of these pronouncements have been promulgated and enforced by the *de facto* MPVPV and its respective departments at provincial level.

38. In addition to the restrictive edits and instructions determining how women and girls should lead their lives, the *de facto* MPVPV has issued guidance advising barbers not to trim men's beards or give "Western-style" haircuts. While the guidance is reportedly only advisory in nature,³² instances of men and barbers being ill-treated and temporarily arbitrarily detained for allegedly breaching the guidance have been reported consistently since the Taliban takeover. At district and provincial levels, men have been ordered by officials of *de facto* Departments for the MPVPV to attend congregational prayers at mosques and in some instances, failure to do so has led to fines and ill-treatment.

39. The *de facto* PVPV has issued various pieces of guidance regarding music. On 28 November 2022, in Kabul city, signs were put up at the entrance of wedding halls and hotels to urge people to refrain from playing music. A video shared on Twitter by the *de facto* MPVPV explained that music is forbidden as it promotes vice in the society and "destroys the roots of Islam".³³ In January 2023, the Spokesperson of the *de facto* MPVPV confirmed an order circulated in the media which disallowed poetry with a musical rhythm. Instances of private vehicles, telephones and weddings being subject to searches for music – and arbitrary arrests and detentions and ill-treatment of individuals when such music was found – have been recorded.

40. Restrictions on the commemoration of religious and cultural events and other holidays have also been issued. On 21 March 2023, the *de facto* MPVPV announced a prohibition on

³⁰ See UNAMA report: [unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf](#) (unmissions.org).

³¹ Mass Media Law 2009, Article 42.

³² Interview posted on the Twitter account of *de facto* MPVPV spokesperson, he stated the policy of barbers not shaving clients' beard or trimming their hair is of advisory nature. See MPVPV [@MOPVPE], Twitter, 10 November 2022. Available at: <https://twitter.com/MOPVPE1/status/1590768823971368960> (Pashto) (accessed 25 April 2023).

³³ MPVPV [@MOPVPE], Twitter, 29 November 2022. Available at: <https://twitter.com/MOPVPE1/status/1597470802139807745> (Pashto) (accessed 25 April 2023).

the celebration of Nowruz (Persian New Year).³⁴ Vehicle checkpoints were set up to search for items used for the celebration. On 17 July 2023, Spokesperson for the *de facto* authorities, Zabihullah Mujahid, announced that large gatherings and movement in groups during the commemoration of Ashura, a holy day for Shi'a Muslims, were prohibited in order to ensure the security of mourners.³⁵

VII. Violations of the rights to life, liberty and security of the person

41. State parties are obliged to respect human rights and protect against human rights abuses and ensure accountability when violations do occur. Throughout the reporting period, UNAMA documented instances of conflict-related civilian harm, extrajudicial killings, arbitrary arrests and detentions, and torture and ill-treatment.

A. Conflict-related civilian harm

42. The Taliban takeover of Afghanistan on 15 August 2021, and the final withdrawal of international military forces on 31 August 2021, saw a significant reduction in hostilities in Afghanistan. There was a corresponding, significant reduction in the scale of conflict-related civilian harm, which continued throughout the reporting period. Despite this, civilian casualties did continue to be recorded.

43. During the reporting period, UNAMA recorded at least 2,618 civilian casualties (719 killed, 1899 wounded), among them 196 women (76 killed, 120 wounded) and 701 children (183 boys and 53 girls killed, 391 boys, 70 girls and four children of unknown gender wounded). The leading causes of civilian harm were of improvised explosive devices (IEDs) and explosive remnants of war.

Improvised explosive devices

44. As highlighted in UNAMA's June 2023 report, *Impact of improvised explosive devices in Afghanistan 15 August 2021 – 30 May 2023*, despite a marked decrease in overall levels of civilian casualties since the Taliban takeover, improvised explosive devices continue to result in significant levels of civilian harm. The majority of IED attacks causing civilian harm during the period were carried out by Islamic State in Iraq and the Levant-Khorasan Province (ISIL-KP) though a significant number remained unclaimed and the perpetrator undetermined.

45. UNAMA's documentation indicates an increase in civilian harm resulting from IED attacks on places of worship compared with prior to the Taliban takeover, with IED attacks on places of worship causing 1,218 civilian casualties (368 killed, 850 wounded) between 15 August 2021 and 15 February 2023. Shi'a communities were found to be most at risk of attacks on places of worship.

46. In addition, IED attacks targeting the – predominantly Shi'a Muslim – Hazara community in schools and other educational facilities, crowded streets and on public transportation occurred during the reporting period. A suicide IED attack which occurred in Kaaj Educational Centre in Dasht-e-Barchi area of Kabul on 30 September 2022 killed 54 people and wounded 114 others, most of them young women and girls (48 females killed including three children, 67 females wounded including nine girls). ISIL-KP claimed responsibility for the attack. IED attacks targeting the *de facto* security forces and *de facto* civilian entities also contributed to civilian harm throughout the period, with most incidents claimed by ISIL-KP. The first six months of 2023 did, however, reflect a 53 per cent

³⁴ See two tweets (with video clips) broadcast by *de facto* MPVPV: MPVPV [@MOPVPE], Twitter, 21 March 2023. Available at: <https://twitter.com/MOPVPE1/status/1638052712079040519> and <https://twitter.com/MOPVPE1/status/1638052716525105152> (Pashto)

³⁵ See X account of *de facto* Spokesman Zabihullah Mujahid (17 July 2023) https://twitter.com/Zabehulah_M33/status/1680919805451288576?s=20.

reduction in civilian casualties compared with the same period of 2022, largely due to a reduction in IED attacks.

Explosive remnants of war

47. UNAMA documented 512 civilian casualties (169 killed, 343 wounded) as a result of explosive remnants of war during the reporting period. This represents a slight increase compared with the same period a year earlier. Most victims were children (115 boys and 28 girls killed, 233 boys and 43 girls wounded) who picked up unexploded ordnance collecting scrap metal or to play with. In several instances, multiple members of a single family lost their lives or were seriously wounded. For example, on 19 March 2023, in Ghor, five children and one woman were killed when a hand grenade detonated in their home.

B. Extrajudicial killings

48. During the reporting period UNAMA documented extrajudicial killings carried out by *de facto* security forces targeting former government officials and former security force members, and individuals perceived to be affiliated with the self-identified “National Resistance Front” and with ISIL-KP.

49. On 15 August 2021, the *de facto* authorities announced what they termed a “general amnesty” for former officials of the government of the Islamic Republic of Afghanistan and former members of the Afghan National Defense and Security Forces (ANDSF). In August 2023, UNAMA released a report *A barrier to securing peace: Human rights violations against former government officials and former armed force members*. Despite senior *de facto* officials repeatedly, publicly expressing their commitment to protect former government officials and former ANDSF members under the general amnesty. Between 15 August 2021 and 30 June 2023, UNAMA documented at least 218 extrajudicial killings of former government officials and ANDSF members. The most targeted groups were former ANA members, Afghan National Police, National Directorate of Security officials and Afghan Local Police. In most instances, individuals were detained by *de facto* security forces, often briefly, before being killed. Some were taken to detention facilities and killed while in custody, others were taken to unknown locations and killed, their bodies either dumped or handed over to family members.

50. UNAMA also recorded 61 instances extrajudicial killings of individuals affiliated with the self-identified “National Resistance Front” throughout the period. Between 12 and 14 September, at least 48 summary executions of individuals affiliated with the National Resistance Front in Dara and Khenj districts of Panjshir province were documented.

51. Throughout the reporting period, UNAMA documented 48 extrajudicial killings of individuals perceived to be affiliated with ISIL-KP, predominantly in Nangarhar and Kunar provinces where the group is known to be most active. The incidents followed a similar pattern, with bodies found dumped, sometimes hanging from trees, often dismembered, or beheaded. In several instances, bodies were accompanied by a note which stated that the person was killed due to ISIL-KP affiliation. Such killings reached a peak shortly after the Taliban takeover and continued throughout the reporting period.

C. Unnecessary and disproportionate use of force

52. Extrajudicial killings and injuries as due to unnecessary or disproportionate use of force by *de facto* authorities were also recorded. Most instances concerned shootings at checkpoints, allegedly because individuals had failed to stop when signalled to do so by *de facto* security force members or because of unlawful use of force in the dispersal of crowds and protests.

53. For example, on 28 July 2023, during the commemoration of Ashura in Ghazni city, *de facto* security personnel opened fire to disperse a crowd of mourners. Four people were killed, including one child and one woman who was shot through the window of her house, and six were injured. In response to the incident, *de facto* Provincial Governor’s office issued

a tweet stating that among the group of Ashura mourners, some threw stones and opened fired at the *de facto* security forces, resulting in the casualties. According to UNAMA monitoring, the mourners were unarmed. The statement expressed sympathies to the victims and stated that a committee, which will include members of the Shia community, will be established to investigate the incident.

D. Arbitrary arrests and detentions

54. Many arrests and detentions carried out by the *de facto* authorities are likely arbitrary due to a lack of clarity regarding the applicable legal framework as well as failures to inform individuals of the reasons for their arrest and the charges against them, the length of time for which people are kept in pre-trial detention, lack of access to legal counsel and their own families and denial of other procedural rights to which detainees are entitled. UNAMA recorded more than 2,400 arrests and detentions determined to be arbitrary during the reporting period.

55. The *de facto* authorities have used arrests and detention as a means of suppressing dissent. Numerous women who had participated in peaceful protests or spoke out against the *de facto* authorities' discriminatory policies towards women and girls were arbitrarily detained, and some remained in detention for extended periods. UNAMA documented arbitrary arrests and detentions of at least 78 women civil society activists during the period.

56. For example, on 3 November 2022 in Kabul, women's rights activist Zarifa Yaqobi and four of her male colleagues were arrested from a press conference. They were held for over a month, on unknown charges, by the *de facto* General Directorate of Intelligence. Outspoken advocate for girls' education, Matiullah Wesa, was arrested on 27 March 2023 in Kabul and remains in the custody of the *de facto* authorities.

57. Journalists and media actors continued to experience threats, ill-treatment, arbitrary arrests and detentions in connection with their work, often related to accusations of criticizing the *de facto* authorities in their reporting. UNAMA documented arbitrary arrests and detentions of at least 115 media workers during the reporting period. Between 6 and 13 August 2023, nine journalists from six provinces were detained by *de facto* General Directorate of Intelligence. Mortaza Behboudi, a French-Afghan journalist arrested by officials of the *de facto* General Directorate of Intelligence on 7 January 2023, remains in detention on unknown charges.

58. UNAMA documented at least 356 arbitrary arrests and detentions of former government officials and ANDSF members; 408 arbitrary arrests and detentions of individuals accused of affiliation with the self-identified "National Resistance Front" and 39 arbitrary arrests and detentions of individuals accused of affiliation with ISIL-KP were also documented throughout the period.

E. Torture and ill-treatment

59. The *de facto* police and *de facto* General Directorate of Intelligence routinely use illegal force, blind-folding, beatings and ill-treatment in the course of arrests. Additionally, while in the custody of both *de facto* institutions, detainees are routinely subjected to torture and ill-treatment, largely during investigations and questioning, often resulting in the signing of forced confessions. This is coupled with the almost systematic denial of their fundamental due process rights while in custody.

F. Corporal punishment and the death penalty

60. Since their takeover of Afghanistan, the *de facto* authorities have implemented corporal punishment and the death penalty. UNAMA's May 2023 report, *Corporal punishment and the death penalty in Afghanistan*, found that the implementation of judicial corporal punishment increased significantly following a 13 November 2022 tweet by the spokesperson for the *de facto* authorities, Zabihullah Mujahid, which stated that the Taliban

Leader had met with judges and emphasized their obligations to apply Hudūd and Qisās punishments for offences when Sharia conditions for the implementation of such punishments are met.³⁶ For example, 14 people (11 men, 3 women) were publicly flogged in a football stadium in Logar province on 23 November.

61. The tweet was also followed, on 7 December 2022, by the implementation of the first execution sanctioned by the *de facto* judicial authorities since the takeover in Farah province. A second such execution was carried out in Laghman province in June 2023. Both executions were carried out in public³⁷ against individuals convicted of crimes of intentional killing.

VIII. Accountability

62. Conducting prompt, thorough, effective, independent, impartial and transparent investigations into human rights violations and holding perpetrators to account is a key obligation of States under international human rights law. Accountability is also critical to preventing the recurrence of violations. There is limited information regarding measures taken by the *de facto* authorities to investigate reports of human rights violations and hold perpetrators to account and a general climate of impunity prevails.

63. The *de facto* authorities have, in isolated instances, publicly announced the conduct of investigations into specific incidents. To date, such announcements have not been followed by the public release of information regarding the progress or outcome of investigations. For example, on 17 September 2022, the *de facto* Ministry of Defence announced that “serious investigations” would be conducted into allegations of killings in Panjshir. On 16 October 2022, it was reported that a commission led by former *de facto* Provincial Governor for Kabul, Mawlawi Neda Mohammad Nadeem (subsequently appointed as *de facto* Minister for Higher Education) would examine the files of individuals detained during military operations in Panjshir. The findings of the investigation have not been publicly announced.

64. With regards to torture and ill-treatment, in its response to UNAMA’s report on corporal punishment and the death penalty, the *de facto* MOFA stated that 93 cases of torture or ill-treatment in the custody of *de facto* security organs were recorded and investigated, with some of the perpetrators dismissed from their duties and punished according to their crimes. No breakdown by responsible entity was specified or provided.³⁸

65. While levels of civilian harm have significantly decreased since the Taliban takeover of Afghanistan and the conclusion of hostilities between the Taliban and the former forces of the Government of the Islamic Republic of Afghanistan, efforts regarding accountability for harm suffered by civilians over decades of conflict – already a significant challenge prior to the takeover by the *de facto* authorities – have largely stalled. The suspension of the role of prosecutors and reorientation of the role of the former Attorney-General’s Office also effectively ended the work of its International Crimes Directorate, which was created in 2018 to investigate allegations of violations of international human rights law and international humanitarian law committed during the conflict. On 31 October 2022, a Pre-Trial Chamber at the International Criminal Court authorized the Prosecution Office to resume investigations into

³⁶ Zabihullah (م هلا ذبیح) [Zabehulah_M33], Twitter, 13 November 2022. Available at : https://twitter.com/Zabehulah_M33/status/1591824999870259200?s=20&t=DiJiPIQqSmH78zWj4KjBFw (Pashto).

³⁷ UN Human Rights Committee, General Comment No. 36: Article 6 (Right to life), 2019, para. 40. Regarding public executions, in resolution 2005/59, the Commission on Human Rights urged all States still maintaining the death penalty “to ensure that, where capital punishment still occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, (...)”. UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, 20 April 2005, E/CN.4/RES/2005/59, para. 7 (i). The prohibition was reaffirmed by the UN Secretary-General, see Report of the Secretary-General, Question of the death penalty, 14 September 2018, A/HRC/39/19, para. 38.

³⁸ See UNAMA, Corporal Punishment and the Death Penalty, May 2023: Annex - Response of the *de facto* MOFA, available at [https://unama.unmissions.org/file/21157/df/MFA Response](https://unama.unmissions.org/file/21157/df/MFA%20Response).

the situation in Afghanistan.³⁹ On 4 April 2023, the Appeals Chamber clarified the scope of the Prosecutor's investigation as being "in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other State Parties in the period since 1 July 2002"⁴⁰.

IX. Conclusions

66. International human rights law requires States to respect human rights, protect individuals under their jurisdiction from human rights abuses and to take positive action at all levels to facilitate the enjoyment of human rights. Over the past two years, the *de facto* authorities have steadily dismantled institutional protections for human rights and eroded the rule of law, despite the international human rights obligations that continue to bind Afghanistan as a State. In addition, the humanitarian and economic crisis facing Afghanistan continues to seriously impact the enjoyment of the full spectrum of human rights.

67. Afghan women and girls have been restricted from participation in most areas of public and daily life by the introduction of progressively more severe and discriminatory edicts, policies and other pronouncements. These measures deny the rights of women and girls to access education, to work and their freedom of movement and impact access to health and other essential services.

68. The ambiguity regarding the domestic legal framework, as well as inconsistent practices within the justice system, has affected the entire legal process. Allegations of torture and ill-treatment during arrests and in places of detention are widespread, most notably with regards to *de facto* General Directorate of Intelligence and *de facto* police. Such treatment is occurring in the context of an almost routine denial of procedural safeguards and due process rights. Violations of the rights to which all accused person are entitled contributes to an increased risk of arbitrary detention and human rights violations in places of detention, as well as abuses of due process and the right to a fair trial before *de facto* courts.

69. The exclusion of women lawyers and judges from the legal system, along with the abolition of specialized Elimination of Violence Against Women prosecution units and courts, affects the rights of women and girls to obtain legal representation, equality before the law and access to justice.

70. Some decrees and policies appear intended to offer some protection, such as the Decree on Women's Rights in December 2021 and the Code of Conduct on Reforming the Prisoners' System of January 2022,⁴¹ which regulates the treatment of individuals deprived of their liberty. However, the protections they offer are limited and are overshadowed by the issuance of other edicts and decrees which infringe on human rights, particularly those of women and girls, and the continued prevalence of human rights violations.

71. The practical absence of a national human rights institution has left a significant gap with regards to the protection and promotion of human rights at a domestic level. While other institutions purport to have mandates that may cover some of these functions, seemingly intended to provide accountability, effective action in this regard remains to be seen.

72. The *de facto* law-making process currently lacks consultation and input from external bodies, including civil society, further diminishing opportunities to strengthen human rights protections.

73. In addition to the broader climate of repression of human rights and fundamental freedoms, violations of the rights to life and liberty and security of the person continue to be

³⁹ *Situation in the Islamic Republic of Afghanistan* (Decision pursuant to Article 18(2) of the Statute) ICC-02/17 (31 October 2022)

⁴⁰ *Situation in the Islamic Republic of Afghanistan* (Judgement on the Prosecutor's appeal against the decision of Pre-Trial Chamber II entitled "Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation") ICC-02/17 OA5 (4 April 2023)

⁴¹ The Code of Conduct regulates treatment of individuals deprived of their liberty and contains numerous provisions prohibiting torture and ill-treatment.

carried out by members of the *de facto* authorities with apparent impunity. There is little information about steps taken by the *de facto* authorities to hold perpetrators accountable.

74. Over two years on from their takeover of the country, there has been systematic regression of the rule of law and human rights in Afghanistan, particularly with regard to the rights of women and girls. The *de facto* authorities still have an opportunity to change the trajectory of human rights and bring Afghanistan in line with its international obligations. This will require concerted action at all levels to address the current vacuum of institutional human rights protections and establish a more inclusive and responsive system of governance which protects, promotes and fulfils human rights.

X. Recommendations

75. The High Commissioner calls upon the *de facto* authorities to fundamentally change their approach on human rights and reiterates previous calls to fully comply with Afghanistan's obligations under international human rights law.⁴²

The High Commissioner further recommends that the *de facto* authorities:

- Promptly rescind discriminatory edicts and decrees which curtail women and girls' human rights and fundamental freedoms, enable their access to secondary and tertiary education and work, respect their freedom of movement and cease interference with other aspects of their daily lives;
- In view of review of applicable laws being undertaken, ensure that all legislation applicable in Afghanistan is in line international human rights law;
- Establish a legal aid framework through which legal services for persons suspected or accused, of criminal offences, are effectively ensured;
- Immediately halt arbitrary arrests and detention, and ensure that any person detained is given prompt access to an independent, impartial and competent court, and that the legality of their detention is subject to a speedy and effective court review;
- Issue clear instructions to *de facto* courts and *de facto* judges, in line with international human rights norms and standards, on professional standards for judicial actors, and prohibiting ill-treatment or harassment of lawyers and those accused;
- Permit resumption of a credible and independent national human rights institution, in line with the Paris Principles, with a broad mandate for the promotion and protection of human rights at national level;
- Ensure access to justice and right to a remedy for survivors of gender-based violence through the formal justice system;
- Promote and protect fundamental freedoms by replacing restrictive policies with human rights compliant ones;
- Take immediate legal, policy and practical measures to prevent human rights violations, in particular extrajudicial killings, arbitrary arrests and detentions and torture and ill-treatment, and ensure accountability when violations occur;
- Establish a complete moratorium on executions with a view to abolition of the death penalty;
- Ensure the professionalization of *de facto* security personnel in executing their duties in accordance with international human rights norms and standards, particularly those applicable to the use of force in law enforcement; and ensure that criminal investigations are conducted without resort to torture or ill-treatment;
- Conduct prompt, thorough, effective, independent, impartial and transparent investigations into alleged human rights violations and hold perpetrators accountable,

⁴² See recommendations in: A/HRC/51/24.

in particular with regards to allegations of extrajudicial killings and torture and ill-treatment.

The High Commissioner recommends that the international community:

- Maintain concerted dialogue and advocacy with the *de facto* authorities regarding Afghanistan's human rights obligations, in particular with regards to the situation for women and girls;
 - Continue to facilitate financial measures and assistance of support for urgent humanitarian needs and basic services;
 - Support the continuation of the human rights mandate of UNAMA and ensure that adequate resources are provided for ongoing human rights monitoring, documentation, reporting and advocacy.
-