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UNIVERSAL PERIODIC REVIEW: AFGHANISTAN
THE DISMAL STATE OF HUMAN RIGHTS AND RULE OF LAW

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Submission by

Non c'è pace senza giustizia

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A. INTRODUCTION

1. Non c'è pace senza giustizia (NPWJ) is an international non-profit organisation established in 1994 that works for the protection and promotion of human rights, democracy, the rule of law and international justice. NPWJ aims to address situations where fundamental and universal principles are often set aside in the name of political stability and presumed cultural incompatibility. NPWJ raises awareness, fosters public debate and spurs mobilisation among democracy advocates, decision-makers and governments to promote human rights, democracy, the rule of law and international criminal justice. NPWJ is in special consultative status with the Economic and Social Council since July 2022.
2. In this document, NPWJ outlines urgent concerns on issues that threaten the Afghan judicial system evolved and issues related to violations of human rights. Part B covers violations of the right to life, enforced disappearances, the right to freedom of expression and media and other human rights as well as the limitations imposed on the rights of women and girls. Part C covers violations regarding the collapse of Afghanistan's judicial and legal system with a special focus on arbitrary arrests and detention, the situation regarding access to justice and the use of the judiciary as a tool of oppression, which leads to a phenomenon also known as rule by law, contrary to rule of law. Specific concerns linked to court rulings and proceedings as well as practices linked to law enforcement demonstrate that this system appears to accept disrespect of human rights and the use of violence as a means of maintaining power.

B. VIOLATIONS OF HUMAN RIGHTS, WOMEN'S RIGHTS AND GENDER RIGHTS

3. Afghanistan is a party to several treaties and conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities. Since 1 May 2003, Afghanistan has been a State Party to the Rome Statute of the International Criminal Court, where an investigation into alleged war crimes and crimes against humanity is underway.
4. Since the Taliban took power in August 2021, Afghanistan's human rights standards have dramatically decreased. Restrictions on women's rights, freedom of the media and freedom of expression have increased exponentially. Institutions designed to uphold human rights have been severely limited or closed completely. Peaceful protesters have been subject to arbitrary arrests, torture and enforced disappearances. The Taliban has

carried out extrajudicial executions, arbitrary arrests, torture and illegal detentions of perceived opponents with impunity, creating an atmosphere of fear and impunity.

5. Enforced disappearance is recognised as a severe violation of human rights and a crime against humanity. Since the return of Taliban to power, there has been a string of targeted killings of former security force members, tribal elders and other civilians. From August 2021 to the end of November 2022, around 320 people were killed in targeted attacks and another 95 persons were injured in Kandahar. From August 2021 and August 2022, 2,722 civilians have been killed or wounded throughout Afghanistan. These individuals were victims in a variety of security events, including terrorist attacks. Taliban have killed 70 individuals between August 2021 and November 2022 as a punishment for their alleged affiliation with ISKP. Taliban attacked and killed not only those accused of being members of ISKP, but also targeted members of the security forces of the previous Government of Afghanistan.¹
6. Despite recommendation 136.104 on the investigation of enforced disappearances, at least 11 individuals were forcibly disappeared by the Taliban in the first six months of 2023. Those responsible should be prosecuted in order to align with international human rights standards. Recommendation 136.192 should be followed to improve measures to prevent violence and eliminate discrimination. Additionally, protection of civilians and all incidents of civilian casualties should be a priority for the country and victims should be provided with reparations.
7. In the last two years, scores of journalists and media officials were ordered to consult and coordinate with the Taliban before publishing reports or any public content: journalists who have disobeyed have been subjected to violence. Moreover, no report should be published against the wishes of the authorities. The Taliban consider any criticism or protest to be a conspiracy or destruction of the reputation of the “Islamic Emirate”.
8. The Taliban have violently suppressed peaceful demonstrations and protests. Civil activism and demonstrations are prohibited, as are calls for demanding human rights. The Afghanistan Independent Human Rights Commission (AIHRC) has been closed and its members persecuted, further limiting the space for civil society organisations to document and report on human rights violations and abuses.
9. Over the past two years, women have been gradually removed from various social, political and economic spheres. The right to education is among the most important human rights; international human rights instruments emphasise the necessity of equal and uniform access to educational opportunities for all individuals.² On 28 January

¹ Rawadari Report, *One-Year of Taliban Rule in Afghanistan*, <https://rawadari.org/wp-content/uploads/2022/12/One-Year-of-Taliban-Rule-in-Afghanistan.pdf>

² 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 <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>

2023, the Taliban's Ministry of Higher Education officially banned women and girls from participating in the entrance exams of public and private universities in Kankor. Now only girls below the sixth grade and students at health training centers can attend school.

10. Despite recommendation 136.161, on 16 June 2023 the Department of Promotion of Virtue and Prevention of Vice in Ghazni province prohibited girls from learning English and computer skills. They also warned private educational centers to halt their educational activities for girls in these subjects.³
11. Although the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires Member States to eliminate all forms of discrimination against women in employment and to create equal opportunities based on the principles of gender equality,⁴ the de facto authorities have issued decrees and legislative measures to curtail and restrict the human rights and fundamental freedoms of Afghan women and girls. On 24 December 2022, the de facto Ministry of Economy issued an order prohibiting Afghan female staff from working for domestic and international NGOs; on 4 April 2023, this prohibition was extended to include Afghan female staff working for the United Nations.
12. The continuation of ongoing measures towards women's access to more affordable education has been neglected as well as the actions to facilitate women's access to better health-care services. The absence of women in healthcare centers, the lack of facilities, the social restrictions imposed by the Taliban and low levels of awareness among families force women to deprive themselves of basic medical care.
13. The targeted discrimination and deliberate limitation of basic freedoms for women by the Taliban have diminished their dignity and basic human status, depriving them of their ability to be active participants in Afghanistan's society.
14. In Kandahar Province, on 8 May 2023, a Taliban Vice and Virtue official established inspection checkpoints in various districts of the province to interrogate women who leave their homes wearing makeup and having henna on their hands. Many recommendations (136.131, 136.130, 136.144, 136.221) stressed the importance of women's empowerment.
15. On 7 January 2023, Taliban Vice and Virtue officials warned ticket sellers and flight agencies in the city that they should not sell tickets to women without a mahram and should not facilitate their travel.
16. Concerning recommendation 136.226 about the allocation of enough economic and human resources for the coordination of departments involved in human rights, the

³ Rawadari Report, *Human Rights situation in Afghanistan* https://rawadari.org/wp-content/uploads/2023/08/RW_AFGHumanRights2023_English.pdf?#

⁴ UNGA, Convention on the elimination of all forms of discrimination against women, adopted in 1977, Article 11

efforts that have been done in the last four years are not sufficient, in particular regarding those departments which are responsible for safeguarding the empowerment of women in Afghan society.

C. TORTURE, DETENTION AND THE COLLAPSE OF AFGHANISTAN'S JUDICIAL AND LEGAL SYSTEM

17. Article 7 of the International Covenant on Civil and Political Rights prohibits torture and inhuman treatment or punishment. Despite Afghanistan being a party to the ICCPR since 1983, on 24 January 2023, an official letter from the judicial deputy of the Kandahar provincial High Court was sent to police headquarters to permit mistreatment and torture in detention.
18. Article 14 of the ICCPR safeguards the individual's right not to be compelled to testify against themselves or to confess guilt, establishing that confessions elicited through torture hold no legal validity and cannot form the basis of judicial decisions. In Afghanistan, while torture is not contemplated in the investigation stage, inhumane and degrading treatment are allowed if it follows a court verdict.
19. Article 1 of the International Convention against Torture, Cruel Punishment, and Inhuman or Degrading Treatment prohibits the infliction of any kind of inflicted pain to obtain confessions. Media and local NGOs reports confirm that in many police stations and districts, however, confessions were obtained in this manner.
20. Concerning recommendation 136.135, media and local NGOs reports confirm that the Intelligence Department detained and tortured the relatives and family members of former government employees, critics and dissidents, disregarding the principle of individual criminal responsibility. The adoption of the draft law on the protection of the family has not changed the provisions of the Civil Code yet.
21. Across the country, Taliban commanders and local officials run unofficial and secret prisons where individuals are detained and subjected to torture. According to media and local NGO reports, local de facto authorities operate private prisons in the districts of Bala Marghab, Jhund and in the centre of Badghis city.
22. Between 15 August 2021 and 15 November 2022, the Taliban arrested and detained a total of 248 employees of the former government and members of security and defence institutions and former "people's uprisings" members.
23. Courts and judges should be independent and impartial; this constitutes a fundamental principle of a fair trial. Despite recommendation 136.50, there are documented cases where there is clear bias within Taliban-controlled courts. Many changes have been made during these last four years despite the challenges in ensuring justice and maintaining the rule of law under the Islamic Republic of Afghanistan. These changes

were undone with the return of the Taliban to power, but now radical interpretations of Islam supersede the rule of law and courts adjudicate legal and criminal cases based on religious decrees (*fatwas*).

24. Media and local NGOs reports indicate that 1,016 professional and administrative employees from various departments of the Attorney General's Office and 2,000 judges nationwide were dismissed. Those dismissed included both women and men. Hundreds of court registrars, administrative staff and professional legal assistants from the Ministry of Justice were dismissed, leaving the Nangarhar Province with only 24 out of the original 126 registrars; of these 24 workers, none has a decisive role in the judiciary system. Recommendation 136.49 concerning strengthening human rights training for judges, prosecutors and law enforcement officials has been completely ignored.
25. The Taliban disbanded all specialised courts, including those dedicated to addressing violence against women, juvenile matters, anti-corruption and crimes against internal and external security. These specialised prosecutors and courts were extremely important for ensuring justice, upholding the rule of law, fighting corruption and combating violence against women.
26. Taliban courts can administer criminal and legal cases using jurisprudential sources, but some judges can base their rulings on personal interpretations and perceptions. The right to appeal is rarely recognised, particularly in criminal cases, while in civil disputes the parties can appeal the court's decision and request a review.
27. Previously, the Office of the Attorney General oversaw investigations, but the Taliban altered this office into the Office for Monitoring and Follow-up of Decrees and Orders, effectively expunging the investigation stage from criminal proceedings. Despite recommendation 136.91, ensuring the protection of civilians is still not guaranteed.
28. Recommendation 136.111 supports a decisive intervention to strengthen access to justice for victims and fight impunity. Media and NGOs reports reveal that many criminal cases have been resolved in a single hearing without going through a formal investigative process or presenting sufficient evidence to establish guilt.

D. RECOMMENDATIONS

Considering the above, NPWJ recommends:

29. Promptly initiate an inclusive and participatory Afghan-led and Afghan-owned political process for the establishment of a participative, inclusive and representative government, including with regard to gender and all ethnic and religious minorities;

30. Ensure the compliance of Afghanistan with its international human rights obligations by repealing all discriminatory edicts and instructions issued since August 2021 by the *de-facto* authorities, including those specifically targeting women and girls;
31. Develop a robust legal framework for the promotion and protection of human rights by ensuring that constitutional and national legislation are fully compliant with international human rights standards, including by a comprehensive review of the Penal Code and all other relevant legislation;
32. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
33. Ratify the Optional Protocol to the International Covenant on Civil and Political Rights;
34. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
35. Fully implement and enforce the elimination of violence against women law and its national action plan for the implementation of United Nations Security Council Resolution 1325 (2000);
36. Fully implement UNGA Resolution 67/146 on “Intensifying global efforts for the elimination of female genital mutilation”;
37. Ensure immediate, safe and unhindered access to International Criminal Court personnel involved in the on-going investigation into crimes against humanity and war crimes in Afghanistan conducted by the ICC.