

13 September 2024

**To: Permanent Representatives to the UN Human Rights Council**

**RE: Meaningful action needed at UN Human Rights Council to advance accountability for past and ongoing crimes under international law in Afghanistan**

Excellencies,

We, the undersigned human rights organizations, write to reiterate our [joint appeal](#) with 90 Afghan, regional and international organizations, for the urgent establishment by the UN Human Rights Council (HRC) of an independent mechanism on Afghanistan, with a mandate to investigate and advance accountability for past and ongoing crimes under international law committed in the country. This mechanism would be distinct but complementary to the mandate of the Special Rapporteur on the situation of human rights in Afghanistan (Special Rapporteur), which should also be fully renewed this session.

In 2021, in response to civil society calls for a Fact-Finding Mission or similar investigative mechanism, the HRC established the mandate of the SR on Afghanistan. The Special Rapporteur carries out vital monitoring and reporting on the human rights situation in the country and makes recommendations. The mandate also engages on urgent cases and issues and offers essential support to brave activists and human rights defenders, particularly Afghan women human rights defenders, who continue their resistance at significant personal risk.

Three years on since the Taliban's return to de facto control of the country, the situation continues to deteriorate dramatically, particularly for women and girls, who face arbitrary restrictions in every area of their lives, as well as unchecked violence as previous protections are dismantled. With the most recent [vice and virtue law](#), the Taliban have effectively completed the erasure of women and girls from public life. They have also severely curtailed freedom of expression and the media, arbitrarily detained and tortured protesters and critics, and recently confirmed the [barring](#) of the SR from the country. As a group of Special Procedures have [recently highlighted](#), avenues for justice within the country are "virtually non-existent," following decades of impunity for crimes committed by a range of actors. The HRC should take action to address this pervasive impunity, and support justice, truth and reparation for victims.

In this context, the Special Rapporteur's mandate is vital but not sufficient. The HRC should urgently establish a robust gender-responsive investigative and accountability mechanism with a mandate to: a) investigate and establish facts and root causes of past and ongoing crimes under international law and gross human rights violations and abuses, including any gendered dimensions of such violations and abuses; b) collect, analyze, consolidate and preserve evidence of past and ongoing grave violations and abuses to support future prosecutions; c) identify suspected perpetrators of such crimes; d) make specific recommendations on advancing accountability and enhancing access to justice for victims; and e) cooperate with national and international judicial processes. The HRC should not unduly restrict the

mechanism in terms of the time frame or scope of its investigations, ensuring impartiality and independence in its ability to investigate human rights violations and abuses by all actors in Afghanistan, respecting the equality of rights of all victims.

We are pleased to share in an annex to this letter a “question and answer” document explaining the scope of the proposed accountability mechanism, and addressing key questions in relation to its mandate, complementarity with other mechanisms, and added value.

Signed:

- Amnesty International
- Asian Forum for Human Rights and Development (FORUM-ASIA)
- Human Rights Watch
- International Bar Association's Human Rights Institute
- International Commission of Jurists
- International Service for Human Rights
- Women’s International League for Peace and Freedom
- World Organisation Against Torture (OMCT)



## Q&A: WHY SHOULD THE UN HUMAN RIGHTS COUNCIL ESTABLISH AN INDEPENDENT MECHANISM ON AFGHANISTAN?

13 September 2024

Ninety Afghan, regional and international non-governmental organizations have recently [renewed their appeal](#) to the UN Human Rights Council (HRC) to establish an independent investigative mechanism, complementary to the mandate of the Special Rapporteur on the situation of human rights in Afghanistan (Special Rapporteur), with a mandate to advance accountability for grave past and ongoing human rights violations and abuses, including specific violations and abuses against women and girls. This Q&A document seeks to address key questions that may arise as states consider this proposal during the HRC's 57th regular session (9 September-11 October 2024).

### WHAT MANDATE WOULD THIS MECHANISM HAVE?

The accountability mechanism should be designed to advance justice, accountability and reparation for past and ongoing grave human rights violations and abuses, some of which amount to crimes against humanity and war crimes, including grave violations and abuses against women and girls.

Specifically, it should have a mandate to:

- **Investigate and establish the facts, circumstances and root causes** of alleged serious human rights violations and abuses, and violations of international humanitarian law – past and ongoing – including a focus on any gendered dimensions of such violations and abuses, and related serious crimes under international law by all actors in Afghanistan;
- **Collect, consolidate, preserve and analyze evidence** of such violations and abuses, including those affecting women and girls, and to systematically record and preserve all information, documentation and evidence, including interviews, witness testimony and forensic material, consistent with the highest standards of international best practices, in view of any future legal proceedings;

- **Identify, where possible, those individuals and entities allegedly responsible** for violations or abuses of human rights and or violations of international humanitarian law, including where these amount to crimes under international law and other serious human rights violations, in Afghanistan, with a view to ensuring that those responsible are held accountable;
- **Make recommendations, in particular on accountability measures, all with a view to ending impunity and addressing its root causes**, and ensuring accountability, including, as appropriate, individual criminal responsibility, and access to justice for victims;
- **Support relevant judicial and other proceedings**, including in Member States, with competent jurisdiction, and through international bodies, including the International Criminal Court (ICC) and the International Court of Justice (ICJ).

In carrying out its mandate, the mechanism should be requested to:

- **Integrate a gender perspective, a child’s right perspective and a survivor-centered approach** throughout its work;
- **Report regularly to the UN Human Rights Council and General Assembly**, including with regards to findings of its investigations and recommendations for advancing accountability for past and ongoing crimes;
- **Coordinate with the Special Rapporteur** and other relevant UN human rights mechanisms in order to ensure the accountability mechanism is able to make use of all relevant information, analysis and reporting, with due consideration to their respective and distinct mandates;
- Give due regard to **ensuring that its efforts are complementary to those of other actors**, in particular the United Nations Secretary-General (UNSG) and his Special Representative and Head of the United Nations Assistance Mission in Afghanistan (UNAMA), the Office of the High Commissioner for Human Rights (OHCHR) and the Special Rapporteur, and the ICC.

The accountability mechanism should be provided with adequate resources and expertise necessary to carry out its mandate, including to:

- collect and preserve the integrity of **evidence** to a standard that may ultimately become admissible in court;
- ensure a gender-responsive approach, and effectively investigate the **gendered dimensions** of violations and abuses;
- carry out robust **remote investigations**, including with digital and forensic investigative expertise.

### **HOW WOULD THIS COMPLEMENT THE WORK OF THE SPECIAL RAPPOREUR?**

The [UN Special Rapporteur on the situation of human rights in Afghanistan](#) has a vital mandate to: monitor, document and report on violations and abuses; make recommendations to improve the situation; and support and advise civil society, particularly women human rights defenders. As the Special Rapporteur noted in his update to HRC56, he “regularly [raises] human rights concerns with the Taliban,” and is able to respond quickly in response to policy developments or on individual cases, issuing public statements or communicating directly with the de facto authorities. He continues vital work to raise awareness and press for a coordinated

response to the specific situation facing women and girls, that he has described as “gender apartheid.”

As we have seen in other situations (e.g. Myanmar, Belarus, Iran, Syria), the mandate of such an independent mechanism would be distinct, but complementary, to this work. It would focus primarily on the collection, analysis, consolidation and preservation of evidence of violations of international human rights and humanitarian law, committed in Afghanistan, the identification of potential perpetrators for further investigation by judicial authorities (at national and international levels), and recommendations and guidance on steps to advance accountability and deliver justice to victims and their families.

### **HOW WOULD THE MECHANISM COMPLEMENT THE WORK OF UNAMA AND THE ICC INVESTIGATION ON AFGHANISTAN?**

The proposed investigative mechanism is designed to address gaps in accountability and documentation that neither the United Nations Assistance Mission in Afghanistan (UNAMA) nor the International Criminal Court (ICC) presently cover.

#### **Scope and Focus**

UNAMA’s mandate includes monitoring and documenting human rights violations and abuses across Afghanistan, focusing on civilian protection, and reporting on the impact of the conflict. It compiles and analyzes data related to human rights conditions, however, this valuable data is largely inaccessible and remains underutilized.

The Office of the Prosecutor at the ICC has prioritized investigations of the Taliban and Islamic State – Khorasan Province (ISKP). While essential, this narrow focus does not address the broader range of human rights violations that amount to crimes under international law within its mandate. The ICC is also likely to bring only a limited number of cases in any particular investigation given its global mandate. The proposed investigative mechanism would complement the ICC’s work by documenting these wider violations, identifying additional perpetrators, and providing detailed evidence that could strengthen the ICC’s existing investigations and potentially lead in the future to expanding their scope, while contributing to justice efforts elsewhere, for example, under universal jurisdiction.

#### **Complementary Mandates**

The mechanism would fill a gap by focusing specifically on collecting, preserving, and analyzing high legal standards of proof of evidence in line with international requirements. Unlike UNAMA, which balances documentation with ongoing engagement with the Taliban de facto authorities, the mechanism would prioritize accountability, even in politically sensitive areas, without the operational constraints faced by UNAMA. It would also, unlike UNAMA, analyze and investigate allegations of human rights violations and abuses to a standard for use in legal proceedings, both at the international level and in national courts.

#### **Enhanced Coordination and Access**

Furthermore, the mechanism's independence and focus on evidence collection, consolidation and preservation would complement UNAMA's human rights monitoring and reporting by taking on tasks UNAMA cannot risk addressing publicly, such as identifying perpetrators.

### **Preserving Evidence and Broadening Accountability**

A key role of the mechanism alongside sharing information with existing accountability initiatives, like the ICC, would be to preserve evidence for future accountability proceedings, including if the political landscape shifts providing new opportunities for justice. This complements both UNAMA's work, which must remain diplomatically cautious, and the work of the ICC Office of the Prosecutor by creating a reliable repository of evidence for future prosecutions.

By focusing on a wider range of violations, the mechanism could also serve to amplify efforts calling on the ICC Office of the Prosecutor to pursue additional cases and lines of inquiry, ensuring that justice is sought for human rights violations and abuses by all actors.

### **HOW WOULD SUCH A MECHANISM ACTUALLY ADVANCE ACCOUNTABILITY FOR THESE CRIMES GIVEN THE CURRENT CHALLENGES?**

As noted by Special Procedures in a [recent joint statement](#), "avenues for justice within Taliban-controlled Afghanistan [are] virtually non-existent." It is therefore imperative that more is done at international level to advance access to justice for victims of ongoing and past grave human rights violations and abuses. In his oral update to the Human Rights Council on 9 September, the UN High Commissioner for Human Rights similarly said: "A key factor underlying these and other violations is the persistent lack of accountability in Afghanistan, over decades, for human rights violations and abuses committed by multiple actors...Accountability is a powerful deterrent to future violations. Given the pressing need for action to prevent the recurrence of human rights violations and abuses, and to redress the rapid decline of rights and freedoms across the country, I believe that a comprehensive approach to accountability is needed – spanning both national and international action."

The proposed mechanism would facilitate such efforts by taking on the function of collecting and preserving evidence to a standard that could be admissible in courts. At present no such independent international comprehensive mechanism exists to collect and preserve evidence, and evidence of crimes is being lost every day, significantly affecting and even precluding the possibility of prosecution.

The work of the mechanism could support the following accountability avenues:

- **International Criminal Court:** Evidence or other information collected could be made available to the ICC.
- **International Court of Justice:** In the case of *The Gambia vs. Myanmar* at the ICJ, where the investigations of the former FFM on Myanmar, and evidence collected by the IIMM, have been made available to parties to the litigation. Information and evidence gathered by a similar mechanism for Afghanistan could be used by parties in any future

proceedings at the ICJ, including under the Convention on the Elimination of All Forms of Discrimination against Women, regarding the situation in Afghanistan.

- ***National courts through universal jurisdiction and prosecution of nationals***

The International, Impartial and Independent Mechanism for Syria has substantially contributed to cases in European courts. The Afghanistan mechanism could support investigations and prosecutions in national jurisdictions by identifying individuals credibly implicated in crimes under international law and other serious human rights violations and also promote accountability through non-judicial measures such as evidence-based and targeted sanctions.

### **THE TALIBAN TOOK POWER IN AUGUST 2021, WHY WOULD THE MECHANISM NEED A MANDATE TO LOOK BEFORE THEN?**

In pursuing justice there should be no hierarchy of victims. As Afghanistan's long history of impunity for war crimes over more than four decades makes clear, it is crucial that impartial and independent justice is delivered to victims of grave international crimes, regardless of where in Afghanistan they were/are being committed, and by whom. As the High Commissioner noted in his 9 September update, "generations of Afghans, under successive administrations, have been denied truth, justice, reparation and guarantees of non-recurrence for the suffering that has been inflicted on them."

In the 46 years since the armed conflicts in Afghanistan began, beyond the International Criminal Court, there has been no serious effort, international or domestic, to hold perpetrators accountable for crimes against humanity and war crimes that have included summary executions, enforced disappearances, indiscriminate bombing, torture, mass rape, gender persecution, and other atrocities. Some of these crimes are ongoing. For example, ongoing enforced disappearances.

Taliban crimes predate August 2021, and a failure to address the crimes of the pre-2021 period also risks marginalizing the victims, creating a rural/urban hierarchy and sidelining certain kinds of crimes, including the many attacks the Taliban (and ISKP) carried out targeting civilians.

Western countries who fought in Afghanistan have been reluctant to hold their forces accountable for serious human rights violations and abuses, with Australia the only country to make some progress. Afghans across the board have pointed to the failure to hold warlords and others accountable as another example of entrenched impunity that has undermined peace and stability in Afghanistan.

There can be no place for double standards. All victims of all perpetrators should have an equal right to justice. The credibility of the international response on Afghanistan requires a holistic and non-selective approach to justice and accountability, including for women who have faced some of the most egregious crimes both previously and now.