



## QUESTIONS & ANSWERS ON THE ESTABLISHMENT OF AN INDEPENDENT INTERNATIONAL ACCOUNTABILITY MECHANISM FOR AFGHANISTAN

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### INTRODUCTION

Since taking power in August 2021, the Taliban have imposed ever-more extreme restrictions on human rights. The rights of women and girls have been especially affected: they have been barred from education beyond sixth grade and many forms of employment, and banned from [singing](#), [reading aloud](#), or even being heard outside their houses. LGBTQI+ people face arbitrary detention, extortion, torture and other ill-treatment and unlawful killing. Taliban forces have [summarily executed and forcibly disappeared](#) former government employees, especially security officers. Ethnic and religious minorities face significant risks of persecution and discrimination. Journalists, human rights defenders, and protesters, particularly women, face harassment, arbitrary detention, and violent reprisals. The Taliban have imposed cruel and inhuman punishments, including public executions, flogging and other forms of corporal punishment. The ongoing humanitarian crisis, compounded by economic collapse and the Taliban's ban on women aid workers, has led to widespread poverty and food insecurity. Women and girls face limits on their freedom of movement that impacts their access to health care, resulting systemic abuses of reproductive rights and the right to health more generally.

As noted in the recent United Nations Office of the High Commissioner for Human Rights ([OHCHR](#)) [stocktaking report](#) on accountability options and processes for human rights violations and abuses in Afghanistan, addressing long-standing and entrenched impunity for past and ongoing human rights violations and abuses in the country is essential to ensure victims' rights to justice, truth and reparation. It is also crucial for long-term sustainable peace, development and reconciliation, establishing the rule of law, preventing recurrence, and rebuilding trust among the full range of members of Afghan society.

The latest resolution on Afghanistan ([57/3](#)), adopted by the UN Human Rights Council (HRC) by consensus in October 2024, provides a blueprint for the action that is needed going forward. It stresses

the “urgent and imperative need to ensure accountability, by bringing perpetrators of crimes involving violations and abuses of human rights and violations of international humanitarian law to justice through a comprehensive, multidimensional, survivor- and victim-centered, gender-responsive approach to accountability efforts, applying a comprehensive approach to transitional justice, and to prevent and redress human rights violations and abuses.” Moreover, it specifically recognizes the need to “strengthen existing mechanisms and to give consideration to ensuring the capacity for collecting, preserving and analyzing evidence of the most serious international crimes and violations of international law in a way that could be used to facilitate future accountability and transitional justice processes.”

Since 2021, Afghan and international civil society organizations have emphasized the need for an independent international accountability mechanism with the mandate to do just that – to investigate and collect, preserve and analyze evidence of grave violations and abuses in Afghanistan, with a view to advancing accountability. Most recently, ahead of the 57<sup>th</sup> session of the UN HRC, a coalition of over 90 Afghan, regional and international human rights organizations and human rights defenders [called on the UN HRC to take action to establish such a comprehensive accountability mechanism on Afghanistan](#) without further delay. Such a mechanism could be a key tool in addressing the entrenched impunity at the heart of the current crisis, advancing accountability, and supporting access to justice, truth and reparation for victims. It would be distinct and complementary to the vital mandate of the UN Special Rapporteur on Afghanistan, and would also [complement](#) and support ongoing or future efforts at the International Criminal Court, the International Court of Justice, and at the national level, including through the use of universal (or other form of extraterritorial) jurisdiction in the courts of third countries.

This document provides further details of the mandate such a mechanism should have, its added value, and how it would build on and complement existing efforts.

## 1. WHAT MANDATE SHOULD THIS MECHANISM HAVE?

The independent international accountability mechanism on Afghanistan should be designed to advance justice, accountability and reparation for past and ongoing serious human rights violations and abuses, some of which amount to crimes under international law, including crimes against humanity and war crimes, including the ongoing serious violations and abuses against women and girls. Specifically, the mechanism should have a mandate to:

- **Investigate and establish the facts, circumstances and root causes** of the past and ongoing alleged serious violations and abuses of international human rights law and violations of international humanitarian law, and other crimes under international law, by all actors in Afghanistan, and should include a focus on the gendered dimensions of such violations and abuses;
- **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 international standards and best practices, in view of any future legal proceedings;
- **Identify, where possible, those individuals and entities allegedly responsible** for serious violations and abuses of international human rights law and violations of international humanitarian law and other crimes under international law, with a view to ensuring that they are held accountable in proceedings that fully respect the right to a fair trial, without recourse to the death penalty;
- **Make recommendations on, among others, accountability options** with a view to ending impunity for violations and abuses, and addressing their root causes, and ensuring the right to an effective remedy and to justice, truth and reparations for victims, survivors and their families;
- **Support relevant judicial and other proceedings**, including in national courts through the use of universal and other forms of extraterritorial jurisdiction, and through international judicial institutions, 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;
- Report regularly to the UN HRC and the General Assembly, including with regard to its investigations and recommendations for advancing accountability for past and ongoing crimes;
- Coordinate with the UN Special Rapporteur on the situation of human rights in Afghanistan and other relevant UN human rights mechanisms in order to ensure the independent international accountability mechanism is able to use 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 UN 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), the Special Rapporteur on Afghanistan, and the ICC.

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

- Collect, analyze, consolidate 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; and
- Carry out robust remote investigations, including with digital and forensic investigative expertise.

## **2. HOW WOULD THIS MECHANISM COMPLEMENT THE WORK OF THE UN SPECIAL RAPPORTEUR ON AFGHANISTAN?**

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 UN Special Rapporteur noted in his update to Human Rights Council 56 session, he “regularly [raises] human rights concerns with the Taliban,” and is able to respond quickly to policy developments or on individual cases, issuing public statements or communicating directly with the Taliban. He continues vital work to raise awareness about and press for a coordinated response to the specific situation facing women and girls, which he and other UN human rights mechanisms have described as “gender apartheid.”

As evident in other situations, such as Myanmar, Belarus, Iran and Syria, the mandate of an independent international accountability mechanism would be distinct from, but complementary, to the UN Special Rapporteur’s important work. It would focus primarily on the collection, analysis, consolidation and preservation of evidence of violations and abuses of international human rights law and violations of international 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, survivors and their families. It could enhance efforts to establish the facts and document patterns of violations and abuses; provide victims and survivors with a platform, support and legitimation; and offer some level of deterrence.

## **3. HOW WOULD SUCH A MECHANISM’S WORK ADVANCE ACCOUNTABILITY?**

The role of the mechanism would be to investigate, collect, analyze, consolidate and preserve evidence to a standard that can be admitted in court and that meets international requirements in order to assist relevant authorities leading investigations and prosecutions against suspected perpetrators of serious crimes. As a mechanism created by the UN HRC, its mandate would not be associated with a police force, a prosecutor or a court. It would not have the power to arrest, prosecute or try individuals.

Given the current absence of such a mechanism, evidence of crimes under international law in Afghanistan 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 (ICC):** Evidence or other information collected could be made available to the ICC to support its ongoing or future [investigations](#) into war crimes and crimes against humanity in Afghanistan.
- **International Court of Justice (ICJ):** In the case of *The Gambia vs. Myanmar* at the ICJ, information gathered by the investigations of the UN HRC’s Fact-Finding Mission on Myanmar and the Independent Investigative Mechanism for Myanmar (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 brought against the Taliban authorities before the ICJ under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). There are real prospects for such a case now that Germany, Australia, Canada and the Netherlands have announced a dispute with the State of Afghanistan under CEDAW.
- **Domestic courts:** Evidence or other information collected could also be made available to national investigators and prosecutors exercising universal and other forms of extraterritorial jurisdiction for crimes under international law and jurisdiction over crimes committed by national military personnel and others.

In addition to the collection and preservation of evidence, the identification of alleged perpetrators would also be an important tool to support and advance criminal prosecutions against those responsible for crimes under international law. For example, it could help to examine the criminal responsibility of specific individuals within the Taliban for the serious human rights violations against women and girls, some of which amount to the crime against humanity of gender persecution. In addition to supporting criminal investigations and possible prosecutions, this work could contribute to the adoption of travel restrictions and other targeted sanctions against specific individuals, under the condition that these be applied in a manner consistent with international human rights law.

#### **4. WHY IS IT SO IMPORTANT FOR THE MECHANISM TO BE ABLE TO INVESTIGATE PAST AS WELL AS ONGOING CRIMES UNDER INTERNATIONAL LAW COMMITTED IN AFGHANISTAN?**

Genuine justice for the victims of human rights violations and abuses in Afghanistan would be seriously undermined by double standards or cherry-picking in investigations and prosecutions. All victims should have equal access to justice, without a hierarchy of victims. The credibility of the international response to Afghanistan requires a holistic and non-selective approach to justice and accountability, including for women and girls, who have faced crimes under international law and other serious human rights violations and abuses both now and in the past. It is crucial that impartial and independent justice is delivered to victims of crimes under international law, regardless of where and when in Afghanistan they were committed, and by whom.

As noted in the OHCHR report presented at the 57th session of the UN HRC, “following four decades of conflict and widespread human rights violations and abuses and violations of international humanitarian law committed by multiple perpetrators, generations of Afghans have been denied truth, justice, reparation and guarantees of non-recurrence for gross violations of international human rights and serious violations of international humanitarian law.”<sup>1</sup>

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<sup>1</sup> Report of the Office of the United Nations High Commissioner for Human Rights: The human rights situation in Afghanistan (UN doc. A/HRC/57/22, Para 58).

Taliban crimes predate August 2021, and a failure to address the crimes of the pre-2021 period also risks marginalizing the victims and sidelining certain kinds of crimes, including the many attacks the Taliban and other armed groups committed against civilians.

The OHCHR report also underlines the responsibility of states involved in past international military interventions in Afghanistan “to ensure accountability, justice, remedy and reparations for violations committed by their personnel in Afghanistan.” There has yet to be meaningful justice anywhere for alleged crimes under international law committed by members of the armed forces of such states. Victims of these crimes – which include extrajudicial executions, enforced disappearances and torture and other ill-treatment – should have equal access to justice; states of origin of any suspected perpetrator of crimes under international law should hold such individuals accountable. The mechanism could be a tool in that regard and address a major existing gap, as the ICC has also deprioritized investigating allegations concerning members of international military forces.

Moreover, Afghans across the board have pointed to the failure to hold to account warlords and others implicated in serious human rights violations and abuses in Afghanistan as another example of entrenched impunity that has undermined peace and stability in the country.

Recognizing the complexity of the situation, the need for “rebuilding trust among the full range of members of Afghan society,” and the right to justice of all victims of crimes under international law, the OHCHR set out a series of principles that should guide international efforts to advance accountability. In a report requested by consensus by the HRC, the OHCHR affirmed that “a comprehensive approach should encompass all the different periods of the conflict and responsibilities of all parties and perpetrators.”<sup>2</sup> States should heed this advice, presented in a report that was requested by consensus by the HRC.

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<sup>2</sup> Report of the Office of the United Nations High Commissioner for Human Rights: The human rights situation in Afghanistan (UN doc. A/HRC/57/22, Para 60).