



Afghanistan Under the Taliban: The Crime Against Humanity of Gender Persecution

Since taking over Afghanistan in August 2021, the Taliban have committed numerous human rights violations, particularly against the country's women and girls. Human Rights Watch has concluded that many of the abuses against women and girls amount to crimes against humanity of persecution based on gender.

Crime Against Humanity of Gender Persecution

Crimes against humanity are part of customary international law and were first codified in the charter of the Nuremberg International Military Tribunal of 1945. The purpose was to prohibit crimes “which either by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied...endangered the international community or shocked the conscience of mankind.”¹

There is currently no international convention on crimes against humanity. The Rome Statute of the International Criminal Court (ICC) outlines a range of prohibited acts that constitute crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”² The Rome Statute defines attack as a “course of conduct involving the multiple commission of acts [referred to the list of crimes] pursuant or in furtherance of a State or

¹ History of the United Nations War Crimes Commission and the Development of the Laws of War (1943), p. 179, quoted in Rodney Dixon, “Crimes against humanity,” in *Commentary on the Rome Statute of the International Criminal Court* (O. Triffterer, ed.) (1999), p. 123.

² Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 7(1), The acts are: “Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

organizational policy to commit such attack.”³ Afghanistan became a party to the Rome Statute in February 2003.

In addition to the ICC, crimes against humanity can also be prosecuted in ad hoc international courts that have jurisdiction, the domestic courts of the country where the crimes took place, and in other countries’ courts in which the principle of universal jurisdiction applies.

Under the Rome Statute, the attack against a civilian population underlying the commission of crimes against humanity must be widespread *or* systematic; it need not be both.⁴ “Widespread” refers to the scale of the acts or number of victims. A “systematic” attack indicates “a pattern or methodical plan.” The Rome Statute specifies 10 crimes against humanity plus “[o]ther inhumane acts of a similar character.”

The crime of persecution is “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity,”⁵ based on “political, racial, national, ethnic, cultural, religious, gender...or other grounds that are universally recognized as impermissible under international law.”⁶ Persecution operates as an umbrella term that encompasses other constitutive acts so long as they are committed with discriminatory intent. The statute limits the crime to applying only “in connection with” other crimes identified under it. The customary international law definition of persecution includes no such limitation.⁷

The ICC’s “Policy on the Crime of Gender Persecution” (2022) states that “gender persecution is committed against persons because of sex characteristics and/or because

³ Ibid., art. 7(2)(a).

⁴ International Criminal Tribunal for Rwanda (Appeals Chamber), *The Prosecutor v. Jean-Paul Akayesu*, Case ICTR-96-4-A, ICTR Trial Chamber, September 2, 1998, para. 579; International Criminal Tribunal for the Former Yugoslavia (ICTY), *Kordić & Čerkez*, Case IT-95-14/2, ICTY Trial Chamber, February 26, 2001, para. 179; International Criminal Tribunal for Rwanda, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case ICTR-95-1-A, ICTR Trial Chamber, May 21, 1999, para. 123.

⁵ Rome Statute, art. 7(2)(g), <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>.

⁶ Ibid., article 7(1)(h).

⁷ *Prosecutor v. Kupreskic et al.* Case No. IT-95-16-T, International Criminal Tribunal for the former Yugoslavia (ICTY), January 14, 2000, available at: <https://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf> (accessed May 14, 2020), paras 580-581.

of the social constructs and criteria used to define gender.”⁸ The policy notes that perpetrators use gender-based crimes:

to *regulate or punish* those who are perceived to transgress gender criteria that define “accepted” forms of gender expression manifest in, for example, roles, behaviors, activities, or attributes. These criteria often regulate every aspect of life, determining the extent of individuals’ freedom of movement, their reproductive options, who they can marry, where they can work, how they can dress and whether they are simply allowed to exist.⁹

As with all forms of persecution, discrimination fundamentally underlies the crime of gender persecution. Gender persecution enforces social constructs through imposed discriminatory regulations that violate fundamental rights.¹⁰ The court first charged gender persecution in 2019 in a case involving forced marriage and sexual violence in Mali.¹¹

Individual criminal liability can extend beyond those who carry out the acts to those who order, assist, facilitate, aid, and abet the offense. Under the principle of command or superior responsibility, civilian and military officials including at the top of the chain of command can be held criminally responsible for crimes committed by their subordinates when they knew or should have known that such crimes were being committed but failed to take all necessary and reasonable measures to prevent the crimes or punish those responsible.¹²

Gender Persecution in Afghanistan

The crime against humanity of persecution targeting women and girls in Afghanistan has been manifested in various ways:

⁸ International Criminal Court, “Policy on the Crime of Gender Persecution,” December 7, 2022, p. 3 <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>.

⁹ Ibid., p. 4 (emphasis added).

¹⁰ ICC Office of the Prosecutor’s policy paper on gender persecution n, December 2022, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>.

¹¹ “ICC prosecutes Islamist militant on groundbreaking gender-based charges,” Guardian, April 12, 2018, <https://www.theguardian.com/law/2018/apr/12/icc-prosecutes-islamist-militant-al-hassan-ag-abdoul-aziz-ag-mohamed-ag-mahmoud-gender-persecution>.

¹² Rome Statute, art. 28.

- Restrictions on freedom of movement, expression, and association;
- Restrictions on employment;
- Restrictions on dress;
- Bans on education;
- Arbitrary arrests and violations of the right to liberty.

Human Rights Watch’s research on Afghanistan since 2021 has found that the Taliban’s treatment of women and girls meets the four requirements for crimes against humanity as set out under the Rome Statute: (1) that the attack is “widespread or systematic”; (2) that the attack is directed against a “civilian population”; (3) that the acts are committed “with knowledge of the attack”; and (4) that the acts are “pursuant to or in furtherance of a State or organizational policy to commit such attack.”

Widespread or systematic: In Afghanistan, the Taliban authorities are responsible for crimes that are part of both a widespread and systematic attack against women. The policies, with some variation based on locale, affect all women and girls in the country, making the attack widespread. The attack is systematic in that it has been carried out through a series of decrees adopted since the Taliban takeover in August 2021.

Specific Civilian Population: Women and girls in Afghanistan constitute a specific civilian population.

Knowledge of the attack: The specific intent of the Taliban to target women is evident in the promulgation of decrees, instructions, and orders that limit women’s rights, which the Taliban have reaffirmed in oral statements.

Pursuant to an organizational policy: The Taliban restrictions have been imposed on women and girls through various written or announced decrees since August 2021:

- September 18, 2021: education restricted for girls beyond grade six;
- December 23, 2021: instructing drivers (men) not to accept to drive women without “proper hijab” and forbidding women without a *mahram* (a male family member chaperone) from travelling more than 72 kilometers;
- March 27, 2022: limiting access of women and girls to parks;
- March 27, 2022: banning women from boarding domestic and international flights without a *mahram*;

- May 7, 2022: requiring women to observe “proper hijab,” preferably by wearing a *chadari* (a non-fitted black garment with face covering) or not leaving the home without a reason (“the first and best form of observing hijab”);
- August 23, 2022: women government workers told to stay home from work;
- November 10-11, 2022: women prohibited from using gyms, entering parks in Kabul;
- December 20, 2022: right of women to attend university “suspended”;
- December 22, 2022: girls banned from all forms of education beyond grade six;
- December 24, 2022: right of women to work with national and international nongovernment organizations “suspended”;
- April 4, 2023: Afghan women banned from working for the United Nations.¹³

While men in Afghanistan have also been subject to serious violations of their human rights, the underlying discrimination against women is evident from the all-encompassing restrictions targeting women.

- Women are permitted to work in a very limited number of jobs, and that number has steadily shrunk. Women can work in some roles in health and education, but even these opportunities have been increasingly constrained by Taliban restrictions. Men face few restrictions on employment.
- With respect to dress codes, women must [cover themselves](#) almost completely or face severe punishment; men may [face punishment](#) for not having a beard but otherwise face no evident restrictions.
- The Taliban’s ban on education for women and girls beyond sixth grade also limits their opportunities for future employment, risking their complete elimination from many important areas including health care, education, technology, and law. Men and boys face no such bans.
- Women and teenage girls are prohibited from traveling more than 72 to 78 kilometers from their homes or on domestic and international flights [without a mahram](#). In practice, Taliban security forces have stopped and beaten women found traveling without a *mahram* much closer to home. Women are also [prohibited](#) from public parks, gyms, amusement parks, and other spaces. Men face no restrictions on travel.

¹³ See full list at United States Institute of Peace, “Tracking the Taliban’s (Mis)Treatment of Women,” <https://www.usip.org/tracking-talibans-mistreatment-women>.

Persecution as a crime under the Rome Statute: To be considered a crime under the Rome Statute, persecution must be committed in connection with any other crime against humanity or any other crime within the jurisdiction of the ICC. The relevant Rome Statute crimes committed in connection with gender persecution in Afghanistan could include: imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; torture; enforced disappearance; and other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Imprisonment, Enforced Disappearance, Torture: In Afghanistan, women and some men who have protested against Taliban policies violating women's rights have frequently been detained.¹⁴ In some cases, women have been held in unacknowledged incommunicado detention for up to 40 days, amounting to enforced disappearance.¹⁵ Among them: activist Nadima Noor, who was detained incommunicado for three weeks in February 2022; Parwana Ibrahimkhel, who was detained on January 19, 2022 and held incommunicado until February 11, 2022; and at least 35 women activists along with some of their relatives who were detained following protests in February 2022 and held incommunicado for one to three weeks. Women who were detained said Taliban authorities subjected them to threats and beatings, and assaulted and administered electric shocks to detained male relatives.¹⁶

Other inhumane acts: While reliable statistics are hard to obtain, the Taliban's systematic violations of women's rights are having a devastating impact on the mental health of many

¹⁴ United Nations, "Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls," A/HRC/53/21, June 15, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>; Human Rights Watch, "Afghanistan: Women Protesters Detail Taliban Abuse," October 20, 2022, <https://www.hrw.org/news/2022/10/20/afghanistan-women-protesters-detail-taliban-abuse>.

¹⁵ United Nations, "Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls," A/HRC/53/21, June 15, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>; United Nations Assistance Mission in Afghanistan, "Human Rights in Afghanistan, 15 August 2021-15 June 2022," July 2022, https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf.

¹⁶ Human Rights Watch, "Afghanistan: Women Protesters Detail Taliban Abuse," October 20, 2022, <https://www.hrw.org/news/2022/10/20/afghanistan-women-protesters-detail-taliban-abuse>.

women and girls. Cut off from education and their plans for their future, or pushed out of jobs that gave them not only the ability to support their families but also a sense of independence, purpose, and accomplishment, many women and girls now describe themselves as virtual prisoners in their homes. The new barriers they face to access health services, including requirements that a *mahram* escort them to appointments and the shrinking supply of female healthcare professionals, compounds the mental health crisis and also reduces access for women and girls to treatment for all health needs.