



*The Crime Against Humanity
of Gender Persecution Series*

VOLUME ONE
**Gender Persecution
in Afghanistan:
A Crime Against
Humanity**

PART ONE:

Severe Deprivation of
the Fundamental Rights
to Education, Assembly,
and Expression

March, 2023

*Institute for Gender, Law,
and Transformative Peace*

CUNY SCHOOL OF LAW



Table of Contents

I. Introduction	2
II. Gender Persecution: Elements of the Crime	5
III. Taliban Policies and Discriminatory Gender Ideology	8
IV. Taliban Fundamental Rights Violations Amounting to Gender Persecution	13
A. Right to Education	13
1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights	13
2. Element Two: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such	17
3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law	18
4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court	20
B. Right to Peaceful Assembly	24
1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights	24
2. Element Two: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such	28
3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law	29
4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court	32

C. Right to Freedom of Expression	36
1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights	37
2. Element Two: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such	41
3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law	43
4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court	47

This report is part of The Crime Against Humanity of Gender Persecution Series by the Institute on Gender, Law, and Transformative Peace at the City University of New York (CUNY) School of Law. This series analyzes crimes against humanity of persecution based on gender in different conflict or other atrocity settings. Published in March 2023, *Gender Persecution in Afghanistan: A Crime Against Humanity Report (Part One)* focuses on the deprivation of three fundamental rights that may amount to gender persecution in the context of Afghanistan, and specifically acts or crimes committed by the Taliban. These three fundamental rights are the right to education, the right to assembly and the right to expression.

This report was authored by Lisa Davis, Associate Professor of Law, Co-Director of the Human Rights and Gender Justice Clinic, and founding Faculty Adviser for the Institute at CUNY Law School, and JM Kirby, Director of Advocacy at MADRE, an international feminist organization. Research contributions were made by Farzana Ali, Laura Baron-Mendoza, Danny Bradley, Elyse Dye, Anna Kim, Hannah Kohn, Shelby Logan, Aubrey Mayo, Laura Mendez, Aura Soto Peguero, Gillian Rowland-Kain, and Paloma Soria

If this is done to a racial group in any country, we will be asking questions about persecution as a crime against humanity. What do we call it when it happens to half the population on grounds [of] their gender?¹

– Chile Eboe-Osuji, Former President and Appeals Judge, International Criminal Court, responding to the Taliban’s denial of education and other fundamental rights to women and girls in Afghanistan.

Your Honour is right. It is a crime against humanity. It is gender persecution.²

– Dr. Rosemary Grey, Senior Lecturer, Sydney Law School, responding to Eboe-Osuji.

I. Introduction

“[T]he worst country in the world to be a woman or a girl,” is how the United Nations (UN) Special Rapporteur on the situation of human rights in Afghanistan recently described Afghanistan.³ After seizing power, the Taliban banned women from political participation and from most jobs, excluded most girls from education past grade six, and eliminated women’s right to attend higher education.⁴ They all but eliminated gender-based violence services and legal protections,⁵ and imposed mahrams, or male guardians on girls and women leaving their homes.⁶ The Taliban

has also outlawed protests by women and their supporters who oppose the new restrictions.⁷ Men, women, boys, and girls must adhere to strict gendered dress codes and other appearance regulations, with the Taliban calling for full cover burqas for women and girls.⁸ Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+⁹ people have no legal protections and face heightened danger. The Taliban’s stated policy is to flog, stone or otherwise kill people deemed “homosexual.”¹⁰

While gender inequality and gender-based violence crimes are not new in Afghanistan,¹¹

1 Chile Eboe-Osuji, Twitter, (December 20, 2022).

2 Rosemary Grey, Twitter (December 22, 2022), (*responding to Chile Eboe-Osuji*).

3 United Nations (UN) General Assembly, Third Committee Highlights Human Rights Violations in Several Nations, Underscoring School Attacks, Arbitrary Arrests, Detentions, GA/SHC/4359 (October 26, 2022).

4 Amnesty International, “Death in slow motion: Women and girls under Taliban rule” (July 2022), pp. 5-6; Alissa J. Rubin, “Taliban Complete Interim Government, Still Without Women”, *New York Times* (September 21, 2021); Amnesty International, “Afghanistan: Taliban’s backtrack on school re-opening for girls irreversibly impacts their future” (March 28, 2022); Stefanie Glinski and Ruchi Kumar, “Taliban U-turn over Afghan girls’ education reveals deep leadership divisions”, *The Guardian* (March 25, 2022); “Afghanistan: Taliban ban women from universities amid condemnation”, *BBC* (December 21, 2022).

5 Amnesty International, “Afghanistan: Survivors of gender-based violence abandoned following Taliban takeover – new research” (December 6, 2021).

6 UN Human Rights Council, Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, A/HRC/51/6 (September 9, 2022), para. 24; Amnesty International, “Death in slow motion: Women and girls under Taliban rule: Women and girls under Taliban rule” (July 2022), p. 30.

7 Akhtar Mohammad Makoi, Peter Beaumont and Patrick Wintour, “Taliban ban protests and slogans that don’t have their approval”, *The Guardian* (September 8, 2021); Zeba Siddiqui and Parniyan Zemaryalai, “Protests get harder for Afghan women amid risks and red tape”, *Reuters* (October 4, 2021); David Zucchino and Yaqoob Akbary, “Threatened and Beaten, Afghan Women Defy Taliban With Protests”, *New York Times* (January 24, 2022); “Taliban disperses Afghan women’s march for ‘work and freedom’”, *Al Jazeera* (August 13, 2022).

8 Arwa Ibrahim, “In Afghanistan, Taliban diktat sparks debate about women’s attire”, *Al Jazeera* (January 26, 2022); Human Rights Watch, “Afghanistan: Taliban Deprive Women of Livelihoods, Identity” (January 18, 2022); Belquis Ahmadi and Mohammad Osman Tariq, “How the Taliban’s Hijab Decree Defies Islam”, *United States Institute of Peace* (May 12, 2022). See Part II Gender Persecution: Elements of the Crime discussion on intent and targeted group.

9 The plus sign represents people who identify with the broader LGBTQI community, but use other terms for self-identification. While the acronym LGBTQI+ is inclusive of a broad range of persons, it is not exhaustive, nor is it a universally standard acronym. For the purposes of this report, LGBTQI+ includes nonbinary persons.

10 Paul Ronzheimer and Giorgos Moutafis, “This Taliban judge orders stoning, hanging, hands chopped off”, *BLD* (July 12, 2021); Vic Chiang, “Afghanistan: LGBTQ people fear for their lives under Taliban rule”, *Deutsche Welle* (October 8, 2021).

11 Prior to 2021, Afghan girls and women faced significant barriers to education and employment and gender-based violence survivors faced inadequate protection and justice. An estimated 87% of Afghan women experienced domestic violence, according

local women's advocates secured some advances in the decades between the Taliban's ouster in 2001 and its takeover in 2021. These included greater political participation, increased access for girls to education, and a measure of justice and protection for some gender-based violence survivors.¹²

The Taliban takeover of Afghanistan in August 2021 represented a dramatic setback for gender equality that largely eliminated these gains. As fighters rolled into Kabul, Taliban members told international media they would respect women's rights "within the framework of Islam."¹³ Their promulgation and violent enforcement of discriminatory policies make clear that their understanding of that framework is in direct opposition to women, girls, and LGBTQI+ people's fundamental human rights, as well as to globally accepted interpretations of Islam.¹⁴ Of course, whatever their religious interpretation, under international law, their "[b]reaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture," including religion.¹⁵

From its initial period in power in the 1990s

through to today, the Taliban has used violence to enforce discriminatory gender regulations and policies. As described in depth in this briefing, Taliban members have committed torture, sexual violence and other inhumane acts targeting women, men, girls, boys, and LGBTQI+¹⁶ people, that they believe transgress their imposed gendered dress and appearance regulations. They have attacked girls' schools, killed girls' teachers, and sprayed acid in women and girl students' faces. The Taliban have routinely beaten, unlawfully arrested, held incommunicado, inhumanely treated and tortured women and girls who protest their discriminatory restrictions. They have subjected journalists reporting on women's demonstrations to similar treatment.

These and other acts likely amount to the crime against humanity of persecution on the basis of gender (gender persecution) under the Rome Statute (the Statute) of the International Criminal Court (ICC). As the only holistic charge that recognizes crimes committed on the basis of gender in the context of conflict and other atrocities, gender persecution is a vital tool for holding perpetrators accountable.¹⁷ By analyzing the evidence emerging from Afghanistan in

to a 2008 study. Tim Luccaro and Erica Gaston, "Women's Access to Justice in Afghanistan", *United States Institute for Peace* (2014), p. 6; Human Rights Watch, "Afghanistan: Girls Struggle for an Education. Insecurity, Government Inaction, and Donor Disengagement Reversing Vital Gains" (October 17, 2022); Amnesty International, "The World's Worst Places to be a Woman" (June 17, 2011); Daniel Moylan, "Afghanistan is Failing to Help Abused Women", *Foreign Policy* (May 1, 2015). People could be arrested and imprisoned for same-sex intimacy. The Human Dignity Trust, "Types of criminalisation: Afghanistan", *Human Dignity Trust* (last visited October 11, 2022).

- 12 Tim Luccaro and Erica Gaston, "Women's Access to Justice in Afghanistan", *United States Institute for Peace* (2014), pp. 5-7; Daniel Moylan, "Afghanistan is Failing to Help Abused Women", *Foreign Policy* (May 1, 2015).
- 13 "Afghan women to have rights within Islamic law, Taliban say", *BBC* (August 17, 2021).
- 14 The Taliban's interpretation contradicts globally accepted interpretations of Islam, as well as that of some of its own leadership. For example, the 57-state, multilateral Organization of Islamic Cooperation, condemned the Taliban's deprivation of women and girls' access to education, as did the influential International Fiqh Academy. Shadi Khan Saif, "Call for Islamic unity against Taliban's banning of women's HE", *University World News* (December 30, 2022); Recently, some of the Taliban de facto authorities' own ministries expressed opposition to its ban on women aid workers. Patrick Wintour, "UN suspends some Afghanistan programs after ban on female aid workers", *The Guardian* (December 28, 2022).
- 15 Office of the Prosecutor, **Policy on the Crime of Gender Persecution**, International Criminal Court (ICC) (December 7, 2022), para. 27 (hereinafter "Policy on the Crime of Gender Persecution"); Office of the Prosecutor, **Policy on Cultural Heritage**, International Criminal Court (ICC) (June 2021), fn. 8 (hereinafter "Policy on Cultural Heritage").
- 16 While LGBTQI+ persons can belong to women, girls, men and boys groups, they can also be targeted for belonging to LGBTQI+ groups. **Policy on the Crime of Gender Persecution**, para 5.
- 17 Other charges may also recognize discriminatory intent to commit prohibited acts, such as torture as a war crime. However, gender persecution is the only holistic charge available to uphold accountability for such crimes. Lisa Davis, "**Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTI Persons**", *William & Mary Journal of Women and the Law*, Vol. 24 (2018), pp. 544-547.

light of gender persecution's legal elements, the Taliban's discriminatory policies and conduct can be recognized as amounting to both grave human rights violations and to crimes against humanity, including the crime of persecution based on gender (gender persecution).

About this Report

This report begins with an explanation of the elements of the crime against humanity of gender persecution under the Rome Statute, and how a fundamental rights lens can help investigators, prosecutors, judicial actors, documenters, and advocates recognize it and holistically ensure justice. Next it describes the Taliban's policies depriving Afghans of fundamental human rights on the basis of gender, and the discriminatory ideology underpinning them. It also provides an overview

of the violent crimes they committed throughout their existence to enforce those policies.

The remaining sections provide in-depth analysis of the Taliban's acts to deprive Afghans of three fundamental rights—an incomplete list meant to be a representative sample—on the basis of gender: the rights to education, assembly, and expression. They describe the evidence demonstrating that the Taliban has promulgated policies to deprive each of these fundamental rights on a discriminatory basis, and provide samples of crimes they committed in order to enforce the rights violations. Each of the three sections contains an analysis of the Taliban's actions in light of the elements of the crime of gender persecution. This analysis focuses on the first four elements of persecution under the Rome Statute, excluding the chapeau elements for crimes against humanity. This is the first in a



series of reports and briefing papers analyzing gender persecution in Afghanistan as well as other conflict and atrocity settings. Sources for this document include publicly available human rights reports, news articles, international case law and legal standards, and text produced by the Taliban.¹⁸ All acts and crimes discussed in this report have been documented or alleged by their sources, but have not been proven in a court of law. This report refers to these acts or crimes as such for the purposes of analyzing them as possible crimes of gender persecution.

Diverse forms of accountability may occur in response to conflicts and atrocities. However, before any accountability mechanism may commence there must first be agreement on what constitutes a crime or wrongdoing. It is not enough to hold perpetrators accountable for the harms they cause; we must also understand why crimes happen if we are to root out cycles of violence. The recognition of gender persecution as a crime can help visibilize victims/survivors¹⁹ who are targeted because of gender and other intersecting identities. As The ICC's Office of the Prosecutor's (OTP) Policy on the Crime of Gender Persecution (Policy on Gender Persecution) reminds us, "such crimes can reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by women, girls and LGBTQI+ persons."²⁰ By shedding light on gender persecution, we help unearth the discrimination underlying these

crimes and fueling conflicts, and demonstrate to the world that targeting women, girls, men, boys, and LGBTQI+ persons because of their gender is a crime against humanity.

II. Gender Persecution: Elements of the Crime

Persecution on the basis of gender (gender persecution) is a crime against humanity under the Rome Statute of the International Criminal Court (ICC).²¹ Persecution is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."²² To find persecution, the following elements must be proven:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the [Rome] Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph

18 In addition to spokesperson statements to media outlets, the Taliban provides evidence of its acts and its beliefs in social media accounts and websites that it controls. For example, Taliban officials report regularly through their social media that they are flogging people for such alleged "crimes" as homosexual and extramarital relationships. See, e.g., Supreme Court of Afghanistan, *Twitter* (December 22, 2022); Supreme Court of Afghanistan, *Twitter* (December 25, 2022). The Taliban also operates a website called "Al Emarah."

19 This Report uses the term "victim" as defined in Rule 85(a) of the Rome Statute and recognizes that persons who experience crimes or harms may identify with the term "victim" or with the term "survivor."

20 **Policy on the Crime of Gender Persecution**, para. 9.

21 UN General Assembly, **Rome Statute of the International Criminal Court** (July 17, 1998), Article 7(1)(h) (hereinafter "The Rome Statute" or "Statute").

22 **The Rome Statute**, Article 7(2)(g).

1, of the [Rome] Statute or any crime within the jurisdiction of the Court.

5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.²³

This report analyzes Taliban crimes that may amount to gender persecution under the first four elements, namely that: the perpetrators severely deprived one or more people of fundamental rights, by reason of the identity of a group or collectivity, on the grounds of gender, and in connection to any act under the Statute or crime within the ICC's jurisdiction. This report does not analyze the chapeau elements for crimes against humanity.

The ICC's Office of the Prosecutor's (OTP) Policy on the Crime of Gender Persecution (Policy on Gender Persecution) notes the link between elements one—severe fundamental rights deprivations—and four—acts under the Statute or crimes within the ICC's jurisdiction:

The threshold for element 1 of gender persecution is always met when the crime/ crimes under the Statute is/are committed with discriminatory intent. This is because all crimes under the Statute are violations of fundamental rights, and all persecutory conduct violates the fundamental right to be free from discrimination. Taken together, the violation of the right to be free from

discrimination in connection with any relevant crime prohibited by the Statute always constitute a severe deprivation of fundamental rights. Regardless, for the severity assessment, fundamental rights deprivations based on discriminatory grounds should always be considered cumulatively.²⁴

While evidence of individual crimes may therefore speak to both elements one and four, a persecution analysis requires a broad fundamental rights lens. Such an approach to analyzing gender persecution requires consideration of all fundamental rights deprivations—not only those that are listed acts under the Statute—as well as any connected gender discrimination. By incorporating a thorough analysis of fundamental rights deprivations, investigators can more easily demonstrate how individual acts or crimes fit into a broader persecutory pattern. Ascertaining whether prohibited acts or crimes were intended to deprive fundamental rights on the basis of gender, aids investigators and judicial actors in ensuring that discrimination at the root of atrocities is exposed, and that victims and their rights are more fully recognized. For example, the killing of both women and men employed at a girls' school in an attack on the facility may be understood not only as a murder, but also as a gender persecutory act, by examining its link to the perpetrator's discriminatory deprivation of girls' fundamental right to education.²⁵

An array of international and regional legal sources can guide investigators and courts' consideration of fundamental rights violations. The Policy on Gender Persecution lists as examples:

²³ International Criminal Court, **Elements of Crimes** (2013), Article 7(1)(h).

²⁴ **Policy on the Crime of Gender Persecution**, para. 39.

²⁵ **Policy on the Crime of Gender Persecution**, para. 80. Also of importance, in an example like this, is that the "targeted group" under element 2 can include those merely affiliated with the targeted group, as discussed later in this report. **Policy on the Crime of Gender Persecution**, para. 43.

...the Universal Declaration of Human Rights; 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 for the Elimination of Racial Discrimination; Convention on the Rights of Persons with Disabilities; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights; and the European Convention on Human Rights, as well as other rights under customary international law.²⁶

When unpacking targeted group (element 2) and intent (element 3) it is important to keep in mind their differences. Intent to discriminate is demonstrated when the perpetrator specifically intended to treat a targeted gender group or member of that group unequally.²⁷ For example, a perpetrator may demonstrate discriminatory intent when creating, upholding or imposing a regulation that dictates how men and women should dress. In this case, the investigator would assess whether the regulation was discriminatory on its face, or if the regulation was imposed in a discriminatory way in its application. Either (or both) may demonstrate specific discriminatory intent.

Targeted group, on the other hand, is who the perpetrator targets for discrimination. The Policy on Gender Persecution reminds us that “persons

may be targeted for gender persecution because of sex characteristics and/or because of the social constructs and criteria used to define gender roles, behaviours, activities and attributes.” It also notes that “[p]ersons may be targeted for gender persecution when they are perceived to have or carry (gender) criteria prohibited by the perpetrator; or are perceived to not have or carry (gender) criteria required by the perpetrator.”

Discriminatory dress policies that regulate how men and women should dress, for example, may be imposed on women, girls, men, boys, and LGBTQI+ persons and all subset groups as targeted groups. LGBTQI+ persons can belong to women, girls, men and boys groups, and can also be targeted for belonging to LGBTQI+ groups. For this reason, this report uses “women, men, girls, boys, and LGBTQI+ persons” when naming different targeted groups.

The three rights discussed in this report—education, assembly and expression—are a sample, and do not represent the full range of fundamental rights that the Taliban violate on a discriminatory basis. Investigators should, as just one example, also analyze the ways in which the Taliban’s imposition of the mahram system—a system enforced through violence—is linked to the deprivation of women and girls’ fundamental right to freedom of movement, and to their role in aiding and abetting domestic violence, among other abuses. The treatments of these three rights in section four of this report are therefore meant to provide a roadmap for identifying the severe deprivations of fundamental rights that may amount to gender persecution. This is the first in a series of reports and briefing papers

26 **Policy on the Crime of Gender Persecution**, para. 37.

27 **Policy on the Crime of Gender Persecution**, para. 46. “Unless the accused is charged under article 25(3)(a) as a direct perpetrator, a co-perpetrator and/or an indirect perpetrator, there is no requirement to prove that the accused had a specific intent to discriminate.” *Id.*, at para. 47.

analyzing gender persecution in Afghanistan.

III. Taliban Policies and Discriminatory Gender Ideology

Throughout its existence, whether in control of all or parts of Afghanistan, the Taliban has implemented regulations and policies that discriminate on the basis of gender. This history is worth reviewing for evidence of gender persecution. During its first period in control of Afghanistan, between 1996 and 2001, the Taliban violently enforced a misogynist and homophobic interpretation of Islam.²⁸ Their restrictions on women and girls' rights largely removed women from the public sphere. Women faced corporal punishment for "adultery" if seen walking with a male non-relative, for example.²⁹ Same sex intimacy was outlawed, and gendered appearance and dress requirements were enforced targeting women, girls, men, boys, and LGBTIQ+ people.³⁰ The Taliban punished those it found did not adhere

to their regulations through inhumane acts, torture, killing, and other crimes. As part of its enforcement mechanism, the Taliban empowered religious police from their Ministry for the Promotion of Virtue and the Prevention of Vice to publicly and arbitrarily punish women, girls, men, and boys for perceived transgressions.³¹ Taliban members also committed rapes, kidnappings, forced marriages, disappearances, and killings against women and girls, and aided and abetted domestic violence against them.³²

Following its 2001 ouster, the Taliban's often violent enforcement of gender discriminatory policies in areas it controlled became particularly acute as its resurgence gained strength, starting around 2005. Bans on women working and girls attending schools increased, alongside dress and appearance requirements for women, girls, men, and boys, accompanied with torture, death threats, killings, and other violence for perceived noncompliance.³³ In February 2010, founding

-
- 28 UNAMA and OHCHR, **Silence is Violence – End the Abuse of Women in Afghanistan** (July 9, 2010), pp. 5-6. There are interpretations of Islam and of Sharia that differ dramatically from that of the Taliban, in that they recognize and support women and girls' rights. Stavroula Kristina Kallini, "Being a Woman under Taliban's Theocratic Regime", HAPSc (December 2021), p. 1; Daniel Victor, "What is Sharia law, and what does it mean for Afghan women under the Taliban?", *New York Times* (August 30, 2021). See also, footnote 14.
- 29 The Taliban's rules also led to preventable deaths and impoverished countless women, particularly widows. See Chesmak Farhoumand-Sims, "Unfulfilled Promises: Women and Peace in Post-Taliban Afghanistan", *International Journal*, Vol. 62 (2007), pp. 643–663, 658; "The Taliban's War on Women: A Health and Human Rights Crisis in Afghanistan", *Physicians for Human Rights* (1998), pp. 30-34; A. Widney Brown and Laura Grenfell, "The International Crime of Gender-based Persecution and the Taliban", *Melbourne Journal of International Law*, Vol. 4 (2003), p. 350; Talya Friedman, "Cures to the Enigmatic Taliban Plague: Legal and Social Remedies Addressing Gender Apartheid in Afghanistan", *Loyola of Los Angeles International and Comparative Law Review*, Vol. 23 (2001), p. 81 and 89; Emma Graham-Harrison and Akhhtar Mohammad Makoi, "The Taliban took years of my life': the Afghan women living in the shadow of war", *The Guardian* (February 9, 2019); J. Godwin, "Buried Alive: Afghan Women Under the Taliban", *On the Issues*, Vol. 7 (1998).
- 30 Maura Reynolds, "Kandahar's Lightly Veiled Homosexual Habits", *LA Times* (April 3, 2002); "The Taliban's War on Women: A Health and Human Rights Crisis in Afghanistan", *Physicians for Human Rights* (1998), p. 12.
- 31 Human Rights Watch, "Afghanistan: Vice and Virtue Department Could Return" (18 July 2006); "Humanity Denied: Systematic Violations of Women's rights in Afghanistan", Human Rights Watch (October 2001), p. 22; Mitchell Prothero, "Taliban Quietly Bring Back Notorious Vice Ministry That Patrolled Streets With Whips", *Vice News* (September 9, 2021); "The Taliban's War on Women: A Health and Human Rights Crisis in Afghanistan", *Physicians for Human Rights* (1998), pp. 12, 31-34, and 52; Heather Barr, "For Afghan Women, the Frightening Return Of ' Vice and Virtue'", *Foreign Policy in Focus* (September 29, 2021); Alasdair Pal, "Taliban replaces women's ministry with ministry of virtue and vice", *Reuters* (September 17, 2021); "Women's Rights in Afghanistan: The Back Story", *Amnesty International* (July 27, 2022); J. Godwin, "Buried Alive: Afghan Women Under the Taliban", *On the Issues*, Vol. 7 (1998); "Stoning for Adultery, Execution for Tight Clothes: Taliban's Medieval Gender Rules for Afghan Women", *News18* (August 15, 2021); Payam-e-zan Reporters, "Reports from Afghanistan under the Taliban -1997", *RAWA* (1997); Maura Reynolds, "Kandahar's Lightly Veiled Homosexual Habits", *LA Times* (April 3, 2002).
- 32 "Stoning for Adultery, Execution for Tight Clothes: Taliban's Medieval Gender Rules for Afghan Women", *News18* (August 15, 2021); Talya Friedman, "Cures to the Enigmatic Taliban Plague: Legal and Social Remedies Addressing Gender Apartheid in Afghanistan", *Loyola of Los Angeles International and Comparative Law Review*, Vol. 23(2001), pp. 81, 84, and 88; Human Rights Watch, "Humanity Denied: Systematic Violations of Women's Rights in Afghanistan" (October 2001), p. 14.
- 33 Human Rights Watch, "The 'Ten-Dollar Talib' and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation" (2010), pp. 5-6; Human Rights Watch, "You Have No Right to Complain': Education, Social Restrictions, and Justice in Tali-

Taliban member Mullah Abdul Salam Zaeef told reporters that women's freedoms, including the right to work, are "corrupting." He affirmed the Taliban's view that women should not be able to choose with whom to work or socialize, and must be segregated from men.³⁴

The Taliban manual on education, obtained by human rights analysts in 2019, provides further documentation of its members' discriminatory views towards women and girls' rights. It prohibits "inappropriate and inaccurate subjects such as anti-jihad topics, immoral and anti-religion topics related to Muslim women, and subjects derived from the infidel laws."³⁵ The Taliban's provincial level guidelines provide more detail on what this means for school curriculums, stating for example, that information related to "sending women abroad and similarly, women rights issues during King Zahir Shah,"³⁶ should be removed from the curriculum. Under King Zahir Shah, girls schools were opened, women received the right to vote, and women were not required to wear traditional coverings.³⁷ Regarding the subject of "Women and Current Era," local Taliban guidelines state that, "in this subject, women have been motivated towards immoral corruption, and it should be considered null and void."³⁸ Provincial curriculum guidelines for Paktia call for text to align with the

Taliban's gender views, specifying that in the sentence "'Zarghona loves to study in Library,' the library should be changed to (home)."³⁹

In 2020, the Taliban Ministry for the Promotion of Virtue and the Prevention of Vice issued a manual delineating multiple gendered policies, including a prohibition on sex outside of marriage, and requirements that women and girls cover themselves fully and only go outside with a mahram.⁴⁰ While the manual calls for women and girls' rights to be protected, its other provisions and the Taliban's enacted policies belie any notion that they intend to uphold these rights protections. Still utilized by the Taliban, the manual also outlaws same-sex intimacy.⁴¹ In July 2021, Gul Rahim, a Taliban judge in central Afghanistan told a German newspaper that, "[f]or homosexuals, there can only be two punishments: either stoning, or he must stand behind a wall that will fall down on him. The wall must be 2.5 to 3 meters (8 to 10 feet) high."⁴²

As they gained control of more Afghan territory in 2021, Taliban fighters framed their policies as means to implement a "pure Islamic" governance system,⁴³ and clarified their anti-feminist views in writing. They describe feminism as a western tool to subvert Muslim cultures, and as incompatible

ban-Held Afghanistan" (June 30, 2020), p. 50.

34 Human Rights Watch, "The 'Ten-Dollar Talib' and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation" (2010), p. 29.

35 Rahmatullah Amiri and Ashley Jackson, "Taliban attitudes and policies towards education", *Center for the Study of Armed Groups* (February 2021), p. 19.

36 Rahmatullah Amiri and Ashley Jackson, "Taliban attitudes and policies towards education", *Center for the Study of Armed Groups* (February 2021), p. 20.

37 Harry Howard, "Is this finally the end of the Afghan royal family?", *Daily Mail* (August 31, 2021).

38 Rahmatullah Amiri and Ashley Jackson, "Taliban attitudes and policies towards education", *Center for the Study of Armed Groups* (February 2021), p. 20.

39 Rahmatullah Amiri and Ashley Jackson, "Taliban attitudes and policies towards education", *Center for the Study of Armed Groups* (February 2021), p. 20.

40 Human Rights Watch, "Afghanistan: Taliban 'Vice' Handbook Abusive" (October 29, 2021).

41 Human Rights Watch, "Afghanistan: Taliban 'Vice' Handbook Abusive" (October 29, 2021).

42 Paul Ronzheimer and Giorgos Moutafis, "This Taliban judge orders stoning, hanging, hands chopped off", *BILD* (July 12, 2021); Vic Chiang, "Afghanistan: LGBTQ people fear for their lives under Taliban rule", *Deutsche Welle* (October 9, 2021).

43 "What type of government do we want?", *Al-Emarah* (April 23, 2021); Dana Kamour and Meetra Qutb, "Women's Rights and Education under the Taliban", *London School of Economics* (September 27, 2021). See footnotes 14 and 25.

with Islam.⁴⁴ Meanwhile, in Taliban-controlled regions, Taliban fighters demanded that families and religious leaders provide them with lists of young women and girls for them to forcibly marry and sexually enslave.⁴⁵

After seizing Kabul in August 2021, the Taliban continued to broadcast misogynist beliefs, and to attempt to explain oppressive policies as “Islamic.”⁴⁶ Regarding their elimination of women’s political participation, Taliban Spokesperson Sayed Zekrullah Hashimi told media that, “[t]here is no need for women to be in the cabinet. . . You are burdening her with something that she is unable to carry out, she is not capable. What useful thing can come out of that?”⁴⁷ According to a private school administrator, the Taliban told him that certain subjects would be removed from girls’ curriculums, including engineering, vocational education and government studies.⁴⁸ When pressed about Afghan women and girls’ fears of leaving their homes due to the Taliban’s restrictions, the Taliban’s Interior Minister, Sirajuddin Haqqani said, “[w]e keep naughty women at home.”⁴⁹ When Afghan women demonstrate for their rights, the Taliban physically attack them and refer to them as “whores,”⁵⁰ a gendered term, meant to frame “good” women as invisible and silent.

The Taliban hold a view of “honor” that frames women and girls as sex objects who themselves are responsible for sexual violence against them, and who merit punishment if they don’t cover themselves,⁵¹ or better yet, remain home.⁵² The Taliban frames the elimination of the risk of exposure of any part of a woman’s body as more important than her ability to carry out any activity in public, and wields this as an excuse to deprive fundamental rights. When questioned in 2021 about its ban on women’s sports, for example, the deputy head of the Taliban’s cultural commission expressed concern about women athletes being photographed while not fully covered, saying “Islam and the Islamic Emirate [Afghanistan] do not allow women to play cricket or play the kind of sports where they get exposed.”⁵³

Since seizing power in August 2021, the Taliban have imposed and violently enforced a series of rights-violating restrictions on Afghans that demonstrate the continuity of a discriminatory gender ideology that restricts women to their homes and denies them a host of basic rights. De facto authority members prohibit women’s involvement in government. They told one woman government worker who tried to go to work, “[w]e don’t need women to work anymore.”⁵⁴ The Taliban disbanded the Ministry of Women’s

44 “Feminism as colonial tool”, *Al-Emarah* (April 28, 2021).

45 Dana Kamour and Meetra Qutb, “Women’s Rights and Education under the Taliban”, *London School of Economics* (September 27, 2021); Ruchi Kamar, “Taliban trying to force Afghan girls as young as 13 into marriage”, *The National News* (August 3, 2021).

46 “Liberalism is Unneeded for Women’s Rights”, *Al-Emarah* (August 23, 2021).

47 Kara Fox, “Afghanistan is now one of very few countries with no women in top government ranks”, *CNN* (September 10, 2021).

48 Victor Blue and David Zucchini, “A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools”, *New York Times* (September 20, 2021).

49 Jo Shelley, et al., “Top Taliban leader makes more promises on women’s rights but quips ‘naughty women’ should stay home”, *CNN* (May 19, 2022).

50 David Zucchini and Yaqoob Akbary, “Threatened and Beaten, Afghan Women Defy Taliban with Protests”, *New York Times* (January 24, 2022).

51 Sonia Ahsan-Tirmizi, *Pious Peripheries: Runaway Women in Post-Taliban Afghanistan* (2021), pp. 149, and 157-169; OHCHR and UN-AMA, **Silence is Violence – End the Abuse of Women in Afghanistan** (July 9, 2010), p. 2.

52 Belquis Ahmadi and Mohammad Osman Tariq, “How the Taliban’s Hijab Decree Defies Islam”, *United States Institute of Peace* (May 2022).

53 Akhtar Mohammad Makoi et al., “Taliban ban protests and slogans that don’t have their approval”, *The Guardian* (September 8, 2021).

54 Human Rights Watch, “Afghanistan: Taliban Deprive Women of Livelihoods, Identity” (January 18, 2022). While preventing women

Affairs (MOWA) and re-opened the Ministry for the Promotion of Virtue and Prevention of Vice in its place, the same entity that has violently punished those they perceived as failing to conform to their patriarchal regulations since their inception.⁵⁵ They largely barred women from working,⁵⁶ and eliminated education for most girls past grade six.⁵⁷ Domestic violence services have been all but eliminated, and victims no longer have access to legal protections.⁵⁸ The 2009 Elimination of Violence Against Women Law (EVAW), which imposed criminal penalties for child and forced marriages, domestic violence, and other violence against women is no longer enforced, and forced marriages are on the rise.⁵⁹ Reports have emerged of Taliban members themselves directly subjecting women and girls to gender-based violence, including forced marriage. In one high-profile case, evidence of Taliban spokesman Saeed Khosty's physical and sexual violence against a young medical student he forcibly married circulated on social media on August 30, 2021.⁶⁰

Further restricting women's ability to carry out daily survival activities and reinforcing patriarchal control over women and girls, the Taliban imposed mahrams, or male relative escorts on girls and women leaving their homes or traveling.⁶¹ Taliban members have forced men, women, boys, and girls to conform to strict dress and appearance regulations, including calling for women and girls to wear burqas.⁶² They enforce these standards through inspections, intimidation, and violence.⁶³

The Taliban issued an edict imposing criminal punishments on male relatives of women who are not covered, while declaring that "the best way to obey the hijab for women is to not go out of the home."⁶⁴ They also quickly outlawed protests by women who oppose the new restrictions⁶⁵ and punished those who did not comply. They have routinely beaten, unlawfully arrested, held incommunicado, inhumanely treated, and tortured women who protest against discriminatory regulations, including the bans

government workers from returning to their jobs and denying them their paychecks, Taliban officials initially forced some to nonetheless sign in at their old job sites monthly, purportedly so they could claim the women still worked there. David Zucchino and Yaqoob Akbary, "Threatened and Beaten, Afghan Women Defy Taliban With Protests", *New York Times* (January 24, 2022).

- 55 Heather Barr, "For Afghan Women, the Frightening Return of 'Vice and Virtue'", *Foreign Policy in Focus* (September 29, 2021); Alissa J. Rubin, "Taliban Complete Interim Government, Still Without Women", *New York Times* (September 21, 2021).
- 56 Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022).
- 57 "Afghanistan: Taliban's backtrack on school re-opening for girls irreversibly impacts their future", *Amnesty International* (March 28, 2022); Stefanie Glinski and Ruchi Kumar, "Taliban U-turn over Afghan girls' education reveals deep leadership divisions", *The Guardian* (March 25, 2022).
- 58 "Afghanistan: Survivors of gender-based violence abandoned following Taliban takeover – new research", *Amnesty International* (December 6, 2021).
- 59 Human Rights Watch, "Afghanistan: Ending Child Marriage and Domestic Violence" (2013), p. 3; Fahima Sirat, "Violence Against Women: Before and After the Taliban", *Oxford Human Rights Hub* (March 15, 2022); Zahra Joya and Rukhshana Media Reporters, "'No escape' for Afghan girls forced out of education and into early marriage", *The Guardian* (February 9, 2023).
- 60 "'Better to Die': Afghan Woman Accuses Taliban Official of Rape, Forced Marriage", *Radio Free Europe Radio Liberty* (September 2, 2022).
- 61 UN Human Rights Council, Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, [A/HRC/51/6](#) (September 9, 2022), para. 24; "Death in slow motion: Women and girls under Taliban rule", *Amnesty International* (July 2022), p. 20.
- 62 Arwa Ibrahim, "In Afghanistan, Taliban diktat sparks debate about women's attire", *Al Jazeera* (January 26, 2022); Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022).
- 63 Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022); Outright Action International, "A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans" (2023), p. 20-21.
- 64 Belquis Ahmadi and Mohammad Osman Tariq, "How the Taliban's Hijab Decree Defies Islam", *United States Institute of Peace* (May 2022).
- 65 Akhtar Mohammad Makoi, Peter Beaumont and Patrick Wintour, "Taliban ban protests and slogans that don't have their approval", *The Guardian* (September 8, 2021); Zeba Siddiqui and Parniyan Zemaryalai, "Protests get harder for Afghan women amid risks and red tape", *Reuters* (October 4, 2021); David Zucchino and Yaqoob Akbary, "Threatened and Beaten, Afghan Women Defy Taliban With Protests", *New York Times* (January 24, 2022); "Taliban disperses Afghan women's march for 'work and freedom'", *Al Jazeera* (August 13, 2022).

on girls' education and women's access to work, and imposition of the mahram system and dress regulations. Journalists covering these protests and other perceived supporters or affiliates have faced similar treatment.⁶⁶

In November 2022, the Taliban ordered instatement of corporal punishments.⁶⁷ Lists of crimes for which the Taliban report flogging people emphasize women's "moral behavior" and punish them for alleged crimes such as prostitution, escaping from home, or having "illegal relations."⁶⁸ Between November 18, 2022 and January 15, 2023, they reportedly flogged over 180 women, men, and children in public. All individuals received between 20 and 100 lashes for alleged crimes that included "violating codes of social behaviour."⁶⁹ On February 17, 2023, for example, the Taliban announced that it publicly flogged nine men and two women in Northern Badakhshan province for "moral crimes and adultery."⁷⁰ In November 2022, Taliban officials told news media that they flogged nine men and three women in a stadium in Logar province for "'moral crimes' including adultery, robbery and gay sex," with each receiving between 21 and 39 lashes.⁷¹ In November 2022, the Taliban publicly lashed a 22

year-old woman who refused to marry a Taliban members' son after the Taliban detained her purportedly for speaking to a man who was not her mahram.⁷²

These crimes have occurred amid a broader Taliban campaign of intimidation, coercion, and violence targeting women lawyers, human rights activists, service providers, and government workers, which has caused many to flee or go into hiding.⁷³ Taliban members have looted and appropriated domestic violence shelters, and have harassed and threatened their staff. They released imprisoned gender-based violence perpetrators, and jailed some survivors, while placing lawyers, judges and services providers who supported gender-based violence victims in danger of reprisal violence.⁷⁴ They have searched the offices of local non-governmental organizations (NGOs), seized computers, and warned imams that they must report on women who worked with foreign NGOs or who attempt to flee. A woman with an international non-governmental agency in Ghazni told human rights monitors that "[t]he Taliban have communicated their policies and informed [the organization] not to engage with human rights, women's rights, and other issues."⁷⁵

66 See § IV (B) below, Right to Peaceful Assembly.

67 According to the UN Special Rapporteur on Afghanistan, these punishments "constitute[] treatment that is contrary to universally recognized norms, which prohibit torture and other degrading, cruel and inhuman treatment or punishment." Richard Bennett, Report of the Special Rapporteur on the situation of human rights in Afghanistan, [A/HRC/52/84](#) (February 9, 2023), para. 52.

68 Pamela Constable, "Public execution, whippings in Afghanistan mark revival of Taliban punishments", *Washington Post* (December 9, 2022).

69 Richard Bennett, Report of the Special Rapporteur on the situation of human rights in Afghanistan, [A/HRC/52/84](#) (9 February 2023), para. 54.

70 Digital Desk, "Taliban Publicly Whips 11 People in Afghanistan's Badakhshan Province: Report", *RepublicWorld.com* (February 18, 2013).

71 Mattea Bubalo, "Three women among dozen publicly flogged in Afghanistan - Taliban official", *BBC News* (November 23, 2022).

72 Ruchi Kumar and Orooj Hakimi, "Return of Afghan floggings as Taliban takes a hardline path", *Al Jazeera* (December 10, 2022). Taliban officials report regularly through their social media that they are flogging people for such alleged "crimes" as homosexual and extramarital relationships. See, e.g., Supreme Court of Afghanistan, Twitter (December 22, 2022); Supreme Court of Afghanistan, *Twitter* (December 25, 2022).

73 Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022); Melissa Mahtani, "The Taliban cannot erase us' says winner of the International Women's Rights award", *CNN* (2022); Dalia Faheid, "These Female Afghan Politicians are Risking Everything for their Homeland", *NPR* (August 18, 2021); Shad Khan Saif, "Floggings to forced marriages - women's freedoms under threat from Taliban", *Thomas Reuters Foundation News* (August 16, 2021).

74 "Afghanistan: Survivors of gender-based violence abandoned following Taliban takeover - new research", *Amnesty International* (December 6, 2021).

75 Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022).

IV. Taliban Fundamental Rights Violations Amounting to Gender Persecution

This section analyzes the Taliban's acts to deprive Afghans of three fundamental rights on the basis of gender: education, assembly and expression. These do not represent the full range of fundamental rights that the Taliban violate on a discriminatory basis, and the analysis provided here is a roadmap for investigating multiple fundamental rights deprivations that may amount to gender persecution. This report is the first in a series of reports and briefing papers analyzing gender persecution in Afghanistan. The following three sub-sections are organized by the first four elements of the crime of gender persecution under the Rome Statute, and does not include an analysis of the chapeau elements for crimes against humanity. The sub-sections describe evidence of Taliban regulations, acts and conduct that deprive each of these fundamental rights on a discriminatory basis, and acts or crimes they commit in order to enact or enforce the rights violations.

A. Right to Education

It is clear from evidence that local human rights monitors have gathered and from the statements and actions Taliban members have claimed ownership of, that the de facto authority's severe deprivation of the right to education may amount to gender persecution as a crime against humanity. In line with the first four elements of the crime, the below sections describe how the Taliban severely deprived women and girls of

the fundamental right to education, on the basis of gender, in connection with crimes under article 7, paragraph 1, of the Rome Statute and other acts or crimes within the International Criminal Court's jurisdiction.

1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

Taliban members deny women and girls the fundamental right to education. During their first period in power from 1996-2001, the Taliban denied all girls' education throughout Afghanistan. Following their ouster in 2001, women and girl students were permitted to attend schools and universities. The rate of girls in the student population went from essentially zero out of ten in 2001 to four out of ten by 2018, and the women and girls' literacy rate increased from 17 to 30% between 2011 and 2018.⁷⁶ As the Taliban seized regions of Afghanistan during its insurgency prior to August 2021, Taliban members again banned education for girls, sometimes including primary education, in areas they controlled.⁷⁷

Immediately following their return to power in Afghanistan in August 2021, the Taliban swiftly acted to deny girls' access to education across the country.⁷⁸ In September 2021, the Taliban's Education Ministry issued a statement announcing that schools were reopening for male teachers and boys in grades seven to twelve, but made no announcement regarding the reopening of schools for women teachers and girls past sixth grade.⁷⁹ In May 2022 the acting Minister of Interior and deputy Taliban

76 UNESCO, "The right to education: What's at stake in Afghanistan?", [ED/PLS/EDP/2021/062Rev.2](#) (2021), p. 5.

77 Human Rights Watch, "You Have No Right to Complain": Education, Social Restrictions, and Justice in Taliban-Held Afghanistan" June 30, 2020), p. 50.

78 "Afghanistan: the fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban", *Amnesty International* (September 21, 2021), p. 8.

79 Emma Graham-Harrison, "Taliban ban girls from secondary education on Afghanistan", *The Guardian* (September 17, 2021).

chief Sirajuddin Haqqani, affirmed the ban, claiming that the Taliban had to establish conditions to ensure the “honor” and security of girls prior to reopening their secondary schools.⁸⁰ Although some girls have been able to return to secondary school in limited places, such as Balkh province, almost 80% of Afghan girls have been deprived of secondary school education.⁸¹ In December 2022, the Taliban banned women from attending universities.⁸² To enforce these bans, the Taliban have killed and beaten teachers and school officials, sprayed students and teachers with acid, and committed torture, inhumane acts, enforced disappearance, and unlawful imprisonment against those who demonstrate in support of girls’ education, those report on the protests as well as other supporters and affiliates. (See § IV(A)(4), below).

Education is a Fundamental Right

International human rights law recognizes that the fundamental right to education is the primary means to equal social participation and economic advancement, and that it ensures individuals’ effective participation in a democratic society.⁸³

Accordingly, the deprivation of the right to education may amount to persecution. As far back as World War II, the Military Tribunal at Nuremberg recognized that the deprivation of the right to education and of the right to teach can be components of persecution.⁸⁴ The International Criminal Tribunal for the former Yugoslavia (ICTY)’s Kvočka Trial Chamber Judgment cited the Nuremberg Tribunal finding that persecution can include not only physical acts, but other discriminatory acts such as denying people educational or employment opportunities.⁸⁵ Most recently, the OTP Policy on the Crime of Gender Persecution notes that perpetrators may commit gender persecution through the prohibition of girls’ education by, for example, bombing girls’ educational facilities.⁸⁶

The Taliban’s Deprivation of the Fundamental Right to Education Meets the Severity Standard

Article 7(2)(g) of the Statute defines “persecution” as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.⁸⁷ When examining

80 Ayaz Gul, “Taliban leader indicates reopening girl’s schools depends on dress codes”, *VOA News* (May 17, 2022).

81 Hugo Williams and Ali Hamedani, “Afghanistan: Girls’ despair as Taliban confirm secondary school ban”, *BBC* (December 8, 2021); Human Rights Watch, “Afghanistan: Taliban Deprive Women of Livelihoods, Identity” (January 18, 2022); “80% of secondary education school girls in Afghanistan missing out on education, one month since Taliban ban extended”, *Save the Children* (April 21, 2022). In January 2022, Taliban spokesperson Zabihullah Mujahid announced that girls’ schools would fully reopen on March 21, 2022. Nonetheless, at the start of the day they were set to return to school, as many girls in and above sixth grade were apparently in their classrooms, the Taliban’s education ministry announced the reopening would be postponed “until further notice when a comprehensive plan, in accordance with Sharia and Afghan culture, is developed.” “Afghanistan: Taliban’s backtrack on school re-opening for girls irreversibly impacts their future”, *Amnesty International* (March 28, 2022); Stefanie Glinksi and Ruchi Kumar, “Taliban U-turn over Afghan girls’ education reveals deep leadership divisions”, *The Guardian* (March 25, 2022).

82 “Afghanistan: Taliban ban women from universities amid condemnation”, *BBC* (December 21, 2022).

83 Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, **OEA/Ser.L/V/II** (November 17, 1988), Article 13; UN General Assembly, Convention on the Rights of the Child, **Resolution 44/25** (November 20, 1989), Article 29(1)(a)-(e); UN General Assembly, International Covenant on Economic, Social and Cultural Rights, **Resolution 2200A(XXI)** (December 16, 1966), Article 13(1) and Article 2200A.

84 The Ministries Case, Case No. 11, *United States v. Weizsaecker et al.*, Opinion and Judgment and Sentence, Green Series, Mil. Trib. **No. 41949-04-13**, Vol. 14 at p. 471.

85 *Prosecutor v. Kvočka*, Trial Chamber Judgment, **IT-98-30/1-T**, para. 186 (citing *U.S. v. Ernst von Weizsaker*, Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 Nuremberg, October 1946–April 1949, Vol. XIV (1949), p. 471). See also, *Prosecutor v. Tadić*, Trial Chamber Judgment, **IT-94-1-T** (May 7, 1997), para. 710 (affirming that gender persecution may involve “attacks on political, social and economic rights...”).

86 **Policy on the Crime of Gender Persecution**, para. 80. See also, Office of the Prosecutor, **Policy on Children**, International Criminal Court (ICC) (November 2016), para. 87 (hereinafter “Children’s Policy Paper”). Note that such bombings may be charged as War Crimes under article 8 of the **Rome Statute** and may also constitute acts of gender persecution.

87 **The Rome Statute**, Article 7(2)(g).



the severity standard for the deprivation of the right to education alone, several factors may weigh in, including, for example, length of time. A deprivation of education for one week, for example, may not meet the severity standard, but deprivations for longer time periods may. While case law has yet to establish a temporal standard for severity of a deprivation of the fundamental right to education, it can be assumed that the

standard is always met when a perpetrator unilaterally prohibits education for one protected group in perpetuity, as the Taliban has.⁸⁸

Regardless, the OTP Policy on the Crime of Gender Persecution is mindful that fundamental rights deprivations should always be considered cumulatively for the severity assessment. It reminds us that “Where possible, naming fundamental rights violations based on

88 Other factors may also contribute to the severity standard for denial of access to education, including poor quality of curriculum. Under international law, everyone has the fundamental right to a quality education, directed to the full development of their personality, talents and mental and physical abilities. UN Committee on Economic, Social, and Cultural Rights, **General Comment No. 13, The Right to Education**, E/C.12/1999/10 (1999), para. 6 (c); UN General Assembly, **Convention on the Rights of the Child**, Resolution 44/25 (November 20, 1989), Article 29(1)(d). This education must include “essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.” **World Declaration on Education for All**, Art. 1(1); cited in UN Committee on Economic, Social, and Cultural Rights, **General Comment No. 13, The Right to Education**, E/C.12/1999/10 (1999), paras. 9 and 22. It should prepare them for “responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.” UN General Assembly, **Convention on the Rights of the Child**, Resolution 44/25 (November 20, 1989), Article 29(1)(d). Secondary education should encompass “completion of basic education and consolidation of the foundations for life-long learning and human development,” and “prepare[] students for vocational and higher educational opportunities.” UN Committee on Economic, Social, and Cultural Rights, **General Comment No. 13, The Right to Education**, E/C.12/1999/10 (1999), para. 12.

discriminatory grounds that may cumulatively amount to a severe deprivation also produces a more accurate and holistic historical record of the abuses that occurred.”⁸⁹

The OTP also reminds us that this threshold is always met when acts or crimes prohibited under the Statute are committed with discriminatory intent.⁹⁰ This is because all crimes under the Statute are violations of fundamental rights and all persecutory conduct violates the fundamental right to be free from discrimination.⁹¹ Taken together, the violation of the right to be free from discrimination in connection with a violation of the right to education and any relevant crime prohibited by the Statute clearly constitutes a severe deprivation of fundamental rights.⁹²

In the Afghanistan context, denying women and girls education is not only a violation of the fundamental right to education, it is also a deprivation of the fundamental right to be free from discrimination. Rights are further deprived when such a policy is enforced through murder, torture, or inhuman treatment as has happened in Afghanistan. These deprivations should also factor into consideration of the severity standard.

Equal enjoyment of the right to education is universally recognized and guaranteed in international and regional legal instruments.⁹³ The right to be free from discrimination applies

to all aspects of education and encompasses all prohibited discrimination grounds, including gender.⁹⁴ Any one of these fundamental rights violations—whether denial of access to school or discrimination based on gender—on their own can meet the threshold. Together, the threshold is unquestionably met.

In the case of the Taliban, rights violations to enforce their education ban include crimes such as murder, torture, inhumane treatment, unlawful detention, and enforced disappearance. (See § IV(A)(4), below). Given that element one of persecution is met when crimes under the Statute are committed with discriminatory intent,⁹⁵ these crimes amount to severe deprivations of fundamental rights under element one of gender persecution.

Just as a victims' vulnerable status on the basis of gender (such as vulnerabilities of women and LGBTQI+ persons) may enhance the gravity of the crime of persecution, so can a victims' age.⁹⁶ Depriving girls their fundamental right to education has lasting harmful impacts on their health, well-being, and development,⁹⁷ compounding the deprivation's severity. Denial of access to education can also trigger other human rights violations, including the rights to decent work, adequate standard of living, access to food, housing, social security and other basic needs. Lack of access to education can make children more

89 **Policy on the Crime of Gender Persecution**, p. 5. See also, paras. 26, 33, and 39.

90 **Policy on the Crime of Gender Persecution**, para. 39.

91 **Policy on the Crime of Gender Persecution**, para. 39.

92 See **Policy on the Crime of Gender Persecution**, paras. 38-39.

93 Committee on the Elimination of Discrimination against Women, General Recommendation No. 36 on the right of girls and women to education, **CEDAW/C/GC/36** (November 16, 2017), paras. 16, 20, 24, 27, 29, 50, 63, and 81; UN Committee on Economic, Social and Cultural Rights, General Comment No. 13, **The Right to Education, E/C.12/1999/10** (1999), para. 31.

94 UN Committee on Economic, Social, and Cultural Rights, General Comment No. 13, **The Right to Education, E/C.12/1999/10** (1999), paras. 6(b), 31, and 34.

95 **Policy on the Crime of Gender Persecution**, para. 39; **Policy on the Crime of Gender Persecution**, para. 89.

96 **Policy on the Crime of Gender Persecution**, para. 8; *Prosecutor v. Bralo*, Sentencing Judgment, **IT-95-17-S** (December 7, 2005), para. 31.

97 Amanda L. Strayer, “Protecting Rights ‘in Small Places’: Why Depriving Girls of the Right to Education is Gender-Based Persecution and a Crime Against Humanity”, *Georgetown Journal of International Law*, Vol. 50 (2019), pp. 967-974.

vulnerable to exploitation and abuse, lower their future earnings, and reduce their access to healthcare, amongst other harms.⁹⁸ It is particularly harmful to girls due to its connection to early and forced marriage and the resulting dangers of early childbearing.⁹⁹ Education is therefore recognized as a basic human need, indispensable for the realization of other human rights.¹⁰⁰ Undoubtedly its deprivation is severe for all victims of the Taliban's discriminatory education ban, and additionally so for girls.

2. Element Two: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

Article 7(1)(h) of the Rome Statute criminalizes persecution by perpetrators that target a person or persons by reason of the identity of a group or collectivity, or that target the group or collectivity as such.¹⁰¹ The OTP Policy on the Crime of Gender Persecution affirms that the "'targeted group' should be viewed broadly. Not all targeted persons are required to be directly part of the targeted group: it is sufficient that they are sympathizers or affiliates of targeted members."¹⁰² Specifically, where "a perpetrator targets a school to prevent girls from attending, men who are teachers and staff at

that school may form part of the targeted group, where the grounds for targeting are based on gender."¹⁰³ The Policy on Gender Persecution further clarifies that "[i]t is also sufficient that the perpetrator perceives the person as a member or an affiliate of the targeted group."¹⁰⁴

In enacting and enforcing its ban on women and girls' education, the Taliban is targeting women and girls, and supporters or affiliates of women and girls' right to education. As described below, Afghan women and girl students have been the target of the Taliban's policy and violent enforcement, by reason of their identity as women and girls, and/or for their support of their right to education. The Taliban have also targeted teachers and other school personnel, by reason of either their perceived support or affiliation with women or girls' education. They have also targeted journalists, demonstrators, and their families, to punish those perceived to be supporting women and girls' education through protesting or reporting on demonstrations against the Taliban's prohibition. Some demonstrators and journalists have been additionally targeted on the basis of their identity as women and girls. All such victims of the ban or of the acts or crimes used to enforce the ban are members of the targeted group for the purposes of element two.

98 UN Human Rights Council, "They have erased the dreams of my children": children's rights in the Syrian Arab Republic, [A/HRC/43/CRP.6](#) (January 13, 2020), para. 6; Quentin Wodon, Claudio Montenegro, Hoa Nguyen, and Adenike Onagoruwa, "Missed Opportunities: The High Cost of Not Educating Girls", *World Bank* (July 2018), pp. 4-5; "UNICEF concerned by impact of school ban on girls' learning", *TOLO News* (May 4, 2022).

99 Quentin Wodon, Claudio Montenegro, Hoa Nguyen, and Adenike Onagoruwa, "Missed Opportunities: The High Cost of Not Educating Girls", *World Bank* (July 2018), pp. 4-5.

100 UN Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education, [E/C.12/1999/10](#) (1999), para. 1; European Court of Human Rights, [Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights](#) (April 2022), para. 8; World Economic and Social Survey, [The Basic Needs Development Strategy](#) (2010), p. 1.

101 [Policy on the Crime of Gender Persecution](#), para. 41; "The *Al Hassan* Pre-Trial Chamber noted that gender persecution acts may constitute, for example, the imposition of disproportionate sanctions against women, or the imposition of sanctions involving gender-specific violence. *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mohmoud*, [ICC-01/12-01/18](#) (September 30, 2019), paras. 177 and 697 (hereinafter "*Al Hassan*, Confirmation of Charges"). For instance, rape was used as a gender-specific sanction committed against women held in detention centres and forced into marriages. [Al Hassan, Confirmation of Charges](#), paras. 699-700; *id.*, footnote 51.

102 [Policy on the Crime of Gender Persecution](#), para. 43.

103 [Policy on the Crime of Gender Persecution](#), para. 43.

104 [Policy on the Crime of Gender Persecution](#), para. 44.

3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law.

Mental Elements for Gender Persecution

In addition to the intent required for chapeau elements, gender persecution also requires that the perpetrator:

- meant to cause a severe deprivation of fundamental rights or knew that it would occur in the ordinary course of events;
- had the specific intent to discriminate (targeting based on the statutory ground of gender)¹⁰⁵

Note however, that there are exceptions for proving specific intent to discriminate under modes of liability, which is only required for direct, co-, or indirect perpetrators. Perpetrators who, for example, order, induce, or aid its commission, may be charged with gender persecution without necessarily showing specific intent:

[U]nless the accused is charged under article 25(3)(a) as a direct perpetrator, a co[-] perpetrator and/or an indirect perpetrator, there is no requirement to prove that the accused had a specific intent to discriminate. However, the mental elements for other relevant modes of liability must be proven. It suffices that the perpetrators had the specific intent to discriminate, in that case.¹⁰⁶

Taliban members clearly intend to deprive women and girls of their fundamental right

to education through their discriminatory regulations, and their acts to promote and enforce them or to punish transgressors. Such policies and conduct demonstrate the intent to discriminate based on gender.

Evidencing Discriminatory Intent

According to the Policy on Gender Persecution, discriminatory intent may be evidenced, among other factors, through acts or statements of direct perpetrators, as well as by legislation, policies, or regulations promulgated by the perpetrator group, or public statements relating to the underlying crimes or persecutory acts.¹⁰⁷ It can also be inferred from targeting patterns, such as where crimes “are committed exclusively or predominantly against certain individuals or groups and/or not against others, or [involve] the separation of individuals based on their identifying gender characteristics. Intent and knowledge can also be inferred from prior or subsequent conduct.”¹⁰⁸ Specifically, “the disproportionate use of a persecutory conduct against one group based on gender,” may also evidence discriminatory intent.¹⁰⁹ It should be noted, however, that the lack of disproportionate use against one group is not evidence of the absence of gender persecution.¹¹⁰

The OTP makes clear that “motives do not undermine discriminatory intent.”¹¹¹ As such, the concepts of “motive” and “intent” should not be conflated. Moreover, “motive should not be conflated with the perpetrator’s determination to act by reason of gender. Intent to discriminate is demonstrated when the perpetrator specifically

105 [Policy on the Crime of Gender Persecution](#), para. 46.

106 [Policy on the Crime of Gender Persecution](#), para. 47.

107 [Policy on the Crime of Gender Persecution](#), para. 95.

108 [Policy on the Crime of Gender Persecution](#), para. 95.

109 [Policy on the Crime of Gender Persecution](#), para. 50.

110 [Policy on the Crime of Gender Persecution](#), para. 88.

111 [Policy on the Crime of Gender Persecution](#), para. 49.

intended to treat a targeted gender group or member of that group unequally” on the basis of gender.¹¹²

For example, while the Taliban’s motives for denying women and girls access to education may include living out their religious values and interpretation, or preserving “honor”, this does not negate their intention to treat women and girls unequally, namely by denying them access to education. Furthermore, “human rights violations prohibited under international law are not culturally determinative. Breaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture.”¹¹³ Thus, the Taliban’s justification for denying women and girls access to education as a fulfillment of religious or cultural interpretation does not exempt them from abiding by international law. It should be noted that such religious interpretation calling for discrimination against women and girls is not prevailing theological interpretation of Islamic law.¹¹⁴

Taliban members’ statements, acts, policies, and regulations as well as their conduct intentionally targeting based on gender, provide evidence of discriminatory intent. Through denial of women and girls’ access to education and through crimes singling out women, girls and affiliates of girls’ education, (See §IV (A)(4), below), the nature of their targeting evidences the Taliban’s intent to discriminate on the basis of gender.

Taliban members have also made their discriminatory intent and knowledge explicit through the enactment of policies, plans, rules, and regulations and through other means of expressing their gender criteria.¹¹⁵ After seizing power in August 2021, the Taliban took just a month to decide on a plan to allow boys to return to secondary school.¹¹⁶ Since then, no such plan exists for girls. Taliban officials’ claims that they need time to devise a plan to ensure safety and “honor” for girls (as opposed to boys) before allowing them to return to school, is evidence of their discriminatory gender beliefs. These claims are furthermore belied by the fact that Taliban members have only acted to exacerbate the discriminatory education ban by further barring women from attending universities.¹¹⁷

Taliban members’ statements demonstrating their belief that women and girls are intellectually inferior to men and boys also evince an intent to discriminate. For example, spokesperson Sayed Zekrullah Hashimi defended the Taliban’s elimination of women’s political participation by saying, “[t]here is no need for women to be in the cabinet. . . You are burdening her with something that she is unable to carry out, she is not capable. What useful thing can come out of that?”¹¹⁸ One can also infer that the Taliban believes women’s role is not to carry out work requiring sophisticated education, but rather to simply to serve husbands in their homes,

112 **Policy on the Crime of Gender Persecution**, para. 49.

113 **Policy on the Crime of Gender Persecution**, para. 27; **Policy on Cultural Heritage**, fn. 8 (citing the Report of the Special Rapporteur in the field of cultural rights, **A/HRC/31/59** (February 3, 2016), para. 27).

114 There are interpretations of Islam and of Sharia that differ dramatically from that of the Taliban, in that they recognize and support women and girls’ rights, and prominent Muslim entities, including the multilateral Organization for Islamic Cooperation have condemned Taliban policies. Stavroula Kristina Kallini, “Being a Woman under Taliban’s Theocratic Regime”, *HAPSc* (December 2021), p. 1; Daniel Victor, “What is Sharia law, and what does it mean for Afghan women under the Taliban?”, *New York Times* (August 30, 2021); Shadi Khan Saif, “Call for Islamic unity against Taliban’s banning of women’s HE”, *University World News* (December 30, 2022); Patrick Wintour, “UN suspends some Afghanistan programs after ban on female aid workers”, *The Guardian* (December 28, 2022). See also, footnotes 14 and 28.

115 See **Policy on the Crime of Gender Persecution**, para. 94.

116 “Afghanistan: the fate of thousands hanging in the balance: Afghanistan’s fall into the hands of the Taliban”, *Amnesty International* (September 21, 2021), p. 8.

117 “Afghanistan: Taliban ban women from universities amid condemnation”, *BBC* (December 21, 2022).

118 Kara Fox, “Afghanistan is now one of very few countries with no women in top government ranks”, *CNN* (September 10, 2021).

through their written policy that the best way for women to observe their imposed hijab rule is “to not leave home without necessity.”¹¹⁹

Other policies, acts, and statements additionally demonstrate their discriminatory intent, including past acts and conduct.¹²⁰ Taliban members have long sought to limit women and girls’ right to education, through restrictions on age, place, and manner in which girls are taught.¹²¹ In 1996, the Taliban banned girls’ education, a policy only lifted once the Taliban was ousted in 2001.¹²² Later, as its insurgency strengthened, the Taliban published a code of conduct in 2006 that instructed field commanders to attack schools that were not devoted solely to religious instruction, and to specifically target girls’ schools.¹²³ In 2009, after the Taliban moved into the Mirwais area and other parts of Kandahar, signs appeared in mosques reading, “Don’t Let Your Daughters Go to School,” just months before men believed to be Taliban attacked girl students with acid.¹²⁴

In May 2013, in the Khogyani district of Nangarhar province, the Taliban issued a letter threatening school personnel, teachers and students at a girls’ school with serious action,

including acid attacks on their faces, if girls continued to attend.¹²⁵ They also published a widely-distributed 2012 directive on school curriculum that stated that women and girls’ education is “not absolute.”¹²⁶ In 2018, the Taliban gathered girls’ school principals in Baraki Barak district in Logar province, and ordered that girls in grades seven through twelve stop attending school, and that all women teachers be replaced with male teachers.¹²⁷ Leading up to August 2021, as the Taliban consolidated control of areas including districts within Jawzjan, Kunar, Helmand, Logar and Zabul provinces, it used directives, intimidation, destruction of schools, and violence to implement its policy denying girls’ access to education.¹²⁸ Such elements of Taliban members’ background and prior conduct are indicative of relevant intent.¹²⁹ The Taliban’s current policies and crimes to enforce them make clear the Taliban is continuing to enact a policy to deny women and girls access to education on the discriminatory basis of gender.

4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court.

119 Belquis Ahmadi and Mohammad Osman Tariq, “How the Taliban’s Hijab Decree Defies Islam”, *United States Institute of Peace* (May 2022).

120 **Policy on the Crime of Gender Persecution**, para. 49.

121 Kate Clark, “Afghanistan Analysts Network, Who Gets to Go to School? (1): What People Told Us About Education Since the Taleban Took Over”, *Afghanistan Analysts Network* (January 26, 2022); S.Reza Kazemi and Kate Clark, “Who Gets to Go to School? (2): The Taleban and Education Through Time”, *Afghanistan Analysts Network* (January 31, 2022); Barnett Rubin and Clancy Rudeforth, “Enhancing Access to Education: Challenges and Opportunities in Afghanistan”, *NYU Center on International Cooperation* (May 2016), pp. 14-16; Rahmatullah Amiri and Ashley Jackson, “Taliban Attitudes and Policies Towards Education”, *Center for the Study of Armed Groups* (February 2021).

122 Kate Clark, “Afghanistan Analysts Network, Who Gets to Go to School? (1): What People Told Us About Education Since the Taleban Took Over”, *Afghanistan Analysts Network* (January 26, 2022).

123 Barnett Rubin and Clancy Rudeforth, “Enhancing Access to Education: Challenges and Opportunities in Afghanistan”, *NYU Center on International Cooperation* (May 2016), p. 9-10.

124 Dexter Filkins, “Afghan Girls, Scarred by Acid, Defy Terror, Embracing School”, *New York Times* (January 13, 2009).

125 UN Security Council, Report of the Secretary General on children and armed conflict in Afghanistan, **S/2015/336** (May 15, 2015), para. 46.

126 OHCHR and UNAMA, **Protection of Civilians in Armed Conflict: Mid-Year Report 2012** (July 2012), p. 33.

127 Global Coalition to Protect Education from Attack, “Education under attack 2020: A Global Study of Attacks on Schools, Universities, their Students and Staff, 2017-2019” (2020), pp. 99-100.

128 Bureau of Democracy, Human Rights and Labor, “Afghanistan 2021 Human Rights Report”, U.S. State Department (April 12, 2022), pp. 30-31; “Afghanistan: the fate of thousands hanging in the balance: Afghanistan’s fall into the hands of the Taliban”, *Amnesty International* (September 21, 2021), p. 9.

129 **Policy on the Crime of Gender Persecution**, para. 94.

With regard to element four, the OTP Policy on the Crime of Gender Persecution notes that “[g]ender persecution charges can capture a fuller range of criminality and serve to redress impunity gaps. Such charges may help to unearth a myriad of gender-based acts that may or may not be found within the scope of most statutory crimes.”¹³⁰ It also clarifies that “[g]ender persecution can be connected with crimes that take forms other than physical injury to persons, such as attacks on property or protected objects, for example, acts that target places important to the targeted group. Such places may include ... educational, social or health centers...”¹³¹

It is clear that element four is fulfilled when a perpetrator commits acts or crimes prohibited

under the Rome Statute such as torture or murder to enforce a severe deprivation of a fundamental right, as the Taliban has. As its de facto authority members consolidated control of regions of Afghanistan, and after seizing Kabul in August 2021, the Taliban announced multiple public policies and decrees denying women and girls their most basic rights, including the right to education beyond sixth grade.¹³² To enforce its ban on girls' education, the Taliban has resorted to violence in regions it controls. Human rights monitors have reported the Taliban's acts of murder, torture, unlawful imprisonment, enforced disappearance, and other inhumane acts in an effort to enforce the deprivation of women and girls' fundamental right to education.

130 [Policy on the Crime of Gender Persecution](#), para. 57.

131 [Policy on the Crime of Gender Persecution](#), para. 58.

132 "Afghanistan: the fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban", *Amnesty International* (September 21, 2021), p. 8.



As described in detail in section IV (B) on the right to peaceful assembly, since seizing power in August 2021, the Taliban have cracked down on the wave of largely women-led protests against its deprivations of women and girls' rights, particularly their right to education. Taliban officials have committed torture, inhumane treatment, unlawful imprisonment, and enforced disappearance against demonstrators standing up for girls' education and the journalists who cover them. In just one instance in Bamyan province, Taliban authorities tricked girl students and women's education supporters into attending an event under the pretext of discussing re-opening schools in April 2022. Once attendees arrived and realized the space was decorated to appear as an event in support of the Taliban, many protested and spoke out in favor of girls' education. The Taliban detained at least ten persons, eventually releasing three after a few days, but continuing to hold at least seven incommunicado.¹³³ Other examples of reported Taliban acts or crimes to enforce their deprivation of women and girls' fundamental right to education include the following:

- In December 2022, Taliban fighters beat men in Kandahar, who participated in widespread walk-outs from Afghan universities in protest of the Taliban's ban on women attending higher education.¹³⁴
- Two videos show alleged Taliban members killing school teachers after August 2021, one in Panjshir and another in Baghlan.¹³⁵ It is unclear if these were in relation to their enforcement of their ban on girls' education, but the killings should be further investigated.

- In areas under Taliban control in Farah Province in April 2019, men on motorcycles burned two girls' schools, indefinitely ending classes for around 1,700 girls. The Taliban's slogan, "long live the Islamic emirate," appeared near the site. The arsons occurred soon after the Taliban had threatened the province's deputy education director, and despite the provincial government's compliance with the militants' demands that they fire any male teachers that taught girls and replace them with women. Four other girls' schools in the province were attacked in the months prior.¹³⁶
- On August 26, 2018, the Taliban threatened girls' school principals in Logar, Badghis, and Badakhshan provinces, warning that girls from grades 7 to 12 were not permitted to attend school, and women teachers were not to teach certain grades. As a result of these threats, classes beyond grade six were suspended for girls and all women teachers were replaced with male teachers.¹³⁷
- On April 5, 2018, in Herat, the Taliban shot and killed the headmaster of a girls' high school. This occurred amid a documented five Taliban attacks on co-educational or girls' high schools in 2018, in the Farah or Herat provinces, where the Taliban burned schools or placed explosive devices inside them. The Taliban also made threats against girls' schools in at least three other instances in Logar, Badghis and Badakhshan provinces.¹³⁸
- In October 2016, in an attack the local police attributed to the Taliban, armed men entered

133 "Human Rights Watch calls for inquiry into fate of female protestors detained by Taliban", *The Print* (April 10, 2022); "Afghanistan: Two women detained and interrogated over protest against school closure for girls", *The New Arab* (April 8, 2022).

134 Shadi Khan Saif, "Call for Islamic unity against Taliban's banning of women's HE", *University World News* (December 30, 2022).

135 "Afghanistan dispatch: Taliban ignore real problems while invading private homes in arbitrary searches", *Jurist* (March 13, 2022).

136 Najim Rahim and David Zucchini, "Attacks on Girls' Schools on the Rise as Taliban Make Gains", *New York Times* (May 21, 2019).

137 OHCHR and UNAMA, **Protection of Civilians in Armed Conflict, Annual Report 2018** (February 2019), p. 15.

138 OHCHR and UNAMA, **Protection of Civilians in Armed Conflict, Annual Report 2018** (February 2019), p. 15.

a girls' school in Jawzjan province at night, beat the security guards, and set the building on fire. The men warned against allowing girls to attend the school. Nearly 500 girls had been attending the school.¹³⁹

- In January 2016, the Taliban attacked a school in Nangarhar province, using a bomb that blew out the school's windows. The Taliban left a letter in the school yard saying that girls should not attend school. The principal received several threatening letters.¹⁴⁰
- In 2013, in the Khogyani district of Nangarhar province, the Taliban issued a letter threatening acid attacks against school personnel, teachers, and students at a girls' school, if they continued to educate girls.¹⁴¹
- In 2012, the Taliban distributed a directive on education specifying that girls should not be educated beyond childhood.¹⁴² This position persisted, enforced across Afghanistan, in part, through intimidation and threats.¹⁴³
- In May 2011, in Logar province, the Taliban killed Khan Mohammed, the headmaster of a girls' school. Leading up to the assassination, the Taliban made several threats against Mohammed, warning him not to teach girls.¹⁴⁴
- In 2011, in Bati Kot, the Taliban threw acid on seven or eight teenage girls as they traveled to school. The Taliban left a letter at the local mosque addressed to the injured girls'

families, stating that the girls were too old to attend school. After this incident, two-thirds of the school's girls stopped attending.¹⁴⁵

- On November 12, 2008, six men circled the Mirwais School for Girls in Kandahar on motorcycles and threw acid at around eleven girls and four teachers on their way to school. Six victims were hospitalized. An attacker asked one of the victims, a 14 year-old, whether she was going to school before pulling away her burqa and spraying her face with acid. Although the Taliban have not claimed involvement in the attack, just after their militants moved into the area a few months earlier, posters appeared in local mosques warning parents not to send their daughters to school.¹⁴⁶
- In November 2008, motorcyclists targeted at least two girls' schools in Kandahar, throwing acid at students and faculty members. An attacker asked one of the victims whether she was going to school before attacking her. While the Taliban denied responsibility for the attack, there is evidence that at least two of the motorcyclists involved were reported to have had been paid by the Taliban.¹⁴⁷
- On September 26, 2006, Mullah Sadullah, a regional Taliban commander, asserted responsibility for shooting and killing Safia Amajan, head of Department for Women's Affairs in Kandahar, and a known girls'

139 AFP, "Armed Men Burn Down Girls' School in North Afghanistan", *The Guardian* (October 29, 2016).

140 Human Rights Watch, "'I Won't Be a Doctor and One Day You'll Be Sick:' Girls' Access to Education in Afghanistan" (October 17, 2017), p. 68.

141 UN Security Council, Report of the Secretary-General on Children and Armed Conflict in Afghanistan, **S/2015/336** (May 15, 2015), para. 46.

142 OHCHR and UNAMA, **Protection of Civilians in Armed Conflict: Mid-Year Report 2012** (July 2012), p. 33.

143 UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, **S/2015/336** (May 15, 2015), para. 33; UNAMA and OHCHR, **Protection of Civilians in Armed Conflict: Midyear Report 2016** (July 2016), p. 21.

144 "Taliban kill Afghan girls' school headmaster", *Reuters* (May 25, 2011).

145 Human Rights Watch, "'I Won't Be a Doctor and One Day You'll Be Sick:' Girls' Access to Education in Afghanistan", (October 17, 2017), p. 70.

146 Dexter Filkins, "Afghan Girls, Scarred by Acid, Defy Terror, Embracing School", *New York Times* (January 13, 2009).

147 Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber III, **ICC-02/17** (November 20, 2017), para. 120.

education advocate.¹⁴⁸ Amajan was a former girls' educator, and ran an underground school for girls during Taliban rule in the 1990s. Her high-profile assassination occurred amid rising Taliban violence against other government officers, civilians, schools, and teachers.¹⁴⁹

- On March 25, 2006, Mohammed Hanif, of the Taliban Leadership Council issued a statement threatening to attack schools. Hanif laid out the Taliban's opposition to girls' school: "Another matter worth pointing out is that failure to observe the Islamic veil at girls' schools, co-education and visits by the American forces to schools are not acceptable to any Afghan. Therefore, we are strongly opposed to it and cannot tolerate it."¹⁵⁰
- In January 2006, insurgents suspected to be Taliban dragged Malim Abdul Habib, a high school teacher at the Shaikh Mathi Baba School, a co-educational school in Zabul Province from his house. They stabbed him eight times, and beheaded him in front of his wife and children. Nabi Khushal, education director of Zabul Province, attributed the attack to the Taliban, citing posters they distributed in the town that demanded girls' schools close and that threatened to kill teachers.¹⁵¹
- In December 2005, gunmen believed to be Taliban dragged a teacher in Helmand

Province from a classroom and shot and killed him outside the school. Prior to the attack, he had received threats for teaching girls.¹⁵²

- Since at least 2004, threatening night letters attributed to the Taliban were sent to educators and parents forcing closure of girls' schools and reducing girls' school attendance in particular.¹⁵³

B. Right to Peaceful Assembly

The Taliban's severe deprivation of the fundamental right to peaceful assembly may amount to gender persecution as a crime against humanity. In line with the first four elements of the crime, the below sections describe how the Taliban may have severely deprived persons of the fundamental right to assembly, on the basis of gender, in connection with crimes under article 7, paragraph 1, of the Rome Statute and other crimes within the International Criminal Court's jurisdiction.

1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

After the Taliban seized power in 2021, its Interior Ministry's first official decree targeted women's protests.¹⁵⁴ Across Afghanistan women had been at the forefront of a series of peaceful demonstrations in response to the Taliban's

148 Human Rights Watch, "We Have the Promises of the World: Women's Rights in Afghanistan" (December 2009), p. 20.

149 Noor Khan, "Afghan Women's Activist Assassinated by Gunmen", *Washington Post* (September 26, 2006); Carlotta Gall, "Gunmen Kill Afghan Official Who Backed Women's Rights", *New York Times* (September 26, 2006).

150 Hanif subsequently denied the intention to attack schools or students. Human Rights Watch, "Lessons in Terror: Attacks on Education in Afghanistan" (July 2006), p. 34.

151 Carlotta Gall, "High School Teacher is Beheaded in Afghanistan", *New York Times* (January 5, 2006); Noor Khan, "Militants Behead Afghan Principal for Educating Girls – Taliban Assaults Cited in Closing of Schools", *Boston.com* (January 5, 2006).

152 Carlotta Gall, "High School Teacher is Beheaded in Afghanistan", *New York Times* (January 5, 2006); Michael Den Tandt, "In Afghanistan, to teach is to live in fear", *Globe & Mail* (March 9, 2006); "Militants set fire to a school in southern Helmand", *New Humanitarian* (February 21, 2006); Human Rights Watch, "Lessons in Terror: Attacks on Education in Afghanistan" (July 2006), p. 47.

153 See, Human Rights Watch, "Lessons in Terror: Attacks on Education in Afghanistan" (July 2006).

154 Akhtar Mohammad Makoi, Peter Beaumont and Patrick Wintour, "Taliban ban protests and slogans that don't have their approval", *The Guardian* (September 8, 2021).

restrictions on women and girls' rights.¹⁵⁵ Protests peaked in early September 2021, with hundreds rallying for women's rights in multiple cities, including in Kabul and in Herat, where two demonstrators were shot and killed. On September 8, the Taliban issued a formal decree banning unapproved demonstrations and requiring prior authorization for protests' slogans and chants. The Taliban warned that anyone out of compliance would face "severe legal consequences."¹⁵⁶

Through discriminatory enforcement, the Taliban has made clear that the decree is aimed in significant part at preventing women's rights protests. While the Taliban have since permitted, and sometimes promoted, protests against the United States, for example, they have refused to grant any permits for women-led protests.¹⁵⁷ They have also routinely beaten,

unlawfully arrested, held incommunicado, inhumanely treated and tortured women who protest against unequal treatment, including bans on women and girls' education and access to work, the mahram system, and discriminatory dress regulations. Journalists covering these protests have faced similar treatment.¹⁵⁸ The Taliban have also carried out campaigns of infiltration and intimidation against women organizers of peaceful protests.¹⁵⁹

The Right to Peaceful Assembly is a Fundamental Right

The right to peaceful assembly is a fundamental human right.¹⁶⁰ It encompasses the right to organize or participate in non-violent gatherings to express oneself, convey a position on an issue, exchange ideas, or assert group solidarity or identity, among other purposes.¹⁶¹ Peaceful

155 Zahra Nader and Amie Ferris-Rotman, "They stayed to fight the Taliban. Now the protesters are being hunted down", *The Guardian* (November 4, 2021).

156 Akhtar Mohammad Makoi, Peter Beaumont and Patrick Wintour, "Taliban ban protests and slogans that don't have their approval", *The Guardian* (September 8, 2021); Zeba Siddiqui and Parniyan Zemaryalai, "Protests get harder for Afghan women amid risks and red tape", *Reuters* (October 4, 2021); Emma Graham-Harrison and Peter Beaumont, "Violent attacks on Afghan journalists by Taliban prompt growing alarm", *The Guardian* (September 9, 2021).

157 David Zucchino and Yaqoob Akbary, "Threatened and Beaten, Afghan Women Defy Taliban With Protests", *New York Times* (January 24, 2022); "Taliban disperses Afghan women's march for 'work and freedom'", *Al Jazeera* (August 13, 2022).

158 See § IV (B) below, Right to Peaceful Assembly.

159 Zahra Nader and Amie Ferris-Rotman, "They stayed to fight the Taliban. Now the protesters are being hunted down", *The Guardian* (November 4, 2021).

160 UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 21 ("The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."); UN General Assembly, International Covenant on Economic, Social and Cultural Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 8; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, **Resolution 34/180** (December 18, 1979), Article 7; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, **Resolution 2106 (XX)** (December 21, 1965), Article 5; UN General Assembly, Convention on the Rights of the Child, **Resolution 44/25** (November 20, 1989), Article 15; UN General Assembly, Convention on the Rights of Persons with Disabilities, **A/RES/61/106** (January 24, 2007), Article 29; UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, **A/72/280** (August 3, 2017), Article 24.7; UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, **A/RES/45/158** (December 18, 1990), Article 26; UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), paras. 1 and 12; UN General Assembly, Universal Declaration of Human Rights, **Resolution 217 A (III)** (December 10, 1948), Article 20.1; Council of Europe, **European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Article 11** (4 November 1950); Organization of American States (OAS), **American Convention on Human Rights** (November 22, 1969), Article 15; Organization of African Unity (OAU), **African Charter on Human and Peoples' Rights** ("Banjul Charter"), CAB/LEG/67/3 rev. 5 (June 27, 1981), Article 11; League of Arab States, **Arab Charter on Human Rights** (September 15, 1994), Article 24.

161 UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 21 ("The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."); UN General Assembly, International Covenant on Economic, Social and Cultural Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 8; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, **Resolution**

assemblies include marches, protests, meetings, and demonstrations, and are protected whether indoors, outdoors, or online and whether they are stationary or mobile.¹⁶² The right extends to participants and organizers during an assembly and the associated activities integral to making the right's exercise meaningful, such as mobilization of resources, planning, dissemination of information, and traveling to and from the assembly.¹⁶³ It protects journalists and others' right to report on or monitor assemblies, including where an assembly is dispersed or declared unlawful.¹⁶⁴

Under international law, any restrictions or prohibitions imposed on peaceful assembly must be strictly necessary and proportionate to address a narrow set of extraordinary circumstances related primarily to imminent, serious threats to public safety.¹⁶⁵ Restrictions may only be imposed on the right to assemble where they are necessary and proportionate to protect national security, public safety, public order, public health or morals, or others' rights and freedoms. These grounds are narrowly defined. For example, public safety may only

be invoked as reason for a restriction where an assembly creates a real and significant risk to persons' safety. "Morals", if invoked at all, cannot be used to protect understandings of morality deriving exclusively from a single tradition, and must be understood in light of the universality of human rights and non-discrimination principles. Restrictions may not for example, be imposed for reasons of gender discrimination, such as opposition to sexual orientation or gender identity expressions.¹⁶⁶ Unnecessary or disproportionate force or other unlawful conduct against an assembly may constitute violations of the right to life, or to freedom from torture or arbitrary arrest. Where relevant criteria are met, force against assemblies may constitute a crime against humanity.¹⁶⁷ The Taliban's effective ban on protests by and for women meets none of the exceptions that may allow for restrictions on the right to peaceful assembly under international human rights law and therefore is in violation of international law.

Under international criminal law, in its decision confirming persecution charges in *Al Hassan*, the ICC's Preliminary Chamber I identified

34/180 (December 18, 1979), Article 7; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, **Resolution 2106 (XX)** (December 21, 1965), Article 5; UN General Assembly, Convention on the Rights of the Child, **Resolution 44/25** (November 20, 1989), Article 15; UN General Assembly, Convention on the Rights of Persons with Disabilities, **A/RES/61/106** (January 24, 2007), Article 29; UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, **A/72/280** (August 3, 2017), Article 24.7; UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, **A/RES/45/158** (December 18, 1990), Article 26; UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), paras. 1 and 12; UN General Assembly, Universal Declaration of Human Rights, **Resolution 217 A (III)** (December 10, 1948), Article 20.1; Council of Europe, **European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14** (November 4, 1950), Article 11; Organization of American States (OAS), **American Convention on Human Rights** (November 22, 1969), Article 15; Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, **CAB/LEG/67/3 rev. 5** (June 27, 1981), Article 11; League of Arab States, **Arab Charter on Human Rights** (September 15, 1994), Article 24.

162 UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), paras. 6 and 13; UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Islamic Republic of Iran, **CCPR/C/IRN/CO/3** (2011), para. 26.

163 UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), para. 33.

164 UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), para. 30.

165 UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), paras. 41-46 and 85.

166 UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), paras. 41-46.

167 UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), para. 98.

freedom of assembly and association as fundamental rights, along with other related rights, including the right to freedom of expression and to not be subjected to arbitrary detention.¹⁶⁸ The ICC's Pre-Trial Chamber III also identified freedom of assembly among rights that can be considered fundamental in relation to persecution.¹⁶⁹ The ICTY found that persecution can include not only physical acts, but other discriminatory acts “involving attacks on political, social and economic rights,”¹⁷⁰ and that the “deprivation of these rights [against targeted groups] can be said to have as its aim the removal of those persons from the society in which they live alongside the perpetrators [...],”¹⁷¹ applicable in the Afghan context where Taliban policies are removing women from public life.

The Taliban's Deprivation of the Fundamental Right to Peaceful Assembly Meets the Severity Standard

In confirming persecution charges in *Al Hassan*, the ICC identified the outlawing of protests and mass arrests of participants as acts amounting to severe deprivations of fundamental rights, including the right to assembly. The Court found the same regarding harassment, threats, forced office closures, and arrest warrant issuance against independent journalists and civil society organizations.¹⁷² By banning peaceful protests for women and girls' rights and arbitrarily

arresting participants who protest nonetheless, the Taliban is committing severe deprivations of the fundamental right to assembly.

The deprivation of the fundamental right to be free from discrimination compounds the severity of the deprivation of the fundamental right to peaceful assembly.¹⁷³ Equal enjoyment of the right to assembly is universally recognized and guaranteed in international and regional legal instruments.¹⁷⁴ This applies to all aspects of the right to freedom of assembly and encompasses all prohibited discrimination grounds, including gender. The right to peaceful assembly provides that participants must be free from discriminatory abuse and attacks when exercising their right. Protection of the right to peaceful assembly under international law is especially emphasized with regard to members of groups that are or have been discriminated against, or that may face challenges participating in assemblies.¹⁷⁵ The Taliban has deprived the right to assembly on the basis of gender, as explained under elements two and three, thus compounding the severity of its deprivation of fundamental rights.

The Taliban has further enhanced the severity of the deprivation by committing additional human rights abuses and crimes to enforce its ban on peaceful demonstrations in favor of women's rights. As described under element four, Taliban members have committed acts

168 *Al Hassan, Confirmation of Charges*, para. 664.

169 *Prosecutor v. Al Hassan*, Prosecutor's Urgent Request by the Office of the Prosecutor for Issuance of a Warrant of Arrest, **ICC-01/12-01/18-1-Red** (March 31, 2018) (citing Situation in the Republic of Burundi, Pre-Trial Chamber III, **No. ICC-01/17-X**, para. 132-133).

170 *Prosecutor v Kupreskic*, Trial Chamber Judgment, **IT-95-16-T** (January 14, 2000), para. 615 (cited in A. Widney Brown and Laura Grenfell, “The International Crime of Gender-based Persecution and the Taliban”, *University of Melbourne Journal of International Law* (2003), p. 359).

171 *Prosecutor v Kupreskic*, Trial Chamber Judgment, **IT-95-16-T** (January 14, 2000), para. 634.

172 *Al Hassan, Confirmation of Charges*, paras. 135-136.

173 **Policy on the Crime of Gender Persecution**, para. 39.

174 See, e.g., UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Articles 2(1), 3, and 21; Organization of American States (OAS), **American Convention on Human Rights** (November 22, 1969), Articles 1 and 15.

175 UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (Article 21), **CCPR/C/GC/37** (2020), para. 25.

that may amount to torture, inhumane treatment, unlawful detention, enforced disappearance, and possibly sexual violence and killings as part of an effort to deny the fundamental right of protestors in Afghanistan to assemble on behalf of women's and girls' rights. They have committed these acts against demonstrators, bystanders and journalists reporting on the demonstrations—all perceived supporters or affiliates of girls' education. Given that element one of persecution is met when crimes under the Statute are committed with discriminatory intent,¹⁷⁶ these crimes amount to severe deprivations of fundamental rights.

The right to assemble is key to the foundation of participatory governance grounded in democracy, human rights, the rule of law, and pluralism.¹⁷⁷ The Taliban's decrees and violent enforcement have had a chilling effect on women's right to assembly,¹⁷⁸ undermining bedrock foundational rights essential to governance grounded in democracy and human rights. As an individual right that is exercised collectively, the right to assembly is understood to include an inherent associative element, and to rely on and support the protection of other overlapping rights, including freedom of expression, association, and political participation.¹⁷⁹ By denying demonstrators' and journalists' rights to assemble on the basis of gender, the Taliban denies these and other fundamental rights.

These fundamental rights violations based on discriminatory grounds should be considered cumulatively for a severity assessment.¹⁸⁰ By depriving the fundamental right to assembly and non-discrimination on the basis of gender, and enforcing the deprivation through additional fundamental rights violations, the Taliban's acts meet the severity standard for element one of persecution.

2. Element Two: The perpetrator targeted such person or persons by reasons of the identity of a group or collectivity or targeted the group or collectivity as such.

Article 7(1)(h) of the Rome Statute criminalizes persecution by perpetrators that target a person or persons by reason of the identity of a group or collectivity, or that target the group or collectivity as such. The OTP Policy on the Crime of Gender Persecution affirms that the "targeted group" should be viewed broadly. Not all targeted persons are required to be directly part of the targeted group: it is sufficient that they are sympathizers or affiliates of targeted members."¹⁸¹ The Policy on Gender Persecution further clarifies that "[i]t is also sufficient that the perpetrator perceives the person as a member or an affiliate of the targeted group."¹⁸² Akin to the way in which teachers who are men and are victims of a school bombing used to enforce a prohibition on girls' education may form part of a targeted group based on gender,¹⁸³ male protesters who support women's rights may also

176 [Policy on the Crime of Gender Persecution](#), para. 39

177 UN Human Rights Committee, [General Comment No. 37 \(2020\) on the Right of Peaceful Assembly \(Article 21\)](#), [CCPR/C/GC/37](#) (2020), para. 1.

178 Zahra Nader and Amie Ferris-Rotman, "They stayed to fight the Taliban. Now the protesters are being hunted down", *The Guardian* (November 4, 2021); Zeba Siddiqui and Parniyan Zemaryalai, "Protests get harder for Afghan women amid risks and red tape", *Reuters* (October 4, 2021).

179 UN Human Rights Committee, [General Comment No. 37 on the Right of Peaceful Assembly \(Article 21\)](#), [CCPR/C/GC/37](#) (2020), paras. 4, 9, and 100.

180 [Policy on the Crime of Gender Persecution](#), para. 39.

181 [Policy on the Crime of Gender Persecution](#), para. 43.

182 [Policy on the Crime of Gender Persecution](#), para. 44.

183 [Policy on the Crime of Gender Persecution](#), para. 43. Note that such bombings may be charged as War Crimes under article 8 of the [Rome Statute](#), and may also constitute acts of gender persecution.

As detailed under element four, the Taliban have targeted women demonstrators, journalists and bystanders for being members, or perceived as members, of a group or collectivity—that of women and girls and sympathizers or affiliates of their rights. The Taliban has specifically targeted women and those who organize and participate in women's rights protests, on the basis of their identity as women and girls, and/or as supporters of women and girls' rights. The Taliban also targeted journalists covering women's demonstrations, on the basis of the identity of the women protesters whose pro-women and girls' rights messaging the journalists sought to report on. They have targeted women protesters' family members, on the basis of their perceived affiliation or sympathy with the women and with women and girls' rights.

3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law.

Mental Elements for Gender Persecution

In addition to knowledge that conduct was part of a widespread or systematic attack on civilians or intention that it be part of such an attack, mental elements for gender persecution require that the perpetrator:

- meant to cause a severe deprivation of fundamental rights or knew that it would occur in the ordinary course of events;
- had the specific intent to discriminate (targeting based on the statutory ground of gender)¹⁸⁴

Note however, that exceptions for proving specific intent to discriminate under modes of liability other than direct, co-, or indirect perpetrator modes allow for finding gender persecution where perpetrators, for example, order, induce, or aid its commission, without necessarily proving specific intent:

[U]nless the accused is charged under article 25(3)(a) as a direct perpetrator, a co[-] perpetrator and/or an indirect perpetrator, there is no requirement to prove that the accused had a specific intent to discriminate. However, the mental elements for other relevant modes of liability must be proven. It suffices that the perpetrators had the specific intent to discriminate, in that case.¹⁸⁵

Regarding the first mental element, the Taliban clearly intends to deprive women, girls and their sympathizers of their fundamental right to assembly. Its members make this intention clear via policies and through their enforcement. They intentionally employ crimes such as torture, inhumane treatment, unlawful detention, enforced disappearance, sexual violence, and killings as part of an effort to deny the fundamental right of protestors in Afghanistan to assemble on behalf of women's and girls' rights. The Taliban's acts also demonstrate the intent to discriminate based on gender, meeting the second mental element, in that they directly target women and girls, as well as those the Taliban believe support women and girls' rights.

Evidencing Discriminatory Intent

According to the OTP Policy on the Crime of Gender Persecution, discriminatory intent may be evidenced through acts or statements of

184 [Policy on the Crime of Gender Persecution](#), para. 46.

185 [Policy on the Crime of Gender Persecution](#), para. 47.

direct perpetrators, as well as by legislation, policies or regulations promulgated by the perpetrator group, or public statements relating to the underlying crimes or persecutory acts. It can also be inferred from targeting patterns, such as where crimes “are committed exclusively or predominantly against certain individuals or groups and/or not against others, or [involve] the separation of individuals based on their identifying gender characteristics. Intent and knowledge can also be inferred from prior or subsequent conduct.”¹⁸⁶ Specifically, “the disproportionate use of a persecutory conduct against one group based on gender,” may also evidence discriminatory intent.¹⁸⁷

The Taliban may claim its ban on unapproved protests is gender neutral, yet its members’ actions and statements indicate their intent to discriminate on the basis of gender. Across Afghanistan women had been at the forefront of peaceful demonstrations against the Taliban’s restrictions on women and girls’ rights, when its Interior Ministry issued a decree on September 8th 2021, banning unapproved demonstrations and requiring prior authorization for protests’ slogans and chants.¹⁸⁸ Through discriminatory enforcement, the Taliban made clear that the decree was aimed in significant part at halting women’s protests.

While the Taliban have since permitted protests against the United States, for example, they

have refused to grant any permits for women-led protests.¹⁸⁹ Taliban members have also used gendered insults against women’s rights protesters, referring to them for example, as “whores”, “prostitutes,” and “bitches.”¹⁹⁰ They have also called them “puppets of the west”—as if they lack agency in calling for their own human rights. One woman protester reported that the Taliban knocked her phone out of her hand as she attempted to film at a demonstration, then told the women to go home ‘because that’s where a woman’s place is.’¹⁹¹ While arbitrarily detaining and beating another woman protester, a Taliban member told her she was a “prostitute” who did not know how to behave and that he knew how to “fix” her.¹⁹² Such statements not only demonstrate animus, evincing discriminatory intent based on gender, they also clearly show the intent to cause unequal treatment to women who believe in their right to equality. As the Policy on Gender Persecution notes, “[w]hile personal beliefs or motives are not a requisite to establish individual criminal responsibility for gender persecution, they may evince discriminatory intent, particularly if expressed by the direct perpetrators before, during or after the commission of crimes.”¹⁹³

The Policy on Gender Persecution makes clear that “motives do not undermine discriminatory intent.”¹⁹⁴ Moreover, “motive should not be conflated with the perpetrator’s determination

186 [Policy on the Crime of Gender Persecution](#), para. 95.

187 [Policy on the Crime of Gender Persecution](#), para. 50.

188 Zahra Nader and Amie Ferris-Rotman, “They stayed to fight the Taliban. Now the protesters are being hunted down”, *The Guardian* (November 4, 2021).

189 David Zucchino and Yaqoob Akbary, “Threatened and Beaten, Afghan Women Defy Taliban With Protests”, *New York Times* (January 24, 2022); “Taliban disperses Afghan women’s march for ‘work and freedom’”, *Al Jazeera* (August 13, 2022).

190 Sahar Fetrat and Heather Barr, “Taliban Uses Harsh Tactics to Crush Afghan Women’s Rights Protest”, *Human Rights Watch* (January 17, 2022); Orooj Hakimi, “Afghan women protest school attack as Taliban cracks down”, *Al Jazeera* (October 3, 2022).

191 Masoud Popalzai, Laura Smith-Spark and Tim Lister, “Taliban fighters use whips against Afghan women protesting the all-male interim government”, CNN (September 9, 2021); Yogita Limaye and Aakriti Thapar, “Afghanistan: Women beaten for demanding their rights”, *BBC* (September 8, 2021).

192 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), p. 74.

193 [Policy on the Crime of Gender Persecution](#), para. 96.

194 [Policy on the Crime of Gender Persecution](#), para. 49.

to act by reason of gender. Intent to discriminate is demonstrated when the perpetrator specifically intended to treat a targeted gender group or member of that group unequally.”¹⁹⁵ Furthermore, “human rights violations prohibited under international law are not culturally determinative. Breaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture.”¹⁹⁶

In another case, a Taliban spokesman tweeted in response to the arrests of women who protested imposed gender dress requirements that “insulting the religious and national values of the Afghan people is not tolerated anymore.”¹⁹⁷

One of the detained women reported after her release that the Taliban had recorded themselves torturing her in detention.¹⁹⁸ While the Taliban’s stated motives for denying women, girls and their allies the right to peacefully assemble may including living out their religious values and interpretation, this does not negate their intention to deny fundamental rights on the basis of gender.

Rather than condemn the arbitrary arrest and torture of a peaceful demonstrator, by releasing the tweet, the Taliban spokesperson made clear the group’s belief that women’s rights demonstrators contravene their imposed values.

195 [Policy on the Crime of Gender Persecution](#), para. 49.

196 [Policy on the Crime of Gender Persecution](#), para. 27.

197 “Taliban Claims Right to Jail Protesters Following Disappearance of Afghan Women Activists”, *Radio Free Europe Radio Liberty* (January 22, 2022); “Afghanistan women’s rights activist says Taliban tortured her in prison, but she ‘had to speak out’”, *CBC News* (August 16, 2022); Kathy Gannon, “Taliban Storm Kabul Apartment, Arrest Activist and Her Sisters”, *The Diplomat* (January 22, 2022); “Afghan woman activist released after arrest in January”, *BBC* (February 13, 2022).

198 “Afghanistan women’s rights activist says Taliban tortured her in prison, but she ‘had to speak out’”, *CBC News* (August 16, 2022).



In doing so, he acknowledged that they have denied the fundamental right to assemble on the basis of gender.

As detailed under element four, the Taliban have also responded brutally to women's rights protests. They have at times shut them down within minutes¹⁹⁹ and beat and tortured both protesters and journalists covering them, in some cases beating women on the breasts and between their legs to dissuade them from publicizing their injuries.²⁰⁰ Injuries targeting sexualized body parts evidence the intent to cause specific shame to women in a further effort to enforce a prohibition on promoting women's equal rights.

The Taliban's active surveillance and targeting of women's protest organizers further demonstrate a calculated policy to repress the right to assemble on behalf of women's rights.²⁰¹ These acts, meant to stifle protests against the Taliban's broader rollback of women's equal rights to education, to political participation and to freedom of movement, expression, and work, among others, are clear evidence the Taliban is suppressing peaceful assembly on the basis of gender.

4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court.

With regard to element four, the OTP Policy on the Crime of Gender Persecution notes that “[g]ender persecution charges can capture a fuller range of criminality and serve to redress

impunity gaps. Such charges may help to unearth a myriad of gender-based acts that may or may not be found within the scope of most statutory crimes.”²⁰²

The broad nexus between persecutory conduct and acts listed under article 7, paragraph 1 of the Rome Statute also includes all crimes under the ICC's jurisdiction. It is clear that element four is fulfilled when a perpetrator commits crimes under the Rome Statute such as arbitrary detention, enforced disappearance, inhumane treatment or torture to enforce a severe deprivation of a fundamental right based on gender, as the Taliban has.

After the Taliban seized power in 2021, its Interior Ministry's first official decree banned unapproved protests, in response to the growing demonstrations led by women, on behalf of women and girls' rights.²⁰³ To enforce the ban, Taliban members committed enforced disappearance, unlawful imprisonment, torture and other inhumane acts, as well as possibly killings and sexual violence, amounting to crimes against humanity.

The Taliban have subjected women protesters to arbitrary arrest and detention, where they face additional rights violations ranging from inadequate access to food, water, ventilation, sanitary products, and medical care to severe beatings and physical and psychological torture.²⁰⁴ Many have been held incommunicado, and denied multiple due process rights.²⁰⁵ To secure their release, some were forced to sign

199 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), p. 70.

200 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), p. 72.

201 Zahra Nader and Amie Ferris-Rotman, “They stayed to fight the Taliban. Now the protesters are being hunted down”, *The Guardian* (November 4, 2021).

202 **Policy on the Crime of Gender Persecution**, para. 57.

203 Akhtar Mohammad Makoi, Peter Beaumont and Patrick Wintour, “Taliban ban protests and slogans that don't have their approval”, *The Guardian* (September 8, 2021).

204 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), pp. 8, and 75-77.

205 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), pp. 8, 69, and 75-77.

“agreements” stating that they and their family members would neither protest again nor speak publicly about their detention.²⁰⁶ Some were beaten so hard in detention they continued to suffer health complications after release.²⁰⁷ The Taliban have also detained and tortured women’s relatives and journalists covering the protests, and have subjected women protesters, bystanders and journalists (perceived as supporters or affiliates) to beatings with whips and sticks, and to electric shocks, tear gas, and chemical spray.²⁰⁸

In addition to the ban on protests, the Taliban have persistently carried out human rights violations to terrorize the women who participate in or organize women’s rights demonstrations, their family members, and the journalists that cover them. In addition to arbitrary arrest and detention, Taliban members have employed enforced disappearance, inhumane treatment, and torture against women protesters and journalists.²⁰⁹ They have also carried out campaigns of infiltration and intimidation against women organizers. Women activists reported that Taliban have appeared at private addresses only discussed on closed online chat groups, for example.²¹⁰ The Taliban’s restrictions, intimidation and violent repression of women’s rights protestors has had a chilling impact on the rights to assembly and expression in Afghanistan.²¹¹ Reported instances where

Taliban authorities have used violence and committed other crimes to enforce their discriminatory denial of the right to peacefully assemble include the following:

- In December 2022, Taliban fighters beat men in Kandahar, who participated in widespread walk-outs from Afghan universities in protest of the Taliban’s ban on women attending higher education.²¹²
- On October 3, 2022, women organized protests in multiple cities against gendered restrictions, including those limiting girls’ education and women’s right to work. The protest occurred days after a suicide bomb attack killed dozens at a private education institution in Kabul that was attended by Hazaras and was one of the few available sites where girls could still attain education. The Taliban responded to the protests with violence. In Bamiyan, Taliban members beat women demonstrators, broke their cell phones and called them “bitches.” Another pointed a gun at a woman demonstrator and threatened to kill her. In Mazar-i-Sharif, Taliban surrounded Balkh University, trapping students on campus to prevent them from protesting. Some managed to escape and join the protests. The Taliban beat some of the women protesters and broke their phones to stop them from filming.²¹³

206 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), pp. 77.

207 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), pp. 8, and 75-77.

208 Sahar Fetrat and Heather Barr, “Taliban Uses Harsh Tactics to Crush Afghan Women’s Rights Protest”, *Human Rights Watch* (January 18, 2022); Celine Alkhadi, “Women’s protest in Taliban-controlled Kabul turns violent”, *CNN* (September 4, 2021); Masoud Popalzai, “Taliban fighters use whips against Afghan women protesting the all-male interim government”, *CNN* (September 9, 2021); “Afghanistan: Taliban attempting to steadily erase women and girls from public life – UN experts”, *UNHRC* (17 January, 2022); David Zucchini and Yaqoob Akbary, “Threatened and Beaten, Afghan Women Defy Taliban With Protests”, *New York Times* (January 24, 2022).

209 UN Human Rights Council, Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, *A/HRC/51/6* (September 9, 2022), para. 83.

210 Zahra Nader and Amie Ferris-Rotman, “They stayed to fight the Taliban. Now the protesters are being hunted down”, *The Guardian* (November 4, 2021).

211 Zeba Siddiqui and Parniyan Zemaryalai, “Protests get harder for Afghan women amid risks and red tape”, *Reuters* (October 4, 2021).

212 Shadi Khan Saif, “Call for Islamic unity against Taliban’s banning of women’s HE”, *University World News* (December 30, 2022).

213 Orooj Hakimi, “Afghan women protest school attack as Taliban cracks down”, *Al Jazeera* (October 3, 2022).

- In Kabul, on September 8, 2021, Taliban members whipped and beat—including with prods that emit electric shocks—women who were protesting the newly announced all-male interim minister’s cabinet. Taliban also beat bystanders, including a 16 year-old who was watching the protest, and detained a number of journalists covering the event. One woman reported that the Taliban knocked her phone out of her hand as she attempted to film, and told the women to go home ‘because that’s where a woman’s place is.’ Another woman was beaten so badly, she couldn’t move her arm afterwards.²¹⁴ They brutally beat at least two of the detained reporters with batons, electrical cables, and whips, while accusing them of organizing the protest. One Taliban member told them they were lucky not to be beheaded. The beatings left severe welts and bruises on the journalists’ bodies. One of the two, photographer Nematullah Naqdi, said “[o]ne of the Taliban put his foot on my head, crushed my face against the concrete. They kicked me in the head ... I thought they were going to kill me.”²¹⁵ During the same week, the Taliban detained at least 14 journalists covering protests in Kabul, and subjected at least six to violence during their arrests or detention.²¹⁶
- On September 7, 2021, and 8, 2021, the Taliban arrested protestors, including women, in Herat, Mazar-e-Sharif, and Kabul, and subjected them to ill treatment, including torture and incommunicado detention. Journalists covering the protests were also arrested and subject to incommunicado detention and ill-treatment. One woman protester’s husband had to flee because the Taliban repeatedly called and threatened him. In Herat, two bodies with bullet wounds were brought to the city’s central hospital from the protest site.²¹⁷
- On September 4, 2021, roughly 100 women protested in front of the Taliban’s command center, carrying banners and chanting slogans for women’s equality. The Taliban beat at least ten of the women, including one who fainted from being beaten with a metal object. The Taliban claimed to media that they detained four Taliban militants involved in the beatings.²¹⁸
- In September 2021, Taliban members severely injured a girl’s hands in Kabul at a protest. The Taliban told her to leave, and started to beat her with a rubber pipe on her hands. She said she could not feel her hands. When a fellow protester got her into a taxi to leave, the Taliban members broke the car’s windows.²¹⁹
- In September 2021, two women protesters told human rights observers that in the wake of fellow protesters’ injuries being posted on social media, the Taliban developed new strategies to prevent women from publishing their injuries, including beating women on

214 Masoud Popalzai, Laura Smith-Spark and Tim Lister, “Taliban fighters use whips against Afghan women protesting the all-male interim government”, CNN (September 9, 2021); Yogita Limaye and Aakriti Thapar, “Afghanistan: Women beaten for demanding their rights”, *BBC* (September 8, 2021).

215 Emma Graham-Harrison and Peter Beaumont, “Violent attacks on Afghan journalists by Taliban prompt growing alarm”, *The Guardian* (September 9, 2021).

216 Emma Graham-Harrison and Peter Beaumont, “Violent attacks on Afghan journalists by Taliban prompt growing alarm”, *The Guardian* (September 9, 2021).

217 UN Human Rights Council, Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, A/HRC/51/6 (September 9, 2022), para. 83; “UN condemns Taliban violence against peaceful protestors”, *Al Jazeera* (September 10, 2021).

218 Fereshta Abbasi, “Afghan Women Protest Against Taliban Restrictions”, *Human Rights Watch* (September 7, 2021).

219 “Death in slow motion: Women and girls under Taliban rule”, *Amnesty International* (July 2022), pp. 72.

their breasts and between their legs. One woman said that a Taliban soldier hit her in her breast, and said, 'I can kill you right now, and no one would say anything.'²²⁰

- At a protest in September 2021, thirty Taliban members approached a group of men and women protesters and forced them into police cars, private cars, and taxis. The Taliban covered a woman protester's face with a blindfold, beat her with their guns and other objects, and then locked her in a room. A few hours later, another officer entered and asked her if she was Tajik or from Panjshir and if she was protesting for money. When she said no, he beat her with the butt of his gun and told her she was a "prostitute" who did not know how to behave and that he knew how to "fix" her.²²¹
- On August 13, 2022, Taliban fighters shot guns into the air to disperse women protesters opposed to the Taliban's restrictions on women's political participation and access to work, and girls' access to education. They chased women protesters into nearby shops, where they beat them with rifle butts. They also beat journalists covering the protests.²²²
- Dozens of protesters and their families, including 29 women were detained by the Taliban and went missing on February 10, 2022.²²³ On February 21, the Taliban released a video of several of these women saying foreign activists told them to protest in exchange for the chance to relocate or send

their children to study abroad.²²⁴

- On February 3, 2022 Taliban forces arrested women's rights advocate Zahra Mohammadi at her office. Mohammadi had held an indoor protest on February 2nd, calling for Paryani and Ibrahimkhel to be freed. The day prior the Taliban arrested Mursal Ayar in her home. Ayar is a journalist and women's human rights defender who also participated in protests against the Taliban's restrictions on women.²²⁵ Both were released February 13, along with Paryani and Ibrahimkhel after Afghan advocates successfully waged an international campaign for their freedom.²²⁶
- On January 16, 2022, women gathered in Kabul to demonstrate for women's rights and were immediately met by armed Taliban members. Many fled when they saw the Taliban, but about 25 marched towards Kabul University. The Taliban pointed firearms at them, assaulted witnesses who were filming the rally, and called the women "whores" and "puppets of the west." Once the protesters reached Kabul University, a larger group of Taliban members surrounded them, assaulted some with electric devices and sprayed them with a chemical substance, which caused severe irritation to demonstrators' eyes, skin, and respiratory tracts. One told human rights observers she was still coughing and suffering painful skin irritation from the spray a day later. Taliban members also hit and physically

220 "Death in slow motion: Women and girls under Taliban rule", *Amnesty International* (July 2022), pp. 72.

221 "Death in slow motion: Women and girls under Taliban rule", *Amnesty International* (July 2022), pp. 74.

222 "Taliban disperses Afghan women's march for 'work and freedom'", *Al Jazeera* (August 13, 2022).

223 Namita Singh, "Female Afghan activist arrested by armed men in January 'has been released'", *Independent* (February 13, 2022).

224 Golnaz Esfandiari, "Detained Women Activists In Afghanistan Apparently Forced To Confess Before Release", *Radio Free Europe Radio Liberty* (February 23, 2022); Sudarsan Raghavan, "Faced with disappearances, beatings and intimidation, Afghanistan's women's rights activists go quiet on the streets", *Washington Post* (February 8, 2022).

225 "Woman human rights defenders Zahra Mohammadi and Mursal Ayar abducted", *Frontline Defenders* (February 9, 2022).

226 "Afghan woman activist released after arrest in January", *BBC* (February 13, 2022).

assaulted the protesters and followed some of those making their way home.²²⁷

- On January 19, 2022, the Taliban arrested Tamana Zaryabi Paryani and Parwana Ibrahimkhel, who participated in the January 16 protests for women's rights, which occurred shortly after the Taliban had mandated that women wear a hijab. During the protest, a burqa was burned. The evening of January 19th, Paryani filmed the moment the Taliban came to break her door down to arrest her along with her three sisters. Released nearly a month later with Ibrahimkhel and other activists, Paryani reported that the Taliban had recorded themselves torturing her with cables, pipes and whips in detention. She said she still felt imprisoned after her release because the Taliban forbade her from leaving the country. The Taliban denied detaining the women, who were held incommunicado, but a Taliban spokesman tweeted January 20th in response to the arrests that "insulting the religious and national values of the Afghan people is not tolerated anymore."²²⁸
- In 2022, The Taliban detained a woman protester in a 12x12 meter cell for ten days, during which they showed her photos of her family while threatening to kill them, and beat her twice. A Taliban member kicked her all over, and injured her back. He also kicked her in her chin so hard it hurt any time

she spoke after she was released. As they brutalized her, the Taliban called her a "nasty woman" and said "America isn't giving us the money because of you bitches." They told her she should have expected this type of treatment for protesting. She suffered multiple broken bones and other health complications as a result of the Taliban beating her and denying her medical care.²²⁹

- In Nangarhar province, in 2021, the Taliban violently broke up women's rights protests, and detained and tortured several women protesters.²³⁰

C. Right to Freedom of Expression

The Taliban's severe deprivation of the right to freedom of expression may amount to gender persecution as a crime against humanity. Perpetrators may target persons "for gender persecution because of sex characteristics and/or because of the social constructs and criteria used to define gender roles, behaviours, activities and attributes,"²³¹ including for defying gendered dress regulations assigned to men and women, or simply for being perceived as an LGBTIQ+ person.²³² While manifestations of these constructs and criteria are numerous and often interwoven, this report section focuses primarily on the Taliban's dress and appearance regulations as deprivations of the right to expression. However, the Taliban's imposition of other constructs and criteria

227 Sahar Fetrat and Heather Barr, "Taliban Uses Harsh Tactics to Crush Afghan Women's Rights Protest", *Human Rights Watch* (January 18, 2022).

228 "Taliban Claims Right to Jail Protesters Following Disappearance of Afghan Women Activists", Radio Free Europe Radio Liberty (January 22, 2022); "Afghanistan women's rights activist says Taliban tortured her in prison, but she 'had to speak out'", CBC News (August 16, 2022); Kathy Gannon, "Taliban Storm Kabul Apartment, Arrest Activist and Her Sisters", *The Diplomat* (January 22, 2022); "Afghan woman activist released after arrest in January", BBC (February 13, 2022).

229 "Death in slow motion: Women and girls under Taliban rule", *Amnesty International* (July 2022), pp. 8 and 75-76.

230 Zahra Nader and Amie Ferris-Rotman, "They stayed to fight the Taliban. Now the protesters are being hunted down", *The Guardian* (November 4, 2021).

231 [Policy on the Crime of Gender Persecution](#), para. 42.

232 [Policy on the Crime of Gender Persecution](#), para. 45.

should also ultimately be examined in relation to its deprivations of various fundamental rights, including expression.

In line with the first four elements of the crime, the sections below describe how the Taliban severely deprived people of the fundamental right to expression, on the basis of gender, in connection with crimes under article 7, paragraph 1, of the Rome Statute and other crimes within the International Criminal Court's jurisdiction.

1. Element One: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

The Taliban have severely deprived people of all genders their fundamental right to freedom of expression through restrictive, gendered policies on dress and appearance, and through violent enforcement of them. They have issued pronouncements and dictates on dress criteria that obligate women to cover themselves head to toe. They severely punish those who fail to comply,²³³ and have stated that the best way for women to obey their imposed hijab rule is “to not leave home without necessity.”²³⁴ The Taliban have also issued dress and appearance criteria for boys and men, that require them to have long beards and wear long, loose clothing.²³⁵ They

have targeted LGBTQI+ persons or otherwise gender non-conforming people that they deemed to transgress their gender regulations on dress and, more broadly, appearance. Taliban members have committed violence, including arbitrary detention, sexual violence, torture and inhumane acts to enforce dress and appearance regulations²³⁶ in further violation of multiple other fundamental rights in addition to freedom of expression.

The right to expression, including the right to choose one's manner of dress or appearance, is a fundamental right under international law

International law grants all people the fundamental right to freedom of expression.²³⁷ This includes the freedom to seek, receive, and impart information and ideas through any media of one's choice.²³⁸ The right encompasses all forms of expression and their means of dissemination, including written, oral or non-verbal expressions and dress.²³⁹ Manner of dress is recognized as “an integral part of the expression of the human personality” and a legitimate means to externalize one's identity, individuality, lifestyle, and world conception.²⁴⁰

Recognizing freedom of expression as a fundamental right in relation to persecution, The *Al Hassan* Pre-Trial Chamber noted that

233 Arwa Ibrahim, “In Afghanistan, Taliban diktat sparks debate about women's attire”, *Al Jazeera* (January 26, 2022); “Afghanistan: Taliban Deprive Women of Livelihoods, Identity”, *Human Rights Watch* (January 18, 2022); “A timeline of the Taliban's assault on women's and human rights”, *Onward for Afghan Women* (last visited March 26, 2023).

234 “How the Taliban's Hijab Decree Defies Islam”, *United States Institute of Peace* (May 2022).

235 “Afghanistan: Taliban ban Helmand barbers from trimming beards”, *BBC* (September 26, 2021); Charlotte Greenfield, “Taliban bars government employees without beards from work”, *Reuters* (March 28, 2022).

236 Human Rights Watch, “‘You Have No Right to Complain’: Education, Social Restrictions, and Justice in Taliban-Held Afghanistan” (June 30, 2020), pp. 38 and 39.

237 See, e.g., UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 19.2; Organization of American States (OAS), **American Convention on Human Rights (November 22, 1969)**, Art. 13.

238 UN General Assembly, Universal Declaration of Human Rights, **Resolution 217 A (III)** (December 10, 1948), Article 19; UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 19.2; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, **Resolution 2106 (XX)** (December 21, 1965), Article 5 (d) (viii).

239 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 12.

240 ***In the Case of Velásquez Paiz El Al v. Guatemala***, Judgment, Inter-American Court of Human Rights (IACHR) (November 19, 2015), paras. 4, 8, 21, and 22.

policies that regulate everyday aspects of victims' lives, including their clothing, and that provide harsh penalties for transgressors, are gender and religious persecutory acts.²⁴¹ The Policy on Gender Persecution affirms this, noting that gender persecution may be committed by, for example, punishing "men and boys who exhibit what perpetrators view as "undesirable behaviors or clothing" counter to their notions of masculinity,"²⁴² and that "women and men may be targeted [for persecution] ... for being out of dress code."²⁴³

Similarly, the ICTY found that persecution can include not only physical acts, but other discriminatory acts "involving attacks on political, social and economic rights,"²⁴⁴ and that the "deprivation of these rights [against targeted groups] can be said to have as its aim the removal of those persons from the society in which they live alongside the perpetrators [...],"²⁴⁵ applicable in this context where, for example, the Taliban states publicly that the best way for women to obey their dress code is to stay home.²⁴⁶

Under international law, limits imposed upon the right to expression "must be understood

in the light of universality of human rights and the principle of non-discrimination," and may not violate rights protections nor provide for penalties incompatible with human rights law.²⁴⁷ For example, "[p]rohibitions of displays of lack of respect for a religion or other belief system" are incompatible with international law.²⁴⁸ Any restriction on the right to expression must be clearly prescribed by law, for a legitimate purpose under international law, and be strictly necessary and proportionate for the purpose.²⁴⁹

"Legitimate purposes" include only two limited grounds, one related to respect of others' rights or reputations, and the other to protection of national security, public order, public health or morals.²⁵⁰ The Taliban's civilian dress and appearance regulations do not fall within any of these narrow exceptions. One cannot resort to "morals protection" in this case, as morals must be understood in light of the universality of human rights including the right to non-discrimination,²⁵¹ and may not be based on principles deriving exclusively from a single tradition.²⁵² In that non-compliance with the dress and appearance regulations may exhibit disrespect for religion or belief systems, these expressions are explicitly

241 *Al Hassan, Confirmation of Charges*, para. 664. The Pre-Trial Chamber in *Al Hassan* confirmed the right freedom of expression among a wide range of recognized fundamental rights including, for example, freedom of thought, association, assembly, and movement; as well as equality, and personal dignity. *Prosecutor v. Al Hassan*, Pre-Trial Chamber Decision on the Prosecutor's Application for the Issuance of a Warrant of Arrest, **ICC-01/12-01/18**, para. 88.

242 **Policy on the Crime of Gender Persecution**, para. 91(i).

243 **Policy on the Crime of Gender Persecution**, para. 45.

244 *Prosecutor v Kupreskic*, Trial Chamber Judgment, **IT-95-16-T** (January 14, 2000), para. 615 (cited in A. Widney Brown and Laura Grenfell, "The International Crime of Gender-based Persecution and the Taliban", *University of Melbourne Journal of International Law* (2003), p. 359).

245 *Prosecutor v Kupreskic*, Trial Chamber Judgment, **IT-95-16-T** (January 14, 2000), para. 634.

246 "How the Taliban's Hijab Decree Defies Islam", *United States Institute of Peace* (May 2022).

247 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), paras. 21, 26, and 31.

248 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 48.

249 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), paras. 21-48.

250 UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 19.3; UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 21.

251 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), paras. 26 and 32. The Committee cites its General comment No. 22.

252 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 32. The Committee cites its General comment No. 22.

protected under international law.²⁵³

The Taliban's Deprivation of the Fundamental Right to Expression Meets the Severity Standard

Deprivations of the fundamental right to freedom of expression or the right to be free from discrimination on their own may meet the severity standard. However, the Policy on Gender Persecution reminds us to take a cumulative approach.²⁵⁴ All persons have the fundamental right to freedom of expression without discrimination, including on the basis of gender.²⁵⁵ This includes women's exercise of these rights on an equal basis with men.²⁵⁶

The UN Human Rights Committee notes exceptions where dress regulations or policies may not be in violation of human rights law.²⁵⁷ "Restrictions must be 'necessary' for a legitimate purpose."²⁵⁸ For example, dress regulations requiring shoes in certain environments for health or safety reasons may not violate the right to freedom of expression. However, international human rights law is clear that such laws cannot

violate the right to non-discrimination and cannot be enforced through acts or conduct that deprive persons of their fundamental rights.²⁵⁹

It is also a violation of fundamental rights to discriminate in favor of or against a particular religion or belief system.²⁶⁰ The UN Human Rights Committee notes that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition."²⁶¹ It adds that "any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination."²⁶² Similarly, the OTP Policy on the Crime of Gender Persecution and the Policy on Cultural Heritage note that human rights violations cannot be ignored, dismissed or justified on the basis of culture.²⁶³

The Taliban's dress and appearance criteria violate the right to non-discrimination on the basis of gender, in that they forbid people from wearing clothing or appearing in a manner that

253 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 48. The OTP **Policy on the Crimes of Gender Persecution** and OTP **Policy on Cultural Heritage** also reaffirm that "Breaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture." Policy on the Crime of Gender Persecution, para. 27. Policy on Cultural Heritage, fn. 8 (citing the Report of the Special Rapporteur in the field of cultural rights, **A/HRC/31/59** (February 3, 2016), para. 27).

254 **Policy on the Crime of Gender Persecution**, para. 39.

255 UN General Assembly, Universal Declaration of Human Rights, **Resolution 217 A (III)** (December 10, 1948), Articles 2 and 19; UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Articles 2(1) and 19(2).

256 UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 3; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, **Resolution 34/180** (December 18, 1979), Article 3.

257 Such laws "may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated." UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 22.

258 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 33.

259 "Laws must not violate the non-discrimination provisions of the Covenant. Laws must not provide for penalties that are incompatible with the Covenant, such as corporal punishment." UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 26.

260 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 48.

261 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 32.

262 UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, **CCPR/C/GC/34** (September 12, 2011), para. 32.

263 **Policy on the Crime of Gender Persecution**, para. 27; **Policy on Cultural Heritage**, fn. 8 (citing the Report of the Special Rapporteur in the field of cultural rights, **A/HRC/31/59** (February 3, 2016), para. 27).

Taliban members find fall outside of imposed gender regulations. Under this regime, men are required to have facial hair and wear only garments that the Taliban deems adhere to its vision of masculinity. The Taliban require women to wear full coverings, as part of a clear aim to remove them from public life altogether.²⁶⁴ They enforce these regulations through torture, wrongful detention, and inhumane acts. (See §IV(C)(4), below).

Dress codes often reflect discriminatory attitudes that objectify women and deny their personal autonomy.²⁶⁵ The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression observed with concern the ways in which “interpretations of culture, religion and tradition that subordinate women ... are used to justify discriminatory laws [and] rules,” finding “[t]hey disempower women and undermine their agency to express themselves or define their own culture, religion and tradition, while at the same time assigning them the role of preserving cultural traditions and values.”²⁶⁶ The Rapporteur condemned state and non-state actors that weaponize notions of “modesty,” and in the name of “protecting” women, violate their rights for acts like posting photos of themselves on social media without headscarves. She found that these and other

similar “paternalistic approaches do not take women’s consent into account and see any expression of female sexuality as problematic, transgressive and punishable.”²⁶⁷

These concerns are applicable to the Taliban, which utilizes interpretations of religion that subordinate women to justify discriminatory rules, like their dress and appearance regulations.²⁶⁸ Taliban spokesmen have made clear that they are enforcing their interpretation of Islam through the dress regulations.²⁶⁹ It is apparent that their interpretation dehumanizes and objectifies women. For example, in their order requiring women to fully cover, they demonstrate their intent to deny women access to public life by stating that the best way for them to obey the dress regulation is to not leave their homes.²⁷⁰ They make no such requirement of men or boys. By design, these and other Taliban rules “disempower women and undermine their agency to express themselves or define their own culture, religion and tradition, while at the same time assigning them the role of preserving cultural traditions and values.”²⁷¹

Further compounding the severity of the Taliban’s deprivation of the fundamental right to expression is its enforcement through crimes including torture, arbitrary detention, and

264 “How the Taliban’s Hijab Decree Defies Islam”, *United States Institute of Peace* (May 2022).

265 Amnesty International, “Women’s right to choose their dress, free of coercion, statement to the 55th session of the United Nations Commission on the Status of Women” (February 22, 2011), p. 2; *In the Case of Velásquez Paiz El Al v. Guatemala*, Judgment, Inter-American Court of Human Rights (IACHR) (November 19, 2015), paras. 9-10. “Thus, it is the State’s obligation to ensure a safe environment so that every woman who decides to express her control of her own body by using clothes that differ from those favored by society can do so. Owing to the existence of a known context of violence against women, the choices that women make as regards their clothing deserve special protection, because the external appearance – mainly the clothing – can be used to unfairly categorize women, often to their detriment.”

266 Irene Khan, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *A/76/258* (July 2021), para. 15.

267 Irene Khan, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *A/76/258* (July 2021), paras. 24-25.

268 Irene Khan, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *A/76/258* (July 2021), para. 15.

269 Arwa Ibrahim, “In Afghanistan, Taliban diktat sparks debate about women’s attire”, *Al Jazeera* (January 26, 2022).

270 “How the Taliban’s Hijab Decree Defies Islam”, *United States Institute of Peace* (May 2022).

271 Irene Khan, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *A/76/258* (July 2021), para. 15.

inhumane acts, as described under element four. Taliban members have beaten men, boys, women, girls and/ including²⁷² LGBTQI+ people, often in public, for perceived non-compliance with gender dress regulations, in contravention of the fundamental right to expression. For example, Taliban members have beaten men who shaved their beards, unlawfully detained and beat a transgender woman for days on end, and flogged a woman until she lost consciousness because her burqa lacked a mesh covering over her eyes. These and other brutal acts, taken together with the Taliban's record of inhumane treatment, torture and murder of those who did not adhere to their gender regulations during their initial period in power, create an atmosphere of coercion,²⁷³ further curtailing the right to freedom of expression.

The severity of the denial of the right to expression through dress and appearance regulations is also apparent in its ability to impact other rights, including to movement, education, and work. Women and LGBTQI+ people report that they fear leaving their homes because of the Taliban's dress code enforcement. Before the Taliban banned women's access to higher education, a Taliban member denied a woman entry to her university to take an exam for purportedly being out of dress regulation.²⁷⁴ Such a fundamental rights violation also triggers other human rights violations. For example, some women in Afghanistan have reported

not being able to breathe adequately and overheating during hot weather while covering their faces and bodies in accordance with the Taliban's dress regulations, while others report it makes performing their jobs difficult.²⁷⁵

Dress is also linked to freedom of thought, conscience and religion. By imposing dress regulations targeting men and women and denying their freedom to choose what to wear, the Taliban denies people under its control the right to manifest their beliefs free of coercion, on the basis of gender.²⁷⁶ By depriving the fundamental right to expression and non-discrimination on the basis of gender, and enforcing the deprivation through additional fundamental rights violations, the Taliban's acts meet the severity standard for element one of persecution.

2. Element Two: The perpetrator targeted such person or persons by reasons of the identity of a group or collectivity or targeted the group or collectivity as such.

Article 7(1)(h) of the Rome Statute criminalizes persecution by perpetrators that target a person or persons by reason of the identity of a group or collectivity, or that target the group or collectivity as such. The OTP Policy on the Crime of Gender Persecution affirms that "persons may be targeted for gender persecution because of sex characteristics and/or because of the social

272 See discussion on intent and targeted group, in § II Gender Persecution: Elements of the Crime, above. While LGBTQI+ persons can belong to women, girls, men and boys groups, they can also be targeted for belonging to LGBTQI+ groups. **Policy on the Crime of Gender Persecution**, para 5.

273 Haroon Janjua, "I lost consciousness': woman whipped by the Taliban over burqa without veil", *The Guardian* (April 18, 2019).

274 Amnesty International, "Death in slow motion: Women and girls under Taliban rule" (July 2022), pp. 38-39; Human Rights Watch and OutRight Action International, "Even If You Go to the Skies, We'll Find You' LGBT People in Afghanistan After the Taliban Takeover" (January 2022), pp. 3,11, and 13.

275 Amnesty International, "Death in slow motion: Women and girls under Taliban rule" (July 2022), pp. 37-38; Human Rights Watch, "Afghanistan: Taliban Deprive Women of Livelihoods, Identity" (January 18, 2022).

276 UN General Assembly, International Covenant on Civil and Political Rights, **Resolution 2200A (XXI)** (December 16, 1966), Article 18.1.2; *Amnesty International*, "Death in slow motion: Women and girls under Taliban rule" (July 2022), p. 82.

constructs and criteria used to define gender roles, behaviours, activities and attributes.”²⁷⁷

The Policy on Gender Persecution also makes clear that the “‘targeted group’ should be viewed broadly. Not all targeted persons are required to be directly part of the targeted group: it is sufficient that they are sympathizers or affiliates of targeted members.”²⁷⁸ This includes targeting persons for gender persecution “when they are perceived to have or carry (gender) criteria prohibited by the perpetrator; or are perceived to not have or carry (gender) criteria required by the perpetrator.”²⁷⁹ The Policy clarifies that “[i]t is also sufficient that the perpetrator perceives the person as a member or an affiliate of the targeted group. For example, if a perpetrator targets a person for being perceived as a gay man or lesbian, it is irrelevant that the person does not personally identify as homosexual.”²⁸⁰ Targets of gender persecution can include multiple groups targeted with the same persecutory conduct, separately based on gender.²⁸¹ For example, men and women may both be targeted through rape by reason of gender.²⁸²

The OTP Policy on the Crime of Gender Persecution also reminds us that “[a]cts or crimes are committed as punishments for deviating from gender criteria imposed by the perpetrators. For example, women or girls who violate dress regulations by not wearing gloves at the market, could be met with corporal punishment. Men and boys who exhibit what

perpetrators view as ‘undesirable behaviors or clothing’ counter to their notions of masculinity may be punished with torture or murder.”²⁸³

The Taliban’s deprivation of the fundamental right to expression targets specific groups based on gender, forcing adherence to the different dress and appearance criteria assigned to women and men. Taliban members have targeted women and girls with torture and other inhumane acts for not adhering to their notions of proper attire for women. Similarly, they have targeted men and boys for not following the Taliban’s dress and appearance regulations for men. The UN Special Rapporteur on the situation of human rights in Afghanistan expressed deep concern that the Taliban’s policy to beat men found with women wearing colorful clothing or no face covering, is designed “to compel men and boys to control the behaviour, attire and movement of women and girls, thus pitting men against women, normalizing discrimination and violence against women and girls and taking away their agency.”²⁸⁴ Both men and women in these instances may also be victims of gender persecution.

The Taliban has also targeted LGBTQI+ people, and those they presume to be, for not complying with dress and appearance regulations for men and women. LGBTQI+ people in Afghanistan have reported being attacked, sexually assaulted, or directly threatened by Taliban members based on their real or perceived sexual orientation or gender identity.²⁸⁵ (See §

277 [Policy on the Crime of Gender Persecution](#), para. 42.

278 [Policy on the Crime of Gender Persecution](#), para. 43.

279 [Policy on the Crime of Gender Persecution](#), para. 42.

280 [Policy on the Crime of Gender Persecution](#), para. 44.

281 [Policy on the Crime of Gender Persecution](#), paras. 50 and 51.

282 [Policy on the Crime of Gender Persecution](#), para. 51.

283 [Policy on the Crime of Gender Persecution](#), para. 91(i).

284 Richard Bennett, Report of the Special Rapporteur on the situation of human rights in Afghanistan, Human Rights Council, [A/HRC/52/84](#) (February 9, 2023), para. 20.

285 Human Rights Watch and OutRight Action International, “‘Even If You Go to the Skies, We’ll Find You’ LGBT People in Afghanistan After the Taliban Takeover” (January 2022), p. 1.



IV(C)(4), below).

3. Element Three: Such targeting was based on gender as defined in article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognized as impermissible under international law.

Mental Elements for Gender Persecution

In addition to knowledge that conduct was part of a widespread or systematic attack on civilians or intention that it be part of such an attack, mental elements for gender persecution require

that the perpetrator:

- meant to cause a severe deprivation of fundamental rights or knew that it would occur in the ordinary course of events;
- had the specific intent to discriminate (targeting based on the statutory ground of gender)²⁸⁶

Note however, that exceptions for proving specific intent to discriminate under modes of liability other than direct, co-, or indirect perpetrator modes would allow for finding

²⁸⁶ Policy on the Crime of Gender Persecution, para. 46.

gender persecution where perpetrators, for example, order, induce, or aid its commission, without necessarily proving specific intent:

[U]nless the accused is charged under article 25(3)(a) as a direct perpetrator, a co[-] perpetrator and/or an indirect perpetrator, there is no requirement to prove that the accused had a specific intent to discriminate. However, the mental elements for other relevant modes of liability must be proven. It suffices that the perpetrators had the specific intent to discriminate, in that case.²⁸⁷

The intent to impose discriminatory dress regulations that dictate how men and women should dress demonstrates the intent to discriminate. The targeted group for this discrimination may include men, women, girls, boys, and LGBTQI+ persons. Regarding the first mental element, the Taliban clearly intends to deprive women, men, girls, boys, and LGBTQI+ people of their fundamental right to free expression through discriminatory policies regulating “social constructs and criteria used to define gender roles, behaviours, activities and attributes.”²⁸⁸ Their acts and conduct also evidence their intent to deprive the fundamental right to freedom from discrimination. These include their creation, promotion and enforcement of policies that regulate men and women's dress and appearance, and that are frequently connected to other acts and crimes prohibited under the Statute.

The Taliban's acts also demonstrate the intent

to discriminate based on gender, meeting the second mental element. The Taliban imposes dress and appearance requirements for men and women explicitly on the basis of gender, depriving people of their fundamental right to free expression. Taliban members then target women, men, girls, boys, and LGBTQI+ persons that they believe transgress their gender regulations. They have committed torture, inhumane treatment, sexual violence, and unlawful detention in an effort to enforce these gender regulations, severely depriving persons of numerous fundamental rights including the right to freedom of expression.

When analyzing the intent to discriminate, it is important not to conflate the concepts of “motive” and “intent.”²⁸⁹ The Policy on Gender Persecution makes clear that “motives do not undermine discriminatory intent.”²⁹⁰ Moreover, “personal motives that do not evidence discriminatory intent do not negate a discriminatory intent.” Intent to discriminate is demonstrated when the perpetrator specifically intended to treat a targeted gender group or member of that group unequally.²⁹¹

Prior discrimination by other actors does not negate a perpetrator's discriminatory intent. For example, human rights monitors have observed that the Taliban de facto authorities' anti-LGBTQI+ stance reflects the previous government's support for the criminalization of same-sex relations.²⁹² Promotion of previously enacted discriminatory policies may serve as evidence of gender persecution. The question

287 [Policy on the Crime of Gender Persecution](#), para. 47.

288 [Policy on the Crime of Gender Persecution](#), para. 42.

289 [Policy on the Crime of Gender Persecution](#), para. 49.

290 [Policy on the Crime of Gender Persecution](#), para. 52 (citing *Prosecutor v. Kvočka*, [IT-98-30/1-A](#), Appeals Chamber Judgement, para. 463; *Prosecutor v. Kunarac*, Appeals Chamber Judgement, [IT-96-23 & 23/1-A](#), paras. 103 and 153).

291 [Policy on the Crime of Gender Persecution](#), para. 49.

292 Human Rights Watch and OutRight Action International, “‘Even If You Go to the Skies, We'll Find You' LGBT People in Afghanistan After the Taliban Takeover” (January 2022), p. 1. E.g., Taliban judge reported to the media shortly before the fall of Kabul, “For homosexuals, there can only be two punishments: either stoning, or he must stand behind a wall that will fall down on him.” Id., at

of intent hinges on whether the perpetrator intended to discriminate on the basis of gender. Motive to discriminate may include, for example, a desire to curry favor with or exert control over the local population; a desire to uphold an interpretation of religious beliefs; or a desire to enact strategy or tactic of war. It could be that the perpetrators are simply reinforcing systems or measures that were already in place before they took control. These are all examples of motives for engaging in discriminatory conduct. Here the question of intent is simply whether the perpetrator intended to cause unequal treatment to a victim based on gender. In each case, motive should be de-conflated with the intent to treat persons unequally based on gender. Just as a perpetrator's willingness to enforce preexisting racist policies may evidence racial or ethnic persecution, so does the enforcement of new or preexisting misogynist or homophobic policies, in contexts where the Court has jurisdiction.

Similarly, the Taliban's motives for denying freedom of expression may also include living out their religious values and interpretation or preserving "honor." This does not negate their intention to deny the fundamental right to expression on the basis of gender. In October 2022, a Taliban spokesperson stated to the media: "LGBT... That's against our Sharia [Islamic] law."²⁹³ The OTP Policy on the Crime of Gender Persecution and the Policy on Cultural Heritage both remind us that, "human rights violations prohibited under international law

are not culturally determinative. Breaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture."²⁹⁴

Evidencing Discriminatory Intent

According to the OTP Policy on the Crime of Gender Persecution, discriminatory intent may be evidenced through direct perpetrators' acts or statements, as well as by legislation, policies, or regulations promulgated by the perpetrator group, or public statements relating to the underlying crimes or persecutory acts. It can also be inferred from targeting patterns, such as where crimes "are committed exclusively or predominantly against certain individuals or groups and/or not against others, or [involve] the separation of individuals based on their identifying gender characteristics. Intent and knowledge can also be inferred from prior or subsequent conduct."²⁹⁵ Specifically, "the disproportionate use of a persecutory conduct against one group based on gender," may also evidence discriminatory intent.²⁹⁶

Through pronouncements regarding their imposition of gendered dress and appearance regulations and their enforcement of them, the Taliban make clear that their deprivation of the right to expression is committed on the basis of gender. They publicize and violently enforce policies regulating dress and appearance standards based on their understanding of how women, girls, men and boys should dress and

p. 1 (citing to Paul Ronzheimer and Giorgos Moutafis, "This Taliban judge orders stoning, hanging, hands chopped off", BILD (July 13, 2021)); The Taliban's Ministry of Vice and Virtue issues a manual in 2020 that calls on religious leaders to prohibit same-sex relations and allows the reporting and punishment of homosexual behavior. Id. (citing a document on file with Human Rights Watch); See also, "Afghanistan: Taliban 'Vice' Handbook Abusive," Human Rights Watch (October 29, 2021).

293 Human Rights Watch and OutRight Action International, "'Even If You Go to the Skies, We'll Find You' LGBT People in Afghanistan After the Taliban Takeover" (January 2022), p. 1 (citing "Taliban say gay rights will not be respected under Islamic law", *Reuters* (October 29, 2021)).

294 **Policy on the Crime of Gender Persecution**, para. 27. **Policy on Cultural Heritage**, fn. 8.

295 **Policy on the Crime of Gender Persecution**, para. 95.

296 **Policy on the Crime of Gender Persecution**, para. 50 and 88 (noting that a lack of disproportionality may not evidence an absence of gender persecution).

present themselves.²⁹⁷ Taliban members have also made discriminatory remarks related to gender when punishing people for not adhering to their dress regulations, for example calling a man a “sister” and asking another why he was “acting like a girl,” both for not having beards.

Discriminatory remarks such as these against men indicate the Taliban's disparagement of women and girls. They not only evidence the intent to discriminate based on gender, they also demonstrate a belief that men enjoy a higher standing than women or LGBTQI+ persons.²⁹⁸ Their tactic is to insult men and boys for supposed gender non-conformity by equating them with women and girls, whom they view as inferior. A gender persecution analysis helps to expose the manipulation of discriminatory beliefs about women, girls, and LGBTQI+ persons in harms committed against hetero-normative men.²⁹⁹ This violence targets victims who may believe in the inequality these narratives uphold. In this sense, the intent is to harm victims by using oppressive gender beliefs they may not normally be subordinated by.³⁰⁰ This also “reflect[s] the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by vulnerable gender groups such as women, girls and LGBTQI+ persons.”³⁰¹

When regulating and enforcing dress and appearance requirements for women and girls,

the Taliban's acts are connected to their overall attempt to remove women from public life. Their order calling for women to fully cover states that the best way to obey their hijab order is to not leave the house,³⁰² demonstrating that the dress code is part of their broader intent to remove women from public life, inseparable from their denial of women and girls' rights to education or work.

The Taliban's deprivation of women and girls' right to expression in their manner of dress also reflects a misogynist view of “honor” that frames women and girls as sex objects who themselves are responsible for sexual violence against them, and therefore must be covered or invisible.³⁰³ Taliban statements reflect the view that eliminating the risk of exposure of any part of a woman's body is more important than ensuring that she be able to carry out routine public activities, triggering numerous deprivations of other fundamental rights including the rights to work, to education, and to civic participation.

For example, when announcing in September 2021 that women and girls would not be allowed to play sports, Ahmadullah Wasiq, deputy head of the Taliban's cultural commission, stated that this was because “they might face a situation where their face and bodies will not be covered.”³⁰⁴ In December 2021, the Taliban banned drivers from transporting women passengers without a hijab,³⁰⁵

297 Note these policies target women, girls, men, boys, and LGBTQI+ persons. See § IV(C)(3) *Mental Elements for Gender Persecution*, noting that “The intent to impose discriminatory dress regulations that dictate how men and women should dress demonstrates the intent to discriminate. The *targeted group* for this discrimination may include men, women, girls, boys, and LGBTQI+ adults and youth.”

298 See, e.g., [Policy on the Crime of Gender Persecution](#), para. 51.

299 Lisa Davis, “[Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities](#)”, *Northwestern Journal of Human Rights*, Vol. 20 (2021), p. 20.

300 Lisa Davis, “[Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities](#)”, *Northwestern Journal of Human Rights*, Vol. 20 (2021), p. 20.

301 [Policy on the Crime of Gender Persecution](#), p. 5.

302 “How the Taliban's Hijab Decree Defies Islam”, *United States Institute for Peace* (May 2022).

303 Sonia Ahsan-Tirmizi, *Pious Peripheries: Runaway Women in Post-Taliban Afghanistan* (2021), pp. 149, and 157-169; UNAMA and OHCHR, [Silence is Violence – End the Abuse of Women in Afghanistan](#) (July 9, 2010), p. 2.

304 Joshua Rhett Miller, “Taliban official says women will be barred from playing sports in Afghanistan”, *New York Post* (September 8, 2021); Haris Zargar, “The Taliban's bid to make Afghan women invisible”, *New Frame* (June 2022).

305 “A timeline of the Taliban's assault on women's and human rights”, *Onward for Afghan Women* (last visited March 26, 2023).

thereby limiting their ability to appear in public unless adhering to the Taliban's dress restrictions. Taliban have stated that before they will open girls' secondary schools, they have to ensure girls' school uniforms meet their imposed dress requirements as part of preserving "honor"³⁰⁶—a burden not imposed on boys or men.

The Taliban heavily focus on women and girls' dress and appearance, repeatedly emitting new orders requiring women to cover themselves. In January 2022, the Ministry for the Promotion of Virtue and Prevention of Vice spokesperson Muhammad Akif Muhajir stated that the hijab or burqa is a "Qurani order" that Muslim women should follow. The Ministry also hung posters throughout Kabul, directing women to wear burqas, a long garment which fully covers the face and entire body.³⁰⁷ In May 2022, the Taliban issued directives regarding proper hijab wearing, as well as orders prohibiting women TV presenters from showing their faces on air.³⁰⁸ The orders prescribed criminal punishments, including for male family members of women found without hijabs in public,³⁰⁹ reflecting a diminished view of women and girls' agency and encouraging male relatives' control over them. The orders also said women in certain jobs would be fired if found out of compliance.³¹⁰

In January 2022, A spokesman tweeted in response to the arrests of women they were detaining incommunicado and torturing after a

protest against gendered dress requirements, that "insulting the religious and national values of the Afghan people is not tolerated anymore."³¹¹ This statement affirms the Taliban's view that women and girls must adhere to their imposed dress and other requirements. While the Taliban's motives for denying women, girls and their supporters and affiliates the right to expression may include living out their religious values and interpretation, as stated before, this does not negate their intention to deny fundamental rights on the basis of gender.³¹²

The Taliban have also committed brutal acts against LGBTIQ+ people to enforce gendered dress and appearance regulations. They have arbitrarily detained, tortured, and committed sexual violence against victims. Human rights reporting indicates that the Taliban are enacting even more systemic targeting and abuse of LGBTIQ+ people than they were during their first months in power.³¹³

4. Element Four: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the Court.

Article 7(1)(h) provides that persecution on grounds of gender must occur in connection with any act referred to under article 7(1) of the Statute or any crime within the jurisdiction of the Court. Taliban members have committed acts of torture and other inhumane acts, ranging from repeatedly

306 Fazelminallah Qazizai and Diaa Hadid, "Taliban reverses decision, barring Afghan girls from attending school beyond 6th grade", NPR (March 23, 2022); Ayaz Gul, "Taliban leader indicates reopening girl's schools depends on dress codes", VOA News (May 17, 2022).

307 Arwa Ibrahim, "In Afghanistan, Taliban diktat sparks debate about women's attire", Al Jazeera (January 26, 2022).

308 "A timeline of the Taliban's assault on women's and human rights", *Onward for Afghan Women* (last visited March 26, 2023).

309 "How the Taliban's Hijab Decree Defies Islam", *United States Institute for Peace* (May 2022).

310 "How the Taliban's Hijab Decree Defies Islam", *United States Institute for Peace* (May 2022).

311 "Taliban Claims Right to Jail Protesters Following Disappearance of Afghan Women Activists", *Radio Free Europe Radio Liberty* (January 22, 2022); "Afghanistan women's rights activist says Taliban tortured her in prison, but she 'had to speak out'", *CBC News* (August 16, 2022); Kathy Gannon, "Taliban Storm Kabul Apartment, Arrest Activist and Her Sisters", *The Diplomat* (January 22, 2022); "Afghan woman activist released after arrest in January", *BBC* (February 13, 2022).

312 See footnotes 14 and 28.

313 OutRight Action International, "A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans" (2023), p. 5-6.

beating a wrongfully detained victim to pouring boiling water on another, in order to enforce their denial of the right to freedom of expression.³¹⁴ Taliban acts or crimes enacted in an effort to enforce policies regulating dress and appearance for women and girls include the following:

- On January 19, 2022, the Taliban arrested Tamana Zaryabi Paryani and Parwana Ibrahimkhel, who participated in the January 16 protests for women's rights, which occurred shortly after the Taliban had mandated that women wear a hijab. During the protest, a burqa was burned. The evening of January 19th, Paryani filmed the moment the Taliban came to break her door down to arrest her along with her three sisters. Released nearly a month later with Ibrahimkhel and other activists, Paryani reported that the Taliban had recorded themselves torturing her with cables, pipes and whips in detention. She said she still felt imprisoned after her release because the Taliban forbade her from leaving the country. The Taliban denied detaining the women, who were held incommunicado, but a Taliban spokesman tweeted January 20th in response to the arrests that "insulting the religious and national values of the Afghan people is not tolerated anymore."³¹⁵
- According to the February 2023 report of the UN Special Rapporteur on the situation of human rights in Afghanistan, the Taliban are

beating men accompanying women wearing colorful clothing or without a face covering, including in cases when they cannot prove their relationship.³¹⁶

- According to the February 2023 report of the UN Special Rapporteur on the situation of human rights in Afghanistan, the Taliban ordered instatement of corporal punishments in November 2022. Between 18 November 2022 and 15 January 2023, Taliban have flogged over 180 men, women and children in public. Victims received between 20 and 100 lashes for alleged crimes that included "violating codes of social behaviour."³¹⁷
- In November 2021, a 32-year-old woman journalist based in Takhar province was walking to a market near her home wearing an overcoat. At a Taliban checkpoint, when she raised her arm, making her wrist and hand visible, a Taliban official asked, "Why is your hand like this? It's naked." He then beat her with an iron rod.³¹⁸
- A week before the Taliban took complete control over Kabul in 2021, its militants shot an Afghan woman to death in Balkh Province, purportedly for wearing tight clothing and not being accompanied by a male relative.³¹⁹
- In March 2019, Taliban members arrested a woman at a local market in Sancharak district in Sari-i-pul, after asking her why her burqa lacked a mesh eye covering. They arrested

314 [The Rome Statute](#), Article 7(1)(g).

315 "Taliban Claims Right to Jail Protesters Following Disappearance of Afghan Women Activists", *Radio Free Europe Radio Liberty* (January 22, 2022); "Afghanistan women's rights activist says Taliban tortured her in prison, but she 'had to speak out'", *CBC News* (August 16, 2022); Kathy Gannon, "Taliban Storm Kabul Apartment, Arrest Activist and Her Sisters", *The Diplomat* (January 22, 2022); "Afghan woman activist released after arrest in January", *BBC* (February 13, 2022).

316 Richard Bennett, Report of the Special Rapporteur on the situation of human rights in Afghanistan, Human Rights Council, [A/HRC/52/84](#) (February 9, 2023), para. 20.

317 Richard Bennett, Report of the Special Rapporteur on the situation of human rights in Afghanistan, Human Rights Council, [A/HRC/52/84](#) (February 9, 2023), para. 20.

318 *Amnesty International*, "Death in slow motion: Women and girls under Taliban rule" (July 2022), p. 38.

319 RFE/RL's Radio Azadi, "Afghan Police Say Taliban Killed Young Woman For Wearing Tight Clothing", *Radio Free Europe/Radio Liberty* (August 4, 2021).

her and publicly flogged her so hard that she lost consciousness.³²⁰

- Taliban members threatened the national women's volleyball team players and their families, telling them that if they allowed girls to play sports they would face violence. In 2019, two men stabbed one of the leading players in Kabul after the Taliban issued threats against her.³²¹

Taliban acts or crimes enacted to enforce policies regulating dress and appearance for men and boys include the following:

- In 2022, Taliban members sexually assaulted a gay man and subjected him to electric shocks after arresting him on the basis that his clothing did not adhere to their dress code for men.³²²
- In late 2021 a group of Taliban members stopped a bisexual man riding his scooter and attacked him because he had shaved his beard and "wore some good clothes." The victim reports that the Taliban said, "Why do you shave your face like a girl? Why are you acting like a girl?" The Taliban warned the man to not wear certain clothes, to not shave his beard, and to "just live the way we say."³²³
- In October 2021, a man told reporters that a group of Taliban fighters in Kabul stopped him because he was wearing clothing they deemed out of compliance with their dress code for men. The Taliban searched his

phone, found photographs suggesting that he identified as gay, and started beating hi³²⁴m with a whip and stick while saying he should be killed. The Taliban covered the man's mouth, told him not to make noise or they would beat him more, and threatened to kill him if they found him wearing clothes not in compliance with their dress code for men, or carrying similar photos in his phone again.

- Taliban authorities attacked a gay human rights defender when he visited a government building for identification documents in October 2021. After grabbing him, questioning why he was wearing clothing they deemed out of compliance with their dress code for men, and then forcing him into his office, a Taliban authority slapped him. Two more then kicked and beat the man before throwing scalding water at him, burning his chest. The victim that while the Taliban first questioned his clothes, he knew that they had identified him as gay.³²⁵
- In September 2021, a Taliban fighter stopped a gender non-conforming person walking down the street and beat them with a plastic pipe. The Taliban fighter said, "Don't you know how to walk like a man?"³²⁶
- In Taliban-controlled Helmand province, amid interviews conducted between January 2019- and April 2020, a man told human rights observers that the Taliban stopped and beat him in the Gereshk district and called

320 Haroon Janjua, "I lost consciousness': woman whipped by the Taliban over burqa without veil", *The Guardian* (April 18, 2019).

321 George Wright, "Afghanistan's female volleyball players tell of threats and fear", *BBC* (September 23, 2021).

322 OutRight Action International, "A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTQ Afghans" (2023), p. 29.

323 Human Rights Watch and OutRight Action International, "'Even If You Go to the Skies, We'll Find You' LGBT People in Afghanistan After the Taliban Takeover" (January 2022), p. 20.

324 Brent Swailis and Clarissa Ward, "Taliban's religious police instructed to be more moderate, but vulnerable Afghans say brutal justice is still being meted out", *CNN* (October 12, 2021).

325 Patrick Kelleher, "Gay Afghan burned by Taliban says international LGBT+ community has 'forgot about us'", *Pink News* (October 22, 2021).

326 Ben Westcott, "Angry and afraid, Afghanistan's LGBTQ community say they're being hunted down after Taliban takeover", *CNN* (September 18, 2021).

him “sister” because he did not have a beard. The Taliban warned him they would beat him again if he shaved his beard.³²⁷

- In Gereshk district in Taliban-controlled Helmand province, the Taliban set up checkpoints to control all vehicles entering a local bazaar, and to look for people with short or shaved beards. In one instance in 2019, the Taliban found three people with shaved beards and beat them in front of a crowd.³²⁸
- In August 2019, in Wardak province, in areas under Taliban control, the Taliban beat two men who had shaved their beards and had haircuts the Taliban did not approve of.³²⁹

The OTP Policy on the Crime of Gender Persecution notes that “[i]ntersex, nonbinary or transgender persons may be targeted for not belonging to ‘male/men’ or ‘female/women’ groups, as defined by the perpetrator.”³³⁰

The following are examples of acts or crimes reported to have been committed by the Taliban targeting transgender persons in an effort to enforce policies regulating dress and appearance for men, women, girls, and boys:

- In February 2022, people lured an 18 year-old trans woman and her friend to a party by agreeing to pay them to dance, then trapped them and turned them over to the Taliban. The Taliban bound their hands, took their cell phones and beat them with a whip. They clipped the transgender woman’s nails while whipping her. One of them said “I wish I

could do this to your neck and sever your head from your filthy body instead of cutting your nails.”³³¹

- On July 23, 2022, two presumed Taliban members stopped a 21 year-old trans woman on the street, and forced her to a police station. At the station, a third Taliban member joined the first two in beating the transgender woman, dragging her across gravel and whipping her. That night a guard extorted sex from her in exchange for release.³³²
- In October 2021, Taliban arrested a trans woman who was performing song and dance at a village wedding, along with nine of the hosts. They beat them all with whips, chains and the butts of their guns in a dark basement. They then brought the trans woman to a mosque, where a mullah publicly shamed her, saying that “people who engage in homosexuality or wear gender non-conforming clothes are ‘cursed.’” She was only released after performing a public repentance ritual. She ultimately had to flee her village.³³³
- In October 2021, civilians attacked a trans woman in her home and then handed her over to the Taliban. The Taliban held her naked at a police station, where they mocked her body, beat her repeatedly, demanded she reveal other trans women’s locations, shaved her eyebrows, and shaved and cut her scalp. They released her on the street in

327 “You Have No Right to Complain’: Education, Social Restrictions, and Justice in Taliban-Held Afghanistan”, *Human Rights Watch* (June 30, 2020), p. 43.

328 “You Have No Right to Complain’: Education, Social Restrictions, and Justice in Taliban-Held Afghanistan”, *Human Rights Watch* (June 30, 2020), pp. 42-43.

329 “You Have No Right to Complain’: Education, Social Restrictions, and Justice in Taliban-Held Afghanistan”, *Human Rights Watch* (June 30, 2020), p. 50.

330 **Policy on the Crime of Gender Persecution**, para. 45.

331 OutRight Action International, “A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans” (2023), p. 22.

332 OutRight Action International, “A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans” (2023), p. 22-23.

333 OutRight Action International, “A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans” (2023), p. 20-21.

men's clothing with no cell phone. A Taliban commander ordered her to return to her hometown, where she had no place to stay because she'd been disowned by her family. He said that he would kill her if she returned to the city.³³⁴

- In September 2021, two Taliban members stopped a trans woman to ask why she had no mahram. Upon hearing her voice, they said “[y]our voice sounds different... You are a male wearing women's clothes.” One of the Taliban members beat her with an electric cable. She managed to escape the scene, but eventually she and her husband had to go separately into hiding when a relative reported them to the Taliban.³³⁵

- Taliban members beat a transgender man on the street for “wearing men's clothing” after their takeover in August 2021.³³⁶
- Soon after seizing control of Kabul in 2021, Taliban members whipped a transgender woman at a checkpoint because her appearance did not conform to their gender standards. The Taliban asked her, “Why have you made up your eyebrows? Why don't you have a beard? Why do you wear pants and a shirt?”³³⁷

334 Human Rights Watch and OutRight Action International, “‘Even If You Go to the Skies, We’ll Find You’ LGBT People in Afghanistan After the Taliban Takeover” (January 2022), p. 16-17.

335 OutRight Action International, “A Mountain on My Shoulders: 18 Months of Taliban Persecution of LGBTIQ Afghans” (2023), p. 21-22.

336 Human Rights Watch and OutRight Action International, “‘Even If You Go to the Skies, We’ll Find You’ LGBT People in Afghanistan After the Taliban Takeover” (January 2022), p. 20.

337 Human Rights Watch and OutRight Action International, “‘Even If You Go to the Skies, We’ll Find You’ LGBT People in Afghanistan After the Taliban Takeover” (January 2022), p. 20.