

THE UPR PROJECT AT BCU

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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. The current human rights situation in Afghanistan is of significant concern. In August 2021, immediately after the US and its allies withdrew its armed forces from the country, the Taliban regained control of Afghanistan. The consequences have been devastating for women's rights, as women have been banned from "parks, gyms, universities, and jobs at nongovernmental groups and the United Nations",¹ and the government Ministry of Women's Affairs has been shut down.² In June 2023, the UN Deputy High Commissioner for Human Rights said that "[g]lobally, we have seen a backlash against women's and girl's rights in recent years. However, nowhere has this been more profound and all-encompassing than in Afghanistan since the Taliban took power in mid-August 2021".³ In September 2023, Human Rights Watch condemned the human rights violations as amounting to "crimes against humanity of persecution based on gender".⁴
2. This Stakeholder Report provides information on a specific human rights issue in Afghanistan: domestic abuse experienced by women. Even prior to the Taliban regaining control of the country, it was reported that Afghanistan had one of the highest global rates of domestic abuse perpetrated against women.⁵ Domestic abuse is defined as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".⁶ This Stakeholder Report refers to 'domestic abuse' throughout, in recognition of the fact that domestic abuse includes mechanisms of control much more than just physical violence and psychological intimidation. However, domestic abuse is sometimes referred to as 'domestic violence' or 'intimate partner violence' and is also included under the broad umbrella terms 'violence against women and girls' and 'gender-based violence'.
3. In this submission we encourage Afghanistan to commit to improving its human rights protection and promotion, by engaging meaningfully with the fourth cycle of the UPR in 2024 and engaging with the international community and the United Nations.

A. Normative and Institutional Framework of Afghanistan

4. There are nine core international human rights treaties,⁷ of which Afghanistan is a party to seven, albeit with the attachment of reservations, understandings, and declarations ('RUDs').⁸ The Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW')⁹ is key when considering the protection of women from domestic abuse. In particular, General Recommendation 19 passed in 1992 provides that:

'The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.¹⁰

5. General Recommendation 35 from 2017 updated General Recommendation 19 to provide “further guidance aimed at accelerating the elimination of gender-based violence against women”.¹¹ Afghanistan has been a party to CEDAW since 1985.¹²
6. There are a number of other international human rights agreements and policies related to domestic abuse, in particular the Declaration on the Elimination of Violence Against Women 1993.¹³ Also pertinent are the Beijing Declaration and Platform for Action 1995,¹⁴ the UN Commission on Human Rights Resolution 1994/945,¹⁵ and the Commission on the Status of Women.¹⁶ Article 6 of the Cairo Declaration of Human Rights in Islam (1996),¹⁷ which states that “[w]oman is equal to man in human dignity”, is also relevant to Afghanistan in this context.
7. Domestically, the 2004 Constitution of Afghanistan provided for equality of rights between men and women.¹⁸ In 2009, the ground-breaking Elimination of Violence Against Women Law (‘EVAW’) was passed, which sought to prohibit violence against women, whilst also prosecuting perpetrators and providing public awareness and education on the issue.¹⁹ While this was an important development for women’s rights, enforcement of EVAW was challenging, with Human Rights Watch reporting that “all actors involved—including police, prosecutors, and judges—often deter[] women from filing complaints”.²⁰
8. However, EVAW is no longer in force following the Taliban taking control of the country. As Fahima Sirat reports,

“While previously the EVAW Law provided crucial support for Afghan women, under the current regime there is no similar law or court. The lack of a provision to prosecute crimes committed against women has created an environment of impunity for the perpetrators, making violence normal and acceptable.”²¹
9. On International Women’s Day 2023, UN experts warned that “the situation of women and girls’ rights in Afghanistan has reverted to that of the pre-2002 era when the Taliban last controlled the country, effectively erasing progress on women’s rights in the intervening 20 years.”²²

B. Implementation of Recommendations from Cycle Three in 2019

10. In 2019, Afghanistan received 258 recommendations. Of these, 43 were made regarding domestic abuse or a related issue, such as violence against women and girls (‘VAWG’). All were accepted, yet such acceptance took place in a very different political context. Under the current Taliban rule, none of the recommendations have been implemented

and instead, there has been a clear regression in the protection of women from domestic abuse. Below is a consideration of the situation in Afghanistan as it relates to the recommendations on domestic abuse and VAWG.

Combat Violence Against Women and Girls (VAWG) and Gender-Based Violence (GBV)

11. 27 recommendations were made regarding combatting VAWG and GBV: **Indonesia (para 136.40); Costa Rica (para 136.58); Iceland (para 136.105); Norway (para 136.107); Uruguay (para 136.109); Slovakia (para 136.114); Angola (para 136.190); Austria (para 136.192); Thailand (para 136.194); Chile (para 136.195); Ireland (para 136.196); Cyprus (para 136.197); Djibouti (para 136.199); Hungary (para 136.203); Iraq (para 136.204); Lithuania (para 136.207); Luxembourg (para 136.208); Maldives (para 136.209); Malta (para 136.210); Ukraine (para 136.211); Myanmar (para 136.212); Nepal (para 136.213); Slovenia (para 136.218); Sri Lanka (para 136.219); Honduras (para 136.234); Republic of Moldova (para 136.246); Denmark (para 136.198).**
12. Whilst such recommendations are welcomed, some were very broad. It is crucial that they remain specific and measurable in order to assess the level of implementation, and to hold Afghanistan to account in future UPR cycles. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.²³ It is recommended that States adopt a SMART approach to recommendations as recognised by UPR Info.²⁴ In particular, when referring to VAWG, Member States should specify the type of violence they are referring to and the key action the State should take.²⁵
13. Other VAWG recommendations were more specific. For example, **Angola's** recommendation was to “[i]ncrease, where possible, the number of shelters for women and girl victims of gender-based violence, and strengthen the care provided”. **This has not been implemented in practice.** Under their pre-2001 rule, the Taliban had “branded women’s safe houses as ‘brothels,’”²⁶ Since their 2021 takeover, “[s]helters have been closed and, in some cases, Taliban members have been harassing or threatening staff to cease their work”.²⁷
14. **Slovenia** suggested that Afghanistan should “[e]liminate discrimination and violence against women and children, also through education on human rights and by raising awareness of the general public”. While **the government has not implemented this recommendation in practice**, civil society had taken steps on this theme of education and awareness raising. Women for Afghan Women (WAW), a grassroots organisation, “provides humanitarian aid, logistics support, and protection and support services to vulnerable populations across Afghanistan, with a particular focus on Afghan women, children, and their families”.²⁸ WAW had significant successes prior to the Taliban regaining control of the country in 2021, when “WAW operated 34 protection centers across 32 provinces, including family guidance centers, women’s protection centers (women’s shelters), and children’s support centers”. However, since August 2021,

“WAW and all other organizations operating protection centers, particularly for women, were forced to shutter these operations”.²⁹ This has led to women being forced to return to their abusers or face homelessness.³⁰

Implement EAW

15. Twelve recommendations asked Afghanistan to implement EAW effectively (**Australia (para 136.35); Slovakia (para 136.61); Canada (para 136.96); USA (para 136.188); Albania (para 136.189); Belgium (para 136.192); Georgia (para 136.202); Italy (para 136.205); Liechtenstein (para 136.206); Portugal (para 136.214); Republic of Korea (para 136.215); United Kingdom (para 136.217)**). There had already been concerns about the implementation of EAW prior to August 2021, however, since the Taliban’s takeover in 2021, **EAW is no longer in force in Afghanistan**. This is a “direct threat to the hard-won gains achieved by the Afghan women in the past two decades”.³¹

Specific Reference to Domestic Abuse

16. Four recommendations made specific reference to “domestic violence.” **Estonia (para 136.201)** recommended that Afghanistan should “[a]ccelerate progress in tackling gender-based violence, including domestic violence against women and girls” and **Algeria (para 136.220)** suggested to “[t]ake extra measures to prevent and combat domestic violence”. **Tunisia (para 136.200)** asked Afghanistan to “[c]ontinue its efforts to combat violence against women and domestic violence through the full implementation of the national strategy adopted in this context and related national programmes in this area.” **Finland (para 136.97)** recommended “[c]omply in a more effective way with the Convention on the Elimination of All Forms of Discrimination against Women and create policies and practices to prevent all forms of violence against women and girls, including domestic violence, as well as to increase accountability and promptly investigate and prosecute all cases of violence against women and girls”.

17. In direct opposition to the recommendations made in cycle three, there have been multiple violations of CEDAW since 2021. Women’s rights activists have been imprisoned,³² domestic abuse has “increased drastically”,³³ and Amnesty International has reported that detainees have been released from prison “including many convicted of gender-based violence offences”.³⁴ This puts not only survivors themselves “at risk of violence and death” but also “shelter staff, lawyers, judges, government officials, and others involved in protective services”.³⁵

18. This is a dire situation for the women who are facing domestic abuse and other forms of VAWG. Rukhsana Media, an online news agency covering issues affecting women in Afghanistan, has found that “international human rights institutions do not take

action beyond publishing statements and reports” and has asked the international community to “not leave Afghan women to suffer and fight alone”.³⁶ We call on the international community and the United Nations to take positive action in relation to VAWG in Afghanistan, including financial support for women fleeing violence.

C. Recommendations for Action by Afghanistan

We recommend that:

- i. The international community and United Nations should, without delay, provide resources and support for women fleeing violence, including financial provisions.
 - ii. Afghanistan should immediately reinstate the Elimination of Violence Against Women Law as enforceable legislation, whilst also ensuring that it is implemented in practice.
 - iii. In line with recommendation ii, Afghanistan should immediately re-open domestic abuse support shelter and refuges, and fund healthcare and support services for women. A publicly available action plan should be provided on how this will be achieved.
 - iv. In line with recommendation ii, Afghanistan should provide up-to-date and accurate statistics regarding investigations and prosecutions of domestic abuse cases across the country during the Fourth Cycle, to allow Member States and civil society to fully assess the implementation of domestic abuse recommendations.
 - v. Afghanistan should engage with the recommendations made during the UPR regarding domestic abuse, providing clear responses to recommendations and setting out specific plans for implementation.
19. These recommendations should be implemented in line with the UN Sustainable Development Goals, in particular SDG 5 striving for gender equality, SDG 10 which aims for reduced inequalities, and SDG 16 targeting the protection of life through Peace, Justice and Strong Institutions.

¹ Riazat Butt, ‘The Taliban are Entrenched in Afghanistan After 2 Years of Rule. Women and Girls Pay the Price’ (AP, 15 August 2023) <<https://apnews.com/article/afghanistan-taliban-takeover-anniversary-explainer-10711b53a73638f46f2eb534b15b1a63>>.

² Amnesty International, ‘Afghanistan: Survivors of Gender-based Violence Abandoned Following Taliban Takeover – New Research’ (6 December 2021) <www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/>.

³ Nada Al-Nashif, ‘Afghan Women Suffer Extreme Discrimination, Restrictions and Violence – Deputy High Commissioner’ (UN Human Rights Council, 19 June 2023) <www.ohchr.org/en/statements/2023/06/afghan-women-suffer-extreme-discrimination-restrictions-and-violence-deputy-high> (19 June 2023).

⁴ Human Rights Watch, ‘Afghanistan Under the Taliban: The Crime Against Humanity of Gender Persecution’ <www.hrw.org/sites/default/files/media_2023/09/Gender%20Persecution%20final_060923.pdf> accessed 6 October 2023.

⁵ The World Bank, ‘Gender Data Portal’ <<https://genderdata.worldbank.org/indicators/sg-vaw-1549-zs/>> accessed 6 October 2023.

⁶ Council of Europe, ‘The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (November 2014) ISBN 978-92-871-7990-6.

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- ⁷ UN OHCHR, ‘The Core International Human Rights Instruments and their Monitoring Bodies’ <www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.
- ⁸ See, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force on 27 January 1980) 1155 UNTS 331; 8 ILM 679 (1969) Article 2(1)(d).
- ⁹ UN General Assembly, ‘Convention on the Elimination of All Forms of Discrimination Against Women’ (18 December 1979) UNTS vol 1249.
- ¹⁰ Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 19: Violence against women’, Eleventh session (1992), contained in A/47/38, para 2.
- ¹¹ Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 35 on gender-based violence against women, updating General Recommendation 19’ (14 July 2017), CEDAW/C/GC/35.
- ¹² Convention on the Elimination of All Forms of Discrimination: Reservations <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#24> accessed 6 October 2023.
- ¹³ Declaration on the Elimination of Violence Against Women 1993.
- ¹⁴ Beijing Declaration and Platform for Action 1995, Art 124-b.
- ¹⁵ UN Commission on Human Rights Resolution 1994/945.
- ¹⁶ Commission on the Status of Women.
- ¹⁷ Cairo Declaration on Human Rights in Islam (5 August 1990) UN Doc A/CONF157/PC/62/Add18, Article 6.
- ¹⁸ Constitution of Afghanistan (2004) Article 22(2).
- ¹⁹ Islamic Republic of Afghanistan, ‘Law on Elimination of Violence Against Women (EVAW)’ (1 August 2009) Issue No 989, Article 2.
- ²⁰ Human Rights Watch, ‘I Thought Our Life Might Get Better: Implementing Afghanistan’s Elimination of Violence Against Women Law’ (5 August 2021) <www.hrw.org/report/2021/08/05/i-thought-our-life-might-get-better/implementing-afghanistans-elimination>.
- ²¹ Fahima Sirat, ‘Violence Against Women: Before and After the Taliban’ (*Oxford Human Rights Hub*, 15 March 2022) <<https://ohrh.law.ox.ac.uk/violence-against-women-before-and-after-the-taliban/#:~:text=The%20law%20provides%20for%20measures,to%20pay%20compensation%20for%20damage%20s>>.
- ²² UN Human Rights, ‘Afghanistan: UN Experts Say 20 Years of Progress for Women and Girls’ Rights Erased since Taliban Takeover’ (8 March 2023) <www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased#:~:text=Since%20the%20takeover%20of%20Afghanistan,compelled%20to%20stay%20at%20home>.
- ²³ Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ (2020) 4(1) RSIL Law Review 126, 153; Alice Storey, ‘Challenges and Opportunities for the UN Universal Periodic Review: A Case Study on Capital Punishment in the USA’ (2021) 90 UMKC L Rev 129, 148-49.
- ²⁴ See UPR Info, ‘For impact on the ground the UPR needs SMART recommendations’ <<https://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations>> (21 October 2015).
- ²⁵ Alice Storey, ‘Improving Recommendations from the UN’s Universal Periodic Review: A Case Study on Domestic Abuse in the UK’ (2023) 35 Pace International Law Review 193.
- ²⁶ Frud Bezhan, ‘Afghan Women’s Shelters Vanishing under Taliban’ (*Afghan Online Press*, 26 September 2021) <www.aopnews.com/taliban/afghan-womens-shelters-vanishing-under-taliban-rule/>; Women for Afghan Women, ‘Afghanistan’ <<https://womenforafghanwomen.org/afghanistan-2/>> accessed 6 October 2023.
- ²⁷ Observer Research Foundation ‘Taliban’s Return Threatens Past Gains for Afghanistan’s Women and Girls’ 22 February 2022) <www.orfonline.org/research/talibans-return-threatens-past-gains-for-afghanistans-women-and-girls/#_ednref46>.
- ²⁸ Women for Afghan Women (n 27).
- ²⁹ *ibid*.
- ³⁰ Amnesty International (n 2).
- ³¹ Observer Research Foundation (n 28).
- ³² Karina Tsui, ‘Violence Against Women Rampant under Taliban, New Report Finds’ (*The Washington Post*, 27 July 2022) <www.washingtonpost.com/world/2022/07/27/afghanistan-women-taliban-rights-violence-amnesty-international/>.
- ³³ Zahra Joya, ‘Women in Afghanistan are Fighting an Unequal War. We Need Your Support’ (*The Guardian*, 6 September 2023) <www.theguardian.com/global-development/commentisfree/2023/sep/06/women-in-afghanistan-fighting-an-unequal-war-against-taliban-we-need-support>.
- ³⁴ Amnesty International (n 2).
- ³⁵ *ibid*.
- ³⁶ Zahra Joya (n 34).