

Persecution of Women in Afghanistan under International Criminal Law

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Abstract

This research analyzes the policies and actions of the Taliban against women and girls after 2021 and evaluates them within the framework of international criminal law, in particular, the gender-based persecution as a crime against humanity under Article 7 (1) (b) of the Rome Statute. The research design is qualitative, descriptive-analytical, and founded on legal-documentary approach, and data were collected from international legal documents, the jurisprudence of the International Criminal Court, reports of the United Nations, and the human rights organizations. The results of the research reveal that institutionalized policies of the a Taliban in the spheres of education, employment, healthcare, freedom of movement, and access to justice represent a harsh and premeditated deprivation of essential rights of an identifiable group of people on gender basis and include the legal components of crimes against humanity (harassment and persecution). According to the findings of the research, this has reached past being a human rights crisis and has become a prosecutable case in terms of the international criminal law.

Keywords: *International Criminal Law, Crimes Against Humanity, Gender Based Persecution, Taliban, Women in Afghanistan*

Introduction

Since the Taliban's return to power in August 2021, the human rights situation of women and girls in Afghanistan has deteriorated drastically. During 2024² and the first half of 2025, this deterioration became institutionalized and systematic through the enforcement of the Law on the Promotion of Virtue and the Prevention of Vice. These measures have affected all aspects of women's lives, including education, employment, healthcare, freedom of movement, and access to justice, amounting to organized gender-based discrimination and potentially crimes against humanity.³

Education has been one of the most severely affected sectors. By March 2024, more than 1.4 million girls had been deprived of education, with over 1,000 days passing since the ban on girls' secondary schooling. In 2024, at least 13 educational centers were closed and at least 28 students, teachers, and administrators were arrested across multiple provinces.⁴ In 2025, restrictions intensified further, with the closure of vocational and handicraft centers for women, the revocation of operating licenses, and the imposition of strict dress codes.

In some areas, girls over the age of 9 were issued "mahram cards," and the Taliban declared puberty at age 9, effectively limiting girls' education to only a few primary grades. Teachers and educational institutions also faced repression. In the first half of 2025, at least 9 private educational centers, 41 English language courses, and 5 computer courses were shut down, and at least 11 teachers were arrested. Large-scale closures occurred in

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² Rawadari, *Afghanistan Human Rights Situation Report 2024* (Online: Rawadari, 2024), https://rawadari.org/wp-content/uploads/2025/01/RW_MidYear2024_HRRReport_ENG.pdf.

³ Rawadari, *Afghanistan Human Rights Situation Report 2025* (Online: Rawadari, 2025), 30–31, https://rawadari.org/wp-content/uploads/2025/04/RW_Annual_Report_Human_Rights_Report_2025_ENG.pdf.

⁴ Rawadari, *Afghanistan Human Rights Situation Report 2024*, 25–26.

provinces such as Paktika and Bamyan, affecting thousands of female students. Home-based education was targeted as well, with families forced to sign written commitments to stop teaching girls, accompanied by intimidation and threats.⁵

Women's right to work and economic independence was further undermined in 2024 and 2025. Livelihood projects for hundreds of women were closed, women-only markets were shut down, and female business owners faced harassment and arrest. A 2024 decree reduced all female government employees' salaries to a fixed minimum regardless of rank or qualifications.⁶ In 2025, strict enforcement of the mahram requirement led to dismissals of women from health and education sectors, while business licenses were issued exclusively in men's names. Cuts in international aid also resulted in widespread job losses for women in humanitarian and health-related fields.⁷

Access to healthcare was severely restricted. Women were barred from seeking medical treatment without a mahram, even in emergency situations, and strict dress codes were enforced. The dismissal of female healthcare workers led to the closure of maternity wards and an increase in home births. Mental health services for women were eliminated in some provinces, and family planning services were restricted, with contraceptives confiscated and declared un-Islamic.^{8, 9}

Freedom of movement for women was almost eliminated during this period. Women without a mahram were prohibited from accessing public spaces, transportation, and social activities.¹⁰ Numerous cases of arrest, beating, and humiliation for alleged "improper hijab" or presence in public spaces were reported. Women were also forbidden from speaking with non-mahram men, including professionals such as doctors and judges.¹¹

Access to justice was effectively denied to women under the Taliban's judicial system. Complaints related to domestic violence, forced marriage, and divorce were routinely rejected, and women were required to appear in court with a mahram, who could be the perpetrator. Taliban judges treated violence against women as permissible, and cases were reported in which child marriage was ordered by courts. Women seeking justice faced intimidation, humiliation, and arrest, with no effective protection mechanisms available.¹²

The systematic policies of the Taliban that restrict women's rights in education, employment, healthcare, movement, and access to justice may constitute gender-based persecution as a crime against humanity under Article 7 of the Rome Statute. These measures represent a deliberate and institutionalized denial of fundamental rights against an identifiable group based on gender.¹³ As documented by UN reports and human rights

⁵ Rawadari, *Afghanistan Human Rights Situation Report 2025*, 32.

⁶ Rawadari, *Afghanistan Human Rights Situation Report 2024*, 27.

⁷ Rawadari, *Afghanistan Human Rights Situation Report 2025*, 33.

⁸ Rawadari, *Afghanistan Human Rights Situation Report 2024*, 28.

⁹ Rawadari, *Afghanistan Human Rights Situation Report 2025*, 34.

¹⁰ Rawadari, *Afghanistan Human Rights Situation Report 2024*, 29.

¹¹ Rawadari, *Afghanistan Human Rights Situation Report 2025*, 36.

¹² Rawadari, 38.

¹³ Special Rapporteur on the situation of human rights in Afghanistan, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity, and Exclusion of Women and Girls* (Geneva: Institution, 2024), https://documents.un.org/doc/undoc/gen/g24/075/00/pdf/g2407500.pdf?utm_source=chatgpt.com.

organizations, the widespread and systematic nature of these policies may trigger individual criminal responsibility under international criminal law, allowing international mechanisms such as the International Criminal Court (ICC) to consider prosecution of those responsible.¹⁴

This research paper seeks to explore the Taliban treatment of women and whether such acts could be considered as crimes against humanity (persecution) in the International Criminal Law and how the International Criminal Court (ICC) and other international institutions could address the issue of accountability and prosecute gender-based persecution in Afghanistan.

Problem Formulation

- 1) Does the treatment of women by the Taliban constitute gender-based persecution as a crime against humanity under international criminal law, particularly under Article 7 of the Rome Statute?
- 2) How can the International Criminal Court (ICC) and other international institutions address accountability and prosecute gender-based persecution in Afghanistan?

Methodology

The qualitative approach to the research is descriptive-analytical and the legal-documentary approach is used as the basis of the research. The data on research is gathered based on a systematic analysis of the international legal sources such as the Rome Statute of the International Criminal Court, the rules of customary international law, the jurisprudence of the International Criminal Court and international criminal tribunals, official reports of the United Nations, report of special rapporteurs, documents of international human rights institutions, reliable scientific sources. The analysis of the data is done in an analytical-interpretative and comparative approach and legal and social realities of Afghanistan are analyzed against the international criminal law norms to clarify the legality of the Taliban policies towards women in the view of crimes against humanity. Using this method, it is possible to explore the connection between the discriminatory structural policies and the legal aspects of crime within the international criminal law system.

Discussion and Result

Concept of Persecution in International Criminal Law

Persecution is a fundamental crime against humanity in international criminal law and it is very important in determining and addressing any forms of discrimination and

¹⁴ Human Rights Watch, "Afghanistan: Taliban's Gender Crimes Against Humanity | Human Rights Watch," Human Rights Watch, accessed January 20, 2026, https://www.hrw.org/news/2023/09/08/afghanistan-talibans-gender-crimes-against-humanity?utm_source=chatgpt.com.

suppression of certain groups systematically.¹⁵ The fact that this crime has been incorporated in the Rome Statute of the International Criminal Court (ICC) is indicative of how international law has changed to not only prioritizing physical violence as international crimes, but also severe deprivations of fundamental rights, when committed based on a discriminatory ground. In this section, the definition of persecution in the Rome Statute in article (7)(1) (h) is considered, as well as the legal elements of the crime including its bases of discrimination (specifically gender, religion and social group),¹⁶ and jurisprudence on the case before international criminal tribunals, specifically the ICTY¹⁷ and the ICC.

Article 7(1)(h) of the Rome Statute defines persecution

Persecution of a group or a population, which can be identified based on political, racial, national, ethnic, cultural, religious, gender, etc.¹⁸ grounds or any other ground that can universally be considered as impermissible according to international law in relation to any of the aforementioned acts or in relation to any other offence within the jurisdiction of the Court. This definition of persecution takes persecution as a crime against humanity when committed as part of a common or organized violence against a civilian people and founded on a State or organizational policy. Thus, the sporadic or individual discrimination is not under this heading but the presence of a pattern that is organized and collective is what is necessary in committing the crime.¹⁹

Among the Rome Statute innovations worth noting is the clear definition of gender as a forbidden ground of discrimination, as such a move is a huge step towards the international criminal law development. Persecution is concentrated on the discriminatory motive of the behavior of the perpetrator as opposed to the nature of the act as it is discernible in other crimes against humanity. This is why, the crime in question may comprise a vast number of actions that may lead to a severe breach of basic rights.²⁰

Law aspects of the persecution crime

The components of the crime of persecution are established in the elements of crimes provided by the international criminal court. They are summed up as follows: First, the perpetrator should have severely denied individuals or groups their basic rights, which are guaranteed by the international law. Such rights could be the right to education, the right to work, the right to free movement, freedom of religion, the right to health care and

¹⁵ Rome Statute of the International Criminal Court (1998), <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

¹⁶ Rome Statute of the International Criminal Court.

¹⁷ International Criminal Tribunal for the former Yugoslavia (ICTY), "Prosecutor v. Kupreškić et al., Trial Judgment," 2000, https://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf?utm_source=chatgpt.com.

¹⁸ Rome Statute of the International Criminal Court.

¹⁹ International Criminal Court, *Elements-of-Crimes* (International Criminal Court, 2011), https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf?utm_source=chatgpt.com.

²⁰ Bangladeshi Non-Governmental Representatives, "Amicus Curiae Observations by the Bangladeshi Non-Governmental Representatives Pursuant to Rule 103 of the Rules of Procedure and Evidence on the Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Rome Statute," International Criminal Court (ICC), June 18, 2018.

equality before the law.²¹Second, this deprivation should have been done on the ground of group identity of the victims. One of the central elements of the crime of persecution is the discriminatory element and it is not enough to know who the victim is but the perpetrator should possess discriminatory intent.

Third, the acts that were perpetrated must have been perpetrated in conjunction with another act that falls under Article 7(1) of the Rome Statute or another offence that falls under the jurisdiction of the Court. This linking variable is what makes the difference between persecution and a violation of human rights and puts it into the context of crimes against humanity. Fourth, the act under consideration should be included in an overall or systematic attack against a civilian group, and the offender should be aware of that. The international jurisprudence has highlighted that the persecution crime does not always involve physical violence.²²A series of legal, administrative or social remedies that effectively strip a group of its essential rights can be just sufficient to satisfy the severity level to execute the crime.

Discriminatory Grounds: Gender, Religion, and Social Group

In the international criminal law, it is identified that there are a number of reasons leading to the crime of persecution with some grounds of gender, religion and belonging to a certain social group being of paramount importance.²³ Gender based persecution is the state of affairs whereby a person is denied basic rights in a systematic manner due to his or her social role and expected behaviors as per his or her gender.²⁴ The Rome Statute believes that gender is more of a social construct and not an exclusive biological difference.²⁵The general denial of women education, employment, involvement in the life of state and the access to the justice can become an act of persecution in the modern practice.²⁶

Religious persecution covers those measures that seriously limit the freedom of belief, practice or conversion of people.²⁷ Obvious examples of this kind of persecution are the imposition of certain religious laws, the punishment of their disobedience, or the silence of the religious minority. The term, particularly social group is as well a flexible one, which involves the groups sharing common, immutable or fundamental attributes of human

²¹ International Criminal Court, *Elements-of-Crimes*, 14–16.

²² International Criminal Court, 15–16.

²³ Human Rights Watch, “Afghanistan: Taliban’s Gender Crimes Against Humanity | Human Rights Watch.”

²⁴ Elena Katselli Proukaki, “Preventing the Forcibly Displaced from Returning as Persecution and Inhumane Act under International Criminal Law and the Rome Statute,” *International Criminal Law Review* 22, no. 3 (November 2021): 401–37, <https://doi.org/10.1163/15718123-bja10118>.

²⁵ Yvonne Dutton and Milena Sterio, “Beyond Policy: Overcoming Challenges in Prosecuting Gender Persecution at the International Criminal Court,” *FIU Law Review* 19, no. 2 (2025): 521–38, <https://doi.org/10.25148/lawrev.19.2.9>.

²⁶ Rosemary Grey, “On Hope, Reform and Risk: The Rome Statute’s Definition of ‘Gender’ and the Crimes Against Humanity Convention,” *European Journal of International Law* 36, no. 2 (September 2025): 369–98, <https://doi.org/10.1093/ejil/chaf026>.

²⁷ Proukaki, “Preventing the Forcibly Displaced from Returning as Persecution and Inhumane Act under International Criminal Law and the Rome Statute.”

identity.²⁸ This framework has been able to identify women and other marginalized groups at the international level.²⁹

International criminal tribunal case law

The International Criminal Tribunal of former Yugoslavia (ICTY) has been instrumental in the creation of the legal understanding of persecution. As the case of Kupreshkić has shown, the Tribunal believed that persecution may take the form of various acts, including discriminatory laws and administrative actions, as long as their overall outcome is a severe deprivation of the basic rights.³⁰ The Tribunal believed that persecution was an umbrella crime, which may involve more than the direct cases of crimes against humanity. The ICTY in the Krnojelac case has pointed out that the aspect of discriminatory intent is the essence of the crime of persecution and that the fact that there was no physical violence did not exclude the occurrence of the crime.³¹

Ntaganda and Al Hassan are some of the cases discussed at the ICC level that have helped in the construction of the perception of the concept of persecution, especially when it involves gender and religious discrimination.³² The ICC has provided that systematic application of discriminatory rules and policies, when a part of a comprehensive or a systematic attack on civilians, may amount to persecution pursuant to Article 7(1)(h) of the Rome Statute.³³

Legal Framework Applicable to Afghanistan

In the international criminal law, Afghanistan is subject to a certain and multi-layered legal framework permitting the former to prosecute the serious international crimes, such as the crime of persecution and persecution against humanity. Afghanistan ratified the Rome Statute of the International Criminal Court on 10 February 2003, and the instrument became effective on the country on 1 May 2003. This has led to the fact that Afghanistan, as a State Party, has recognized the jurisdiction of the Court over crimes committed on its territory or against its nationals after that date. This is an important legal stance that has been taken, because the jurisdiction of the Court is territorial and works regardless of the international status of the sovereign State or its character.³⁴

²⁸ Rosemary Grey, “On Hope, Reform and Risk: The Rome Statute’s Definition of ‘Gender’ and the Crimes Against Humanity Convention,” *European Journal of International Law* 36, no. 2 (May 2025): 369–98, <https://doi.org/10.1093/ejil/chaf026>.

²⁹ Office of the Prosecutor, International Criminal Cour, “Policy on the Crime of Gender Persecution,” *ICC – Office of the Prosecutor*, 2022, https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf?utm_source=chatgpt.com.

³⁰ International Criminal Tribunal for the former Yugoslavia (ICTY), “Prosecutor v. Kupreškić et al., Trial Judgment.”

³¹ Hildegard Uertz-Retzlaff, Peggy Kuo, and Mr William Smith, *MILORAD KRNOJELAC JUDGMENT*, 2002.

³² Prosecutor v. Bosco Ntaganda, Judgment, ICC-01/04-02/06-2359 (International Criminal Court July 8, 2019), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_03120.PDF?utm_source=chatgpt.com.

³³ Office of the Prosecutor, International Criminal Cour, “Policy on the Crime of Gender Persecution,” pp 10-19.

³⁴ International Criminal Court, “Afghanistan | International Criminal Court,” accessed January 24, 2026, <https://www.icc-cpi.int/afghanistan>.

The case law has also clearly affirmed that the ICC is jurisdictional in the situation in Afghanistan. In 2020, the Court made the Appeals Chamber reverse the decision of the Trial Chamber not to issue an investigation and gave the Prosecutor the opportunity to start an investigation into the affairs in Afghanistan.³⁵ The Appeals Chamber said that even political, practical or potential non-cooperation considerations by States cannot rule out the exercise of its jurisdiction by the Court in the case where the legal prerequisites are fulfilled. This ruling defined the jurisdiction of the Court with regard to war and crimes against humanity that occurred in Afghanistan since 2003 and proved that the Court could apply its jurisdiction to both the State and non-State actors.³⁶

Along with the judicial mechanisms, there are international non-judicial institutions and mechanisms that have a significant complementary role in the accountability system to Afghanistan.³⁷ The role of the institutions like the UN Human Rights Council, special rapporteurs, and mechanisms of fact-finding and documentation developed by the General Assembly is important in documenting, analyzing, and evaluating severe human rights breaches. Even though these institutions do not possess crime jurisdiction their reports and findings are of significant legal importance and can also be referred to in determining behavioral patterns, victims and offenders and also to maintain evidence to be used in further court cases.³⁸

The traditional international law also constitutes a significant component of the law that should be applied to Afghanistan. Crimes against humanity such as persecution and persecution is well known as customary rules of international law and establishes universal responsibilities (*Erga omnes*) to all States and actors.³⁹ The ban on persecution is not restricted to the treaty commitments hence;⁴⁰ this applies to all de facto authorities and non-State armed groups.⁴¹

The applicability of customary international law is especially clear in those cases when the domestic legal systems are weak, ineffective, or failed.⁴² When such institutional and judicial mechanisms to protect fundamental rights have been grossly compromised as in the case of Afghanistan, the customary international law functions as a minimum normative system.⁴³ It gives the juridical foundation of systematic and discriminatory denials of fundamental rights including the right to education, the right to work, the right

³⁵ Yurika Ishii, "Situation in the Islamic Republic of Afghanistan," *American Journal of International Law* 115, no. 4 (October 2021): 688, <https://doi.org/10.1017/ajil.2021.48>.

³⁶ Ishii, 689–90.

³⁷ United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan* (Geneva: Office of the United Nations High Commissioner for Human Rights (OHCHR), n.d.), 2–3, accessed January 24, 2026, https://www.ecoi.net/en/file/local/2114653/g2416116.pdf?utm_source=chatgpt.com.

³⁸ United Nations Human Rights Council, 3–10.

³⁹ Leila Sadat, "Crimes Against Humanity and Customary International Law," preprint, SSRN, 2025, 11–12, <https://doi.org/10.2139/ssrn.5183587>.

⁴⁰ Sadat, 6–7.

⁴¹ Sadat, 22–24.

⁴² International Law Commission (ILC), *Peremptory Norms of General International Law (Jus Cogens)*, Report of the International Law Commission Seventy-First Session (New York: United Nations, 2019), 9–11, https://legal.un.org/ilc/reports/2019/english/chp5.pdf?utm_source=chatgpt.com.

⁴³ M. Cherif Bassiouni, "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes,'" *Law and Contemporary Problems* 59, no. 4 (1996): 68–71, <https://doi.org/10.2307/1192190>.

to move freely and the right to justice, as acts of persecution in international criminal law.⁴⁴ In combination with the application of the aforementioned normative framework and, in addition, the fact that Afghanistan is a State Party to the Rome Statute, the established jurisdiction of the International Criminal Court, the potential to exercise universal jurisdiction, and the authority of customary rules of the international law,⁴⁵ a consistent legal system of international accountability and criminal responsibility of crimes committed in Afghanistan becomes evident.⁴⁶

Forms of Persecution of Women in Afghanistan

The set of limitations placed on the Afghan women since 2021 is not merely a set of isolated human rights violations, but a structured and logical framework of social exclusion that, within the framework of the international criminal law, can be described as a crime against humanity as one of the manifestations of persecution. Such measures have not been applied in a case-by-case fashion, but rather as a part of overall and concerted policy in which women are systematically being deprived of their basic rights based on the article of persecution within the provisions of Article 7(1)(h) of the Rome statute.⁴⁷

Not allowing women their rights to receive education and be employed is not merely a social denial, but a social mode of creating structural dependence, and their institutional marginalization to the economic and social system. Such deprivation in legal terms is the intentional deprivation of the fundamental rights accepted in international law⁴⁸ (the right to education, the right to work, legal equality and social participation).⁴⁹ Once this kind of deprivation is enforced on the basis of an identity trait (gender) and is done as a matter of public policy, it transcends into the field of discrimination and rises to the level of persecution in that its purpose is not merely to limit the actions of an individual but to eliminate a group of people as a part of the legal framework of society.⁵⁰

There is also severe limitation on the freedom of movement and expression of the same structural nature. These are not disciplinary neutral measures, but are tools of social control whose primary role is to leave women out of the public domain and deny them of their civil and political personhood.⁵¹

Compulsory veiling and institutional gender segregation are both a discriminative legal order, which serves to institutionalize structural domination and symbolic relegation

⁴⁴ Bassiouni, 72–75.

⁴⁵ Bassiouni, 63–67.

⁴⁶ International Law Commission (ILC), *Peremptory Norms of General International Law (Jus Cogens)*, 14–17.

⁴⁷ International Commission of Jurists, “Afghanistan: Taliban’s Treatment of Women and Girls Should Be Investigated as the Crime against Humanity of Gender Persecution – New Report | ICJ,” International Commission of Jurists, *International Commission of Jurists*, May 26, 2023, <https://www.icj.org/resource/afghanistan-talibans-treatment-of-women-and-girls-should-be-investigated-as-the-crime-against-humanity-of-gender-persecution-new-report/>.

⁴⁸ Rangita de Silva de Alwis, “Holding the Taliban Accountable for Gender Persecution: The Search for New Accountability Paradigms under International Human Rights Law, International Criminal Law and Women, Peace, and Security,” *German Law Journal* 25, no. 2 (March 2024): 289–334, <https://doi.org/10.1017/glj.2023.113>.

⁴⁹ United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*.

⁵⁰ Rawadari, *Afghanistan Human Rights Situation Report 2024*.

⁵¹ International Commission of Jurists, “Afghanistan.”

of women to the public space.⁵²In legal studies the concept of persecution does not always constitute outright physical violence but may be achieved by a combination of various acts of collective discrimination which together lead to deprivation of basic rights.⁵³The combination of these actions, both together, creates an oppressive system, which is not just cultural or religious, but legal-structural.

Arbitrary arrests, application of force and violence to women who break this discriminative system creates the coercion aspect to this system bringing it to a new level of discrimination as a discriminative policy to persecutory system. Such violence acts serve an executive role and ensure that the system of exclusion is perpetuated.⁵⁴ The combination of these acts in the ultimate judgment includes the key components of the crime of persecution in international criminal law: discriminatory intent, and rights against a particular group (women), extreme deprivation of fundamental principles, structure, and relation to organized policy.⁵⁵ Thus, the perpetrated acts against women, in Afghanistan, are not only in violation of human rights, but can as well be viewed according to the international criminal law as gender-based persecution as a crime against humanity.⁵⁶

Attribution of Criminal Responsibility

Article 25 of Rome Statute does not impose criminal responsibility on the state but on the individual; that is, any individual who directly or indirectly takes part in the occurrence of an international crime through participation, aiding, abetting, inciting or facilitating is individually criminally responsible.⁵⁷This principle is what legally justifies the shift between the responsibility of the state and the responsibility of an individual in the international criminal law and demonstrates that the application of oppressive policy toward women can directly give rise to the criminal responsibility of people in case the individual role of the decision-makers, the implementers and designers of the policy in question is established.⁵⁸ In the context of Article 25, individuals that did not undertake the acts themselves, but in a structural sense, were part of the plan, direction or execution of discriminatory policies, can be charged with the responsibility of being an indirect participant, or as an accomplice.⁵⁹According to the doctrine of international criminal law, the present article is the primary instrument in the change of the concept of repressive policies into the idea of individual criminal responsibility.⁶⁰

Article 28 of the Rome Statute introduces the concept of the command and superior responsibility, according to which political and military leaders, though they did not take part in commission of a crime directly, are criminally liable in the event that they knew or

⁵² Alwis, "Holding the Taliban Accountable for Gender Persecution."

⁵³ Lisa Davis, *Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities*, n.d.

⁵⁴ Human Rights Watch, "Afghanistan: Taliban's Gender Crimes Against Humanity | Human Rights Watch."

⁵⁵ Rome Statute of the International Criminal Court.

⁵⁶ International Criminal Court, *Rome Statute of the International Criminal Court*, n.d., https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf?utm_source=chatgpt.com.

⁵⁷ International Criminal Court.

⁵⁸ Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law* (Oxford University Press, 2020), <https://doi.org/10.1093/law/9780198826859.001.0001>.

⁵⁹ Rome Statute of the International Criminal Court.

⁶⁰ Werle and Jeßberger, *Principles of International Criminal Law*.

should have known that the crime was being committed and did not or should not stop or prosecute it. This is a fundamental principle of such structures like the Taliban which is founded on a chain of command and organization obedience.⁶¹ The factor of oppressive policies towards women in such structures is not due to isolated individual actions, but due to centralization of decisions and policies which are made in higher ranks. Criminal responsibility may thus be devolved down to the executive officers to the political, religious and military leaders. This doctrine is the primary law instrument of connecting the organization of policy to the criminal responsibility of leaders that is at an individual level.⁶²

Under the international criminal law, the possible offenders are not restricted to executive officers, but also to the political leaders, the military commanders, religious decision-makers and those involved in the executive structures that are design-approve, order, or even implement repressive policies.⁶³ According to UN reports, the limitations set on women in Afghanistan are either policy-based, systematic, and based in centralized form as opposed to ad hoc and arbitrary ones. This supports the element of a structured policy, which is essential to commit crimes against humanity.⁶⁴ Regarding international criminal law, this kind of organization permits the criminal responsibility of Taliban leaders to be attributed on the basis of their contribution to policy-making, structural orientation and control of the organization, despite the lack of physical involvement in the violence.⁶⁵

Difficulty of proving is one of the greatest impediments to attributing criminal blame.⁶⁶ The international criminal law demands evidence of material aspect of crime (*actus reus*), psychological aspect (*mens rea*), and structural links of the person to organized politics. The unavailability of fields, the absence of collaboration with the authorities, fear of victims, document destruction, and the inability to have an independent judicial institution are serious issues to the evidence collection process in closed systems like Afghanistan.⁶⁷ But, criminal law of the international community also admits such tools as the testimonies of victims, records of the international organizations, effectiveness of fact-finders, regular patterns of behavior, and analysis of the policy as valid indirect evidence. This contribution demonstrates that the evidence of structural crimes can be held by both the official state document, but it may also be supported by the repetitive patterns of behavior, proclaimed policies, and the organized way of discrimination.⁶⁸

⁶¹ International Criminal Court, *Rome Statute of the International Criminal Court*.

⁶² "Rome Statute of the International Criminal Court, 1998," accessed January 25, 2026, https://legal.un.org/icc/statute/99_corr/cstatute.htm.

⁶³ Special Rapporteur on the situation of human rights in Afghanistan, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity, and Exclusion of Women and Girls*.

⁶⁴ *Afghanistan Human Rights Situation Report 2024 – Rawadari – For an Equal and Peaceful Afghanistan*, n.d., accessed June 4, 2025, <https://rawadari.org/reports/afghanistan-human-rights-situation-report-2024/>.

⁶⁵ Werle and Jeßberger, *Principles of International Criminal Law*.

⁶⁶ Iryna Marchuk, *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2014), <https://doi.org/10.1007/978-3-642-28246-1>.

⁶⁷ Marchuk.

⁶⁸ "Draft Articles on Prevention and Punishment of Crimes Against Humanity 2019," *African Journal of International Criminal Justice* 6, no. 2 (October 2020): 316–28, <https://doi.org/10.5553/AJ/2352068X2020006002017>.

Accountability Challenges and Enforcement Gaps

The international criminal responsibility of the state of women in Afghanistan is characterized with a couple of structural, political and legal challenges that have grossly hindered the application of international criminal justice. As much as the normative frameworks of international criminal law allow the ability to define the acts that have been perpetrated as crimes against humanity, a significant gap exists between the legalization of the crime and the actual application of justice. Such is not a loophole of the legal inadequacy of the ideas of criminalization, but rather the result of the institutional, political and executive shortcomings of the international criminal justice system.⁶⁹

The initial underlying hindrance is the political character of international judicial procedures and the fact that the International Criminal Court (ICC) is practically: reliant on the goodwill of states. The Court does not have an executive branch of its own and needs to depend on the collaborative efforts of the states to enforce the judicial orders, imprison defendants and gain access to documents and evidence. This structural dependence is effectively barring judicial jurisdiction in the situation of Afghanistan where the existing ruling structure is not only not cooperative, but is also the object of the accusation. In this manner, an institutional paradox exists before the Court, in which the entity charged with the responsibility of dispensing justice lacks independent facilities of dispensing justice.⁷⁰

The international level of Taliban government has also been dependent on a lack of formal recognition of this situation, which has resulted in a dual legal situation. On one hand, this incongruence does not allow the legal legitimacy of the current power structure, and on the other hand, the vacuum of legal representation of the state makes it impossible to have a party that would officially cooperate with international institutions. Consequently, the traditional systems of international judicial collaboration (mutual legal help, extradition, cooperation accords) end up being practically irrelevant and the system of criminal accountability, as an institution, goes into a state of institutional inertia.⁷¹

Another aspect to this accountability vacuum is the structural constraints of the enforcement mechanisms. The international criminal law does not have any independent international police, supranational system to enforce the law and the structure to enforce the sentences is not imposed. The implication of this absence is that despite a legal demonstration of a criminal act and the subsequent issuance of a prosecution warrant the actual delivery of justice would, once again, be at the mercy of states.⁷²

Under these conditions, instead of being a binding system, international criminal justice will become a normative-symbolic system that contributes more to the creation of

⁶⁹ Ehsan Qaane, *The-International-Criminal-Courts-Afghanistan-Investigation-Challenges-and-Constraints-Assessment*, 2024, https://rwi.lu.se/wp-content/uploads/2024/04/The-International-Criminal-Courts-Afghanistan-Investigation-Challenges-and-Constraints-Assessment.pdf?utm_source=chatgpt.com.

⁷⁰ Karin M Frodé, "Universal Jurisdiction as International Solidarity with Survivors of Atrocity Crimes: Lessons from Afghanistan's Diaspora," *Journal of International Criminal Justice* 22, nos. 3–4 (July 2024): 463–77, <https://doi.org/10.1093/jicj/mqae048>.

⁷¹ Internationa Commission of Jurists, "Afghanistan."

⁷² Carsten Stahn and Göran Sluiter, *The Emerging Practice of the International Criminal Court* (Brill | Nijhoff, 2009), 4, <https://doi.org/10.1163/ej.9789004166554.i-774>.

norms and moral legitimacy rather than effective execution of punishment.⁷³ Meanwhile, fact-finding missions, special rapporteurs and international documentation are institutions that take an incomplete part in the search and documentation of the truth. These institutions offer the foundation of future responsibility by recording the offences systematically, developing archives of the law, documenting behavior patterns, and generating legal accounts of offenses.⁷⁴ Nevertheless, these mechanisms are not judicial and do not have the authority to sentence, prosecute and administer justice. They serve as a kind of legal memory and a reservoir of evidence that will be used in the future than a form of delivering justice in the present.⁷⁵

Consequently, the norm-enforcement gap in the scenario in Afghanistan is quite apparent: on the one hand, the international legal system can be able to understand acts perpetrated against women as crimes against humanity in the so-called persecution; on the other hand, the international implementation system does not possess the required tools to actualize this interpretation in practice.⁷⁶ This scenario demonstrates that the Afghan crisis is not merely human rights crisis, but it is a structural crisis of the international criminal justice system in the execution of the mission.⁷⁷

Conclusion

In this study, the Taliban policies and activities since 2021 have resulted in a structured, organized, and institutionalized women and girl abuse and oppression in Afghanistan. Lack of education, exclusion of the labor market, limitations on the right to health services, lack of freedom of movement, and lack of access to the right to justice are not single violations of human rights, but a complex and systematic policy that targets women as a group, which may be identified based on their gender. According to the provisions of Article 7(1)(h) of the Rome Statute, this scenario already has all the legal constituents of a crime against humanity (persecution), such as gross deprivation of human rights, discrimination motive, and the acts which have been performed as components of a mass and organized assault on a civilian population. Hence, it is not merely a human rights crisis, but a definite manifestation of gender-persecution as the crime against humanity within the international criminal law, in which the Taliban treats women.

In terms of accountability and criminal responsibility, this study indicates that the international criminal law has provided the legal framework of prosecution of these acts by way of the membership of the international criminal court (ICC) using the membership of the country (Afghanistan) to the Rome Statute and applicability of the customary international law. ICC in collaboration with the UN mechanisms, as well as international

⁷³ Barrie Sander, "The Expressive Turn of International Criminal Justice: A Field in Search of Meaning," *Leiden Journal of International Law* 32, no. 4 (December 2019): 851–72, <https://doi.org/10.1017/S0922156519000335>.

⁷⁴ "Draft Articles on Prevention and Punishment of Crimes Against Humanity 2019."

⁷⁵ International Commission of Jurists, "Afghanistan."

⁷⁶ Emma Askarisirchi, *INTERNATIONAL CRIMINAL COURT (ICC) AND THE PURSUIT OF GLOBAL JUSTICE: "A COURT WORTH HAVING"—PREDICAMENTS TO THE COURT'S ENFORCEMENT AND FRAMEWORKS FOR IMPROVING COMPLIANCE*, n.d.

⁷⁷ Mirjan Damaška, "The International Criminal Court Between Aspiration and Achievement," *UCLA Journal of International Law and Foreign Affairs* 14, no. 1 (2009): 19–35, <https://www.jstor.org/stable/45302333>.

documentary bodies, is instrumental in raising criminal responsibility, collecting evidence, and converting gender oppression into an international criminal law problem, not a domestic or cultural one. Although there is well-known implementation, political, and institutional difficulties concerning the realization of justice, there is obviously a legal framework of accountability, which shows that the systematic abuse of women in Afghanistan can be charged as a crime against humanity under the international criminal law and is not located beyond the reach of universal justice.

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