

Gender Persecution of Afghan Women Under Taliban Rule: Assessing the ICC's Jurisdiction and Responsibility

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Abstract

The Taliban's return to power in Afghanistan in 2021 was one of the most severe contemporary attacks on women's and girls' rights. Since then, the Taliban rule has imposed several restrictions on every aspect of women's lives, including access to education, freedom of movement, dress, work, public life, and political participation. Women and girls were excluded from society through such measures and systems. This paper analyzes whether the Taliban's acts against women and girls count as gender-based persecution under the Rome Statute of the International Criminal Court (ICC). Using a normative analysis of journals, case studies, books, international organization reports, and ICC jurisprudence, the study demonstrates how the Taliban's actions constitute a systematic and widespread attack against a civilian population. It further evaluates the ICC's jurisdiction, legal standards, and the feasibility of prosecuting the Taliban authority.

The findings indicate that the Taliban's restrictive policies meet all key elements of gender persecution under Article 7(1)(b) of the ICC, including the severe deprivation of fundamental rights, the discriminatory intent behind the policies, and the targeted nature of the attacks against women and girls. ICC route, including territorial jurisdiction for crimes committed while Afghanistan was a state party to the Rome Statute, personal jurisdiction over nationals of ICC member states, and the possibility of referral through the UN Security Council. The article concludes that recognizing the Taliban's actions as gendered harassment is not only legally justified but also necessary to ensure accountability and strengthen international human rights support.

Introduction

With the withdrawal of the U.S. forces from Afghanistan in 2021, the republic government collapsed, and the Taliban regained power for the second time. During both periods of their regime, women were systematically excluded from basic rights, including participation in public life, employment, political engagement, freedom of movement, and education. These restrictions were isolated incidents, but part of a systematic policy targeting women and girls as a group. Despite massive evidence by the UN Special Rapporteur (SR) on the situation of human rights in Afghanistan, the report was based on their visit to Afghanistan in May 2023, as well as interviews both in person and online, with 2,000 Afghan men and women.¹

This report indicated widespread and ongoing violations of human rights in Afghanistan, including for more than four years of banning girls from secondary school beyond grade 6, this ban extended on women works, prohibiting from working in Offices later, they were gradually dropped from doing most jobs, including beauty salons, restaurants, parks, games, finally, women were prevented from working at national and international NGOs even at humanitarian organizations.² In addition, several restrictions were placed on women's movement; they were banned from using transportation and from traveling more than 70 km without a male guardian. The restricted policies of the Taliban on women and girls in Afghanistan raise urgent concern regarding human rights

¹ Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*, UN Report (United Nations (UN), Human Rights Council, 2023), https://docs.un.org/en/A/HRC/56/25?utm_source=chatgpt.com.

² Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

violations and gender persecution as a crime against humanity under Article 7 (1) (h) of the Rome Statute.³

This paper examines the Taliban's gender persecution of Afghan women through the lens of international criminal law, with particular reference to Article 7(1)(h) of the Rome Statute, which defines gender persecution as a crime against humanity. Drawing on ICC jurisprudence, including the landmark case of *Prosecutor v. Dominic Ongwen*, as well as reports from international organizations, the paper evaluates the ICC's authority and responsibility to address these violations. It argues that the Taliban's systematic restrictions on women's rights amount to crimes against humanity.

Methodology

This paper applies a normative legal research methodology to examine the principles and relevant legal frameworks governing the International Criminal Court. The study is based on doctrinal analysis, which draws from primary legal sources such as the Rome Statute, the ICC case, and international human rights instruments, as well as secondary sources, including academic journals, books, reports, and documents published by international organizations. Through this approach, this article assesses how the Taliban's actions against women and girls align with the legal elements of crimes against humanity – particularly gender persecution – under Article 7 (1) (h) of the Rome Statute and assesses the role of the International Criminal Court in ensuring accountability for perpetrators.

The legal concept of gender persecution under the Rome Statute

The Rome Statute is the foundational instrument of the International Criminal Court (ICC), which defines crimes against humanity and establishes accountability for their perpetrators.⁴ Persecution recognized as a crime against humanity under Article 7(1)(h) of the Rome Statute, is defined as acts committed against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.⁵ Under the Rome Statute, persecution involves a systematic and serious deprivation of basic rights against a particular group. For gender-based persecution to be considered a crime against humanity, several conditions must be met: the attacker targets a specific group based on their gender, the act should fall within the crimes recognized by the Rome Statute, the persecution must happen as a part of a large-scale attack on civilians, and the perpetrator must be aware of the broader attack and its results.⁶

³ United Nation, "Rome Statute of the International Criminal Court," United Nations / International Criminal Court, July 17, 1998, https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf?utm_source=chatgpt.com.

⁴ William A. Schabas, *An Introduction of International Criminal Court*, Second Edition (Cambridge University Press, 2004).

⁵ United Nation, "Rome Statute of the International Criminal Court."

⁶ 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 (2024): 289–334, <https://doi.org/10.1017/glj.2023.113>.

Scholars noticed that persecution under the ICC, the scope of persecution covers a wider range of acts, including the deprivation of social, economic, civil, and political rights, even when the harm is not physical. Gender-based persecution represents a milestone step forward in international criminal law, as it supports the prosecution of systematic violence against individuals based on gender.⁷ Afghanistan became a State party to the Rome Statute in 2003, giving the ICC full territorial and personal jurisdiction over Rome Statute crimes committed after 1 May 2003 on Afghan territory or by Afghan nationals. This provides the ICC with the legal responsibility and authority to investigate and prosecute the Taliban perpetrated gender- based harassment and persecution of women and girls in Afghanistan.⁸

ICC Jurisprudence and Taliban Gender Persecution

The 2021 case of *Prosecutor v. Dominic Ongwen* represents a key improvement in the ICC's jurisprudence on persecution and gender- based crimes. Ongwen, a senior commander of the Lord's Resistance Army (LRA) in Uganda, was charged and convicted of multiple crimes against humanity, including sexual slavery, forced marriage, forced pregnancy, and torture. For the first time, the Court recognized forced marriage and forced pregnancy as distinct crimes against humanity, affirming that these acts constitute serious violations of women's dignity, autonomy, and freedom. The ICC emphasized these crimes were committed systematically to control and subordinate women within the LRA's structure, therefore amounting to gender persecution under Article 7(1)(h) of the Rome Statute.⁹ The situation of Afghan women under the Taliban regime is very relevant to the LRA case. Amnesty International and the United Nations (2023) have reported several cases of Taliban members being involved in forced marriages. Women and girls were forced to marry Taliban members. For example, the report shows that a 15-year-old girl was forced to marry a Taliban member despite her family's disapproval. Such acts represent a systematic attack on women as a group and a serious violation of the dignity and autonomy, and freedom of women and girls, which, according to international law, is a crime against humanity.¹⁰ Therefore, the Taliban policies systematically restrict the autonomy of women and girls, depriving them of basic rights, including education, employment, freedom of expression, freedom of movement, and participation in public and political life, as documented by the UN Special Rapporteur (SR). The Taliban implements an organized system of control, reinforced through arbitrary arrest,

⁷"Holding-the-Taliban-Accountable-for-Gender-Persecution-the-Search-for-New-Accountability-Paradigms-under-International-Human-Rights-Law-International-Criminal-Law-and-Women-Peace-a," n.d.

⁸ United Nations Treaty Collection, *Rome Statute of the International Criminal Court*, Chapter XVIII.10, "Afghanistan: Ratification," deposited 10 February 2003, entry into force 1 May 2003, <https://treaties.un.org/doc/publication/unts/volume%202187/v2187.pdf>

⁹ The Prosecutor v. Dominic Ongwen, ICC-02/04-01/15 (ICC February 4, 2021), https://www.icc-pi.int/sites/default/files/CourtRecords/CR2021_01165.PDF.

¹⁰ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf* (Amnesty International & ICJ, 2023), 60, https://www.icj.org/wp-content/uploads/2023/05/The-Talibans-war-on-women-the-crime-against-humanity-of-gender-persecution-in-Afghanistan-FINAL-VERSION.pdf?utm_source=chatgpt.com.

punishment, torture, and other forms of inhuman treatment. These systematic restrictions and abuses demonstrate that the Taliban's acts constitute gender persecution under Article 7 (1) (h) of the Rome Statute.¹¹

Building on the Ongwen case, the ICC interpreted the term other inhuman acts widely, allowing the court to act systematically to oppress individuals or groups even when they are not overtly physical.¹² By using this instrument, the ICC can identify the Taliban's restricted policies and regulations on education, work, dress code, and freedom of movement as acts of gender-based persecution.¹³ As a result, the Taliban's actions legally constitute crimes against humanity under international law.¹⁴

Furthermore, the concept of gender apartheid is a descriptor for the systematic and structural nature of oppression. The concept shows not only the obvious restrictions imposed on Afghan women but also the institutionalized mechanisms that enforce gender inequality. Applying this lens, the ICC can reinforce the legal argument for accountability, ensuring that the Taliban members' involvement in this crime is responsible for widespread and systematic violations against women and girls.¹⁵ Previous ICC cases, such as those addressing sexual and gender-based crimes, demonstrate the Court's capacity to implement regulations on gender-based persecution effectively.¹⁶

Do the Taliban's acts against women count as persecution?

Article 7 (1) (h) Rome Statute recognized persecution as a crime against humanity, "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court."¹⁷ The crime of persecution contains several essential elements. First, the perpetrator seriously deprived one or more persons of fundamental rights. Second, the victims must be targeted due to their political, racial, national, ethnic, cultural, religious, or gender as defined in article 7(3). Third, the conduct must be part-connected to an act that falls within the jurisdiction of the ICC. Moreover, the acts were committed as part of a widespread or systematic attack directed against a civilian population. Finally, the perpetrator was aware that their actions were part of a widespread or systematic attack against civilians.¹⁸

Persecution involves deliberate discrimination against a specific group, combined with acts causing serious physical, psychological, or material harm.¹⁹ Since the Taliban

¹¹ Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

¹² *The Prosecutor v. Dominic Ongwen*.

¹³ *The Prosecutor v. Dominic Ongwen*.

¹⁴ Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

¹⁵ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

¹⁶ *The Prosecutor v. Dominic Ongwen*.

¹⁷ United Nation, "Rome Statute of the International Criminal Court."

¹⁸ M. Cherif Bassiouni, *Crimie against Humanity*, First Edition (Cambridge University Press, 2011), <https://www.cambridge.org/9781107001152>.

¹⁹ Bassiouni, *Crimie against Humanity*.

regained control of Afghanistan in 2021, the group has imposed more than fifty decrees and statements targeting women and girls, systematically depriving them of fundamental rights. These limitations have affected access to education, public life, political engagement, freedom of movement, employment, and protection under the legal system. Therefore, women and girls have suffered severe physical and psychological harm and have been effectively excluded from all aspects of social and public life.²⁰ These acts represent deliberate targeting of women as a group, directly meeting the criteria of persecution under Article 7 (1) (h) of the Rome Statute.

Ban on education

On 18 September 2021, the Taliban authority announced that girls beyond the sixth grade could not attend schools, and then on 20 December 2022, the de facto Ministry of Higher Education issued a degree to ordering educational institutions, including universities, not to give admissions for women and girls, later the Taliban issued an immediate suspension regarding the education of women and girls until further notice.²¹ Thus, Women and girls across Afghanistan do not have access to further education beyond primary school. So far, Afghanistan is the only country worldwide where women and girls are barred from schools, universities, and other educational institutions. ²²The ban on education represents a blatant instance of gender harassment under Article 7 (1) (h) of the ICC.²³ The Taliban systematically deprived women and girls of basic rights recognized in international law, including the right to education. Importantly, Women and girls as a group were the sole target of this policy, showing the discriminatory and gender-specific nature of the restriction. By denying access to education, the Taliban carried out widespread and deliberate attacks against Afghan women and girls, fulfilling the criteria of persecution as a crime against humanity.²⁴

Restriction on Employment and freedom of movement

Following their takeover, the Taliban claimed that women would be permitted to work, through only within the framework of Islamic Sharia as stated by Spokesman Zabihullah Mujahid in a press conference on August 17, 2021. However, despite this promise, the Taliban quickly imposed a series of restrictive policies. by November 2021, women were banned from performing roles in films, appearing on television, and participating in journalism, unless fully *hajib*. In addition, they were prohibited from

²⁰ Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

²¹ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

²² Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

²³ Ilias Bantekas and Susan Nash, *International Criminal Law*, 2. ed (Cavendish, 2003).

²⁴ Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

participating in sports activities and were instructed to remove their images from all social platforms.²⁵

In December 2022, another decree was issued regarding banning women from working at national and international NGOs. The situation got worse in August 2023, when the Taliban officially shut down all beauty salons across Afghanistan, and nearly 50,000 women who worked in beauty salons lost their jobs.²⁶ By 2023, restrictions expanded further, with women being prohibited from working at the United Nations and other humanitarian NGOs.²⁷ These practices represent widespread discrimination against women and a severe violation of their right to work, placing the lives and well-being of thousands of Afghan women and girls at serious risk.²⁸

Furthermore, the Taliban have restricted women and girls' freedom of movement without a male guardian (mahram). In 2022, the Taliban Ministry of Virtue and Vice issued a decree requiring women not to leave their homes unless emergency and requiring them to cover their faces in public.²⁹ Women are banned from traveling farther than 72 km without a mahram.³⁰ Appearing in public without a mahram puts the woman at serious risk of punishment. According to reports of Amnesty International and UNAMA, many women have been beaten, arrested, and harassed by Taliban authorities for moving in public without a male guardian. These policies severely limit women's autonomy and freedom of movement, forcing many to remain at home to avoid violence and arrest.³¹ Women who lack a mahram are disproportionately affected, as they cannot travel abroad for medical treatment, visit relatives, and carry out other important activities.³² Through these restrictive and targeted policies, the Taliban have systematically denied women and girls fundamental rights, including the right to work and the right to freedom of movement. The deliberate nature of these actions demonstrates a clear intention to control and subordinate women, amounting to gender-based persecution under international law.³³

²⁵ Qudrat Mirzayi, "The Status of Women under the Taliban Ruling: A Comparative Research in Two Different Periods (1996-2001) to (2021- up to Date)," *Cognizance Journal of Multidisciplinary Studies* 3, no. 7 (2023): 293–304, <https://doi.org/10.47760/cognizance.2023.v03i07.021>.

²⁶ Dr. Kalsoom Hanif et al., *Womens Rights In Afghanistan Under Talib*, 32 (2022): 314–32, https://www.researchgate.net/publication/382241695_Women's_Rights_In_Afghanistan_Under_Taliban_Rule.

²⁷ Ilias Bantekas and Asiya Karimi, "Gender Apartheid Under the Taliban_ Key Elements of an Ideology Designed to Disempower Afghan Women," *William & Mary Journal of Race, Gender, and Social Justice* 31, no. 3 (2025): 549, <https://scholarship.law.wm.edu/wmjowl/>.

²⁸ Mirzayi, "The Status of Women under the Taliban Ruling."

²⁹ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

³⁰ Sebghatullah Qazi Zada and Mohd Ziaolhaq Qazi Zada, "The Taliban and Women's Human Rights in Afghanistan: The Way Forward," *The International Journal of Human Rights* 28, no. 10 (2024): 1687–722, <https://doi.org/10.1080/13642987.2024.2369584>.

³¹ United Nations Assistance Mission in Afghanistan (UNAMA), *Summary Report of Country-Wide Women's Consultations* (UN Women, IOM, and UNAMA, 2024), https://unama.unmissions.org/sites/default/files/report_situation_of_afghan_women_february_2024.pdf?utm_source=chatgpt.com.

³² Special Rapporteur Richard Bennet on the situation of human rights in and Afghanistan, *Situation of Women and Girls in Afghanistan*.

³³ Bantekas and Karimi, "Gender Apartheid Under the Taliban_ Key Elements of an Ideology Designed to Disempower Afghan Women."

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Arbitrary Arrests and Inhuman Treatment of Women

The Taliban have arbitrarily arrested hundreds of women for reasons such as appearing in public without a mahram, alleged violations of dress codes, and participating in protests demanding their rights. Many of these women have been detained in isolation, without access to a lawyer or contact with family members. Such practices constitute inhuman treatment and amount to torture and cruel, degrading punishment prohibited under international law. Reports indicate that upon arrival at detention centers, women are beaten with cables, chained, subjected to electric shocks, and threatened with death. There is no legal protection for detained women: they are denied access to a lawyer, prevented from informing family members, and deprived of any form of fair trial. In most cases, prosecutors never review the arrests, and women's cases never pass through any lawful judicial procedure. In some instances, women have even been pressured to marry Taliban officials in exchange for their release. These practices constitute grave violations of fundamental human rights and reflect a systematic pattern of gender-based violence and persecution.³⁵

Erosion of Protection Mechanisms for Survivors of Gender-Based Violence

Another factor that has gotten worse regarding the situation of women's and girls' rights in Afghanistan is the shutdown of the institutional mechanisms, including Family Response Units, shelters, legal aid, and protection services that protected and supported women from gender-based violence. This was created under the 2009 Elimination of Violence Against Women (EVAW) law.

The EVAW Law considers acts as crimes, including child and forced marriage, beating, and rape, when committed against women. The law also criminalized certain violations of women's rights, like violations of the right to work, education, and access to health care. The EVAW also established a mechanism to address criminal complaints through various entities, including the Office for Civil Rights, the Family Response Unit, and the EVAW units. These units were responsible for handling and investigating cases related to domestic violence and gender-based violence. The law also required that victims of violence have access to services, including medical care, legal aid, and shelter. After the Taliban took control, they dismissed the Ministry of Women's Affairs and withdrew

³⁴ Bantekas and Karimi, "Gender Apartheid Under the Taliban_ Key Elements of an Ideology Designed to Disempower Afghan Women."

³⁵ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

support. Family response units and shelters were closed as a result, and survivors face the risk of further violence and unstable conditions.³⁶

Restriction on dress code

The Taliban launched a public campaign on women's dress, requiring that women and girls wear a form of hijab that covers the entire body except for the eyes. This policy has been aggressively enforced in public spaces, including checkpoints, hospitals, supermarkets, and streets.

In March 2022, the Taliban formally issued a decree to all government institutions mandating that all female employees wear the prescribed hijab, and women who did not comply were denied entry into government offices. Shortly thereafter, the authorities expanded this requirement, issuing a letter stating that all women and girls across Afghanistan must wear hijab.³⁷ A report by Amnesty International and UNAMA, women and girls were frequently beaten, threatened, and punished by Taliban members at checkpoints, on the streets, and in other public spaces when they did not comply with the Taliban's clothing rules.³⁸ Such enforcement practices have created fear and constitute a direct assault on women's dignity, autonomy, and security.³⁹

Taken together, the Taliban's restrictive dress code policies alongside the deprivation of fundamental rights like freedom of movement, personal security, access to justice, and human dignity reflect a systematic and widespread pattern of gender-based persecution. These acts targeted women and girls as a group for more than five years, affecting thousands, and were implemented intentionally to exert control over them. Thus, they are fulfilling the element of gender persecution under Article 7 (1) (h) of the Rome Statute.⁴⁰

As a State party to the International Criminal Court (ICC) since 2003, Afghanistan recognizes the court's jurisdiction to investigate and prosecute crimes against humanity, including gender-based persecution, under Article 7(1)(h) of the Rome Statute. In the context of the Taliban's systematic and widespread discrimination against Afghan women and girls, including their deprivation of basic rights, education, and access to a fair trial, freedom of movement, work, and dignity, the ICC has a legal basis to investigate these acts and pursue individual criminal responsibility for Taliban officials involved in such violations.

The ICC can recognize the Taliban's acts as gender-based persecution in violation of the international legal framework. Even if the Taliban refuse to cooperate with the court, ICC warrants carry symbolic and legal implications. They restrict the mobility of alleged perpetrators, undermine their legitimacy, and affirm the international community's

³⁶ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

³⁷ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

³⁸ Amnesty International & International Commission of Jurists (ICJ), *The-Talibans-War-on-Women-the-Crime-against-Humanity-of-Gender-Persecution-in-Afghanistan-FINAL-VERSION.Pdf*.

³⁹ Bantekas and Karimi, "Gender Apartheid Under the Taliban_ Key Elements of an Ideology Designed to Disempower Afghan Women."

⁴⁰ Bantekas and Karimi, "Gender Apartheid Under the Taliban_ Key Elements of an Ideology Designed to Disempower Afghan Women."

commitment to justice. By framing the Taliban's abuses as crimes against humanity, the ICC reinforces the understanding that these actions are not merely discriminatory policies but constitute grave international crimes requiring justice.

Conclusion

Since 2021, the Taliban's policies have demonstrated a systematic and deliberate attack on Afghan women and girls, depriving them of fundamental rights such as education, work, freedom of movement, and personal security. These actions directly target women as a group and obviously meet the element of gender persecution under Article 7 (1) (h) of the Rome Statute. ICC jurisprudence, including the *Ongwen* case, confirms that systematic restriction and discrimination on gender can amount to crimes against humanity. As a state party to the Rome Statute, Afghanistan falls under ICC jurisdiction, given that the court has both the authority and responsibility to investigate these violations. Even if the Taliban refuse to cooperate, ICC action would carry legal and symbolic importance by affirming that these abuses are not mere discriminatory policies but grave international crimes. Holding perpetrators accountable is essential to recognizing Afghan women's suffering and reinforcing the global commitment to justice and human rights.