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SILENCING HALF THE POPULATION: THE TRAGIC DENIAL OF GIRLS AND WOMEN'S RIGHT TO EDUCATION IN AFGHANISTAN

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ANALYSIS

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1. Executive Summary

15 August 2023 marks two years since the Taliban toppled the democratic government in Kabul and took power as a result of a political agreement in Doha city. The developments that followed not only sealed the fate of Afghanistan's fledgling democracy but also included gross violations of human rights. As of today, the Taliban, as the *de facto* authorities, are committing "gender apartheid" that already marked their first reign between 1996 and 2000.

During the last two years, Afghan women have faced grave ordeals. Systematically, they have been subjected to discriminatory practices and their access to public life has been largely restricted. The leader of the Taliban, *Mullah Habatullah Akhundzada*, has issued more than twenty decrees regarding the status of women, stripping them of any active role in society.

A cornerstone of the Taliban's rule is the gross violation of women's right to education. Step by step, the access of girls and women to educational institutions has been restricted. Girls are excluded from secondary education and, since 20 December 2022, women face a total ban from higher education. Experts who follow the situation in Afghanistan, especially within the framework of the Special Procedures of the United Nations Human Rights Council, have documented systematic human rights abuses.

This paper shows that these violations take place in spite of Afghanistan's international obligations. As a member of the international community, Afghanistan signed and ratified many

international human rights conventions and treaties. Regardless of any *de facto* or *de jure* recognition by the international community, the Taliban are obliged to respect women's rights and adopt measures for their effective implementation. Evidently, the Taliban have not only failed to protect Afghan women but they have also actively violated their fundamental rights.

This paper further considers the responsibilities of the international community. First of all, the right to education is a universal human right, and the universal validity of those rights should be of essential concern to all members of the United Nations. Considering the current political climate in Afghanistan, it is extremely challenging to pressure the Taliban into enforcing human rights. But there still is an international responsibility to explore avenues for ameliorating the situation of women in Afghanistan. This duty falls especially on those countries who, following United Nations Security Council Resolution 1378, were present in the country for over twenty years.

Although the situation remains difficult and options for Western policymakers are limited, this paper makes a number of recommendations for improving the situation of Afghan women. These include utilising the possibilities that are envisaged within international law, leveraging diplomatic pressure, and providing aid to Afghan girls and women directly, for instance through supporting online universities. Finally, policymakers should take women's rights seriously not only as an accessory to international policy but as an integral component of it.

2. The Taliban's war on women's education

"No rights for women unless they (Afghan girls and women) conform to our framework.", Said Mohammad Yunus Rashid, Deputy of Youth Affairs of the Taliban's Ministry of Information and Culture (Kabul Now, 28 July 2023). Given such rigid and draconian statements, there is little hope that the Taliban will reopen schools and universities for female students. Since 15 August 2021, the group has systematically excluded women from public life. In large cities as well as small villages, they are punished when they go outside their homes without a male companion (*mahram*) or enter parks and public places.

2.1. Women's education in Afghanistan between 2001 and 2021

In less than two years, the Taliban have rolled back most of the achievements in women's education that were made between 2001 and August 2021. Already during the first reign of the Taliban, women were barred from accessing most educational institutions and most notably any form of higher education. As a result, women's education, health care and security were at the top of the international agenda after the fall of the Taliban in 2001 (Thier & Chopra, 2002, p. 904).

Even though progress was slower than maybe anticipated during the early years of the Islamic Republic of Afghanistan, it was still moving in the right direction for Afghan women. A twenty-year review of the situation by UNESCO, which was published in 2021, painted a fairly optimistic picture of such progress during the last twenty years. The female literacy rate almost doubled from 2011 to 2018, and four out of 10 pupils in primary schools were girls (UNESCO, 2021a). Universities in particular emerged as comparatively free spaces, in which women could escape repressive gender roles. By 2018, 28% of all students and 14% of faculty members were women (Hayward & Karim, 2019) Nevertheless, the situation for girls and women remained fragile throughout these years. As a UNICEF report noted in 2019, adolescent girls continued to face a number of barriers to education, including prejudices, poverty and a lack of government investment in women's education. Insecurity and conflict, too, remained a problem –

and one that had been growing drastically before the Taliban reentered Kabul (UNICEF Regional Office South Asia & United Nations Girls' Education Initiative, 2019).

2.2. The return of the Taliban

In the early days of their return, the Taliban were keen to dissuade fears that they would return to the discriminatory practices that marked their first reign. However, in September 2021, they only reopened secondary schools to boys and men, while girls and women had to stay at home (UNESCO, 2021b). One year later, in October 2022, the Taliban blocked women from taking certain college entrance exams and on 20 December 2022, the Taliban banned women from attending universities altogether (BBC, 2022).

In his recently published study, Hassan Abbas, a professor at the National Defense University in Washington, argues that these wide-ranging measures have been the "wish of a hardline faction" within the Taliban, but not necessarily indicative of a wider consensus within the leadership (Abbas, 2023, p. 110). For instance, leaders such as Mullah Berader, First Deputy of the Taliban cabinet, who also led the Doha negotiations with the United States, and Abass Stanikzai, currently Deputy Minister of the Ministry of Foreign Affairs, seem to be moderate and in favour of women's education. On the other hand, the group under the leadership of Mullah Habbatullah Akhundzada, the leader of the Taliban (the so called *Amir ul Mo'menin*), implements a hardline policy against women's education. Be this as it may, it is clear that the current crackdown on women's education singles out Afghanistan as the only country in the world that suspends the access of girls and women to education altogether.

At the domestic level, single acts of resistance occur almost on a daily basis. As it is well-documented under the Twitter hashtag #LetAfghanGirlsLearn, women in different cities of Afghanistan take to the streets and protest against the discriminatory practices. However, as of now, such protests have very little to no effect on the situation on the ground. First,

Number of students in Afghanistan, 2001-2018 (thousands)

Year	Primary			Lower secondary			Upper secondary		
	Both Sexes	Female	% of Female	Both Sexes	Female	% of Female	Both Sexes	Female	% of Female
2001	773.6	202.5	160.0
2005	4,318.8	1,541.3	35.7	461.3	113.1	24.5	190.1	39.1	20.6
2010	5,279.3	2,076.9	39.3	1,476.8	494.9	33.5	567.3	159.4	28.1
2015	6,199.3	2,441.9	39.4	1,669.2	596.5	35.7	982.3	323.4	32.9
2018	6,544.9	2,549.6	39.0	1,982.9	708.6	35.7	1,081.0	367.5	34.0

Source: (UNESCO, 2021a, p. 18)

the protestors are too few to create a serious challenge for the Taliban. Those women who do protest on the streets are brutally beaten, arrested and even murdered. In some cases, even members of their families are arrested and tortured in detention centres (Human Rights Watch, 20 October 2022). Second, women are often left alone in the fight for their fundamental rights and they lack the resources to financially mobilise further resistance.

For obvious reasons, outsiders struggle to influence the decision-making processes within the Taliban. The international community, and especially international organisations such as the United Nations, have mostly resorted to passively observing the situation. At least, on 7 October 2021, the UN Human Rights Council established the mandate of a Special Rapporteur on the situation of human rights in Afghanistan. On 1 April 2022, Richard Bennett was appointed to the position. Between September 2022 and June 2023, he published three country reports that outline the situation of human rights in Afghanistan. His latest report, from 15 June 2023, focuses exclusively on women and girls (Special Rapporteur on the situation of human rights in Afghanistan, Working Group on discrimination against women and girls, 2023).

The UN report recapitulates the numerous restrictions that have been placed on women since autumn 2021 and concludes that “nowhere else in the world has there been an attack as widespread, systematic and all-encompassing on the rights of women and girls as in Afghanistan” (ibid, p. 17). The report further argues that “the pattern of large-scale systematic violations of women’s and girls’ fundamental rights in Afghanistan, abetted by the Taliban’s discriminatory and misogynistic policies and harsh enforcement methods, constitutes gender persecution and an institutionalized framework of gender apartheid” (ibid, p.17f). This assessment is significant, because it adopts an international law perspective imposing legal obligations on policymakers to take the situation extremely serious. Placing Afghanistan’s obligations at the centre of the debate serves as an important avenue for safeguarding non-discriminatory universal rights.

3. Afghanistan's international obligations

Access to education is a fundamental human right incorporated in a number of international treaties and conventions to which Afghanistan is a party. To begin with, the Universal Declaration of Human Rights (UDHR) states that "everyone has the right to education" (1948, Art. 26). In other words, access to education should be provided for each individual without any kind of discrimination based on sex, gender, religion, race, etc. According to Article 26 of the International Covenant on Civil and Political Rights (ICCPR), states should adopt specific laws that prohibit discrimination on the grounds of sex or other characteristics. This means that the signatories, which include Afghanistan, are obliged to take active measures to protect women from such discrimination. Finally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the United Nations General Assembly on 18 December 1979 and to which Afghanistan is a signatory state, includes a number of pivotal measures that should be implemented to protect women. According to Article 10 of the CEDAW, "States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education." Furthermore, the CEDAW also requires "appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (Art. 5).

As demonstrated above, since taking over power on 15 August 2021, the Taliban have systematically violated women's rights by banning them from attending schools and universities as well as coercively depriving them of access to all sectors of society. They have not taken any measures to promote education for women, notwithstanding strong international criticism as well as protests in Afghanistan which have been brutally silenced. The UN Special Rapporteur has documented that the Taliban have employed a series of edicts and ordinances to remove Afghan women from public life and create a climate of extreme discrimination.

It is self-evident that the Taliban's treatment of women is a clear violation of the ICCPR and CEDAW obligations. The country ratified both conventions on 24 January 1983 and 5 March 2003 respectively. It could be asked, whether the Taliban are exempted from these international obligations since both conventions were signed and ratified by previous regimes that do not exist anymore. The answer, however, is a clear and simple no. Afghanistan has ratified the above international laws as a state and has the duty to respect, protect and fulfil women's rights regardless of any change in government. Governments are representatives of their states at the international level and state's responsibility remains intact under all circumstances (OHCHR, 1 September 2023, para. 6). Thus, the Taliban bear the primary international responsibility for any violation of women's rights in Afghanistan.

So far, no country in the world has recognised the Taliban, even though they are the *de facto* authorities in Kabul. The absence of recognition, however, does not exempt the Taliban from the obligations that flow from these international treaties. Recognition is a political assertion among states rather than a legal obligation under international law. Therefore, the lack of recognition does not license the Taliban to violate the human rights of half of the Afghan population in any way. Even in the absence of recognition, Afghanistan as a whole has an international responsibility to safeguard the right to education of all its citizens.

With regard to international law, it is clear that the Taliban have effective control over the Afghan territory – and therefore, they are responsible for any violations of the fundamental rights of Afghan women and girls incorporated within the instruments above. This is one of the reasons that the United Nations Secretary-General called upon the Taliban to respect and protect human rights and seek to fulfil the international obligation of Afghanistan (Report of the Secretary-General to the UN General Assembly, 2 September 2021).

The UN Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett, has highlighted the systematic discrimination against women in Afghanistan. His assertion that the measures taken to restrict women's access to education amount to gender persecution and gender apartheid is significant, because these are established assertions of reasonable grounds to believe that international crimes are being committed against women in Afghanistan; they are, therefore, of international concern. Indeed, Bennett's report contains information that gives rise "to a critical concern that women and girls are being targeted for gender persecution because of their sex characteristics and because of the social constructs and criteria used to define gender roles, behaviour, activities and attributes" (Special Rapporteur on the situation of human rights in Afghanistan, Working Group on discrimination against women and girls, 2023, p. 16f.).

The concept of gender apartheid emerged first in the mid-1990s in response to the first reign of the Taliban. A number of human rights and feminist activists successfully launched an international campaign that framed the discrimination of girls and women in Afghanistan as the crime of apartheid (Gallagher, 2000). In 1999, the term was even picked up in a report by Abdelfattah Amor, who was then the Special Rapporteur of the United Nations Commission on Human Rights (as of 2006 replaced by the UN Human Rights Council). The Taliban's policy, Amor concluded, was "tantamount to veritable apartheid against women, as women, and on the basis of specious interpretations of Islam" (the Special Rapporteur of the United Nations Commission on Human Rights, 1999, p. 27). Since apartheid, regardless of its motives, is considered a crime by the International Court of Justice (ICJ) and the ICC, the current practices by the Taliban should give rise to respective investigations, especially by the Office of the Prosecutors

at the ICC. Afghanistan is a party to the Rome Statute of the International Criminal Court and under the Rome Statute, gender persecution constitutes a crime against humanity.

Even if one considers national laws, the Taliban are obligated to respect Afghan women and allow them to continue their education. First, the 2004 Constitution of Afghanistan guarantees the right to education and recognizes Afghanistan's international commitments (Art. 7 & 17). It is not a secret that the Taliban abandoned the constitution and consider it against Islam. As a result, they operate in a legal vacuum, governing solely on the basis of the decrees and ordinances of their leaders. However, considering the constitutional tradition of Afghanistan, the only way to discard the 2004 Constitution, is in a democratic manner, already foreseen within the Constitution itself. Thus, until a new legal document replaces the constitution, it remains the legitimate framework for the country.

4. Questioning the Taliban's narrative

While international law is very clear, it is still useful to analyse the religious basis of the arguments put forward by the Taliban themselves. Amongst the chief reasons for doing so is the need to enlist the support of Muslim governments in putting pressure on the Taliban.

Despite the restrictions imposed on women, the Taliban have never claimed that education for women is not allowed in Islam. There is indeed no interpretation of the Islamic Sharia which demands that women have no right to education. The main two sources of Islamic Sharia, the *Qur'an* (the divine book of Muslims) and the *Sunnah* (deeds and traditions), in fact urge Muslims to seek knowledge. The first commandment that was delivered to the Prophet starts with the word 'Read' (اقرأ) (Qur'an, Chap. 96, vers. 30). Moreover, there are many narrations of Prophet Muhammad according to which he not only encouraged learning but also considered it mandatory for "everyone", i.e. both men and women (Sunan Ibn Mājah 224).

The above *Hadith* (saying of Prophet Muhammad) addresses both male and female Muslims - and there is a strong consensus among both classical as well as contemporary Islamic scholars on the interpretation of this Hadith. A comparison with Article 19 of the UDHR and Article 19 of the ICCPR thus shows that there is no tension between Islamic rules and international law.

One of the reasons for the ban on girls' education put forward by the Taliban is the incompatibility of current conditions in Afghanistan with Islam (Lodi, 26 September 2021; Taliban ban women from Afghan universities - BBC News, 20 December 2022). In particular, the Taliban criticise the mixed nature of schools as well as the absence of the Islamic Hijab during the last 20 years. However, in the previous education system, there were not only separate schools for girls and boys but it also was compulsory for females to wear a white scarf.

Furthermore, a majority of the Afghan population are followers of the Hanafi School of Islamic Jurisprudence (one of the main four schools of Islamic jurisprudence). According to this school, the female *Hijab* means covering the head, whereas the face, hands and feet are allowed to be visible and are not considered private parts (Rabbani, 2011). Many Islamic

scholars, both from Afghanistan and from around the world, have already criticised the Taliban's discriminatory policies and called upon them to reopen schools and universities for female students (United States Institute for Peace, 2022; VOA News, 2023).

4.1. Afghan culture vs. Western values?

Another argument that the Taliban often cite is, that during the international presence in Afghanistan, schools and universities used to teach values that were contradictory to Afghan traditions and values (Global Campus on Human Rights, 24 October 2022). However, the fundamental rights of women have always been an integral part of Afghan society. In 1919, for instance, Afghanistan was one of the first countries that recognised the right to vote for women. The 1923 Constitution recognised, inter alia, education equally both for men and women. As a matter of fact, Afghanistan made elementary school mandatory for all citizens regardless of their gender (Art. 14, 15 & 45). By contrast, in some Western countries, women's suffrage was still not recognised at the time.

Throughout the 1960s and 1970s, the role of women in Afghanistan can be characterised as progressive. Obviously, profound developments in the big cities were not necessarily mirrored in all provinces and the civil war between 1992 and 1996 as well as the first period of Taliban rule, are marked by a lack of female representation in society. Nonetheless, by deciding to send their daughters to schools and universities, millions of Afghan families in the last twenty years not only exercised a universal human right, but they followed their very own traditions and Islamic values.

5. International Responsibilities

Human rights are very difficult to enforce in some countries, as autocratic regimes and repressive governments constantly and brutally violate them. Following their haphazard exit from Afghanistan, the former occupying powers are left with few devices to influence the situation on the ground. “While the Taliban continue on this path, international recognition will not be on the table”, Dame Barbara Woodward, Ambassador and Permanent Representative of the UK Mission to the UN, recently proclaimed in a speech to the UN Security Council (Foreign, Commonwealth & Development Office, 2023). However, it is unclear whether the promise of possible diplomatic recognition alone will suffice to move the Taliban away from violating the rights of its own citizens. Both in terms of international law and with a view to diplomatic efforts, several avenues remain open.

As was shown above, the Taliban’s policies might very well qualify as crimes against humanity under the Rome Statute. Bennett’s recommendation that UN member states “mandate a report on gender apartheid as an institutionalised system of discrimination, segregation, humiliation and exclusion of women and girls [...] galvanizing international legal condemnation and action to end it and ensure its non-repetition” should be followed (Special Rapporteur on the situation of human rights in Afghanistan, Working Group on discrimination against women and girls, 2023, p. 19). Making sure that the existing legal avenues are explored to the fullest extent, should be a priority for policymakers.

Apart from ensuring that all instruments offered by international law are employed, Western governments in particular should step up their support for Afghan women and girls. On a basic level, this could include the maintenance of online universities as a temporary measure to enable the continuation of their studies. In addition, opportunities to study in neighboring countries could be provided. Afghan girls and women outside Afghanistan are deserving of long-term security. Possible policies include refugee and resettlement schemes as well as educational funds.

6. Recommendations for Policymakers

Apart from fulfilling their international responsibilities, policymakers in Germany and beyond are faced with a number of difficult choices. It is far from evident that, for instance, leveraging humanitarian support and holding out the prospect of international recognition, will help to ameliorate the situation. Nonetheless, there are a number of concrete steps that can be taken with little to no risk:

1. The Study Commission on Afghanistan established by the German Federal Parliament is not only tasked with examining the military implications of the German involvement in Afghanistan as part of the ISAF mission, but also to take a broader view which reflects the “networked” nature of the mission. This includes extracting any lessons learnt with regard to the “empowerment and consideration of women and girls” as part of a future German defence and security policy (BT-Drs. 20/2570, 2022). It is vital that this assignment is taken seriously by the commission and policymakers alike. At the transnational level, such lessons can be shared amongst countries that were involved in Afghanistan during the past twenty years. This will not only help pinpoint the shortcomings in the past, but will also enable stakeholders to take necessary steps together.
2. In the spring of 2023, the German Federal Foreign Office published guidelines on “shaping feminist foreign policy.” According to these guidelines, the concern for women and girls in Afghanistan is a “major driving force” behind the feminist foreign policy, but so far, successes are limited. They do, however, include support for the appointment of the Special Rapporteur in Afghanistan and a UN General Assembly resolution that “communicates the international community’s clear expectations of the Taliban in the realms of human rights and the rights of women and girls.” (Federal Foreign Office Guidelines, 2023, p. 36). Translation of these policy guidelines into applicable measures requires cooperation beyond national contexts so that a common and unified transnational approach to address the violations committed by the Taliban and to help Afghan women is adopted.
3. Not only with regard to Afghanistan but in other regions as well, safeguarding human rights and ensuring the access of girls and women to education should be a building block of foreign and security policy. Indeed, taking women’s rights seriously as a matter of foreign policy also means searching for appropriate allies and leveraging the avenues provided by the United Nations and other international organisations.

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