

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# THE TALIBAN MUST IMMEDIATELY REVOKE THE CRIMINAL PROCEDURE REGULATION OF THE COURTS

### EXECUTIVE SUMMARY

The new “Criminal Procedure Regulation of the Courts”, approved by the Taliban, not only fails to ensure basic guarantees for a fair trial, but it also authorizes the destruction of property as a form of punishment, institutionalizes torture and other ill-treatment through corporal punishment and allows the death penalty for a wide range of offences. Additionally, the regulation entrenches discrimination based on gender, religion, belief, and social status. It further restricts civic space and undermines the right to freedom of expression and thought as well as expressly recognizes slavery.

Amnesty International calls on the Taliban to immediately revoke the regulation and stop its implementation, if already started. As the country’s de facto authorities, the Taliban must not only follow laws that existed prior to their return in August 2021 – particularly those that comply with the country’s obligation under international law – but also ensure that any new procedural legislation or administrative act complies with the fundamental principles of the rule of law and the country’s obligations under international human rights law.

Amnesty International also calls on the international community, including regional, and members of the Organization of Islamic Cooperation (OIC) countries, to publicly reject such abusive regulation by the Taliban and to prevail on the Taliban to comply with the country’s obligations under international human rights law and to take effective measures to end violations of human rights in Afghanistan.

Afghanistan has been facing a legal vacuum since August 2021 when the former government collapsed, and the Taliban seized power. Since then, the Taliban as the de facto authorities with a caretaker cabinet have unlawfully declared all existing laws void and imposed their own interpretation of Sharia law. However, among other provisions, Article 7 of the 2004 Constitution obligated Afghanistan to observe the United Nations Charter, the international treaties to which Afghanistan is a State Party, and the Universal Declaration of Human Rights.<sup>1</sup> The Afghan Parliament, the country’s main legislative body, was also dismantled following the Taliban’s seizure of power. Under this legal vacuum, decrees endorsed by the Taliban leader without any clear or stipulated legislative process or broader consultation are considered binding and are gazetted.<sup>2</sup> These decrees are issued in violation of due process and the country’s obligations under international human rights law.

### BACKGROUND AND CONTEXT:

On 5 January 2026, the Taliban leader endorsed the regulation and ordered its publication in the Official Gazette.<sup>3</sup> On 8 January 2026, the Taliban’s Supreme Court Secretariat (*Dar -al-Insha*), circulated the regulation to the members of the Supreme Court, directorates, and courts for its implementation.<sup>4</sup> Though the regulation is not yet published in the official Gazette, on 23 January 2026, the Taliban, in reaction to severe criticisms of the issuance of this regulation, stated that it

<sup>1</sup> 2004 Constitution of Afghanistan, [https://www.constituteproject.org/constitution/Afghanistan\\_2004](https://www.constituteproject.org/constitution/Afghanistan_2004)

<sup>2</sup> Upon criticism of the regulation, the Taliban Ministry of Justice announced that their legislation are drafted by delegations of Ulema, the concerned ministries and agencies, the Ministry of Justice, the Supreme Court, and the Office of the Taliba leader, based on the Book of Allah (Quran), the Sunnah of the Messenger of the Allah, and documented Hanafi books. Taliban Ministry of Justice, Facebook post, (unofficial translation) Objection of Islamic Law is an objection to Sharia and can be legally pursued, 28 January 2026, <https://www.facebook.com/share/17BgoKYCKV/?mibextid=wwXlfr>

<sup>3</sup> Rawadari, *Press Release Regarding the Implications of the “The Criminal Procedure Code for Courts” Issued by the Taliban*, 21 January 2026, <https://rawadari.org/fa/papers/%d8%a7%d8%b5%d9%88%d9%84-%d9%86%d8%a7%d9%85%d9%87-%d8%ac%d8%b2%d8%a7%db%8c%db%8c-%d9%85%d8%ad%d8%a7%da%a9%d9%85-%d8%b7%d8%a7%d9%84%d8%a8%d8%a7%d9%86/>

<sup>4</sup> On the file with Amnesty, Islamic Emirate of Afghanistan – Supreme Court Judicial Deputyship, The Official of the Criminal Procedure Regulation of the Courts.

will be published soon.<sup>5</sup> On 19 February 2026, Amnesty International contacted the de facto Taliban's Supreme Court, Ministry of Foreign Affairs, and Ministry of Justice seeking an official copy of the regulation and any accompanying materials for this analysis, and to determine whether the regulation has been effectively enforced, but no response was provided at publication of the analysis.

Further, while responding to criticisms, the Taliban stated that the regulation had been previously enforced in the areas under their control before August 2021, but claimed that, as circumstances have changed with the Taliban control of the country, it required updating.<sup>6</sup>

Afghan civil society organizations (CSOs), activists, and media publicly circulated a copy of the regulation, which had first been published by Rawadari on 21 January 2026.<sup>7</sup> The regulation came under severe criticisms for infringing on human rights in Afghanistan, recognizing slavery,<sup>8</sup> and prescribing discriminatory and inhumane punishments, including corporal punishment. Despite not publishing the full regulation, the Taliban insisted that it would be released soon and warned that criticism of the regulation constitutes an objection to Sharia and may give rise to criminal prosecutions.<sup>9</sup>

On 15 February 2026, a media outlet reported that the implementation of the regulation had led to the prosecution of an individual in Badghis province for insulting the Taliban leader.<sup>10</sup>

## OVERVIEW OF KEY HUMAN RIGHTS CONCERNS

### 1. FREEDOM OF RELIGION, BELIEF, THOUGHT, AND EXPRESSION

Several of the regulation's provisions embed discriminatory and punitive rules that disproportionately harm religious minorities and anyone diverging from the Taliban's prescribed beliefs. The following examples illustrate how these clauses institutionalize repression and further restrict the right to freedom of religion and belief.

Clause 8 of Article 2 of the regulation provides that a person who holds beliefs contrary to the beliefs of the Sunni branch of Islam is heretical (*mubtadi*)<sup>11</sup>, such labelling entrenches already rampant discrimination against religious minorities in the country.<sup>12</sup> This sits within a wider context in which the Taliban have, for example, compelled Shia Ismailis in Badakhshan Province to convert to Sunni Islam and forcibly evicted Shia-Hazara communities, compounding their long-standing experience of discrimination and persecution in Afghanistan.

Article 26 stipulates that a person who departs from the Hanifi School of Thought, the branch of Sunni Islam that the Taliban claim to adhere to, shall be imprisoned for two years. Under Article 16, if a Muslim insults Prophet Muhammad or other prophets, the person is deemed an apostate and imprisoned for six years if the person repents; otherwise, the sentence is death. Under Article 17, Clause 1, anyone who disrespects the sacred days of Islam is subject to three months of imprisonment. Clause 2 of Article 17 states that a person who intentionally mocks or ridicules the "injunctions of sharia and the hallmarks of Islam" is punishable by two years of imprisonment, if proven before a judge. Clause 3 of Article 17 states that a person who deliberately and consciously states that he/she is not going to implement the Islamic statements of jurists or says he/she does not accept verdict of Islamic scholars, can be sentenced to two years of imprisonment, if proven to a judge.

<sup>5</sup> BBC Persian, (unofficial translation) *The Supreme Court of the Taliban: The Criminal Procedure Regulation Will Soon Be Published in the Official Gazette*, 26 January 2026, <https://www.bbc.com/persian/news-afghanistan-67111111>; دادگاه عالی حکومت طالبان: اصولنامه جزایی محاکم بهزودی در جریده رسمی منتشر می‌شود, BBC News دری

<sup>6</sup> Deputy Spokesman of the Islamic Emirate of Afghanistan, X post: (unofficial translation) *Maulvi Zabihullah Mujahid's interview with the BBC about the Criminal Procedure Regulation of the Courts*, 28 January 2026, (1) Hamdullah Fitrat: *فطرت* on X: "د محاکمو د جزایی اصولنامې په اړه له بي بي سي سره د مولوي" <https://t.co/LsJrsDNyJ2> / X

<sup>7</sup> Rawadari, *Press Release Regarding the Implications of the "The Criminal Procedure Code for Courts" Issued by the Taliban*, 22 January 2026, (previously cited).

<sup>8</sup> Rawadari, *Press Release Regarding the Implications of the "The Criminal Procedure Code for Courts" Issued by the Taliban*, 21 January 2026, (previously cited).

<sup>9</sup> Afghanistan International TV, *Taliban Declare Opposition to Their Laws 'A Crime'*, 28 January 2026, <https://www.afintl.com/en/202601286058>;

<sup>10</sup> Amu TV, Exclusive: Commencement of the Taliban Criminal Procedure Regulation, 15 February 2026, <https://www.amutv.com/news/1345731170576460>; اختصاصی: آغاز اجرای اصولنامه جزایی طالبان | تلویزیون

<sup>11</sup> Also translated as an "innovator".

<sup>12</sup> While the clause is vaguely worded, the Taliban spokesperson said that this clause does not concern Shia communities or other groups, as they are protected under Sharia jurisprudence. He added that the clause particularly concerns individuals who interpret religion according to their own preferences, introduce new elements, or remove existing provisions. He also mentioned that the provision concerns those who depart from the faith, as it is not permitted. However, departing from Hanafi school of thought is separately addressed under 26. <https://www.facebook.com/reel/1345731170576460>

Under articles 18 and 19, not only are insults<sup>13</sup> to the *Imam*<sup>14</sup> criminalized by one year of imprisonment and 39 lashes, but also the *Imam's* orders become obligatory, and if a person opposes these orders of the *Imam*, the individual may receive one month of imprisonment. Article 58 states that a woman apostate will be sentenced to life imprisonment for abandoning the religion and will receive 10 lashes every three days for the purpose of compelling her to accept Islam.

Taken together, these provisions entrench an increasingly coercive system that targets religious minorities and anyone deemed non-compliant with the Taliban's interpretation of Islam. They create heightened risks for religious minorities such as Shia, Ismaili Shia, Hindus, Sikhs, and others whom the Taliban consider not to be following Sunni Islam. They may also trigger discriminatory actions against Sunnis who do not comply with the Taliban, particularly the followers of other branches of Sunni Islam including Sufis. The new regulation in effect provides the Taliban with broad powers to intimidate, silence and persecute perceived opponents and critics, reinforced by punishments that are excessively harsh, cruel and, in some cases, lethal.

Not only do the regulation's provisions violate articles of the 2004 Constitution, previously declared inapplicable by Taliban including Article 22, which prohibits any discrimination based on religion, and Article 131, which allows the court to apply Shia Jurisprudence to cases relating to personal matters. The regulation further violate many provisions of the International Covenant on Civil and Political Rights (ICCPR) to which Afghanistan is a state party, particularly Article 18, Clause 1, on the "right to freedom of thought, conscience and religion", and Clause 2, the ability, "to adopt a religion or belief of one's choice".<sup>15</sup> Limitations on the manifest of religion and belief are subject only to restrictions "prescribed by law" and "necessary" to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, under Clause 3 of Article 18. They further violate Article 2, Clause 1, and Article 26 of the ICCPR on non-discrimination based on religion and equality before the law.

In addition to policing belief, the regulation criminalizes ordinary social conduct and imposes sweeping surveillance obligations. Article 24 criminalizes the failure to report gatherings or consultations of opponents, imposing a penalty of two years of imprisonment on any person who has knowledge of such activities or witnesses them and fails to report to the Taliban or to take actions themselves. Additionally, Article 59 criminalizes both those who dance and those who watch, sentencing each to two months of imprisonment. These provisions violate Article 19, Clause 1 and 2 of ICCPR on right to opinion without interference and right to freedom of expression, which includes "freedom to seek, receive, and impart information and ideas of all kinds", including the expression of these rights in the form of arts. Any restrictions on these rights can only be imposed by law and must be necessary to protect the rights and reputation of others, national security, public order, or public health or morals, under Clause 3 (a) and (b) of ICCPR Article 19. The Human Rights Committee in its General Comment No.34, on Article 19, regarding the right to freedom of opinion and expression, stated that "penalization of a media outlet, publisher or journalist solely for being critical of government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression".<sup>16</sup> It emphasized that restriction based on morals cannot derive from "a single tradition", and must be considered in light of "the universality of human rights and the principle of non-discrimination."

## 2. WOMEN'S RIGHTS

The regulation continues to systematically undermine women's rights by normalizing violence and creating conditions that heighten women's vulnerability to abuse while further restricting their movement, autonomy, and participation in public life. The following examples illustrate how the provisions will further institutionalize discrimination and violence against women in the country.

Article 34 of the regulation allows for the punishment of a woman for repeatedly going to and staying at her father or relative's home if her husband objects and a court decides that she must return. She may be sentenced to three months of imprisonment together with the persons (relatives) preventing her return. Additionally, Article 32 fails to criminalize non-physical violence against women and girls, prescribing only a 15-day imprisonment for a husband only if the physical

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<sup>13</sup> Also translated as "abuses".

<sup>14</sup> Through the regulation, on separate occasions refers to the Taliban leader as *Amir -al-Mu'minin*; yet contextually it appears that the term *Imam* also refer to him. Despite repeated references, the term *Imam* is not defined in the regulation.

<sup>15</sup> International Covenant on Civil and Political Rights,

<sup>16</sup> United Nations, General comment No. 34 – Article 19: Freedom of Opinion and Expression, 11-29 July 2011. P. 11.

<https://www.ohchr.org/sites/default/files/english/bodies/hrc/docs/gc34.pdf>

violence has led to “a broken bone, or an open wound, or a black and blue wound appears on her body”<sup>17</sup> and when this is proven or taken before a judge by the wife. Article 4, Clause 5, allows a husband to carry out “discretionary” punishment<sup>18</sup> on his wife.

Taken together, these provisions remove essential safety mechanisms for victims and survivors of gender-based violence and intimate partner violence, particularly because many women rely on relatives as their only source of refuge when fleeing abuse. Article 34 effectively dismantles avenues of protection for victims and survivors of gender-based violence, as for many women, turning to families and relatives for protection often remains the only option. Provisions of Article 32 normalize physical violence – implicitly treating some forms of violence as less harmful – while entirely ignoring non-physical forms of violence and less severe, but grievous forms physical violence that are prohibited under international law and require States to take urgent steps to prevent and address them.

Domestically, in addition to a constitutional guarantee of equality before the law, Afghanistan has a Law on the Elimination of Violence Against Women (EVAW), which criminalizes 22 forms of violence against women and established specialized prosecution and court units to address them.<sup>19</sup> However, the Taliban have unlawfully dismantled both the law and the institutions responsible for its enforcement. In December 2021, the Taliban issued a decree recognizing the prohibition of forced marriage, affirming that women are not property, and acknowledging women’s rights to inheritance and widows’ rights to a dowry in a new marriage.<sup>20</sup> This decree, however, is thoroughly inadequate to fill the void created by the removal of the EVAW framework, particularly in light of the Taliban’s continuous restrictions on women’s and girls’ rights in almost all areas of life and the additional measures they continue to impose. It represents yet another step in a series of decrees and actions that deny women and girls their most fundamental rights and protections.

Article 38 further criminalizes, with a penalty of one-month imprisonment, any person “looking at a woman who is one’s neighbour, making signal to her, describing her body to others in the course of conversation, or asking after her”.<sup>21</sup> This article, together with other provisions, further restricts and alienates women from everyday social interactions and participation in public life, and in practice can greatly impact women’s access to support for gender-based violence faced by them, and also impede access to humanitarian assistance, as the Taliban have already banned women<sup>22</sup> from working with the UN, INGOs, and NGOs, and from accessing other services.<sup>23</sup> In Afghanistan, about 22 Million people – almost half of the country’s population – are dependent on international assistance.<sup>24</sup>

The above provisions violate many provisions of the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW), including Article 2 on the obligation to tackle all discrimination against women and Article 5 (a) on the obligation to eliminate prejudices against them, Article 1, as interpreted by the CEDAW Committee, which recognizes gender-based violence as a form of discrimination.<sup>25</sup> The regulations contravene guarantees under Article 7 and Article 8 of the CEDAW which protects women’s right to equal participation in political and public arenas, including international arenas. The provisions of the regulation, in so far as it restricts the ability of women and girls to engage with others on an equal basis with men, further impedes on the fulfilment of their rights to non-discrimination in education, employment and economic and social activities, under Articles 10, 11 and 13 respectively. The regulations also violate Article 16 of CEDAW which guarantees equality and non-discrimination on all matters relating to marriages and family relations. The provisions, in the context of the drastic ongoing repressions of women’s rights, violate the right to bodily autonomy, including right to health guaranteed under Article 12 of CEDAW.

<sup>17</sup> Afghanistan Analyst Network, (Unofficial Translation), Penna Code for Courts, 26 February 2026. AAN’s unofficial translation of the Penal Code for Courts - Afghanistan Analysts Network - English

<sup>18</sup> *Ta’zir* punishment, see Article

<sup>19</sup> Law on Elimination of Violence against Women (EVAW), <https://www.refworld.org/legal/legislation/natlegbod/2009/en/102513>

<sup>20</sup> Special Decree issued by Amir-Al-Momenin on Women’s Rights, 3 December 2021 (3 December 2021 Special Decree, [https://www.moi.gov.af/en/special-decree-issued-amir-al-momenin-womens-rights#:~:text=1\)%20Adult%20women's%20consent%20is,and%20or%20to%20end%20animosity](https://www.moi.gov.af/en/special-decree-issued-amir-al-momenin-womens-rights#:~:text=1)%20Adult%20women's%20consent%20is,and%20or%20to%20end%20animosity)

<sup>21</sup> Afghanistan Analyst Network, (Unofficial Translation), Penna Code for Courts, 26 February 2026. AAN’s unofficial translation of the Penal Code for Courts - Afghanistan Analysts Network - English

<sup>22</sup> More than half of Afghanistan’s over 40 million population are dependent on international assistance.

<sup>23</sup> BBC, *Afghanistan: Taliban ban women from working for NGOs*, 22 December 2022. <https://www.bbc.co.uk/news/world-asia-64086682>; UN, *Taliban Order Bars Afghan Women from Working with UN*, 4 April 2023. <https://news.un.org/en/story/2023/04/1135357>

<sup>24</sup> OCHA, *Humanitarian Assistance to the People of Afghanistan*, 29 January 2026, <https://reliefweb.int/report/afghanistan/humanitarian-assistance-people-afghanistan-29-january-2026>

<sup>25</sup> CEDAW, CEDAW General Recommendation No. 29: Violence Against Women, 1992, Para 6. <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>

### 3. TORTURE, CRUEL, INHUMANE PUNISHMENT

Many provisions of the regulation institutionalize the use of punishment by flogging or lashes (*durrah*), which clearly amounts to torture and other ill-treatment under international law, and allow the Taliban to punish people for merely criticizing them under the pretext of “insulting” them. The following examples illustrate how these provisions prescribe cruel and inhuman punishment for a wide range of offenses.

Article 18 prescribes 39 lashes for insulting the *Imam*. Under Article 23 Clause 2, a person may receive 20 lashes and six months of imprisonment for insulting or humiliating high-ranking Taliban personnel or judges. Under Article 41, a Muslim on whom the injunctions of Islam is incumbent<sup>26</sup> and who is found not observing the fast, drinking alcohol or eating— without excuse – during the day in the month of Ramadan is subject to 20 lashes and two months of imprisonment. The person who drinks alcohol is liable both to *hadd*<sup>27</sup> punishment, and 20 lashes of discretionary punishment. Article 53 states that a person who gives false testimony is punishable with 40 lashes in addition to “public” shaming.<sup>28</sup> Article 31 states that a person who beats or shows disrespect to their parent shall be sentenced to 30 lashes and five months of imprisonment.

Article 91, Clause 14 (2), prescribes 39 lashes and two years of imprisonment for the smuggling and import of “traditional medicine, brings medical items to Afghanistan for commercial purposes, without having a certificate allowing him to import medicine and health-related supplies, or brings medicine by official or unofficial channel for medication purposes, ....”<sup>29</sup> Similarly, Clause 15 (2) of Article 91 imposes 39 lashes and two years of imprisonment for the smuggling of prohibited food products, medicine, and health products. Article 72 Clause 1 states that a person who escapes or attempts to escape from prison shall be sentenced to 20 lashes. Further, Article 25 prescribes 39 lashes in addition to five-year imprisonment for anyone who provides shelter to armed robbers, thieves, insurgents, and other offenders.

Such provisions will intensify the ongoing use of corporal punishment by the Taliban, who have already been regularly carrying out lashings on charges including “adultery”, “running away from home”, trafficking of narcotic tablets, selling and consuming alcohol, among others.<sup>30</sup>

The above provisions, particularly those prescribing lashes violate Article 7 of the ICCPR, which prohibits torture, inhuman or degrading treatment or punishment. These provisions further violate many provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Afghanistan is a state party.

The regulation, taken together with the ongoing actions of the Taliban, effectively reverse all previous legal and practical reform efforts aimed at eliminating torture and other ill-treatment in the country. These included, for example, Article 29 of the 2004 Constitution which not only bans torture, including for the discovery of truth, but it also prohibits punishment contrary to human dignity. Although torture and other ill-treatment existed in practice, a law on prevention of torture and other ill-treatment had been enacted in 2018.<sup>31</sup> Additionally, the Afghanistan Independent Human Rights Commission (AIHRC)<sup>32</sup> and the United Nations Assistance Mission in Afghanistan (UNAMA) continually monitored the use of torture and other ill-treatment in the security and defence agencies of Afghanistan. The AIHRC has been dismantled following the Taliban’s return to power.

In addition to corporal punishment, several provisions of the regulation prescribe the destruction of property, including transporting equipment and places, as a punitive measure, despite its inhumane and devastating nature and the crippling impacts on affected persons and their families.

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<sup>26</sup> *Mukallaf Musalman*

<sup>27</sup> Hadd punishments are fixed and cannot change. For details, see Article

<sup>28</sup> Original language, *Tashir*

<sup>29</sup> Afghanistan Analyst Network, (Unofficial Translation), Penna Code for Courts, 26 February 2026. AAN’s unofficial translation of the Penal Code for Courts - Afghanistan Analysts Network - English

<sup>30</sup> KabulNow, *Taliban Enforce Corporal Punishment on 40 People in Kabul and Faryab*, February 2026, <https://kabulnow.com/2026/02/taliban-enforce-corporal-punishment-on-40-people-in-kabul-and-faryab/>; UNAMA, *UN calls on Taliban to End Corporal Punishment in Afghanistan*, 8 March 2023, <https://news.un.org/en/story/2023/05/1136427>

<sup>31</sup> United Nations Assistance Mission in Afghanistan, *Treatment of Conflict-Related Detainees in Afghanistan: Preventing Torture and Ill-treatment under the Anti-Torture Law*, April 2019, <https://unredacted.uk/downloadPDF.php?file=20190401-UNAMA-Report-5526.pdf>; Afghanistan Law Database

<sup>32</sup> Afghanistan Independent Human Rights Commission, *Shadow Report on the Realization of Implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Afghanistan*, 12 April 2017, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=r1rTrnV4gmVPOZBa9BfbcKH1tiBkoND7OlcJJsxT20j0Eag8tg0krI5POYAasR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=r1rTrnV4gmVPOZBa9BfbcKH1tiBkoND7OlcJJsxT20j0Eag8tg0krI5POYAasR)

In particular, as a punishment, Article 12 allows the destruction of movable property, and the withholding of the right to use immovable property. Article 13 states that a judge may “destroy places associated on a day-to-day basis with decadent, disorderly and illicit practices”.<sup>33</sup> Similarly, Article 116 allows for the burning of means used for the transportation of narcotic substances in case the crime is repeated.

Destruction of property under international law is prohibited as a form of collective punishment, and General Comment No. 7 (para 12) highlights that house demolition as a punitive measure, is inconsistent with ICESCR.<sup>34</sup> Punitive measures, such as the destruction of property, affect families and communities beyond the alleged offender, and therefore constitute a form of collective punishment prohibited under international human rights law. Further, Article 40 of the 2004 Constitution guarantees the inviolability of property.

#### 4. DEATH PENALTY

Under several provisions, the regulation prescribes the death penalty for a wide range of offences, in violation of restrictions set out under international law and standards on its use, while also allowing for its imposition following unfair trials (see section below) in violation of the right to life. The regulation also fails to precisely define crimes, in violation of the principle of legality which requires clarity and certainty in the definition of offences.

Under the International Covenant on Civil and Political Rights, to which Afghanistan is a state party, in countries that have not yet abolished the death penalty this punishment must be restricted to the “most serious crimes”, most recently interpreted by the UN Human Rights Committee as referring to intentional killing.<sup>35</sup> The imposition of the death penalty is also prohibited for conduct the criminalization of which violates international human rights law, such as for sexual acts among consenting adults and religion-related “offences”. However, Article 14 Clause 1 of the Regulation provides that for the sake of preserving public interest, and with permission of the *Imam*, offenders such as “a habitual corruptor”,<sup>36</sup> “an active instigator of corruption”,<sup>37</sup> “a killer using a heavy instrument”, “a defender of a false belief or doctrine contrary to Islam”, “a person who seek to win people to false belief and doctrine contrary to Islam, including leaders and trainers of innovators and corruptors”,<sup>38</sup> “a magician or sorcerer”, and “a heretic (*zindiq*)”<sup>39</sup> may be sentenced to death.

Clause 2 of Article 14 adds additional grounds for the death penalty at the *Imam*’s discretion or expediency<sup>40</sup> on the basis of “public interest” for “a person who repeatedly commits sexual intercourse in a non-vaginal manner”, “a person who repeatedly commits sodomy or homosexual acts”, “a person who repeatedly commits killing by strangulation (suffocation)”, and “a person who repeatedly commits theft”.

Article 60 states that a person whose commission of “sodomy”<sup>41</sup> is established, and for whom it has become “habitual”, shall be liable to death by the permission of *Imam*. Clause 2 of Article 42 states that if a kidnapper kills the abducted person, the kidnaper will be sentenced to death by the court decision.

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<sup>33</sup> Afghanistan Analyst Network, (Unofficial Translation), Penna Code for Courts, 26 February 2026. AAN’s unofficial translation of the Penal Code for Courts - Afghanistan Analysts Network - English

<sup>34</sup> CESCR, General Comment No. 7: The Rights to adequate housing (Art. 11.1): Forced Evictions, 20 May 1997. <https://www.refworld.org/legal/general/cescr/1997/en/53063>

<sup>35</sup> UN Human Rights Committee, General Comment No. 36 – Article 6: right to life, UN Doc.CCPR/C/GC/36, 3 September 2019, para.35.

<sup>36</sup> *Par fasad dawam kawunkay*, also translated as someone who persists with disorderly behaviour

<sup>37</sup> *Sa’ii bi’l-fasad*, also translated as spreader of disorder

<sup>38</sup> Also translated as women who seeks to win people over to false doctrines, for example leaders and trend-setters or innovators (*mubtadi’in*) and wrongdoers (*mufsidin*), Afghanistan Analyst Network, (Unofficial Translation), Penna Code for Courts, 26 February 2026. AAN’s unofficial translation of the Penal Code for Courts - Afghanistan Analysts Network - English

<sup>39</sup> “Heretic (*zindiq*) is a person who professes to be a Muslim but harbors beliefs contrary to the core tenets of Islam, or one who openly promotes doctrines that amount to apostasy or atheism.” For further details, see the Article 14.

<sup>40</sup> *Maslihatan*

<sup>41</sup> *Liwat*, also translated homosexual acts

Article 2 Clause 11 describes a “sorcerer”, a “sodomite”<sup>42</sup>, a “strangler”<sup>43</sup>, a “rebel”<sup>44</sup>, or a “highway bandit” as a “persistent corruptor”,<sup>45</sup> someone whose harm is general, and who cannot be reformed except through killing.

These provisions, being extremely broad and discretionary in nature, will have the additional effect of heightening the ongoing application of the death penalty and will also allow the Taliban to target their political and military opponents without any effective due processes. This is particularly concerning, as in practice, the Taliban continue to target former government employees and their political and military opponents through extrajudicial killings.<sup>46</sup> The regulation can further lead to targeting members of the LGBTQ+ community under Article 14, Clause 2 – for “sexual intercourse in a non-vaginal manner” or “repeatedly commit sodomy”.<sup>47</sup> However, same-sex relations were also criminalized under Afghanistan’s 2017 Penal Code.

Before August 2021, although Afghanistan retained the death penalty, the law required a full three-tier court process and presidential approval,<sup>48</sup> offering procedural safeguards that no longer exist. The regulation states that the death penalty may be “permitted by” the *Imam* without defining who this is,<sup>49</sup> thereby undermining the principle of legality. In practice, the Taliban claim that the death penalty is approved by their leader after their three-stage court decision is finalized.<sup>50</sup> However, in Taliban-controlled Afghanistan, the dissolution of existing judicial structures and the nullification of previous laws mean that independent and competent courts are no longer functional.<sup>51</sup> These conditions therefore fall far short of the standards required under ICCPR Articles 6 (2) allowing the death penalty for the most serious crimes only after a final judgment by a competent court guaranteeing fair trial rights. Amnesty International opposes the death penalty under any circumstances, as the ultimate cruel, inhuman and degrading punishment.

## 5. PRINCIPLE OF LEGALITY AND FAIR TRIAL

The regulation fundamentally violates the principles of legality and right to fair trial.

The regulation contains many vague definitions of offences in direct violation of the principle of legality guaranteed by Article 15 of ICCPR. For example, Article 76 allows a judge to impose one year house arrest on a person who casts the “evil eye” and refuse to desist despite the judge’s encouragement. In Article 14, a person may be sentenced to death for being a “sorcerer”, an offence that is not defined.

Additionally, many provisions of the regulation clearly violate the principle of fair trial as well, including the presumption of innocence, guaranteed under Article 25 of the 2004 Constitution. For example, Article 73 states that a person who refuses to take an oath-based liability procedure (*qasamah*)<sup>52</sup> is liable to one year imprisonment for the purpose of extracting the oath or confession. This coerces self-incrimination violates the principle of voluntary testifying under Article 14(g) of ICCPR.

When proving crimes – whether violations relating to the rights of Allah and individuals – the regulation recognizes the use of confessions, testimonies or proof, and reports of “upright persons”, and conclusive (contextual) indicator (*qarina-ye-qatiyya*) as valid forms of evidence, as outlined in Article 5.

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<sup>42</sup> Also translated as “Homosexuals”.

<sup>43</sup> Strangler is a person who kills by choking or suffocation

<sup>44</sup> Rebel is a person who rises against the Taliban de facto rule. However, over the past several years, Amnesty International has investigated several cases where the Taliban extrajudicially killed members of the former security and defence forces, accusing them of rising against their authorities, or members of National Resistance Front after they were detained. For details, see these reports, *Taliban torture and execute Hazaras in targeted attack – new investigation*, 15 September 2022, and “*Your sons are in the mountains*”: *The collective punishment of civilians in Panjshir by the Taliban*, 7 July 2023.

<sup>45</sup> *Sa’ii bi’l-fasad*, also translated as spreader of “disorder”.

<sup>46</sup> United Nations Assistance Mission in Afghanistan, *Update on the human rights situation in Afghanistan: APRIL – JUNE 2025*, p. 5 <https://reliefweb.int/report/afghanistan/unama-update-human-rights-situation-afghanistan-april-june-2025-update-endarips>; Afghanistan International TV, *80,000 Gathered To Witness Public Execution In Khost, Says Taliban, 2 December 2025*. <https://www.afintl.com/en/202512024365>; Amnesty International, *Your sons are in the mountains*: The collective punishment of civilians in Panjshir by the Taliban, 7 July 2023, Afghanistan: “Your sons are in the mountains”: The collective punishment of civilians in Panjshir by the Taliban - Amnesty International

<sup>47</sup> Etilaatroz, *Security Implications of the Taliban Penal Code (Regulation): Why Should Be Concerned?*, 25 January 2026, <https://www.etilaatroz.com/248401/taliban-penal-code/>

<sup>48</sup> Article 129, the 2004 Constitution

<sup>49</sup> However, contextually, it appears to be the Taliban leader.

<sup>50</sup> Euro News, *Afghanistan’s Taliban Rules Carry Out Public Execution in Sports Stadium*, 02 December 2025. <https://www.euronews.com/2025/12/02/afghanistans-taliban-rulers-carry-out-public-execution-in-sports-stadium>

<sup>51</sup> United Nations Human Rights Council Special Procedure, “International Community Must Not Normalise Taliban Rule in Afghanistan”, 24 August 2024

<sup>52</sup> *Qasamah*, for details see, <https://voibooks.bitbucket.io/uith/ch8/>

Similarly, Articles 6 and 7 stress that confession, testimony, retraction of testimony, report from an “upright person”, conclusive (contextual) indicator may be used to prove crimes violating individual rights or the right of Allah. Article 6, Clause 1, specifies that testimonial proof should be either from men, or testimony of joint men and women – which could mean that testimonies of women alone are not accepted. This violates Article 15, Clauses 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Afghanistan is state party, as women testimonies are not considered equal to men. This further violates Article 2, Clause 1, and Article 26 of the ICCPR on equality before law and non-discrimination based on gender.

The regulation’s heavy reliance on confessions, witness testimonies, retraction of testimonies, and reports from so-called “upright persons” to establish criminal liability significantly increases the risks of coerced confessions, unreliable convictions, and violations of the right to a fair trial. It further increases the use of torture and other ill-treatments by the Taliban authorities to extract confessions. In addition, the vague and ambiguities provisions heighten the risks of wrongful, discriminatory, and arbitrary application, undermining all guarantees of a fair trial.

Additionally, the regulation violates other basic fair trial rights including the right to seek review from a higher court guaranteed under Article 14, Clause 5, of the ICCPR, with Article 109 of the regulation prescribing that, for crimes related to narcotic substances, the primary court’s decision final.<sup>53</sup>

While Article 122 of the 2004 Constitution affirms the judiciary system as the sole entity to adjudicate cases, the regulation encourages extrajudicial sentencing and punishment, in the form of vigilante justice by ordinary individuals. For example, Clause 6 of Article 4 of the regulation allows any Muslim who observes a person committing a sin against the right of Allah,<sup>54</sup> a forbidden wrongdoing,<sup>55</sup> to apply punishment at the time. This is a clear violation of ICCPR, Clause 1 and 2 on the right to fair trial and public hearing, and the presumption of innocence, and Article 9, Clause 1, on right to security and liberty.

## 6. EQUALITY BEFORE THE LAW

Some of the provisions of the regulation contravene the principle of equality before the law by dividing offenders based on their social status<sup>56</sup> as “scholars and those of a high social status, “noble/elite such tribal elders and merchants”, “middle” and “lower class”, thereby entrenching discrimination and legitimizing unequal treatment before the law, as illustrated in the following examples.

Article 9, Clause 1 divides society into four classes of offenders for the purpose of determining discretionary punishment.<sup>57</sup>

Based on Clause 1, Article 9, the first group consists of Islamic scholars (ulema) and those of a high social status, whom the Taliban judge will inform them that they have information indicating that they engaged in violations amounting to discretionary punishment. Based on Clause 2 of the same article, the punishment for the second group, elites<sup>58</sup> (*ashraf*) such as tribal elders and businesspeople (*tajiran*), is that they will be notified and summoned to court by the Taliban judge.

Under Clause 3 of the same article, the third group – the middle class of society – will not only be summoned to court by the Taliban judge but also face imprisonment as punishment. Clause 4 of the same article states the fourth group, the lower class of society, will face their punishment not only by threats but also through beating. This clause further states that, in extreme cases, the punishment inflicted includes 39 lashes, and the offender must not be beaten in one place.

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<sup>53</sup> Article 116 of the 2004 Constitution guarantees the independence of the judiciary, comprising the Supreme Court, appellate, and primary courts. Article 129 on death penalty required that, after it was approved by the three stages of the courts, the President’s approval was necessary. As the Taliban unlawfully declared the constitution null, in practice they have retained a three-stage court system, with all the previous judges being removed.

<sup>54</sup> Generally, this right refers to offences considered to affect public order, or the community as whole.

<sup>55</sup> Original term, “*Nahy an al-munkar*”; in a broader sense it includes a moral duty to discourage, prevent, or speaker out against harmful, immoral or unjust action in society.

<sup>56</sup> Regarding the stratification, the Taliban spokesperson said that it only concerns discretionary punishment. He added that, in such cases, not only the crime in the question will be reviewed, but also the personality of the person (the offender), as well as the time and circumstance, and that this approach is based on Shiarah rather than social stratification. <https://www.facebook.com/reel/1345731170576460>

<sup>57</sup> Original term: *Ta’zir* punishment

<sup>58</sup> Also translate as “nobles”

In brief, these provisions of the regulation institutionalize discrimination based on social status. They violate Article 22 of the 2004 Constitution, which bans all forms of discrimination and distinction between the citizens of Afghanistan and Article 26 of the ICCPR, which stipulates equal protection before the law.

## 7. SLAVERY

Additional cause for alarm is the fact that some of the provisions of the regulation appear to recognize slavery, despite slavery having been officially abolished in Afghanistan in 1923<sup>59</sup> and its prohibition constituting a peremptory norm of international law, as illustrated in the following examples.

Article 4, Clause 5, refers to punishment that may be carried out by the *baa-daar* (master). *Baa-daar*, together with Article 15, which divides offenders of crimes into free or *ghulam*<sup>60</sup> (enslaved), male or female, Muslim and non-Muslim, adult or a discerning child, can only mean slave owner.

The inclusion of the term *Ghulam* (slave) and *Baa-dar* (master) not only reverses historical progress in Afghanistan but also creates a real risk of forced and compulsory labour, discrimination and other abuses.

Article 49 of the 2004 Constitution prohibits forced labour in the country. Under international law, slavery is absolutely prohibited as a peremptory norm. Specifically, Article 8, Clauses 1, 2, and 3 of ICCPR prohibits all forms of slavery, servitude, and forced or compulsory labour. In addition, Afghanistan is a state party to the Slavery Convention, which obligates states to prevent and suppress all forms of slavery.<sup>61</sup>

## CONCLUSION

The regulation in its current form primarily serves as a tool for the Taliban to institutionalize discrimination based on gender, religion, belief and thought, and to target their political and military opponents through lethal punishment and coercion. Under no circumstances should the regulation be applied; it must be declared void without delay. The regulation violates the country's obligations under numerous human rights treaties, to which Afghanistan is a state party, distorts the legality of crimes and punishment, and institutionalizes the absence of a fair trial.

## RECOMMENDATIONS

### 1. TO THE TALIBAN DE FACTO AUTHORITIES:

#### A. GENERAL RECOMMENDATIONS

- Immediately revoke the regulation and stop its implementation, if already started. As the country's de facto authorities, the Taliban must not only follow laws that existed prior to their return in August 2021 – particularly those that comply with the country's obligation under international law – but also ensure that any new procedural legislation or administrative act complies with the fundamental principles of the rule of law and the country's obligations under international human rights law.
- Immediately halt ongoing widespread and systematic human rights violations against women, girls, and the people of Afghanistan, and fully respect the country's obligations under international human rights law, and end all discriminatory policies and actions based on religion, gender, social status, race, and ethnicity.

#### B. WOMEN'S RIGHTS AND GENDER-BASED VIOLENCE (GBV)

- Immediately reverse all discriminatory decrees, directives, decisions, and policies against women's rights such as those banning women and girls' access to education, jobs, business, or any other economic opportunities, freedom of movement, and freedom of expression

<sup>59</sup> Slavery Convention Geneva, 25 September 1926, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-3&chapter=18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18)

<sup>60</sup> Ghulam traditionally refers to a male slave

<sup>61</sup> Slavery Convention Geneva, 25 September 1926, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-3&chapter=18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18)

- Immediately implement the provisions of the 2009 Law on the Elimination of Violence Against Women and other related laws, including reinstating the prosecutorial and justice institutions that existed before their return to power.
- Immediately develop a comprehensive strategy, with the support of the relevant UN agencies and civil society organizations, to address gender-based violence against women and girls, in line with Afghanistan's obligations under human rights law and standards for prevention, protection, punishment and redress of GBV against women and girls, which is based on a survivor-centric approach and respects the agency and autonomy of women and girls.
- Immediately ensure that safe shelters for survivors of GBV are available across the country, including by allowing shelters that have been closed to reopen, and ensure access to other protection services for survivors of GBV, including legal aid, medical care, psycho-social counselling services and childcare.
- Take immediate steps to encourage reporting on GBV by women and girls, without fear of retaliation, and ensure that all reported cases of GBV against women and girls are thoroughly, promptly and impartially investigated, and that those suspected of criminal responsibility are prosecuted in accordance with international standards.
- Immediately ensure that survivors of GBV are provided with timely, effective and holistic reparations.
- Immediately end the unlawful and arbitrary detention of GBV survivors.
- Reinstating the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission.

## **2. TO THE INTERNATIONAL COMMUNITY:**

### **A. STATES AND DONOR COUNTRIES TO AFGHANISTAN**

- The international community, including UN member states, and members of the Organization of Islamic Cooperation countries, should unequivocally condemn the formation and application of this regulation and press on the Taliban to declare the abusive regulation void.
- Take immediate concrete steps to further recognize the crime of 'gender apartheid' under international law, including in the crimes against humanity convention being negotiated by states.

### **B. CEDAW PROCEEDINGS**

- The governments of Australia, Canada, Germany, and the Netherlands, which initiated legal proceedings in September 2024 under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – a proceeding that could ultimately lead to a case before the International Court of Justice – should expedite the process and provide transparent updates on its progresses.

### **C. UN SECURITY COUNCIL**

- The UN Security Council should take measures to ensure that the Taliban comply with its decisions and resolutions, including the unanimously adopted Security Council resolution 2681 (April 2023), and identify additional forms of leverage that may influence the Taliban (without harming the Afghan people), such as expanded targeted sanctions on Taliban members implicated in serious human rights violations, without any exemption for travel.
- The UN Security Council should renew the mandate of the United Nations Assistance Mission in Afghanistan for one full year, particularly maintaining its role in documenting, monitoring, and reporting on the human rights situation. UNAMA must be supported with adequate financial, human, political resources to fully investigate and publicly report on all human rights concerns, including women's rights, gender-based violence, discrimination based on ethnicity, race, and religion, and harm to civilians.