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History Repeating Itself: The Resurgence of the Taliban and the Abandonment of Afghan Women

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I. Introduction:

For two decades the United States and its allies fought against the Taliban in Afghanistan. The war in Afghanistan started as an effort to capture the mastermind behind 9/11, but later evolved into an overall war on Terrorism and an effort to establish a democratic government in Afghanistan. Ultimately, the U.S. failed to root out the Taliban, despite the thousands of lives lost and \$2 trillion spent on the conflict.¹ After withdrawing from Afghanistan, the U.S. and the international community is once again figuring out how to deal with the Taliban. The Taliban notoriously disregards human rights, especially those of women.² The U.S. and the international community must do everything they can to protect human rights in Afghanistan, as they created instability in the region which allowed the Taliban to survive and return.

This article will outline the Taliban's disregard for the International Bill of Human Rights,³ analyzing the Taliban's observance of human rights before U.S. invasion in 2001, post-U.S. withdrawal expressions by the Taliban in 2021, and post-U.S. withdrawal actions in 2021. Finally, this article will analyze different actions available to the international community to protect Afghan human rights.

¹ *A Historical Timeline of Afghanistan* PBS NewsHour, (Aug. 30, 2021), <https://perma.cc/M93C-C5UR>.

² Shannon A. Middleton, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & Comp. L. Rev. 421, 422 (2001).

³ This article will specifically focus on the freedom of movement, freedom of expression, freedom of assembly and association, right to education, and right to work.

II. The Rise, Fall, and Subsequent Rise Again of the Taliban:

As a territory, Afghanistan “has a long history of domination by foreign conquerors and strife among internally warring factions.”⁴ Throughout the 18th and 19th century, Great Britain attempted “to annex Afghanistan, resulting in a series of British-Afghan Wars.”⁵⁶ The final British-Afghan War resulted in the independence of Afghanistan.⁷ After gaining their independence, Afghanistan became a monarchy and was headed by Amanullah Khan.⁸

Over the years, the government changed leadership, and eventually in 1973, Daoud Khan, then Prime Minister, overthrew the King and named himself as President.⁹ As a pro-Soviet leader, the Republic of Afghanistan was “established with firm ties to the U.S.S.R.”¹⁰ In 1978, however, President Khan was killed in a coup, and Nur Mohammad Taraki became President.¹¹ While both President Taraki and his deputy prime minister, Babrak Karmal, “proclaim[ed] their independence from Soviet influence,” they did sign a friendship treaty with the Soviet Union.¹²

In his presidency, Taraki faced opposition from another communist leader, Hafizullah Amin.¹³ After the death of American

⁴ *A Historical Timeline of Afghanistan*, *supra* note 1.

⁵ *A Historical Timeline of Afghanistan*, *supra* note 1. There were three British-Afghan Wars. The first war was from 1838 to 1842, the second war was from 1878 to 1880, and the third war was from 1919 to 1921.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Ambassador Adolph Dubs in 1979, the U.S. cut off assistance to Afghanistan, and a power struggle between Taraki and Amin ensued.¹⁴ Later that year, President Taraki was killed by his rival's supporters, and as a consequence, the U.S.S.R. invaded Afghanistan "to bolster the faltering communist regime."¹⁵ Days after invading, the U.S.S.R. executed Amin, and Babrak Karmal became prime minister.

Karmal faced fierce opposition and by 1980, the Mujahadeen¹⁶ united "against Soviet invaders and the U.S.S.R.-backed Afghan Army."¹⁷ The Mujahadeen received arms from the U.S., Britain, and China.¹⁸ The Mujahadeen also received aid from a Saudi Islamist, Osama bin Laden.¹⁹ After years of fighting, the Soviet Union withdrew from Afghanistan in 1989, leaving then-President Najibullah²⁰ and his pro-communist government to fend off rebel groups.²¹ In 1992, rebel groups manage to oust President Najibullah from power. The mujahideen created a largely Islamic state with Burhanuddin

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *A Look At Afghanistan's 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, NPR NEWS (Aug. 31, 2021), <https://perma.cc/U2EK-CWNL>. The mujahideen are a large group of guerrilla fighters originally formed to mount opposition and a jihad against Soviet forces in 1980.

¹⁷ *A Historical Timeline of Afghanistan*, *supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *A Historical Timeline of Afghanistan*, *supra* note 1. "Mohammad Najibullah was elected President of the puppet Soviet state in 1986."

²¹ *A Look At Afghanistan's 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, *supra* note 16; *see also A Historical Timeline of Afghanistan*, *supra* note 1.

Rabbani named president.²² Unfortunately, “the government structure did not provide needed stability in the country.”²³ Within months of establishing the coalition government, the alliance had fallen apart, and Afghanistan slid into civil war.²⁴

After the fall of the In the countryside, “mujahideen established their own mini-fiefdoms.”²⁵ For example, in Kandahar, “militias fought each other for control of the highways and set up checkpoints where they hung chains across the roads to stop vehicles and extort money and goods.”²⁶ These militias who united to fight the Soviet Union “had splintered into a plethora of criminal gangs.”²⁷ Within this environment the Taliban was formed. While accounts differ, the common story holds that in the mid-1990s Mullah Omar created the Taliban to counter the banditry and extortion.²⁸ Early Taliban members include ultraconservative Afghan students from mujahideen groups and religious seminaries in Afghanistan and Pakistan.²⁹ The Taliban’s early success is also attributed to Pakistan, who “acted swiftly to co-opt the movement.”³⁰ For example, in 1994, “Mullah Omar had acquired Pakistani advisors.”³¹

²² *A Historical Timeline of Afghanistan*, *supra* note 1.

²³ Middleton, *supra* note 2 at 424.

²⁴ CARLOTTA GALL, *THE WRONG ENEMY: AMERICA IN AFGHANISTAN, 2001-2014*, at 40 (2014).

²⁵ *Id.*

²⁶ *Id.* at 40-41.

²⁷ *Id.* at 41.

²⁸ JONATHAN CRISTOL, *THE UNITED STATES AND THE TALIBAN BEFORE AND AFTER 9/11* (2019) (ebook) at 11-12.

²⁹ *A Look At Afghanistan’s 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, NPR NEWS (Aug. 31, 2021), <https://perma.cc/U2EK-CWNL>.

³⁰ GALL, *supra* note 24 at 43.

³¹ *Id.*

By 1996, “the Taliban took Kabul and toppled the Burhanuddin Rabbani government.”³² The Taliban was poised to take on the ultimate task of becoming the legitimate government of Afghanistan, until the actions of al Qaeda brought the U.S.’s attention to Afghanistan.³³

While al Qaeda is a global organization, the Taliban sought to gain control over Afghanistan and to “establish a fundamentalist Islamist regime, the Islamic Emirate of Afghanistan.”³⁴ In 1998, the U.S. defined al Qaeda organization as “an international terrorist group... which was dedicated to opposing non-Islamic governments with force and violence.”³⁵ The Taliban was tied to al Qaeda because they provided sanctuary for al Qaeda and its operations which allowed them to cultivate, “thousands of followers in terrorist training camps,” in Afghanistan.³⁶

In 1998, al Qaeda had managed to bomb two U.S. embassies. Having bombed two American embassies, the U.S. demanded the Taliban extradite bin Laden to the U.S. to stand trial, but the Taliban refused.³⁷ The Taliban again angered the international community in 2001 by putting eight international aid workers on trial for spreading Christianity and destroying Buddhist statues in Afghanistan claiming them to be an affront to Islam.³⁸ Then, on September 11th, 2001 al Qaeda members hijacked four commercial airplanes and crashed them into the World Trade Center, the

³² CRISTOL, *supra* note 28 at 20.

³³ *A Historical Timeline of Afghanistan*, *supra* note 1.

³⁴ GALL, *supra* note 24 at 4.

³⁵ *Who is Bin Laden? – Al Qaeda*, PBS (Last visited Mar. 3, 2022), <https://perma.cc/UVG9-H8ZA>.

³⁶ *A Historical Timeline of Afghanistan*, *supra* note 1; *see also The U.S. War in Afghanistan*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/timeline/us-war-afghanistan> (last visited Mar. 13, 2022).

³⁷ *A Historical Timeline of Afghanistan*, *supra* note 1.

³⁸ *Id.*

Pentagon, and a Pennsylvania field.³⁹ In response to the attacks, the U.S. demanded that the Taliban “‘deliver to the United States authorities all the leaders of al-Qaeda who hide in your land,’ or share in their fate.”⁴⁰ Following these unanswered demands, the U.S., with the support of Great Britain, launched airstrikes in Afghanistan, bombing both al Qaeda and Taliban targets.⁴¹ Facing the U.S., the Taliban collapsed quickly. By December 2001 the Taliban abandoned their stronghold in Kandahar and two days later the group their final Afghan territory, the province of Zabul.⁴² At the end of 2001, Hamid Karzai, a U.S.-sponsored leader, was chosen as the interim leader of Afghanistan until the government could hold elections.⁴³ While it appeared as if the Taliban had been eliminated and Afghanistan was on the path to a newly established democratic government, the remnants of the Taliban received support from their Afghani neighbor, Pakistan.

As an ally in the War on Terror⁴⁴, Pakistan was to hold the border between Afghanistan and Pakistan. While Pakistan had pledged its support to the U.S., they continued to support the Taliban and aided their resurgence by allowing Taliban and al Qaeda members to hide “all over the place in Pakistan, wherever they found it more convenient to carry out their activities and to feel safe.”⁴⁵ Over the next few years, with the support of friends in

³⁹ *Id.*

⁴⁰ *The U.S. War in Afghanistan*, *supra* note 36.

⁴¹ *A Historical Timeline of Afghanistan*, *supra* note 1.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *The War on Terror – Timeline and Facts*, HISTORY (May 5, 2020), <https://perma.cc/H74S-7URK>. On September 20, 2001, in an address to Congress, President Bush announced the War on Terror stating, “Our war on terror begins with al Qaeda, but it does not end there. It will not until every terrorist group of global reach has been found, stopped and defeated.”

⁴⁵ GALL, *supra* note 24 at 63.

power in Pakistan's border provinces, the Taliban were "quietly allowed to regenerate in Pakistan".⁴⁶

In 2003, Defense Secretary Donald Rumsfeld said the U.S. had "moved from major combat activity to a period of stability," however, with the support of Pakistan and the resilience of the Taliban, the group continued to fight back.⁴⁷ In 2006, the Taliban gained control of territory in southern Afghanistan.⁴⁸ In 2009, with the Taliban still lingering, the U.S. adopted a new strategy and pledged a substantial troop increase to Afghanistan.⁴⁹ However this strategy did not last because by 2012, N.A.T.O. pledged a withdrawal of troops, and in 2013 the Obama administration announced "plans to start formal peace talks with the Taliban."⁵⁰ Finally, in 2020, the U.S. and the Taliban signed a peace agreement, which included terms on the withdrawal of U.S. troops.

⁵¹ Beginning the formal withdrawal under President Trump and finishing under President Biden, the U.S. has officially withdrawn from Afghanistan, ending America's longest war.⁵² Within a matter of days after U.S. withdrawal, the Afghanistan government collapsed, and the Taliban took over Kabul.⁵³ The Taliban is now shifting away from insurgency to governance,

⁴⁶ *Id.* at 67, 76.

⁴⁷ *A Look At Afghanistan's 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, *supra* note 16; *see also* Gall *supra* note 24 at 67,76.

⁴⁸ *A Look At Afghanistan's 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, *supra* note 16.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *A Historical Timeline of Afghanistan*, *supra* note 1.

⁵³ 'Intelligence failure of the highest order' – How Afghanistan fell to the Taliban so quickly, CNBC (Aug. 16, 2021), <https://www.cnbc.com/2021/08/16/how-afghanistan-fell-to-the-taliban-so-quickly.html>.

creating a formal government and implementing their will over the Afghan people, including restricting the rights of Afghani women.
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III. International Bill of Human Rights;

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (“U.D.H.R.”), the International Covenant on Economic, Social and Cultural Rights (“C.E.S.C.R.”), and the International Covenant on Civil and Political Rights (“C.C.P.R.”), as well as two optional protocols.⁵⁵ The desire to create an International Bill of Human Rights developed in the aftermath of World War II. In 1948, the General Assembly adopted the with the intent of crafting the two covenants, the C.E.S.C.R. and C.C.P.R., which were eventually adopted in 1966.⁵⁶ The outlines “fundamental human rights to be universally protected.”⁵⁷ The two covenants have been ratified or acceded by Afghanistan, which means Afghanistan has “accepted a legal as well as a moral obligation to promote and protect human rights and fundamental freedoms.”⁵⁸ The core philosophy of the International Bill of Human Rights is that “all human beings are born free and equal in dignity and rights.”⁵⁹

⁵⁴ David Zucchino, *Shifting to Governing, Taliban Will Name Supreme Afghan Leader*, N.Y. TIMES (Sept. 21, 2021), <https://perma.cc/N42T-XEV5>.

⁵⁵ UNITED NATIONS, FACT SHEET No.2 (REV.1), THE INTERNATIONAL BILL OF HUMAN RIGHTS (1996), available at <https://perma.cc/4HMK-T47J>.

⁵⁶ *Id.*

⁵⁷ *Universal Declaration of Human Rights*, UNITED NATIONS, [HTTPS://PERMA.CC/898G-C7R5](https://perma.cc/898G-C7R5) (last visited Mar. 13, 2022).

⁵⁸ UNITED NATIONS, FACT SHEET No.2 (REV.1), *supra* note 55.

⁵⁹ *Universal Declaration of Human Rights*, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at Art. 1 (1948).

There are 30 rights and freedoms outlined in the .⁶⁰ ,
government's role is to protect human rights.

Before the Taliban takeover in 1996, women in Afghanistan were engaged in all aspects of life, including social, economic, and political realms. Women made up significant portions of the workforce. Women worked in all fields including teaching, medicine, military affairs, and more.⁶¹ Further, there was special respect for freedom of expression as no censorship was imposed or permitted.⁶² However, as the Taliban took hold of the country in 1996, women's rights were diminished.⁶³

IV. Taliban's disregard to International Human Rights throughout history: Pre- 2001 U.S. invasion, Current statements made by the Taliban, Current actions of the Taliban:

1. Freedom of movement:

Article 13 of the U.D.H.R. proclaims that "everyone has the right to freedom of movement and residence within the borders of each state."⁶⁴ This right is further iterated in the C.C.P.R. holding that everyone has "the right to liberty of movement and freedom to choose his residence."⁶⁵

a. Pre- 2001 U.S. invasion actions of the Taliban (1996-2001):

⁶⁰ *Id.*

⁶¹ Middleton, *supra* note 2 at 441-42.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Universal Declaration of Human Rights, supra* note 59, at Art. 13.

⁶⁵ *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 at Art. 12 (1967).

When the Taliban came into power, one of the most life-altering changes for women was the restrictions placed on their freedom of movement. Women were forbidden from leaving their houses unless they were escorted by a male relative.⁶⁶ Further, even with their male relative accompaniment, women must “walk quietly and refrain from laughing or talking loudly in the street.”⁶⁷ Women were forbidden from driving.⁶⁸ When traveling long distances, women are only permitted to ride in a car when all the windows except for the front windows are painted black, to ensure that women are hidden from the public eye.⁶⁹ Again, even in a women may only ride in a taxi when they are escorted by a man and shielded from public view.⁷⁰

Women’s movements are even restricted within the bounds of their homes.⁷¹ Within their homes, women are forbidden from being seen from the street, therefore in homes with women, the windows must be painted over so they can move freely.⁷²

Restrictions on women’s movement both outside and within their homes is a clear violation of Article 13 of the U.D.H.R. and Article 12 of C.C.P.R. Everyone is entitled to move freely within the borders of their country and these restrictions take

⁶⁶ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN (2000), file:///Users/hannahbogaert/Zotero/storage/7BV24228/afghanis.html.

⁶⁷ Middleton, *supra* note 2 at 442-43.

⁶⁸ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, *supra* note 66.

⁶⁹ Middleton, *supra* note 2 at 442-43.

⁷⁰ *Id.*

⁷¹ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, *supra* note 66.

⁷² *Id.*

away all independence and inhibit a woman's ability to take care of herself and her family.⁷³

b. Current statements made by the Taliban (2021):

Under the previous government, women gained back many rights including freedom of movement, however, the resurgence of the Taliban threatens to unravel the gains made over the past two decades.⁷⁴ The Taliban has indicated that they are going to continue to allow women to move freely in the country, as women have been permitted to do during U.S. occupation. In an interview conducted by CBS News, Taliban spokesman, Suhail Shaheen, indicated that women would be able to leave home without a male family member.⁷⁵ While the Taliban claim women are allowed to move freely and independently, their actions indicate otherwise.

c. Current actions of the Taliban (2021):

Even before the official U.S. withdrawal from Afghanistan, the Taliban gained territory around the country.⁷⁶ In minority communities such as Helmand, which do not normally observe customs of preventing women from moving outside their homes, the Taliban ordered that local women should not go outside their houses, and if they did, the Taliban would act.⁷⁷ In other rural

⁷³ *Universal Declaration of Human Rights*, *supra* note 59, at Art. 11.

⁷⁴ *Taliban are revoking Afghan women's hard-won rights*, DEUTSCHE WELLE, <https://www.dw.com/en/taliban-are-revoking-afghan-womens-hard-won-rights/a-60283590> (last visited Mar. 13, 2022).

⁷⁵ *Taliban spokesman talks to CBS News about group's policy on women's rights, U.S. withdrawal and terror ties*, CBS NEWS (2021), <https://perma.cc/E7Y4-CFUA> (last visited Oct. 29, 2021).

⁷⁶ *A Look At Afghanistan's 40 Years Of Crisis – From The Soviet War to Taliban Recapture*, *supra* note 16.

⁷⁷ *Education, Social Restrictions, and Justice in Taliban-Held Afghanistan*, HUMAN RIGHTS WATCH, <https://perma.cc/2YRX-YSES> (last visited Oct. 29, 2021).

communities the Taliban have told women they cannot even visit clinics alone, but “should have a man accompanying them”⁷⁸ Since the Taliban took full control of the country, they ordered working women to stay home, “until proper systems are in place to ensure their safety.”⁷⁹ Others feel “largely trapped inside their homes due to fear of the Taliban and Taliban restrictions on women’s movement”⁸⁰.

Freedom of movement may be restricted to protect “national security, public order, public health or morals or the rights and freedoms of others.”⁸¹ However, prior history indicates that these security concerns are merely excuses to restrict women’s rights, and such arbitrary deprivation is not permissible under Article 13 of U.D.H.R.

2. Freedom of expression:

Individuals have the right to express their views and opinions without interference from the government or religious leaders. Article 19 of U.D.H.R. holds that “everyone has the right to freedom of opinion and expression.”⁸² This right is emphasized in Article 19 of C.C.P.R., stating that the right to expression includes “freedom to seek, receive and impart information and

⁷⁸ *Id.*

⁷⁹ *Afghanistan: Taliban tell working women to stay home*, BBC NEWS (Aug. 24, 2021), <https://www.bbc.com/news/world-asia-58315413>.

⁸⁰ Heather Burr, *No stability and peace without protecting women and girls*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2021/10/12/no-stability-and-peace-without-protecting-women-and-girls>.

⁸¹ *International Covenant on Civil and Political Rights*, *supra* note 65 at Art. 12.

⁸² *Universal Declaration of Human Rights*, *supra* note 59, at Art. 20.

ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art or through any other media of his choice.”⁸³

Expression of culture is also protected within the International Bill of Human Rights. Article 27 of U.D.H.R. protects a person’s right to participate in the cultural life of the community.⁸⁴ Further, individual and cultural expression may not be restricted in the name of religion. No one may coerce another to adopt a religion which “would impair his freedom to have or adopt a religion or belief of his choice.”⁸⁵

a. Pre- 2001 U.S. invasion actions of the Taliban (1996-2001):

Before the Taliban takeover, Afghanistan was known for its bright, colorful traditional outfits.⁸⁶ When the Taliban came into power, they decreed what women were permitted to wear in public.⁸⁷ When in public, women were required to wear a burqa.⁸⁸ The burqa covers every part of a woman’s body, excluding their eyes. Full black coverings are not a traditional part of Afghan culture.⁸⁹ According to the Taliban website in 2000, women required to “hide their physical attractiveness so that men are not sexually attracted to them.”⁹⁰ The religious police declared that “women

⁸³ *International Covenant on Civil and Political Rights*, *supra* note 65 at Art. 19.

⁸⁴ *Universal Declaration of Human Rights*, *supra* note 59, at Art. 27.

⁸⁵ *International Covenant on Civil and Political Rights*, *supra* note 65 at Art. 18.

⁸⁶ Aaron Parsley, *Afghan Women Post Selfies in Colorful Dresses to Protest Taliban Dress Codes: ‘Do Not Touch My Clothes’*, PEOPLE.COM (Sept. 16, 2021), <https://perma.cc/2DBT-XK3G>.

⁸⁷ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, *supra* note 66.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Middleton, *supra* note 2 at 443.

found outside the home who were not covered properly would be punished severely along with their family elders.”⁹¹

Restricting the clothing of women stripped away vital expression of their identities and culture. Freedom of expression and culture are guaranteed in the International Bill of Human Rights and cannot be restricted under the guise of religion.

b. Current statements made by the Taliban (2021):

Since their return to power in 2021, the Taliban has declared that women are required to wear the hijab, or other conservative Islamic dresses with a head covering.⁹² They claim that they are not requiring women to wear a burqa, only the hijab “or modest Islamic dress including a head covering and non-revealing clothing.”⁹³ This rule is much less restrictive than the past Taliban requirement that women wear a burqa.

However, in certain circumstances, women are required by the Taliban to wear the burqa. At private universities, the Taliban is requiring all females to wear clothing that covers, hair, body, and most of the face.⁹⁴ Women are even required to wear gloves to ensure their hands are covered.⁹⁵ These requirements are in place despite the fact that classes are required to be segregated by gender.⁹⁶

All women should be permitted to wear the clothing of their choice thereby exercising their freedom of expression.

⁹¹ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, *supra* note 66.

⁹² Marcus Yam, *As Afghans try to figure out Taliban’s new rules, burqas are barometer of sorts*, LOS ANGELES TIMES (Aug. 23, 2021), <https://perma.cc/2MAT-9STF>.

⁹³ *Id.*

⁹⁴ Frud Bezhan, *Taliban Imposes New Dress Code, Segregation Of Women At Afghan Universities*, GANDHARA (Sept. 6, 2021), <https://perma.cc/HP42-KLDM>.

⁹⁵ *Id.*

⁹⁶ *Id.*

Bahar Jalal, a historian of 1960s Afghanistan, iterated that “in pre-war Afghanistan, women had choices in what they wore...you could wear traditional Afghan clothes. You could wear a scarf. People had the freedom to express themselves through clothing and that’s gone.”⁹⁷

c. Current actions of the Taliban (2021):

Since returning to power in 2021, the Taliban have been enforcing a stricter dress code than expressed. The Taliban have beaten young girls for wearing revealing sandals.⁹⁸ The manual from the Taliban’s Ministry of Vice and Virtue holds that women “shall be commanded to put on a veil when faced with non-mahrams.”⁹⁹ The manual further iterates that “women shall be prohibited from not wearing hijab and veil in public and against non-mahrams.”¹⁰⁰

3. Freedom of Peaceful Assembly and Association:

Peaceful assembly and association is a necessary check on those in power and is therefore protected in the International Bill of Human Rights. Article 20 of the U.D.H.R. holds that “everyone has the right to freedom of peaceful assembly and association.”¹⁰¹ Restrictions are only permissible to protect national security, public safety, or protection of the rights and freedom of others.¹⁰²

a. Pre- 2001 U.S. invasion actions of the Taliban (1996-2001):

⁹⁷ Mabinty Quarshie, *Afghan women push back against Taliban restrictions with #DoNotTouchMyClothes campaign*, USA TODAY (Sept. 17, 2021), <https://perma.cc/WYR2-UPLS>.

⁹⁸ *Id.*

⁹⁹ *Afghanistan: Taliban ‘Vice’ Handbook Abusive*, HUMAN RIGHTS WATCH (Oct. 29, 2021), <https://perma.cc/95HR-V667>.

¹⁰⁰ *Id.*

¹⁰¹ *Universal Declaration of Human Rights*, *supra* note 59, at Art. 20.

¹⁰² *International Covenant on Civil and Political Rights*, *supra* note 65 at Art. 21.

Expectedly, many of the changes the Taliban implemented during their rule in 1996 to 2001 were met with protests from civilians. For example, when the Taliban took power in 1996, they closed women's bathhouses.¹⁰³ For many women, bathhouses were their only source of running water.¹⁰⁴ Running water is important to an individual's health and therefore many women protested these closures. Protests by women were met with a harsh reaction by the Taliban.¹⁰⁵ The Taliban beat, jailed and turned a fire hose on protesters.¹⁰⁶ Individuals, including Najiba Sara Biabani, attempted to speak out against the Taliban generally only to be met with threats forcing them into silence. Finally, women were forbidden from being allowed to associate in large groups, restricting the ability to effectively protest Taliban rule.¹⁰⁷

b. Current statements made by the Taliban (2021):

The Taliban has banned all demonstrations unless they have received government permission.¹⁰⁸ Protests must provide details of the location and time of protest, and even provide the slogans they plan to chant.¹⁰⁹ This allows the Taliban to censor protests, without outright banning all protests, a notion that would have poor optics both in Afghanistan and abroad. Censorship of protests is a violation of Article 21 of the C.C.P.R.

¹⁰³ Middleton, *supra* note 2 at 445-46.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 444.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 445.

¹⁰⁸ Hannah Bloch, *Photos: Afghan Women Are Protesting For Their Rights*, NPR (Sept. 9, 2021), <https://perma.cc/3R42-KLR9>.

¹⁰⁹ Zeba Siddiqui & Parniyan Zemaryalai, *Protests get harder for Afghan women amid risks and red tape*, REUTERS (Oct. 4, 2021), <https://www.reuters.com/world/asia-pacific/protests-get-harder-afghan-women-amid-risks-red-tape-2021-10-04/>.

¹¹⁰ Restrictions on protests are only permissible to protect national security, public safety, or protection of rights and freedom of others. The Taliban may not place content-based restrictions on protests.

c. Current actions of the Taliban (2021):

Similar to their actions before 2001, the Taliban has met peaceful protests with violence. To disperse protests, the Taliban have used batons, whips, and live ammunition.¹¹¹ Such violent measures have resulted in injuries and deaths of Afghan civilians.¹¹² Specifically, women have taken to the streets advocating for an inclusive Afghan government and respect for women's rights.¹¹³ Their protests have also been met with harsh violence. During a protest in Faizabad city in Badakhshan province, the Taliban fired gunshots into the air and beat several protesters to disperse the crowd. During another protest in Kabul, the Taliban "beat and detained protesters, including several women and up to 15 journalists"¹¹⁴ The violent crackdowns have created legitimate security concerns for protesters, thereby inhibiting them from engaging in future protests.¹¹⁵ As iterated above the Taliban may not engage in content-based restrictions on protests. Further, "use of force in response to protests is a last

¹¹⁰ International Covenant on Civil and Political Rights, *supra* note 65 at Art. 21.

¹¹¹ *Afghanistan: U.N. condemns Taliban's brutal crackdown on protests*, BBC NEWS (Sept. 10, 2021), <https://perma.cc/VW4J-6E2Z>.

¹¹² *Taliban response to protests increasingly violent, warns OHCHR*, U.N. NEWS (Sept. 10, 2021), <https://perma.cc/AM2L-HTMG>.

¹¹³ *Afghanistan: U.N. condemns Taliban's brutal crackdown on protests*, *supra* note 111.

¹¹⁴ *Taliban response to protests increasingly violent, warns OHCHR*, *supra* note 112.

¹¹⁵ Zeba Siddiqui & Parniyan Zemaryalai, *supra* note 108.

resort, strictly necessary and proportionate” and firearms should be used only in response to an imminent threat to safety.¹¹⁶ Both the expressions and actions of the Taliban inhibit freedom of assembly and association thereby violating the International Bill of Human Rights.

4. Right to Education:

Primary education is essential to the economic and social wellbeing of an individual and their country. Further, education centered around “strengthening of respect for human rights and fundamental freedoms” promotes the maintenance of peace and ensures continuing adherence to the International Bill of Human Rights. Article 26 of the U.D.H.R. guarantees a right to free education in elementary and fundamental stages. Not only is the right to elementary education guaranteed, but compulsory.¹¹⁷ Secondary and higher education should also be available to all, though not guaranteed.¹¹⁸ Education “strengthens respect for human rights and fundamental freedoms” and is, therefore, necessary to continue to gain widespread adherence to the International Bill of Human Rights.¹¹⁹

a. Pre- 2001 U.S. invasion actions of the Taliban (1996-2001):

After coming to power in 1996, the Taliban formally prohibited women from attending schools.¹²⁰ For a school to obtain a license from the Taliban, the only form of education permitted to

¹¹⁶ *Taliban response to protests increasingly violent, warns OHCHR, supra* note 112.

¹¹⁷ Universal Declaration of Human Rights, *supra* note 59, at Art. 26.

¹¹⁸ *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6I.L.M. 360 (1967), at Art. 13.

¹¹⁹ *Id.*

¹²⁰ Middleton, *supra* note 2 at 450.

be taught to girls is religious education up to the age of eight years old.¹²¹ However, the implementation of these harsh restrictions varied depending on the region.¹²² While some girls were permitted to attend school, according to U.N.I.C.E.F. in 1999 only 10% of girls were enrolled in school as compared to around 30% of boys.¹²³ Further, the overall illiteracy rate in women in Afghanistan was 96%, which indicated that girls are denied access to education at a greater rate than boys.¹²⁴

The Taliban claimed restrictions on girls' education were due to security threats, however, primary education is compulsory for all children according to Article 26 of the U.D.H.R.¹²⁵ Therefore, excuses of security threats are not a permissible reason for denying most girls the right to any primary education. Further, even if claims of these threats were credible and unavoidable, the Taliban could have offered radio programs and homeschooling options as alternatives to women's education.¹²⁶ However, the Taliban chose to close home schools too, indicating that their restrictions on education were not related to security threats.¹²⁷ The Taliban has also claimed there are insufficient funds to send girls to school¹²⁸, but again primary education is compulsory for all children and does not permit a country to prioritize boys' education when there are insufficient funds for all children to go to school.

b. Current statements made by the Taliban (2021):

Since the U.S. presence in Afghanistan began, there have been dramatic gains for women in education, but many in the

¹²¹ Middleton, *supra* note 2 at 451.

¹²² U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, *supra* note 66.

¹²³ *Id.*

¹²⁴ Middleton, *supra* note 2 at 452.

¹²⁵ *Id.* at 451.

¹²⁶ Middleton, *supra* note 2 at 451.

¹²⁷ *Id.*

¹²⁸ *Id.* at 452.

international community are concerned about protecting those gains after the U.S. withdrawal.¹²⁹ With the eyes of the world watching them, the Taliban has said they will not prevent women from being educated.¹³⁰ The Higher Education Minister Abdul Baqi Haqqani has indicated that, while women will be permitted to study, they will not permit co-education of the genders at any education level.¹³¹ The Taliban further plans to exercise control over the education system, by reviewing and censoring school subjects to ensure it adheres to “Islamic curriculum that is in line with our Islamic, national and historical values.”¹³² While on the surface Taliban appear to be at least trying to adhere to the International Bill of Human Rights by permitting women to receive an education, the separation of genders requirement raises concerns about equal access to education for both men and women, especially when resources are scarce.

c. Current actions of the Taliban (2021):

Since the Taliban takeover, some women have not been permitted to return to school.¹³³ The Taliban ordered secondary school-aged male students to report to school in September but did not mention female students.¹³⁴ A spokesman for the Taliban claims that they are “working on mechanisms to provide transportation and other facilities that are required for a safer and better educational environment.” and until then secondary female

¹²⁹ Conor Finnegan, *How are the Taliban treating Afghan women and girls?*, ABC NEWS (Sept. 29, 2021), <https://perma.cc/MN48-SP6F>.

¹³⁰ *Afghanistan: Taliban announce new rules for female students*, BBC NEWS (Sept. 12, 2021), <https://perma.cc/HRB6-CENL>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Nic Robertson, et al., *Taliban deny claims girls will be banned from school – but don't say when they'll be allowed in*, CNN (Updated Sept. 18, 2021), <https://perma.cc/B3ZJ-PGQ5>.

¹³⁴ *Id.*

students cannot attend school.¹³⁵ This excuse is identical to their reasoning for restrictions in 2001, a problem that was never resolved by the Taliban while they were in power.

Access to education for females is further complicated by different policies in each region. As U.S. presence in Afghanistan decreased, the presence of the Taliban increased.¹³⁶ As of mid-2020, the Taliban controlled major portions of Afghanistan.¹³⁷ Some local Taliban leaders allowed girls to attend primary school, whereas others did not let girls attend school at all.¹³⁸ For example, in 2020 in the Kunduz district, girls were permitted to attend primary school and even travel to attend secondary and post-graduate school.¹³⁹ Contrastingly, in the Helmand province, there were no primary schools available for women.¹⁴⁰ While some of these differences are due to varying levels of acceptance of girls' education in the community, the Taliban has the final say in government policies. The mixed implementation of Taliban educational policies is due to "differing views of provincial Taliban commanders, their standing in the Taliban military command hierarchy, and their relationship with local communities."¹⁴¹

Article 26 of U.D.H.R. requires primary education for all children. Access to education cannot be restricted under the guise of security concerns for female students or more generally based on the preference of local Taliban leadership.

¹³⁵ Victor Blue & David Zucchini, *A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools*, N.Y. TIMES (Updated Oct. 27, 2021), <https://perma.cc/6A8F-TXP2>.

¹³⁶ *A Historical Timeline of Afghanistan*, *supra* note 1.

¹³⁷ Education, Social Restrictions, and Justice in Taliban-Held Afghanistan, *supra* note 77.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

5. Right to Work:

The right to work is imperative for a family to have an “existence worthy of human dignity.”¹⁴² Article 23 of the U.D.H.R. and Article 6 of the C.E.S.C.R. provides that everyone has a right to work in the employment of their choice.¹⁴³ Not only do people have the right to work, but they have the right to earn fair wages. Further, women have the right to equal working conditions, and equal pay for equal work as compared to their male counterparts.¹⁴⁴

a. Pre- 2001 U.S. invasion actions of the Taliban (1996-2001):

When the Taliban took power, women were excluded from all employment outside of the home, except for agricultural work.¹⁴⁵ This meant when the Taliban took Kabul in 1996, female teachers, doctors, nurses, bank tellers, and more were forced to quit their jobs.¹⁴⁶ Such restrictions were difficult on all families; however, they had an especially severe impact on widows.¹⁴⁷ After years of civil unrest in Afghanistan, many women are widows and because they are unable to earn a living, they are forced to sell all of their possessions and beg on the streets to feed their families.¹⁴⁸

Over time some of these restrictions were lifted due to necessity. Running short on adequate staff to operate health care facilities, “the Taliban gave permission for women to work in the

¹⁴² *Universal Declaration of Human Rights*, supra note 59, at Art. 23.

¹⁴³ *Id.*; see also *International Covenant on Economic, Social and Cultural Rights*, supra note 118, at Art. 6.

¹⁴⁴ *International Covenant on Economic, Social and Cultural Rights*, supra note 118, at Art. 7.

¹⁴⁵ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORTS FOR 1999: AFGHANISTAN, supra note 66.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

health field subject to many rules.”¹⁴⁹ Additionally, after many widows were denied any source of income, the Taliban permitted women without income to seek employment.¹⁵⁰

Despite the minor exceptions in the health sector and for widows, many women were denied the right to work. This is a clear violation of Article 23 of the U.D.H.R. Without the ability to earn a living, women are wholly dependent on their families and spouses to survive. Therefore, when women are denied the right to work, they are not simply denied a livelihood, they are denied their independence.

b. Current statements made by the Taliban (2021):

As with many other rights, the Taliban’s policy on a woman’s right to work is unclear. Generally, the Taliban has stated that women will have the freedom to work within the limits laid down by sharia.¹⁵¹ Taliban deputy prime minister, Abdul Salam Hanafi, has exclaimed that the Taliban are “trying to provide working conditions for women in the sectors where they are needed, according to Islamic law.”¹⁵² Such a caveat, however, is open to wide interpretation. One senior official indicated that “men and women cannot work together. That is clear, they are not allowed to come to our offices and work in our ministries.”¹⁵³ Another Taliban spokesman, Zabihullah Mujahid, told reporters that “women were an important part of the community, and they

¹⁴⁹ Middleton, *supra* note 2 at 448.

¹⁵⁰ *Id.* at 449.

¹⁵¹ Alasdair Pal, *Afghan women should not work alongside men, senior Taliban figure says*, REUTERS (Sept. 13, 2021), <https://www.reuters.com/world/asia-pacific/exclusive-afghan-women-should-not-work-alongside-men-senior-taliban-figure-says-2021-09-13/>.

¹⁵² Adela Suliman & Susannah George, *Taliban tells Kabul’s female city government employees not to come to work*, WASHINGTON POST (Oct. 21, 2021), <https://perma.cc/CCL9-JZM7>.

¹⁵³ Alasdair Pal, *supra* note 151.

would work ‘in different sectors’.”¹⁵⁴ The unclear stance appears to permit women to work in certain sectors under certain restrictions, but the International Bill of Human Rights does not permit such caveats to the universal right to work in the job of your choice.¹⁵⁵

c. Current actions of the Taliban (2021):

The Taliban’s actions demonstrate that women are not permitted to work. Many women are not currently working, as they have been told to stay home for their security.¹⁵⁶ Women who have dared to return to work are being sent home.¹⁵⁷ While the Taliban have said women will be allowed to work once proper segregation is implemented, many may no longer have jobs to return to as they are being replaced by men.¹⁵⁸ In mid-September 2021, the Mayor of Kabul stated that “virtually every municipal city job held by women would be re-filled by men.”¹⁵⁹ Further, no females are currently serving in any cabinet position in the Taliban government.¹⁶⁰ Article 23 of the Universal Declaration of Human Rights guarantees the right to work and free choice of employment. By only permitting women in the public health and education sectors to work, barring women for other professions, the Taliban is directly violating the Universal Declaration of Human Rights.

Before the U.S. invasion of Afghanistan in 2001, the Taliban instituted draconian laws¹⁶¹, most of which severely

¹⁵⁴ *Id.*

¹⁵⁵ Alasdair Pal, *supra* note 151; *see also International Covenant on Economic, Social and Cultural Rights*, *supra* note 118, at Art. 6

¹⁵⁶ *Taliban tells women and girls to stay home from work and school*, CBS NEWS (Sept. 20, 2021), <https://perma.cc/AY87-XCF4>.

¹⁵⁷ Alasdair Pal, *supra* note 151.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Alasdair Pal, *supra* note 151.

¹⁶¹ The term Draconian laws came out of 7th century B.C. Greece. Draco was an Athenian legislator who created a written code of

impacted females.¹⁶² During the U.S. occupation, Afghanistan returned to a democracy and adopted a new constitution that called for equality for women.¹⁶³ During the U.S. occupation, Afghan women recovered many of the rights taken away during Taliban rule, such as the right to education and the right to participate in public life. Since the Taliban's return, the Taliban have tempered their rhetoric and stance on women's rights, recognizing the need for international tolerance to remain in power. However, their actions do not align with their expression and the international community must take action to stand with Afghan women.

V. Actions the International Community can take to defend Women's Rights:

International powers have interfered in Afghanistan since the early 1900s with the Third British-Afghan War, then Soviet Union interference throughout much of the Cold War, and U.S. invasion after 9/11.¹⁶⁴ Continuous interference created instability and therefore the International Community has a responsibility to protect the Afghan people.

1. Convention on the Elimination of All Forms of Discrimination against Women:

The Convention on the Elimination of All Forms of Discrimination against Women ("C.E.D.A.W.") was adopted by the U.N. General Assembly in 1979.¹⁶⁵ Often called the International

law. The laws were known for their severity. Draconian has since been associated with authoritative actions that are viewed as cruel or harsh. *Draconian*, MERRIAM-WEBSTER (2022).

¹⁶² *Education, Social Restrictions, and Justice in Taliban-Held Afghanistan*, *supra* note 77.

¹⁶³ *A Historical Timeline of Afghanistan*, *supra* note 1.

¹⁶⁴ *A Historical Timeline of Afghanistan*, *supra* note 1.

¹⁶⁵ *Short History of C.E.D.A.W. Convention*, U.N. (last visited Nov. 5, 2021), <https://perma.cc/7W6Q-U45T>.

Bill of Rights for Women, the convention outlines the “meaning of equality and how it can be achieved.”¹⁶⁶

C.E.D.A.W. emphasizes many of the rights already guaranteed to women in the International Bill of Human Rights. Article 10 outlines equal education rights for men and women, including “access to the same curricula...teaching staff” and “same opportunities for access to programs of continuing education.”¹⁶⁷ Article 11 guarantees equality for men and women in the workforce, exclaiming that women have the “right to the same employment opportunities” as men.¹⁶⁸ Article 13 requires states to “take all appropriate measures to eliminate discrimination against women in areas of economic and social life.”¹⁶⁹

Afghanistan signed on to C.E.D.A.W. on August 14, 1980 and ratified the document on March 5, 2003.¹⁷⁰ As a State party, every four years Afghanistan is required to create a report on the legislative, judicial, administrative, and other measures they have adopted to adhere to the convention. C.E.D.A.W. is then supposed to make recommendations based on the reports. Afghanistan has never submitted a report to the Committee.¹⁷¹ The Committee was not granted enforcement powers in the treaty and therefore reporting, as well as adherence, is entirely self-monitored. Without any enforcement mechanisms, C.E.D.A.W. lacks the immediate ability to aid women in Afghanistan. Actions of the Taliban in the past and today demonstrate that they are not likely to change their

¹⁶⁶ *Id.*

¹⁶⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980), at Art. 10.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at Art. 13.

¹⁷⁰ *Treaty bodies Treaties*, U.N. (last visited Nov. 9, 2021), <https://perma.cc/V9PP-XA4N>.

¹⁷¹ *Convention on the Elimination of All Forms of Discrimination against Women*, *supra* note 167, at Art. 18.

stance on women's rights willingly. C.E.D.A.W. can serve as a set of ideals for the international community to hold the Taliban to, however, alone, C.E.D.A.W. is unusable.

2. Withholding Aid:

The current strategy of the international community to pressure the Taliban to respect the International Bill of Human Rights is withholding monetary aid to the country.¹⁷² Withholding aid includes blocking Taliban access to Afghan reserves parked abroad, upholding 9/11 era monetary sanctions, and denying international recognition, each action is intended to cut the Taliban off from the global financial system.¹⁷³ While actions such as withholding assets are a "key instrument by the West to pressure the Taliban to respect women's rights and the rule of law," the consequences of outlasting the Taliban could be detrimental for Afghans.¹⁷⁴ Afghanistan has been devastated by war for many decades and therefore their economy has largely been supported by foreign aid, with nearly half of their legal economy consisting of foreign aid.¹⁷⁵ Cutting off half of the Country's legal economy will impact all Afghans.

¹⁷² Andrea Shalal & Daphne Psaledakis, *U.S. has no plans to release billions in Afghan assets, Treasury says*, REUTERS (Sept. 3, 2021), <https://www.reuters.com/world/us/us-has-no-plans-release-billions-afghan-assets-treasury-says-2021-09-03/>.

¹⁷³ See *Id.*; see also Alan Rappeport, *Afghanistan Faces Economic Shock as Sanctions Replace Foreign Aid*, N.Y. TIMES (Aug. 21, 2021), <https://perma.cc/KU24-VCUW>; see also Gregory Gerbus, *The Humanitarian Effects of Sanctioning Afghanistan*, IMMIGRATION AND HUMAN RIGHTS LAW REVIEW (Oct. 28, 2021), <https://perma.cc/K6R4-4AB4>.

¹⁷⁴ Andrea Shalal & Daphne Psaledakis, *supra* note 172.

¹⁷⁵ Alan Rappeport, *supra* note 173.

The humanitarian consequences of withholding aid are already evident. Afghanistan's currency, the Afghani, has reached record lows, and the central bank governor, Ajmal Ahmad "warned that inflation would likely send food prices soaring."¹⁷⁶ Before the Taliban takeover, 30% of the country was food insecure.¹⁷⁷ Since the Taliban takeover and the subsequent monetary sanction, food insecurity is now at 40%.¹⁷⁸ Further, according to Mary-ellen McGroarty, the head of the World Food Programme in Afghanistan, 8.7 million people are "one step away from starvation."¹⁷⁹ The eventual total collapse of the Afghani would create a financial crisis that would inflict pain, largely on Afghan civilians, as opposed to the Taliban.¹⁸⁰ The current strategy of the international community "hinges on the Taliban coming to the negotiating table" and there is a real possibility, if pushed into a corner, the Taliban will rule without international assistance, shutting off any hope of international cooperation and adherence to the International Bill of Human Rights.¹⁸¹

An alternative route the international community is currently exploring is bypassing the Taliban and providing aid directly to the people through multilateral agencies.¹⁸²

¹⁷⁶ *Id.*

¹⁷⁷ *Afghanistan: Humanitarian Crisis Needs Urgent Response*, HUMAN RIGHTS WATCH (Sept. 3, 2021), <https://perma.cc/X7X2-6UGV>.

¹⁷⁸ *Id.*

¹⁷⁹ Jonathan Landay & Michelle Nichols, *U.N. urgently needs cash in Afghanistan, but struggles for solution*, REUTERS (Oct. 28, 2021), <https://perma.cc/84AJ-VA3P>.

¹⁸⁰ Alan Rappeport, *supra* note 173.

¹⁸¹ Gregory Gerbus, *supra* note 173.

¹⁸² Gibran Peshimam, *U.N.I.C.E.F. to directly fund Afghan teachers, bypassing Taliban authorities*, REUTERS (Nov. 3, 2021), <https://www.reuters.com/world/asia-pacific/unicf-directly-fund-afghan-teachers-bypassing-taliban-authorities-2021-11-03/>.

U.N.I.C.E.F., the United Nations children’s agency, has set up a system to directly fund teachers, sidestepping the Taliban completely.¹⁸³ This allows the international community to continue to support the education of girls in Afghanistan, ensuring schools are properly funded, without taking any sort of stance on the Taliban. However, many countries have banned “funding outside of humanitarian aid that is channeled through multilateral agencies.”¹⁸⁴ This limits nongovernmental organizations to providing urgent supplies, “leaving public service works including teachers without pay for months.”¹⁸⁵ Additionally, “the United Nations is also aware that no one option will work and several avenues to get enough cash into Afghanistan are needed”¹⁸⁶

While bypassing the Taliban and providing funding directly to Afghans would enable the international community to continue to apply pressure to the Taliban to induce them to the International Bill of Human Rights, it would likely only provide a fraction of the overall funding needed to stop the worsening humanitarian crisis.

3. International Criminal Court:

The Rome Statute, which was signed by 120 States in 1998, established the International Criminal Court.¹⁸⁷ By signing this statute, States accepted the jurisdiction of the International Criminal Court “for the prosecution of perpetrators of the most serious crimes committed in their territories or by their nationals.”¹⁸⁸ The International Criminal Court prosecutes four different types of crimes, genocide, crimes against humanity, war crimes, and the

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Jonathan Landay & Michelle Nichols, *supra* note 179.

¹⁸⁷ UNDERSTANDING THE INTERNATIONAL CRIMINAL COURT, INTERNATIONAL CRIMINAL COURT <https://perma.cc/HYP4-HHKD>, (last visited Nov. 8, 2021).

¹⁸⁸ *Id.*

crime of aggression.¹⁸⁹ While the International Criminal Court is not a substitute for national courts, the court can intervene where a state is unable or unwilling to carry out investigations and prosecute such crimes.¹⁹⁰

Afghanistan became a signing party to the Rome Statute in 2003.¹⁹¹ On March 5, 2020, the International Criminal Court launched a formal investigation into alleged crimes in Afghanistan.¹⁹² The grant of the investigation came from an appeal of a 2019 decision that denied the initial request to open a formal investigation.¹⁹³ The pretrial chamber initially denied the request “due to factors such as ‘volatility’ of the political climate ‘surrounding the Afghan scenario’ and the likely lack of cooperation by the countries involved” including the Afghan and U.S. governments.¹⁹⁴ On March 26, 2020, the Afghan government requested the investigation be deferred to the Afghan national authorities.¹⁹⁵ Complying with the Rome Statute, the prosecutors complied, and both parties shared the burden of investigation.¹⁹⁶ Since the formal takeover by the Taliban the International Criminal

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Q&A: The International Criminal Court and the United States*, HUMAN RIGHTS WATCH (Sept. 2, 2020), <https://perma.cc/L8H6-64N2>.

¹⁹² *I.C.C. Greenlights Afghanistan Investigation*, HUMAN RIGHTS WATCH (March 5, 2020), <https://perma.cc/K7V8-W2LF>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Karim A. A. Khan QC, STATES OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, KARIM A. A. KHAN QC, FOLLOWING THE APPLICATION FOR AN EXPEDITED ORDER UNDER ARTICLE 18(2) SEEKING AUTHORIZATION TO RESUME INVESTIGATIONS IN THE SITUATION IN AFGHANISTAN, INTERNATIONAL CRIMINAL COURT (Sept. 27, 2021), <https://perma.cc/YWL8-CMVL>.

¹⁹⁶ *Id.*

Court Prosecutor has sought to change the course of the investigation.

On September 27, 2021, the Prosecutor for the International Criminal Court, Karim A.A. Khan QC filed an order seeking permission for the Prosecutor's office to resume its investigation in Afghanistan.¹⁹⁷ In the request, the prosecutor cited concerns that "there is no longer the prospect of genuine and effective domestic investigations into Article 5 crimes within Afghanistan."¹⁹⁸ If granted authorization, Prosecutor Khan plans to focus their efforts on crimes committed by the Taliban and the Islamic State – Khorasan Province, including, among other things, the persecution of women and girls.¹⁹⁹ While such an investigation could help shed needed light in the country, the International Criminal Court lacks the necessary enforcement powers to resolve systemic human rights abuse in the country.

The International Criminal Court, like any other international system, has its flaws thereby limiting its ability to support Afghan women. Since its inception the International Criminal Court has only conducted a few trials for war crimes and crimes against humanity, resulting in four convictions, four acquittals, and a few dismissals.²⁰⁰ A large challenge facing the court is their lack of enforcement powers. Without enforcement powers, the court "relies on states for cooperation in arrests, and that cooperation has been inadequate."²⁰¹

4. Seeking Asylum and Refuge abroad:

Another measure the international community can take is to support all Afghans who wish to flee from the Taliban. Many

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Q&A: The International Criminal Court and the United States, supra* note 191.

²⁰¹ *Id.*

Afghan women, including human rights defenders, women’s rights activists, and other high-profile women, are at grave risk and “are depending on governments to respect the right to seek asylum.”²⁰² To support Afghans who must flee, the international community must secure safe passage out of Afghanistan, provide resettlement and financial support upon arrival, and provide a pathway to permanent residency.

Since the Taliban took control of the country, Afghan refugees have been “harassed, beaten and extorted by Taliban officials as they attempted to leave the country.”²⁰³ Individuals have the human right to exit their country and governments should pressure the Taliban to respect that right.²⁰⁴

Upon entry into a new region, Afghans should also be provided support to resettle. First, countries should financially support refugees. Programming should also provide “mental health support for new arrivals, taking into account the trauma of forced flight and the specific hardships Afghans may have faced in Afghanistan and after leaving the country.”²⁰⁵ Finally, countries must also provide access to education to Afghan children, many of whom have had their education interrupted by the ongoing conflict in Afghanistan and Covid-19.²⁰⁶

While evacuating Afghans would ensure the protection of their human rights, it fails to solve the large-scale human rights issues in Afghanistan. Further, Afghans should not be forced to

²⁰² *Afghanistan: Asylum Seekers Need Pathways to Protection*, HUMAN RIGHTS WATCH (Oct. 21, 2021), <https://perma.cc/8BP7-SQAU>.

²⁰³ *Id.*

²⁰⁴ *Universal Declaration of Human Rights*, *supra* note 59, at Art. 13.

²⁰⁵ *Afghanistan: Asylum Seekers Need Pathways to Protection*, *supra* note 201.

²⁰⁶ *Id.*

flee their country to have the rights guaranteed to them in the International Bill of Human Rights.

VI. Conclusion:

The Taliban's actions, and even most verbal policies of the Taliban, violate the International Bill of Human Rights. The Taliban's blatant disrespect for human rights is only likely to worsen as international focus shifts and global pressure on the government decreases over time.

Each of the solutions presented above, including C.E.D.A.W., withholding monetary aid, investigations in the International Criminal Court, and seeking asylum abroad, are at best flawed and at worst wholly inadequate, demonstrating the larger inadequacies in intergovernmental agencies. Intergovernmental agencies, such as the United Nations and the International Criminal Court, lack the proper enforcement power to implement the ideals set for in the International Bill of Human Rights. However, military force, as exercised by the U.S. over the last two decades, is also ineffective to create a lasting, stable government that will honor the International Bill of Human Rights. Had the U.S. taken a different approach militarily, such as focusing on winning the hearts and minds of Afghans, then maybe the U.S.-backed Afghan government could have survived, unfortunately, it is impossible to truly know.

The U.S. and other powers, such as Great Britain and the Soviet Union, have been a contributing factor to the instability in Afghanistan, which enabled a group such as the Taliban to take root. Therefore, it is the responsibility of the international community, but in particular, the above countries, to support Afghans and protect their guaranteed human rights. Firstly, each of these countries has the financial means to take in and support

refugees.²⁰⁷ Secondly, and most importantly, each of these countries invaded and occupied Afghanistan.²⁰⁸ These countries left a power vacuum in their absence and created instability prime for a guerilla group to take control. Simply put, Great Britain, the Soviet Union, and the United States, made this mess and now they must clean it up. While the solution is unclear, the complete abandonment of Afghan citizens should not be the response.

²⁰⁷ Caleb Silver, THE TOP 25 ECONOMIES IN THE WORLD (Dec. 24, 2020),

<https://www.investopedia.com/insights/worlds-top-economies/>.

²⁰⁸ *A Historical Timeline of Afghanistan*, *supra* note 1.