



**Justice Denied: An Examination
of the Legal and Judicial System in
Taliban-Controlled Afghanistan**

June 2023



Rawadari is an Afghan human rights organisation that aims to deepen and grow the human rights culture of Afghanistan, ultimately reducing the suffering of all Afghans, especially women and girls. Rawadari helps build an Afghan human rights movement, monitors human rights violations, and pursues justice and accountability for violations. Rawadari works with individuals and collectives inside and outside Afghanistan.

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INTRODUCTION

This report presents a detailed examination of the challenges of access to justice and the human rights violations prevailing in Afghanistan's judicial system under Taliban rule. It offers a comprehensive analysis of the widespread violations of fair trial standards within the Taliban's legal and judicial institutions. Of particular concern is the significant obstacles faced by women and religious minorities in accessing justice. The report also highlights the changes in legal institutions impacting their independence and the lack of established legal frameworks to regulate judicial proceedings, which further compound the gravity of the situation.

The findings underscore the urgent need for substantial improvements in Afghanistan's legal and judicial institutions to uphold human rights and ensure equitable access to justice for all Afghan citizens.

Following the Taliban's resurgence in August 2021, Afghanistan's judicial system collapsed. The Taliban dismantled existing laws and replaced professional personnel with their preferred candidates, primarily religious school graduates. This abrupt removal of past laws, particularly those governing judicial proceedings, has created a void in effective legal criteria and mechanisms to regulate the competence and powers of legal and judicial institutions. Coupled with removal of professional legal and judicial cadre, these changes have resulted in widespread disorder and chaos, characterized by violations of fair trial principles and rampant human rights abuses. The Taliban's attempt to establish their own court system through documents such as the "Administrative Principles of Courts," (*Usul-nama e Edari e Mahakim*) "Bill of Courts," (*Layha e Mahakim*) and "The Law on Acquisition of Rights" (*Qanoon e Tarz e Tahsil e Huqooq*) has proven insufficient in addressing the existing challenges and effectively regulating judicial affairs.

Furthermore, the Taliban appointed judges, primarily students or graduates of religious schools, lack familiarity with judicial knowledge and fair trial standards. In this context, torture has become the most common method utilized for crime verification, leading to coerced confessions from the accused.

Rawadari's investigation has exposed widespread violations of fair trial standards within the Taliban's legal and judicial institutions. Women and religious minorities face significant obstacles in accessing justice, as they bear the brunt of these violations. The Taliban-controlled courts and judges employ inconsistent procedures when handling criminal and legal cases, resulting in a lack of coherence in legal proceedings. Additionally, women, particularly women victims of violence, have experienced increased challenges and stricter restrictions in accessing justice, owing to the discriminatory behavior exhibited by the courts.

The legal and judicial landscape under the Taliban is rife with significant challenges and serious violations, such as mistreatment of women and marginalized groups, torture, arbitrary and illegal detentions, widespread corruption, the presence of illegal and secret prisons, and the improper handling of criminal cases by non-judicial entities. Moreover, the lack of independence and impartiality within the courts intensifies these issues, leading to further obstacles in accessing justice.

This report is divided into three sections, each offering insights into the state of Afghanistan's legal and judicial system under Taliban rule.

In the first section, we delve into the organizational structure and hierarchy of Taliban courts, shedding light on how they have been established and function. This section provides a comprehensive overview of the various levels of courts, their jurisdiction, and their roles within the judicial framework.

Moving to the second section, we explore the profound impact of the Taliban's takeover on the legal and judicial system in Afghanistan. Here, we examine the dismantling of the previous legal framework, the dismissal of professional personnel, and the dissolution of specialized courts and prosecution offices. This section paints a vivid picture of the far-reaching consequences of the Taliban's actions on the system that was once in place.

In the third section, we analyse the violations of fair trial principles within the Taliban's legal and judicial institutions and the subsequent repercussions on the accessibility of justice. By closely examining these violations, we highlight the challenges faced by vulnerable groups, particularly women and religious minorities, in accessing a fair and equitable legal system.

The report culminates with a set of recommendations aimed at the de-facto authorities, the international community, and other relevant stakeholders. These recommendations address the pressing need for reforms and improvements within the legal and judicial system, with the ultimate goal of safeguarding human rights and improving access to justice for all Afghans, women and men, in all parts of Afghanistan.

METHODOLOGY

This report aims to provide an accurate and comprehensive assessment of the performance of the Taliban’s judicial system and the state of access to justice for Afghan citizens. Gathering reliable information under the Taliban regime has presented significant challenges due to the surveillance by de-facto authorities and security risks to interviewees, but we have employed a robust methodology to ensure the validity of our findings. This report presents comprehensive data and information regarding the changes in the judicial and legal framework in Afghanistan from August 15, 2021, to June 2023. To prepare this report, Rawadari conducted 141 interviews with a wide range of individuals, including defense lawyers, current and former employees of the legal and judicial institutions, human rights defenders, survivors, and local reporters and journalists across 26 provinces¹ of Afghanistan. These interviews were conducted in the period of January- May of 2023. The obtained information was meticulously analysed, compared, and evaluated to ensure utmost accuracy and reliability.



To complement the primary sources, we have referred to the documents released by the de-facto authorities and related to the functioning of the legal and judicial institutions including *Usul-namas* and bills as prepared by the “High Office of Courts “ (*Edara e Adli e Mahakim*). Additionally, international human rights documents and previous Rawadari reports on human rights violations in Afghanistan have informed the analysis of this report.

We faced significant challenges in collecting and verifying information due to security threats and the restrictive environment surrounding the operations of legal and judicial institutions. Lack of direct access to places of detention and detainees further hindered our data collection efforts. To ensure the safety and security of the interviewees and sources, we have chosen not to disclose specific details about their identities. In certain cases, to protect the security of victims and witnesses, we have withheld exact dates and locations of incidents of human rights violations.

¹ Kabul, Maidan Wardak, Ghazni, Herat, Farah, Badghis, Nimruz, Ghor, Kandahar, Helmand, Zabul, Uruzgan, Daikundi, Bamiyan, Panjshir, Paktia, Paktika, Khost, Kunar, Ningarhar, Balkh, Baghlan, Faryab, Jawzjan, Badakhshan and Kunduz



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1

ORGANIZATIONAL STRUCTURE AND HIERARCHY OF TALIBAN COURTS

The Taliban has established an organizational structure for the judiciary, outlined in the “Courts Bill,” which replaces the previous “Supreme Court” with the “High Office of Courts.” This structure, initially implemented in areas under Taliban control during the Islamic Republic of Afghanistan’s rule, now extends throughout the entire judicial system. However, there are variations in organization, duties, and jurisdiction among the courts across different provinces. The following information is sourced from Taliban public documents and interviews with reliable local sources.



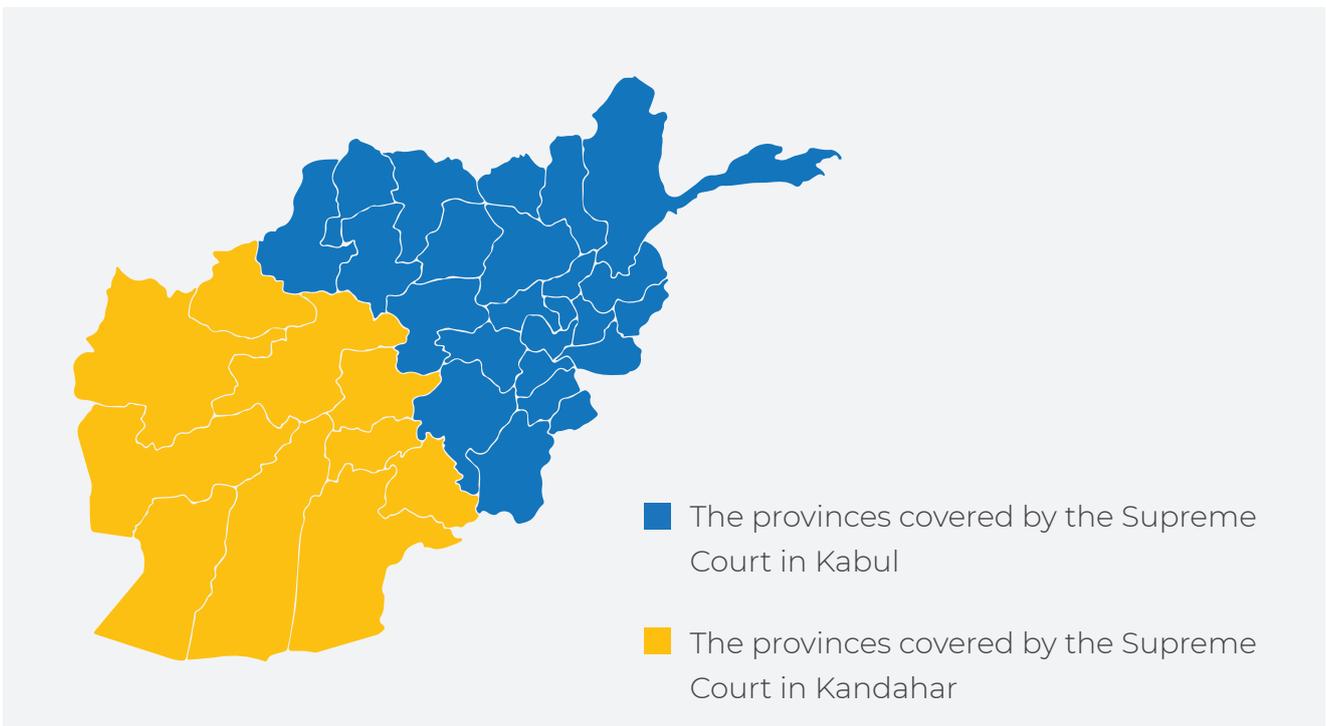
Photo: VOA and AFP

A. General and Ordinary Courts (*Mahakim e Umomi wa Aadi*)

The general and ordinary courts operate in three tiers: the supreme/high court, appellate courts, and lower courts. These courts handle general crimes and civil and legal disputes.

1. Supreme/High Courts (*Mahakim e Tamiz*)

The supreme courts, located in Kandahar and Kabul provinces, serve as the highest judicial authorities for the Taliban. The Kandahar Supreme Court oversees ten provinces², while the Kabul Supreme Court has jurisdiction over the remaining 24 provinces³. These courts have the power to uphold, dismiss, amend, or cancel decisions made by lower courts. The structure of a Supreme Court includes a Director, Members, and two departments: investigation and administration.



2. Appellate Courts (*Mahakim e Murafia*)

Ranking second in the judicial hierarchy, the appellate courts are located in provincial capitals. They consist of four branches: criminal, public security, civil, and commercial.

3. Primary Courts

Primary courts typically comprise a judge, a *mufti* (religious legal expert), and a registrar. The number of members may vary across provinces for the city courts (a form of primary court).

² The provinces covered by the Supreme Court in Kandahar are: Kandahar, Helmand, Urzughan, Zabul, Farah, Nimruz, Ghor, Herat, Badghis and Daikundi

³ Kabul Court covers the following 24 provinces: Kabul, Maidan Wardak, Ghazni, Samangan, Bamiyan, Panjshir, Paktia, Paktika, Khost, Kunar, Ningarhar, Balkh, Baghlan, Faryab, Jawzjan, Badakhshan, Kunduz, Sar e Pol, Kapisa, Takhar, Laghman, Logar, Nuristan and Parwan

B. Special Courts

The Taliban has established new special courts to replace the previous ones, operating in Kabul and several other provinces.

1. Special Military Courts

Special Military Courts, found at the appellate and primary levels in various provinces, handle cases involving military employees of the “Islamic Emirate”.

2. Special Accountability (*ehtesab*) Court

Previous, republic era courts dealing with internal and external security-related cases have been replaced by specialized “Accountability” courts in multiple provinces. These courts address charges against “former national army and police members, spies and supporters of the previous government”.⁴

Court Structures Vary Across Provinces

The Taliban does not enforce a unified court structure. In certain regions, such as Helmand province, two distinct special commissions have been established. The first commission, formed by the provincial governor, addresses non-judicial issues, while the second commission, established by appellate courts in the provincial capital, handles residual cases from the Republic Government era. This second commission also resolves disputes within appellate and primary courts and addresses conflicts of duties.

In Maidan Wardak province, a complaints commission deals with unfinished files from the previous government, while in Daikundi province, a judicial deputy court handles such cases. Special courts in Paktika, Paktia, and Khost provinces address pending cases from the previous government.

The Taliban has also implemented a “*Shura-e-Faqhi*” (council of religious clerics appointed by appellate courts) in several provinces, functioning under the appellate courts. This council investigates and resolves cases related to civil and military government entities.

⁴ Islamic Emirate of Taliban, *Layha e Mahakim*, 2018, articles 1 and 57

Educational Background of Taliban Judges

The majority of judges and “*muftis*” in Taliban courts are either students or graduates of religious madrassas, primarily in Pakistan. Some of the current judges previously served as judges in Taliban-controlled areas during the war. Only a small number of judges, particularly in Herat and Panjshir provinces, have formal higher education and studied in law or sharia faculties at universities.

Most Taliban judges have limited familiarity with modern legal knowledge, especially principles of a fair trial. Additionally, there is no established mechanism or procedure for appointing judges. Local sources from Takhar and Baghlan provinces told Rawadari that the most important prerequisites for judicial appointments in these provinces include a certificate of education from Pakistani madrassas and a history of membership in the Taliban group.



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THE COLLAPSE OF AFGHANISTAN'S JUDICIAL AND LEGAL SYSTEM

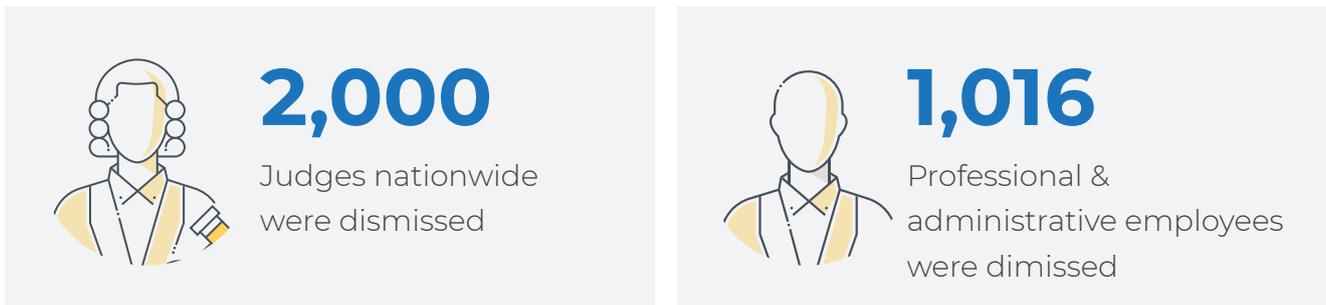
Despite the challenges in ensuring justice and maintaining the rule of law under the Islamic Republic of Afghanistan, significant strides were made in legislation, judicial reforms, and building the legal system. These changes were undone with the return of the Taliban to power. Radical interpretations of Islam now supersede the rule of law, and courts adjudicate legal and criminal cases based on religious decrees (*fatwas*). This section outlines the pivotal issues concerning the dismantling of Afghanistan's judicial and legal system.



Photo: The Afghanistan Analysts Network (AAN)

1. Collective Dismissals of Professional Cadre from Judicial Institutions

Following their takeover, the Taliban purged judicial institutions of professional and trained personnel. Our information indicates that 1,016 professional and administrative employees, from various departments of the Attorney General's Office and 2,000 judges nationwide were dismissed. Those dismissed included both women and men. In tandem, hundreds of court registrars, administrative staff, and professional legal assistants from the Ministry of Justice were also dismissed.



For instance, only 24 out of the original 126 registrars working in Nangarhar Province's primary and appellate courts remain. Moreover, Grade 3 and 4 officials of the Ministry of Justice's legal departments, including legal assistants, were dismissed by decree, leaving only grades five and six who are the support staff i.e. driver, gardener, etc.



2. Dissolution of Special Courts and Prosecution Offices

The Taliban disbanded all special courts, including those dedicated to addressing violence against women, juvenile matters, anti-corruption, and crimes against internal and external security.

Furthermore, they eliminated the special prosecutor for violence against women and children, the primary prosecutor for anti-corruption, and the directorate combating harassment of women in government offices from the structure of the Attorney General's office, both in the capital and in the provinces. These special prosecutors and courts, established under the judicial institutions of the Islamic Republic of Afghanistan, were important for ensuring

justice, upholding the rule of law, combating corruption, and counteracting violence against women.

3. Annulment of laws

The Taliban annulled all preceding laws and regulations, including the constitution and the penal code, which were aligned with Afghanistan's international human rights commitments. These laws were once considered some of the best in the region. Now, religious decrees (*fatwas*) and jurisprudential interpretations of Islam, often interpreted differently by different individuals) have replaced these laws, and Taliban courts administer criminal and legal cases using jurisprudential sources. For instance, some judges reference *Majallat al-Ahkam*⁵ while others base their rulings on personal interpretations and perceptions.

In criminal cases, the judges first derive the rulings from the sources of Hanafi jurisprudence and delegate the file to a *mufti* for final decision-making. The *mufti* then verifies the judgment against *Sharia* standards, either endorsing or rejecting it. If the jurisprudential sources lack a specific ruling, the *mufti* issues a *fatwa* based on personal understanding, which is considered a valid verdict. Moreover, the decrees of the Taliban "Supreme Leader" Haibatullah Akhundzada also significantly influence judicial rulings and decisions. The "Supreme Leader" issues *fatwas* on various criminal and civil cases, which subsequently guide court decisions. The right to appeal is rarely recognized, particularly in criminal cases. However, in civil disputes, parties can appeal the court's decision and request a review. According one of our interviewees, if a review is filed against a court judgment in a criminal case, judges interpret it as opposition to *Sharia*.

4. Elimination of Formal Investigative Process from Criminal Proceedings

Investigation constitutes a crucial component of judicial proceedings, involving the collection of evidence, documents, and arguments necessary to substantiate a claim. This process significantly influences court decision-making. Previously, the Office of the Attorney General oversaw investigations, but the Taliban altered this office into the "Office for Monitoring and Follow-up of Decrees and Orders," effectively expunging the investigation stage from criminal proceedings.

Although the responsibility for investigation has been transferred to the police, intelligence department, and courts, a consistent procedure is lacking. Neither courts nor police departments have a dedicated investigative division. We have observed instances where both the police and courts conduct simultaneous investigations, in some instances one of the entities conduct investigation and there are also cases that neither of these entities carry out an investigation.

⁵ *Majallat al-Ahkam* is an important source of *Hanafi* jurisprudence that provides guidance on matters such as contracts, property rights, obligations, and personal status issues.

For instance, in Panjshir province, only the courts have investigative authority, while in some other provinces, both entities, courts and the police, conduct investigations.

Our findings reveal a significant number of criminal cases are resolved in a single hearing without going through a formal investigative process or presenting sufficient evidence to establish guilt. People arrested by the intelligence department or the department for the Promotion of Virtue and Prevention of Vice are frequently sentenced on the same day without an investigation or court referral.

Some cases are decided directly at the police headquarters' crime department, with the accused either being imprisoned or released. In legal (*Huqoq*) cases, previously handled by the Ministry of Justice, the courts are now responsible for evidence and document collection. Thus, the investigation, a critical phase in the criminal proceedings process, has been effectively eliminated. Courts lack investigative departments and no specific professionals are appointed for this purpose. It appears that the judges presiding over cases also conduct investigations, and in practice, not just judges but any member of the security forces and local authorities can assume this role at any stage of the criminal proceedings. For example, in Kahmard district of Bamiyan province, the district governor interrogates the accused persons in lieu of a judge.

5. Lack of Uniform Procedure for Handling of Legal Cases

No specific and uniform mechanism exists for handling of civil and legal (*Huqoq*) cases, and the procedures adopted by Taliban courts vary by province and court. In Kandahar province, district police stations initially attempt to resolve legal cases, and unresolved cases are transferred to police headquarters for further investigation. There is a volunteer *mufti* in each police station for this purpose. If the police stations fail to reach a resolution, these files are then sent to the Justice Directorate, currently part of the city courts. In contrast, in Helmand Province, a case first goes to the Justice Directorate, and if unresolved, it is transferred to the courts. In most instances, there is discord between court staff and the judicial board due to the dispersion of jurisprudential sources, resulting in delays in case handling and confusion of litigants.

6. Exercise of Judicial Powers by Non-Designated Bodies and Authorities

Rawadari's findings illustrate that a significant portion of legal, civil and criminal cases are handled by bodies and authorities without official judicial responsibility. The police, intelligence department, Jurisprudence Council, Jurisprudence Commission, *Dar al-Fatwa* of religious schools, ethnic elders, and local *Jirgas* are some of the entities playing crucial roles in processing and resolving civil and criminal cases.

For instance, in Badakhshan province, the Department of Promotion of Virtue and Prevention of Vice is responsible for handling all cases related to violence against women and family disputes, often leading to verdicts against women.

In eastern provinces, including Paktia, Paktika, and Khost, the bulk of legal and criminal cases are resolved by the district governor, Mullah Imams (religious community/mosque leaders), tribal elders, and local *Jirgas*. In certain provinces, Social Conflict Resolution Commissions have been established, extending their authority to criminal cases. In Daikundi province, the deputy governor and the intelligence department typically oversee civil cases and legal disputes. Similarly, in Baghlan province, the majority of civil and criminal cases are dealt with by the Department of Promotion of Virtue and Prevention of Vice, with cases seldom referred to the courts.



3

VIOLATIONS OF FAIR TRIAL PRINCIPLES

International human rights law emphasize the right for victims of crimes to seek justice before a competent court. Accused individuals should also have the right to a fair trial and to defend themselves before an unbiased and independent court. To safeguard the execution of justice and protect the rights of suspects and the accused, international human rights documents outline specific principles and criteria. These are applied at all stages of the criminal proceedings, from the charge to the verdict and execution of the punishment. Rawadari’s findings suggest, however, that Taliban judges and courts are unfamiliar with these principles and often overlook human rights standards. They show little regard for the principles and standards of a fair trial, particularly concerning criminal offenses, and crimes subject to *Hudood and Qisas* punishments.

This section of the report discusses in detail the violations of fair trial standards and the challenges Afghan citizens face in accessing justice. It’s worth noting that former laws, such as the Constitution, Criminal Procedures Law, Penal Code, “The Law on Formation, Duties and Competencies of courts and Attorney General’s Office” were in place to ensure the principles of a fair trial. But with the Taliban government dismissing these laws, only the international framework for human rights is referenced here.



Photo: Independent Farsi

Discrimination in Taliban Courts and by Taliban Judges

Equality before the law is a fundamental principle of a fair trial, recognized in international human rights treaties. This principle obliges courts and judges to treat litigants equitably. However, Rawadari's findings reveal discriminatory practices by Taliban courts, especially against women, former government employees, and followers of the Ja'fari jurisprudence.

1. Discrimination Against Women

Under the previous government, specialized offices and courts were instituted to address crimes of violence against women. However, these facilities were dismantled by the Taliban along with the Ministry of Women's Affairs and 27 of the ministry's support centres (i.e. shelters) across Afghanistan. To the best of our knowledge, the only surviving support centre run by a non-government entity is currently operating in Kabul. Furthermore, the Taliban also abolished the Law on Elimination of Violence against Women (EVAW Law), which had criminalized various forms of violence against women. Consequently, the legal mechanisms designed to protect women from violence were dismantled.

Legal and judicial institutions, including courts, prosecution offices, and vital departments of the Ministry of Interior, were purged of their female workforce. As of now, there are virtually no women employed within the legal and judicial institutions under Taliban control, barring a small number of female staff who serve as guards or conduct body searches of visitors and homes within the departments of the Ministry of Interior Affairs and the Directorate of Intelligence. Additionally, women defense lawyers do not have official permission to work.

Since their return to power in 2021, the Taliban have enforced stringent regulations on women's basic freedoms. This includes prohibiting women from leaving their homes without a legal companion, even for receiving healthcare services or accessing judicial institutions. Consequently, women who face abuse from their relatives or family members are often unable to approach courts and other authorities to file a complaint or lawsuit. This has had detrimental effects on women's access to justice.

Rawadari's findings over the last two years highlight that women victims of violence encounter numerous challenges and hurdles in accessing justice. In fear, women avoid the Taliban courts throughout the country. The Taliban have displayed a strict stance towards women's criminal and legal claims, often issuing judgments that disadvantage women. Cases concerning women's personal status, such as requests for separation, forced marriages, inheritance, and alimony, are often neglected, and the complaints of women in such cases aren't given much importance. Cases involving women's claims that were in process during the previous government have also been disregarded.

According to Rawadari's findings, the majority of women's cases, both criminal and civil, are settled within administrative offices without official records of the complaints. For instance, in Balkh, Takhar, and Baghlan, the Department for Promotion of Virtue is the only institution

vested with the authority to handle women's civil and criminal cases. In some provinces, women's cases are handled by the Civil Court, while in others, they are addressed at the police headquarters.

Our findings indicate that in most parts of the country, women's legal and criminal cases are resolved via non-judicial methods such as local *Jirgas*. For instance, on 19th February 2023, a woman in Badghis province was assaulted and set ablaze by her husband. The local community, learning of the incident, took her to the hospital. She succumbed to her injuries a month later. Although her relatives complained to the Taliban, the matter was referred to the local elders' *Jirga*. The *Jirga* addressed the murder case by decreeing that the husband transfer a plot of land to the deceased woman's father and family.

In another instance in Bamiyan province, a divorced woman whose divorce had been concluded during the Republic era had remarried. However, her previous husband lodged a complaint, and the Taliban court overturned the previous court's divorce decree, compelling the woman to return to her first husband.



Digital Art: Fatima Wojohat

2. Discrimination against followers of Ja'fari Jurisprudence

With the Taliban's takeover of Afghanistan, all Shia judges were dismissed from their duties, and currently, there are no Shia judges in the Taliban judicial system. The Taliban also abolished the "Shia Personal Status Law" and decide on all cases relating to Shia persons, including civil suits and personal status, according to Hanafi jurisprudence. Article 8 of the Taliban's "Court Bill" stipulates that judges and relevant court members must issue all decisions in light of Hanafi jurisprudence. Rawadari's findings suggest that Taliban courts exhibit bias in cases where one of the litigants is from a religious minority. For example, in the "Dolat Khana" area of Herat, a property dispute over a mosque entrance, previously used by Shia followers for many years, was resolved in favor of the Hanafi followers aligned with the Taliban, effectively displacing the Shia community members from the mosque.



Photo: Andisha Foundation - Facebook

The Shia community has little faith in Taliban courts. Particularly for civil cases and personal matters, they prefer informal justice or non-judicial mechanisms like tribal *Jirgas* and mosque Imams who can adjudicate according to the Ja'fari jurisprudence. Furthermore, there are several cases that highlight Taliban's ethnic and tribal bias interfering in delivery of justice. For instance, sources from Qala-e-Naw in Badghis province allege that Taliban judges discriminate against litigants from other (non-Pashtun) ethnic groups.

Torture and Coerced Confessions

International human rights conventions condemn and prohibit all forms of human abuse and torture, asserting the absolute right to freedom from such actions. According to Article 7 of the International Covenant on Civil and Political Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Further, Article 1 of the International Convention against Torture, Cruel Punishment, and Inhuman or Degrading Treatment defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession.” Additionally, Article 14 of the International Covenant on Civil and Political Rights safeguards the individual’s right not to be compelled to testify against oneself or to confess guilt, establishing that confessions elicited through torture hold no legal validity and cannot form the basis of judicial decisions.

Contrary to these principles, evidence suggests that torture and coerced confessions constitute the most common method of accusation verification within the Taliban judicial system. Given the lack of familiarity with evidence collection and argument construction, the system places excessive weight on confessions, testimonies, and oaths for judicial decisions. Consequently, various forms of torture are employed to extract confessions from suspects or punish the accused.

An official letter from the judicial deputy of the Kandahar provincial High Court sent to police headquarters and the intelligence department of the southwestern provinces on 24 January 2023 states that torture should not happen without court orders. The letter refers to widespread mistreatment and torture in detention centres of Intelligence Directorate, police stations and district detention centres. The document also refers to instances of forced confessions. While banning torture in the investigation stage, the letter permits inhumane and degrading treatment if it follows a court verdict.

Victims report various brutal forms of torture used in Taliban detention centres, particularly within the detention centres of the intelligence department.

These methods include beatings, exposure to extreme heat, suffocation, waterboarding followed by penial strangulation, attaching heavy objects to victims’ penises followed by forced walking, asphyxiation using plastic bags, sleep deprivation, forcing consumption of excessively spicy or bitter food, scaring with gunshots, confinement in unsanitary environments, electric shocks, and confinement in stables. These torture tactics are used by the Taliban particularly in detention centres of the intelligence department.

Several accounts illustrate these abhorrent practices. A drug user arrested by the Taliban for alleged theft in Qala-e-naw city was severely electrocuted. Another resident of Bamiyan province reported being subject and witness to nightly beatings of detainees aimed at forced confessions while in Taliban detention. A Kandahar resident shared the following testimony: “Taliban picked up my brother and me from our home. They covered our eyes and took us to a private house. They brutally tortured us and asked for bribes. We had to handover two cars to them, get the documents from them for this exchange and were then released”.

Another resident of Kandahar told Rawadari that he and three others were detained on 13 April 2023 by the director of Vice and Virtue of the province and were then taken to a police station. They were kept in an unsanitary and foul-smelling container for three days and did not have access to clean water and food in this period.

Similarly, a civil activist from Maidan Wardak province was arrested for publishing a Facebook post criticizing the Taliban and was beaten three times with sticks and cables. He was told that this was his punishment for his critical post. The Taliban released him only after securing a promise not to criticize them again or reveal the conditions of his detention to anyone. Another former (Republic era) soldier in Kandahar province was killed due to excessive torture while in custody.

Given limited access to detention centres by Rawadari and other human rights institutions, accurate data on the number of torture victims remains elusive. It’s important to note the absence of legal mechanisms to protect suspects from the Taliban’s torturous practices. Since Taliban have repealed all previous laws, including the constitution, criminal laws, and the law against torture, the prohibition of torture within the Taliban’s judicial system is not assured, nor is there any recognition of victims’ right to sue or seek compensation.

Arbitrary and Unlawful Detention

International human rights standards affirm freedom from arbitrary detention as an inalienable right of every individual. Article 9 of the International Covenant on Civil and Political Rights states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Hence, detaining individuals without legal justification, in a manner that’s unnecessary, disproportionate, unpredictable, or discriminatory, constitutes a violation of their right to liberty and personal security.

Rawadari’s findings reveal that the Taliban frequently breach these principles when arresting

and detaining individuals. Over the past 20 months, numerous former soldiers, ethnic elders, journalists, and human and women's rights activists have been arbitrarily arrested, subjected to torture, and in some instances, killed.

Taliban authorities detain and arrest individuals across various departments and jurisdictions, often ignoring basic arrest and detention procedures and without requiring a court order or approval from relevant authorities. For instance, in Ghor province, officials from the intelligence department, the Department for Promotion of Virtue and Prevention of Vice, and even municipal employees have been involved in detentions and arrests. In Kandahar province, victims reported to Rawadari that they were detained by officials from the Traffic Department, the Department of Statistics, the Department of Public Health, and Mirwais Regional Hospital, and subsequently held in confinement.

There are also cases where the Intelligence Department has held in detention and tortured the relatives and family members of former government employees, critics and dissidents, disregarding the principle of individual criminal responsibility.

We have received reports of hundreds of arbitrary arrests by the Intelligence Department and the Department for Promotion of Virtue and Prevention of Vice which demonstrates that these bodies operate without any legal restrictions, exercising unchecked power to arrest, detain indefinitely, and torture individuals.

Secret and Illegal Prisons

Findings from Rawadari indicate that across the country, Taliban commanders and local officials run unofficial and secret prisons where individuals are detained and subjected to torture. Reports from local sources in Helmand province reveal that several government entities have allocated specific rooms or containers for the purpose of detention. For instance, the municipality uses a container to hold detainees. On one occasion, those detained in this container were released following the intervention of influential local and ethnic elders.

In Maidan Wardak province and in Kandahar, particularly in the districts of Dand, Panjvai, Shah Wali Kot, Spin Boldak, and "Aino Minah" of Kandahar, local Taliban officials reportedly imprison people in their own homes. Similarly, in the southwest region, district governors and municipalities arrest and detain individuals in private prisons.

One resident of Kandahar province shared his traumatic experience of being held in a secret Taliban prison. He narrated, "On July 27, 2022, the Taliban arrested and blindfolded me before driving me to a private prison in a remote village in the Shah Wali Kot district. During

the two-hour journey, they frequently stopped to fire gunshots in an attempt to intimidate me into confession, despite my innocence. Approximately 20 others were imprisoned in the same location, where the Taliban subjected us to torture, usually late at night. After 15 days, my brother managed to locate and rescue me. During my second detention, they transferred me to a security station in Kandahar city and then to the police headquarters' detention centre. There, they severely tortured us in the middle of the night, denied us food, and left us to starve. After eight agonizing days, they finally released me when my innocence was confirmed”

A source from Balkh Province reported to Rawadari that a number of women arrested by the Taliban were held in secret prisons and sexually assaulted. The women were arrested and taken to the prison. Subsequently, they were moved to a secret, private prison. One of the witnesses told Rawadari: “The women were taken away at 8pm every night to unknown locations. They looked made up in the evening and would be returned to the private prison with a messy appearance and in obvious distress in the morning”.

In a separate case in 2022, a relative of the district governor of Rostaq district in Takhar province detained an individual in his house for a week. Also, it came to light in mid-2022 that Kabul Municipality was using a container for detention, a revelation sparked by the death of a detainee in this container due to suffocation.

According to Rawadari's findings from Badghis, local Taliban authorities in the districts of Bala Marghab, Jhund, and the centre of Badghis city also operate private prisons. The governor and the head of the economy department of Badghis province both have detention rooms within their offices. They decide whether to transfer detainees to public prisons or release them. In Bamyān province, during the early days of the Taliban regime, every military and civil department reportedly operated their own jails, arbitrarily detaining and torturing individuals. This situation still exists in the provincial capital and in the districts of Kahmard and Saighan.

Several victims of torture and former detainees of these secret and illegal Taliban prisons informed Rawadari that upon their release, the Taliban coerced them into promising not to discuss their experiences with the media or human rights organizations.

Violation of the Presumption of Innocence

The presumption of innocence is enshrined in international human rights conventions. According to Paragraph (2) of Article 14 of the International Covenant on Civil and Political Rights: “Everyone charged with a crime shall have the right to be presumed innocent until proved guilty according to law”. Similarly, Paragraph (2) of Article 10 states: “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.”

Despite these legal provisions, Rawadari’s investigations show that the Taliban’s judicial system consistently violates the principle of presumption of innocence. As evidenced in previous sections, the Taliban has effectively eliminated the investigation stage from criminal proceedings, failing to distinguish between suspects, the accused, and convicted criminals. In numerous instances, upon the arrest by the intelligence department and the department for promotion of virtue and prevention of vice, individuals are punished and later released, without official cases prepared or lawfully processed through the court system.

Our findings illustrate that arrests of those accused of “political crimes”, Taliban critics and employees of former government are carried out by the intelligence and police officers. These entities then also detain, adjudicate, and punish these individuals as they see fit, and the courts have no role in this process.

There are no effective legal safeguards to outline the conditions of detention and the authority of investigative and intelligence agencies and to prevent illegal and arbitrary detention.

Several interviewees from the eastern provinces reported to Rawadari that they were held in the Taliban’s intelligence department detention centres for several months and subjected to severe torture during their detention. Despite the lack of any formal charges or prepared cases against them, they were imprisoned for months in these detention centres and eventually released on bail or giving a guarantee. The jurisdiction of the intelligence department, police, and the department for promotion of virtue and prevention of vice regarding arrest and detention duration is unclear, and these departments do not transfer cases to courts for trial and judgment. This has been confirmed by a court employee from the eastern region who informed Rawadari that since the Taliban took power, the intelligence department has not forwarded a single case to the courts.

The Taliban authorities further violate the principle of presumption of innocence by publicly labeling individuals, especially dissidents, as “spy, criminal, *baghi* (transgressor)” at the time of their arrest. These labels are disseminated through media and social media accounts, exposing the identities of the accused and undermining their right to be presumed innocent until proven guilty. This practice disregards the fundamental principle of fair trial and due process.

Compromised Independence and Impartiality of Judges and Courts

The independence and impartiality of judges and courts constitute fundamental principles of a fair trial. These principles operate at two levels: ‘institutional independence’ and ‘individual independence.’ In essence, this means that courts and judges, as adjudicating authorities, should be free from interference and undue influence from other governmental institutions or internal and external forces that could sway their judgments. Article 21, Paragraph 1, of the Universal Declaration of Human Rights affirms: “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” When a judge allows their political, ethnic, religious, or other personal affiliations to interfere with their duty, it undermines the principle of impartiality and independence of the courts.

Despite this principle, Rawadari’s findings suggest that the courts under Taliban control lack neutrality and independence, and their decisions are influenced by interventions and external forces outside the judiciary. In all provinces, governors, police commanders, district governors, and other local Taliban commanders play decisive roles in judicial orders and decisions, and can influence the course of criminal proceedings. Given the lack of professional judges and the absence of laws safeguarding the courts’ impartiality, judges bring biases and personal preferences in their rulings. This is particularly evident in disputes involving women or former government employees.

Rawadari has documented cases where there is clear bias within Taliban-controlled courts. For instance, the judges exhibit bias when handling lawsuits involving individuals associated with them or those with influential connections. Even in cases where guilt is established, leniency is often granted to individuals with prior affiliations or influence from powerful entities outside the judiciary. Conversely, employees of the previous government who are apprehended by police, intelligence departments, and other security and military institutions face disproportionately severe punishments.

A notable incident from January 17, 2023, exemplifies this bias. In Kandahar province, an employee of the civil administration, who had a familial relationship with a local Taliban

official, was convicted of embezzlement and illicit sexual conduct. Surprisingly, during the prescribed flogging punishment, local officials intervened and secured the immediate release of the accused without any further penalty.

In another instance, the Taliban governor of Ghazni province openly disregarded a court's final ruling and prevented its enforcement. He then implemented his preferred resolution through the police headquarters of the province.

Sources from Daikundi province informed Rawadari: "In Khadir and Sang-e-Takht districts of Daikundi province, both the district governor and district judge operate from the same building, with many legal cases decided by the district governor while the judge is not involved in the process."

Undue Delays

Article 9, Clause 3 of the International Covenant on Civil and Political Rights asserts: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment." Contrary to this principle, there is currently no law in Afghanistan to regulate surveillance and detention durations, making judicial proceedings' timeline ambiguous. As a result, judicial institutions, and the intelligence department, can detain individuals indefinitely. Instances have been reported where the accused have spent months in detention centres awaiting trial. There also exists an unwarranted delay in addressing legal disputes, some of which remain unresolved for over a year. For instance, a case in Herat province, initiated in the primary court of Enjeel district, has yet to be addressed even after a year and a half, and the relevant department to handle it has not been specified, despite both both sides of the dispute residing and present in Herat province.

Lack of Access to Defense Lawyers

Access to defense lawyers and legal aid for suspects and accused parties is indeed a crucial principle of a fair trial, as guaranteed by Article 14, paragraph 3 of the International Covenant on Civil and Political Rights. This provision states that everyone charged with a criminal offense has the right to legal assistance, including the appointment of a defense counsel if they cannot afford one. It ensures that individuals have the opportunity to effectively defend themselves, present their case, and receive legal advice throughout the legal proceedings. This right plays a fundamental role in safeguarding the fairness and integrity of the criminal justice system. However, evidence shows that courts and judges under the Taliban disregard this right of access to a lawyer, with judges in some provinces being unaware of this principle.

For instance, a source from Baghlan province told Rawadari that Taliban judges initially questioned the role of defense lawyers, expressing skepticism to the idea of defending alleged criminals.

The Taliban has disbanded the Afghanistan Independent Bar Association. Many defense lawyers have discontinued their work due to security threats by Taliban members and the restrictive environment. This has particularly impacted women lawyers. Currently, not a single defense lawyer is officially working in Panjshir province. Only 15 of the initial 150 defense lawyers remain in Kandahar province, and Ghazni province, with 19 districts, retains just five defense lawyers, all based in the provincial capital. The Taliban established the department of defense lawyers in Ministry of Justice and legal aid section is also active. But in practice, no legal assistance is offered and the defense lawyers working with the ministry have lost their independence. In provinces of Kandahar, Paktika, Paktia, Maidan Wardak, and Khost, those accused of political crimes are denied the right to a defense lawyer. One source from Kandahar confirmed that Taliban do not accept defense lawyers in any criminal cases but might allow them a role in small legal and commercial disputes.

In several provinces the courts do not accept the involvement of defense lawyers in any case, viewing it as interference in the judicial process. A source from Daikundi Province shared with Rawadari that “judges argue that if accused persons are mature and wise, they should not require a lawyer to defend them. They should defend themselves and no one should interfere in the court proceedings.” In other provinces, defense lawyers can prepare defense bundles for their clients only in legal disputes and civil cases, but are not allowed to represent their clients in court hearings. The Taliban restrict access for defense lawyers to visit places of detention, which prevents them from effectively communicating with their clients who are in pretrial custody or detention.

In several provinces, including Badakhshan, Kandahar, Helmand, Zabul, Uruzgan, Jawzjan, Faryab, Kunduz, Balkh, and Herat, the Taliban have recruited defense lawyers who are graduates of religious schools. They have also subjected former defense lawyers to examinations evaluating their familiarity with basic religious issues.

A defense lawyer from Helmand province revealed that the Taliban revoked licenses of defense lawyers from the Republic era, mandating them to take a test primarily centred around religious issues such as prayer (namaz). Those who passed were allowed to continue practice. Another source from Kandahar shared that the new defense lawyer recruits are graduates of religious madrassas and some of them work both as judges and defense lawyers. They prepare the defense lawyer statements outside office hours. Additionally, in Kandahar, religious school teachers and imams also prepare defense statements for the accused.

Mistreatment of Defense Lawyers

Sources from Maidan Wardak Province revealed to Rawadari that judges perceive defense lawyers' statements as contradictory to Islamic values and standards, thereby barring them from practice. Very commonly, Taliban-led courts and judges view the work of defense lawyers as endorsing criminals, thereby going against religious and Islamic values. Another source reported to Rawadari that courts and judges under the Taliban typically dismiss defenses presented by lawyers from the prior government, despite the soundness of their arguments. They subject these lawyers to ill-treatment, accusing them of involvement in corruption due to their work during the previous administration.

In Bamiyan province, the Taliban threatened to kill several defense lawyers who were active during the previous government and revoked their legal practice licenses and closed their offices.

Violation of Decision- Making and Verdict Procedures

In a transparent and fair legal system, judicial hearings are expected to be conducted publicly, unless in specific and limited cases as determined by law. This principle is in place to generate public trust in judicial institutions. Additionally coerced confessions can not be the source of a verdict. However, Rawadari's findings indicate that Taliban courts and judges arbitrarily deliver rulings without adhering to specific principles and rules. Judicial hearings are held privately, often without the presence of a defense lawyer, and relay coerced confessions as legal evidence. In the meantime, punishments are publicly executed. Moreover, Taliban-led courts typically issue rulings orally and do not provide written decisions.

Implementation of Inhumane and Cruel Punishments

The Taliban have been responsible for inflicting extrajudicial and inhumane punishments throughout the country. According to Rawadari's previous reports, a minimum of 109 individuals were subjected to trials and punishments without undergoing a thorough investigation or receiving due process before a competent court during the first 12 months of Taliban rule.

In Kandahar province, Taliban courts routinely whip and then imprison the accused. From August 2021 to June 2023, courts in the southwest region publicly flogged 118 individuals. In one case, a 19-year-old girl was first flogged on the accusation of having an illicit sexual relationship and then sentenced to three years of imprisonment, despite lack of evidence. The victim's father claimed that his daughter was punished by the Taliban for attending school, not for any 'illicit' conduct. He is currently in hiding in fear of retribution for criticizing this Taliban decision as unjust.

Abdul Malik Haqqani, the deputy of the Taliban's "High Office of Courts", stated that their courts have so far issued verdicts for 175 Qisas punishments, 37 stoning verdicts, 4 verdicts of burial under the wall⁶, and 103 Hudood verdicts. He stated that these verdicts will be carried out after the approval of the Leadership Council and Taliban cabinet. In this arbitrary process and with inhumane and degrading punishments, there is no room for the accused to access a fair trial and legal assistance.

⁶ A punishment for same-sex relations under the Taliban, sometimes applied to children who are victims of bacha-bazi (sexual exploitation of boys and young men often by those in positions of power).

CONCLUSION AND RECOMMENDATIONS

In conclusion, the findings of this report paint a concerning picture of the judicial system under Taliban rule in Afghanistan. The absence of clear laws and regulations, coupled with a lack of institutional and individual independence, has created significant barriers to justice. Interference from non-relevant entities, the prevalence of torture and mistreatment of detainees, arbitrary and unlawful detentions, and the disregard for fair trial standards have all contributed to a loss of trust in the Taliban's judicial institutions among the Afghan population. This erosion of trust has pushed individuals to seek alternative, informal avenues for resolving disputes. This has particularly impacted women, specifically women victims of domestic violence who are left with no legal remedy and protection.

Almost two years into the Taliban's governance, the absence of enacted legislation to regulate government institutions and protect citizens' rights has resulted in widespread disorder and a steady erosion of basic freedoms. The lack of legal frameworks allows for arbitrary actions by Taliban members, undermining the rule of law and perpetuating a climate of fear and insecurity for citizens.

The existence and utilization of secret and illegal prisons and lack of regular monitoring of detention facilities under Taliban control raises serious concerns about the treatment and well-being of detainees. This lack of regular oversight further compounds the human rights challenges faced by detainees.

The absence of an effective and accountable mechanism to monitor the performance of legal and judicial institutions has fostered corruption and the violation of citizens' rights. The lack of checks and balances allows for unchecked abuses within the system.

Addressing these issues requires collective action. The international community must hold the Taliban accountable for their actions, urging them to respect human rights principles and implement necessary reforms. Efforts should be made to pressure the Taliban to enact legislation that safeguards citizens' rights and promotes access to justice. The United Nations should conduct comprehensive investigations into secret and illegal prisons, cases of torture, and detention conditions to shed light on these human rights violations.

Recommendations:

These recommendations are intended for the international community, the de-facto authorities, international human rights organizations, civil activists, and the media:

To the International Community:

- **Call for Accountability:** The international community should hold the Taliban accountable as the ruling authority in Afghanistan using a variety of tools and measures. Specifically, the UN Human Rights Council should renew and reinforce the mandate of the UN Special Rapporteur on the situation of human rights in Afghanistan. Additionally, the Council should establish an independent international accountability mechanism dedicated to Afghanistan.
- **Conduct Comprehensive Investigations:** The United Nations Assistance Mission in Afghanistan (UNAMA) should conduct thorough investigations into illegal and secret prisons, cases of torture, and the conditions of prisons under Taliban control. The findings should be made shared with human rights organizations, media outlets and the public.
- **Support to women defense lawyers:** The international community should support the provision of legal assistance in Afghanistan through credible non-government organizations, with particular attention and support provided to women defense lawyers as they explore ways to continue their work.

To the De-facto Authorities:

- **Uphold Human Rights Obligations:** The de-facto authorities must fulfill their legal obligations by respecting human rights values and upholding fair trial standards. They should refrain from violating the principles of a fair trial in their judicial proceedings.
- **Close Illegal Prisons and Prevent Torture:** Immediate action should be taken to close down private prisons and guarantee the right to freedom from arbitrary and illegal detention. Strict measures should be implemented to prevent torture and mistreatment of prisoners including but not limited to investigating cases of torture and arbitrary detention and holding perpetrators to account.
- **End Systematic Discrimination against Women and Religious Minorities:** The current systematic discrimination in legal and judicial institutions against women, religious minorities and other marginalized groups is a denial of justice to the Afghan population and must be immediately addressed through laws, decrees and enforcement. The de-facto authorities should enable women's safe return to work in the legal and judicial sector and re-establish protection framework and mechanisms to facilitate women's access to justice.
- **Enable Independent Detention Monitoring:** The de facto authorities should grant access to independent human rights organizations to monitor prisons and detention centres.

To International Human Rights Organizations, Civil Activists, and Media Outlets:

- Advocate for Human Rights: International human rights organizations should actively engage in efforts to improve the human rights situation in Afghanistan. As the attention moves away from Afghanistan, they should continue to dedicate resources and expertise to advocate for the rights of the Afghan people.
- Coordinate Joint Advocacy: Collaboration and coordination among human rights organizations and media outlets are crucial. Joint efforts should be undertaken to hold the Taliban accountable for human rights violations and to ensure consistent, aligned advocacy.
- Document and Report Human Rights Violations: Media outlets should work in collaboration with organizations and human rights defenders to document and report human rights violations in Afghanistan, safeguarding the safety of victims and witnesses.

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