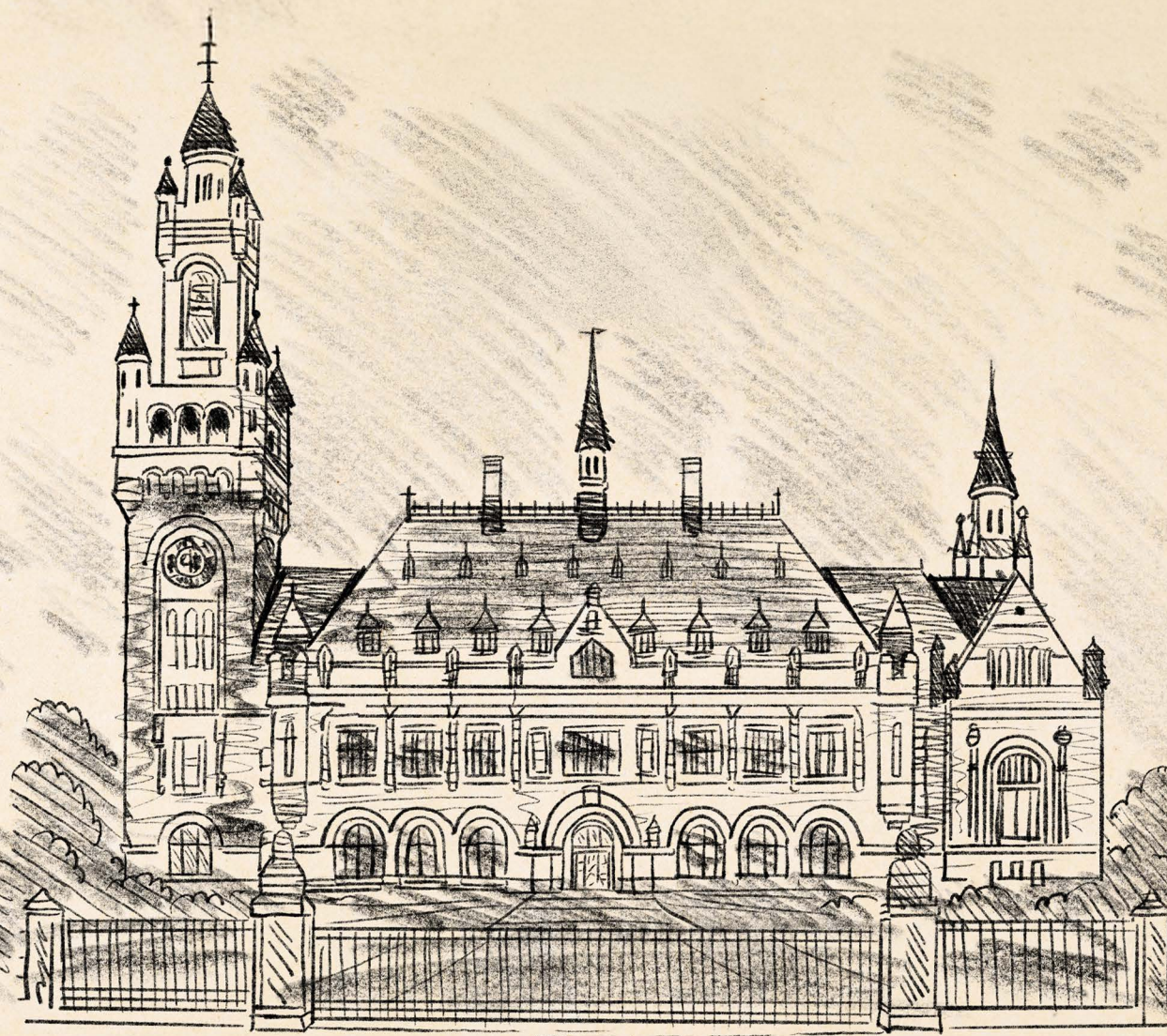


# Bringing a Case Before the International Court of Justice for the Rights of Afghan Women and Girls

September 2025



# Acknowledgments

This paper was authored by Natasha Arnpriester, Manuela Londoño, Mariana Pena, Genevieve Quinn, and Duru Yavan, with editorial review and contributions by James Goldston and Omar Waraich. The selected questions and answers were developed through consultations with Afghan civil society, international partners, legal experts, and the vital collaboration of Rawadari, an Afghan human rights organization and a key partner in advocacy and consultations for an ICJ CEDAW case. Additional contributions to the preparation of this initiative were made by colleagues from the Open Society Justice Initiative and Open Society Foundations, including those above, as well as Betsy Apple, Zsanett Borsos, Georgiana Epure, Shehryar Fazli, Sana Ghouse, May-Lin Lecomte, Sophie Li, Peyman Majidi, Diana Romina Puerto Michaut, Ashrakat Mohammed, Beini Ye, and Stephanie Yung. All contributors are listed in alphabetical order by surname.

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# Summary

“[N]owhere else in the world has there been an attack as widespread, systematic, and all-encompassing on the rights of women and girls as in Afghanistan.” *Report of the UN Special Rapporteur on the situation of human rights in Afghanistan and the UN Working Group on discrimination against women and girls*. Despite international condemnation of the Taliban’s oppressive actions, no legal action has been pursued to restore the human rights of Afghan women and girls. Instead, the Taliban continue to escalate their repression.

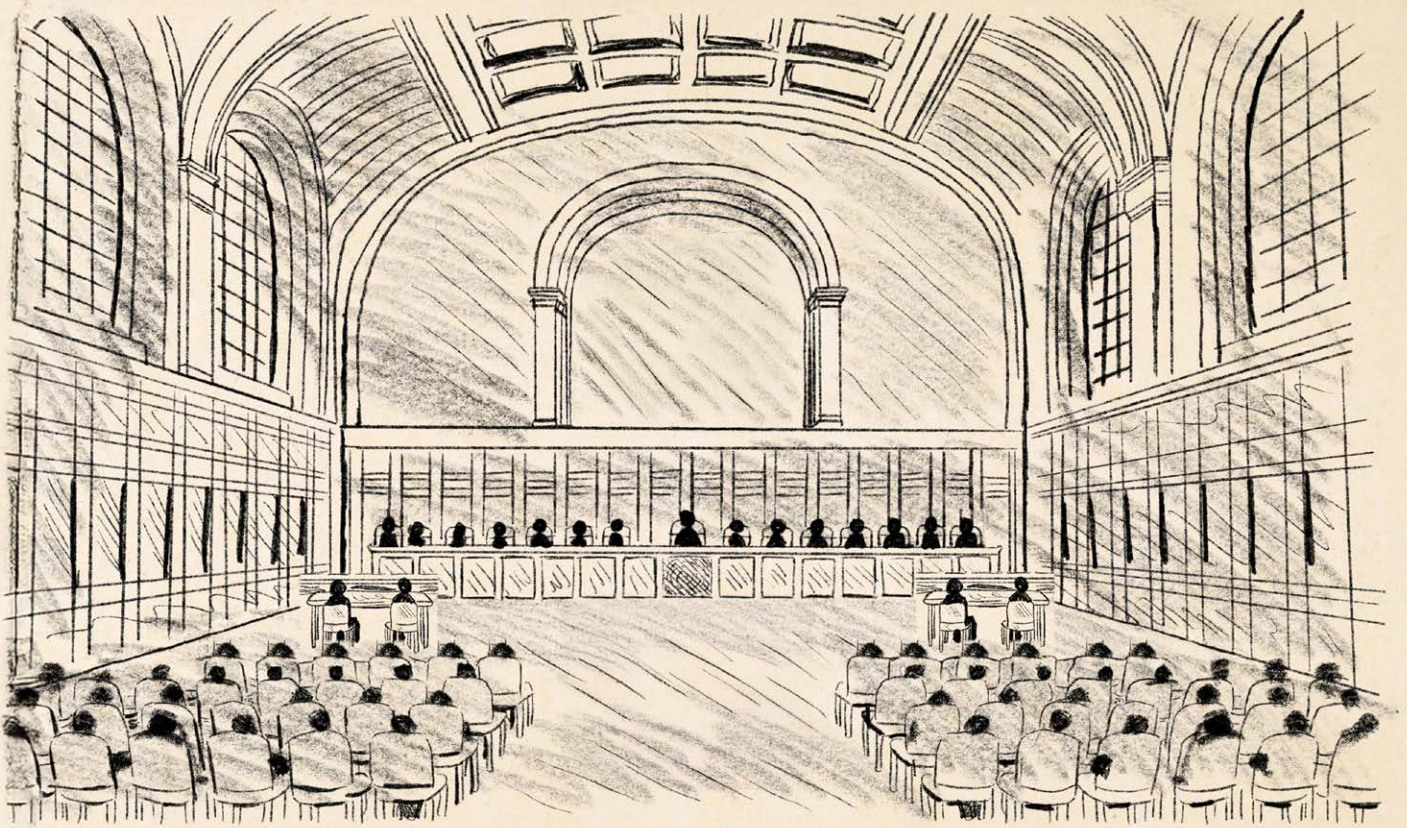
A growing coalition of Afghan women, UN mandate holders, legal experts, civil society, and activists have urged countries to bring a case against Afghanistan before the International Court of Justice (ICJ) for violations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Afghanistan is a party. In September 2024, Australia, Canada, Germany, and The Netherlands announced preliminary steps toward this path to accountability, but an official case has not yet been filed.

The ICJ is increasingly recognized as a vital venue for addressing state responsibility for severe human rights violations. Recent decisions by the ICJ in conflicts like Gaza, Ukraine, and Myanmar underscore the opportunity for the international community to engage the Court on the dire situation of Afghan women and girls under the Taliban regime. Nevertheless, there is uncertainty and misunderstanding regarding potential proceedings before the ICJ.

In response to inquiries from a diverse group of stakeholders, below is a set of 29 frequently asked questions addressing the feasibility and implications of initiating a case before the ICJ on Afghan women’s and girls’ rights. These questions explore the ICJ’s role relative to the International Criminal Court, the steps for a potential case, the concern of legitimacy and recognition of the Taliban, the role of Afghan civil society, and possible outcomes. This Q&A also highlights how ICJ litigation could support Afghans through possible legal rulings, bolstering advocacy efforts, influencing international relations, and offering other practical benefits.

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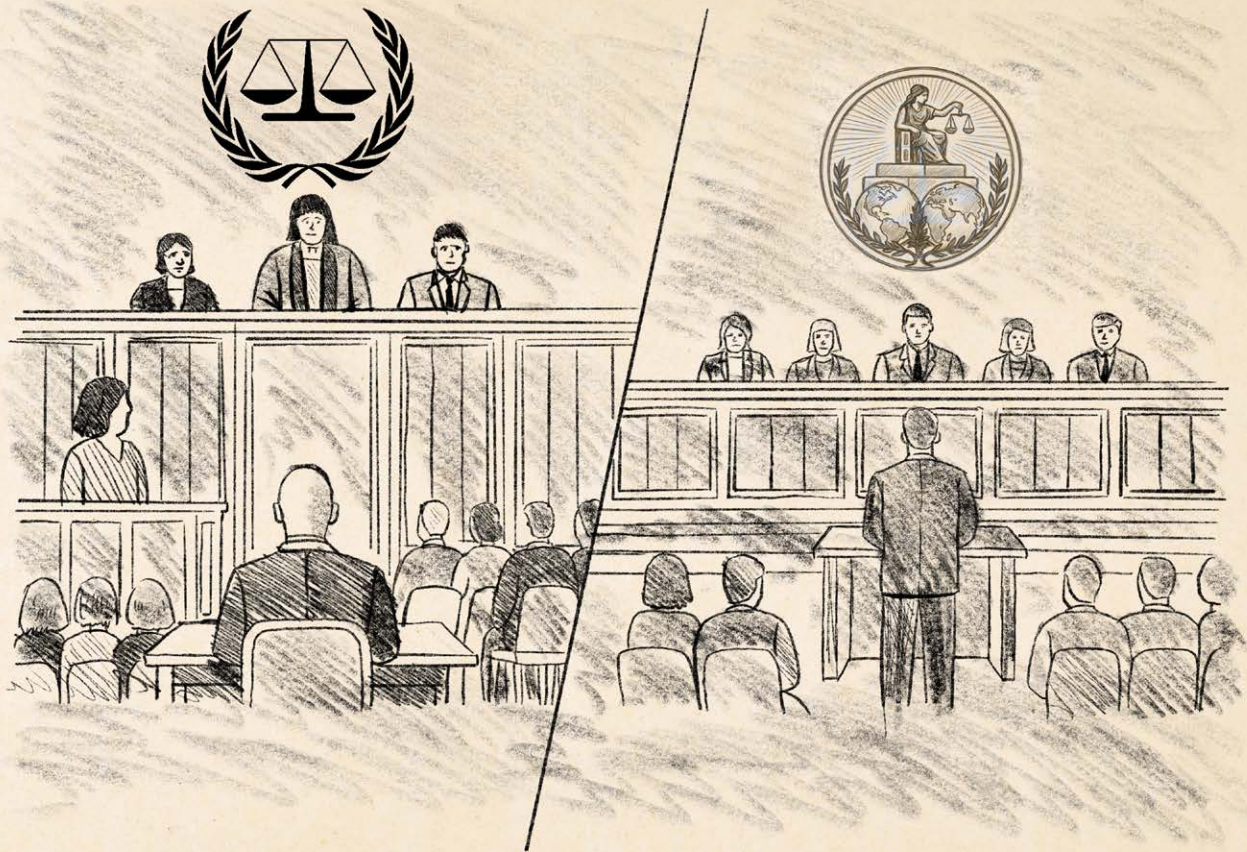


## 1. What is the International Court of Justice?

*The principal judicial organ of the United Nations (UN)*

The International Court of Justice (ICJ, or “Court”), often called the World Court, is the principal judicial organ of the United Nations. Located in The Hague, Netherlands, its main function is to settle legal disputes between countries in accordance with international law. Countries can submit disputes to the ICJ, which then examines the facts and the relevant laws before issuing a binding decision. Additionally, the Court provides opinions on legal questions (“Advisory Opinions”) posed by authorized UN entities and specialized agencies (e.g., World Health Organization, International Labour Organization). The ICJ is composed of 15 judges from different countries, which reflect a diverse range of legal traditions from around the globe, helping to ensure a more comprehensive perspective on international law. The Court’s proceedings are public and live-streamed, promoting transparency and accessibility.



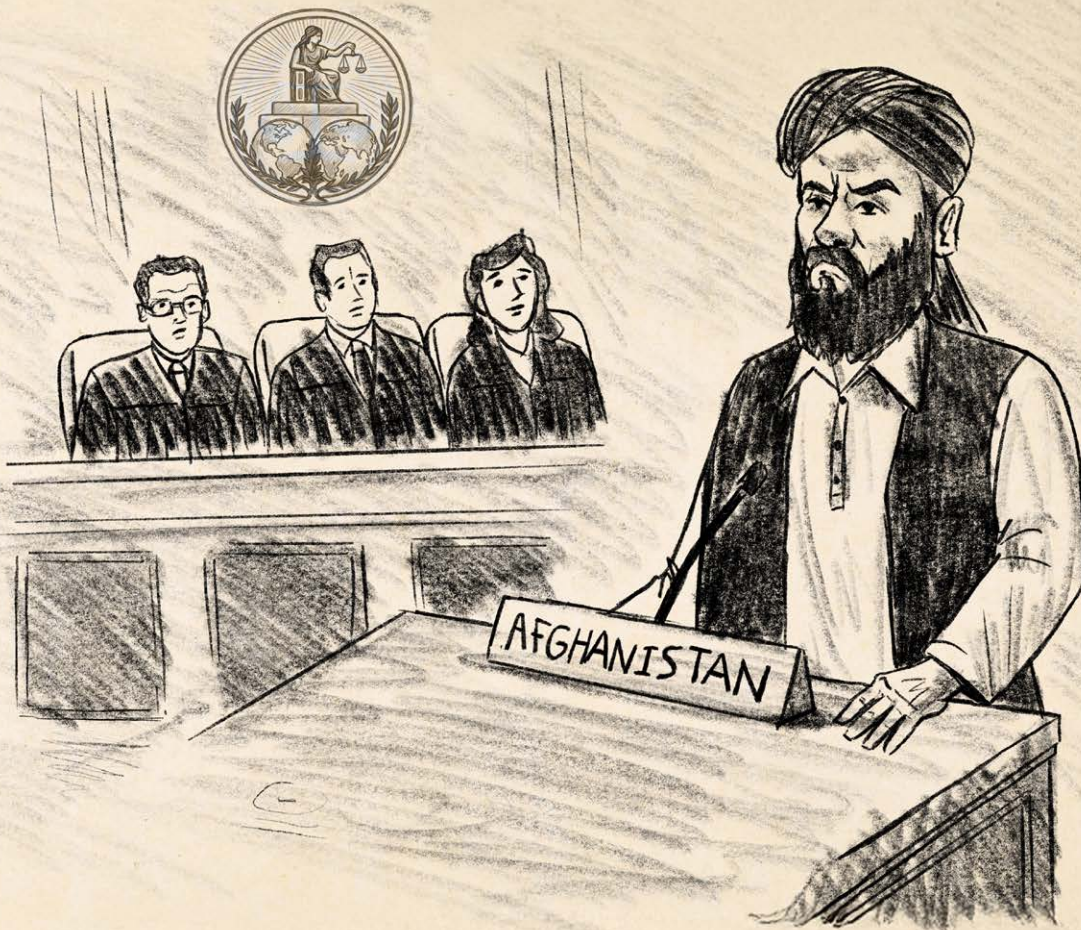


## 2. What is the difference between the ICJ and the International Criminal Court (ICC)?

*The ICJ and ICC have different mandates*

The ICJ should not be confused with the ICC. While both courts are located in The Hague, they serve very different purposes. The ICC only has jurisdiction to prosecute individuals accused of genocide, crimes against humanity, and war crimes; and cases are initiated by the ICC Prosecutor, who has discretion over whom to prosecute and which cases to pursue. On the other hand, the ICJ is not a criminal court, but a court that hears cases between countries. This often involves cases about which country owns a territory, where border lines lie, and the application of international treaties. The ICJ does not depend on a prosecutor to start a case; instead, countries themselves initiate proceedings. Once a country files a case at the ICJ against another country, the Court is obligated to hear the dispute as long as it falls within the Court's jurisdiction.





### 3. Why can Afghanistan be brought before the ICJ for violations of women's and girls' rights?

#### *Breach of international legal obligations*

Afghanistan is bound by international rules that safeguard women's and girls' rights. One key agreement is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Afghanistan became a party in 2003. Its commitment to CEDAW obligates Afghanistan to ensure equal rights and legal protections for women and girls. Article 29 of CEDAW allows for disputes relating to the interpretation or application of the Convention to be referred to the ICJ, but only if the involved countries have expressly accepted its jurisdiction. Afghanistan's ratification of CEDAW included acceptance of Article 29, thereby granting the ICJ jurisdiction over such disputes. Over the years, Afghanistan has committed significant violations of its CEDAW obligations, creating grounds to bring the country before the ICJ to address those breaches.





#### **4. Who can bring the case under CEDAW against Afghanistan before the ICJ?**

*Only another country (not individuals or organizations) can bring the case against Afghanistan before the ICJ*

Only countries can bring cases before the ICJ; individuals and organizations cannot. To bring an ICJ case against Afghanistan for violations of CEDAW, a country (or group of countries) must meet two requirements, they must have: (1) ratified CEDAW; and (2) accepted the Court's jurisdiction to hear a case on CEDAW under Article 29.

When countries join a treaty like CEDAW, they are not just agreeing to follow its rules, they are also counting on every other country that is part of the agreement to do the same. This collective expectation creates a global network of rights and responsibilities among all these countries to work together to end discrimination against women. If a country believes Afghanistan is not living up to its promises under CEDAW, it has the right to challenge Afghanistan at the ICJ.

Among the 189 countries that are part of CEDAW, 150 (including Afghanistan) have agreed to allow the ICJ to hear cases under the Convention. This means that any one of 149 countries can file a case against Afghanistan for breaching its CEDAW obligations.





## 5. Who exactly would be sued: the State of Afghanistan or the Taliban?

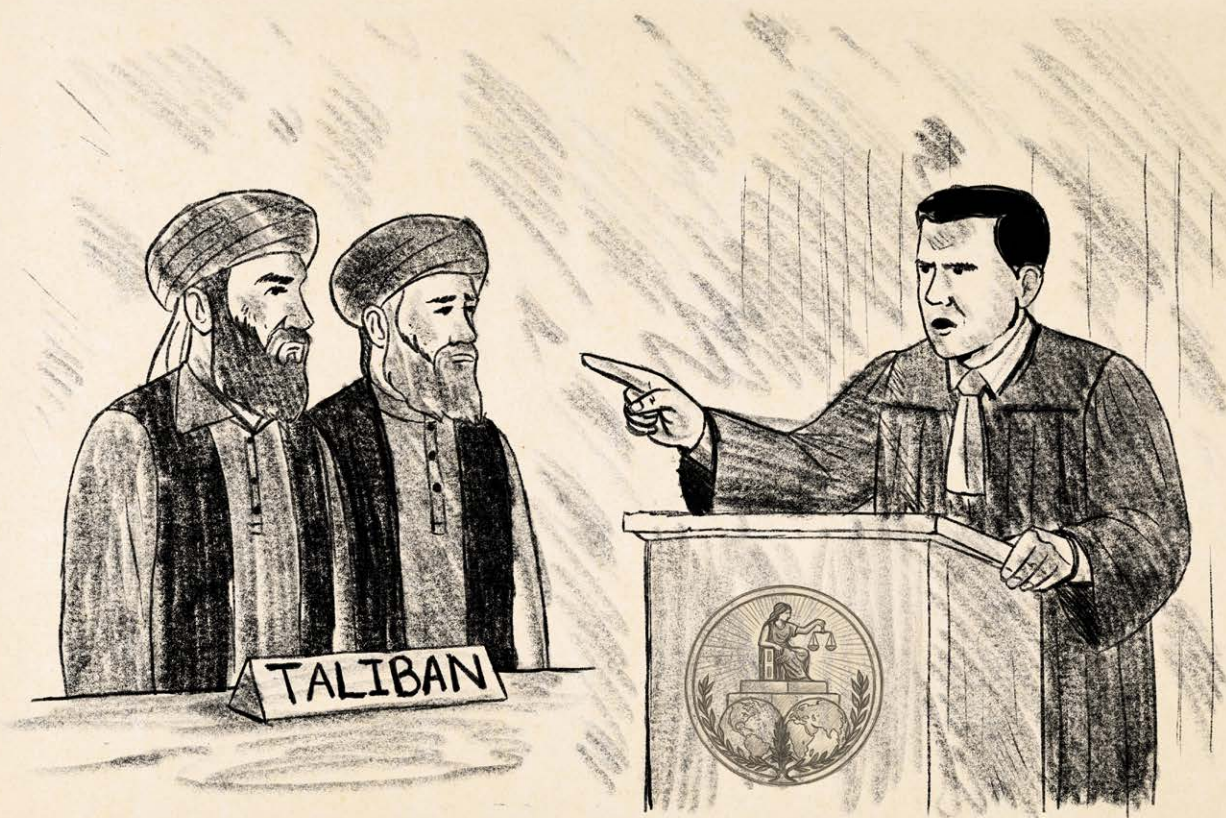
### *The State of Afghanistan*

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## 6. Who will represent Afghanistan before the International Court of Justice?

*Most likely the Taliban, as the de facto authority of the state of Afghanistan*

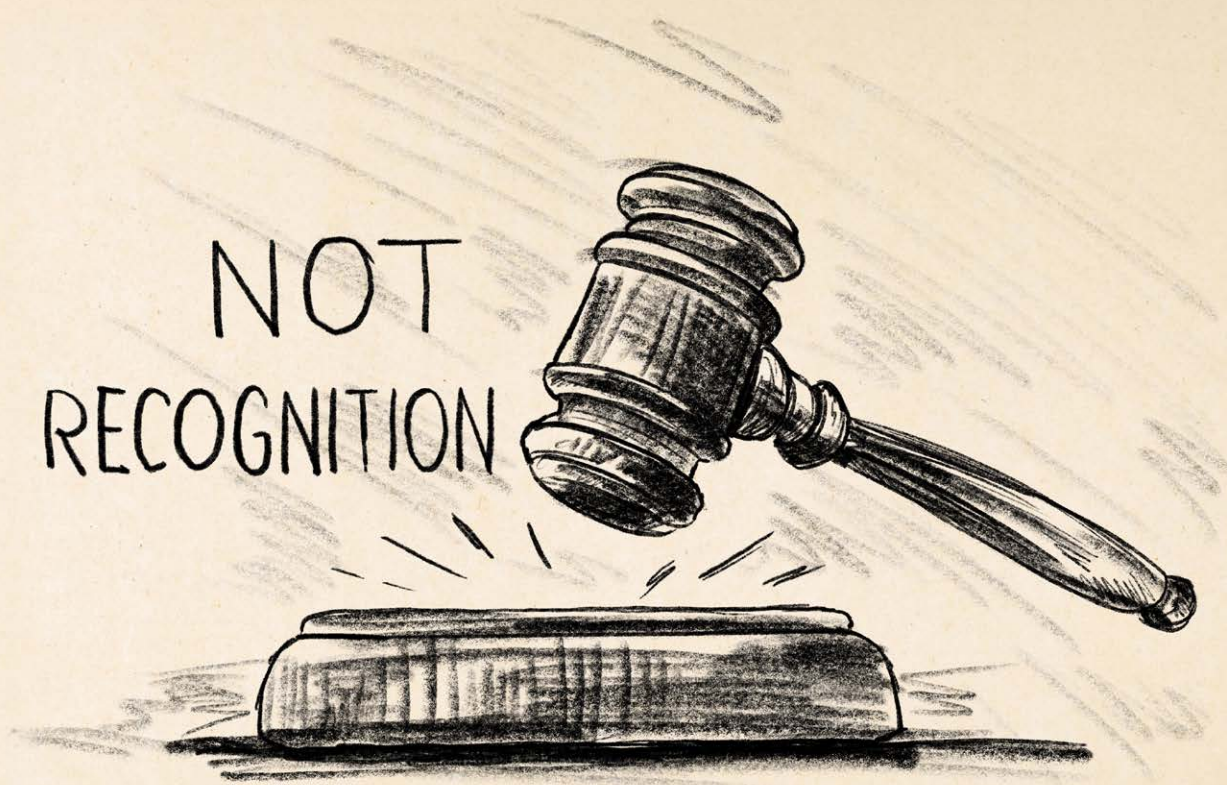
Despite lacking formal recognition, the Taliban's "effective control" over Afghanistan's territory and population establishes them as the de facto ("in fact") authority of Afghanistan. As such, under international law, the Taliban's actions are attributable to Afghanistan, and their conduct is considered an act of the state (Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 4; Comment 4 to Article 9); a lack of legitimacy does not "exonerate" the Taliban "from responsibility for the conduct of its personnel" (Article 10). Therefore, regardless of the Taliban's unrecognized status, they are the most relevant actor to appear before the ICJ and they are accountable for women's rights violations occurring in the country.

There is ICJ precedent from similar situations. In the case of *The Gambia v. Myanmar* under the Genocide Convention, the Court permitted Myanmar's de facto government, the military junta, to represent the country due to its effective control over the state's territory, despite lacking formal recognition.



In terms of formal legal representation, typically internal state lawyers (such as those from the ministries of justice or foreign affairs) represent countries before the ICJ. Countries also hire specialized external law firms and international law experts for their legal teams. At this point, it is unclear who would represent the Taliban legally or whether they would engage external counsel.

If the Taliban decide not to participate in the case, the ICJ can proceed to hear the case in their absence. This has happened in other cases, including the recent Convention Against Torture (CAT) case against Syria, where no representative appeared on Syria's behalf. A lack of appearance in the case by Afghanistan would not alter the Court's procedure—the applicant countries would still be able to present the entirety of their case and the full scope of alleged violations. Similarly, the ICJ would still be fully empowered to proceed and render a binding judgment against Afghanistan.



## **7. Would a case against Afghanistan before the ICJ require or result in recognition of the Taliban?**

*An ICJ case against Afghanistan would not require nor result in recognition of the Taliban*

Filing a case at the ICJ against Afghanistan for its human rights violations does not mean that the Taliban will be recognized as the country's government. The ICJ has previously handled cases involving countries with unrecognized governments without it resulting in recognition. For instance, the United States filed a case against Iran in 1980 without recognizing its revolutionary government; and The Gambia's case against Myanmar continued despite the 2021 military coup by its now unrecognized government. Notably, in the Myanmar case, the Court clarified that its proceedings involve countries, not governments, which means that a case against a country does not equate to recognition of that country's government.

Moreover, an ICJ case highlighting Afghanistan's breaches of women's and girls' rights could impede the Taliban's pursuit of recognition. A recent report to the UN Security Council, pursuant to Resolution 2679 (2023), concluded that recognition should hinge on the Taliban's compliance with Afghanistan's international obligations, including CEDAW, as reflected in their policies, laws, and actions. An ICJ ruling affirming Afghanistan's violation of these obligations would provide an



authoritative legal obstacle to recognizing a Taliban-led government.

From a practical perspective and to ensure that the Taliban remain unrecognized throughout the ICJ proceedings, the applicant countries can and should emphasize their continued lack of recognition. Specifically, countries can clearly state in all their submissions and oral arguments before the Court that they do not acknowledge or recognize the Taliban as the government of Afghanistan. Instead, they are seeking accountability for rights violations that should preclude any path to recognition.



## 8. Even if an ICJ case against Afghanistan doesn't require or result in recognition, could it help legitimize the Taliban?

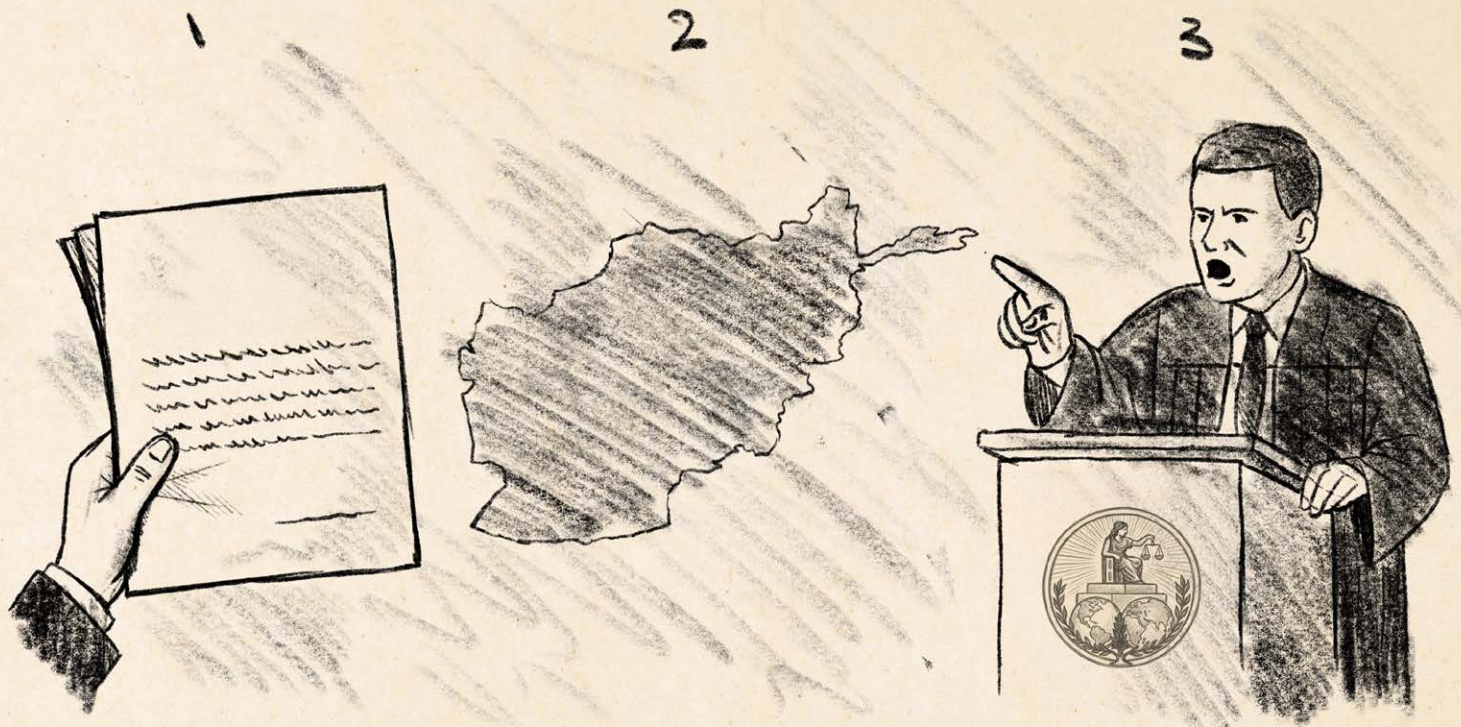
*An ICJ case would spotlight international condemnation of the Taliban's conduct and underscore their lack of legitimacy as actors in the international system*

The ICJ has previously handled cases involving problematic governments without legitimizing them. For instance, in 1960, Ethiopia and Liberia brought landmark cases against apartheid South Africa, using the ICJ as a platform to delegitimize the ruling government internationally. These cases contributed to broader global efforts that eventually led to South Africa's suspension from the UN General Assembly for its apartheid policies.

Similarly, bringing a case to the ICJ would not legitimize the Taliban. Instead, it would highlight their egregious human rights abuses—which constitute serious violations of international law—reinforcing their status as international pariahs.

Bringing the Taliban's actions to trial could significantly hinder their efforts to appear as legitimate actors, let alone the legitimate government of Afghanistan. An ICJ ruling confirming the Taliban's violations of international standards, like CEDAW, could serve as a powerful deterrent to any country considering normalizing relations with them.





## 9. What are the steps for initiating an ICJ case against Afghanistan?

*Notification followed by attempts to negotiate and arbitrate*

The process to bring an ICJ case against Afghanistan for violating CEDAW involves a few steps; to start:

1. A country or group of countries must notify Afghanistan of their belief that it has violated CEDAW. This is typically done through a diplomatic note to a country's mission, ministry, or other diplomatic channel.
2. Afghanistan will either respond or remain silent. If Afghanistan disagrees or is silent, this will establish a "dispute" between the countries. The countries must then "negotiate," meaning they must make a "genuine attempt" to resolve the dispute. No specific timeframe is prescribed for negotiations, which can range from a few months to significantly longer, depending on how the countries proceed.
3. If "negotiations" fail, the countries are expected to "organize" arbitration. Arbitration is a separate process of resolving disputes outside of court, but it also results in a binding, legally enforceable judgment. If, within six months, the countries cannot agree on specifics—such as the location or the choice of arbitrators—or if Afghanistan ignores efforts to arrange arbitration during this time, the case may proceed to the ICJ.





## 10. What does it mean that countries must “negotiate” before bringing a case to the ICJ?

*Unlike other negotiations controlled by the Taliban, “negotiation” under CEDAW would focus solely on restoring women’s rights*

When countries are required to “negotiate” before bringing a case to the ICJ, they must make a “genuine attempt” to resolve their dispute before turning to the Court. This requirement helps ensure that the ICJ’s limited resources are reserved for disputes that cannot be resolved through dialogue and demonstrates that the issue is serious enough to warrant the Court’s intervention.

According to ICJ jurisprudence, a country must provide evidence of real efforts to engage the other party in resolving the disagreement. A theoretical attempt is insufficient; there must be proof that negotiations failed, became futile, or reached a deadlock. Additionally, the negotiations must directly address the subject matter of the dispute—in this case, CEDAW obligations regarding women’s rights in Afghanistan.

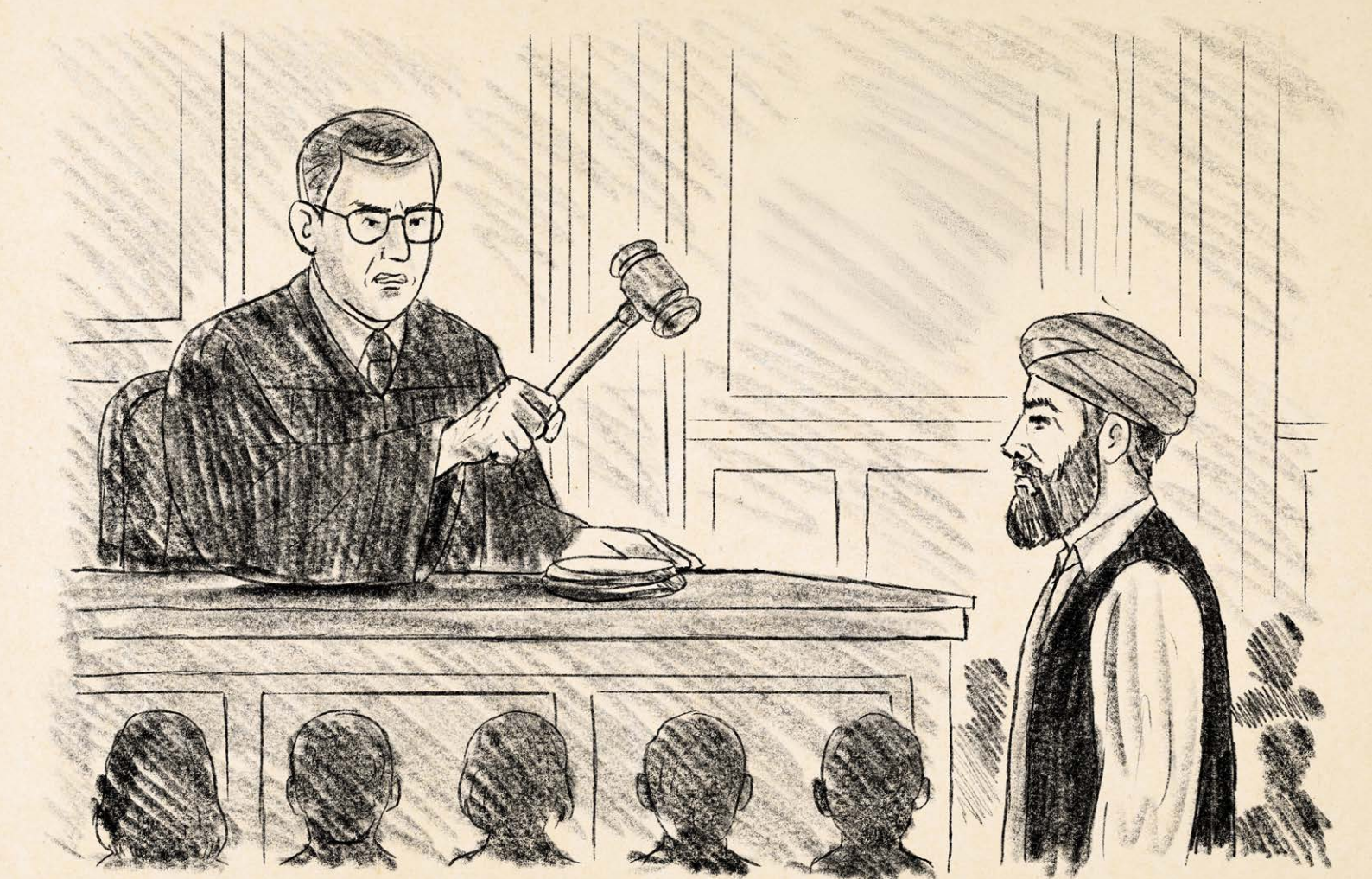
Unlike broader negotiations, such as the “U.S.-Taliban Peace Deal” or the UN-led Doha Meetings—where the Taliban controlled participation by insisting on the exclusion of women and the removal of human rights from the agenda—negotiations under CEDAW would focus



specifically on restoring women's rights in Afghanistan. The countries initiating the dispute are expected to demand that violations under CEDAW be resolved and restrictions on women lifted.

The Taliban can choose whether to engage in these discussions. If the Taliban refuse to participate, the applicant countries can still fulfill the negotiation requirement by acting in "good faith," meaning they must make a genuine effort to resolve the dispute. In such a case, the process can proceed to the next procedural phase (organize arbitration).

Logistically, negotiations can involve an exchange of diplomatic notes outlining the dispute and seeking responses, potentially culminating with in-person meetings. The ICJ has accepted that this requirement can be met through written exchanges alone or with one or two meetings. If positions remain unchanged and negotiations clearly cannot resolve the dispute, the ICJ will likely consider that the negotiation precondition under CEDAW has been fulfilled.



## 11. What can the ICJ order against Afghanistan?

*Unlike other negotiations controlled by the Taliban, “negotiation” under CEDAW would focus solely on restoring women’s rights*

As the ICJ is not a criminal court, its rulings must focus on ordering Afghanistan to take measures to stop violating women’s and girls’ rights and/or to remedy past violations. The ICJ has a wide range of options for its rulings, including: a formal declaration that Afghanistan has breached its obligations under CEDAW, identifying specific violations, such as banning women from working and moving freely; an order for Afghanistan to perform its obligations under CEDAW, such as directing the state to remove discriminatory policies and practices on education, freedom of movement, access to healthcare, and other public services; an order requiring Afghanistan to make assurances and guarantees that it will halt its violations of CEDAW, such as requiring the state to repeal discriminatory laws and policies and taking steps to prevent future violations; and an order instructing Afghanistan to prevent the destruction and to ensure the preservation of evidence related to acts that violate CEDAW, such as not destroying documents or cooperating with investigations.





## 12. How long will the case take?

*Although a case can take years to resolve, the ICJ can issue binding interim rulings within weeks*

The length of ICJ cases varies and, in some cases, can take years to resolve. For instance, the Bosnia and Herzegovina v. Serbia and Montenegro case under the Genocide Convention spanned almost 15 years. However, when immediate action is needed, the ICJ can act swiftly and issue binding interim decisions (called “provisional measures”) within weeks. These “provisional measures” are urgent orders by the Court aimed at stopping immediate harm and protecting rights at risk before the final judgment. In a case against Afghanistan, such measures could include orders to, for instance, lift discriminatory restrictions on education and access to healthcare, cease ill-treatment of women, and refrain from destroying vital information related to the case.

Provisional measures can be requested by the applicant countries at the time the case is filed, and the Court can order them quickly. In recent cases, provisional measures were issued within days or weeks after the case was filed. For example, in a case brought by Ukraine against Russia, the Court issued provisional measures 18 days later, and, in a case that South Africa filed against Israel, provisional measures were issued within 28 days.





### 13. Will filing a case against Afghanistan have any immediate impact?

*An ICJ case can have immediate legal, diplomatic, and political impact*

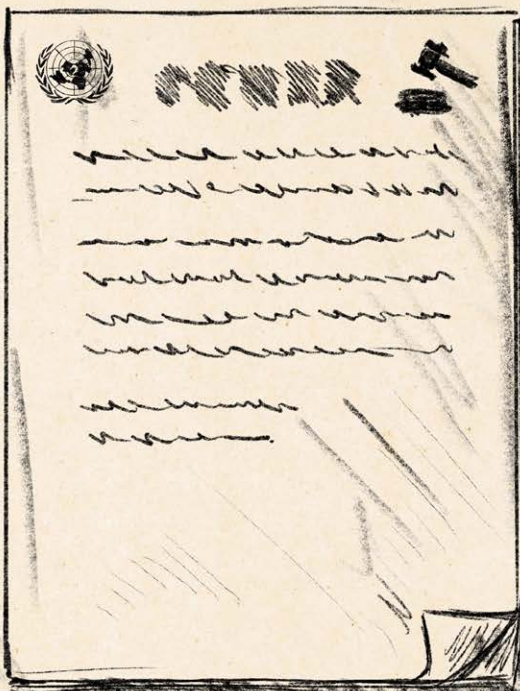
Filing a case against Afghanistan at the ICJ can have significant immediate impact, even before a final ruling is made. This impact can span the diplomatic, legal, and political spheres.

The act of filing the case itself sends a clear message to the Taliban that the international community condemns—and is committed to using all available legal avenues to challenge the egregious human rights violations to which Afghan women and girls are being subjected every day. This legal approach moves beyond general statements of condemnation and calls for change, into a legally binding process that reflects the urgency, gravity, and authority which mere statements cannot achieve. It lays a legal foundation for further monitoring and advocacy by journalists, rights advocates, humanitarian organizations, other countries, and international bodies. As shown in the recent case South Africa filed against Israel, an ICJ case can also serve as an elevated warning to other countries that are aiding international law violations.



An ICJ case also creates stronger attention within international bodies, including the UN Security Council, which can lead to increased pressure on the Taliban. Moreover, if the ICJ orders provisional measures, the UN Security Council must be notified, thereby sharpening the Council's focus on Afghanistan and women's rights, in particular. The Security Council has the power to enforce provisional measures, including through a formal mechanism.

Finally, as already mentioned, the case can delay and create strict conditions for any prospective international recognition and legitimacy that the Taliban seeks.



## 14. Are ICJ orders legally binding?

*ICJ orders are binding, and Afghanistan must comply with the Court's judgments*

Under the UN Charter, Afghanistan is legally obligated to comply with the decisions of the ICJ; this includes orders for provisional measures (see Question 13). Should Afghanistan fail to comply with ICJ orders, the applicant countries can turn to the UN Security Council, which has the power to enforce the Court's orders.

Additionally, ICJ orders and judgments have value in themselves: they can help in the context of negotiations and be leveraged by other UN mechanisms, regardless of whether the Taliban immediately comply with an order (see Question 15).





## 15. What happens if Afghanistan does not comply with an ICJ ruling?

*Implementation relies on compliance mechanisms and international pressure*

While the Taliban are unlikely to immediately comply with a ruling on Afghanistan's violations, other options for enforcement will remain open. The ICJ lacks direct enforcement mechanisms, just as the ICC does not have its own police force. However, in cases of non-compliance with ICJ rulings, the UN Charter outlines several options involving such entities as the UN General Assembly, Secretary-General, and Security Council. Article 94, for example, empowers the Security Council to take measures to ensure compliance, ranging from sanctions and travel bans to establishing inquiry commissions and recommending that the General Assembly take further actions, such as suspending a country's UN privileges.

Even the threat of such actions could sway the Taliban to lift oppressive decrees, or at least deter them from introducing new ones. The ability of the Security Council to take decisive action can sometimes be constrained by vetoes from its permanent members, but given the global consensus on Afghanistan with regards to treatment of women and girls, this may be less of a concern. That said, even if a decision does not directly change Taliban behavior, its impact could reach beyond the Court's order. In cases of non-compliance, power can also lie in international pressure and other forms of influence.





## 16. How could an ICJ case help Afghan women, especially if a decision is not directly enforced?

*There are tangible opportunities to help Afghan women through international advocacy*

As discussed, while direct enforcement is limited, the Court's decisions carry weight and can make a tangible difference for Afghan women and girls, even if only incrementally. For instance:

1. Filing a case against Afghanistan before the ICJ will draw stronger and renewed international attention to the plight of Afghan women and girls. This can enhance advocacy efforts, mobilize new forms of international support, and provide a platform for Afghan voices. As seen in other cases, such increased visibility can bolster political pressure for reversing or easing oppressive policies. Further, the comprehensive nature of proceedings at the ICJ, which can span years, ensures that the situation of women and girls in Afghanistan remains a subject of serious international attention for years to come.
2. ICJ decisions can guide how other countries interact with Afghanistan. For example, these rulings might be used as requirements before improving trade relations or officially recognizing a Taliban government. This may be particularly relevant to



countries that are invested in the Court's success and want to see the Court's orders lead to tangible outcomes. An ICJ ruling might also lead countries linked to the Taliban to reassess their relationships, considering the legal risks they would face if perceived as assisting violations of international law.

3. The possibility that ICJ proceedings might affect the Taliban's chances of gaining legitimacy could discourage new oppressive laws against women and girls.

4. Concerns over UN Security Council penalties for non-compliance with an ICJ ruling might prompt the Taliban to revoke oppressive laws or deter enactment of new ones.

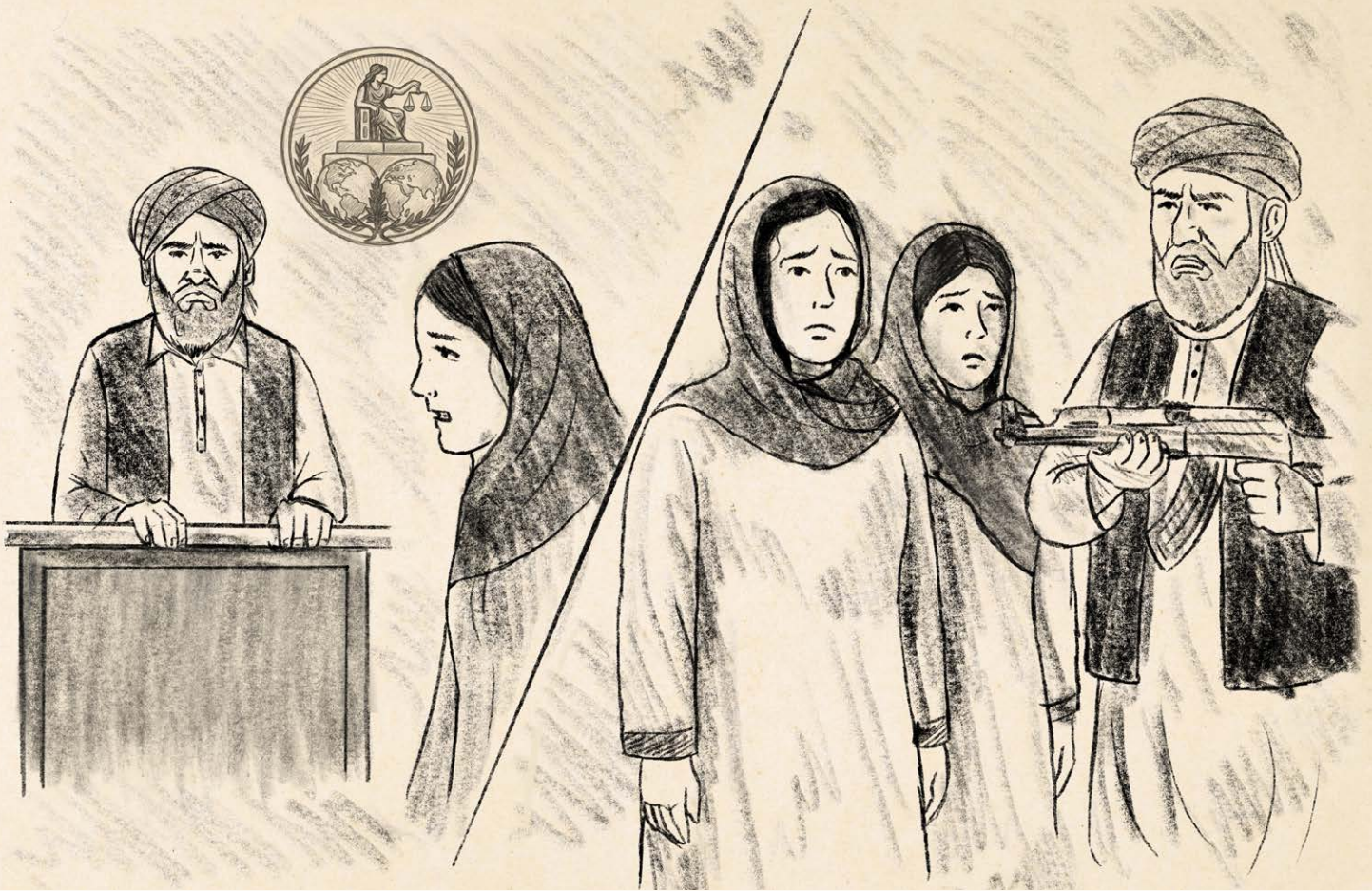
5. Highlighting discriminatory or incriminating statements from Taliban officials can intensify public scrutiny and legal pressure on those individuals. This strategy, used in other ICJ proceedings, not only aids criminal investigations but might also lead officials to limit or cease harmful actions against women as a self-protective measure.

6. An ICJ decision can make it easier for Afghans to seek asylum in other countries and to receive humanitarian aid. An ICJ ruling would prove these individuals' need for protection by officially recognizing the violations from which they are fleeing.

7. Documenting violations against women and girls in ICJ proceedings contributes to a historical record, which aids future accountability efforts, including, for example, the prosecution of Taliban officials before the ICC or national courts.

8. The documentation and findings from ICJ proceedings create a permanent record, laying down the truth of what Afghan women and girls endured under Taliban rule, and representing an official recognition of their experiences.

9. The case offers an opportunity to utilize and uplift the vital documentation conducted by Afghan human rights organizations and media, bringing firsthand evidence to the forefront of the proceedings.



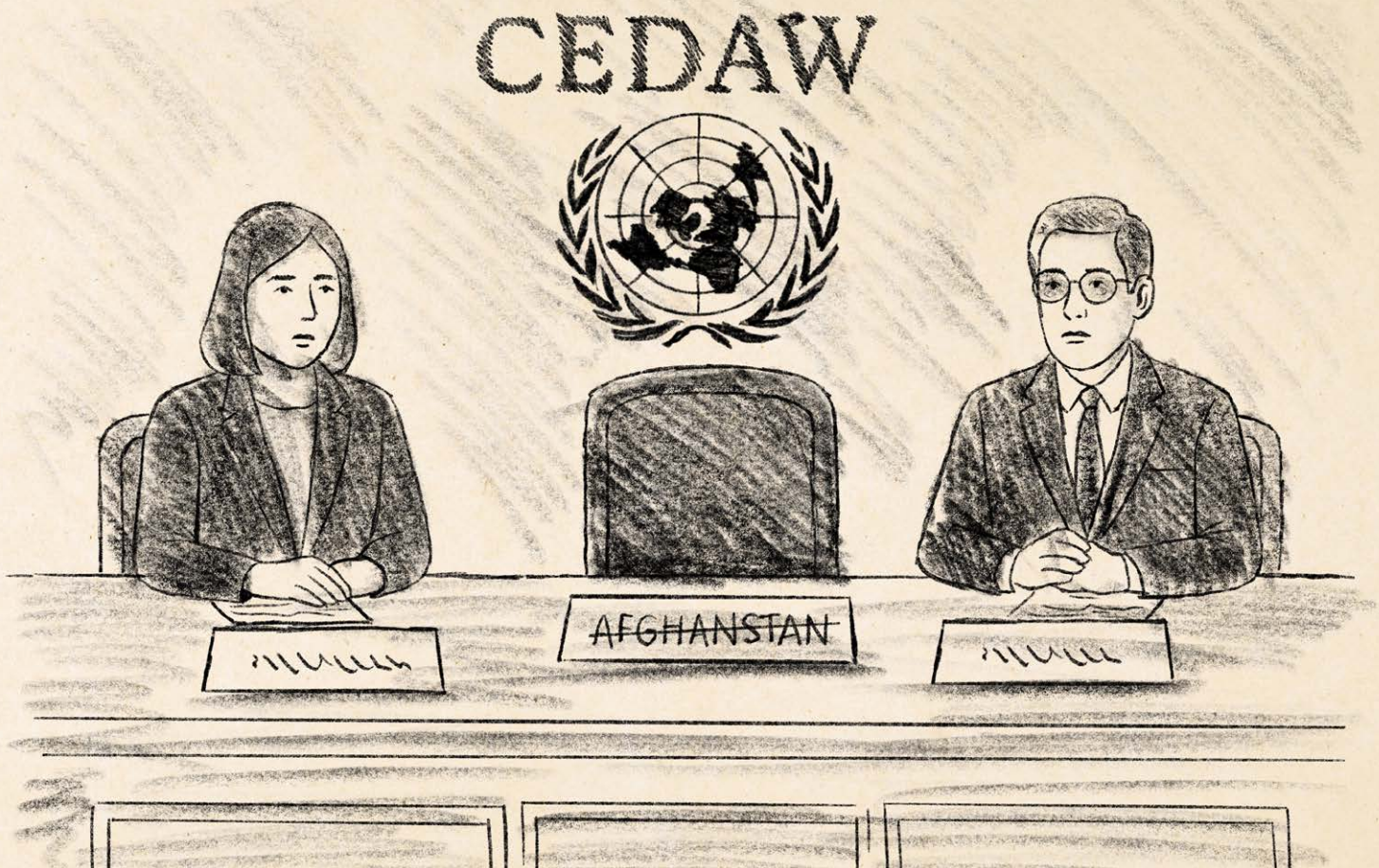
## 17. What are the risks of bringing an ICJ case?

*While there may be some risks, they can be reduced through strategic planning*

“If the Taliban participate in the ICJ proceedings, they could seek to use the platform to spread propaganda and claim legitimacy—though they are not likely to succeed. As explained above, ICJ proceedings do not confer legitimacy or recognition on a *de facto* government (see Questions 7 and 8). The very nature of a case that spotlights the Taliban’s disregard for the rule of law and systematic violations against women and girls inherently counters and diminishes any legitimacy they might seek.

It is also important to acknowledge that the participation of Afghans in an ICJ case could pose security and retraumatization risks to those individuals and their families. To minimize such risks, it is critical that any participation—from evidence-gathering to testimony—be entirely voluntary and fully informed. Prior ICJ cases involving victims of human rights violations, such as *The Gambia v. Myanmar* and *Canada and the Netherlands v. Syrian Arab Republic*, may be helpful in developing strategies to facilitate participation while also minimizing security risks.”





## 18. Can the Taliban withdraw Afghanistan from CEDAW?

*The Taliban lack the international recognition necessary to alter the country's international obligations and CEDAW does not have a clear withdrawal provision*

Because the United Nations does not recognize the Taliban as Afghanistan's legitimate government, they lack the legal authority to alter Afghanistan's international commitments, including its status as a party to CEDAW. Even if recognized, the Taliban would face significant legal barriers to withdrawal, as CEDAW does not explicitly provide for it. Under the Vienna Convention on the Law of Treaties (VCLT)—which guides the interpretation of international treaties—withdrawal when a treaty is silent is only permitted if: (1) it can be proven that the treaty was intended to allow withdrawal; or (2) the nature of the treaty implies a right to withdraw.

Neither condition appears to be met in the case of CEDAW. The exclusion of a withdrawal clause seems intentional. Earlier drafts of CEDAW included withdrawal provisions, however, many states objected, arguing that such provisions, for instance, weakened the Convention. As a result, the final version of CEDAW, adopted in 1979, deliberately excluded a withdrawal clause.

This omission is particularly significant when compared to the earlier women's rights treaties that CEDAW was to subsume—the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)—all of which included explicit withdrawal clauses. The absence of such a provision in CEDAW signals a conscious decision by its drafters to establish the treaty as enduring.

Additionally, CEDAW's focus on universal values, such as equality and non-discrimination, and its purpose to extend human rights protections to women, do not imply a right to withdraw. The context of its drafting further reinforces this interpretation. The 1970s marked a transformative period in the global approach to women's rights. The United Nations highlights this era as the rise of "the international feminist movement," driven by UN member states initiatives such as the first "International Women's Year," the "Decade for Women," and the "World Conference on Women," a collective momentum underscoring the indivisibility of women's rights.

The Taliban's ability to withdraw is further constrained by the VCLT's Article 54, which stipulates that when a treaty is silent on withdrawal and the two conditions for withdrawal are not met, a country may only withdraw with the consent of all treaty parties. For Afghanistan, this would require agreement from all 188 other state parties—an outcome that is practically impossible.

Even in the exceedingly unlikely event that Afghanistan could withdraw, the VCLT would still require a 12-month notice period for withdrawal to take effect. During this time, Afghanistan would remain bound by CEDAW, and violations occurring before the effective date of withdrawal could still be brought before the ICJ.

Beyond full withdrawal from CEDAW, Afghanistan's ability to opt out of Article 29—the provision allowing countries to bring disputes before the ICJ—is similarly restricted. International law generally permits reservations only at the time of ratification, not afterward (VCLT, Article 19). Importantly, Afghanistan ratified CEDAW without any reservations. Further, Guideline 2.3 of the International Law Commission's Guide to Practice on Reservations to Treaties specifies that new reservations are prohibited unless the treaty explicitly allows it (which CEDAW does not) or all other parties consent. If even one party objects, the reservation is invalid, and CEDAW would remain fully binding on Afghanistan.





## 19. How can an ICJ case affect other accountability and justice mechanisms?

*An ICJ case will complement other accountability and justice mechanisms*

An ICJ case can strategically complement other accountability efforts. Each accountability mechanism has limitations in delivering justice to Afghan women and girls, yet each also offers unique value.

To date, most discussions around accountability in Afghanistan have focused on criminal accountability—notably before the ICC and through domestic cases in different countries, using the concept of universal jurisdiction. The threat of criminal accountability (including the likelihood that some members of the Taliban may end up in prison) is powerful. At the same time, criminal trials alone have limitations. For example, only certain types of crimes can be prosecuted and only a few individuals can be tried.

The ICJ, however, offers an opportunity to address responsibility for several state violations under international law. This opens a pathway for holding the Taliban broadly accountable for a wider range of violations that could otherwise go unaddressed. Also, litigation before the ICJ could yield faster results than criminal investigations and prosecutions, especially through provisional measures.

Crucially, the different accountability and justice mechanisms can complement and strengthen one another. For example, evidence collected for an ICC criminal investigation may help an ICJ case and vice versa. The same can be true for other accountability mechanisms, such as the work of the UN Special Rapporteur on Afghanistan.

This synergy can extend to other efforts, including, for instance (a) the campaign to codify gender apartheid—inhumane acts aimed at enforcing domination and systematic oppression by one gender group over another—in Afghanistan; (b) advocacy to ensure Afghan women and girls are granted asylum based solely on gender; or (c) strategies to thwart the Taliban’s pursuit of recognition. Together, these efforts can build a mutually reinforcing legal framework to account for the totality of violations of international law that the Taliban are perpetrating against Afghan women and girls.”





## 20. How might an ICJ case reinforce efforts to codify “gender apartheid”?

*An ICJ case could establish a factual record of gender apartheid, highlighting the need for its formal codification*

The prohibition of discrimination is a cornerstone of international law. However, unlike apartheid—which is recognized as a crime under international criminal law and defined as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”—the concept of “gender apartheid” is not yet codified.

Gender apartheid builds on the existing legal definition of apartheid by including “gender” as a basis for apartheid. But, because gender apartheid is not yet officially recognized as a crime under international law, international and domestic criminal courts cannot prosecute it. Accordingly, many Afghan women and advocates are calling for gender apartheid to be recognized as a crime against humanity, arguing that current laws addressing gender persecution fall short of capturing the specific intent and institutionalized nature of the Taliban’s systemic subjugation of women.

While the ICJ is unlikely to rule on the idea of gender apartheid, which is not a codified concept under CEDAW, an ICJ case against Afghanistan could nevertheless play an important and complementary role in helping advance the campaign to codify gender

apartheid. For example, the ICJ case could create an authoritative record of the Taliban's systematic gender-based oppression and domination, including the multiplicity of rights violations, documenting the reality of gender apartheid in practice. This record would provide concrete, official findings by the world's highest court as to the severity and pervasiveness of gender-based discrimination in Afghanistan. Such a ruling could establish a legal precedent by recognizing the systematic nature of these violations, offering a strong foundation for advocating for the formal codification of gender apartheid as an international crime.

Moreover, ICJ cases attract significant global attention. An ICJ case against Afghanistan would draw continued international focus to the plight of Afghan women and girls, thereby strengthening advocacy efforts for recognizing and codifying gender apartheid under international law.

An ICJ case could also highlight the gaps in existing legal frameworks, underscoring the need for codifying gender apartheid to ensure comprehensive legal protection and accountability, particularly in the realm of international criminal law. This is underscored by the CEDAW Committee itself, who recently called for its codification "to create full accountability for gender-based crimes."

"The codification of the crime of forced pregnancy offers a useful example of how human rights law can support the criminalization of serious violations. Initially recognized as a serious violation under international human rights law, forced pregnancy was not explicitly listed as an international crime. But the international trials of the atrocities in Bosnia and Rwanda brought the issue into sharp focus, leading countries, and civil society to advocate successfully for its recognition as a crime against humanity and a war crime in the Rome Statute of the International Criminal Court. Similarly, an ICJ case could serve as a catalyst for recognizing gender apartheid as a crime, paving the way for more comprehensive protections for women and girls in Afghanistan, and worldwide."





## 21. Why bring a case under CEDAW to the ICJ instead of the CEDAW Committee?

*Individual complaints to the CEDAW Committee against Afghanistan are not an option*

“The Committee on the Elimination of Discrimination against Women plays a crucial role in monitoring the implementation of CEDAW. It reviews national reports and offers recommendations aimed to improve compliance.

The CEDAW Committee can also consider individual complaints (called “communications” or “petitions”) about violations of the Convention. However, the Committee can only do so if the country in question has accepted the Committee’s authority by ratifying the Optional Protocol to CEDAW, which is a separate treaty. Afghanistan has not ratified this Protocol, which means individuals cannot bring complaints against Afghanistan directly to the Committee.





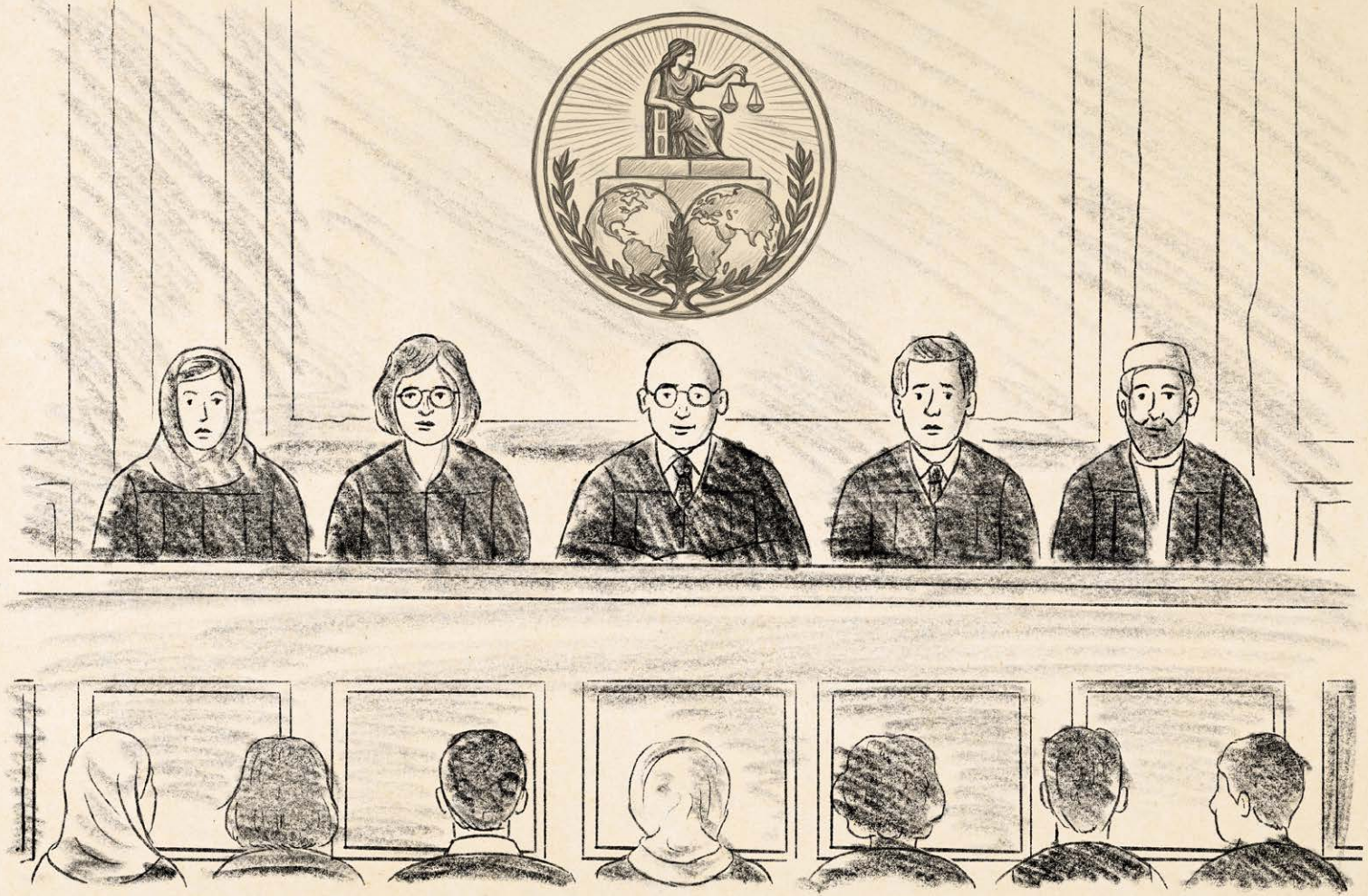
## 22. Is it possible to bring a case to the ICJ under other human rights treaties that Afghanistan is violating?

*Cases can only be brought to the ICJ under treaties that recognize its jurisdiction*

Not every treaty allows for disputes to be taken to the ICJ. Of the nine core international human rights treaties, only three have granted jurisdiction to the ICJ: CEDAW, Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention Against Torture (CAT).

Among these three treaties, Afghanistan has only allowed for ICJ jurisdiction under CEDAW and CAT. This means that, in addition to CEDAW, it is also possible to bring an ICJ case against Afghanistan under CAT, provided the country filing the case also recognizes the ICJ's jurisdiction under this treaty. Like CEDAW, CAT requires a filing country to undertake a series of steps before resorting to the ICJ (see Question 9).





## 23. Why use resources on an ICJ case versus other avenues?

*To bolster the pursuit of justice and accountability at the international level*

Pursuing a case at the ICJ is a strategic option aimed at bolstering the pursuit of justice and accountability on an international level. This approach is based on the principle of utilizing every available legal route to address violations and seek remedies, rather than replacing or overshadowing other efforts.

The ICJ has been used in various contexts where multiple accountability mechanisms were already in place, demonstrating its role as a complementary avenue rather than one that competes for resources. For example, despite the existence of the UN-established Independent Investigative Mechanism for Myanmar, The Gambia initiated a case against Myanmar at the ICJ under the Genocide Convention. This action did not detract from ongoing efforts, such as the work of the UN Special Rapporteur on the situation of human rights in Myanmar or the investigation at the ICC. Similar multifaceted approaches have been undertaken to address the situations in Syria, Palestine, and Ukraine, where a combination of mechanisms operate simultaneously.

Opting for the ICJ enriches the spectrum of accountability measures by offering a judicial avenue that can leverage existing evidence and documentation. This means that initiating

a case at the ICJ does not necessitate starting from scratch in terms of evidence gathering. Further, the evidentiary standard used in ICJ cases differs from that in criminal law, such as in proceedings at the ICC. This distinction allows for a broader range of documentation to be presented in an ICJ case, ensuring that a wider array of Afghan voices are captured in the historical record established by the case. In short, efforts to bring a case to the ICJ complement rather than compete with ongoing initiatives.





## 24. Can, or must, Afghan civil society play a role in an ICJ case against Afghanistan?

*Afghan civil society participation is not mandatory, but should be welcomed*

The responsibility for initiating and advancing a case at the ICJ rests with countries, not individual Afghans or Afghan civil society. This means that countries carry the burden of litigation. Although Afghan participation is not legally required, it is essential for enhancing the case's impact and relevance, offering invaluable insights and perspectives that might otherwise be overlooked. It is beneficial for any country initiating a case against Afghanistan to seek and facilitate Afghan participation, not only to ensure the case's integrity, but also to ensure that it resonates with the lived experiences of Afghan women and girls—those individuals to whom the case ultimately aims to deliver justice.

Afghan civil society participation can happen in a number of ways, from case building through litigation and the ultimate implementation of any decisions. For example, Afghan civil society can help gather evidence, prepare documentation, and work on strategic communications (especially to convey the significance of the case and its developments to the Afghan community and other countries). Afghan legal professionals can be part of the legal team representing the country (or countries) bringing the case, aiding in the decision-making process, shaping the litigation strategy, and informing the legal arguments and remedies sought. This expertise would ensure that the case is representative and reflective

of the reality on the ground in Afghanistan. When hearings take place or decisions are issued in the case, civil society can also play a critical role in robust advocacy to ensure the public is informed and all entities demand that the Taliban comply with the ICJ's orders.

Participation of Afghans and Afghan civil society can also help ensure that the case resonates more strongly with the needs and aspirations of Afghan society. While invitations to participate in all case aspects should be extended to Afghans and Afghan civil society, these invitations should not be understood as mandatory, nor should they impose additional burdens or security threats on the Afghan community.





## 25. Can Afghan individuals submit evidence to the Court?

*Not directly, but they can cooperate with countries that are parties to the dispute*

The ICJ does not have a formal procedure for direct victim/survivor participation in its proceedings; only countries may be parties to Court cases, which means that individuals cannot independently intervene or provide evidence to the Court.

However, the Court or countries to the case may call upon Afghan victims, survivors, and witnesses to provide evidence/testimonies in support of the claims made against Afghanistan. In particular, witnesses can provide videotaped or other forms of statements that constitute compelling evidence of the enduring harm to women and girls, and that also demonstrate the urgency and severity of the situation, which is needed to convince the Court to issue provisional measures. For example, in the case filed by Canada and The Netherlands against Syria for violations of the Convention Against Torture, the filing countries extensively relied on evidence provided by Syrian torture victims. Victims/survivors can also attend the ICJ's hearings. For example, in the case against Myanmar brought by The Gambia for violations of the Genocide Convention, some Rohingya victims attended the provisional measures hearing in person.





## 26. What does it mean that Australia, Canada, Germany, and The Netherlands initiated the dispute process under CEDAW against Afghanistan?

*These countries have notified the Taliban of their dispute under CEDAW, but a case has not yet been filed*

On September 25, 2024, Australia, Canada, Germany, and The Netherlands announced that they had initiated the dispute settlement process under CEDAW (Article 29), which means that if negotiation and arbitration fail to resolve their dispute with Afghanistan, they can bring the case to the ICJ (see Question 9).

At the time of publication, these countries had sent a communiqué to the Taliban, notifying them of a dispute regarding the application of CEDAW in Afghanistan concerning women's and girls' rights. This moves the process into the next step under CEDAW, where these countries must attempt to resolve the dispute through "negotiation" (see Question 10). Currently, they are at this negotiation stage, which does not permit them to bring the case to the ICJ unless the dispute remains unresolved. Therefore, continued advocacy for these countries to fulfill their commitments to advance the case is important, particularly if this aligns with the impacted community's priorities.





## 27. Can other countries join Australia, Canada, Germany, and The Netherlands in their CEDAW dispute against Afghanistan?

*Other countries can initiate their own dispute process under CEDAW, coordinate with these countries, or intervene in the case*

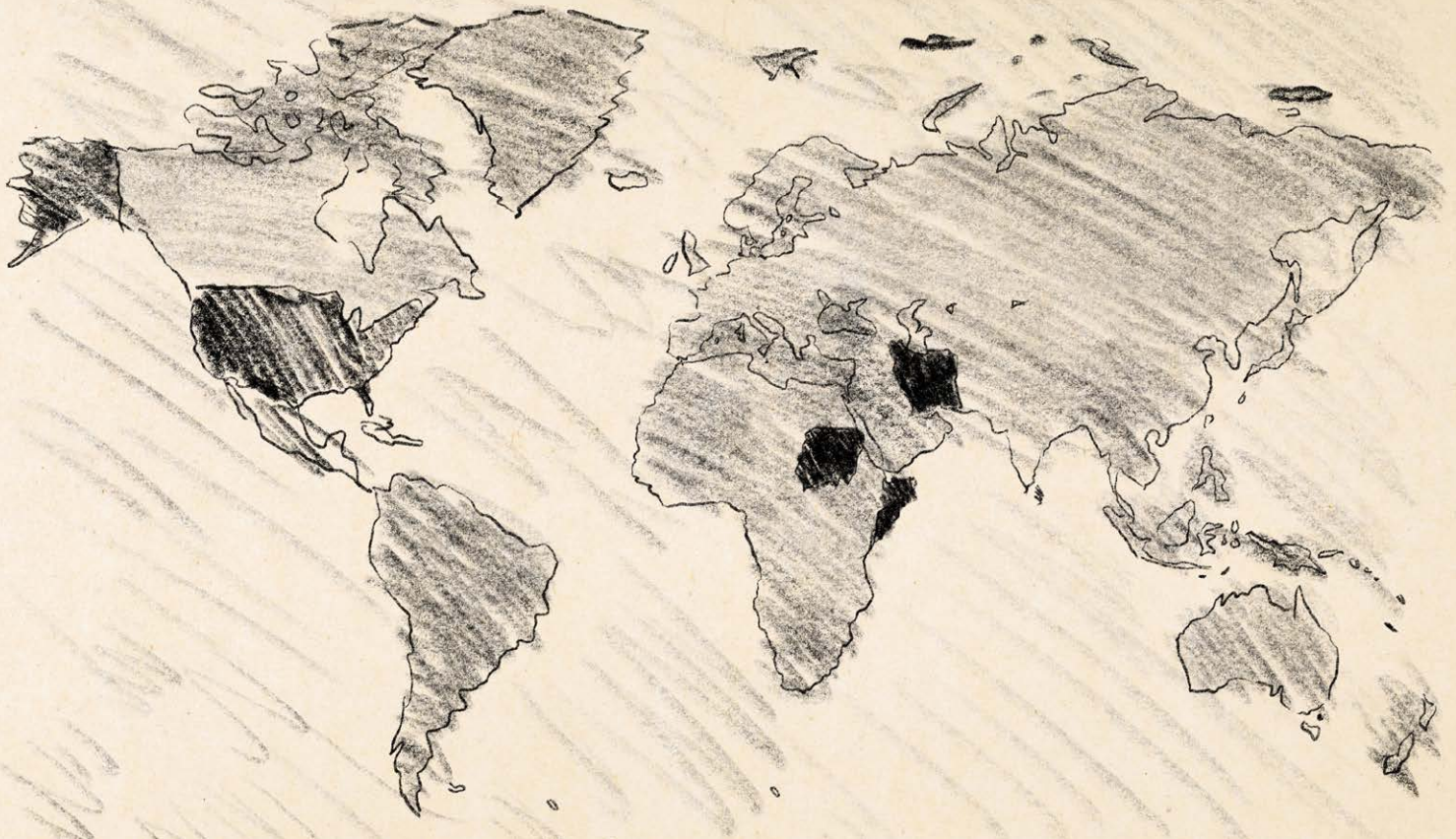
Any country that is a party to CEDAW and has accepted the ICJ's jurisdiction under Article 29 can initiate a dispute process against Afghanistan. Although Australia, Canada, Germany, and The Netherlands have publicly announced their dispute, this does not prevent other countries from starting their own process against Afghanistan. Such countries would need to follow similar steps: establishing a dispute and attempting both negotiations and arbitration (see Question 9). In doing so, countries can choose to either coordinate with the initial group of four countries, or they may proceed independently or in partnership with other countries.

If multiple cases arise, the ICJ may decide to either combine or handle the cases separately, depending on whether they overlap and to what extent—for example, whether they invoke the same CEDAW articles, have similar claims, or follow similar procedures.

Alternatively, a state could intervene in the case under Article 62 or Article 63 of the ICJ Statute, which allow for intervention when the case's outcome may affect the country's legal

interests or when the interpretation of the treaty is at issue. For example, in the Genocide Convention cases filed by Ukraine against Russia and by South Africa against Israel, several countries have submitted interventions.





## **28. Can countries that are not parties to CEDAW or that have not accepted the ICJ's jurisdiction support the case?**

*All countries can support the case through informal means*

All countries, including those that are not parties to CEDAW or have not accepted the ICJ's jurisdiction, can support a CEDAW case through informal means. Such support can add important political weight to the case and take various forms, such as issuing public statements to endorse the case and its objectives, providing evidence or information relevant to the claims, offering legal advice or technical assistance, or contributing other forms of assistance related to the case. For example, when Australia, Canada, Germany, and The Netherlands announced their dispute under CEDAW, 22 countries—including some that had not accepted the ICJ's jurisdiction—issued a joint statement in support of this effort. This group included countries from the Global South, such as Chile and Malawi, as well as countries with significant or majority Muslim populations, like Albania and Morocco. Furthermore, these countries indicated that they might “consider other possible options to be followed individually or collectively under CEDAW and other relevant human rights frameworks.”

# OPEN SOCIETY JUSTICE INITIATIVE



## 29. What is the role of Open Society and Rawadari in the proposed case?

*All countries can support the case through informal means*

“Open Society Foundations (OSF) has worked on Afghanistan for many years and had an office in Kabul until 2021. Since late 2021, the Open Society Justice Initiative (OSJI)—a program of OSF specializing in strategic litigation to advance human rights—has been actively developing and advocating for an ICJ CEDAW case. This work has been carried out in collaboration with Afghan civil society, human rights defenders, legal experts, and women’s rights advocates. This effort has been bolstered by diverse expertise and resources from across OSF. While Open Society does not have a formal role in a potential ICJ case, it collaborates with interested countries to help bridge the gap with Afghan defenders, researchers, and civil society, supporting efforts to gather information and resources, and aiming to elevate the priorities of impacted communities in this initiative.

Rawadari is an Afghan human rights organization established in exile in 2022, dedicated to strengthening Afghanistan’s human rights culture and advancing justice and accountability for human rights violations, particularly those impacting women and girls. As part of the effort on ICJ, Rawadari has led consultations with Afghanistan’s civic and human rights



community both inside and outside Afghanistan regarding a potential case to hold Afghanistan accountable for violations of women's rights. Rawadari has also produced and translated materials in local languages to expand awareness about the potential ICJ case. Rawadari collaborates with Afghan experts and civil society to help ensure that the priorities and perspectives of impacted communities are reflected in this significant and potentially historic process for justice for women of Afghanistan.

