

## Press Release Regarding the Implications of the "The Criminal Procedure Code for Courts" Issued by the Taliban

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Rawadari has recently obtained a copy of the "Criminal Procedure Code for Courts" (*De Mahakumu Jazaai Osulnama*) signed by the Taliban leader, Habatullah Akhundzada, and circulated to the courts at the provincial level across Afghanistan for implementation. The Criminal Procedure Code, issued on 4 January 2026, has been compiled in three sections, 10 chapters, and 119 articles.

The contents of this document are deeply concerning and stand in clear contradiction to international human rights standards and the fundamental principles of fair trial. The document legalizes and formalizes discrimination against religious minorities and the suppression of individuals' basic freedoms, including violations of human dignity, restrictions on freedom of expression and thought, and arbitrary arrest and punishment.

This document is incompatible with even the most basic standards of fair trial, including the principle of equality before the law, the principle of legality and personal criminal responsibility, the presumption of innocence, the prohibition of torture, freedom from arbitrary detention, the right to remain silent, and the right to effective defence. Nowhere in this Criminal Procedure Code are the right of access to a defence lawyer, the right to remain silent and the right to compensation recognised, nor are other minimum requirements of a fair trial guaranteed.

Furthermore, the Code has not specified minimum and maximum penalties, and by eliminating the process of independent investigation in proving criminal acts and instead has instituted "confession" and "testimony" as the primary means of proving guilt. This significantly heightens the risk of torture, serious abuse and widespread violations of the rights of the accused.

### **Increased Risk of Discrimination and Suppression of Religious Freedoms**

Clause eight of Article 2 of the Criminal Procedure Code describes followers of the Hanafi school of thought [Hanafi jurisprudence] as Muslims, whilst characterising followers of other sects and beliefs that differ from or oppose the "Ahle-Sunnah wal-Jama'ah" as "mubtadeh" or "heretics". This discriminatory classification in a country where numerous religious minorities including Jafari Shias, Ismailis, and followers of other Islamic orientations such as Ahl-e-Hadith, as well as non-Muslims such as Sikhs, and Hindus live, directly violates the principle of non-discrimination on the basis of religion and belief. The application of the label of "badaat/bid'ah" and the granting of unlimited powers to the Taliban's judicial institutions, creates the conditions for widespread repression, deprivation of legal protection, and the imposition of arbitrary punishment against religious minorities.

Moreover, Article 14 of the Criminal Procedure Code has stipulated that in order to serve "public interest", the killing of offenders, including individuals who "defend false beliefs contrary to Islam" or those who invite others to such beliefs" described as maabtadin and corrupters is deemed permissible with the permission of the "Imam". Likewise, clause two of Article 17,

through a general ruling, has deemed "mockery" and "ridicule" of Islamic rulings punishable, and has prescribed a penalty of two years' imprisonment for perpetrators. This article introduces no criteria for identifying "mockery" or "ridicule", and grants judges' broad and arbitrary discretion to punish individuals merely for expressing different and critical viewpoints.

Article 26 of this document states that, followers of the Hanafi school of thought [Hanafi jurisprudence] are not permitted to abandon their belief, and should this matter be proven before a judge, they will be sentenced to two years' imprisonment. This ruling, which constitutes a clear violation of freedom of religion and belief, specifically places Salafis and Ahl-e-Hadith at risk of arbitrary arrest, trial, and punishment a danger that, given the Taliban's treatment of these individuals over the past four years, is serious and alarming.

These provisions intensify the narrowing of civic space, widespread suppression of freedom of religion and belief and can lead to an increase in arbitrary arrest, torture, and particularly pressure on religious minorities.

### **Intensification of Arbitrary Detention and Punishment**

Clause eleven of Article 2, by defining a "baghi" i.e. "rebel" as someone who "strives to spread corruption", states that "their harm is public [general] and they cannot be reformed without being put to death." This ruling grants the Taliban's judicial institutions and other branches of the Taliban government broad and dangerous authority to kill opponents, critics, and human rights activists under this designation, without guaranteeing the right to defence and fair trial.

Furthermore, clause six of Article 4 states that every Muslim "whenever they witness sinners committing a sin, is permitted to proceed with their punishment" a matter which grants even ordinary individuals, morality police officers, and clerics aligned with the Taliban the authority to punish others. These provisions seriously violate the right to liberty and personal security, human dignity, the prohibition of arbitrary detention and punishment, and the right of access to a fair trial.

On the other hand, clause 14 of Article 2 states that in crimes of "hudud and diyat" [prescribed punishments and blood money], attention is paid only to "the crime itself" and not to the "personality of the perpetrator", whilst this approach is incompatible with the requirements of a fair trial; since under criminal law standards, assessing criminal responsibility requires considering the mental state, capacity, and intent of the perpetrator. Disregarding these factors result in violation of due process guarantees and free trial principles.

Article 59 of this document, by criminalising "dancing" and "watching it" without providing any clear, precise, and legal definition of this concept, disregards the fundamental principles of legality of crime and punishment and the presumption of innocence, and thereby grants judicial authorities the discretion to arbitrarily deprive individuals of their liberty and personal security. In such circumstances, individuals may be detained and punished for performing local dances that are considered part of their tradition and way of life.

Similarly, Article 13 of the Code, through a vague reference and without providing any necessary explanation, calls for the destruction of "places of {moral} corruption." This provision violates the principles of legality and personal criminal responsibility, as well as the presumption of innocence. Given the broad and undermined interpretation of "corruption", this ruling can be extended to the destruction of places such as barbershops and beauty salons, and can punish their owners without proving personal responsibility.

At the same time, according to Article 40, any person who is present at a "gathering of corruption" even involuntarily, without the meaning of "corruption" being clarified, is considered complicit in the act of "corruption" and deemed punishable. This provision also conflicts with the principle of personal criminal responsibility and the presumption of innocence, because under this article, criminal responsibility is imposed upon a person without proving intent, knowledge, or role of the individual.

### **Enshrining Social Stratification and Division of Individuals into "Free" and "Enslaved"**

Whilst human dignity and the equality of all human beings, non-discrimination, and the absolute prohibition of slavery are amongst the fundamental principles of human rights and among the peremptory norms of international law, Article 9 of the Criminal Procedure Code of Courts effectively divides society into four categories: "scholars" (ulama), "the elite" (ashraf), "the middle class", and "the lower class". According to this article, in the event of committing the same crime, the type and severity of punishment is determined not on the basis of the nature of the crime committed, but rather on the basis of the perpetrator's social standing. For example, if a crime is committed by a religious scholar, it warrants merely an advice, and if committed by someone from the elite, it results in a summons to a court and advice. However, if the same crime is committed by individuals belonging to the "middle class", they are imprisoned, and if by individuals from the "lower class" of society, in addition to imprisonment, they are also sentenced to corporal punishment. This ruling not only recognises the discriminatory concepts of social stratification but also directly violates the principle of equality before the law, the principle of prohibition of discrimination, the principle of proportionality between crime and punishment, and the prohibition of cruel and inhumane punishment.

Moreover, the Code has also legitimised slavery by mentioning the word "slave" [ghulam] in several sections. As stated in Article 15: "In the case of any crime for which a 'hadd' (prescribed punishment) has not been specified, ta'zir (discretionary punishment) is ruled, whether the criminal is free or a slave..." Likewise, paragraph 5 of Article 4 states that the execution of the "hadd" punishment can be carried out by the "Imam" and the execution of "tazir punishment" can be carried out by the "husband" and the "master" [badaar].

The description of individuals as free and enslaved, and the explicit mention of the word "slave" in this Criminal Procedure Code, constitutes the recognition of an absolutely prohibited legal status that stands in clear contradiction to the principle of equality, human dignity, and all fundamental standards of human rights. Slavery is absolutely and, in all circumstances, prohibited in international law and is considered part of the peremptory norms of international law.

### **Increase in Corporal Punishment [physical punishment]**

In Article 18 and other articles, the punishment of flogging has been prescribed very extensively and without clear limitations. This punishment, constitutes corporal punishment and degrading treatment, which conflicts with the principle of human dignity and the absolute prohibition of torture and cruel punishment. The expansion of such punishment in law seriously increases the risk of systematic violence and the institutionalisation of practices contrary to human rights values within the Taliban's judicial system.

### **Suppression of Freedom of Expression and Criminalisation of Opposition and Criticism of the Taliban**

Article 19 states that if a person performs a "amal e mubah" i.e "permissible act" [neutral act] that has been prohibited by the Taliban leader, or criticises and objects to "permissible matters", they are deemed criminal and deserving of punishment. The primary concern is the generality of this provision, which provides the de facto authorities with unlimited powers. In the Taliban's perspective, the prohibition of women's education is also part of "permissible matters" [neutral act], and now, according to this Criminal Procedure Code, punishment for criticising this matter has been legalised and formalised. This provision directly violates the right to freedom of expression and thought, and creates grounds for the pursuit, detention, and arbitrary punishment of citizens for expressing their views regarding Taliban policies.

Likewise, clause two of Article 23 of the said document stipulates: "Those who insult the Taliban leaders" will be sentenced to 20 lashes and six months' imprisonment. This article, in addition to granting broad and unlimited powers to Taliban judges to suppress dissenting and critical views, also leads to further violation of the right to freedom of expression. Based on this provision, criticism, opposition, or the expression of dissenting views regarding Taliban officials and leaders has been criminalised, and now judicial authorities effectively possess a legal instrument for suppressing opposing voices and restricting civic space.

According to Article 24 of this Criminal Procedure Code, if a person witnesses or has knowledge of "subversive" meetings and activities of "opponents of the regime", but does not take action against them herself/himself or does not inform the relevant Taliban departments, he/she is criminal, and the judge may sentence the "witness" and the "informed person" to two years' imprisonment. According to this article, all citizens are obligated to inform the relevant Taliban departments of the movements of Taliban opponents, otherwise they will be punished, a matter which leads to widespread violation of the right to liberty and personal security, and arbitrary detention and punishment of individuals. On the other hand, this principle also contradicts the principles of international humanitarian law, which emphasise the neutrality of civilians, and exposes ordinary citizens to serious danger.

### **The Risk of Intensifying and Institutionalising Violence against Women and Children**

Article 30 of this document only prohibits certain forms of physical violence against children by teachers, specifically cases that result in "bone fracture", "torn skin", or "bodily bruising", and does not explicitly prohibit other forms of physical violence, psychological violence, and sexual violence.

Therefore, the Criminal Procedure Code for Courts, instead of prohibiting violence against children, indirectly legitimises the perpetration of other forms of abuse, maltreatment, and punishment of children. This is an approach that contradicts the principle of special protection for children and their human dignity. Similarly, Article 48 states that a father may punish his 10 years old son when the child is acting against his own interest, such as for abandoning prayer and other matters.

Regarding violence against women, the Code has also adopted a discriminatory approach and position. Article 32 states that only if the husband beats the woman with a stick and this act results in severe injury such as "a wound or bodily bruising", and the woman can prove it before a judge, will the husband be sentenced to fifteen days' imprisonment. Nevertheless, other types of physical violence, psychological violence, and sexual violence against women have not been explicitly prohibited and have been disregarded in this document.

Moreover, clause 5 of Article 4, regarding the difference between "hadd" and "tazir", states that "hadd punishment can be executed by the Imam" and "tazir punishment" can be executed by the "husband" and the "master", which directly legitimises domestic violence by the husband.

Likewise, Article 34 states that if a woman repeatedly goes to her father's house or that of other relatives without her husband's permission and does not return home despite her husband's request, the woman and any member of her family and relatives who has prevented her from going to her husband's house are deemed criminal and will be sentenced to three months' imprisonment. This provision, particularly in the case of women who take refuge at their parents' house and relatives' homes from violence and maltreatment by their husbands, exposes them to continued domestic violence and strips them of family and community protection, the only remaining protection for women victims of domestic violence in absence of formal and legal remedies.

The totality of these provisions stands in clear contradiction to the principle of equality, the prohibition of gender discrimination, the prohibition of violence against women, and the right to human dignity, and seriously increase the risk of intensifying and institutionalising violence against women.

Over all, the implementation of the Criminal Procedure Code for Courts, in the absence of any independent and effective internal oversight mechanism, will significantly increase human rights violations, lead to widespread suppression of citizens' fundamental freedoms and encourage abuse and lawlessness.

Rawadari, calls for the immediate halt of the implementation of the Criminal Procedure Code by the Taliban courts and repelling of this repressive ruling. Rawadari also calls upon the international community, the United Nations, and other relevant international bodies to utilise all legal instruments to prevent the application of this Criminal Procedure Code. We also emphasise our commitment to continuous monitoring of the Taliban's conduct and the consequences of implementing this Criminal Procedure Code, and will make our findings available to the media, human rights organisations, and citizens through regular reports.