

## **Afghanistan Human Rights Defenders HRD+**

**"Ending gender apartheid in Afghanistan is a global responsibility!"**

### **Legal Note #1: "Internalizing" gender apartheid by the Taliban de facto administration**

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Apartheid is the ugliest and most severe form of discrimination imposed on citizens by laws, structures, policies, and official mechanisms. Human society has witnessed various forms of apartheid, the most inhumane of which are racial apartheid and gender apartheid. In this regard, the global community has tried to make all governments commit to including all forms of apartheid as crimes in their legal systems and to prosecute the perpetrators of this heinous crime. On the other hand, international courts consider apartheid as a crime against humanity and call on the global community to completely eliminate apartheid on Earth. The International Criminal Court (ICC)<sup>1</sup> recognizes apartheid as a crime against humanity and conducts research and interpretation of legal theories related to this crime. Supporting the victims of apartheid violations is considered a duty of member states of the United Nations. Therefore, governments are required to identify ways to prevent this heinous phenomenon and punish those responsible, in line with the requirements of human rights conventions derived from the Universal Declaration of Human Rights (UDRH), which specifically prohibit apartheid and discrimination.

With the takeover by the Taliban in August 2021, the human rights situation of the people of Afghanistan has tragically changed. The Taliban, by declaring an Islamic emirate, nullified the Afghan constitution, which had guaranteed the protection of citizens' fundamental rights in its second chapter, and abolished the laws derived from it. The Taliban leadership subsequently issued a continuous chain of restrictive orders against human rights of citizens, and the Taliban's executive structures imposed and enforced them on the people. By implementing these discriminatory orders against women, the Taliban leader systematically deprived women of all their fundamental rights. Women were deprived of their right to education, right to work, right to access social and cultural opportunities through this oppressive imposition. This chain of discrimination against women, imposed by laws, policies, official and unofficial institutions under the rule of the Taliban in the name of the Islamic Emirate of Afghanistan, is forcibly imposed on women in the country, showing clear examples of gender apartheid.

This oppressive method of the Taliban against Afghan women has been met with serious reactions from the global community, human rights monitoring bodies, mechanisms of the UN human rights, civil society organizations, and human rights defenders inside and outside the country. However, the Taliban deliberately consider their approach as an internal issue of Afghanistan and, under this pretext, ignore global reactions. The Taliban do not respond to reports, criticisms, and recommendations of the special rapporteur on human rights and other human rights organizations, arguing that women's issues are dependent on the cultural situation of Afghanistan. This approach of the Taliban and their extremist and dogmatic interpretations of their political ideology have originated and are being imposed on society under the guise of supporting the sanctities of the Islamic religion.

The HRD+, through comprehensive legal, social, political, and cultural analysis of the situation in Afghanistan, unequivocally declares that discrimination and gender apartheid are not desired by our

people, nor are they part of our culture or an internal matter; rather, they are a global tragedy that requires serious human rights intervention by all governments, institutions, and influential figures globally.

Based on the eight fundamental principles of international human rights listed below, the HRD+ considers the plight of the Afghan people to be the responsibility of the entire global community and calls on the international system to urgently, seriously, and effectively support the people of Afghanistan and work towards freeing them from the shameful chains of gender apartheid.

### **1. The principle of universality of human rights**

Human rights are universal and global for all citizens of the world. The UDRH<sup>ii</sup> states that all human rights are equally important and governments must consider these rights in a fair, equal, and equally emphasized manner. All countries have a duty to respect all human rights without any discrimination, regardless of their political, economic, and cultural structures. Based on this key and important principle of human rights promotion, observance, and protection, the commitment to human rights is an international obligation. Similarly, the global community's responsibility for crimes against humanity is perceived on the basis of collective and universal commitment. Gender apartheid as one of the types of crimes against humanity in Afghanistan should be examined and monitored by the global community and taken seriously based on international criminal laws.

### **2. The principle of rule of law**

The UDRH explicitly mentions the principle of equality before the law in Article 7<sup>iii</sup>. This principle is addressed by all international conventions, including Article 2 of the International Covenant on Civil and Political Rights (ICCPR) Article 3 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Article 4 of the International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA). These international human rights laws have found their way into international law and have obligated the entire global community to enforce them. This principle clearly obligates all governments and global systems to ensure equality of citizens before the law. The principle of rule of law is the foundation for the implementation of human rights in society. This principle has been severely disregarded by the de facto administration of the Taliban, and the position of laws has been taken over by the anti-human rights commands of the "Amir al-Mu'minin." The lack of rule of law has led to the reinforcement and perpetuation of discrimination against women at the level of apartheid and in all political structures of the Taliban.

### **3. Equal and non-discriminatory access to national and government resources**

This means that citizens should have access to education, health services, and other social necessities without discrimination, and governments are obligated to provide that. All citizens have the right, based on this principle, to equal access in the production and use of national and government resources, without any gender or racial discrimination. Article 21 of the UDHR explicitly states that "Everyone has the right to take part in the government of their country, directly or through freely chosen representatives, and to access governmental services equally."<sup>iv</sup> This principle is not specific to one or more governments, it is universal, and all governments are obligated to respect this fundamental right of citizens. The Taliban de facto administration has deprived citizens of access to national resources and information, particularly depriving women of this fundamental right. The

government, which should serve all citizens equally, has specifically catered to men. Women have been deprived of the right to work, produce, and develop through participation in the political and executive structures of the government, indicating a systemic gender-based discrimination akin to apartheid.

#### 4. Principle of Indivisibility of Human Rights

The concept of the **Indivisibility**<sup>v</sup> of human rights means that human rights are inherent, cannot be taken away, cannot be denied, and are indivisible. In other words, all humans must have access to fundamental and basic rights without discrimination or division. The inalienability of human rights also means that these rights cannot be degraded or violated under any circumstances, and all humans must have access to these rights regardless of race, gender, religion, ethnicity, or other beliefs. Governments cannot take away parts of human rights based on their culture or political regime and cause systematic discrimination in society. The Taliban regime selectively violates the values and principles of human rights and imposes widespread discrimination against women, especially educated, professional, artistic, and creative women, using their extremist ideology. The Taliban persecute and pursue women who have the power of creativity and innovation, subjecting them to torture and humiliation.

#### 5. Principle of Gender Equality

The principle of gender equality in human rights refers to equality and justice between women and men in all aspects and areas of life. This principle means that all individuals, without discrimination based on gender, have rights and equality in various social, economic, cultural, and political rights and positions. This principle is included in various international regulations, including the UDHR, and is recognized as one of the fundamental principles of human rights.<sup>vi</sup> The goals of the principle of gender equality include supporting and promoting women's rights and ending gender discrimination in all aspects of life and society. The Taliban regime has completely eliminated the role of women in leadership, management, and decision-making. The political, executive, and service administration of the Taliban system is entirely male-dominated, and women have been ordered to stay at home. Recently, a decree was issued by the "Amir al-Mu'minin" stating that female government employees should be given a monthly salary of 5000 Afghanis to stay at home. This kind of treatment shows a dangerous trend in the systematic elimination of women from economic, cultural, and social life, and their complete isolation from political affairs.

#### 7. Principle of Accountability for Human Rights

Accountability for human rights is a fundamental principle whereby all individuals and institutions commit to their obligations in ensuring and protecting human rights. This principle means that every individual, community, or state has a responsibility to protect human rights and must commit to and strive for its implementation<sup>vii</sup>. This principle is of great importance because human rights should not be violated or ignored in a terrifying manner and must be respected and implemented by all individuals and institutions, even governments. However, this principle is not respected in the Taliban administration. The Taliban use the excuse that human rights are an internal issue to evade accountability. This is despite the fact that the Taliban are the de facto administration and have serious responsibilities and obligations under the human rights laws to which Afghanistan is a party. The Taliban treat women as a domestic commodity that they can use however they want. They see women as individuals who should stay at home and serve men and children, without any social responsibilities.

This approach is carried out through rigid and ideological interpretations and completely isolates women.

## 8. Principle of Transparency in Human Rights

The principle of transparency in human rights means informing and making information related to human rights accessible. This principle emphasizes the importance of providing information and access to information related to human rights so that individuals can fully identify and understand their rights and obligations.<sup>viii</sup> The principle of transparency in human rights means regular and transparent information about the human rights situation, government commitments, statistics and information related to human rights, and past, present, and future actions. This principle focuses on informing the community about human rights and the commitments of governments, institutions, and companies, as well as on empowering people to demand transparency to uncover and address human rights violations. In fact, transparency in human rights is of great importance to ensure compliance with and protection of human rights, strengthen monitoring mechanisms, and increase commitment to human rights. This is while the people have not yet seen the Taliban leader "Amir al-Mu'minin." Women do not have the right to public meetings, protests, and demonstrations, and their role in the media has been so limited that.

As Afghanistan is a member of the international community and committed to the UDHR and many related conventions, the de facto administration of the Taliban is obligated to uphold these fundamental principles of human rights in the country. In order for these principles to be upheld, governments and political structures that hold political power have responsibilities.

The responsibility of governments towards human rights at the global level includes ensuring and protecting the human rights of all individuals within and outside their geographical boundaries. According to accepted human rights norms, governments are obligated to respect, support, and guarantee the fundamental and inherent rights of every individual without discrimination based on race, gender, religion, nationality, and other characteristics.

These responsibilities include various actions such as:

1. Prevention of human rights violations: Governments must prevent human rights violations and take appropriate measures to avoid them.
2. Ensuring the right to access justice: Governments must provide easy and effective access to justice for all individuals.
3. Providing support and rights to the most vulnerable groups: Governments must provide necessary support and rights for vulnerable groups such as children, women, migrants, minorities, and refugees, and assist them.
4. Cooperation with international organizations and agencies: Governments must collaborate with international organizations and agencies to protect and enhance human rights at the global level.

Furthermore, governments are required to submit regular reports on the human rights situation in their country to international organizations and agencies, and must give special consideration to addressing complaints and protests from individuals regarding human rights violations.

### Recommendations and Suggestions

- The Human Rights Assembly asserts that human rights violations, particularly gender apartheid, are one of the most discriminatory forms of treatment experienced and practiced in Afghanistan. While the International Criminal Court recognizes the deprivation and suppression of women in Afghanistan through gender-based prosecutions, gender apartheid in Afghanistan has not yet been officially recognized by international legal authorities under this term in international laws. However, clear examples of it are evident in Afghanistan. Therefore, the HRD+ calls on international courts and the UN to officially recognize gender apartheid in Afghanistan and classify it as a crime against humanity, holding the de facto Taliban administration accountable for this historical crime. The HRD+ emphasizes that global intervention is necessary to address the gender apartheid imposed by the de facto Taliban administration, as this tragedy requires global cooperation and coordination according to human rights laws.
- The HRD+ expects ICC to appoint specialized prosecutors for legal and social investigations into gender apartheid and to provide serious and effective recommendations for its prevention and elimination to the global community.
- HRD+ urges civil institutions and human rights activists to document the inhumane crimes of gender apartheid in Afghanistan and to collaborate with human rights monitoring bodies and institutions.
- HRD+ calls on all national and international media to actively participate in raising awareness about gender apartheid, its consequences, and the resulting suffering for the citizens of Afghanistan and the world. Furthermore, independent research is needed to highlight the devastating consequences of this crime on the people and the entire country, as gender apartheid not only constitutes a violation of human rights but also has far-reaching negative impacts.

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<sup>i</sup> The ICC or International Criminal Court is an international criminal court located in The Hague, Netherlands, and began its activities in 2002. This court is responsible for investigating and prosecuting cases of war crimes, crimes against humanity, and genocide related to the international community. The ICC is one of the legal tools for achieving justice against recognized international crimes. <sup>i</sup>

<sup>ii</sup> This principle originates from Article 2 of the UDHR, which states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." This article emphasizes that all human beings are entitled to all rights and freedoms related to humanity, without any discrimination or distinction.

<sup>iii</sup> This principle is derived from Article 7 of the UDHR, which states: "All are equal before the law and are entitled without any discrimination to equal protection of the law." This article states that all individuals are equal before the law and everyone is entitled to legal protection without any discrimination. This principle refers to the equal and fair application of the law for all individuals.

<sup>iv</sup> The right to political participation in human rights is derived from Article 21 of the UDHR. This right is mentioned in Article 21 of the Universal Declaration of Human Rights and is as follows: "Everyone has the right to take part in the government of their country, directly or through freely chosen representatives, have equal access to public service in their country, enjoy of the same opportunities, and have an equal society under the law. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and

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shall be held by secret vote or by equivalent free voting procedures." This article states that every individual has the right to freely and without discrimination participate in and receive equal opportunities in the public affairs of their country.

<sup>v</sup> The principle of indivisibility of human rights is one of the fundamental principles in the philosophy of law and international law, which states that human rights are inseparable from the human personality of each individual and their capabilities from their social and cultural positions. In other words, this principle states that human rights, as fundamental rights that are inherent and inherent only based on being human and can not be compromised in any circumstances, must be preserved at all times and conditions and should not be separated or abolished. This principle emphasizes that human rights must be established for all humans without discrimination and unconditionally.

<sup>vi</sup> The principle of gender equality is mentioned in many international human rights conventions and documents. One of the clearest cases is in the ICESCR and the Convention on the Elimination of CEDAW. In these conventions, full and equal rights for both genders (men and women) are emphasized and discrimination based on gender is declared prohibited. This principle of gender equality demonstrates equal rights and justice between genders and emphasizes equality and equal opportunities between women and men.

<sup>vii</sup> The principle of accountability for human rights violations is enshrined in many international human rights conventions and documents. One of the conventions that emphasizes this issue is the ICCPR. In this convention, rights such as the right to a fair trial in cases of violations such as torture, imprisonment, restrictions on personal freedom, etc. are outlined. This convention also defines individuals' right to access avenues for redress. This principle of accountability is of great importance as it emphasizes that individuals who violate their human rights must be held responsible and prosecuted under international laws and principles.

<sup>viii</sup> The principle of transparency regarding the human rights situation is also included in many international human rights conventions and documents. One of the clearest instances of this is in the ICCPR. This convention emphasizes the importance of transparency and information dissemination for human rights, stating that governments are obligated to inform the public about the human rights situation in their country. This principle is important because transparency and information dissemination help individuals to understand and monitor the human rights situation in their countries and take necessary actions in case of violations. This principle also commits governments to effectively and transparently inform the public.