

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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### The UN Human Rights Council Should Address Serious Gaps in Accountability by Establishing an Independent International Accountability Mechanism to Collect and Preserve Evidence of Crimes Under International Law

#### Amnesty International Calls for the Urgent Establishment of an Independent International Accountability Mechanism for Afghanistan with a Mandate to:

- Monitor, document, and verify relevant information and evidence, including through field engagement, and cooperate with judicial and other entities, national and international, as appropriate.
- Collect, preserve, analyse, and consolidate information and evidence of crimes under international law and other serious human rights violations, including a focus on any gender dimension of such violations which are consistent with international law and standards, with a view to support future accountability efforts, including by future prosecutorial and judicial mechanisms;
- Investigate crimes under international law and other serious human rights violations;
- Identify, where possible, those individuals and entities against whom there are credible allegations of responsibility for crimes under international law and other serious human rights violations, including identifying chain of command responsibility;
- Cooperate with judicial and other entities, national and international, including the International Criminal Court (ICC), as appropriate;
- Collaborate with and complement the work of the UN Special Rapporteur on the Human Rights Situation in Afghanistan (the Special Rapporteur on Afghanistan) and other UN bodies and mechanisms;
- Report to the Human Rights Council (HRC) and the UN General Assembly on findings and brief other relevant UN bodies and entities.

The establishment of such an independent international accountability mechanism for Afghanistan would help in establishing pathways to victim and survivor-centred justice and accountability in Afghanistan, ensure that serious human rights violations and abuses across the country, including sexual and gender-based crimes, are investigated properly, and will meaningfully contribute to preventing the recurrence of human rights violations and abuses, and ending the cycle of impunity in the country.

The international independent accountability mechanism must be provided with sufficient financial and technical resources to fulfill its mandate. It should be staffed with independent international and national experts, including those with expertise relating to international human rights law, international humanitarian law, international criminal law, the command structure of armed forces and armed groups, sexual and other gender-based violence, children's rights, the rights of people with disabilities, video and image verification, and forensic analysis. It should ensure extensive engagement with, and where appropriate, the participation of Afghan civil society, including – crucially – women human rights defenders and other relevant stakeholders.

#### The Pressing Need for Accountability

The deepening human rights crisis in Afghanistan requires international action to address the cycle of impunity in the country and demonstrates the urgent need for the United Nations (UN) to establish an independent international accountability mechanism for Afghanistan, with the mandate to investigate crimes under international law and other serious human rights violations.

Afghanistan has been long blighted by its geostrategic location at the crossroads of geopolitical interests. The involvement of various globally and regionally influential states in the conflicts that have taken place in Afghanistan for almost half a century has made accountability for associated violations a geopolitically sensitive topic. This has contributed to a muted reaction by UN member states compared to other situations.

For nearly half a century, continuous cycles of violence and armed conflict have devastated Afghanistan.<sup>1</sup> This has had a horrendous impact on people in the country, especially women and girls and people from minority religious and ethnic groups.<sup>2</sup> Since the Taliban returned to power on 15 August 2021, impunity for crimes under international law and other serious human rights violations, particularly those implicating Taliban members, have become increasingly prevalent.<sup>3</sup>

Contrary to Afghanistan's international obligations, the Taliban have institutionalized a system of repression, including a persistent introduction of draconian rules to suppress the human rights of the people in Afghanistan.<sup>4</sup> The Taliban's severe restrictions on the human rights of women and girls, together with the Taliban's use of torture and other ill-treatment, enforced disappearance, and arbitrary arrest, can amount to the crime against humanity of gender persecution.<sup>5</sup> The Taliban also have continued to extrajudicially execute, arbitrarily arrest, disappear, and torture members of the former government as well as those critical of the Taliban's draconian rules or those engaged in armed conflict with the Taliban.<sup>6</sup> The Taliban leader issued a decree on prison reform which also prohibited the use of torture and other ill-treatment in 2022, but subsequent reports by Amnesty International and the UN prove that these practices remain widespread and the decree has not been implemented with any effectiveness.<sup>7</sup> The Taliban are carrying out judicially sanctioned corporal punishment that can amount to torture and other ill-treatment, in addition to conducting public executions, including in the presence of senior Taliban officials.<sup>8</sup>

Decades of impunity for crimes under international law and other serious human rights violations have persisted in the country. In 2004, the Afghanistan Independent Human Rights Commission (AIHRC) conducted a countrywide survey of 4151 participants found that 69 percent of respondents had identified either themselves or their immediate family members as victims of serious human rights violations between 1978 and 2001.<sup>9</sup> These violations have been marked by impunity since 1978. Many suspected perpetrators, including members of the Taliban, currently move freely in the region and beyond, and justice for victims, survivors, and those who have endured crimes under international law is absent.<sup>10</sup> Therefore, it is paramount that accountability and international justice in Afghanistan be pursued for victims who - since 1978 - have suffered from crimes under international law and other serious human rights violations committed by multiple perpetrators, including by: the Taliban; Islamic State of Khorasan Province; members of previous governments; armed opposition groups; and members of national and international military forces, including the United States of America's military and its Central Intelligence Agency (CIA) personnel, who are accused of war crimes related to the conflict in Afghanistan between 2001 to 2021.<sup>11</sup> Similarly, there has been persistent impunity for perpetrators of crimes under

<sup>1</sup> Amnesty International, "Afghanistan: Making Human Rights the Agenda," 1 November 2001, [asa110232001en.pdf](https://www.amnesty.org/en/documents/asa110232001en/pdf) (amnesty.org); Human Rights Watch, "Blood-Stained Hands Past Atrocities in Kabul and Afghanistan's Legacy of Impunity," 6 July 2005, p. 11-19, [Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity](https://www.hrw.org/report/2005/07/06/blood-stained-hands) | HRW; Amnesty International, *No Escape: War Crimes and Civilian Harm During the Fall of Afghanistan to the Taliban*, 15 December 2021, p 9-12, [Afghanistan: No escape: War crimes and civilian harm during the fall of Afghanistan to the Taliban - Amnesty International](https://www.amnesty.org/en/documents/asa116816/2023/en/)

<sup>2</sup> Human Rights Watch, "Survivors Describe Taliban: Human Rights Watch urges U.N. Investigation of Massacre," 1 November 1998, [Survivors Describe Taliban](https://www.hrw.org/news/1998/11/01/survivors-describe-taliban) | Human Rights Watch (hrw.org); Human Rights Watch, "Group Targets Religious Minorities: Taliban Need to Protect, Assist Hazara, Other At-Risk Communities," 6 September 2022, [Afghanistan: ISIS Group Targets Religious Minorities](https://www.hrw.org/news/2022/09/06/group-targets-religious-minorities) | Human Rights Watch (hrw.org)

<sup>3</sup> Amnesty International, "Your Sons Are in the Mountains": *The Collective Punishment of Civilians in Panjshir by the Taliban* 7 June 2023, [www.amnesty.org/en/documents/asa11/6816/2023/en/](https://www.amnesty.org/en/documents/asa11/6816/2023/en/), p. 5 and 21; Amnesty International, "The Taliban's War on Women: The Crime Against Humanity of Gender Persecution in Afghanistan", 23 May 2023, <https://www.amnesty.org/en/documents/asa11/6789/2023/en/>, p. 50 – 52.

<sup>4</sup> UNAMA, "De Facto Authorities' Moral Oversight in Afghanistan: Impacts on Human Rights," 9 July 2024, [moral\\_oversight\\_report\\_english\\_final.pdf](https://www.unmissions.org/sites/default/files/moral_oversight_report_english_final.pdf) (unmissions.org)

<sup>5</sup> Amnesty International, "The Taliban's War on Women: The Crime Against Humanity of Gender Persecution in Afghanistan", 23 May 2023, p. 50 – 52.

<sup>6</sup> Amnesty International, "Afghanistan: 13 Hazara killed by Taliban fighters in Daykundi province – new investigation", 5 October 2021, [www.amnesty.org/en/latest/news/2021/10/afghanistan-13-hazara-killed-by-taliban-fighters-in-daykundi-province-new-investigation](https://www.amnesty.org/en/latest/news/2021/10/afghanistan-13-hazara-killed-by-taliban-fighters-in-daykundi-province-new-investigation); Amnesty International, "Afghanistan: Taliban torture and execute Hazaras in targeted attack – new investigation", 15 September 2022, [www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation](https://www.amnesty.org/en/latest/news/2022/09/afghanistan-taliban-torture-and-execute-hazaras-in-targeted-attack-new-investigation); UNAMA, *A Barrier to Securing Peace: Human Rights Violations Against Former Government Officials and Former Armed Force Members in Afghanistan: 15 August 2021 – 30 June 2023*, 22 August 2023, pp. 5-6, <https://unama.unmissions.org/barrier-securing-peace-hr-violations-against-former-government-officials-former-armed-force-members>

<sup>7</sup> UNAMA, "De Facto Authorities' Moral Oversight in Afghanistan: Impacts on Human Rights," [moral\\_oversight\\_report\\_english\\_final.pdf](https://www.unmissions.org/sites/default/files/moral_oversight_report_english_final.pdf) (unmissions.org), 9 July 2024, p. 4.

<sup>8</sup> UNAMA, "Corporal Punishment and the Death Penalty in Afghanistan," May 2023, [Corporal Punishment and the Death Penalty in Afghanistan](https://www.unmissions.org/sites/default/files/corporal-punishment-and-the-death-penalty-in-afghanistan.pdf) | UNAMA (unmissions.org), p. 13 to 16; Amnesty International, "Taliban's Cruel Return to Hardline Practices with Public Floggings Must be Halted Immediately," 24 November 2022, [Afghanistan: Taliban's cruel return to hardline practices with public floggings must be halted immediately - Amnesty International](https://www.amnesty.org/en/latest/news/2022/11/24/talibans-cruel-return-to-hardline-practices-with-public-floggings-must-be-halted-immediately)

<sup>9</sup> Afghanistan Independent Human Rights Commission, "A Call for Justice - A National Consultation on past Human Rights Violations in Afghanistan", 25 January 2005, p.8 <https://www.refworld.org/reference/confdoc/aihrc/2005/en/58500> (accessed on 9 September 2024).

<sup>10</sup> Amu, Taliban's Action Minister Mansoor Visits Turkey Despite UN Travel Ban, 8 January 2023, [Taliban's acting minister Mansoor visits Turkey despite UN travel ban](https://www.amu.com.af/en/news/2023/01/08/talibans-action-minister-mansoor-visits-turkey-despite-un-travel-ban) | Amu TV; The Diplomat, "Why Did the Taliban's Sirajuddin Haqqani Visit the UAE?", 07 June 2024, [Why Did the Taliban's Sirajuddin Haqqani Visit the UAE? – The Diplomat](https://www.diplomat.com/en/2024/06/07/why-did-the-talibans-sirajuddin-haqqani-visit-the-uae/)

<sup>11</sup> ICC, "The Prosecutor of the International Criminal Court, Fatou Bensouda, requests judicial authorisation to commence an investigation into the

international law and other serious human rights violations including those committed during periods in which the Soviet Union (between 1979 and 1989), People Democratic Parties of Afghanistan (PDPA) and Mujahedeen groups held positions of control between 1978 and 2001.<sup>12</sup>

The 57th session of the UN Human Rights Council began with calls from the UN Special Rapporteur on the situation of human rights in Afghanistan and the High Commissioner for comprehensive efforts and approach towards accountability in Afghanistan.<sup>13</sup> A stocktaking report on accountability options and processes in relation to Afghanistan submitted to the session identifies that a comprehensive approach to accountability should include all the different periods of conflict in Afghanistan and the responsibilities of all parties and perpetrators.<sup>14</sup>

### **An Independent International Accountability Mechanism to Collect, Preserve, Consolidate, and Analyse Evidence, and Identify Potential Perpetrators**

Afghan civil society organizations, human rights defenders, the Afghan Independent Human Rights Commission, and international human rights organizations have long called for the establishment of independent international accountability mechanisms or processes for Afghanistan by the UN.<sup>15</sup> In August 2024, 36 Special Procedure mandate holders called for “the adoption of an ‘all tools approach’, which combines accountability and increased documentation, with greater support, solidarity and protection for the people of Afghanistan”.<sup>16</sup> Despite decades of crimes under international law and other serious human rights violations, and those currently committed by the Taliban, these calls continue to go unanswered.

In particular, in the present circumstances of persisting and ongoing crimes under international law and other serious human rights violations, the systematic collection, consolidation, preservation, and analysis of evidence from a variety of sources, and the identification of potential perpetrators of crimes under international law are critical for any ongoing or future justice and accountability processes, including those on the national level or at the International Criminal Court. Most importantly, the collection and preservation of evidence can also act as a solid foundation to assist the future domestic accountability processes in Afghanistan – if there is a future possibility in the country that allows it to move towards a conducive environment for the realization of human rights, including the right of victims to justice, truth and reparation.

Timely and proper evidence collection and preservation, which meets international standards, is crucial to ensure that evidence is not destroyed, degraded, or lost - either through deliberate means or for example, by the passage of time - thereby significantly devaluing it as a source of probative information for international justice and accountability processes. Given the current lack of an effective and comprehensive international accountability mechanism for Afghanistan, evidence collection and preservation are particularly required.

Furthermore, an independent international accountability mechanism should have a mandate to establish the facts and circumstances surrounding ongoing and past violations; identify chains of command; and identify perpetrators - thus laying the foundation for future international justice processes, including individual criminal prosecutions. In this regard, such a mechanism must consider a broad timeline or temporal scope that includes the long period of violations in Afghanistan from 1978. Accordingly, it should have a mandate to address the root causes of the pervasive crimes under international law and other serious human rights violations that are being committed to this day – including the crime against humanity of gender persecution against women and girls as well as other crimes against humanity and war crimes.<sup>17</sup>

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Situation in the Islamic Republic of Afghanistan,” 20 November 2017, The Prosecutor of the International Criminal Court, Fatou Bensouda, requests judicial authorisation to commence an investigation into the Situation in the Islamic Republic of Afghanistan | International Criminal Court (icc-cpi.int); Human Rights Watch, “Blood-Stained Hands Past Atrocities in Kabul and Afghanistan’s Legacy of Impunity,” 2005, (previously cited), p. 11-19; Afghanistan Justice Project, “Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001: Documentation and analysis of major patterns of abuse in the war in Afghanistan”, Microsoft Word - AJP REPORT JULY 2005 FINAL.doc (opensocietyfoundations.org), 2005.

<sup>12</sup> Afghanistan Justice Project, “Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001: Documentation and analysis of major patterns of abuse in the war in Afghanistan” 2005 (previously cited).

<sup>13</sup> Afghanistan: Comprehensive efforts needed to stop destructive cycle of impunity, says UN expert | OHCHR; Afghanistan can advance rights – or spiral deeper into failure, Türk says | OHCHR

<sup>14</sup> A-HRC-57-22-AdvanceEditedVersion.docx (live.com)

<sup>15</sup> Amnesty International, “Open Letter on Afghanistan to the Permanent Representatives of Member and Observer States of the United Nations Human Rights Council”, 6 September 2024, <https://www.amnesty.org/en/documents/asa11/8500/2024/en/>

<sup>16</sup> OHCHR, International community must not normalise Taliban rule in Afghanistan, 14 August 2024, <https://www.ohchr.org/en/press-releases/2024/08/international-community-must-not-normalise-taliban-rule-afghanistan>

<sup>17</sup> Amnesty International, “The Taliban’s war on women: The crime against humanity of gender persecution in Afghanistan”, 25 MAY 2023, (previously cited).

## Gaps in Existing UN Mechanisms and Other International Accountability Mechanisms

In Amnesty International's view, all avenues that could support ongoing processes, or serve to support and lead the way to a more comprehensive future international justice response, should be taken. This is particularly the case due to the absence of any prospect of justice and redress at the national level, where in recent years the Taliban have destroyed independent judicial and oversight institutions. Such institutions had previously provided some legal, judicial, and political avenues for investigation, monitoring, and accountability in the country.<sup>18</sup> In this regard, at present, our organization recognizes that a number of international mechanisms have been established – albeit with somewhat limited mandates or capacities – to monitor, document, as well as – in the case of the ICC – investigate and prosecute crimes under international law with respect to Afghanistan. Some states have also commenced national proceedings pursuant to universal or other forms of extraterritorial jurisdiction.

However, despite the existence of certain UN mechanisms, and a limited number of international justice initiatives, it is clear that significant impunity gaps remain, and that the UN could do significantly more to pursue accountability and reparations for Afghanistan. In this regard, an international independent accountability mechanism established under the auspices of the UN, with a specific mandate to comprehensively collect, preserve, analyse, and consolidate evidence, is vital. Of course, in light of existing mechanisms and justice initiatives, any such mechanism should have a specific mandate to cooperate with, and complement ongoing international justice processes, as well as to support any future accountability processes. This should include, for example, any future cases at the International Court of Justice.

Ultimately, however, an independent international accountability mechanism should undertake critical functions not being performed by existing mechanisms. This is particularly apparent when considering the mandates and scope of operation of other mechanisms such as:

### International Criminal Court (ICC)

The ICC has opened an investigation into war crimes and crimes against humanity that have occurred in Afghanistan since 2003.<sup>19</sup> While information on the scope of the current investigation is somewhat limited, the ICC Office of the Prosecutor (OTP) has stated it will focus on investigating alleged crimes committed by members of the Taliban and ISKP, due to their gravity and continuing nature.<sup>20</sup> It should be recalled that the ICC is not conducting a full investigation into all allegations it had outlined in its request seeking authorization for an investigation. Indeed, its ongoing investigation has been (unduly) limited by the current Prosecutor, 'deprioritizing' investigations into crimes committed by former Afghan National Security Forces, US armed forces, and CIA personnel.<sup>21</sup> Therefore, despite ongoing investigations, it is clear that the OTP has a limited capacity and willingness to investigate fully. In addition, due to its limited temporal jurisdiction, it will not be able to comprehensively investigate and prosecute crimes that have been committed in Afghanistan for nearly five decades, and certainly not to a scale required to provide comprehensive truth, justice and reparations. Furthermore, while the OTP has affirmed that, in relation to aspects other than those currently being investigated, it will work to preserve evidence and pursue complementarity framework "to the extent possible",<sup>22</sup> it is clear that the OTP's mandate and capacity does not allow for the comprehensive collection, preservation, consolidation and analysis of evidence of crimes under international law which the Afghanistan situation demands.

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<sup>18</sup> Amnesty International, "Afghanistan: The Taliban's war on women: The crime against humanity of gender persecution in Afghanistan", 25 May 2023, (previously cited), p. 10. The Taliban have also reversed legal reforms including by abolishing the penal code that opened possible avenues to prosecute war crimes, crimes against humanity, genocide. The lack of national justice mechanisms adds more urgency for an international independent accountability mechanism to collect and preserve evidence as well as investigate crimes under international law and other serious human rights violations. Access to information from Afghanistan is increasingly difficult under the Taliban de facto rule, especially for human rights researchers to visit the country and conduct independent on the ground investigations. Owing to the Taliban's crackdown and possible security repercussions, remote investigation is also getting increasingly difficult. In addition to the Taliban's surveillance, such as searching personal mobile phone on the streets and roads, reliable internet access remains challenging in the country. Fearing their safety under the Taliban rule, many human rights defenders and journalists have left the country.

<sup>19</sup> After more than a decade of preliminary examination, in November 2017 the Office of the Prosecutor requested the court's authorization to investigate alleged crimes against humanity and war crimes committed in the context of the armed conflict by the Taliban and their affiliated Haqqani Network as well as war crimes allegedly committed by members of United States armed force and the US Central Intelligence Agency (CIA) in detention facilities in Afghanistan and on the soil of other ICC state members.<sup>19</sup> The prosecutor's requested investigation also focused on alleged war crimes committed by the ANSDFs, particularly by the members of the Afghan National Police (ANP) and members of National Directorate for security (NDS).

<sup>20</sup> International Criminal Court - Office of the Prosecutor Annual Report 2023, Delivering Better, 2023, <https://www.icc-cpi.int/sites/default/files/2023-12/2023-otp-annual-report.pdf>, p. 25.

<sup>21</sup> Amnesty International has consistently criticised this OTP's decision and any double-standard in the application of international justice is strengthening the perception of selective international justice, specifically where the interest of powerful states are concerned – see Amnesty International, "ICC justice should match victims' demands," 6 December 2023, Afghanistan: ICC justice should match victims' demands - Amnesty International

<sup>22</sup> International Criminal Court - Office of the Prosecutor Annual Report 2023, Delivering Better, 2023, (previously cited). p. 25.

## UN Bodies and Mechanisms

Several UN bodies and mechanisms exercise mandates to monitor and report on developments in Afghanistan. However, only a few mechanisms were specifically created to address the situation in Afghanistan. While some existing UN mechanisms on Afghanistan have mandates that contribute towards justice and accountability, UN member states are yet to set up strong UN mechanisms dedicated to justice and accountability in Afghanistan with a focus on investigations and, where appropriate, prosecutions.<sup>23</sup> Further, while some existing UN mechanisms have limited mandates to monitor, collect, and preserve information, these existing mechanisms do not have strong and comprehensive mandates for the collection, analysis, consolidation, and preservation of evidence, including for criminal prosecutions, if sufficient evidence exists.

While Afghanistan is a state party to seven of the nine core human rights treaties, as well as four optional protocols,<sup>24</sup> it has introduced reservations to some of the treaties<sup>25</sup> and failed to cooperate constructively with some of the treaty body monitoring mechanisms,<sup>26</sup> creating a gap in monitoring. Other treaty body mandates and procedures, including confidential inquiries,<sup>27</sup> inter-state complaints,<sup>28</sup> and individual communications<sup>29</sup> lack necessary recognition of competence (through accession or declaration) and cannot, as part of their function, analyse, and preserve evidence for individual criminal responsibility.<sup>30</sup>

In relation to assessing Afghanistan's human rights compliance, the Universal Periodic Review (UPR) could act to provide a record of Afghanistan's performance on human rights, although is not necessarily a comprehensive reflection of the full human rights situation in the country. The UPR only takes place every –four –and –a half years and is not designed to provide any avenues towards criminal accountability (including evidence collection and preservation) or the investigation, and possible prosecution, of crimes under international law.<sup>31</sup>

The Human Rights Service within UNAMA acts as the Office of the High Commissioner of Human Rights (OHCHR)'s representation in Afghanistan.<sup>32</sup> This has allowed OHCHR to work jointly with UNAMA to document and report on human rights violations in Afghanistan. For instance, they have regularly reported on civilian casualties in Afghanistan between 2009 and 2021.<sup>33</sup> While these reports<sup>34</sup> are a valuable source of information, UNAMA is not established with a function or

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<sup>23</sup> For example, the UN and the UN Security Council (UNSC) has not followed the same course of action that it did to address conflicts that were going on simultaneously with the wars in Afghanistan, where the UNSC created ad hoc international criminal tribunals to address crimes under international law in the Former Yugoslavia and Rwanda.<sup>23</sup> Nor, more recently, has the UN taken steps to establish international mechanisms similar to those in relation to Syria ('IIMM') or Myanmar ('IIMM'), or Commissions on Inquiry or Fact-Finding Missions with strong accountability components, as it has done in other situations marked by crimes under international law and other serious human rights violations.

<sup>24</sup> These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children child prostitution and child pornography and the Convention on the Rights of Persons with Disabilities and Optional protocol to the Convention on the Rights of Persons with Disabilities. See OHCHR, Ratification Status for Afghanistan, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN) (accessed 06/09/2024), and UNAMA, "De Facto Authorities' Moral Oversight in Afghanistan: Impacts on Human Rights," 9 July 2024, (previously cited), p. 21.

<sup>25</sup> The Convention on the Rights of the Child.

<sup>26</sup> The three-decade overdue reports to the Human Rights Committee and the Committee on the Elimination of Racial Discrimination have created gaps in monitoring under the International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination. Afghanistan is yet to establish an independent and impartial national preventative mechanism under the OPCAT. See OHCHR, Reporting status for Afghanistan, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN) (accessed 06/09/2024)

<sup>27</sup> OHCHR, Ratification Status for Afghanistan (link above).

<sup>28</sup> Including Article 30 CAT and article 29 CEDAW, International Court of Justice | INTERNATIONAL COURT OF JUSTICE (icj-cij.org) <https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/inter-state-complaints>

<sup>29</sup> United Nations Human Rights Treaty Bodies, "View the acceptance of procedures and the ratification status by country or by treaty," accessed on 11 July 2024

<sup>30</sup> For example, the report under the ICCPR was due 1996, under the ICESCR in 2014 and the last review by CAT was in 2017 with the next state report due in 2021. The report under the ICERD was submitted in 2020, the CRPD in 2021 and the CRC in 2019, currently awaiting scheduling for review. See, [tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=AFG&Lang=EN)

<sup>31</sup> Furthermore, the UPR is informed in part by state-led reporting, and the responsibility to implement UPR recommendations lies solely with the state under review. In the human rights context created by the Taliban, and given their status as de facto authorities, who remain uninvolved with the UPR process, the implementation of UPR recommendations is implausible in the near future, added to which, the inability of independent civil society to operate, further means that there is no independent monitoring from the country on the implementation of recommendations.

<sup>32</sup> OHCHR in Afghanistan | OHCHR

<sup>33</sup> UNAMA, "Human Rights Monitoring and Reporting", accessed on 24 August 2024.

<sup>34</sup> In particular, UNAMA has been focusing on women's rights, detainees' rights, children and armed conflict, and protection of civilians as well as violations of the rights to life, liberty, and physical integrity.<sup>34</sup> In addition to some of its thematic reports, UNAMA is now producing a quarterly human rights update as well as thematic reports in relation to Afghanistan.

specific mandate to undertake actions towards international criminal investigation and prosecution or to establish justice and redress mechanisms for victims.

In 2021, following the takeover by the Taliban, the HRC enhanced its engagement on Afghanistan when it passed a resolution to establish the mandate of the current Special Rapporteur on Afghanistan.<sup>35</sup> Since then, the Special Rapporteur has given visibility and brought to the attention of the HRC and the General Assembly the deteriorating human rights situation in the country.<sup>36</sup> However, in August 2024, the Taliban announced that the Special Rapporteur would be barred from entering the country.<sup>37</sup> The Special Rapporteur's mandate is critical and valuable to ensure continuing monitoring of and reporting on the human rights situation in Afghanistan. The Special Rapporteur has undertaken massive and commendable steps, including operationalising a digital repository of 3,000 pieces of information from both open-source and first-hand material.<sup>38</sup> The Special Rapporteur's mandate extends mainly to documenting and preserving information on human rights violations, rather than the collection, preservation, analysis, and consolidation of evidence of crimes under international law. A Special Procedure mandate enjoys considerably fewer resources, particularly when compared to international investigative mechanisms such as those specifically established for Syria and Myanmar.<sup>39</sup>

Therefore, despite some existing UN, international, and domestic avenues for accountability, significant impunity gaps remain, in terms of ensuring a long-term, comprehensive, and coherent accountability approach for Afghanistan, as well as ensuring that crucial functions such as evidence collection and preservation are undertaken. It is essential that, despite the work and mandates of existing international mechanisms, these gaps be addressed at the earliest by the international community. In particular, the HRC or the UN General Assembly should urgently act to close these gaps and establish an international independent accountability mechanism to investigate, as well as collect, preserve, analyse, and consolidate evidence of crimes under international law, in a timely and systematic manner before they are degraded, destroyed or lost. Given that any mechanism that is established should exercise its mandate in a manner sufficient to address the root causes of the pervasive crimes under international law and other serious human rights violations that are being committed to this day, it is equally paramount that historical evidence that may be relevant to addressing such root causes is preserved - before it is lost, or destroyed.

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<sup>35</sup> Human Rights Council Resolution, UN Doc. A/HRC/RES/48/1, 13 October 2021, <https://documents.un.org/doc/undoc/gen/g21/285/32/pdf/g2128532.pdf>

<sup>36</sup> For example, the work of the Special Rapporteur has placed invaluable special attention on the rights of women and girls, including in cooperation with other Special Procedures and the CEDAW Committee, drawing attention to institutionalized and systematic violations of human rights against women and girls, as well as the rights of minorities, torture and extrajudicial killings. See, A/HRC/53/21: Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls I OHCHR

<sup>38</sup> United Nations Human Rights Council, "“Situation of human rights in Afghanistan Report of the Special Rapporteur on the situation of human rights in Afghanistan,” 22 February 2024, <https://www.ohchr.org/en/documents/country-reports/ahrc5580-situation-human-rights-afghanistan-report-special-rapporteur>, p.3.

<sup>39</sup> See the IIM for Syria, or IIMM for Myanmar, which have a clear mandate to collect, analyse and preserve evidence, including for future criminal prosecutions.