



## Human Rights Guidelines for the Fund for the Afghan People

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In August 2021, the Taliban seized territorial and governmental control of Afghanistan following the United States withdrawal after 20 years of occupation.<sup>1</sup> Since the Taliban takeover, Afghan residents have suffered from severe economic decline, the curtailing of women’s and girls’ rights, migratory displacement, and security concerns, among other depredations.<sup>2</sup> To help alleviate this damage, the United States announced the creation of the so-called “Fund for the Afghan People”, supported through a \$3.5 billion fund which appropriates previous Afghanistan Central Bank reserves held in the United States to disperse assets for the benefit of the Afghan people.<sup>3</sup> The Fund has an explicit charter, with goals that include providing banking sector liquidity and paying for critical imports like energy, but the founding Board of Trustees—which consists of two Afghan economics experts, a U.S. government representative, and a Swiss government representative—has full discretion to operate the fund as it sees fit.<sup>4</sup> This discretion includes the management of assets and the policies that govern disbursement of aid.

The Fund intends to disburse money to promote monetary and macroeconomic stability in Afghanistan by paying for central critical imports like electricity and paying off Afghanistan’s financial obligations at international financial institutions.<sup>5</sup> The goal of these disbursements is to support civilian needs to “benefit the Afghan people.”<sup>6</sup> It is therefore crucial that the Board’s discretion be wielded in congruence with principles of international human rights law. While there is no clear international treaty or security council directive that dictates the decision-making guidelines that should accompany humanitarian aid, there exists a myriad of treaty components, customary international law principles, and *jus cogens* that address how organizations like the Afghan Fund disperse its assets. These principles should guide every disbursement decision of the Afghan Fund to and are supported by the explicit guidelines included below.

As a starting point, all international actions should be in service of—or at the very least not contradict with—the principle outlined in Article 28 of the Universal Declaration of Human Rights (UDHR): everyone is entitled to a social and international order in which the rights and freedoms set forth in the UDHR can be realized.<sup>7</sup> In service of an equitable international order, the Vienna Declaration and Program of Action’s World Conference on Human Rights upheld the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter

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<sup>1</sup> Kim Coghill, “Timeline: The Taliban’s rapid advance across Afghanistan”, *Reuters*, August 16, 2021, <https://www.reuters.com/world/timeline-talibans-rapid-advance-across-afghanistan-2021-08-15/>.

<sup>2</sup> Hameed Hakimi and Dr. Gareth Price, “Afghanistan: One year of Taliban rule,” *Chatham House*, August 15, 2022, <https://www.chathamhouse.org/2022/08/afghanistan-one-year-taliban-rule>.

<sup>3</sup> Media Note, United States Department of State, Office of the Spokesperson, The United States and Partners Announce Establishment of Fund for the People of Afghanistan (Sept. 14, 2022), <https://www.state.gov/the-united-states-and-partners-announce-establishment-of-fund-for-the-people-of-afghanistan/>

<sup>4</sup> William Byrd, *U.S. to Move Afghanistan’s Frozen Central Bank Reserves to New Swiss Fund*, United States Institute of Peace, <https://www.usip.org/publications/2022/09/us-move-afghanistans-frozen-central-bank-reserves-new-swiss-fund> (Sept. 28, 2022).

<sup>5</sup> Media Note, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Universal Declaration of Human Rights*, art. 28, GA Res 217A (III), UN Doc A/810 at 71 (1948).

of the United Nations, other instruments relating to human rights, and international law.<sup>8</sup> Beyond a general framework for action, the Declaration specifically calls on states to “supplement the efforts of the Governments of [developing] countries to attain the full realization of the economic, social, and cultural rights of their people.”<sup>9</sup> Because the Fund’s stated goal of economic aid in service of the Afghan people are consistent with this call to action, all disbursements should act in accordance with the universal principles of the UDHR and Vienna Declaration.

Furthermore, a central purpose for all Member States of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>10</sup> As an international instrument operated between the United States and Switzerland and in service of Afghanistan, the central purpose of this cooperation should echo that of the United Nations Charter.

To this end, Article 55 of the Charter calls on member states to promote “conditions of economic and social progress and development,” “solutions of international economic, social, health, and related problems,” and “universal respect for, and observance of, human rights and fundamental freedoms.”<sup>11</sup> Recognizing the pledge of all members to the United Nations under Article 56 of the UN Charter to act for the achievement of the purposes set forth in Article 55, the Afghan Fund should ensure that these principles are promoted.<sup>12</sup>

Specific international agreements should also guide all decisions by the Afghan Fund. For example, according to the obligations imposed by the Convention on the Rights of Child (“CRC”), including, with regard to economic, social and cultural rights under Article 4, state parties shall undertake such measures to the maximum extent of their available resources within the framework of international co-operation.<sup>13</sup> Similar obligations exist under the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) among others.<sup>14</sup>

While the United States is not a party to either the CRC, CEDAW, or ICESCR, Switzerland is a party to each of them.<sup>15</sup> Although the fund explicitly allows for Trustees to exercise a unilateral veto blocking any decision by the Board, a veto that violates the object and purpose of these treaties

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<sup>8</sup> United Nations General Assembly, *Vienna Declaration and Program of Action*, June 25, 1993, A/CONF.157/23.

<sup>9</sup> *Id.* at ¶ 12.

<sup>10</sup> U.N. Charter, art. 1(3).

<sup>11</sup> *Id.* at art. 55.

<sup>12</sup> *Id.* at art. 56.

<sup>13</sup> *Convention on the Rights of the Child*, art. 4, 1577 U.N.T.S. 3 (1989).

<sup>14</sup> *See generally*, *Convention On the Elimination of All Forms of Discrimination Against Women*, 1249 U.N.T.S. 13 (1979); *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (1966); *International Covenant on Economic, Social, and Cultural Rights*, 993 U.N.T.S. 3 (1966).

<sup>15</sup> U.N. Office of the High Commissioner for Human Rights, “Ratification of 18 International Human Rights Treaties”, <https://indicators.ohchr.org/>.

would put Switzerland in a bind.<sup>16</sup> As a party to the treaties, Switzerland is obligated to act in accordance with the object and purpose of the treaty while executing disbursement from the Afghan Fund.<sup>17</sup> This obligation is attributable to the Fund’s operations because the Fund is a “State Organ” and all Board conduct constitutes an exercise of governmental authority.<sup>18</sup> Any derogation of these treaty obligations by the Afghan Fund—as an entity under the direction or control of Switzerland—would cause Switzerland to be in breach of the international treaties by which its bound.

In the context of Afghanistan, humanitarian assistance and other activities that support basic human needs are not a violation of paragraph 1 (a) of United Nations Security Council resolution 2255 (2015), so the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are “permitted”.<sup>19</sup>

The central guiding principles for humanitarian aid—humanity, neutrality, and impartiality—were adopted by UN General Assembly Resolution 46/182.<sup>20</sup> According to this resolution, adopted in 1991, the principle of humanity requires that human suffering be addressed wherever it is found in order to protect life, health, and ensure respect for human beings. To maintain neutrality, humanitarian actors must not take sides in a conflict, ensuring that the provision of aid is to support the human rights of the people effected rather than the parties in power. Humanitarian actors must also be impartial, giving priority to “the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class, or political opinions.”<sup>21</sup> The principle of independence, added by UN General Assembly Resolution 58/114 in 2004, must also be upheld to ensure that humanitarian action is “autonomous from the political, economic, military or other objectives that any actor may hold.”<sup>22</sup>

The deprivation of economic, social, civil, political, and cultural rights for women and children since the Taliban took power is grave and demands the urgency of humanitarian action

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<sup>16</sup> Sarah Lazare, *As Afghans Suffer, U.S. Stalls on Plan to Return Central Bank Funds*, Dec. 19, 2022, *In These Times*, <https://inthesetimes.com/article/as-afghans-suffer-u-s-stalls-on-plan-to-return-central-bank-funds>.

<sup>17</sup> *Vienna Convention on the Law of Treaties*, art. 18, opened for signature May 23, 1969, 1155 U.N.T.S 331.

<sup>18</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, art. 4-5, adopted by the International Law Commission at its fifty-third session in 2001, UN Doc A/56/10 (“The conduct of any State organ shall be considered an act of that State under international law.”) (“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”).

<sup>19</sup> United Nations Security Council, Resolution 2615 (December 22, 2021) UN Doc S/Res/2615.

<sup>20</sup> For a thorough breakdown of the central guiding principles for humanitarian aid, see United Nations Office for the Coordination of Humanitarian Affairs, “OCHA on Message: Humanitarian Principles” (July 2022), [https://www.unocha.org/sites/unocha/files/OOM\\_Humanitarian%20Principles\\_Eng.pdf](https://www.unocha.org/sites/unocha/files/OOM_Humanitarian%20Principles_Eng.pdf)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

underpinned by human rights.<sup>23</sup> The Afghan Fund has the ability to address the deteriorating economic situation since the Taliban takeover by providing access to food, healthcare, and other critical services.<sup>24</sup> Humanitarian aid has a history of producing a positive impact in Afghanistan, and it should continue to flow in accordance with the requisite human rights principles.<sup>25</sup>

To ensure that any action by the Fund supports human rights and abides by international law, the Board of Trustees should adopt the following resolution:

*Affirming* that the Fund’s bylaws dictate that “All disbursements from the Fund shall be made pursuant to any disbursement policy approved by the Board of Trustees”<sup>26</sup>,

*Recognizing* that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be realized,

*Recognizing* the Vienna Declaration and Program of Action’s World Conference on Human Rights, which upheld the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law,

*Recalling* that the universal nature of these rights and freedoms is beyond question,

*Recalling* a central purpose for state parties to the United Nations, stated in Article 1(3) of its charter, is to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,

*Recalling* article 55 of the United Nations Charter’s call on state parties to promote “conditions of economic and social progress and development,” “solutions of international economic, social, health, and related problems,” and “universal respect for, and observance of, human rights and fundamental freedoms,”

*Emphasizing* the pledge of all members to the United Nations under Article 56 of the UN Charter to act for the achievement of the purposes set forth in Article 55,

*Recognizing* the obligations imposed by the Convention on the Rights of Child (“CRC”), including, with regard to economic, social and cultural rights under Article 4, that state parties shall undertake such measures to the maximum extent of their available resources within the framework of international co-operation.

*Recognizing* the obligations imposed by the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),

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<sup>23</sup> UNHRC, “Situation of Human Rights in Afghanistan,” A/HRC/51/6, September 9, 2022, <https://www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur>

<sup>24</sup> *Id.*

<sup>25</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Afghanistan Humanitarian Fund 2021 Annual Report*, 2021, <https://www.unocha.org/sites/unocha/files/AHF%202021%20Annual%20Report.pdf>

<sup>26</sup> “Fund for the Afghan People”, art. 4, September 2, 2022.

*Noting* that while the United States is not a party to either the CRC or CEDAW, as a party to both treaties, Switzerland is obligated to act in accordance with the object and purpose of the treaty while executing disbursement from the Afghan Fund,

*Emphasizing* that every state has right to offer humanitarian assistance and that, if offered, the recipient state has a duty to admit humanitarian assistance<sup>27</sup>,

*Understanding* that while no state is obligated to offer humanitarian aid, to the extent that such aid is offered, it's disbursement must abide by international law,

*Recalling* that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of paragraph 1 (a) of United Nations Security Council resolution 2255,

*Reaffirming* the central guiding principles for humanitarian aid—humanity, neutrality, and impartiality—adopted by UN General Assembly Resolution 46/182,

*Reaffirming* the principle of independence, added by UN General Assembly Resolution 58/114 in 2004,

*Deeply Concerned* about the deprivation of economic, social, civil, political, and cultural rights for women and children since the Taliban took power<sup>28</sup>,

*Deeply Concerned* about the deteriorating economic situation since the Taliban takeover and its impact on the access to food, healthcare, and other critical services<sup>29</sup>,

*Mindful* of the positive impact of humanitarian aid to Afghanistan<sup>30</sup>,

*Recognizing* this background, the Afghan Fund Board of Trustees should adopt the following disbursement policy:

1. *Require* that fund disbursements are not used in any matter that results in:
  - a. The discrimination against women;
  - b. The discrimination against children;
  - c. Restrictions on freedom of expression, opinion, or access to information;
2. *Ensure* that the disbursement of any, and all, funds is analyzed under the humanity, neutrality, impartiality, and independence framework and:
  - a. *Refuse* to disperse any aid that fails to meet the humanity, neutrality, impartiality, and independence framework;
  - b. *Codify* the principles of humanity, neutrality, impartiality, and independence, adopted by UNGA Resolutions 46/182 and 58/114 in the Fund's bylaws;
3. *Operate with transparency*. The public should have access to all financial information of the Afghan Fund. The fund should publish public, transparent reports which

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<sup>27</sup> Dietrich Schindler, The right to humanitarian assistance: right and/or obligation, SHS95/CONF.805/6 (UNESCO, 1995).

<sup>28</sup> UNHRC, "Situation of Human Rights in Afghanistan," A/HRC/51/6, September 9, 2022, <https://www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur>

<sup>29</sup> *Id.*

<sup>30</sup> United Nations Office for the Coordination of Humanitarian Affairs, *Afghanistan Humanitarian Fund 2021 Annual Report*, 2021, <https://www.unocha.org/sites/unocha/files/AHF%202021%20Annual%20Report.pdf>

- document the amount, destination, mandate, relevant stakeholders, and other descriptive information relating to each and every disbursement from the fund. The public should also have access to all meeting minutes from the Board of Trustees and should be privy to any communications between the Fund and third parties, such as utility companies or currency printers;
4. *Require* that each aid disbursement is used for the particular mandate adopted by the Board of Trustees, and that any derogation away from this mandate, whether it be misappropriation by third-party distributors or the Taliban authorities, be denounced and analyzed by the Afghan Fund to determine the appropriate remedy;
  5. *Monitor* the banking activity of the Afghanistan Central Bank to ensure that any windfall resulting from fund disbursements is not used in any manner that is in violation of these guidelines.