



Afghanistan Human Rights Review: The Right to Protest

by

Hashmat Nadirpor

International Justice Clinic, Afghanistan Human Rights Project

University of California, Irvine School of Law

Cover map source: USAID/OTI website

Afghanistan Human Rights Review: The Right to Protest

Following the fall of Kabul to the Taliban in August 2021, many protests have been held in Kabul and some other provinces. The subjects of protests varied from such topics as [girls' education](#), [women's rights to work and participation in public life](#), [attacks on certain ethnic groups](#), to the [country's economic situation](#). They were peaceful; in most cases, women led them. However, the Taliban response to the peaceful protests has been extremely violent. According to the report of the Special Rapporteur on the situation of human rights in Afghanistan, the Taliban authorities have often used “excessive force, including live ammunition, batons, whips, pepper spray and tear gas” to disperse protests.¹ Furthermore, the authorities have targeted protesters beyond the protests themselves, including by raiding their homes, to increase people’s fear of retaliation for publicly expressing dissent.²

Despite the fact that the Taliban authorities have increasingly restricted the right to peaceful protests by oppositions, they have enabled counter-protests held to support them, not imposing any restrictions.³

The right to peaceful protest is a fundamental human right, guaranteed under international law. Afghanistan is party to many human rights treaties, including International Covenant on Civil and Political Rights, and has a binding legal obligation to respect and protect this and all other rights enjoyed by those within its territory or under its jurisdiction. Regardless of the status of Afghan laws since August 2021, the Taliban, as the de facto government, have a duty to respect the still-in-force international legal obligations of the state and bear responsibility for any breaches of these obligations.⁴

The Right to Peaceful Protest in International Law

The right to protest is protected under the right to peaceful assembly enshrined in article 21 of the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the ICCPR states:

The right of peaceful assembly shall be recognized. No restriction may be placed on the exercise of this right other than those imposed in conformity with law which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.⁵

Similar protection may also be found in article 20 of Universal Declaration of Human Rights which states “everyone has the right to freedom of peaceful assembly and association” and in article 5(d) of International Convention on the Elimination of All Forms of Racial Discrimination which oblige State

¹ HRC, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, para. 82, U.N. Doc. A/HRC/51/6 (Sep. 9, 2022).

² *Id.*

³ United Nations Assistance Mission in Afghanistan (UNAMA), *Human Rights in Afghanistan: 15 August 2021 to 15 June 2022*, at 24, (2022), available at <https://unama.unmissions.org/human-rights-monitoring-and-reporting>.

⁴ Ben Saul, “Recognition” and the Taliban’s International Legal Status, International Center for Counter Terrorism (Nov. 16, 2022, 11:48 AM), available at <https://icct.nl/publication/recognition-talibans-international-legal-status/>.

⁵ International Covenant on Civil and Political Rights, art. 21, Dec. 16, 1966, 999 U.N.T.S. 171.

parties to guarantee to everyone “the right to freedom of peaceful assembly and association” without racial discrimination in all its forms.⁶

Furthermore, protest is a form of action, individual or collective, to express ideas, opinions, or values of dissent, disagreement, criticism, or vindication.⁷ As individual action or an individual’s right to participate in a protest with others, protest is an exercise of freedom of expression and is protected under article 19 of ICCPR. Article 19 protects all forms of expression including spoken and written and their means of communication. Protests take place to express social, cultural, or political views, or opinions; to support or criticize a group, party, or government; to react to a policy; to denounce a public problem; or to raise awareness about situation of discrimination and social exclusion of a certain group.⁸

The right to protest is deeply connected with human rights activities such as demands for the recognition, protection and exercise of a right.⁹ People protest to show their reaction when a right is affected, or they may gather in groups to express a view on any matter of public interest. In many cases, public protests have been the means through which a large number of human rights have been recognized globally.¹⁰

Peaceful protests allow people to publicly show their dissatisfaction and to urge states or other authorities, or private actors, to take actions in response to demands. In the course of history, they played a vital role in bringing changes. For example, public protests had an essential role in bringing an end to the apartheid regime in South Africa in the late 1980s and early 1990s.¹¹ Protests can also provide a means of challenging authoritarian governments and thus, repressing protests may cause deep-rooted crisis or conflicts.

The Human Rights Committee recently adopted an important interpretation of the right to peaceful assembly, General Comment No. 37, which affirms that “article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors, and online; in public and private spaces; or a combination thereof.”¹² The Committee further states that peaceful assemblies may be held in many forms, including “demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs.”¹³ Additionally, the Committee adds that they are protected under article 21 whether they are immobile, such as pickets, or mobile, such as demonstrations or marches.¹⁴

⁶ Universal Declaration of Human Right art. 20, Dec. 10, 1948; International Convention on the Elimination of All Forms of Racial Discrimination, art, 5(d), Dec. 21, 1965, 660 U.N.T.S. 195.

⁷ Inter-American Commission on Human Rights, *Protest and Human Rights*, para. 1, (2019), available at <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>.

⁸ *Id.*

⁹ *Id.* para. 2.

¹⁰ HRC, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, para. 31, U.N. Doc. A/HRC/17/28 (May 23, 2011).

¹¹ Neil Jarman and Michael Hamilton, *Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly*, 1 J. Hum. Rights Pract. 208, 209 (2009).

¹² HR Comm., General Comment No. 37 (2020) on the Rights of Peaceful Assembly, para. 6, U.N. Doc. CCPR/C/GC/37 (Spt. 17, 2020).

¹³ *Id.*

¹⁴ *Id.*

Protests in its turn, as a form of peaceful assembly, may take place in the manner, form and for the duration of one's choosing including through the use of digital technologies and can be spontaneous or simultaneous.¹⁵ They can target any audience such as governments or public authorities, private entities or individuals or the general public and can be held in a public or private place or even online.¹⁶

In protests mainly the objectives are to express opinions, to disseminate information, and to articulate demands. Therefore, the right to protest is fully protected when other overlapping rights such as freedom of expression, freedom of association and political participation are protected as well.¹⁷ Individuals may retain these rights where their conduct is not protected under the scope of article 21.¹⁸

Restrictions on the Right to Protest

International human rights law provides narrow conditions under which the right to protest may be restricted. However, the authorities must justify any restrictions, and must demonstrate that the restrictions are legitimate, necessary and proportionate to at least one of the acceptable grounds for limitation stipulated in article 21 (national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others).¹⁹ Furthermore, the limitations “must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.”²⁰

Article 21 of the Covenant provides that any restriction imposed on the right to peaceful assembly must be in conformity with the law. Therefore, limitations must be placed through a precise law in which conduct of protesters and discretions of enforcing authorities are clearly regulated.²¹ The limitations must pursue the legitimate objectives explicitly set forth in Article 21. Moreover, the limitations must be necessary and proportionate for one of the legitimate aims. They must also be the least interfering measures of its kind and must not outweigh the advantages over the disadvantage to be considered proportionate.²² To impose any limitations on the right to peaceful protest, the authorities must show that these standards have been met and all of them are respected concurrently.

The Right to Protest Under the Taliban

Protests against Taliban rule started right after their takeover of the government. Disturbingly, the Taliban security forces used violence against protesters, including “shooting above the crowds, persistent beatings, intimidation of media, and other repressive measures.”²³ Additionally, the security forces searched houses and arbitrarily arrested and detained protesters to restrict opposition.²⁴

¹⁵ Article 19, *The Right to Protest: Principles on protection of human rights in protest*, at 11, (2015) available at <https://right-to-protest.org/wp-content/uploads/2015/06/right-to-protest-for-web.pdf>.

¹⁶ *Id.*

¹⁷ HRC, Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, para. 14, U.N. Doc. A/HRC/39/28 (July 20, 2018).

¹⁸ HR Comm., *supra* note 12, para. 9.

¹⁹ *Id.* para. 36.

²⁰ *Id.*

²¹ *Id.* para. 40.

²² *Id.*

²³ UNAMA, *Briefing by Special Representative Deborah Lyons to the Security Council* (9 September 2021), available at <https://unama.unmissions.org/briefing-special-representative-deborah-lyons-security-council-5>.

²⁴ UNAMA, *supra* note 3, at 24.

The first street protests against Taliban takeover of the country took place in at least two cities of Jalalabad and Khost on August 18, 2021.²⁵ On one occasion, the protesters marched through the main street of the city of Jalalabad carrying large flags of the former government.²⁶ Taliban fighters fired in the air to disperse the protesters; when that was unsuccessful, the fighters fired on the crowd, killing at least two people and injuring a dozen.²⁷

On September 4, 2021, Afghan women protested in front of the presidential palace demanding for their equal rights in society.²⁸ Taliban security forces used violence to stop the protest. A protester described her personal experience to Human Rights Watch, saying, “When I saw that they are badly beating one of the participants, I went to help but the Taliban soldier hit me with a metal object, and I fainted. All I remember is that there were two other women on the ground and they were still being beaten.”²⁹

According to United Nations Assistance Mission in Afghanistan (UNAMA), from 6 to 8 September 2021, numerous protests occurred throughout Afghanistan in support of women’s right to education, work and participation in public life, or in opposition to Taliban’s military operations in Panjshir and Pakistan’s interference in Afghan affairs.³⁰ The protests occurred in many cities: Kabul, Herat, Balkh, Bamyan, Kapisa, Ghor, Baghlan, Badakhshan, Parwan, Kunduz, Takhar and Nimroz.³¹ The Taliban forces responded to these protests violently, again including shooting in the air, arresting or beating protesters and journalists to break up the crowds or to avoid media coverage.³²

These examples show the Taliban authorities’ failure to meet its international obligations. Under article 21, the de facto authorities have obligation to guarantee and facilitate the exercise of the right to protest and to ensure that this right can be practiced freely through implementing necessary measures and mechanisms rather than obstructing them. Additionally, law enforcement officials have a duty not only to respect the fundamental rights of protesters but also to protect journalists, medical personnel, and members of the public.³³ They should avoid violence, and if the use of force is an undeniable necessity, it must be in compliance with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination with prior warning.³⁴

In stark contrast, highlighting the exclusive focus on anti-Taliban protest, protests in support of Taliban’s policies took place with no restriction. For instance, on September 11, 2021, hundreds of women demonstrated at Kabul university *in support* of the Taliban and their strict interpretation of Islamic rules including separate education for men and women.³⁵ Unlike other protests, this

²⁵ *The Taliban respond with force to an outpouring of public anger*, nytimes (Aug. 18, 2021), available at <https://www.nytimes.com/2021/08/18/world/asia/afghanistan-taliban-protests.html>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Human Rights Watch, *Afghan Women Protest Against Taliban Restrictions* (Sep. 7, 2021), available at <https://www.hrw.org/news/2021/09/07/afghan-women-protest-against-taliban-restrictions>.

²⁹ *Id.*

³⁰ UNAMA, *supra* note 3, at 24.

³¹ *Id.*

³² *Id.*

³³ HR Comm., *supra* note 12, para. 74.

³⁴ HR Comm., *supra* note 12, para. 78.

³⁵ *At Pro-Taliban Protest, a Symbol of America’s Lost Influence: Faces Obscured by Veils*, nytimes (Sep. 11, 2021) available at <https://www.nytimes.com/2021/09/11/world/europe/afghanistan-women-burqas.html>.

demonstration was approved by the Taliban and journalists were allowed to cover it.³⁶ Similarly, in February, April, and May 2021, several other peaceful demonstrations took place in many provinces, for example, to protest the US decision on Afghanistan's assets, to condemn reports of human rights abuses against Afghan citizens in Iran, to protest against Pakistan's air strikes in Khost and Kunar provinces, and to show support for Taliban's hijab policy.³⁷

A comparison of above examples demonstrates bias by the Taliban authorities, directly contrary to the general principle of nondiscrimination. This principle requires that protests may not be limited on the grounds of the biases and prejudices that governments or peoples have towards certain groups or individuals.³⁸ Furthermore, restrictions may not be imposed with discriminatory effects based on the type of protest, content, or request that protesters want to demonstrate.³⁹

After more than a year of the Taliban takeover and despite their countless commitments to uphold human rights⁴⁰, the situation has remained the same. Recently a series of protests took place in Kabul, Mazar-e-Sharif, Herat, Bamyan, Nangarhar, and Kapisa provinces as an aftermath of a suicide attack which targeted ethnic Hazara students in an educational center on September 30 in Kabul. For instance, on October 1, women gathered to protest against the killings of Hazaras in Kabul.⁴¹ In response, the Taliban security forces opened fire and used physical violence, including pepper spray and whippings, to disperse the protest.⁴² Similarly, on October 2 at Herat university, the Taliban frequently opened fire at women protesters who were asking for their right to education and security for Hazaras.⁴³

The Special Rapporteur on the situation of human rights in Afghanistan in his first report in September 2022 warned about the decline in civil, political and cultural rights and continuation of gross violations due to Taliban's actions and their failure to keep up their obligations.⁴⁴ He further added that the human rights situation is enormously grave and there are strong signs of "descending into authoritarianism" in the country.⁴⁵

Conclusion

The right to protest is protected by international law and treaties to which Afghanistan is party, in particular the ICCPR. The de facto government of the Taliban has an obligation to fulfil the country's international obligations, including protecting citizen's fundamental rights. Illegitimate, unnecessary, and disproportionate restriction of the right to protest and responding violently to peaceful assemblies and protests violate human rights instruments. Therefore, any restriction by the Taliban authorities

³⁶ *Id.*

³⁷ UNAMA, *supra* note 3, at 24.

³⁸ Inter-American Commission on Human Rights, *supra* note 7, para. 46.

³⁹ *Id.*

⁴⁰ OHCHR, *Afghanistan: UN human rights experts warn of bleak future without massive turnaround* (Aug. 12, 2022), available at <https://www.ohchr.org/en/statements/2022/08/afghanistan-un-human-rights-experts-warn-bleak-future-without-massive-turnaround>.

⁴¹ *Taliban beat women protesting against school bombing, say witnesses*, theguardian (Oct. 2, 2022), available at <https://www.theguardian.com/global-development/2022/oct/02/taliban-beat-women-protesting-school-bombing-afghanistan>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ HRC, *supra* note 1, para 95.

⁴⁵ *Id.*

must be lawful and respect international standards of legitimacy, necessity, proportionality, and nondiscrimination and be subject to accountability in the instance of violations.