

## Submission to the Universal Periodic Review of Afghanistan October 2023

### Introduction

1. The University of California, Irvine School of Law (UCI-Law) International Justice Clinic conducts research and advocacy promoting compliance with international human rights law and, inter alia, the United Nation human rights mechanism. Under the direction of Professor David Kaye, a former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Clinic work with human rights defenders, lawyers, scholars, NGOs, and other civil society actors and organizations in the United States and abroad to develop and implement advocacy strategies concerning accountability for violations of human rights law.<sup>1</sup>
2. To help monitor the situation and to identify approaches to advocacy, UCI-Law launched its Afghanistan Human Rights Project as part of Law School's International Justice Clinic in the summer of 2022. The Project highlights rights at high risk and proposes recommendations for their protection; explores international mechanisms to hold the authorities accountable and ensure victims protection; and aims to identify mechanisms for documenting human rights violations and examining potential areas of advocacy.
3. This report accounts violations of the human right to work in Afghanistan, focusing on the women's right to work under international law.

### International Obligations

4. Pursuing gender equity remains a vital goal by the United Nations to address structural inequalities, financial hardships, violence, and discrimination.<sup>2</sup> The right to work is a fundamental right that serves as a tool to help achieve gender equity and encourage furthering the empowerment of women.<sup>3</sup> Since the Taliban's reign in Afghanistan in 2021, reports show that Afghan women are systematically excluded from working by Taliban authorities.<sup>4</sup> As a result, an increasing number of families have struggled to attain basic necessities without access to employment, such as medical healthcare or physical support.<sup>5</sup>
5. Experts in the region have called on the authorities to fulfill their obligations to affirm women's right to employment and to take proactive measures in supporting Afghan women

to engage in decision making processes in Afghanistan<sup>6</sup> is bound by international law to uphold and defend essential human rights, including the right to work and right to non-discrimination, which are both protected by human rights instruments that Afghanistan is a party to. The Taliban, acting as the *de facto* government, have a responsibility to uphold the state's international legal obligations and carry responsibility for any violations of those responsibilities.

6. Paragraph (1) of Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates:

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.*<sup>7</sup>

Under Article 6, the Taliban has a responsibility to give everyone in Afghanistan the ability and opportunity to work, no matter their gender, religion, or sexual orientation. This is supported by the nondiscrimination portion of the ICESCR.<sup>8</sup>

7. Under Article 6, the ICESCR recognizes the right to work and that each individual has the opportunity to gain living by work which they freely choose and accept.<sup>9</sup> The ICESCR further elaborates that states have an obligation to ensure the rights of individuals to work and establishes a general human rights standard which every individual has the right to earn their living.<sup>10</sup> This principle is established to provide all individuals the means to provide for themselves an adequate standard of living.<sup>11</sup> By allowing individuals the ability to earn for themselves, work serves as a tool to provide individuals an adequate standard of living and to allow individuals to participate in their society.
8. Similarly, the Economic and Social Council asserted in General Comment No. 18 that the right to work is a fundamental right and allows each individual to live with dignity by providing them the tools to ensure the survival of the individual and their family.<sup>12</sup> General Comment No. 18 establishes that state parties recognize the right to work for everyone and that states will take the appropriate steps to safeguard this right.<sup>13</sup> These steps include technical and vocational guidance, training programs, and state policies to achieve development and full employment under conditions that safeguard fundamental political and economic freedoms.<sup>14</sup>

9. Furthermore, under the ICESCR, states must undertake to respect and ensure that any individuals, without distinction to characteristics such as sex, should not have any rights or freedoms violated. Paragraph (2) of Article 2 of the ICESCR stipulates:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*<sup>15</sup>

10. Similarly, Article 11 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulates that:

*States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.*<sup>16</sup>

11. Article 11 (1) further establishes that the right to work is an unalienable right of all human beings and that states will establish protective legislations for the right to the same employment opportunities, to free choice of profession and employment, and to equal enumeration.<sup>17</sup>

12. Along these lines, General Comment No. 20 further establishes that the ICESCR guarantees the equal rights of men and women in economic rights and that even prohibiting activities on the basis of sex predicated on social constructions of gender stereotypes, prejudices and expected roles constitute discrimination.<sup>18</sup> The on-going, unreasoned, unexplained hindrances on women to fulfillment of economic rights in Afghanistan constitutes the worst forms of discrimination. Paragraph 3 of the General Comment stipulates:

*The principles of non-discrimination and equality are recognized throughout the Covenant. The preamble stresses the “equal and inalienable rights of all” and the Covenant expressly recognizes the rights of “everyone” to the various Covenant rights such as, inter alia, the right to work...*

### **Limitations on Women’s Right to Work in Afghanistan**

13. Since the Taliban takeover, women have struggled to obtain economically beneficial work. On August 17, 2021, the Taliban Spokesperson stated that women would be allowed to work and study within their interpretation of Islam.<sup>19</sup> However, within months, a set of

bans were instituted that violated women's right to work. For example, women are prohibited from registering in organizations, working in NGOs and foreign organizations, and owning local and small businesses. Additionally, most women civil servants are not allowed to report to work and there is restriction of access to employment sites.<sup>20</sup> The Taliban has also restricted women's ability to freely move without a mahram, or a male chaperone. Although some Taliban spokespeople have claimed that having a mahram is only necessary for travel that is longer than three days, not for daily activities like attending work, school shopping, medical appointments, and other needs, the rules are unclear.<sup>21</sup> It is often difficult for women to have mahram when they want to meet their basic needs, like buy food or sanitary pads from a store. If their husband is working, women fear to go out on their own. Some women do not have a mahram at all, because their husbands or brothers work abroad.<sup>22</sup>

14. Women have also been systematically excluded from roles of government and decision-making. On September 7, 2021, the Taliban announced an exclusively male cabinet and positions while dissolving other legislative bodies.<sup>23</sup> On August 31, 2023, the acting deputy Minister of Foreign Affairs announced that women could not occupy top leadership positions in the Taliban government.<sup>24</sup> Shortly after this announcement, the offices of the Ministry for Women's Affairs were converted into offices of the Ministry for the Propagation of Virtue and Prevention of Vice. There is no justification for the removal of the right to work for women in government.
15. Additionally, women working in journalism and media lost their positions after women were no longer given access to press conferences and the acting Minister for the Economy issued a letter barring women from working in international and national NGOs on December 24, 2022.<sup>25</sup>
16. On April 5, 2023, the *de facto* authorities released a ban on Afghan women working in the United Nations.<sup>26</sup> As a result, the UN adopted Security Council Resolution 2681 (2023) which critiqued and condemned the actions of prohibiting women's right to work.<sup>27</sup> Taliban authorities responded with a letter stating that women's rights were ensured and that the UN must respect and not politicize the diversity of other individuals.<sup>28</sup>
17. Human Rights Watch interviews with women in Ghazni province of Afghanistan have increasingly demonstrated that the Taliban has imposed policies that prevent women from

working in local and small businesses.<sup>29</sup> On July 4, 2023, the Taliban banned women from employment in beauty salons due to their belief that it creates an undue financial burden on men.<sup>30</sup> As a result, already-struggling families have been further deprived of access to food, water, shelter, and health care.<sup>31</sup> Some women reported that their families had faced a total income loss as many had been the primary wage earners for their family until the Taliban implemented policies that did not permit women to work.<sup>32</sup>

18. Women in the interviews reported being told to not come back to their place of employment until further notice and being told to wait for previous paychecks to be processed.<sup>33</sup> Women who are employed in primary education or health care are able to work; however, some of these teachers and health care workers are not being paid due to the ongoing financial crisis in Afghanistan.<sup>34</sup> Healthcare workers, such as midwives, noted that even working for organizations funded by foreign donors did not protect them from losing their pay, given that the aid had been cut off and the Taliban had recently curtailed humanitarian aid. Taliban restrictions also include not permitting women to farm, export products, or run local farms.<sup>35</sup> Home-based self-employment is the predominant form of women's participation in the labor market, which has decreased woman's participation in the formal economy.<sup>36</sup>
19. The Taliban's increasing restriction on women's freedoms, specifically exclusion from the workforce, has resulted in an estimated loss of \$1 billion to the Afghan economy, according to the UNDP.<sup>37</sup> The International Labour Organization documented a 25% drop in women's employment levels by late 2022, attributed to the restriction on women's work.<sup>38</sup> Additionally, a World Bank report observed that women-owned businesses were worst affected by the flailing economy and restrictions, forcing nearly 42% of them to temporarily close, all of which contributed to the reduction of Afghanistan's GDP.<sup>39</sup>
20. On January 18, 2023, the UN Refugee Agency released news that local NGO agencies have attempted to provide training to women to learn tailoring and sewing to sell.<sup>40</sup> Though the project provided an important step to bringing women closer to finding employment, only 10 women received training and the restrictions on employment place severe threats towards program participants.<sup>41</sup>
21. On June 15, 2023, the Special Rapporteur on the situation of human rights in Afghanistan provided a current report that described and confirmed continued discrimination against

women that directly prohibits women from working.<sup>42</sup> The Special Rapporteur and the Working Group found that the *de facto* authorities perpetuated the most extreme forms of gender-based discrimination through restrictive edicts targeting women and girls and through the ongoing denial of rights.<sup>43</sup>

22. Under the Rome Statute, persecution of women in this way is an international crime where “persecution” means “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”<sup>44</sup>

## Recommendations

23. Considering the foregoing, the following recommendations are suggested:

- a. The *de facto* authorities should ensure the compliance of Afghanistan with human rights obligations that include the right to work;
- b. The *de facto* authorities should desist from prohibiting women’s employment in a multitude of spheres, such as government and business, and should immediately remove all restrictions, bans, and barriers to women working;
- c. The *de facto* authorities should take steps to promote women’s active participation in all opportunity sectors and restore the legal protections of women as provided in the Afghan Laws;
- d. The *de facto* authorities should provide training programs to help facilitate more opportunities for women’s employment;
- e. The *de facto* government should afford women the opportunity to get a formal education so they can make a meaningful contribution to the workforce and economy of Afghanistan.

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<sup>1</sup> For more information, please see <https://ijclinic.law.uci.edu/>.

<sup>2</sup> See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>3</sup> *Ibid.*

<sup>4</sup> *In focus: Women in Afghanistan one year after the Taliban Takeover*, UN Women, Aug. 22, 2022 at , <https://www.unwomen.org/en/news-stories/in-focus/2022/08/in-focus-women-in-afghanistan-one-year-after-the-taliban-takeover>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Press Release. OHCHR, Afg.: UN experts say 20 years of progress for women and girls’ rights erased since Taliban takeover (March 8, 2023), <https://www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased>

<sup>7</sup> International Covenant on Economic, Social, and Cultural Rights Art 6.¶ 1, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>8</sup> *Ibid.*

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)* at ¶ 1, February 6, 2006, E/C.12/GC/18, <https://www.refworld.org/docid/4415453b4.html> [accessed 20 July 2023]

<sup>13</sup> *See id at* ¶ 2.

<sup>14</sup> *Id.*

<sup>15</sup> *See* ICESCR, *supra* note 5, Art. 2 ¶ 2.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Art. 11 ¶ 1, New York, December 18, 1979, 1249 U.N.T.S. 13.

<sup>17</sup> *Ibid.*

<sup>18</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, July 2, 2009 at ¶, E/C.12/GC/20, <https://www.refworld.org/docid/4a60961f2.html> [accessed 20 July 2023]

<sup>19</sup> Afghanistan Country Report, *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* at ¶ 11, U.N. OHCHR (June 15, 2023), <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>.

<sup>20</sup> *Afghanistan: Taliban Deprive Women of Livelihoods, Identity*, Human Rights Watch, January 18, 2022, <https://www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity>.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> U.N. OHCHR, *supra* note 19.

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

<sup>25</sup> *Id. at* 46.

<sup>26</sup> *Id. at* 48.

<sup>27</sup> *Id.*

<sup>28</sup> *Id at* 11.

<sup>29</sup> Human Rights Watch, *supra* note 21.

<sup>30</sup> *Salons: One of the Last Places Women Can Gather Now Must Close*, July 14, 2023, <https://www.npr.org/sections/goatsandsoda/2023/07/14/1187462663/i-am-crying-at-my-salon-taliban-orders-kabul-beauty-parlors-to-shut-down#:~:text=Tiny%20Desk-,Taliban%20to%20shutter%20Kabul%20beauty%20salons%3A%20Women%20lose%20jobs%2C%20safe,congregate%20under%20the%20Taliban%20regime>.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Human Rights Watch, *supra* note 20.

<sup>35</sup> *Ibid.*

<sup>36</sup> Press Release., Int. Lab. Org., Women bear the brunt of Afg. job losses (Mar. 7, 2023).

<sup>37</sup> Ruchi Kumar, *The Taliban Again Bans Afghan women aid workers. Here's how the U.N. Responded*, NPR, April 14, 2023, <https://www.npr.org/sections/goatsandsoda/2023/04/14/1169682995/the-taliban-again-bans-afghan-women-aid-workers-heres-how-the-u-n-responded>

<sup>38</sup> Int. Lab. Org., *supra* note 33.

<sup>39</sup> Mohammad Sulaiman Akbari, Hikmatullah Fayez, and Subika Farazi, *Afghanistan Private Sector Rapid Survey: An Assessment of the Business Environment*, World Bank Organization, Sept. 3, 2022.

<sup>40</sup> Caroline Gluck, *Afghan Women Affected by Taliban Bans on Work and Study Fear for Their Futures*, UN Refugee Agency, January 18, 2023, <https://www.unhcr.org/news/afghan-women-affected-taliban-bans-work-and-study-fear-their-futures>

<sup>41</sup> *Ibid.*

<sup>42</sup> Afghanistan Country Report, *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*, U.N. OHCHR (June 15, 2023), <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>.

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<sup>43</sup> *Ibid.*

<sup>44</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)* at Art. 7 ¶ 2(g), July 17, 1998, <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 30 September 2023]