

# ARTICLES 1, 2 AND 3

Articles 1, 2, and 3 of CEDAW establish the foundation for CEDAW by defining what constitutes discrimination against women and outlining the obligations of States Parties to eliminate discrimination and promote gender equality. Articles

1, 2, and 3 define discrimination against women; clarify policy measures state parties should undertake to prevent discrimination; and guarantee basic human rights, freedoms, and equality.

## Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

## Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g. To repeal all national penal provisions which constitute discrimination against women.

## Article 3

States Parties shall take in all fields, in particular in the political, social, economic, and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.



“The women of Afghanistan went from existence—from being part of society, from working, from being part of every aspect of life as doctors, judges, nurses, engineers, women running offices—to nothing. Everything they had, even the most basic right to go to high school, was taken away from them.”<sup>1</sup>

—Mahbouba Seraj, a 74-year-old Afghan women’s rights activist

“They have banned us from living our lives.”<sup>2</sup>

—Afghan woman educator working for a humanitarian aid organization

## Introduction

Article 1 of CEDAW protects women’s and girls’ right to equality in all aspects of life by prohibiting any form of sex-based discrimination and calling for discrimination against women and girls, in all its forms and manifestations, to be eliminated. Article 1 defines “discrimination against women” as any distinction, exclusion, or restriction made based on sex that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms in all spheres of life, including political, economic, social, cultural, and civil rights, on an equal basis with men. Discrimination can be intentional or unintentional. The definition of discrimination applies to all women and girls, regardless of their marital status.

Article 2 requires countries to take action to eliminate discrimination against girls and women. These requirements include States: condemning discrimination against women; establishing legal protection for girls’ and women’s rights; and modifying or abolishing laws that discriminate against girls and women.

Article 3 mandates that in all spheres of life, state parties go beyond prohibiting discrimination and require states to actively promote women’s equal advancement and development with men in political, social, economic, and cultural domains. Article 3 obligates state parties to use legal frameworks and other appropriate means to achieve this goal.<sup>3</sup>

## Afghanistan’s Commitments to Women’s Rights and Equality

Afghanistan is bound by the UN Charter, the Universal Declaration of Human Rights, and has ratified most of the major international human rights treaties, including the International Covenant on Civil and Political Rights (1983), the International Covenant on Economic, Social and Cultural Rights (1983), the Convention on the Elimination of All Forms of Racial Discrimination (1983), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1987), the Convention on the Rights of the Child (1994), CEDAW (2003), and the Convention on the Rights of Persons with Disabilities (2012), among others. All these international human rights treaties apply equally to protect women’s and girls’ rights and freedoms without discrimination. Notably, when Afghanistan ratified CEDAW, it did so without reservation.

Established in June 2002, the Afghanistan Independent Human Rights Commission (AIHRC) was mandated to promote, protect, investigate, and monitor human rights in Afghanistan. The AIHRC’s mandate was further reinforced by its inclusion in the 2004 Constitution. The AIHRC played an important role in promoting women’s and girls’ human rights, and in addressing widespread sexual and gender-based violence and discrimination in the country.

Afghanistan’s ratification of CEDAW strongly influenced its 2004 Constitution, which guarantees women’s equality with men, grants women equal rights and duties with men before the law, prohibits gender-based discrimination, and guarantees women’s right to fully participate in public and

political life. Article 83 of the 2004 Constitution calls for a quota system to help ensure women's political representation, with approximately 25 percent of seats in the lower house of parliament (Wolesi Jirga) and 17 percent of seats in the upper house (Meshrano Jirga) reserved for women. The electoral law required that at least 20 percent of seats in every Provincial, District, and Village Council should be reserved for women candidates. In 2008, the government's "National Policy on Gender Mainstreaming", "National Action Plan for the Women of Afghanistan (2008–2018)", and the "Afghanistan National Development Strategy," all committed efforts to reach a goal (by 2020) of promoting gender equality; women holding 30 percent of civil services positions; that all government ministries and independent departments would have a minimum of 30 percent of women on their staff; and increasing women's role in the Afghan National Defense and Security Forces.<sup>4</sup>

In 2009, the "Law on Elimination of Violence against Women" was passed by Presidential Decree (after failing to be passed by Parliament). The law criminalized rape as a separate and punishable crime with harsher penalties, as well as other forms of sexual and gender-based violence against women, including sexual, physical, and psychological abuse. Forced marriage and underage marriage were specifically criminalized, as were acts that violated women's civil rights, including acts that prevented them from receiving an education, engaging in employment, or deprived them of receiving an inheritance. The EAW law also required that the government implement specific actions to prevent gender-based violence, support victims, protect women and girls at risk, prosecute and punish perpetrators, and raise public awareness of the crimes of violence against women. Implementation of the EAW faced significant challenges due to conservative patriarchal approaches, cultural norms and dispute resolution systems like jirgas and shuras, and lack of access to justice. Even with EAW in place, Afghan women and girls continued to face some of the highest rates of gender-based violence in the world.<sup>5</sup>

Importantly, the EAW law provided a robust legal framework criminalizing violence against women and girls. The EAW law was complemented by the AIHRC's role of monitoring and promoting women's and girls' human rights, as well as investigating and reporting on violence against women and girls.

## The Taliban's Laws and Decrees Discriminate Against Women and Girls<sup>6</sup>

Among the first acts of the Taliban in returning to power in August 2021 was to declare the 2004 Constitution an invalid instrument of Western occupation, revoke the EAW, dissolve the AIHRC, disband the Ministry of Women's Affairs and replace it with the Ministry of Virtue and Vice, and order Morality Police to enforce new laws and decrees that discriminate against women and girls. In the next months and years, the Taliban issued over 100 laws, edicts, and bans in violation of Afghan women's and girls' rights under national and international law, CEDAW, and Afghan conservative patriarchal approaches and customs.

Notably, as the Taliban are now the de facto ruling authority in Afghanistan, they are legally obligated to uphold the country's international human rights commitments that the country signed and ratified, including CEDAW. Significantly, as the de facto ruling authority in Afghanistan, the Taliban are now in violation of CEDAW through their laws, decrees, policies, and actions.

The Taliban's laws, edicts, and bans are in direct violation of Articles 2 and 3 of CEDAW. Through their laws, edicts, and bans, and the often-violent enforcement of these missives, the Taliban have discriminated against women and girls at a level unprecedented in the modern world. The Taliban denied girls the right to education beyond the sixth grade, which violates their right to education upheld in Article 10 of CEDAW. They barred girls and women from employment outside the home (except for limited cases in the health sector), violating their right to work in Article 11 of CEDAW. They banned girls and women's access to health care facilities, in violation of their right to health in Article 12 of CEDAW. They prohibited girls and women from traveling, going to parks, or being in public without a close male family member accompanying them, in violation of their right to freedom of movement in Article 15 of CEDAW. They outlawed girls and women gathering to peacefully protest this harmful and illegal treatment, in violation of their right to freedom of expression enshrined in Article 7 of CEDAW.

The Taliban's law entitled "Propagation of Virtue and Prevention of Vice," is one of the most wide-

ranging and discriminatory laws against women that the Taliban have passed to date.<sup>7</sup> Enacted August 21, 2024, the law consists of four chapters and 35 articles. The law imposes further restrictions on and discrimination against Afghan girls' and women's already under assault rights, personal freedoms, and human dignity.

The law gives overwhelming power to the Taliban's Sharia or religious inspectors, called "enforcers." Article 7 allows anyone in a position of power to enforce the law, while placing specific responsibility on the Sharia enforcers. No means of verification is provided for identifying vice or for the appointment of these enforcers. Enforcers can act based on observation, hearing, and hearsay or the testimony of two people as outlined in Article 10. This opens the door to severe violations of privacy, allowing the enforcers to interfere with people's private lives at home or outside without a court order. The law states they can do so according to Sharia. However, the law's provisions contradict many Sharia principles and are in stark breach of international laws, human rights norms and legal traditions.

Article 13 of the new law dictates that if an older girl or woman leaves her house she is duty-bound to hide her voice, face and body. It mandates that older girls' and women's bodies are to be completely covered. It defines the hijab—a head covering worn in public by some Muslim women—in the most restrictive terms possible. No longer just a head covering, the new law extends hijab to require full body covering, veiling of the face, and avoiding eye contact with men. Leading United Nations experts deem the repressive enforcement of the hijab a violation of women's and girls' freedom of expression and a form of gender persecution. The experts warn that laws enforcing the covering of girls and women "opens the door to a range of other possible violations of political, civil, cultural and economic rights."<sup>8</sup> In stark contrast, Article 13's requirement for men's clothing is for them not to show their knees.

Furthermore, Article 13 bans older girls and women from showing their faces to women who are so-called non-believers. It also orders older girls' and women's voices to be silenced even from praying or reciting holy texts of the Quran. Article 22 also instructs the enforcers to prevent or stop "the sound of a woman's voice or any music emanating from any gathering or from the home."<sup>9</sup> This law violates women's freedom of opinion and expression, their right to liberty, and their right to

protest. By ordering the silencing of their voices, it also violates their right to participate in political and public life, social and cultural life, education and more, all in violation of CEDAW.

Article 20 extends these restrictions further, requiring transportation companies and drivers to refuse to provide services to older girls and women who are not fully covered and who travel without a male companion. The law's enforcers are ordered to prevent older girls and women from sitting with or engaging in any way with an unrelated male while in transport facilities. This violates girls and women's right to freedom of movement, freedom of association, and serves to limit their rights to health, education, and public, political, and social life.

Article 17 severely restricts the freedom of expression and thought for the general population. It censors people's access to media and dictates punishments for broadcasting photographs or films of living beings, or even storing them on personal devices. Article 22 forbids Afghan older girls and women and men from befriending non-Muslims or assisting them in any way to control Afghan's access to information. These are violations of Afghan's right to access information and freedom of opinion, expression, and association.

The law gives free rein to enforcers to determine, in their judgment, if a vice is being committed and the punishments they will impose. The lack of an independent judiciary in determining and enforcing these repressive laws will undoubtedly expose Afghan girls and women to greater private and social violence, physical, mental, and emotional violence, and intimidation. It will also open up pathways for exploitation by third parties.

The law permits enforcers to use physical punishment, including beating, intimidation, and imprisonment, without due process. The list of punishments that are authorized to be enforced promotes arbitrary punishment, imprisonment, torture, and degrading and inhuman treatment of people. Article 24 provides a list of Sharia sanctions which includes advice, intimidation, verbal punishment, confiscation, and destruction of property. Repeated violations by individuals or groups can lead to prosecution before a court, which based on the Sharia criminal law, includes detention, long-term imprisonment, stoning, flogging, execution, being thrown from a mountain, and other inhuman punishments.

The 2024 “Propagation of Virtue and Prevention of Vice” law has dashed hope of real change in the Taliban’s repressive policies toward women and girls. The law also casts serious doubt on how successful the international community has been in its efforts to improve the status of women by holding, in July 2024, high-level multilateral talks with the Taliban, where the Taliban demanded and received the complete exclusion of Afghan women from the talks.<sup>10</sup> Perhaps emboldened, just weeks following these meetings, the Taliban announced the new “Propagation of Virtue and Prevention of Vice” law. These discriminatory laws are created to enforce and uphold the Taliban’s system of gender apartheid.

The Taliban’s laws, edicts, bans, policies, practices, and actions that we detail throughout this report are discriminatory under the definition of Article 1 of CEDAW. They violate Article 2 of CEDAW by requiring Taliban agents and Afghan citizens to discriminate against girls and women, removing legal protections for girls’ and women’s rights, and creating laws and practices that discriminate against girls and women. In violation of Article 3 of CEDAW, the Taliban’s laws, edicts, and bans undermine in all spheres of life women’s and girls’ equal advancement and development with men and boys.

- 1 Ahmadi, Belquis and Scott Worden. “The Taliban Continue to Tighten Their Grip on Afghan Women and Girls.” *United States Institute for Peace*, December 8, 2022, np. <https://www.usip.org/publications/2022/12/taliban-continue-tighten-their-grip-afghan-women-and-girls>.
- 2 Save the Children. “What the Taliban Ban on Female Aid Workers Means for the Future,” np. <https://www.savethechildren.org/us/charity-stories/taliban-ban-girls-education-female-ngo-workers>.
- 3 Schulz, Patricia, Ruth Halperin-Kaddari, Beate Rudolf, and Marsha A. Freeman, eds. *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary*. Oxford University Press, 2023.
- 4 Mosamim, Parwiz, and Jean-Patrick Villeneuve. 2023. “Women in Government: The Limits and Challenges of a Representative Bureaucracy for Afghanistan (2001-2021).” *Policy Studies* 44 (6): 703-27. doi:10.1080/01442872.2022.2161499.
- 5 Wimpelmann, Torunn. “‘Good Women Have No Need for This Law’: The Battles over the Law on Elimination of Violence against Women.” In *The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan*, 1st ed., 51-82. University of California Press, 2017. <http://www.jstor.org/stable/10.1525/j.ctt1w76wn3.8>.
- 6 Mazurana, Dyan, and Sima Samar. 2024. “How the Taliban’s New ‘Vice and Virtue’ Law Erases Women by Justifying Violence Against Them.” *The Conversation*, September 30, 2024.
- 7 Islamic Emirate of Afghanistan, Ministry of Justice. *The Official Gazette: Propagation of Virtue and Prevention of Vice*. Translated by Afghanistan Analysts Network, July 31, 2024. <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>.
- 8 United Nations Office of the High Commissioner for Human Rights. “Repressive Enforcement of Iranian Hijab Laws Symbolises Gender-Based Persecution: UN Experts.” April 14, 2023, np. <https://www.ohchr.org/en/press-releases/2023/04/repressive-enforcement-iranian-hijab-laws-symbolises-gender-based>.
- 9 Islamic Emirate of Afghanistan, Ministry of Justice. *The Official Gazette: Propagation of Virtue and Prevention of Vice*. Translated by Afghanistan Analysts Network, July 31, 2024, np. <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>.
- 10 Fetrat, Sahar. “UN Meeting Blocks Afghan Women from Agenda, Participation Doha 3.” *Human Rights Watch*, June 24, 2024. <https://www.hrw.org/news/2024/06/24/un-meeting-blocks-afghan-women-agenda-participation>.