



# General Assembly

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## Human Rights Council

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Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **Written statement\* submitted by Human Rights Research League, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 August 2024]

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\* Issued as received, in the language of submission only.



## **Lack of Accountability and Denial of Justice in Afghanistan**

In November 2023, Human Rights Research League (HRRL) published a report on ‘Those We Left Behind: Revenge Killings and Other Serious Human Rights Violations in Afghanistan in the Aftermath of the Taliban’s Seizure of Power’.<sup>1</sup> The report was based on a two-year research project documenting revenge killings<sup>2</sup>, acts of torture, enforced disappearances, kidnappings, expulsions and other serious abuses (e.g., extortion, sexual violence, forced marriages etc.) committed in all of Afghanistan’s 34 provinces since 15 August 2021.

Our data demonstrated a broad pattern of revenge killings and other serious human rights abuses, not just in a few provinces, but throughout the entire country, not just during the immediate power transition period, but more than two years after the de facto authorities’ seizure of power, and not just against people directly connected to the former government, but against all people, including women and children targeted by association. Furthermore, we also found that the announced (but never published) general amnesty for former members of the police, army and security forces was not generally observed. Whether or not it was honored seemed to depend on arrangements with local authorities.

Now that three years have passed since the Taliban’s take over, a certain drop in revenge related killings and other serious human rights abuses of that kind (i.e., excluding of course, all gender related abuses) was to be expected. And indeed, as the de facto government tightened its grip on power, the number of (known) cases decreased for a while. This was in part due to the fact that the Taliban felt less threatened by those related to the former government, but not least because many of those at risk of being targeted had either already been taken down or had managed to flee the country.

However, in recent months we have again received an increasing number of reports pertaining e.g. to revenge killings and torture of former members of the police and army. Furthermore, we have been made aware of two levels of ‘injustice’ within the Taliban’s sharia court system, even according to their own, supposedly strict standards.

### **Two Levels of ‘Injustice’**

Several cases were brought to our attention where a victim had been (wrongfully) accused of (minor) infractions of sharia laws, arrested, and then released after paying a fine, in addition to a bribe more than tenfold the amount of the fine. Had the person concerned refused paying the bribe, he was told by his captors (the police) they would even further trump up the charges, adding more serious (and equally unwarranted) charges to the file of the person concerned.

Later on, when summoned by the sharia court, the judges would sometimes explicitly enquire about the exact amount of fine the person had to pay and whether someone had demanded and received a bribe during incarceration, but this puts the victims in an impossible situation. As much as they want to speak out about the bribe they had to pay, they fear the former Taliban fighters turned police, knowing that if the bribe was mentioned to the panel of judges, the fighters now occupying positions within the police may kill the one who dares to speak up and then blame the killing on ‘unknown’ perpetrators.

Therefore, even in the country’s sharia system that prides itself of harsh, yet just punishment, arbitrary and trumped-up charges are common, and corruption lives on, leading often to not just one, but two levels of ‘injustice’.

### **Three Levels of Accountability**

Human Rights Research League has previously spoken about three levels of accountability that we aimed at contributing to with our research project documenting revenge killings and other serious violations of human rights.<sup>3</sup> By presenting the project’s findings and detailing the responsibility of the current regime for the crimes committed within the timeframe of the investigation, we intended to add to international efforts at holding the Taliban to account.

Secondly, we aimed at countering efforts by those states who far too quickly, uncritically and indulgently were tempted to resume to business as usual with the current authorities, willingly trying to claim ignorance about atrocities committed by the regime. Finally, where appropriate, useful and feasible, we committed ourselves to contributing data in select cases to investigations before the International Criminal Court or other future (international) accountability mechanisms.

In the face of the time that has lapsed without serious accountability consequences for the de facto government, there is a real danger that, without continuing international pressure, business will eventually resume as usual, with ensuing, continuing impunity, emboldening the perpetrators. In fact, on August 17, 2024, Uzbek Prime Minister Abdulla Aripov arrived in Afghanistan, signing trade and investment treaties, thereby representing the thus far highest-level visit by any foreign official since the Taliban's seizure of power<sup>4</sup>—without any voices for accountability being raised. Hence, time is of the essence and efforts at pursuing justice must be intensified.

Indeed, several of the atrocities documented in our report may be prosecuted by domestic courts abroad (based on universal jurisdiction) and are reflected in the Rome Statue of the International Criminal Court (ICC) and on March 5, 2020, the Appeals Chamber of the ICC authorized the Prosecutor “to commence an investigation ‘in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003, as well as other alleged crimes that have a nexus to the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties in the period since 1 July 2002’.”<sup>5</sup> While the Government of Afghanistan initially had requested a deferral, on September 27, 2021, the Prosecution requested authorization to resume its investigations, which was granted on October 31, 2022, and further specified on April 4, 2023.<sup>6</sup>

But international investigations and procedures are time consuming and costly, which is why we ask all States Parties and other stake holders to contribute all necessary materials and resources to the ICC and other, future (international) accountability mechanisms.

### **Crimes Do Not Take Place in a Vacuum**

In contemplating justice and avoiding bias, one critical reminder is that crimes and (armed) conflicts do not exist in a vacuum. Evidently, serious crimes have taken place before, in Afghanistan, as well as elsewhere. But Afghanistan in particular has had a several decades long history of grave abuses of human rights and humanitarian law, which did neither start with the current de facto government, nor with the previous Taliban reign. Some crimes had been committed by competing armed groups, others also by allied and Afghan armed, security, and special forces under the previous administration(s), which has also been acknowledged in criminal proceedings abroad. One case in point concerned a judgment by the German Federal Court of Justice [‘Bundesgerichtshof’]<sup>7</sup> where the acts of coercion, mistreatment of captured Taliban fighters, and desecration of a Taliban commander committed in Afghanistan in 2013 and 2014 by an Afghan army officer were qualified as the war crime of torture.<sup>8</sup>

This of course represents in no way any excuse or exoneration of the current, de facto authorities. The level and extensive nature of atrocities committed under their reign speak for themselves.

But what the direct and indirect connections between atrocities, past and present, and the insight that no armed conflict exists in a vacuum should remind us of is that any future (international) accountability process would require a broad mandate to investigate abuses on all sides, and committed also prior to 15 August 2021, should there be any hope for a real, future reconciliation process that Afghanistan will be in need of and that all Afghans deserve.

1 ‘Those We Left Behind: Revenge Killings and Other Serious Human Rights Violations in Afghanistan in the Aftermath of the Taliban’s Seizure of Power’, Human Rights Research League (Nov. 2023), available at: [https://www.hrrleague.org/gallery/HRRL-AFG%20Report%20\(Those%20We%20Left%20Behind\)%20\(FINAL\).pdf](https://www.hrrleague.org/gallery/HRRL-AFG%20Report%20(Those%20We%20Left%20Behind)%20(FINAL).pdf).

2 Where we found a victim had been killed in revenge for a specific affiliation, occupation, or action, we labelled the killing as a ‘revenge killing’, Where such killings coincided or were motivated by other factors, such killings were labelled as other, ‘extrajudicial killings. (Cf. also *ibid.*, pp. 21-22).

3 Cf. *supra*, note 1.

4 Cf. ‘Uzbek prime minister is in Afghanistan in highest-level visit since the Taliban took power’, ABC News (Aug. 17, 2024), available at: <https://abcnews.go.com/International/wireStory/uzbek-prime-minister-afghanistan-highest-level-visit-taliban-112915287>.

5 International Criminal Court, Situation in the Islamic Republic of Afghanistan, Appeals Chamber Judgment, No. ICC-02/17 OA4, 5 March 2020, para. 79.

6 Cf. International Criminal Court, Situation in the Islamic Republic of Afghanistan, Appeals Chamber Judgment, No. ICC-02/17 OA5, 4 April 2023, paras. 57-62.

7 See German Federal Court of Justice [‘Bundesgerichtshof’ – BGH], (Jan. 28, 2021), 3 StR 654/19, ECLI:DE:BGH:2021:280121U3STR564.19.0, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=8c98a8601d12df344bddd113b06a7b3&nr=116372&pos=0&anz=2> (available in German only).

8 For a discussion of the case and an English translation of key excerpts of the judgment and underlying laws, see Tom Syring, Judgment on Foreign Soldiers’ Immunity for War Crimes Committed Abroad (BGH), 61 International Legal Materials, 483-489 (2022). Available at: <https://www.cambridge.org/core/journals/international-legal-materials/article/judgment-on-foreign-soldiers-immunity-for-war-crimes-committed-abroad-bgh/FB44D014EA83AD565A68C4564718B6CE/share/f98b76cf30f222e7afe3a84bd33ca716914ae7c913c9548adc640b2747dd5293>.