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NOW AND THEN: GRASSROOTS ACTIVISM UNDER THE TALIBAN

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ABOUT THE AUTHORS

FREEDOM NOW

Freedom Now is a Washington, D.C.-based non-profit, non-partisan organization that protects individuals and communities from government repression and defends human rights through direct legal support, targeted high-leverage advocacy, and capacity-building analysis and assistance.

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EXECUTIVE SUMMARY

Between 2004 and 2021, the reforms implemented by the Islamic Republic of Afghanistan allowed civil society in Afghanistan to flourish and grow to an unprecedented degree. However, in the aftermath of the Taliban's recapture of the country in August 2021, the human rights situation has rapidly deteriorated, leading to an upheaval of Afghan civil society.

The present report aims to analyze the changes in Afghan civil society by providing a detailed account of (1) the hostile environment faced by civil society under Taliban rule, (2) the changes in civil society that this new environment has spurred, and (3) how grassroots activists and movements are continuing to promote human rights in spite of Taliban repression. In addition to the factual analysis, this report also provides recommendations to various international stakeholders about how these actors may better support the grassroots activists in this challenging environment.

The research for this report is composed of a survey of current Afghan civil society, interviews with current and former civil society members, and desk research of domestic and international law concerning civil society and non-governmental organizations ("NGOs"). Additionally, where useful, the report relies upon publicly available news accounts to provide helpful context for topics raised by interviewees.

The report finds that Afghan civil society operates in a harsh environment and in response, civil society has undergone a substantial transformation in both composition and operating means. As these restrictions have forced official human rights bodies and traditional NGOs to cease operations, grassroots organizations have become the central advocates for safeguarding these rights. Survey responses tended to focus on four issue areas that are severely impacting civil society operation:

Safety and security:
Most respondents surveyed fear persecution from the Taliban, ranging from imprisonment to extrajudicial killings in the most severe cases. Due to these safety and security concerns, prompted by the experiences of many leaders and volunteers being threatened and harassed at public events, most organizations have had to move their work out of the public sphere.

Taliban restrictions:
Relatedly, many individuals and groups that aim to promote education and human rights, as well as address other crucial social issues face an increasingly hostile environment as a result of policies and practices which have been implemented since the regime change in 2021, many of which are directly hostile to the rights which these actors (also known as human rights defenders) seek to safeguard and promote.

Financial challenges:
While both international and domestic funding was previously available, since 2021 none of the organizations surveyed have received any from either source, and are solely reliant on local fundraising and self-funding. Of those surveyed, two organizations have been able to rely on membership fees and online fundraising to support their work, while the vast majority (90%) have never received any kind of funding. Without a reliable source of income, these organizations are forced to operate on a shoestring budget, hindering their ability to carry out activities effectively.

Sustainability and long-term growth:
While many grassroots organizations continue to operate within Afghanistan, it is clear that ever-present security threats and inaccessibility of funding will severely hamper the sustainability or long-term ability of these organizations to continue to grow and operate within the country.

Drawn from the needs expressed by grassroots civil society, our recommendations are addressed to the following international actors: the donor community; international organizations with a presence in Afghanistan; foreign governments; the United Nations and related international institutions; exiled members of Afghanistan's civil society and other international NGOs.

- **Donor Community:**
  The recommendations to the donor community center around acknowledging and adapting to the changes in Afghan civil society. Donors should recognize the increased proportion of grassroots movements and ensure that grant applications are accessible to grassroots civil society members that are newly formed or that have limited administrative capacity. Additionally, donors should consider providing dedicated funding for capacity-strengthening and the expansion of grassroots civil society organizations, as well as for addressing mental health and well-being challenges faced by civic actors.

- **International organizations with a presence in Afghanistan:**
  The recommendations for international NGOs operating in Afghanistan urge organizations to conduct regular and comprehensive risk assessments for in-country staff and volunteers, and adopt harm-mitigation policies. Insofar as it is relevant to their work, international NGOs should be sure to engage and involve grassroots civil society and women-led movements in program planning and decision-making, while elevating the voices of marginalized communities throughout interactions with the Taliban and the international community.

- **Foreign Governments:**
  The recommendations for foreign governments seeking to promote human rights in Afghanistan involve recognizing the role of grassroots civil society, especially women-led movements, in defending civic space in Afghanistan. Governments that provide civil society funding should adopt the recommendations suggested for the donor community, ensuring that long-term funding is allocated towards growing grassroots civil society organizations. Importantly, foreign governments should provide safe and expedited pathways, including visas to third-party countries, for civic actors whose lives are at risk under Taliban rule.

- **United Nations:**
  The recommendations for the UN and its constituent arms advise prioritizing the protection of civic actors. Specifically, the UN should devote resources and attention to negotiating the release of imprisoned activists from Taliban prisons. Moreover, the UN should prioritize consultations with diverse groups of Afghans on a regular basis, including grassroots civic collectives, to inform and shape UNAMA's strategy and engagement with the Taliban.

- **Afghanistan civil society in exile and other international NGOs:**
  The recommendations for those activists in exile and international organizations primarily concern elevating the messages of grassroots movements in the country, including those of women human rights defenders. The work of international NGOs should also aim to support grassroots activists within Afghanistan with capacity strengthening resources and support in the form of mentorship in order to enhance and expand their work. Exiled civil society and international NGOs, when possible, should also advocate for safe pathways and visas for civil society members for whom it is no longer remain safe in Afghanistan.

Grassroots civic organizations remain vital agents of positive change, embodying the spirit of activism and community engagement. It is incumbent upon the international community to recognize and seriously consider their work, while also providing them with the necessary support to amplify their impact. Doing so will contribute to the advancement of human rights, social justice and sustainable development in communities around the world. Together, we can create a more inclusive and equitable future for all.

I. INTRODUCTION

From the end of the first Taliban era in Afghanistan in 2001 until the beginning of the second Taliban era in 2021, Afghan civil society operated within a security, governance, and funding environment that allowed it to grow and flourish.

During this period, the government of the Islamic Republic of Afghanistan took a vastly different approach to civil and political rights than the Taliban regime that preceded, and it aimed to protect certain rights and freedoms that are key to the development of a strong and effective civil society. Among the most significant changes was the ability of women and ethnic minorities to more fully participate in public life, along with greater equality in the spheres of education, community and working life. The result of the changes under the Islamic Republic is that civil society organizations were allowed to operate in a relatively free manner, particularly in comparison to the Taliban regime that preceded it.

With the fall of Kabul and the beginning of the second era of Taliban rule in Afghanistan, a restrictive environment has returned for Afghan civil society. In response to the Taliban's new restrictions on civil and political freedoms, particularly those of women and marginalized ethnic groups, civil society has undergone considerable changes, both in terms of its composition and its activities.

Some civil society organizations mostly focused on providing direct legal support and representation to survivors of domestic violence. Many provided shelters for women as they were moving through their legal cases. With the return of the Taliban none of this exists now and the protection and safety of women who depended on these services are at risk. Women are facing abuse and even death and have nowhere to go to ask for help in the lack of a legal system that protects them and civil society structures that facilitates their access to legal services and protection.

- Activist, UK

In 2001, an international coalition led by the United States invaded Afghanistan, overthrowing the Taliban regime which had been in power since 1996 and aiding in the creation of the Islamic Republic of Afghanistan. Throughout the duration of the subsequent 20 years, while fighting continued between the coalition forces and a Taliban insurgency, the Islamic Republic aimed to develop democratic institutions and a more open civil society, including a free press and a large number of non-governmental organizations ("NGOs").

Under the Islamic Republic, women and ethnic minorities were able to exercise greater rights to participate in civil and political affairs, after having been excluded during the first Taliban era. Between 2004 to 2021, regular parliamentary and presidential elections were held in Afghanistan. Over ten million Afghans, 41% of them women, registered to vote to determine the composition of parliament and local councils in the 2004 presidential elections, while in 2005, this figure rose to 12.5 million citizens, although, security concerns meant that a large proportion of these voters did not actually cast their ballots.[1] Within Parliament, 65 seats were reserved for women and by 2018, over 400 women ran in the parliamentary elections, with 34% of the female population registered to vote, demonstrating female political involvement through both use of the ballot box and representation of the people within the National Assembly, the Afghan Parliament, itself.[2] Coalition building among various political groups also afforded ethnic minorities the opportunity for representation within government, granting groups such as Shi'a Muslims a voice at a national level. Consequently, progress in women and ethnic minority representation became commonplace, affording these groups, who had previously been marginalized or silenced, the opportunity to be directly involved in the political world through their election, or to contribute indirectly by voting.

Voter Registration in Afghanistan:

Female seats in Parliament: (2004)

2018: Over **400** women ran in parliamentary elections. With **34%** of the female population registered to vote

Alongside progress within the political sphere, during this period, women's and girl's education also developed considerably, as "girls in the remotest parts of the country were able to attend school. Young women were enrolled in national government and private universities in all different faculties from fine arts to medical universities, literature, and engineering. By 2021, 27% of the Afghan parliament and 21% of civil servants were women."[3] Under the Islamic Republic, there was a tenfold increase in the number of students enrolled in school, while 21% of university students were women. Although girl's education and employment was severely limited in Taliban-controlled areas of Afghanistan during this period[4] the government of the Islamic Republic strongly supported women's education and employment in the areas over which it exercised control[5]

Under the Islamic Republic, civil society groups in Afghanistan took a variety of forms and offered many vital services, including legal and mental health support, domestic abuse shelters and access to education for women. A comprehensive review of the NGO landscape in Afghanistan conducted in 2016 presented data from 891 NGOs from 2000-2014, the majority of which focused on education, healthcare and vocational training. At its height in 2012 as many as 701 NGOs were registered in the country at one time.[6] Informal and grassroots organizations existed alongside more formal groups in the form of shuras and local councils.

Development of a vibrant civil society was considered one of the key achievements of the international community and previous governments of Afghanistan between 2002 and 2021. In 2018, 1,863 NGOs were registered, implementing over 2,500 projects at a total cost of $876 million, with 69% of these projects implemented by domestic NGOs[7] Alongside these groups, countless community-level associations, informal councils of elders and grassroots volunteer groups were formed over this period to protect human rights and promote social reform and equality.

One of the key achievements and roles of the civil society pre-Taliban was working to strengthen the legal system, especially advocating for laws that protect the rights of women such as the EVAW law, the draft of the family law, and facilitating the access of women to legal services. Registration of marriage and divorce was another important issue that civil society advocated for [and succeeded in implementing]. These laws and procedures were protecting the lives of women facing domestic abuse.

- Activist, UK

The entire landscape of civil society growth was upended when the Taliban seized control of the country in August 2021. On August 15, 2021, the Taliban seized Kabul, and thousands of Afghans attempted to evacuate.[8] Many of the top government officials, including the democratically elected President Ashraf Ghani, fled the country. Before long, the Taliban seized Kabul, precipitating the dissolution of many civil society organizations and a breakdown in formal civil society structures in Afghanistan. In the wake of this upheaval, new grassroots movements along with the few remaining civil society organizations rose up to fill the void.

Despite the overwhelming challenges they face, grassroots activists and volunteers in Afghanistan have continued working to alleviate the worst social ills and promote human rights under Taliban rule. Targeted attacks by the Taliban, financial constraints and numerous operational obstacles have made their work increasingly challenging. While the difficulty of this new environment has led some civil society members to end their work, grassroots organizations are continuing to play a critical role in advocating for women's rights, social justice and education for girls.

This report explores the dramatic changes that civil society in Afghanistan has undergone since August 2021. Drawing from the experiences of activists working in Afghanistan today, this report investigates the ways in which civil society has adapted to the new operational challenges and has continued to promote human rights and social justice in spite of Taliban repression. By presenting a clear picture of the new civil society that has emerged following the Taliban takeover and identifying the challenges and barriers they face, this report is able to identify the means by which the international community may support grassroots activists and ensure they can continue operating.

The report is divided into the following five sections. The next section, Section II, provides information on the research methodology adopted for this report. Section III examines the current composition of civil society members in Afghanistan and presents the key barriers to their work. Section IV explores the ways in which the current legal and governance environment under the Taliban is shaping the work of Afghan civil society. Section V evaluates the international legal obligations of the Taliban government as they pertain to the rights of civil society. Lastly, Section VI concludes with recommendations that aim to promote and protect grassroots civil society members in Afghanistan today. These recommendations are directed at various key actors, including the donor community, international organizations with a presence in Afghanistan, relevant governments, the United Nations and Afghan civil society organizations and activists currently in exile.


AFP

WHAT IS "GRASSROOTS" CIVIL SOCIETY?

The term "grassroots" is employed frequently in this report to describe civil society as a whole, its members, and its activities. For the purposes of this report, "grassroots" refers to the organized collective efforts by individuals or groups of citizens who unite to advocate for social, political or economic change at the local level. In this report, we focus on grassroots movements, in part due to their emergence as a leading approach to activism in Taliban-controlled Afghanistan, and in part due to the breakdown of the existing civil society framework in the wake of the Taliban takeover.

The UN defines grassroots organizations as "primarily made up of civilians advocating a cause to spur change at local, national, or international levels" which "are community-based approaches created to address localized problems"[9] Organizations within these movements typically emerge from the bottom up, driven by the concerns and priorities of ordinary people who share a common goal or vision for their community or wider society. Advocacy can take many forms, ranging from peaceful protests and rallies to community organizing, direct action and civil disobedience. Groups often rely on bottom-up organizing techniques such as door-to-door canvassing, social media campaigns and grassroots fundraising in order to mobilize supporters and build momentum.

Since the Taliban's return to power in Afghanistan, grassroots organizations and small pockets of civic resistance have emerged across the country. The aim of these groups has been to raise awareness of and counteract the atrocities being committed by the new Taliban-led government. Due to their structure, these small movements have circumvented some of the Taliban's broader attempts to restrict the critical work of traditional, registered NGOs, which formerly spearheaded the opposition to the commission of human rights violations and associated atrocities. These groups focus on a variety of causes, including the defense of human rights values, women's rights and equal access to education for all, as well as protecting civic space which has been severely constrained by the Taliban's oppressive policies. Following the Taliban's prohibition on women's employment and the closure of most women-led NGOs across the country, the role of these grassroots organizations is of even greater importance. Increasingly, it is these groups which are becoming the vital lifeline for women's rights and the promotion of social justice in Afghanistan.

II. METHODOLOGY

Freedom Now and Hogan Lovells ("the Authors") have jointly undertaken extensive research with the aim of obtaining reliable data and insights in relation to the status of grassroots civil society in Afghanistan following the Taliban's return to power. To gather a comprehensive and accurate set of data, the Authors conducted interviews with various groups and individuals including grassroots movements and civil actors inside the country, in addition to civil society members in exile.

The Authors selected survey participants based on their focus issues, geographic location, and ethnicity to ensure that information gathered was both diverse and representative of a variety of communities and groups within Afghanistan. Survey participants, many of whom lead official and unofficial organizations, operate in a diverse range of fields, addressing the unique needs and challenges faced by marginalized communities, including working in a diverse range of areas, including women's rights, rights of marginalized ethnic and religious groups, cultural rights and fair and equal access to humanitarian aid. Services provided include the provision of educational opportunities and capacity-building programs aimed specifically at women who are unable to access formal education due to Taliban policies, advocating for basic human rights by organizing public protests, coordinating relief efforts for underprivileged communities, operating secret libraries and publicly campaigning for girls' education.

The Authors designed a survey questionnaire to gather information about various aspects of operating a civil society organization in present-day Afghanistan. To ensure accessibility for all of the survey's respondents and prevent language barriers from limiting participation, questionnaires were provided in both Farsi and Pashto. The survey questions ranged from simpler multiple choice or yes/no questions, to more open-ended questions with wider scope for providing opinions and explanations, allowing the research team to gather a diverse range of information and determine which areas required greater exploration through subsequent interviews with respondents. Information collected included basic facts about the leaders, including their names, contact numbers and ethnicity, the name and year of establishment of their respective organizations, as well as numbers of staff and volunteers working within them.

Furthermore, survey questions inquired about the focus of participants' work, operational challenges, and the nature of collaboration between various grassroots civil society bodies. In order to assess the longevity of the organizations, questions were posed in relation to funding sources, registration status and possession of physical office space. Meanwhile, as a means of truly understanding the extent of the risks and difficulties faced by groups operating within this grassroots civic movement, the final section of the survey posed questions on major security challenges, such as detention of staff members or the occurrence and regularity, if relevant, of office raids. For survey participants that lead organizations, the survey asked about capacity-strengthening needs, such as digital safety, organizational development, proposal development, presentation skills, program management and documentation training, all of which can help these movements to expand and sustain their work.

Freedom Now distributed the survey questionnaire to participants to the leaders of 21 grassroots organizations working in a diverse range of areas, including women's rights, rights of marginalized ethnic and religious groups, cultural rights and fair and equal access to humanitarian aid. Participants had a two-month window to complete the survey in writing and return it to the authors. Follow-up interviews were then conducted with select organizations to gather additional information on security challenges, financial constraints and key operational issues. Some quotes from the surveys and interviews have been translated into English and inserted into this report.

Additionally, Freedom Now and Hogan conducted interviews with five civil society members who have been living in exile since 2021 to gain insight into the civic space prior to the Taliban's return to power, and to determine the impact upon civil society after 2021. To ensure consistency and structure in interviews, the Authors created a questionnaire specifically tailored to issues concerning exiled civil society members, and interviewers recorded participant responses during the course of the interviews. The interview questions centered around understanding how grassroots organizations historically worked to protect democratic values, promote women's rights and ensure commitment to human rights obligations before the fall of Afghanistan, thus helping to highlight the significant changes that have occurred since the Taliban's return.

Throughout the report-drafting process, additional areas of research were identified, leading to follow-up interviews with multiple survey respondents. These helped to ensure that the report was comprehensive and provided a complete understanding of the challenges, opportunities and needs of grassroots civil society movements operating in Afghanistan. As most of the organizations interviewed have been forced underground by recent Taliban edicts and directives, these later interviews were conducted on platforms deemed safest by each participant to avoid endangering any of the respondents. Furthermore, through the report, the Authors have withheld identifying information of survey respondents for security reasons.

In addition to the surveys and interviews, extensive desk research has been conducted in relation to current and pre-Taliban legal frameworks which are relevant to civil society and the protection of civic space. This was critical in attempting to determine the Taliban's legal obligations to protect civic space and assessing how their actions have violated these commitments. This research also helped to confirm that, as a result of these violations, most civil society groups are no longer able to legally operate within Afghanistan, illustrating why many have been forced to operate underground, under extremely hostile conditions.

Ali Khara/Reuters

III. THE NEW REALITY FOR CIVIL SOCIETY UNDER TALIBAN RULE

Since the Taliban takeover in August 2021, Afghanistan has undergone a rapid erosion of rights, and significant gaps have emerged in citizens' access to many social programs, most notably in areas such as healthcare and education. In this context, Taliban rule has imposed considerable restrictions on the ability of civil society to operate effectively, if at all.

Civil society organizations, particularly at the grassroots level and operating without the protection of international affiliations, face existential threats on a near daily basis, in the form of arbitrary arrests, punishments and even extrajudicial killings. Operating in this context poses novel and unique challenges for grassroots activists in Afghanistan.

Inheriting Pre-2021 Civil Society Challenges

Afghanistan civil society is accustomed to working in a challenging operational environment. Long before the 2021 Taliban takeover, civil society groups faced threats and barriers that served to restrict the scope of their projects and activities. Due to the ongoing war between the Taliban and the U.S.-led forces, the growth of civil society was concentrated in regions that were free from conflict and under the security control of the U.S.-led forces. Those members operating in Taliban-controlled regions faced significant risks to their physical safety, and as a result they conducted their work at great personal risk.

Moreover, even in areas where civil society maintained a moderately safer operating environment, governance issues such as corruption created problems for many civil society organizations. For example, local officials who were responsible for the registration and monitoring of NGOs under the Islamic Republic frequently sought bribes in exchange for permission to operate. The prevalence of this form of corruption placed both a moral and financial burden on civil society seeking to operate in Afghanistan.

In this section, we present our findings with respect to lived experience of grassroots civil society who have continued or begun operating under Taliban rule. The first sub-section below provides an overview of the kinds of grassroots civil society members that our research found to be still operating in Afghanistan. The next three sub-sections focus on the operational challenges of these organizations, and each sub-section addresses how these organizations are forced to adapt to the dire security situation, increased Taliban monitoring, and changes in the funding landscape, respectively. Finally, this section concludes by identifying the motivational drivers of civil society since 2021, with the aim of assessing the trajectory and sustainability of grassroots civil society in this new environment.

The Anatomy of Active Grassroots Organizations in Afghanistan

The interviewees for this report consisted of 21 community-led civil society organizations, operating across 21 of the country's 34 provinces, and consisting collectively of approximately 4,600 employees and volunteers. The organizations' work aims to address a diverse range of issues, including women's rights, rights of marginalized ethnic and religious groups, cultural rights, and fair and equal access to humanitarian aid. Insofar as the surveyed organizations are representative of the broader grassroots movements in Afghanistan, the following analysis of the characteristics and trends among interviewees can provide useful insight into the more general nature of civil society in the country.

One of the most striking features of the sample is the relatively young age of the organizations interviewed. The majority of organizations (62%) did not exist prior to the Taliban takeover and were only established after 2021. Although a sizeable portion of organizations had been in operation before 2021, the majority were formed in response to the new environment created under Taliban rule. The need for the creation of new organizations emerged for several reasons. First, the deterioration of the human rights and humanitarian situation created a greater need for civil society support to amplify local concerns and provide relief for affected communities. Second, many leaders and employees of organizations working to address human rights and humanitarian issues before 2021 were either evacuated abroad or forced to flee Afghanistan following the Taliban's takeover. Furthermore, those civil society members who remained faced an increased personal risk associated with their work (discussed in more detail below), which led to an increased desistance among civil society. In response to the emerging needs, new activists and organizers have sought to fill some of the gaps in civil society.

Another key feature of interviewed organizations is the leadership characteristics. A large majority of these organizations (76%) are women-led. The unique repression faced by women under the Taliban, in part, explains the need for organizations focused specifically on women's issues. However, one might expect that due to the Taliban's strict limitations on women's freedom of movement, access to education, work and public life would almost entirely inhibit the ability of many women in Afghanistan to both run and receive support from grassroots organizations. In fact, the converse appears to be true. Due to the pre-Taliban environment, in which women increasingly received education and were able to exercise their right to civic participation, the Taliban's attempt to systematically disenfranchise and marginalize all women across the country in turn created a new, large group of educated and capable people who are no longer able to work or pursue the public life that they had previously sought. Accordingly, due to the new environment under the Taliban, a significant number of women both had the motive and the capacity to pursue civic work. This new environment provides a partial explanation for why those who entered Afghan civil society after 2021 tend to be women and why a significant number of activist and protest movements in the country have been women-led.

Active Grassroots Organizations in Afghanistan

62%: Organizations set-up following the Taliban takeover

38%: Organizations which existed prior to Taliban takeover

Leadership of Active Grassroots Organizations

76%: Female-led

24%: Male-led

Moreover, as one might predict from the increased need for attention to women's issues, the majority of the organizations surveyed are focused on work related to the protection and promotion of women's rights. Notably, six of the organizations (29%) focus on women's education and provide schooling for girls that have been affected by Taliban's ban of women and girls from educational institutions. Other cross-over issues adopted by multiple organizations include the promotion of public participation for women, promotion of cultural rights, and activism protecting the rights of marginalized and minority ethnic groups.

Despite explicit bans and a hostile environment, organizations we interviewed engage in activities ranging from the provision of direct services to public advocacy. Those engaged in the provision of direct services perform activities that include conducting classes and providing access to educational materials and humanitarian aid. The organizations focused on advocacy, while often attempting to maintain anonymous, work to draw attention to their issue areas through the organization of protests, human rights training for their communities, documentation and reporting, and engaging with international media.

The organizations interviewed for this report exemplify a sample of Afghan grassroots civil society that is characterized by its newness, its women leaders, its focus on the rights of women and marginalized groups, and its opposition to the deterioration of human rights under the Taliban. Although the interviews for this report were not conducted with the intent of capturing a representative sample of all grassroots civil society in the country, the characteristics of interviewees clearly demonstrate that Afghan citizens, particularly women, remain willing to join and support civil society movements in response to the repressive environment created by the Taliban. Because of the unique and severe repression faced by women under Taliban rule, the large numbers of women represented among civil society creates an increased risk and additional barriers to the work of civil society. In the following sections, the exact nature of these risks and barriers are explored in more detail.

The Security Environment for Grassroots Civil Society

Since the Taliban take-over, the principal change affecting grassroots organizations in Afghanistan is the deterioration of the security situation for those working in civil society. Particularly for organizations that primarily serve women or that are women led, grassroots civil society members currently face significant threats to their physical safety. Not only does the general security situation pose risks, but employees, volunteers, and members of organizations are directly targeted, both by Taliban officials and by non-state actors, because of their charitable work and activism.

Interviewees report that civil society members face a wide range of severe treatment, ranging from verbal threats and physical assaults to disappearances and killings. Multiple interviewees cited examples of volunteers being imprisoned and tortured. Three of the interviewees specifically detailed threats of harm that they received from Taliban officials related to their work and expressed concern over the possibility of being subjected to enforced disappearance or extrajudicial killing.

An emblematic case of the Taliban's use of enforced disappearances against civil society is the detention of the Hazara activist Zarifa Yaqoubi. In November 2022, the Taliban arrested and disappeared Zarifa Yaqoubi while she was conducting a press conference announcing the launch of a new civil society initiative, the Afghan Women's Movement for Equality.[10] Yaqoubi spent 40 days in Taliban prisons, where she was subjected to various forms of physical and mental abuse.[11] In detailing her ordeal, Yaqoubi mentions reports that she was singled out for particularly harsh treatment due to her ethnicity.[12] This comports with reports from interviewees for this report, who also mentioned that risks of abuse are elevated for members of marginalized ethic groups.

Approximately half of interviewees report that the most common threat that they face is arbitrary arrests and interrogations, which often result in lengthy detentions without due process. The Taliban's use of detention against activists is often unpredictable and causes significant disruption of the organization's ability to continue their work.

> **My own name had been mentioned on terrorist lists several times by extremist groups. The security department informed me and I had to make specific security plans. I finally had to move the office in [to] my house to make my commute less frequent.**
>
> *- Exiled Activist, Canada*

Afghanistan's Women Protester Movements Coalition

The Security Environment Before August 2021

As noted above, the armed conflict in Afghanistan between 2001-2021 created immense security risks for many civil society members operating across the country. The threats primarily came from Taliban-affiliated or other extremist groups. One interviewee reported a specific event when an armed attacker detonated an explosive outside of the building where a civil society conference was being organized, although it appeared the attack was not targeted at the conference.

Additionally, the Taliban or other groups would often directly target civil society members due to their work or their reputation as such. Interviewees recounted that it was not uncommon for their names to be included on the kill lists published by extremist groups.

"My own name had been mentioned on terrorist lists several times by extremist groups. The security department informed me and I had to make specific security plans. I finally had to move the office in [to] my house to make my commute less frequent."
– Exiled Activist, Canada

Although all organizations operating in the country encountered security risks, some regions faced much greater risks that others. Many interviewees reported that certain provinces were considerably more dangerous for staff and volunteers to operate in. One interviewee, an exiled NGO director who led programs across Afghanistan under the Islamic Republic, recounted "[o]ur employees who were going to the provinces were often threatened. During one human rights training program, a gunman came and threatened our employees to stop the training. If someone was threatened, we would relocate them to one of the safer provinces."

Although some regions provided a safer operating environment than others, civil society members working in heavily guarded areas were nonetheless exposed to the conflict. A second interviewee, a director of an NGO in Kabul during this period, recounted "[i]n 2012, in Kabul, our office was attacked by a warlord, and we were forced to close our office for two months. Then, we moved office locations, and we asked the staff to work from home. For some time, we worked in hiding." During periods of escalating conflict, the security risks forced some organizations to temporarily cease operations or to move operate underground.

Despite the danger, organizations did not encounter difficulties recruiting or retaining staff and volunteers. According to one interviewee, "[i]n the provinces, programs were threatened especially in the human rights section, but no employees left because of security threats." While the possibility to operate freely and openly existed to a greater extent under the prior regime than under Taliban rule, security risks prior to 2021 served to constrain the activities of civil society.

> **[People are afraid] to participate in our underground educational activities.**
>
> *- Education Activist, Kandahar*

Although not every member of civil society is subjected to physical violence or deprivations of liberty, the Taliban's use of verbal threats and intimidation is commonplace. Interviewees report that threats of violence are frequent and often communicated in person or by phone. Threats may be made by Taliban officials, a private citizen, or anonymous. In light of the widely reported disappearances and executions under the Taliban,[13] threatening and intimidating messages serve to create a pervasive sentiment of fear and anxiety amongst leaders, supporters, and those served by grassroots organizations.

In addition, several organizations expressed concerns over the impact of Taliban raids of homes, workspaces, and private events. Two organizations specifically recounted instances where staff and volunteer members had been subjected to raids. Intrusions into the homes of civil society members, not only disrupts the work of members, but also subjects the members and their immediate family to stressful and potentially harmful experiences.

While the Taliban and its members pose the most severe and pervasive threat to civil society, interviewees also report that their organizations and members also face significant threats to their physical security from private actors. Several interviewees report that attacks from private citizens or groups is becoming increasingly common. Organizations' staff and volunteers have faced harassment from non-Taliban-affiliated persons, particularly at public events. As a result, many activists do not consider public gathering or raising community awareness of their work viable or safe for their members.

Threats from the public only add to the preexisting risk of harassment and violence faced by certain marginalized groups, regardless of their participation in civil society. For example, due to the deeply ingrained patriarchal culture and limited public support for women's rights, women human rights defenders face compounding risks, in part due to their involvement in civil society and in part due to them being women. As a result, those from marginalized groups who also participate in grassroots civil society movements are more likely to face harassment, intimidation, and retaliation from within their own communities. This intersection of risks affects many members of the organizations interviewed for this report, of which women and ethnic minority compose a significant portion.

The repressive security environment has had a clear impact on grassroots organizations in Afghanistan. For the organizations interviewed, the security risks create severe barriers to their work and take a heavy toll on their members.

For some organizations, the security situation has forced them to cease operations in certain areas or regions where members face increased risk. One survey participant reported: "We have had to suspend most of our activities in [one province] because the attacks on women's groups are more severe. It is a remote province, and no one hears about the disappearances of Hazara women." For other organizations, the situation has led to them ceasing operations all together.

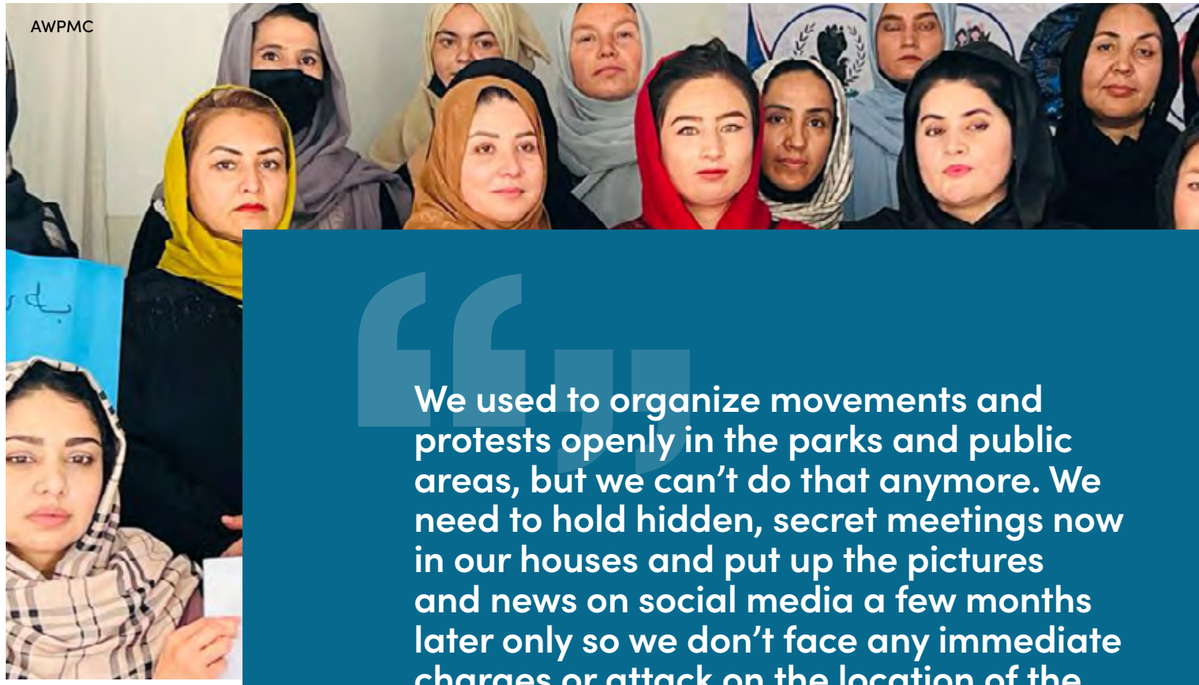
The organizations that continue working in this environment have been forced to adopt different tactics. Interviewees reported that they have begun operating in secret, relocating campaign events, holding meetings behind closed doors and avoiding public spaces where they might be targeted by the Taliban.

> **I established [a library] as a safe space for women and girls to gather, read books and have conversations. . . . After Taliban members started visiting the library, harassing our colleagues, and even threatening to arrest us, we closed the library for the safety of the women.**
>
> *- Education Activist, Kabul*

This shift in tactics has also affected how organizations communicate with the public and the media. NGOs and grassroots movements can no longer openly share information or organize public events, for fear of these activities being perceived as a challenge to the Taliban's authority, which could result in arrests, arbitrary detention, physical punishments or, in the most serious cases, death. One method now being utilized by organizations is that of filming events, campaigns and activities, and subsequently sharing these recordings with the media and key stakeholders, allies and supporters outside of Afghanistan following the event.

Interviewees report that they take various measures in response to these increasing threats to the safety and security of their members. "Lack of a safe space for meetings" was regularly cited as a specific security concern for most of the organizations surveyed, with 67% stating that they have never had an office due to security concerns, while two were forced to shut down their offices when the Taliban seized power, making support systems far less accessible to those groups whose rights they are trying to protect and advocate for. Overall, the severity of the security threats under Taliban rule have served to repress and inhibit civil society work across various dimensions, both operationally and in terms of membership. Despite these challenges, the organizations interviewed remain determined to continue their activities, even if it requires reducing or adapting their activities to minimize the security risks to their members.

The Taliban regime is both a direct cause of the security threats to grassroots organizations and is also responsible for permitting and promoting a public environment that is hostile to civil society. To explore the Taliban government's impact on the work grassroots organizations beyond security issues, the following section assesses the impact that the Taliban's governing practices have on Afghan civil society.


AWPMC

> **We used to organize movements and protests openly in the parks and public areas, but we can't do that anymore. We need to hold hidden, secret meetings now in our houses and put up the pictures and news on social media a few months later only so we don't face any immediate charges or attack on the location of the meeting and don't put people's lives at risk.**
>
> *- Women's Rights Activist, Kabul*

The Impact of Taliban Restrictions on Civil Society Activities

The Taliban's imposition of strict rules and prohibitions on public activities continues to severely restrict civil society and civic participation across the country. Individuals and groups that aim to promote education, human rights and other crucial social causes face strong government pressure and interference into their work under Taliban rule.

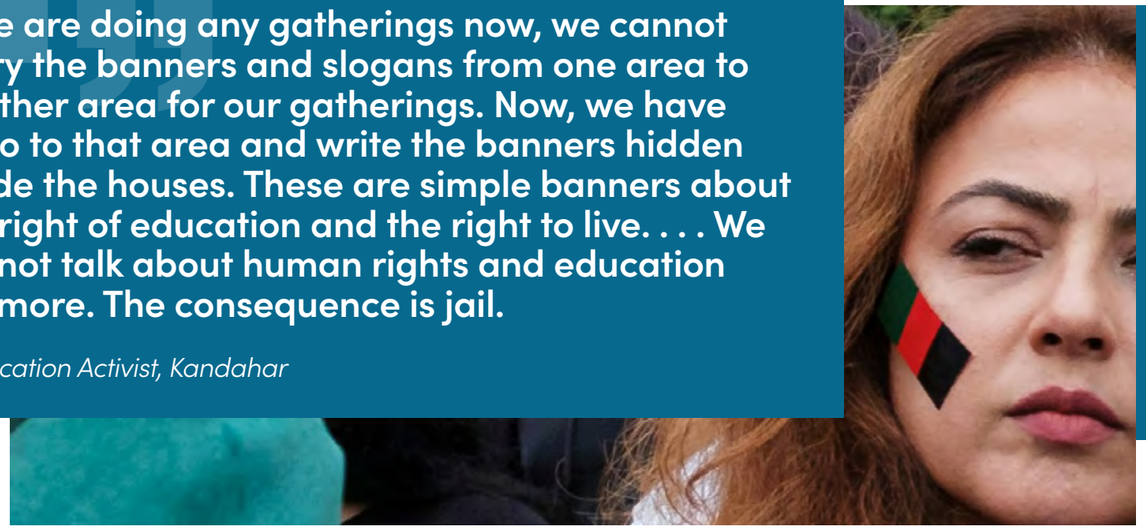
The Taliban has enacted laws and decrees that explicitly prohibit certain human rights activities that are often at the core of grassroots civil society work, such as the Taliban's criminalization of activities involving public discussions and demonstrations relating to human rights. As a result, many grassroots organizations have been forced to move their operations underground to continue their work, despite the great risk.

A clear example of nature of the shifts that have taken place under the Taliban is in the education sector. Activists and non-governmental organizations working on education accessibility issues have faced serious challenges due to the Taliban's policies prohibiting girls from receiving an education. One interviewee, who conducts public education campaigns, shared that book distribution has been prohibited, while permission letters are required for minor tasks, such as door-to-door education campaigns and gatherings with community elders to promote girls' right to education, effectively preventing them from carrying out their work. They have also reported that these challenges come on top of recurring safety and security risks, such as receiving threatening phone calls and in-person warnings from the Taliban to stop their activities. The confluence of operational burdens and barriers serves to amplify the oppressive environment for this organization and those like it.

Another significant impediment is the Taliban's ban on women's employment at local and foreign NGOs.[14] Although initially framed as a temporary issue related to adherence to Islamic dress codes for women, the prohibition is still being upheld by local and national authorities. In January 2023, Taliban ministers announced plans to draw up new guidelines which would facilitate the return of Afghan women to the workplace in the very limited context of specific "humanitarian operations."[15] Although very few local citizens or external observers believe that this ban will realistically be entirely reversed, there do appear to be some proposed "exceptions, exemptions and authorizations" which would allow women to work in crucial areas such as health and community education, areas where women cannot be removed entirely, as the Taliban prohibits men from either treating or teaching women.

If we are doing any gatherings now, we cannot carry the banners and slogans from one area to another area for our gatherings. Now, we have to go to that area and write the banners hidden inside the houses. These are simple banners about the right of education and the right to live. . . . We cannot talk about human rights and education anymore. The consequence is jail.

- Education Activist, Kandahar



Initial reports revealed that the directive against women working was not being uniformly implemented in every region.[16] Those able to work from home in management and technical positions continued to do so, while those working in the field under the aforementioned exemptions and authorizations agreed arrangements with local authorities to work on a restricted basis, based on the justification that this work could not be carried out by men. These restrictions include female employees covering themselves in accordance with Taliban standards, being supervised by a "mahram" and not publicizing their ongoing working status. These compromises varied considerably between provinces, with some officials refusing any kind of female work, while others have displayed willingness to negotiate with NGOs. The Taliban's practice suggests that decisions are made on a fairly arbitrary basis and vary from province to province, making it difficult to present a complete picture of the environment in which these organizations are currently attempting to operate. However, even in cases where approval has been granted for female-led organizations to operate, most often in the form of permission letters from governmental ministries, such as the Ministry of Economy or the Ministry of Justice, authorization from central authorities are nonetheless routinely dismissed by local authorities, illustrating the difficulties faced by organizations in proving their own legitimacy and ability to provide support to marginalized communities.

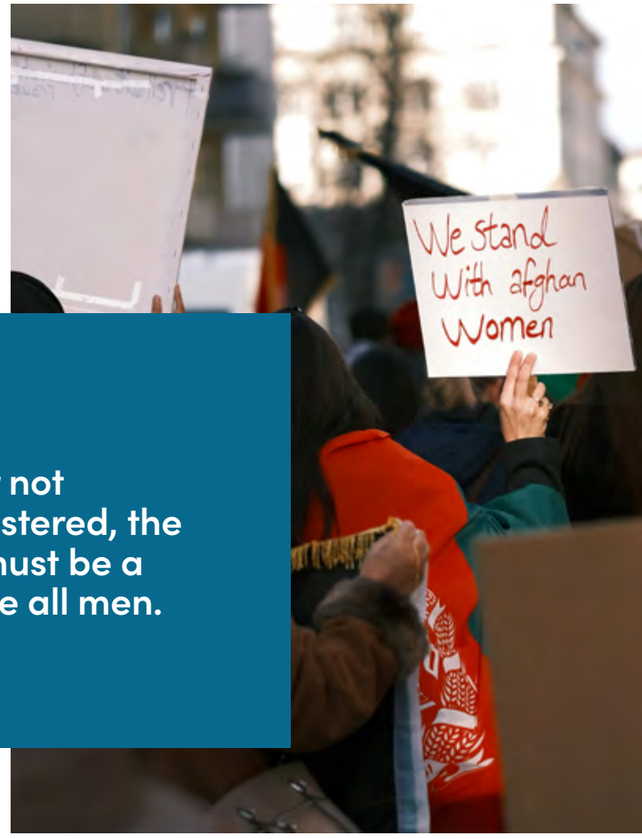
This has dramatically changed how NGOs operate, with one respondent stating:

> *Almost all of our programs are held virtually. Our field activities have been completely halted. Our two or three small activities that are capacity building of civic institutions, we either run entirely femininely and men participate online, or vice versa. Women work from home. The men are in the office.*

A respondent working for an NGO confirmed that, although initially women continued to operate openly in the civic space, at present, the only female employees who were allowed to continue working within their organization were those who worked directly in healthcare, confirming that this ban is being stringently implemented by the Taliban rulers. Almost all of the respondents confirmed that women are not allowed to have any interactions with the finances of an NGO, with another illustrating the extent to which Taliban restrictions on women have infiltrated the NGO space.

Women-led offices are either not register[ed]or, if they are registered, the Taliban say that the deputy must be a male. The board members are all men.

- NGO Executive Director, Kabul



Since the Taliban takeover, the government has sought to exercise control over registered NGOs hiring. One respondent recounting that "if we want to appoint staff under the Taliban's watch, they will forcefully nominate one of their own or a mullah." These informal and formal restrictions controlling the operation of NGOs have drastically altered the regulatory landscape of the civic space and made it almost impossible for women to have any involvement or influence within registered, legitimate NGOs, forcing them to either cease operations entirely, move to virtual work, as several respondents claim to have done, or step back so that the controlling body of the organizations are male-dominated and aligned with the strict Sharia doctrine espoused by the Taliban.

As a result of the severe restrictions coupled with the security issues outlined in the preceding section, many grassroots organizations are forced to operate in the shadows, often without official registration or a physical presence. This presents significant challenges for these groups, as they must rely on word of mouth and personal networks to carry out their work and reach the communities that need their support. They must also carefully navigate the ever-changing political landscape, ensuring that their activities do not draw unwanted attention from the Taliban or other armed groups.

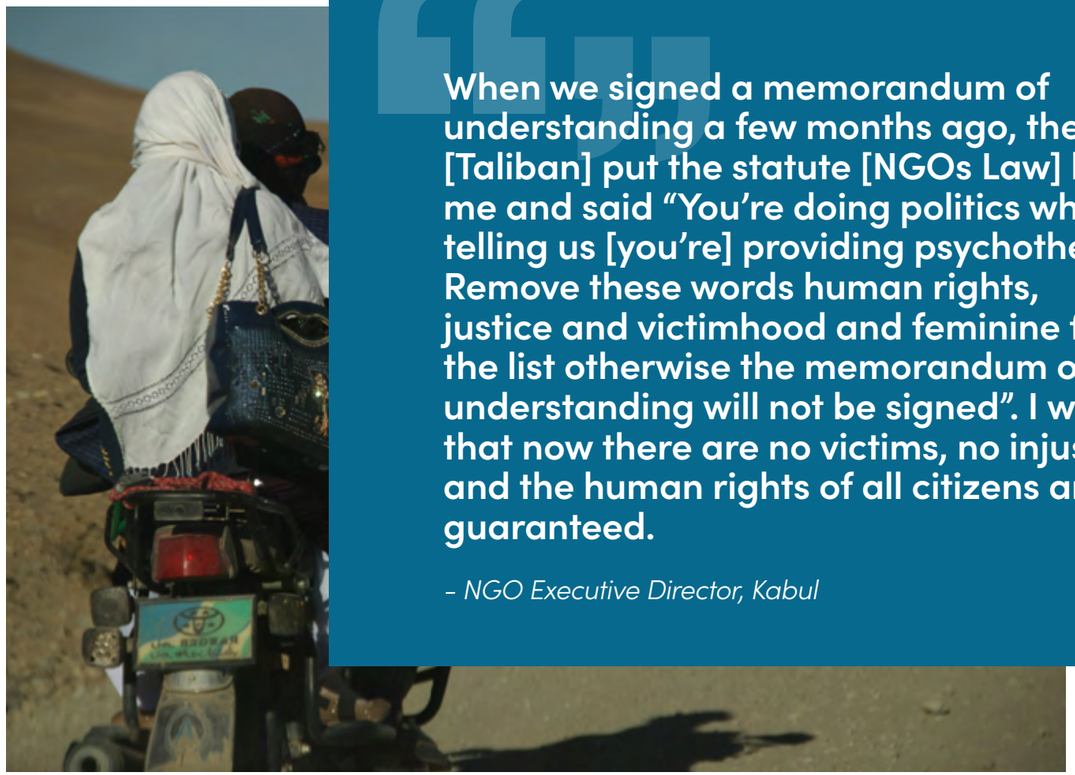
The majority of grassroots organizations and NGOs surveyed (86%) are unregistered, reflecting a wider trend across Afghanistan of the increasingly unofficial nature of activities being undertaken by civil society. Only one of the surveyed organizations which was established after the Taliban takeover is registered. However, they revealed that even a registered status does not necessarily provide them with protection. The Taliban's actions have made it clear that they will not tolerate any groups or individuals that they perceive as a threat to their authority, regardless of official status.

Several groups interviewed who are still operating under Taliban rule have confirmed that the Taliban have forced them to alter the names and objectives of their organizations in order to avoid suggesting that certain issues, such as gender inequality within the education system, exist within the nation and NGOs have been formed in order to address these. One respondent stated that: "We have not changed the content of the program, but we have changed the name. Instead of freedom, we write about welfare... If we mention the compatibility of the issue with Islam, this gives immunity to the participants."

Other interviewees have confirmed that they have had to amend their Memoranda of Operation to remove references to issues such as human rights and women's rights, to name but a few. It is evident that a mixture of official legislation and informal Taliban-imposed regulations is being used to reconstruct the image of NGOs to avoid creating the perception that the population is in need of organizations combatting socio-economic or political problem and, by implication, that Taliban rule has its shortcomings.

In addition, organizations who refuse to adjust their practices to align with Taliban restrictions face dissolution. Under current NGO law, the Taliban maintains a wide discretion to shut down NGOs in the face of any challenges against their decisions.

> **Though we are a registered entity, our staff still receive threatening calls and messages.**
>
> *- Civic Activist, Ghor*



> **When we signed a memorandum of understanding a few months ago, they [Taliban] put the statute [NGOs Law] before me and said "You're doing politics while telling us [you're] providing psychotherapy. Remove these words human rights, justice and victimhood and feminine from the list otherwise the memorandum of understanding will not be signed". I was told that now there are no victims, no injustice, and the human rights of all citizens are guaranteed.**
>
> *- NGO Executive Director, Kabul*

The Funding Environment

Another critical change to the environment for grassroots organizations operating in Afghanistan is the imposition of new barriers funding. All interviewees reported that their organizations have faced significant financial challenges while carrying out their work. It is not only recipients, but also donors that report difficulties. A 2022 study by the Norwegian Refugee Council highlighted that:

> *Transferring funds into, and within, Afghanistan has become a major challenge for non-governmental organisations (NGOs), since the Taliban's return to power on 15 August 2021 [...] This has been due to a combination of international and domestic factors, including a halt in most international funding, paralysis of the Afghan Central Bank, capital controls and confusion over permissible activities under sanctions (leading to worsening overcompliance and financial sector de-risking)*[17]

Imposition of governmental taxation requirements on these bodies have exacerbated these concerns, in particular the introduction of a policy which dictates that civil society organizations must pay the income taxes of their staff, which has drastically increased both administrative and financial burdens imposed upon NGOs.

The Pre-2021 Funding Landscape

Prior to the Taliban takeover, funding for NGOs came from broadly two sources, 'on-budget' (Government) funding, and 'off-budget' (International) funding. An annual report published by the Afghanistan Ministry of Economy in 2018 identified that:

"Total expenses of NGOs in 2018 reached to 875 million USD. 24% (212 million USD) of this amount has been spent through national budget and 76% (664 million USD) has been spent out of national budget."[18]

As these figures reflect, the majority of funding came from the international donor community, and all survey respondents we interviewed confirmed that all of their funding pre-2021 came in this way.

Only one organization out of those surveyed has received any form of government grant to support their work. This illustrates how external funding for NGOs and other civil society organizations in Afghanistan has become increasingly difficult to obtain under Taliban rule. While two organizations have been able to rely on membership fees and online fundraising to support their work, the vast majority (90%) have never received any kind of funding. Without a reliable source of income, these organizations are forced to operate on a shoestring budget, hindering their abilities to carry out activities effectively or provide services to as wide an audience.

As the economy has shrunk considerably since the Taliban took power, reliance on the generosity of volunteers and members' personal contributions is unlikely to enable these organizations to sustain themselves for a prolonged period of time. Given the Taliban's attitude to these groups, which is largely a result of their strong association with women, it is unlikely that they will be provided with much, if any, national funding. Thus, there is a real risk of a large proportion of these organizations disappearing completely in the near future as a direct result of underfunding. For the international community, the challenges of sending money to Afghanistan are mounting, and much of their focus has been heavily weighted towards the provision of humanitarian aid to prevent famine and lessen the burden of poverty, with fewer funds being provided for human rights causes. However, both international and local funding face a bigger obstacle in the Taliban's attempts to intercept aid or control its eventual destination.

[Our main challenge is] financial constraints. We are all volunteers and run our activities from our own personal resources.

- Women's Rights Activist, Kabul

Another example of the obstacles they create in one of our activities on the operational side is that we gather donations from local people or gather our own 'Zakat' and distribute it to poor people. They interfere with who we distribute the donations to. They question us on why we give donations to local people and why we are not giving donations to their people [Taliban members] instead.

- Education Activist, Kandahar

It is important to highlight that the grassroots nature and small size of the organizations also presents some challenges. While the groups collectively have thousands of members, the teams running them are small. The median number of employees or volunteers is 55, with 66% employing fewer than 100 people. As a result, they are less likely to have employees who are trained in grant proposal writing or to have the resources to seek out external funding.

In many cases, the lack of funding has forced these movements to scale back their operations or abandon certain projects altogether, severely restricting the capacity of many organizations and activists to carry out their work. One surveyed organization has been forced to shut down their special education classes for women, book clubs and writing classes, as well as cut back on the distribution of stationery and supplies for children, due to lack of resources. However, despite these challenges, they have managed to keep their library open. Without financial resources, it is difficult to pay for basic necessities such as transportation, communication and printing costs of educational materials and staff resources, leading many activists, as discussed, to volunteer their time or use their own personal funds to keep their work going.

If I had funding, I would pay my reporters, translate our stories [in] to English and produce more stories focusing on challenges women are facing across the country.

- Journalist & Women's Rights Activist, Kabul

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The Current Outlook for Civil Society in Afghanistan

Despite the severe security, regulatory, and funding issues faced by grassroots organizations, many civil society members remain committed to their causes and are finding innovative ways to continue their work, in spite of the mounting number of obstacles they face. Due to the country's young demographics with over 60% of citizens under the age of 30, many Afghan citizens have spent most, if not all, of their life under the prior regime.[19] Therefore, while many of the traditional NGOs have been forced to cease operations, numerous activists and aid workers, many of them falling within this younger demographic, continue to organize at the grassroots level to secure previously exercised rights and improve the social conditions in the country.

While many of civil society's traditional activities and operating procedures are no longer viable, grassroots organizations have found some success adapting their approach to continue their work. One common practice is for organizations to move activities online, when possible. Of those engaged in public advocacy, several have turned to social media and other online platforms to raise awareness about their causes, which provides a safer forum to conduct activities than in physical spaces in Afghanistan. Other interviewees involved in monitoring and documenting human rights report that they are still able to collect information that this activity must be performed discretely. The use of online communication platforms allows for employees and volunteers to connect without detection. Moving their operations online has allowed organizations to coordinate their activities internally and to continue engaging and informing the public without drawing significant attention.

In other cases, grassroots organizations have attempted to maintain the same programmatic work while changing public presentation of their activities. For example, organizations that maintained projects related to promoting "freedom" might conduct the same activities under the auspices of promoting "general welfare." When adopting this approach, interviewees report that they feel that there is space to continue their work so long as the projects are framed in a way that purports to align with Islamic values. Connecting a project to the aim of advancing Islamic values serves as a shield for project activities. However, organizations adopting this approach find that they must abandon projects that are not easily reframed in these terms. One interviewee reported, "Presently, our organization's work has been narrowed down to only offering psychological support and humanitarian aid. Our other prior activities, such as awareness campaigns, transitional justice initiatives, and human rights advocacy clubs, have all been terminated."

Given the high proportion of civil society members that are new to the practice, there is room, as their capacity and experience in the field grows, for organizations to innovate new ways to operate within the restrictive environment. As a result, the available opportunities for civil society members may increase over time as grassroots organizations continue to adapt to the present challenges. However, the limits and barriers described in the preceding sections will likely continue to constrain the scope of possible activities available to grassroots organizations, any improvements from innovations will likely be modest in scope. Moreover, any civil society growth requires that an increase in activism does not cause the Taliban to respond with harsher norms and stricter enforcement. Ultimately, without substantial systemic change, it is unlikely that civil society will be able to operate with the freedom possessed prior to the Taliban take-over.

With this in mind, grassroots civil society remains in jeopardy of further contraction due to the escalating security threats, Taliban repression, and funding limitations. International support—in the form of capacity building initiatives, increased funding, and international protection mechanisms—would help ensure that grassroots organizations can continue operation and development.

Women-led media shut down when the Taliban came to power and many women journalists lost their jobs. News agencies do not focus on issues related to women's rights. Women are finding creative ways to resist the Taliban's oppression, but no one is telling their stories. I started a women-led news agency to tell the stories of women. I have eight women reporters across Afghanistan who have volunteered to support my online news platform. We produce at least two stories each day that are posted on our social media platforms. With funding, we can do more.

- Journalist & Women's Rights Activist, Kabul

Women's Political Participation Network

IV. LAW & CIVIL SOCIETY REGULATION UNDER THE TALIBAN

The Taliban's seizure of power in August 2021 has not only initiated a precipitous decline in civic freedoms and human rights, but also has ushered in an upheaval of the legal system and the rule of law in Afghanistan. Since then, the legal system under Taliban rule has been characterized by inconsistency, indeterminacy, and incorrigibility. The disruption creates further uncertainty for both grassroots organizations as well as the broader society.

This section explores the current legal framework in Afghanistan and the laws that apply to civil society, paying particular attention to the regulations concerning the operation of non-governmental organizations ("NGOs"). The section concludes by looking to the practice of the pre-2001 Taliban regime to gain insight into the approach that the current Taliban regime may take to the issue.

Afghanistan's Legal System under the Taliban

The Taliban continues to govern Afghanistan without clarifying the most basic constitutional questions. The Taliban has not taken official measures aimed at rescinding the 2004 Afghanistan Constitution in force at the time of the Taliban's seizure of control.[20] Enacted following the 2001 U.S.-led invasion and occupation of Afghanistan, the 2004 Constitution provided for the creation of a democratic Islamic republic and guarantees various human rights, including non-discrimination, freedom of speech, and freedom of assembly.[21] Although the 2004 Constitution established Islam as the official state religion, the Taliban, prior to regaining control, had openly considered the 2004 Constitution to violate Sharia and foundational Islamic values.[22]

On 28 September 2021, Taliban officials announced their intention to temporarily adopt articles from Afghanistan's 1964 Constitution, which was enacted during the era of King Mohammad Zahir Shah.[23] The 1964 Constitution also provided protections for the freedom of speech and assembly, as well as rights to privacy, work and due process in legal proceedings, while forbidding discrimination against women.[24] When outlining the Taliban's preference for the 1964 Constitution to replace the 2004 Constitution, Abdul Hakeem Sharaee, the Taliban's Minister of Justice, simultaneously issued a caveat that only those elements of the 1964 Constitution which were not "in conflict with Islamic Sharia and the principles of the Islamic Emirate" would be upheld.[25] Neither Sharaee nor other officials have specifically identified which provisions the Taliban considers to conflict with Sharia.

While the 2004 Constitution codified a commitment to international treaties and the UN Charter, there are no equivalent provisions in relation to this within the 1964 Constitution. Although the Taliban's preference for the 1964 Constitution may suggest that the Taliban does not intend to comply with the prior regime's international commitments, the Taliban clarified in its announcement about the 1964 Constitution that "international laws and instruments which are not in conflict with the principles of Sharia and the Islamic Emirate will be respected, as well".[26]

In recent months, the Taliban have distanced themselves from both the 1964 and 2004 Constitution, instead declaring that they intend to put in place new legislation based purely on their interpretation of Sharia and other religious texts.[27] Because no clear foundational legal principles have been identified by the Taliban, Afghanistan is currently governed without clear direction for the legal basis of the system of governance.

In the absence of a constitution, the Taliban instead are relying on a variety of edicts and directives issued at the local and national level. The edicts and directives, many of which are often vague or ambiguous, are not intended to wholesale replace existing laws, but instead are aimed at reshaping the judicial landscape to align with the regime's political aims. The result is that some portions of pre-existing legislation remain in force, while others are seemingly superseded, either directly or indirectly, by edict. In practice, Taliban officials appear to take an ad hoc approach to determining which provisions of pre-existing legislation will be enforced. The legal indeterminacy creates significant uncertainty about the exact state of the law in Afghanistan.

One of the areas where the Taliban's legal edicts have had the most significant impact is on women's rights and public participation. As of the date of publishing this report, the Taliban have implemented over 65 formal and informal directives, severely limiting women's rights, including education, employment, free movement, and essential services like healthcare, most of which were announced with minimal notice and followed by little explanation, appearing to lack legal basis or political legitimacy.[28] For example, in July 2023, a decree prohibiting women beauticians from working was predicted to lead to 60,000 women losing their jobs and the closure of 12,000 businesses.[29] Actions such as these have contributed to the rapid collapse of the economy, which has led to around 25 million Afghans now living in impoverished conditions.[30] Many directives issued are said to be recommendations alone, however, de facto authorities appear to be implementing them in an extremely strict manner, with women often facing physical punishment if they are found to have infringed.

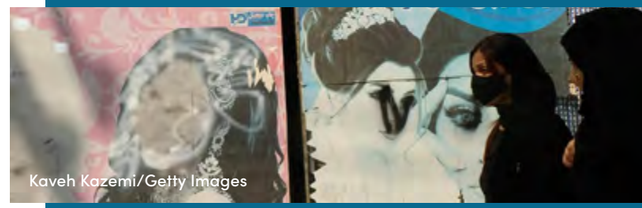
Predicted impact of July 2023 ban on female beauticians:

60,000 Jobs Lost

12,000 Businesses Closed

Number of Afghans living in impoverished conditions since decrees began in 2021:

25million out of 43million



Kaveh Kazemi/Getty Images

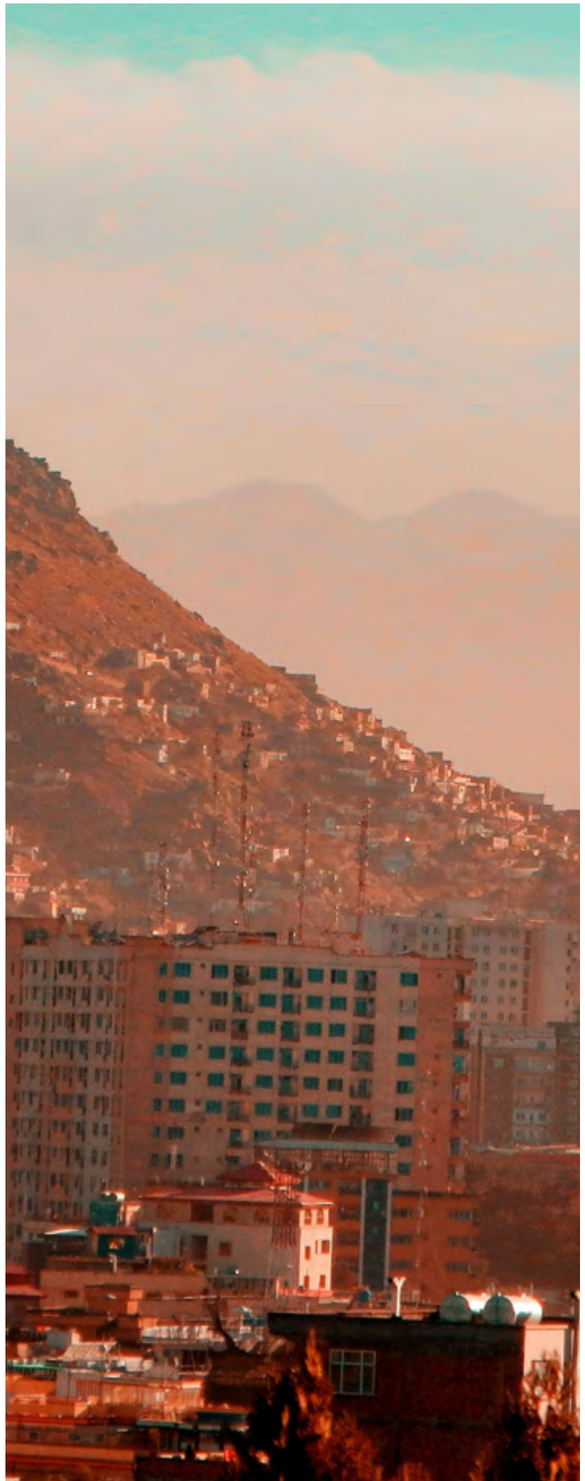
Legal Framework for NGOs under the Taliban

Since August 2021, most local and international NGOs engaged in public policy, human rights, media, women's rights and children's rights have ceased operations, and many of their management personnel have left Afghanistan.[31] As the Taliban government has not officially dissolved these organizations, they remain in a state of limbo, simultaneously legally active but highly restricted in the activities which they are actually able to undertake.

Pre-Taliban Civil Society Regulation

*Alongside central Constitutional documents, specific national laws were implemented under the government of the Islamic Republic which govern the establishment and running of NGOs and charitable organizations, most notably the Law on Non-Governmental Organizations (2005) (the "**NGOs Law**") and the Law on Associations (2013) (the "**Associations Law**").[32] Both of these pieces of legislation outline rules to be followed in relation to the registration and operation of grassroots organizations within the Islamic Republic of Afghanistan. Under Article 35 of the 2004 Constitution, which was in force at this time, any Afghan citizen had "the right to form associations" enshrined in law. While ostensibly distinct, these two laws reflect few substantial disparities and worked in tandem to create a regulated environment in which these bodies operated, therefore, only the NGOs Law will be substantially discussed and referred to within this report, as the most relevant piece of legislation for those bodies interviewed and the subject matter of the report itself, female-led NGOs. According to the Afghanistan Ministry of Justice's website, these two laws remain in force, however, it is self-evident that the majority of their articles have been breached since the Taliban takeover in 2021.*

Both domestic and foreign NGOs are covered by the NGOs Law, which states that to be classified as an NGO, an organization must be registered with the Ministry of Economy.[33] Our survey respondents have indicated that initial registration was a fairly simple process (compared to those of other countries). An interviewee, who is an activist now living in exile, observed that "I don't think the process [in Afghanistan] was too difficult. When I registered the same institution in the UK and saw the number of documents that I had to send out. I thought the process in Afghanistan was very simple."



Online research, reviews of the available legal frameworks and interviews with those on the ground suggest that the Taliban regime has not yet formally withdrawn or amended laws implemented by the government of the Islamic Republic to regulate and protect the operation of NGOs within the country. However, although the 2005 NGOs Law remains in place, the Taliban has been steadily restricting the activities of NGOs and those who run them through a series of national decrees and regional directives issued since the 2021 takeover, many of which both directly and indirectly impact the functioning of NGOs on a day-to-day basis. Those restrictions derive from both the official NGO Law, as well as Taliban reinterpretation of these rules.

The NGOs Law provides that the *"objectives and activities"* of NGOs cannot be restricted in any manner by a governmental authority, however, this is subject to specific provisions within the legislation which effectively limit the spheres in which NGOs are able to operate (Article 7). Article 8 outlines these prohibited areas, including political activities and campaigning, promotion of violence or participation in military activities, engagement in terrorist activities and involvement in narcotics, along with any other illegal industries.

For those who refuse to adjust their practices to align with Taliban restrictions, Article 35 of the NGOs Law contains provisions for the dissolution of organizations, both voluntarily and to be enforced by the High Evaluation Committee, the body responsible for monitoring NGOs. Dissolution can either be invoked when justified by reference to "*relevant statute*" or where the High Evaluation Commission determines that an NGOs activities are "*contrary to the public interest, provisions of this law and other valid laws*".[34] These fairly broad provisions grant the Taliban a wide discretion to shut down NGOs in the face of any challenges against their decisions. A complaints mechanism is provided in the form of the Dispute Resolution Commission, however, [provision of this body does not appear to have been maintained by the Taliban].[35] Although female-led NGOs in Afghanistan cover a vast-range of activities and provide a variety of resources, the majority of those shut down, or whose leaders have been imprisoned or charged as a result of their involvement with these organizations, were not engaging in any activities which could be deemed to be a breach of Article 8, which outlines the areas which NGOs are not allowed to work in, nor were their activities "contrary to public interest", which, in accordance with Article 35(5) of the NGOs Law, would justify their dissolution, illustrating that the Taliban appear to have either completely dismissed or significantly manipulated pre-existing judicial protection for social support systems and charitable bodies to suit their regime aims.

There is little consistency or predictability with regards to the Taliban's attitude towards NGOs and the women who work within them. However, in light of certain announcements made by the Taliban to date, and the experiences of our survey respondents, it is evident that, within official organizations, women are rapidly being either forced out or underground due to increasingly male-centric regulation, legislation and informal restrictions on female activity.

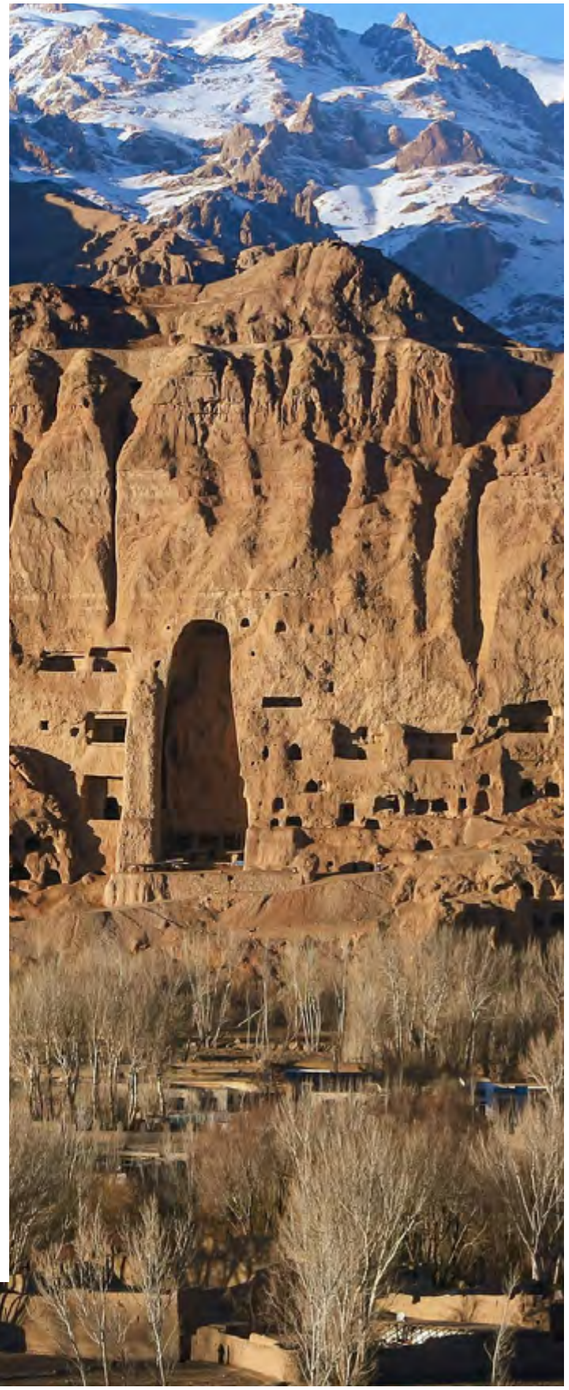
Possible Trajectory of NGO Legislation Under the Taliban

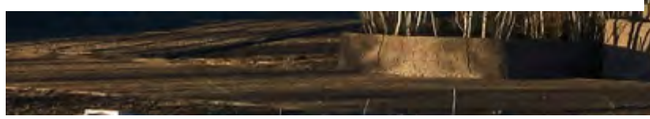
In light of the lack of formal changes to the relevant legal framework since the Taliban takeover in 2021 and lack of transparency regarding intended amendments to the current system of NGO regulation, this report outlines the position that previously existed under the Taliban's first ruling stint from 1996 to 2001 to anticipate how the position for NGOs is likely to develop under the current Taliban regime.

Under the pre-2001 Taliban government, provision of aid was impeded in a variety of ways which appear to be similar to impediments being experienced in present-day Afghanistan. This is particularly true of funding directed towards supporting women and marginalized communities. Women were forbidden from working, with multiple decrees issued explicitly banning the employment of Afghan women at domestic and international NGOs. Meanwhile, arbitrary enforcement of rules regulating civil society organizations, a practice echoed in present-day Afghanistan, forced NGOs to operate in a highly insecure environment, with 38 international NGOs ultimately expelled from the country in 1998 due to Taliban suspicion of alleged involvement in undefined "political activity".[36] It is possible that in the near future the Taliban will revert to these forms of justification to remove NGOs who challenge their views on women's rights and human rights issues. In June 2000, the Regulation on Activities of Domestic and International NGOs in Afghanistan (the "NGO Regulation") narrowed the concept of "NGO activity" considerably and introduced a highly controlling regulatory regime which was imposed upon these groups. Organizations became subject to formidable constraints relating to formation, registration and ongoing activity.

Registration

Under the NGO Regulation, registration became mandatory, preventing NGOs from operating unless they were registered, while imposing punishments, including fines and arrests, for failure to do so. However, the registration process was beset by delays as applications had to be made to the Ministry of Planning and subsequently forwarded to the High Evaluation Committee, all of which invited arbitrary decision-making and elevated chances of denied applications, while simultaneously encouraging corruption.





Registering an NGO Between 2001 - 2021

Guidelines for registration are outlined in Chapter Two of the NGOs Law, with the Ministry of Economy given the ultimate power to grant or deny the establishment of an NGO. Registration forms required domestic organizations to declare fairly standard information, such as their intended name and work plan. However, requests were also made to present details, photos, signatures, and ID documents of all board members, in addition to personal details of any other key staff. International NGOs faced further demands, including the external documents of registration along with the details of close relatives and family members, purportedly to prevent conflicts of interest. It is, therefore, apparent, that while more formally regulated under the Islamic Republic, registration could, in some instances, be an invasive process which exposed those working for NGOs to possible government investigation.

Following submission of an application, Article 16 of the NGOs Law outlines how the actual assessment was carried out. The legislation allowed for the Technical Commission of the Ministry of Economy, the department responsible for approving applications, to delegate their duties to provincial departments, introducing the possibility of regional disparities in relation to the treatment of NGOs. Organizations were required to submit a Memorandum of Understanding to the relevant department within their regional government; for example, if working directly with women, an organization would be compelled to submit the memorandum to the Department of Women's Affairs. Following this submission, approval also had to be granted by the governor of the region or district, with several of the organizations interviewed outlining that these stages were often when demands for bribes were made, illustrating that, despite a relatively formal registration system, success in the process could be hampered by corrupt practices.

Meanwhile, any foreign organizations intending to become registered in Afghanistan were subject to approval by the Ministry of Foreign Affairs, in addition to the Ministry of Economy, augmenting bureaucratic barriers to registration and putting foreign organizations, who often have far superior resources to provide aid to the Afghan people, at the mercy of government decision-making to an even greater extent. Any applications which failed to meet the registration requirements, or were refused permission by either Ministry, could be denied NGO status and registration.[37] Evidently, although more formalized than current practices, NGOs attempting to establish themselves in Afghanistan under the previous governments of the Islamic Republic still faced some difficulties in terms of burdensome conditions imposed and the unpredictable timings of the approval process. However, in comparison to the current environment faced by NGOs attempting to operate in Afghanistan, while occasionally onerous, the prior regulatory environment was arguably more transparent and allowed the majority of NGOs to operate without considerable constraints within the territory.

In addition to this multi-tiered system significantly decreasing the number of successful applicants, financial demands imposed on those attempting to register constituted a further barrier to successful formation, or survival, of NGOs. Any organizations seeking first-time registration were required to deposit 30 million Afghani within a designated bank as a "guarantee", while those wishing to resume operations had to deposit 10 million Afghani.[38] Under exchange rates on 20 September 2000, this constituted a cost of $6,315 for new NGOs. Imposing such a considerable financial burden on groups inevitably prevented many from either forming or resuming existing operations, limiting the population's access to critical support systems to an even greater extent. Thus, administrative and financial burdens associated with the registration process itself acted as a means of control for the Taliban, allowing the ruling party multiple avenues by which they were able to prevent NGOs from operating or even forming if they were perceived to pose a threat to the political or rwveligious ideologies which the government was espousing.

Post-Registration

Even following successful registration, invasive bureaucratic control continued to burden the operational life of NGOs. As stipulated by the NGO Regulation, organizations were required to use the Afghan banking system for their funding, placing both Afghani currency and foreign currency in designated banks within the Afghan banking system.[39] Requirements were imposed upon the organizations to exchange at least 20 percent of any foreign currency holdings into Afghani at the official exchange rate, illustrating how the Taliban continued to encroach upon the very foundations of NGOs.

In addition to their funding, NGOs' activities themselves were also highly regulated by the Taliban government. Prior to the implementation of any project, regardless of size, an organization was required to submit a workplan to the Ministry of Planning for governmental approval. However, no universal standards were implemented for these reviews, thus, as with registration, corruption and arbitrary decision-making was rife.[40] Activities themselves were restricted to "*humanitarian and economic assistance*", preventing NGOs from operating in spheres such as human rights, governance and even basic developmental aid. Under the Regulation, both domestic and international NGOs were obliged to respect the religious and cultural beliefs of Afghanistan, with restrictions on any activities deemed to be "*against the country's national interest*".[41] This effectively granted the Taliban carte-blanche control over any work undertaken by these organizations, allowing the ruling party to prevent any criticism of the Taliban itself, their policy or any governmental decision-making. NGO staff members also faced considerable government scrutiny, with foreign staff members required to notify the Ministry of Interior Affairs of any domestic travel within the country, adding further administrative and funding complexities to the day-to-day running of organizations which were often already over-stretched and struggling for funds. For the duration of the period of Taliban rule, therefore, NGOs' operational abilities were increasingly curtailed from many angles, all of which was justified by sweeping pieces of legislation which put these organizations at the mercy of the Taliban with no ability to challenge arbitrary limitations on not only how they operated, but also their very existence.

Early steps taken by the Taliban since their takeover in 2021 outlined above, such as enforced name changes and replacement of senior female figures with men, suggest that a similar attitude towards civil society organizations is being adopted and echoed by those in positions of power. Therefore, while the aforementioned actions taken by the previous Taliban regime are not guaranteed to come into force, it appears increasingly likely that restrictions very similar to those discussed, particularly those imposed by the NGO Regulation from 2000, could come into force and restrict the work of NGOs even further.

V. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK FOR PROTECTING AFGHAN CIVIL SOCIETY

Before the Taliban retook control, Afghanistan had acceded to several international human rights treaties. This section outlines Afghanistan's international human rights obligations, with a focus on those obligations that protect the activities of civil society. Additionally, this section considers how these treaties have been implemented domestically and how the Taliban's current practice in relation to grassroots civil society falls short of the country's international obligations.

Afghanistan's Treaty Obligations

At the time of the Taliban takeover, Afghanistan was party to seven international human rights treaties.[42] Under the terms of these treaties, the government of Afghanistan is obliged to ensure that their national laws and practices uphold the norms enshrined in the treaties.[43] As the de facto government of Afghanistan, the Taliban remains bound by all of the treaties to which Afghanistan is party. The Talban leadership have acknowledged this responsibility and publicly affirmed their commitment to fulfilling Afghanistan's commitments under international law, with the added caveat that they intend to only comply with norms in so far as they comport with the tenets of Islam.[44]

The International Covenant on Civil and Political Rights (the "ICCPR"), to which Afghanistan acceded in 1983, protects a wide range of rights related to grassroots organizations and civil society.[45] A state which is party to this ICCPR is bound to take all "necessary steps, in accordance with its constitutional processes... to adopt such laws or other measures as may be necessary to give effect to the rights recognised" in the Covenant.

As a consequence, Afghanistan is responsible for implementing national laws which effectively enforce the "equal right of men and women to the enjoyment of all civil and political rights", as well as ensuring that remedies are in place for any breaches which occur. Included among these rights are the right of peaceful assembly (Article 21) and the right to freedom of association with others (Article 22), both of which are critical for those intending to run, or make use of the services provided by, NGOs or other grassroots organizations. In addition, the Covenant places emphasis on ensuring that the rule of law is upheld in member states by promoting mechanisms such as public, fair trials and the innocence of defendants until proven guilty.

A country which has ratified the Covenant remains obliged to comply with all of its articles, upholding these notions of equal access to rights regardless of race, color, sex, language, religion, or other possible categories of discrimination.[46] Adherence to these obligations is monitored by the UN Human Rights Committee, with reviews of implementation intended to be produced every five years.

Another key treaty obligation is the Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW"), to which Afghanistan acceded in 2003. The convention seeks to provide women with equivalent legal protection to men, while also necessitating the implementation of measures centered around the advancement of women and guaranteeing their rights to equal benefits from the State, including health care, access to work and education. State Parties are required by the terms of the treaty to implement "all appropriate measures, including legislation, to ensure the full development and advancement of women".

Other treaties to which Afghanistan is party, include the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), which enshrined the rights to quality of life, health and free education for both women and men within Afghanistan; the Convention on the Rights of the Child (the "CRC"); the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") which protects against racial discrimination; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("CAT") which seeks to prevent torture and forms of ill treatment; and the Convention on the Rights of Persons with Disabilities ("CRPD"), which aims to eliminate forms of discrimination on the basis of disability.

Human Rights in Practice under the Taliban

Since the Taliban regained control in Afghanistan in August 2021, the country has witnessed a drastic decline in the protection and promotion of human rights. The United Nations Assistance Mission in Afghanistan (UNAMA) has documented numerous instances of inhumane treatment, arbitrary arrests, ill treatment, and intimidation, mainly perpetrated by the Taliban. Moreover, freedom of speech has been severely curtailed, illustrated through the closure of a substantial number of media outlets, limiting public discourse and preventing challenges to harsh and restrictive Taliban policies. Notably, the Taliban has enforced oppressive measures against women, denying them access to education beyond primary school, restricting employment opportunities, curbing healthcare access, limiting freedom of movement, and dismantling legal protections against domestic abuse. A recent UNAMA report has recorded 218 extrajudicial killings, 424 arbitrary arrests and detentions, and 144 instances of torture and ill-treatment of former Afghan National Defense and Security Forces ("ANDSF") and government officials between August 15, 2021, and June 15, 2022.[47] These actions have left a substantial segment of Afghan society vulnerable, underscoring the Taliban's disregard for international and domestic human rights obligations. These actions have left a significant portion of Afghan society vulnerable, with the Taliban disregarding international and domestic human rights obligations.

The multitude of laws and edicts issued by the Taliban since their seizure of power in September 2021 fail to respect Afghanistan's international obligations. In December 2022, the Ministry of Economy issued a letter banning women from working for NGOs.[48] The exclusion of women, by virtue of them being women, from the workplace and punitive measures being taken against those who continue to operate in the civic space, amounts to a clear violation of multiple rights enshrined within the ICCPR, CEDAW, and ICESCR. This restriction of women's public activity contravenes the rights to freedom of expression (Article 19 CCPR), freedom of peaceful assembly (Article 21 CCPR) and freedom of association (Article 22 CCPR). Furthermore, all parties to the UDHR, ICESCR and the CEDAW must uphold women's right to work and education, with the CEDAW and the ICESCR also enshrining the right to equal access to health care services. Thus, women's inability to run, support or access services provided by NGOs clearly violates the aforementioned obligation on state parties to implement legislative measures to protect these rights, while also monitoring them and taking action against those who breach them. As the ruling party is responsible for issuing these directives and edicts which have resulted in overt gender-based discrimination, the State under the Taliban has clearly reneged on its international human rights commitments to uphold gender equality and punish those who threaten these rights.

In addition to the multitude of international commitments which appear to have been abandoned by the Taliban regime, many articles of the 1964 Constitution, allegedly in force as a central source of national legislation, have also been breached since the Taliban took control in September 2021. Actions taken by the Taliban and local governments preventing women from running NGOs within the country, many of whom have been either silenced and forced into submission or arrested and detained for their work and views appear to have violated rights relating to freedom of expression, treatment upon arrest, inviolability of citizen's residences, secrecy of communications and prohibitions against torture.

VI. CONCLUSION

In the absence of formal civil society structures under the Taliban's oppressive rule and in light of increasingly shrinking civic space, underground grassroots collectives continue to form across the country and advocate for girls' education, women's rights and freedoms, access to basic services and safeguarding the human rights of the people of Afghanistan throughout this period of national social, political, and economic turmoil. These acts of defiance demonstrate that, even in the face of the Taliban's crackdown, civil society, particularly grassroots movements, are determined to continue to exist and operate.

Grassroots civil society members play critical role in expanding human rights values in their communities and defending the rights of women and marginalized groups. These bodies, initiated by committed individuals or small groups, demonstrate the power of community-driven action in advancing social justice. Despite operating with limited resources and capacity, they have been able to mobilize communities, raise awareness and effect tangible change at the local level.

However, with limited to no financial and operational resources, combined with severe security threats, the outcome of their work is undeniably impacted. Some have been forced to shut down their activities completely, while many are now restricted to carrying on their work in very limited areas. In order to ensure that these grassroots movements can continue to operate and expand their activities, they need meaningful solidarity and support from a wide range of international stakeholders and Afghan civil society in exile.

By investing in these organizations, both financially and through capacity-strengthening initiatives, they will be able to continue their important work and drive meaningful change within their communities. Moreover, it is crucial to foster an enabling environment that empowers grassroots bodies to operate without fear or restrictions. This includes advocating for their rights, protecting their safety and ensuring that they have a seat at the table in discussions about the future of their communities. Their voices and perspectives are essential for building an inclusive and sustainable society within Afghanistan, and for offering alternative visions for the country and its population.

VII. RECOMMENDATIONS

The recommendations that follow will directly address the following international actors: the donor community; international organizations with a presence in Afghanistan; governments; the United Nations and related international institutions; exiled members of Afghanistan's civil society and other international NGOs.

Donor Community:

- Streamline and simplify the application process for relief grants to support individual civic actors in Afghanistan, particularly women who have lost their sources of income due to the Taliban's employment restrictions.
- Support civic movements with small to medium-sized grants to facilitate the implementation of community-based advocacy and campaign initiatives.
- Provide dedicated funding for capacity-strengthening and the expansion of grassroots civil society organizations to reach a larger, nationwide audience, with a specific focus on women-led collectives.
- Recognize the importance of addressing and allocating funds towards the mental health and well-being challenges faced by civic actors operating in highly hostile environments, such as Afghanistan, where grassroots movements operate clandestinely and encounter ongoing threats and attacks from the Taliban.
- Prioritize support to grassroots civil society movements to ensure that they receive the assistance they need to continue their crucial work. Streamline grant proposal procedures and making funding opportunities more accessible for newly-formed grassroots organizations that may have limited resources for compiling proposals.

International organizations with a presence in Afghanistan:

- Provide capacity-building training in areas such as organizational development, program development, digital safety, physical safety, project management, and communication, empowering members to carry out their work effectively and advocate for the rights and needs of their communities.
- Engage and involve grassroots civil society and women-led movements in program planning and decision-making, while elevating the voices of marginalized communities throughout interactions with the Taliban and the international community.
- Ensure that rights encompassed within the UDHR and other UN treaties are respected and protected within their own organizations, so as to demonstrate unwavering support for the implementation of these principles within Afghanistan itself.

Governments:

- Ensure Afghan women are included in all conversations, platforms and forums discussing the future of Afghanistan, and ensure adequate procedures are in place to guarantee their security in doing so.
- Allocate long-term funding to grassroots civil society organizations to ensure sustainable development and growth of human rights initiatives and projects in local communities.
- Exert pressure on the Taliban to respect the rights of grassroots civil society movements, enabling them to operate, mobilize and advocate for the people of Afghanistan.
- Call upon the Taliban to immediately halt the detention, torture and killing of civic actors who are committed to community improvement. Sustained international pressure and advocacy are paramount in realizing these goals and promoting a safe and inclusive environment for civil society in Afghanistan.
- Promote accountability, including the use of sanctions, for members of the Taliban and other groups that have engaged in systematic human rights violations in Afghanistan.
- Advocate strongly for the release and safety of civic actors in the event that the Taliban persists in carrying out arrests and issue clear warnings to the Taliban, emphasizing the severe consequences they will face for their actions.
- Ensure safe and expedited pathways, including visas to third-party countries, for civic actors whose lives are at risk under Taliban rule.

United Nations:

- Prioritize the protection of civic actors and take immediate action to negotiate their safe release from Taliban prisons in cases of arbitrary detention.
- Consult with diverse groups of Afghans on a regular basis, including grassroots civic collectives, to inform and shape UNAMA's strategy and engagement with the Taliban. Prioritize the principles and conditions set forward by these diverse groups in all interactions with the Taliban, ensuring that the voices of different Afghan communities are heard and integrated into UNAMA's work.

Afghanistan civil society in exile and other international NGOs:

- Elevate the voices of women's civic collectives and female protesters who remain inside Afghanistan, ensuring that their demands for inclusion and equal participation in the social and political future of their country are heard and taken into account by the international community.
- Provide grassroots civic actors and collectives within Afghanistan with capacity strengthening resources and support in the form of mentorship in order to enhance and expand their work, while also facilitating their participation in decision-making processes.
- Advocate for safe pathways and visas for civic actors who have risked their lives to make their demands heard and no longer remain safe in Afghanistan, along with resettlement in countries where they can continue their work in safety.
- Continue to advocate for governments and the United Nations to carry out continuous human rights assessments (including women's rights) of Afghanistan, as well as holding the Taliban and other actors in Afghanistan accountable for their human rights violations.

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