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Cour Pénale Internationale

International Criminal Court

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No.**: ICC-02/17**
Date: **23 January 2025**

**PRE-TRIAL CHAMBER II**

**Before:** **Judge Rosario Salvatore Aitala, Presiding Judge**
**Judge Sergio Gerardo Ugalde Godínez**
**Judge Haykel Ben-Mahfoudh**

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**Public**
**with**
**Confidential, *EX PARTE*, only available to the Prosecution**
**Annexes 1-8**

**Public redacted version of**
**"Prosecution's application under article 58 for a warrant of arrest against Abdul Hakim HAQQANI"**

**Source:** **Office of the Prosecutor**

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## A. INTRODUCTION

1. The Office of the Prosecutor applies under article 58(1) of the Rome Statute for a warrant of arrest for **Abdul Hakim HAQQANI**[1] (عبد الحكيم حقاني) ("**HAQQANI**"). Based on the supporting evidence, this Application establishes reasonable grounds to believe that **HAQQANI –** the *Qazi al-Quzzat* or Chief Justice – is responsible for persecution as a crime against humanity committed by the Taliban in Afghanistan, carried out from at least 15 August 2021 until at least 20 January 2025, contrary to article 7(1)(h) of the Statute.[2] **HAQQANI**'s arrest is necessary to ensure his appearance at trial, and to prevent the further commission of crimes.

2. In particular, throughout this time, the Taliban have persecuted girls, women, those whom they perceived as not conforming with their ideological expectations of gender identity or expression, and those whom they perceived as allies of girls and women, across the territory of Afghanistan. This persecution entailed numerous severe deprivations of the victims' fundamental rights, contrary to international law, including to education, to free movement and free expression, to private and family life, to free assembly, and to physical integrity and autonomy.[3] The lives of the victims have been severely affected as a result, and the immediate harm caused to them is matched by the harm also occasioned to future generations, in lost opportunities and unfulfilled potential.

3. The Taliban's campaign of gender persecution formed part of its broader attack against the civilian population of Afghanistan, which was both widespread and systematic, and carried out according to a State or organizational policy. This onslaught of oppression and violence repeated the criminal design to which the people of Afghanistan were previously subjected when the Taliban first exercised power before 2001. Perceived resistance or opposition to the Taliban was, and is, brutally repressed by the commission of crimes including murder, imprisonment, torture, rape and other forms of sexual violence, enforced disappearance, and other inhumane acts. The attack upon the civilian population as a whole created mass compliance through the creation of a deep climate of fear.[4] Civilians knew that resistance would

[1] **HAQQANI** is also sometimes referred to as *Sheikh*, an honorific title referring to a scholar of highly respected learning, piety and renown, one to whom people look up as a religious authority.
[2] Statute, art. 58(1)(a). *See also* *Ngudjolo* Interim Release AJ, para. 18; *Bashir* Arrest Warrant AJ, para. 30. For full citations of all authorities or open source reports (not assigned an ERN) referred to in this Application, *see* Annex 8 ("**Anx8**") (List of Authorities).
[3] *See also e.g.* ECJ, *AH and FN*, para. 44 (finding a "blatant[] and relentless[]" denial of Afghan women's "fundamental rights related to human dignity on account of their gender", amounting to "the establishment of a social structure based on a regime of segregation and oppression in which women are excluded from civil society and deprived of the right to lead a dignified daily life").
[4] [REDACTED].

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be – and was in fact – met with unanswerable violence and aggression, including the commission of crimes under the Statute. In individual cases, further criminal acts of coercion were often simply unnecessary. It was already clear to most girls and women, and indeed all civilians, that the Taliban exercised complete control over their lives.

## B. CLASSIFICATION

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Application is filed confidentially and *ex parte*, only available to the Prosecution,[5] in order to: protect the identity of victims and witnesses and maintain the integrity of the ongoing investigation by keeping confidential the Prosecution's sources of evidence and specific avenues of inquiry.

5. In this particular case, the Prosecution respectfully considers that these purposes may be adequately met by filing this Application confidentially but not under seal.[6] Consistent with the regulation applying to materials classified as 'confidential', it is the Prosecution's understanding that it may publicly acknowledge the existence of this application but not its contents.[7] Bearing in mind the hope specifically expressed by victims and witnesses for a visible sign that the plight of the civilian population of Afghanistan has not been forgotten,[8] the Prosecution therefore respectfully considers that it is appropriate to make such an acknowledgement. Since the alleged crime is ongoing, even this limited degree of public awareness of the Application may be to the benefit of victims and affected communities.

6. The Prosecution respectfully requests that the Chamber takes a similar approach by issuing its decision on this Application, and any warrant of arrest, confidentially, but releasing a public statement that such a decision has been taken if it considers appropriate.

7. The Prosecution further requests that any warrant of arrest is issued as a brief stand-alone document separate from the decision on the Application, or that the decision is structured in such a way that the reasoning concerning specific arguments or evidence can easily be redacted.[9] In any event, the Prosecution submits that the warrant should not contain details which could potentially identify the Prosecution's sources of evidence – including victims or witnesses or its specific avenues of inquiry – so that it may be transmitted promptly and

[5] *See also* Chambers Practice Manual, para. 3.
[6] *See* Regulations of the Office of the Prosecutor, reg. 50(1).
[7] *Compare e.g.* Regulations of the Registry, reg. 14(b), *with* reg. 14(c).
[8] [REDACTED].
[9] *Cf.* Chambers Practice Manual, para. 4. By potential analogy, *see e.g.* para. 66 (vii) (recommending that confirmation decisions contain a separate operative section, distinct from the underlying reasoning).

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efficiently to relevant States and made public, when appropriate, with limited or no redactions. This may assist in seeking the arrest of **HAQQANI**, and/or collecting further evidence.

8. The Prosecution respectfully recalls that its proposals in this respect are consistent with the former practice of the Court,[10] and submits that this is consistent with both articles 59 and 91 of the Statute, which do not require the entirety of the Chamber's reasoning to be served on States Parties requested to arrest and surrender persons wanted for arrest by the Court.[11]

## C. RELEVANT IDENTIFYING INFORMATION OF HAQQANI

9. **Abdul Hakim HAQQANI** was born in 1956 or 1957 under the name **Abdul Hakim ISHAQZAI (**عبدالحکیم اسحاقزی**)** in the area of Talukan/Taloqan (تلوکان), Panjwai District, Kandahar Province, Afghanistan.[12] **HAQQANI** was reportedly appointed by the *Amir-ul Momineen*[13] (Supreme Leader) of the Taliban, AKHUNDZADA, as *Qazi al-Quzzat* (Chief Justice) on either 15 October or 28 October 2021.[14] Annex 1 contains photographs of **HAQQANI**.[15] **HAQQANI** currently resides in Afghanistan.

## D. CONCISE STATEMENT OF FACTS

10. Since they seized power in Afghanistan on 15 August 2021, and pursuant to their ideology, the Taliban progressively and systematically imposed restrictions on the civilian population. In particular, this encompassed the persecution of girls and women, as well as persons whom they perceived as not conforming with their ideological expectations of gender identity or expression, and persons whom they perceived as allies of girls and women. This reflected their ideological view that, ultimately, girls and women belong in the home, and that their lives and livelihoods should be disposed of by men. Everyone was expected to conform their behaviour to the Taliban's rigid rules or suffer severe punishment for non-compliance.

11. To this end, the Taliban imposed a stream of measures which, in combination, affected almost every aspect of the daily lives of Afghan girls and women. In particular:

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[10] *Compare e.g.* *Bashir* Second Article 58 Decision and *Bashir* Second Arrest Warrant; *L. Gbagbo* Article 58 Decision and *L. Gbagbo* Arrest Warrant; *Blé Goudé* Article 58 Decision and *Blé Goudé* Arrest Warrant; *S. Gbagbo* Article 58 Decision and *S. Gbagbo* Arrest Warrant; *Hussein* Article 58 Decision and *Hussein* Arrest Warrant. The practice of issuing a consolidated warrant of arrest including the underlying reasoning was first recommended as a general practice in 2015, conditioned in part on the understanding that "[a]ny detailed discussion of the evidence or analysis of legal questions is premature at this stage and should be avoided": *Pre-Trial Practice Manual*, p. 5; *see also* *Chambers Practice Manual*, para. 4.
[11] *See e.g.* Ryngaert, p. 1737 (mn. 8), 1739-1740 (mns. 11-14); Kreß and Prost, p. 2520-2523 (mns. 2-4, 12-15:).
[12] [REDACTED].
[13] For the purposes of this Application, Arabic words that are commonly used in Afghanistan and have been incorporated into Dari or Pashto are written without the diacritics used in classical Arabic (*e.g. Amir-ul-Momineen vs. Amir-al-Mu'minin* and *tazir* vs. *ta'zir*). For other spelling variations, *see* Annex 5 ("**Anx5**").
[14] [REDACTED].
[15] [REDACTED].

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- For girls, secular education over grade 6 (aged 12-13) was banned and access to university education severely restricted—both in terms of admission and the types of study permitted.
- Women were excluded from the world of work. Their employment in certain sectors (such as government and law) or by certain entities (such as by NGOs or the United Nations) was progressively prohibited, and male relatives urged to attend work in their place. Businesses owned or primarily used by women, such as beauty and hair salons, were closed.
- Girls and women were removed from the public sphere more broadly. They were prohibited from travelling far without a male guardian (*mahram*). They were restricted from accessing a wide variety of public places. When they were allowed in public, they were coerced into conforming to highly burdensome restrictions on dress and appearance. Their faces could no longer be shown. The sound of their voices was silenced.
- The former Ministry for Women's Affairs was effectively replaced by the Ministry for the Promotion of Virtue and the Prevention of Evil (PVPE). Thus, a body for empowering women was replaced by a body to enforce measures which discriminated against them.

12. These discriminatory measures were imposed upon the Afghan civilian population in the context and as part of the wider campaign of oppression carried out by the Taliban. To enforce compliance with their rules, including with regard to the discriminatory measures against girls and women, Taliban members harassed, threatened, and beat Afghan civilians, and imprisoned them in circumstances where they were subjected to torture, rape, and other forms of sexual violence. In particular, those who sought to protest against the Taliban's discriminatory and oppressive measures were targeted for crimes.

13. Alongside girls and women themselves, the Taliban also targeted other persons whom they considered not to conform with their ideological expectations of gender identity or expression. This included members of the LGBTQI+ community, who were singled out for certain types of persecution and connected criminal acts, including for corporal and/or capital punishment for so-called 'morality crimes' within the framework of the *de facto* criminal justice system. The Taliban likewise targeted perceived allies of girls and women – specifically, those supporting the fundamental rights of girls and women.

14. In these circumstances, there are reasonable grounds to believe that the Taliban carried out numerous acts of persecution on grounds of gender, connected with article 7(1) acts, and that this conduct took place as part of a widespread and systematic attack on the civilian population of Afghanistan, pursuant to a State or organizational policy. This attack commenced at least during the non-international armed conflict in Afghanistan, which took place from at

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least 19 June 2002 until at least 15 August 2021,[16] and significantly escalated in scale and impact when the Taliban assumed *de facto* national authority in 2021.

15. [REDACTED],[17] [REDACTED].[18] [REDACTED].[19] There are reasonable grounds to believe that **HAQQANI** bears criminal responsibility. [REDACTED].

## E. ALLEGED CRIMES WITHIN THE JURISDICTION OF THE COURT

16. Within the context of the alleged widespread and/or systematic attack on the Afghan civilian population, the Prosecution submits that there are reasonable grounds to believe that **HAQQANI** is responsible [REDACTED] for the following crime committed by the Taliban and persons affiliated to them across the territory of Afghanistan from at least 15 August 2021 to at least 20 January 2025:

> **Count 1: Persecution as a crime against humanity**, in that girls, women, persons whom the Taliban perceived as not conforming with their ideological expectations of gender identity or expression, and persons whom the Taliban perceived as allies of girls and women, were severely deprived of fundamental rights on the basis of the Taliban's view of gender, contrary to article 7(1)(h) of the Statute.

17. Consistent with the requirements of the Statute, the evidence also shows that the alleged persecution was carried out in connection with the commission of multiple other crimes under the Statute. While the Prosecution does not presently allege **HAQQANI**'s personal responsibility for these connected crimes, including under articles 7(1)(a), (e), (f), (g), (i), and (k) of the Statute, this is without prejudice to bringing such charges in the future.

18. This Application presents specific incidents to meet the requirements of article 58, demonstrating reasonable grounds to believe that the crime of persecution has been committed.[20] However, the available evidence further demonstrates reasonable grounds to believe that the incidents presented are representative of the experience of many thousands more similar victims in the civilian population of Afghanistan.

## F. SUMMARY OF THE EVIDENCE, NARRATIVE AND ANALYSIS

19. The Prosecution relies on multiple types of evidence to establish reasonable grounds to believe that **HAQQANI** is responsible for the crime of persecution specified in this

[16] *See* *Afghanistan* Article 15 Request, paras. 125-128, and sources referenced. [REDACTED].
[17] [REDACTED].
[18] [REDACTED].
[19] [REDACTED].
[20] [REDACTED].

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Application. Primarily, the Prosecution relies on witness statements,[21] an expert[22] witness report on the Taliban's structure and functioning,[23] and official decrees and other instructions promulgated by the Taliban.[24] [REDACTED].[25] Furthermore, many of the allegations in open-source materials concerning the alleged persecutory conduct are corroborated by witness statements.

### F.1. Background

20. The Taliban is primarily a political organisation, aimed at controlling Afghanistan. Its members and adherents are bound together by an ideologically-informed code of behaviour and personal loyalty. In particular, this entails allegiance to the *Amir-ul-Momineen*, understood by the Taliban to be a specific Afghan figure. At all times material to this Application, this was (and is) AKHUNDZADA.[26] The *Amir* exercises ultimate authority.[27] He is the Taliban's chief ideologue,[28] legitimising the conduct of its members,[29] even while allowing some local matters to be decided locally.[30] Power and influence within the Taliban also stems from tribe and ethnicity, with the leadership predominantly Durrani Pashtuns of the Nurzai sub-tribe.[31]

21. Consistent with its origins and ideology, the Taliban is not necessarily a formal membership organisation as such, and persons acting on behalf of the Taliban may be affiliated to it in varying degrees. Consequently, conduct ascribed to the Taliban may not only be carried out by those with formal credentials as Taliban 'members',[32] but also other persons who voluntarily act on their behalf by espousing the Taliban ideology and demonstrating their shared allegiance to the *Amir*.[33] Taliban members do not necessarily or consistently wear uniforms. Rather, witnesses identify Taliban members by their use of particular vehicles (often described as "Rangers", sometimes inherited from the former government) or their carriage of distinctive flags, but also by their manner of dress (often including distinctive turbans), their weapons, and their personal appearance (including long beards, long hair or kohl around the eyes).[34]

[21] [REDACTED].
[22] [REDACTED].
[23] [REDACTED].
[24] [REDACTED].
[25] [REDACTED].
[26] [REDACTED].
[27] [REDACTED].
[28] [REDACTED].
[29] [REDACTED].
[30] [REDACTED].
[31] [REDACTED].
[32] [REDACTED].
[33] [REDACTED].
[34] [REDACTED].

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22. Notwithstanding the political character of the Taliban as an organisation, Taliban ideology originally developed within religious *madrassas*.[35] The Taliban still relies on its understanding of religion both to distinguish its identity and to define its political aims and objectives.[36] As such, Taliban ideology emphasises *compliance* with its interpretation of divine will, which is placed at the heart of its "government of guidance", and correspondingly rejects any inconsistent value or rule.[37] The discriminatory restrictions imposed upon the Afghan civilian population, as demonstrated below, illustrate this hierarchy in action[38]—subordinating victims' fundamental rights to the dictates of the Taliban's worldview. The criminal conduct alleged below thus does not stem from Islamic religious beliefs in general, nor from political expressions of Islam in particular, but rather from the Taliban's distinct conduct in seeking to control the Afghan civilian population by discrimination, oppression, and violence.[39]

23. Previously, from 1996 to 2001, the Taliban had gained control over most of the territory of Afghanistan—a period which may be described as the "First Emirate". In this time, the Taliban severely deprived the civilian population of fundamental rights on a discriminatory basis, particularly affecting girls and women.[40] It was in this context that Taliban rule became synonymous with oppression and abuse. The First Emirate was ended by the military defeat of the Taliban in 2001. Yet this was not the end of the story. The Taliban responded to democratic rule by re-organising and embarking on an armed insurgency—which ultimately succeeded in overthrowing the Islamic Republic of Afghanistan.

24. Around 2016, AKHUNDZADA was appointed as the new *Amir*.[41] He was selected for reasons including his heritage as a Durrani Pashtun of the Nurzai sub-tribe, his ascribed status as a scholar, jurist, and ideologue, and his own personal commitment—illustrated by the 'martyrdom' of one of his sons as a suicide bomber.[42] He had formerly been a senior member of an influential Taliban body known as the Quetta *Shura* (Council), where he formed many of the trusted relationships on which he later continued to rely.[43]

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[35] [REDACTED].
[36] [REDACTED].
[37] [REDACTED].
[38] [REDACTED].
[39] *See also e.g.* *Al Hassan* Confirmation Decision, para. 182 ("far from constituting the imposition of a particular religion, the policy of the armed groups was to impose control over the population through violence, under the pretext of applying an ideology portrayed as being guided by sharia").
[40] [REDACTED].
[41] [REDACTED].
[42] [REDACTED].
[43] [REDACTED].

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25. On 15 August 2021, the Taliban took Kabul and once again assumed *de facto* national authority in Afghanistan. The Taliban swiftly declared itself the interim government representing the State, again styled as "the Islamic Emirate of Afghanistan" ("IEA").[44] From Kandahar,[45] AKHUNDZADA and his circle established structures to interface with the formal seat of government in Kabul, including an *Ulema* (Scholars') Council and a Military Coordination Council.[46] He appointed ministers, governors, and judges, including those with particular loyalty to him.[47] The ministries at least partly functioned as a device to present the Taliban like other national governments, but real decision-making power lay with AKHUNDZADA and his circle in Kandahar.[48] Some ministers were favoured over others.[49]

26. [REDACTED],[50] [REDACTED];[51] [REDACTED];[52] [REDACTED];[53] [REDACTED];[54] [REDACTED];[55] [REDACTED];[56] [REDACTED];[57] [REDACTED].[58]

27. When necessary to resolve disputes or to decide on important matters of policy, senior Taliban leaders were called to Kandahar to meet with AKHUNDZADA.[59] AKHUNDZADA's close circle, and the grassroots of the Taliban, are united in particular by their ideological commitment.[60] AKHUNDZADA is known as a hardliner on measures such as banning girls' education.[61] Senior Taliban figures outside AKHUNDZADA's circle are said to take a somewhat 'softer' line on some of these measures.

28. Notwithstanding some adjustments in its internal organisation, the Taliban's assumption of *de facto* national authority on 15 August 2021 marked no significant change in ideology or method from the First Emirate—indeed, those with a long history in the Taliban tended to remain in power.[62] Victims and witnesses considered the Taliban return to power on 15 August

[44] [REDACTED].
[45] [REDACTED].
[46] [REDACTED].
[47] [REDACTED].
[48] [REDACTED].
[49] [REDACTED].
[50] [REDACTED].
[51] [REDACTED].
[52] [REDACTED].
[53] [REDACTED].
[54] [REDACTED].
[55] [REDACTED].
[56] [REDACTED].
[57] [REDACTED].
[58] [REDACTED].
[59] [REDACTED].
[60] [REDACTED].
[61] [REDACTED].
[62] [REDACTED].

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2021 to mark a return to the restrictions of the First Emirate.[63] Certainly, from that point, the Taliban renewed their assault on critical human rights, especially for girls and women.[64] [REDACTED].[65]

29. Central to the Taliban ideology was a rigid and reductive conception of gender.[66] From that perspective, society is and must be strictly divided between females and males, and females are not entitled to the same rights and freedoms as males.[67] Only very limited rights (such as those relating to marriage, dowry and inheritance) are afforded to females.[68] As a consequence of this gendered dimension of the Taliban ideology, every Afghan was expected to comply with the roles, appearance, obligations and behaviour prescribed as appropriate for their gender, as it was perceived by the Taliban. The Taliban regards the primary duty of the Emirate and its leader to impose their ideology and the rules thereunder on the Afghan population[69]—whose duty is simply to obey the Taliban's ideology and the instructions of the leader.[70]

30. While the Taliban ideology was informed by political and religious views, among other factors, this did not mean that it truly reflected the broader philosophies or faiths it claimed to represent. To the contrary, key outworkings of the Taliban ideology addressed in this Application – such as severely depriving girls and women of the right to education – have been repeatedly criticised by States with large Muslim populations,[71] institutions such as the Organization of Islamic Cooperation,[72] and individual Islamic scholars (both in Afghanistan and outside).[73] Far from a legitimate expression of faith or self-determination, the Taliban's coercive and harmful conduct amounts to a crime against humanity under the Statute.

### F.2. The Taliban committed gender persecution

31. The crime against humanity of persecution requires proof that the perpetrator severely deprived one or more persons of fundamental rights, contrary to international law, and that such

[63] [REDACTED].
[64] [REDACTED].
[65] [REDACTED].
[66] [REDACTED].
[67] [REDACTED].
[68] [REDACTED].
[69] [REDACTED].
[70] [REDACTED].
[71] Such criticisms have been made by the Islamic affairs ministries of relevant States, and/or their experts on Islamic law (*Muftis*). *See e.g.* UNHRC Session (12.09.2022) (statements of Indonesia, Iran, Malaysia, Maldives, Pakistan, Pakistan on behalf of the OIC, and Türkiye); UNHRC Session (29.02.2024) (statements of Iran, Malaysia, Pakistan, Pakistan on behalf of the OIC, and Türkiye); UNSC Meeting (08.03.2023) (statement of United Arab Emirates), [REDACTED]. *See also Al Jazeera* (22.12.2022).
[72] [REDACTED]. *See also* OIC Press Release (11.01.2023); OIC Press Release (29.01.2023); OIC Press Release (07.03.2023); OIC Press Release (06.04.2023); 00005501 (OIC Plan of Action for the Advancement of Women, 2016). [REDACTED].
[73] [REDACTED].

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persons were targeted by reason of the identity of a group or collectivity, on grounds universally recognized as impermissible including but not limited to politics, race, nationality, ethnicity, culture, religion, and gender as defined in article 7(3) of the Statute.[74] As an additional objective element, for the purpose of this Court, it is further necessary that the persecutory conduct as a whole was committed in connection with any act referred to in article 7(1) of the Statute or any crime within the jurisdiction of the Court.[75] In *Al Hassan*, the Trial Chamber recently confirmed several important features of this crime, including that:

- While "an act of persecution *may* constitute an act [in article 7(1) of the Statute] it *need not* be the case", nor need it be of a "physical" nature at all. Rather, it encompasses any discriminatory measure, provided it "infringe[s] on basic rights and reach[es] the necessary level of gravity".[76] A wide variety of fundamental rights, if infringed, may form the basis for such an act of persecution, including "the right to education".[77]
- The deprivation of a fundamental right must be "severe".[78] Acts amounting to a crime under the Statute will in principle meet this requirement,[79] but other violations of fundamental rights should be assessed case-by-case "in their context and with consideration of their cumulative effect".[80] Relevant considerations may also include the number of fundamental rights violated and the nature of the deprivation(s).[81]
- The person(s) or group targeted for persecution may be defined by any identifiable means (including neutral criteria such as geography or residence), either on the basis that they are perceived 'positively' to possess certain characteristics or 'negatively' to lack certain characteristics. The person(s) or group targeted need not themselves identify as part of a common group. Nor is it required that the person(s) or group is identified with reference to or on the basis of one or more of the prohibited grounds of discrimination, which instead relate to the underlying *reason(s)* for the conduct of the perpetrator.[82]
- Finally, while the persecutory conduct as a whole must be connected with at least one article 7(1) act or with a crime under the Statute, this connection need not be made out for

[74] *See* Elements of Crimes, art. 7(1)(h), elements 1-3.
[75] *See* Elements of Crimes, art. 7(1)(h), element 4. This element may be described as 'objective' as there is no requirement for a corresponding *mens rea*: *see* Elements of Crimes, art. 7(1)(h), fn. 22; *Al Hassan* TJ, para. 1211.
[76] *Al Hassan* TJ, para. 1202 (emphasis added).
[77] *Al Hassan* TJ, para. 1201.
[78] *Al Hassan* TJ, para. 1203.
[79] *Al Hassan* TJ, para. 1204.
[80] *Al Hassan* TJ, para. 1205.
[81] *Al Hassan* TJ, para. 1205. *See also* para. 1204 (recalling that persecution can be committed either by a single underlying act or a series of acts).
[82] *Al Hassan* TJ, para. 1206. *See also* para. 1207.

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each individual act underlying the persecution. Nor does the connection require anything more than a factual link or nexus between the persecution and the article 7(1) act or crime.[83] As such, it is not required that a particular suspect is also charged with a connected article 7(1) act or crime under the Statute, or even that they are aware of such conduct. It is only required that a link exists with the alleged persecution *as a whole*, even if that link arises from broader circumstances or the acts of other persons concerned in the persecution.

32. For the reasons set out in the following paragraphs, there are reasonable grounds to believe that Afghan girls and women, as well as those persons perceived by the Taliban as not conforming with their ideological expectations of gender identity or expression, or to be allies of girls or women, were targeted by reason of their identity. In this context, these persons do not constitute different groups or collectivities. Rather, their experiences are highlighted to illustrate the different ways in which the Taliban's gender persecution was manifest. The targeted persons were subject to numerous and severe deprivations of their fundamental rights, including the rights to education, freedom of movement and assembly, private and family life, freedom of expression, physical integrity and autonomy, freedom from arbitrary and unfair punishment, and freedom of conscience and religion. These severe deprivations were imposed because of the Taliban's views of gender. This is without prejudice to evidence of other types of persecution also taking place in Afghanistan, beyond the focus of the present Application.[84]

33. The Taliban severely deprived the targeted persons of their fundamental rights in two ways: first, through imposing discriminatory rules and prohibitions upon them (which, as such, unlawfully restricted the exercise of fundamental rights, and thus *per se* constituted a severe deprivation of rights); and, second, where necessary, through the violent enforcement of those discriminatory rules and prohibitions. For many victims, the pervasive coercive environment created by the Taliban – and its tight control over Afghan society – was such that direct force was often unnecessary: there was no real choice but to comply.

34. The existence of the coercive environment cannot be doubted. Not only did the Taliban take steps to suspend legislation protecting women against violence,[85] and to abolish the Afghan Independent Human Rights Commission,[86] it effectively replaced the Ministry for Women's

[83] *Al Hassan* TJ, para. 1210. *See also* paras. 1208-1209 (concluding, again by majority, that connected article 7(1) acts—such as "any instance of murder, torture, rape or other inhumane act"—need not themselves even "meet the contextual elements for [a] crime against humanity", as the result of a drafting "compromise" which "was intended to ensure the persecution would retain its character as a separate crime and […] would not be merely an auxiliary offence or aggravating factor"). *But see* *Al Hassan* TJ (Judge Akane Opinion), paras. 96-99.
[84] [REDACTED].
[85] [REDACTED].
[86] [REDACTED].

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Affairs with a body mandated to enforce the imposition its discriminatory ideology: the Ministry for the Promotion of Virtue and the Prevention of Evil (PVPE).[87] The PVPE's *Layeha* (Guidelines) and the new PVPE Law specifically permitted enforcement of the Taliban's ideology "by use of force", should this be necessary, or by imprisonment for a brief period.[88] This was reinforced by the intrusive presence of Taliban members on the street, [REDACTED],[89] able to impose punishment at will.[90] [REDACTED].[91] Women no longer felt safe to go out.[92] As explained further below, more serious perceived infractions were met by the Taliban with even harsher responses, including arbitrary detention, torture, and sexual violence.[93] [REDACTED].[94] [REDACTED].[95]

35. The deprivation of the targeted persons' rights was undoubtedly contrary to international law, both under applicable customary and treaty obligations.[96] Even though some of the individual rights denied to the Afghan population are qualified in nature, these deprivations were not necessary to respect the rights or reputations of others, or to protect national security, public order, public health, or morals. Furthermore, because the right to autonomy of thought, conscience, and religion includes the right *not* to hold particular religious beliefs,[97] the discriminatory prohibitions and rules imposed by the Taliban as a consequence of their ideology (informed by their religious views) likewise *also* violated the religious freedoms of the victims *in addition to* the various specific rights described below.[98] Far from justifying

[87] [REDACTED].
[88] [REDACTED].
[89] [REDACTED].
[90] [REDACTED].
[91] [REDACTED].
[92] [REDACTED].
[93] [REDACTED].
[94] [REDACTED].
[95] [REDACTED].
[96] While not legally required, Afghanistan has signed and ratified core human rights treaties without significant reservation or derogation: *see e.g.* ICCPR (Ratifications); ICESCR (Ratifications); CEDAW (Ratifications); CRC (Ratifications). For the relevance of treaty law, *see also e.g.* *Kupreškić* TJ, para. 621; *Krnojelac* AJ, para. 185; *Nahimana* AJ, para. 985; *Popović* AJ, para. 762. It is also noteworthy that many rights were also guaranteed in the constitution, which was purportedly suspended by the Taliban but neither amended or rescinded: *see* Constitution of the Islamic Republic of Afghanistan. [REDACTED].
[97] *See e.g.* UDHR, art. 18; ICCPR, art. 18; CRC, art. 14; ECHR, art. 9; ACHR, art. 12; ACHPR, art. 8. *See further* UN HRC General Comment 22, paras. 2, 5, 10.
[98] *Al Hassan* TJ, paras. 1527-1549; *Al Hassan* TJ (Judge Akane Opinion), para. 100.

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the conduct of the Taliban,[99] deprivation of the rights to freedom of thought, conscience and religion was another dimension of the victimization which took place.[100]

36. Specifically, under AKHUNDZADA's authority as *Amir*, and often with his direct involvement, the Taliban leadership issued decrees and other instructions which imposed rules and prohibitions severely depriving the targeted persons of fundamental rights.[101] While many of the measures aimed at girls and women were ostensibly framed as 'protections', or as temporary or provisional measures, they were in fact discriminatory, punitive, and enduring.[102] While AKHUNDZADA (as the *Amir*) did issue a decree purportedly protecting women's rights, this was limited to discrete family law issues concerning marriage, dowry and inheritance.[103] As apparent from their own statements, and consistent with the absolute nature of the Taliban ideology and the sophisticated mechanisms of enforcement put in place, the discriminatory rules and prohibitions were comprehensive in nature, with the expectation that they would apply to all members of the Afghan civilian population within their scope.

37. The Taliban imposed these discriminatory rules and prohibitions incrementally, with the scope of particular measures potentially intersecting and overlapping; the severe deprivation of the rights of girls and women was certainly manifest cumulatively, but also often individually as a consequence of specific measures.[104] [REDACTED],[105] [REDACTED].[106] [REDACTED].[107] [REDACTED].[108]

38. The actual imposition of the Taliban's discriminatory rules and prohibitions, and their severe and punitive effect on the targeted persons, is confirmed by the evidence of witnesses who were themselves affected, or who have direct knowledge of other persons who were affected. [REDACTED].[109] [REDACTED].[110] [REDACTED].[111] [REDACTED].[112]

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[99] Special Rapporteur on Freedom of Religion and Belief (2018), para. 42 ("[it would] be contrary to both women's rights as well as freedom of religion or belief provisions to allow one set of rights (*i.e.* women's rights) to be undermined on the basis of claims made in defence of the right to freedom of religion or belief"). *See also* UN ESCRC General Comment 21, paras. 18, 25. *See further* CEDAW, art. 5.
[100] This also reflected and was consistent with the Taliban's broader intolerance of religious views other than their own: [REDACTED].
[101] [REDACTED].
[102] [REDACTED].
[103] [REDACTED].
[104] [REDACTED].
[105] [REDACTED].
[106] [REDACTED].
[107] [REDACTED].
[108] [REDACTED].
[109] [REDACTED].
[110] [REDACTED].
[111] [REDACTED].
[112] [REDACTED].

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[REDACTED].[113] Overall, the evidence shows a suffocating environment in which women and girls were excluded from all aspects of public life.

39. The persecutory conduct of the Taliban was inextricably linked with the commission of acts prohibited by article 7(1).[114] As the following paragraphs show, the Taliban's discriminatory rules and prohibitions were frequently associated with or enforced by such acts. Victims were murdered contrary to article 7(1)(a), imprisoned contrary to article 7(1)(e), tortured contrary to article 7(1)(f), raped and subjected to other sexual violence contrary to article 7(1)(g), and forcibly 'disappeared' contrary to article 7(1)(i).[115] Even if certain key aspects of this treatment did not fall within these enumerated provisions of article 7(1), it nonetheless amounted to other inhumane acts contrary to article 7(1)(k).[116]

40. Additionally, the widespread pervasive criminality associated with the alleged persecution carried out by the Taliban also inevitably victimised children, whether they were among the targeted persons or not. Children will inevitably have been harmed by witnessing or experiencing harassment and physical violence directed at their families or wider communities.[117] Furthermore, as the following paragraphs describe, girls were the specific object of a core aspect of the Taliban's discriminatory prohibitions and rules.

### *F.2.a. The Taliban persecuted girls*

41. The Taliban persecuted girls—understood as female children (under the age of 18). While it may be that the Taliban did not necessarily regard some older girls as children at all, children are defined as all persons under the age of 18.[118] Critically, the harms which may be associated with the particular victimisation of older children should not be obscured simply by

[113] [REDACTED].
[114] [REDACTED].
[115] [REDACTED].
[116] In particular, this provision captures certain incidents by which the Taliban created and maintained a pervasive environment of coercion and intimidation in Afghanistan, by means including arbitrary harassment (stops, searches, questioning) and summary punishment (admonitions, threats, humiliating and degrading treatment, assaults, temporary arrest) at checkpoints or at random on the street, causing great suffering and/or serious injury to victims, especially to their mental health. Considered in context, this conduct is similar in character to other article 7(1) acts, having regard to the nature and gravity of the acts in question. Even violent acts which may seem minor in isolation, such as threats or a slap, violated the fundamental rights of the victim and caused, and were intended to cause, serious and cumulative psychological harm in the broader context of the ongoing systematic discrimination and oppression. In particular, such acts reinforced the victims' fear that the Taliban's control over their lives was complete and indefinite, and that any non-compliance would be met with retribution. [REDACTED].
[117] [REDACTED].
[118] CRC, art. 1. This definition is also consistent with relevant provisions of the Statute: *see e.g.* Statute, arts. 6(e), 26; Elements of Crimes, art. 6(e), Element 5. For certain age-defined groups of children, this is set out expressly: *see e.g.* Statute, arts. 8(2)(b)(xxvi), 8(2)(e)(vii).

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the attitudes of the alleged perpetrators.[119] Older children are particularly at risk of gender-based discrimination, and it is important to ensure "continuing protection" for persons up to the age of 18 from "all forms of exploitation and abuse."[120]

42. As the following paragraphs explain, the discriminatory rules and prohibitions imposed by the Taliban served in particular to severely deprive girls of their right to education. This same conduct also amounted to a severe deprivation of their right to private and family life, and to autonomy of thought, conscience, and religion. Additionally, as described below, older girls were also subject to many of the same severe deprivations of rights suffered by adult women.

43. The persecutory conduct related to girls was connected to the commission of article 7(1) acts. While it is only required that this nexus is established for the alleged persecution *as a whole*, the specific connection with the conduct related to girls is set out in the interest of clarity. For example, girls attempting to go to school were beaten by Taliban members; teachers and others who provided education, or protested the denial of education for girls, were beaten, arbitrarily detained, and tortured.

*(i) Girls were severely deprived of fundamental rights, notably including the right to education*

44. Education is a fundamental right.[121] Significantly, it is also an *enabling* right, crucial for realising other human rights including the rights to work, to an adequate standard of living and health, to participate in society on terms of full equality, and other fundamental freedoms. Indeed, it is the gateway through which many other rights may be realised. The harms caused by denying the right to education are also among the most far-reaching—a lost education not only ripples through almost every aspect of a person's life, but also extends through time in the opportunities and joys which are lost, as well as through all of society.[122] "Education plays a pivotal, transformative and empowering role in promoting human rights values and is recognized as the pathway to gender equality and the empowerment of women."[123]

45. While States may face challenges in the delivery of educational opportunities, primary, secondary, and university education shall at least be made available to all equally, without

[119] *See e.g.* *OTP Policy on Children*, paras. 21, 27-29 (noting particular physical, psychological, and social harms which may affect children more acutely).
[120] CRC General Comment 20, paras. 38, 40. *See also* paras. 1, 8-12, 15, 26-28.
[121] *See e.g.* UDHR, arts 1-2, 26; ICESCR, arts. 3, 13; CRC, arts. 1-2, 28-29, 31; CEDAW, arts. 1-2, 10; ACHPR, art. 17. *See also* CEDAW General Recommendation 36, paras. 8-11, 14-15, 20-23.
[122] [REDACTED].
[123] CEDAW General Recommendation 36, para. 1.

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discrimination.[124] Secondary education is no less critical in this regard than primary education, since "universal, quality and inclusive education and training is the single most important policy investment that States can make to ensure the immediate and long-term development of adolescents".[125] In particular, and relevantly to this Application, among other benefits, secondary education "serves to protect girls from child and forced marriage, sexual exploitation and early pregnancy, and contributes significantly towards the future economic potential of girls and their children."[126] Furthermore, restrictions on access to educational opportunities may also lead to and be associated with restrictions on access to "leisure, recreation and the arts" which "give adolescents a sense of uniqueness that is fundamental to the rights to human dignity, optimum development, freedom of expression, participation and privacy."[127]

46. Since States "have a specific and continuing obligation 'to move as expeditiously and effectively as possible' towards the full realization" of the right to education, "[t]here is a strong presumption of impermissibility of any retrogressive measures".[128] If these are taken deliberately, "the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified", including in the context of the totality of the rights engaged.[129] In its exercise of *de facto* national authority, the Taliban's imposition of the discriminatory rules and prohibitions on the targeted persons manifestly failed these standards, and is thus contrary to international law.

47. Through a series of decrees and other instructions, the Taliban effectively denied access to existing secondary educational services to half of Afghanistan's children – girls – by reason of their gender alone.[130] This severe deprivation of girls' right to education was also closely related to the severe deprivation of women's right to education. This is due not only to the progressive nature of education (as exclusion from relevant education as a child may make more advanced forms of study less attainable as an adult), but also since the Taliban sought to restrict access both to secondary and tertiary education. As such, while the consequences of the discriminatory prohibitions and rules fell most heavily on girls, they also severely affected women and especially young women.[131] Recursively, restricting the education of girls and

[124] *See e.g.* CADE (110 States Parties); UN ESCRC General Comment 13, para. 6(b) ("educational institutions and programmes have to be accessible to everyone, without discrimination").
[125] CRC General Comment 20, para. 68.
[126] CRC General Comment 20, para. 69. *See also* CEDAW General Recommendation 36, para. 52.
[127] CRC General Comment 20, para. 75.
[128] UN ESCRC General Comment 13, paras. 44-45.
[129] UN ESCRC General Comment 13, para. 45.
[130] [REDACTED].
[131] *See also* *OTP Policy on Children*, fn. 24 (referring to "youth" as persons between 18-25 years of age).

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women is also highly likely to adversely affect the education of future generations of girls, because it will significantly restrict the supply of future teachers.[132]

48. Although the *de facto* bans on girls' secondary education and female university education have been described as "temporary",[133] women and girls have already lost more than three irreplaceable years.[134] The deprivation is severe and ongoing—the affected generations may never recover. Notable prohibitions and rules successively imposed include:

- initially, restricting education for girls beyond grade 6;[135]
- subsequently, banning education for girls beyond grade 6;[136]
- permitting secondary education only for boys, taught by men;[137]
- banning the education of boys and girls together (both in schools, and at universities);[138]
- limiting eligibility of girls for the *kankor* exam governing admission to university;[139]
- precluding women from studying certain subjects at university (such as engineering);[140]
- restricting the ability of women to go to university at all.[141]

49. These intentional, retrogressive and unjustified restrictions on education for girls and women conformed to hardline Taliban ideology, as espoused by AKHUNDZADA and his circle in the Taliban leadership.

50. [REDACTED].[142] [REDACTED],[143] [REDACTED].[144] [REDACTED].[145] [REDACTED].

51. In this context, it is highly unlikely that restrictions on girls' education were genuinely intended to be temporary.[146] Yet even if the Taliban allowed girls to return to school, the clear aim to permit only a conservative religious curriculum [REDACTED][147] would still restrict girls' education to a very narrow selection of subjects.[148] As such, this would still severely

[132] [REDACTED].
[133] [REDACTED].
[134] [REDACTED].
[135] [REDACTED].
[136] [REDACTED].
[137] [REDACTED].
[138] [REDACTED].
[139] [REDACTED].
[140] [REDACTED].
[141] [REDACTED].
[142] [REDACTED].
[143] [REDACTED].
[144] [REDACTED].
[145] [REDACTED].
[146] [REDACTED].
[147] [REDACTED].
[148] [REDACTED].

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deprive girls of the right to education because this provision is not only discriminatory (being substantively different for girls and boys) but also highly retrogressive compared to the secular educational services formerly available. The same applies to *madrassa* education, which appears to provide only a narrow, religious curriculum.[149]

52. Adding to the weight of open source reporting,[150] individual witness accounts show that the Taliban's discriminatory prohibitions and rules restricting access to education were indeed implemented. They illustrate the impact of the Taliban's restrictions, and the sadness, frustration, loss of opportunity, and loneliness caused as a consequence. [REDACTED].[151] [REDACTED].[152] [REDACTED].[153] [REDACTED].[154] [REDACTED];[155] [REDACTED].[156] [REDACTED].[157] [REDACTED].[158] [REDACTED].[159]

53. Affected girls also described their feelings about being deprived of education, at the perceived loss of their future and frustration at being made to feel that "girls do not have a value". [REDACTED].[160] [REDACTED].[161]

54. [REDACTED].[162] [REDACTED].[163]

55. [REDACTED].[164] [REDACTED].[165] [REDACTED].[166] [REDACTED].[167]

56. [REDACTED].[168] [REDACTED].[169]

*(ii) Article 7(1) acts were committed in connection with the severe deprivation of girls' rights*

57. Given the wider coercive environment, and the particular vulnerability of children, it was frequently unnecessary for the Taliban's discriminatory prohibitions and rules severely

[149] [REDACTED].
[150] [REDACTED].
[151] [REDACTED].
[152] [REDACTED].
[153] [REDACTED].
[154] [REDACTED].
[155] [REDACTED].
[156] [REDACTED].
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[165] [REDACTED].
[166] [REDACTED].
[167] [REDACTED].
[168] [REDACTED].
[169] [REDACTED].

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depriving girls (and women) of education to be enforced by the commission of crimes under the Statute. Very often, the administrative nature of the measures sufficed, and girls and women felt as if they had no choice other than to comply with the discrimination against them. Nevertheless, article 7(1) acts – including imprisonment, torture, enforced disappearance, and other inhumane acts[170] – were committed in connection with the severe deprivation of girls' rights, notably the right to education, as well as in connection with the other associated severe deprivations of rights described below.[171] Such incidents more than suffice to show that the alleged persecution as a whole was connected to at least one article 7(1) act.[172]

58. [REDACTED].[173] [REDACTED].[174] [REDACTED].[175] [REDACTED].[176] [REDACTED].[177] [REDACTED].[178] [REDACTED].[179] [REDACTED].[180] [REDACTED].[181]

59. [REDACTED].[182] [REDACTED].[183] [REDACTED].[184] [REDACTED].[185] [REDACTED].[186] [REDACTED].[187] [REDACTED];[188] [REDACTED].[189] [REDACTED].[190] [REDACTED].[191]

60. [REDACTED].[192] [REDACTED],[193] [REDACTED].[194] [REDACTED].[195] [REDACTED].[196] [REDACTED].[197]

[170] *See* Statute, art. 7(1)(e), (f), (i), (k).
[171] [REDACTED].
[172] [REDACTED].
[173] [REDACTED].
[174] [REDACTED].
[175] [REDACTED].
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[194] [REDACTED].
[195] [REDACTED].
[196] [REDACTED].
[197] [REDACTED].

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61. [REDACTED].[198] [REDACTED].[199]

62. [REDACTED].[200]

### *F.2.b. The Taliban persecuted women*

63. The Taliban's discriminatory rules and prohibitions severely depriving girls (and also women) of the right to education did not exist in isolation, but rather formed part of a broader array of discriminatory prohibitions and rules affecting all spheres of the public and private lives of women (and girls) in Afghanistan. In general, as explained above, Taliban ideology explicitly rejects equality between women and men[201]—with the result that Taliban decrees and other instructions distinguished women (and girls) from men (and boys) across the entire range of human activities, and afforded them unequal rights and protections accordingly.[202]

64. As the following paragraphs explain, the broader scheme of the Taliban's discriminatory rules and prohibitions severely deprived women (and girls) of numerous fundamental rights, including especially to freedom of movement, freedom of expression, and to private and family life. As a consequence of the Taliban's rules, women could no longer participate equally in public life, and were marginalised and excluded. They were removed from political and official positions of any seniority in the civil service. Consistent with their exclusion from the public sphere, women lost their jobs, had their businesses closed, their freedom of movement dramatically curtailed, and their dress and appearance subject to harsh restrictions. They were systematically denied any alternative to the reductive domestic roles assigned to them under the Taliban's ideology. They were subjected to the authority of men, for decisions both large and small. [REDACTED].[203] [REDACTED].[204]

65. The persecutory conduct related to women was connected to the commission of article 7(1) acts. While it is only required that this nexus is established for the alleged persecution *as a whole*, the specific connection with the conduct related to women is set out in the interest of clarity. For example, women were murdered, threatened, imprisoned, tortured, raped, forcibly disappeared, and subjected to other sexual violence and other inhumane acts, in order to enforce the Taliban's discriminatory prohibitions and rules, or punish perceived resistance or dissent.

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[198] [REDACTED].
[199] [REDACTED].
[200] [REDACTED].
[201] [REDACTED].
[202] [REDACTED].
[203] [REDACTED].
[204] [REDACTED].

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*(i) Women were severely deprived of numerous rights, notably including freedom of movement, freedom of expression, and private and family life*

66. Freedom of movement, freedom of expression, and the right to private and family life are all core fundamental rights under international law.[205] [REDACTED].[206] Since the 2021 takeover, the world in which women and girls are permitted to exist has again shrunk dramatically and inexorably. [REDACTED].[207] Through a series of decrees and other instructions, the Taliban thus severely deprived women (and girls) of their rights to move freely, to express themselves, and to private and family life.

67. Notably, for example, the Taliban severely restricted women's access to public life and public places, and to work. [REDACTED].[208] For example:

- women were excluded from positions of political or legal authority;[209]
- women were prohibited from working for NGOs or the United Nations;[210]
- female officials were segregated at work, excluded, or replaced by male relatives;[211]
- businesses run primarily for women, such as beauty and hair salons, were forced to close;[212]
- women were banned from public gatherings to celebrate Eid;[213]
- women were restricted from access to public parks, which were segregated,[214] and other public places such as gyms, baths, restaurants, sports clubs, and amusement parks;[215]
- women could only attend certain places if accompanied by a *mahram*;[216]
- women were prohibited from travelling far from home without a *mahram*;[217]

[205] *See e.g.* UDHR, arts. 12, 13, 19; ICCPR, arts. 12, 17, 19, 25; CEDAW, arts. 3, 7-8, 11-13, 16; CRC, arts. 13, 15-16. *See also* ECHR, arts. 8, 10-11; ACHR, arts. 11, 13, 22; ACHPR, arts. 9, 11-12. Concerning the right to private and family life, *see further e.g.* UN HRC General Comment 16, paras. 1, 4, 8-9; IACtHR, *Murillo v. Costa Rica*, paras. 142-143, 145-146; *Case of the 'Las Dos Erres' Massacre*, paras. 188-189; *Escher v. Brazil*, paras. 113-117; *Donoso v. Panamá*, paras. 55-57; *Case of the Ituango Massacres*, para. 197. While the African Charter on Human and People's Rights does not expressly set out the right to privacy, the African Commission has considered that at least elements of this right are implied through the concept of State non-interference in arts. 8, 10, 11, 12(1), 13(1), 14, and 18: ACHPR Counter-Terrorism Principles, p. 36.
[206] [REDACTED].
[207] [REDACTED].
[208] [REDACTED].
[209] [REDACTED].
[210] [REDACTED].
[211] [REDACTED].
[212] [REDACTED].
[213] [REDACTED].
[214] [REDACTED].
[215] [REDACTED].
[216] [REDACTED].
[217] [REDACTED].

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- women were discouraged from going out or appearing in public at all,[218] since staying at home is the "primary and best way of observing *hijab*".[219]

68. These draconian restrictions implemented the hardline ideology of AKHUNDZADA and his inner circle, [REDACTED].[220] These restrictions were widely imposed—[REDACTED].[221] [REDACTED].[222]

69. [REDACTED];[223] [REDACTED];[224] [REDACTED].[225] [REDACTED].[226] [REDACTED].[227] [REDACTED].[228] [REDACTED].[229]

70. Matching the physical and social isolation increasingly imposed on women, the Taliban took measures to limit free expression and the ability to impart and receive information.[230] This suppressed not only perceived resistance to their rule, but also women's basic awareness of the rights which were denied to them. [REDACTED],[231] [REDACTED].[232] [REDACTED].[233] [REDACTED],[234] [REDACTED],[235] [REDACTED].[236] [REDACTED].[237] [REDACTED].[238]

71. The right to free expression encompasses protections on personal dress.[239] Mandatory and coercive imposition of gendered dress code rules has long been recognised as unlawful.[240] For example, the restrictions on women in Mali during the 2012 occupation, enforced by means of threats and punishment, were considered "a violation of international law" and a form of "cultural engineering".[241] Similarly, the coerced observance of dress code rules in Iran, and the punishment of women protesting against it, has been characterised as "repressive and

[218] [REDACTED].
[219] [REDACTED].
[220] [REDACTED].
[221] [REDACTED].
[222] [REDACTED].
[223] [REDACTED].
[224] [REDACTED].
[225] [REDACTED].
[226] [REDACTED].
[227] [REDACTED].
[228] [REDACTED].
[229] [REDACTED].
[230] [REDACTED].
[231] [REDACTED].
[232] [REDACTED].
[233] [REDACTED].
[234] [REDACTED].
[235] [REDACTED].
[236] [REDACTED].
[237] [REDACTED].
[238] [REDACTED].
[239] UN HRC General Comment 34, para. 12.
[240] *See also e.g.* *Al Hassan* TJ, paras. 1529, 1533, 1535, 1540, 1542, 1544-1545, 1554-1556.
[241] Special Rapporteur on Cultural Rights (2017), paras. 73-74, 76, 79-80.

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discriminatory".[242] In Afghanistan, the severity of the deprivation of the victims' rights was again compounded by the harsh reaction to perceived violations of dress code rules.[243]

72. The Taliban imposed and enforced significant restrictions on the clothing, hairstyles, make-up and personal expression of Afghan women and girls, while also mandating that women and girls were fully covered from head to toe at all times outside their homes[244]—including requiring girls in grades 4-6 to cover their faces while travelling to or from school.[245] Women and girls who deviated even slightly from the strict dress code risked harassment, beatings or arrest by members of the PVPE.[246] Some of the clothing restrictions for women were set out in detail by some of the most senior members of the Taliban, [REDACTED].[247] [REDACTED].[248]

73. The Taliban not only dictated that women should not be seen in public, but also that they should not be heard. The PVPE Law enacted in 2024 provided that "[w]omen's voices (in a song, a hymn, or a recital out loud in a gathering) […] should be concealed."[249]

74. The Taliban's imposition of discriminatory rules and prohibitions regarding free movement, work, access to information and personal appearance did not merely restrict women's access to public life, but also directly and severely interfered with their rights to private and family life. These rights were engaged in multiple ways: through the negative effects of denial of work or education on personal independence and decision-making,[250] affecting choices such as those with respect to marriage and childbearing; through the suppression of individual expressions of identity and sexual orientation, including in intimate lives;[251] and through the inability to access public services necessary for private and family life, such as healthcare (including for family planning).[252] The right to privacy was also engaged by

[242] Special Rapporteur on Human Rights in Iran (September 2018), para. 26. *See also* Special Rapporteur on Human Rights in Iran (March 2018), para. 67. [REDACTED].
[243] [REDACTED].
[244] [REDACTED].
[245] [REDACTED].
[246] [REDACTED].
[247] [REDACTED].
[248] [REDACTED].
[249] [REDACTED].
[250] *See e.g.* ECtHR, *Denisov v. Ukraine*, paras. 95, 101-109, 115-116; *Piskin v. Turkey*, paras. 179-188; *Convertito v. Romania*, para. 29; *Bagirov v. Azerbaijan*, paras. 91-104.
[251] *See e.g.* ECtHR, *Beizaras & Levickas v. Lithuania*, para. 109; *Sousa Goucha v. Portugal*, para. 27; *B v. France*, para. 63; *Dudgeon v. UK*, para. 41. *See also* IACtHR, *Riffo v. Chile*, paras. 161-165, 169-175; Constitutional Court of South Africa, *National Coalition of Gay and Lesbian Equality v. Minister of Justice*, para. 57.
[252] *See e.g.* ECtHR, *Dickson v. UK*, paras. 66, 70; *Evans v. UK*, para. 71; *P & S v. Poland*, para. 96; *RR v. Poland*, para. 180. *See also* IACtHR, *Murillo v. Costa Rica*, paras. 146-150. *See further* CEDAW, art.12.

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the enforcement of the Taliban's discriminatory rules and prohibitions through harassment, threats, and the use of checkpoints to question or search women on an arbitrary basis.[253]

75. Again, the personal experience of witnesses reflects these harms. [REDACTED].[254] [REDACTED].[255] [REDACTED].[256]

76. Similarly, Taliban decrees or instructions stating that women should be married before pursuing an education or before a certain age directly curtailed their right to choose whether and when to marry or plan a family.[257] The exclusion of women from work also meant that they often lacked the financial means to access public services,[258] especially healthcare.[259] Restrictions on male doctors treating female patients reduced the overall availability of medical services.[260] The imposition of *mahram* requirements, both for patients and in some cases also medical professionals, further restricted women and girls' ability to ensure their right to privacy in relation to consultations and treatment, or to access healthcare services at all.[261]

*(ii) Article 7(1) acts were committed in connection with the severe deprivation of women's rights*

77. In connection with its persecution of women, Taliban members committed numerous article 7(1) acts against women, including murder, imprisonment, torture, rape and other forms of sexual violence, enforced disappearance, and other inhumane acts.[262] These occurred because women were perceived to be breaching the Taliban's discriminatory prohibitions and rules, or daring to voice protest at the restrictions on their rights—or simply at random when women were on the street or vulnerable, such as in detention.

78. Women were targeted for various kinds of summary punishment to enforce the Taliban's discriminatory rules and prohibitions. [REDACTED].[263] [REDACTED].[264] [REDACTED].[265] [REDACTED].[266]

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[253] [REDACTED]. On the relevance of this conduct to the right to private and family life, *see e.g.* ECtHR, *Vig v. Hungary*, paras. 49, 62; *Beghal v. UK*, para. 88; *Gillan & Quinton v. UK*, paras. 61, 63.
[254] [REDACTED].
[255] [REDACTED].
[256] [REDACTED].
[257] [REDACTED].
[258] [REDACTED].
[259] [REDACTED].
[260] [REDACTED].
[261] [REDACTED].
[262] *See* Statute, art. 7(1)(a), (e), (f), (g), (i), (k).
[263] [REDACTED].
[264] [REDACTED].
[265] [REDACTED].
[266] [REDACTED].

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79. The Taliban's violent and abusive spot checks on the street were effective in intimidating the civilian population beyond their immediate victims: many women not only took care to observe the dress code, but also went out of their way to avoid encounters with Taliban officials such as the PVPE for fear of what might be done to them.[267]

80. The Taliban also employed summary violence against female protesters, [REDACTED].[268] [REDACTED].[269] [REDACTED],[270] [REDACTED].[271] [REDACTED].[272] [REDACTED].[273] [REDACTED].[274] [REDACTED].[275]

81. [REDACTED].[276] [REDACTED].[277] [REDACTED].[278]

82. Other crimes were apparently carried out on a targeted or premeditated basis, to punish and intimidate women who were seen as taking steps to oppose the Taliban regime and their discriminatory prohibitions and rules. [REDACTED].[279]

83. Likewise, the Taliban identified and arrested other women whom they perceived to oppose them. [REDACTED].[280] [REDACTED]. [281] [REDACTED].[282]

84. [REDACTED].[283] [REDACTED].[284] [REDACTED].[285]

85. Other public violence against women seemed to be more or less random. [REDACTED].[286] [REDACTED].[287]

86. [REDACTED]:

- [REDACTED].[288] [REDACTED].[289]

[267] [REDACTED].
[268] [REDACTED].
[269] [REDACTED].
[270] [REDACTED].
[271] [REDACTED].
[272] [REDACTED].
[273] [REDACTED].
[274] [REDACTED].
[275] [REDACTED].
[276] [REDACTED].
[277] [REDACTED].
[278] [REDACTED].
[279] [REDACTED].
[280] [REDACTED].
[281] [REDACTED].
[282] [REDACTED].
[283] [REDACTED].
[284] [REDACTED].
[285] [REDACTED].
[286] [REDACTED].
[287] [REDACTED].
[288] [REDACTED].
[289] [REDACTED].

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- [REDACTED].[290]
- [REDACTED].[291]
- [REDACTED].[292]
- [REDACTED].[293]
- [REDACTED].[294]
- [REDACTED].[295]
- [REDACTED].[296]

87. Finally, and more generally, there are reasonable grounds to believe that custodial imprisonment for women consistently exposed them to physical abuse, including rape and other forms of violence. [REDACTED].[297] [REDACTED].[298]

### *F.2.c. The Taliban persecuted those they perceived as not conforming with their ideological expectations of gender identity or expression*

88. Alongside its persecution of girls and women, the Taliban persecuted those who were otherwise perceived not to conform with their ideological expectations of gender identity or expression, such as members of the LGBTQI+ community.

89. Notably, as a corollary to the Taliban's ideologically-derived view that each gender has distinct obligations, which must be enforced (in particular on girls and women), the Taliban also imposed upon the Afghan civilian population its view of the characteristics which define gender.[299] Specifically, according to the Taliban's reductive view, gender is defined by a strictly biological binary between heterosexual cisgender males and heterosexual cisgender females.[300] This meant that the Taliban also targeted those perceived not to conform with the Taliban's expectations of gender-appropriate behaviour or appearance, or even gender identity itself.

90. In particular, this manifested in two ways. First, certain expressions of sexuality, or perceived expressions, were regarded as inconsistent with the Taliban's view of gender. Lesbian women were targeted not only because they were women, but because their expressed sexuality

[290] [REDACTED].
[291] [REDACTED].
[292] [REDACTED].
[293] [REDACTED].
[294] [REDACTED].
[295] [REDACTED].
[296] [REDACTED].
[297] [REDACTED].
[298] [REDACTED].
[299] [REDACTED].
[300] [REDACTED].

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was seen as incompatible with the Taliban's expectation of women.[301] Similarly, gay men were beaten, threatened, arrested and sexually assaulted,[302] and punished arbitrarily.[303] Second, transgender, queer, non-binary or gender non-conforming people were also perceived as deviating from the Taliban's gender expectations.[304] Regardless how a person self-identified, the Taliban required them to accept and express a gender identity consistent with Taliban members' view of what their gender should be.[305] Thus, LGBTQI+ persons avoided public services in case they were 'spotted' by Taliban members and targeted.[306] Queer, transgender or intersex persons were harassed, beaten, detained, tortured, and subject to sexual violence.[307]

91. The persecution of those perceived as not conforming with the Taliban's ideological expectations of gender identity or expression was connected to the commission of article 7(1) acts. While it is only required that this nexus is established for the alleged persecution *as a whole*, the specific connection with the conduct against these perceived 'non-conformists' is set out in the interests of clarity. Such persons were, for example, imprisoned, tortured, raped, and subjected to other sexual violence.

*(i) Persons perceived as not conforming with the Taliban's ideological expectations of gender identity or expression were severely deprived of numerous rights, including freedom from arbitrary punishment*

92. Members of the LGBTQI+ community in Afghanistan were often perceived by Taliban members as not conforming with their ideological expectations of gender identity or expression—either because the person concerned did not identify as belonging to the gender which the Taliban assumed to be correct for them, or because the persons did not otherwise act in a way the Taliban considered appropriate for that gender. [REDACTED].[308] In particular, consistent with the Taliban's discriminatory conduct described above, and especially the means of enforcement, many LGBTQI+ people were affected by the extensive use of violent or harassing behaviour (amounting to summary punishment), on the street and in detention.[309]

93. Recent laws have criminalised some forms of homosexuality (lesbianism) as such.[310] In addition, the Taliban imposed violent punishments on LGBTQI+ persons for conduct defined

[301] [REDACTED].
[302] [REDACTED].
[303] [REDACTED].
[304] [REDACTED].
[305] [REDACTED].
[306] [REDACTED].
[307] [REDACTED].
[308] [REDACTED].
[309] [REDACTED].
[310] [REDACTED].

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as immoral according to the Taliban's own ideology (so-called 'morality crimes'),[311] entailing corporal or capital punishment for the exercise of a core aspect of the right to private and family life (consensual relationships between adults including sexual relationships).[312]

94. The right not to be punished *without* a trial, or otherwise arbitrarily or without due process under international law, is the corollary of rights including the rights to a fair trial, to liberty and security of the person, and to freedom from torture and cruel, inhuman or degrading treatment.[313] Both summary punishment and punishment resulting from proceedings not affording the minimum due process guarantees of international law are unlawful[314]—whether imposed in the form of custodial imprisonment, or corporal or capital punishment. These minimum guarantees (such as the rights to an independent and impartial tribunal, to counsel, and to present a defence) are unqualified.[315] Furthermore, international law calls *at least* for the progressive abolition of both corporal and capital punishment,[316] and where such punishments are imposed requires strict adherence to all other aspects of international law. Thus, where a person is subject to corporal or capital punishment in circumstances otherwise prohibited by international human rights law (such as on discriminatory grounds or with respect to protected conduct),[317] the punishment is arbitrary and as such unlawful.[318]

95. Relevantly, the Taliban has punished conduct described as *lawatat* (sodomy) and *zina* (extramarital sex)[319]—and similar conduct described by other euphemistic terms such as "illicit

[311] [REDACTED].
[312] [REDACTED].
[313] *See e.g.* ICCPR, arts. 6, 7, 9-10, 14, 26; ECHR, arts. 2-3, 5-7, 14; ACHR, arts. 4-5, 7-9, 24; ACHPR, arts. 2, 4, 6-7; UDHR, arts. 2-3, 5, 7, 9-11.
[314] *See also e.g.* *Al Hassan* TJ, paras. 1157, 1160-1178.
[315] *See e.g.* UN HRC General Comment 32, paras. 6, 19.
[316] *See e.g.* Úbeda de Torres, pp. 275, 278-281 (mns. 12.03, 12.10-12.15); Rodley, pp. 204-207, 241 ("General international law does not yet prohibit the death penalty, but it does envisage the goal of abolition"). By contrast, there is a much stronger argument to suggest that corporal punishment is *already* prohibited under international human rights law: *Al Hassan* TJ, paras. 1142-1144; Special Rapporteur on Torture (2010), para. 63; Nowak and McArthur, pp. 79-84 (mns. 120-128); Rodley, pp. 309, 316-324; UN HRC General Comment 20, para. 5. *See further* *Caesar v. Trinidad and Tobago*, para. 70; UN HRC, *Osbourne v. Jamaica*, para. 9.1; ECtHR, *Tyrer v. UK*, paras. 33, 35; UNGA Res. 323(IV), para. 2.
[317] *See e.g.* UN HRC General Comment 35, paras. 3, 9. *See also* UN HRC Concluding Observations (El Salvador), para. 16.
[318] *See e.g.* UN HRC General Comment 35, para. 17 ("punishment for the legitimate exercise of the rights as guaranteed by the [ICCPR] is arbitrary"); Úbeda de Torres, p. 281-286 (mns. 12.16-12.26); Rodley, p. 219-220, 242 . *See also e.g.* UN HRC General Comment 32, para. 8; African Commission on Human and People's Rights, *Doebbler v. Sudan* (finding that public corporal punishment for acts 'contrary to public morality' violated the prohibition on inhuman and degrading treatment).
[319] [REDACTED].

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relationships", "affairs", and "running away from home". [REDACTED],[320] [REDACTED],[321] [REDACTED].[322]

96. In principle, within the framework of the Taliban ideology, punishments for this conduct may potentially be applied within the framework for *hudud* offences (for which mandatory penalties of capital or corporal punishment are prescribed) or *tazir* offences (allowing judicial discretion as to the penalty, but including corporal punishment of a lesser degree). The prescribed punishments for relevant *hudud* offences included especially cruel methods of execution such as stoning or crushing under a 2-3m high wall, intentionally collapsed onto the victim.[323] The Taliban's conspicuous publicity of these punishments, ostensibly to deter criminal activity, has been used to intimidate not only LGBTQI+ persons but also the civilian population more broadly,[324] including by mere rumour.[325] [REDACTED].[326] [REDACTED].[327]

97. [REDACTED],[328] [REDACTED].[329] [REDACTED].[330] [REDACTED].[331] [REDACTED].[332]

98. In the circumstances prevailing in Afghanistan, the imposition of punishments for 'morality crimes' as described above, affecting LGBTQI+ persons but also others, were both discriminatory and arbitrary. This was for three reasons.

- First, since assuming *de facto* national authority on 15 August 2021, the Taliban disapplied many laws of the former Republic, including the criminal code – but did not systematically replace them. In many key respects, the framework of *sharī'a* (as understood by the Taliban) was deemed sufficient, without elaboration.[333] As a result, matters of vital importance to the security of the civilian population – such as the means and methods by which Taliban rule might be enforced, as well as the definitions of crimes and the

[320] [REDACTED].
[321] [REDACTED].
[322] [REDACTED].
[323] [REDACTED].
[324] [REDACTED].
[325] [REDACTED].
[326] [REDACTED].
[327] In addition to *hudud* crimes (which receive mandatory penalties of corporal or capital punishment) and *ta' zir* crimes (which receive discretionary penalties, determined by a judge that may include corporal punishment), crimes such as murder fall under the *qisas* regime (a retaliatory form of punishment at the discretion of the victim, or his/her family, including capital punishment). [REDACTED].
[328] [REDACTED].
[329] [REDACTED].
[330] [REDACTED].
[331] [REDACTED].
[332] [REDACTED].
[333] [REDACTED].

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procedures for establishing guilt and imposing punishment – were determined on an arbitrary basis.

- Second, not only was the conduct for which punishment was imposed specifically protected within the fundamental right to private and family life, but the conduct was also discriminatory in nature. Consistent with the principles stated above, this makes any use of corporal or capital punishment in this context arbitrary and unlawful.[334]
- Third, punishment was imposed without the minimum due process guarantees required by international law. [335] In particular, there is at least a reasonable basis to believe that judges were not independent and impartial,[336] but under the control of the Taliban. [REDACTED],[337] [REDACTED].[338] [REDACTED].[339] [REDACTED].[340] [REDACTED].[341] [REDACTED].

*(ii) Article 7(1) acts were committed in connection with the severe deprivation of the rights of those perceived as not conforming with the Taliban's ideological expectations of gender identity or expression*

99. In connection with the persecution of those perceived as not conforming with the Taliban's ideological expectations of gender identity or expression, Taliban members committed numerous article 7(1) acts against such persons, including imprisonment, torture, rape and other forms of sexual violence, and other inhumane acts.[342] [REDACTED].

100. [REDACTED].[343] [REDACTED].[344] [REDACTED].[345] [REDACTED].[346] [REDACTED].[347] [REDACTED].[348]

101. [REDACTED].[349] [REDACTED].[350] [REDACTED].[351]

[334] [REDACTED].
[335] [REDACTED].
[336] [REDACTED].
[337] [REDACTED].
[338] [REDACTED].
[339] [REDACTED].
[340] [REDACTED].
[341] [REDACTED].
[342] *See* Statute, art. 7(1)(e), (f), (g), (k).
[343] [REDACTED].
[344] [REDACTED].
[345] [REDACTED].
[346] [REDACTED].
[347] [REDACTED].
[348] [REDACTED].
[349] [REDACTED].
[350] [REDACTED].
[351] [REDACTED].

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102. [REDACTED].[352] [REDACTED].[353] [REDACTED].[354] [REDACTED].[355]

103. [REDACTED].[356] [REDACTED].[357]

### *F.2.d. The Taliban persecuted those they perceived as allies of girls or women*

104. Alongside its persecution of girls and women, and integral to it, the Taliban also persecuted those perceived as allies of girls or women. For example, some boys and men were targeted for their perceived support of the rights of girls and women – such as by protesting, advocating for women's rights or facilitating girls' education – or for failing to sufficiently enforce the Taliban's discriminatory prohibitions and rules on female relatives for whom they acted as a *mahram*.[358] As other tribunals have affirmed, "acts against […] sympathizers and affiliates also have an impact on the primary targets of the persecution, adding to their overall oppression and isolation" and thus "remain acts or omissions committed against the targeted group or groups as a whole."[359] Consequently, while the persons who were victimised as perceived allies included boys or men, they were nonetheless targeted as part of the Taliban's gender persecution.[360]

105. The persecutory conduct related to those perceived by the Taliban as allies of girls or women was connected to the commission of article 7(1) acts. While it is only required that this nexus is established for the alleged persecution *as a whole*, the specific connection with the conduct related to these persons is set out in the interests of clarity. For example, those perceived as allies of girls or women were imprisoned, tortured, and subjected to sexual violence and rape.

#### *(i) Perceived allies of girls or women were severely deprived of numerous rights, including freedom of assembly and expression, the right to liberty, and freedom from torture and cruel treatment*

106. Within weeks of the Taliban's takeover on 15 August 2021, a significant number of Afghan civilians – including girls and boys, women and men – sought to exercise their right to peaceful protest in order to defend the rights of girls and women which they anticipated (correctly) to be under threat from the Taliban regime. These protests were brutally suppressed, and participants or suspected participants detained, and tortured. As such, this conduct engaged

[352] [REDACTED].
[353] [REDACTED].
[354] [REDACTED].
[355] [REDACTED].
[356] [REDACTED].
[357] [REDACTED].
[358] [REDACTED].
[359] ECCC, *Case 001*, para. 272. *See also* ICTY, *Naletilić and Martinović* TJ, para. 636.
[360] [REDACTED].

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not only the core fundamental rights to freedom of assembly and expression, but also the rights to liberty, and to freedom from torture, as well as to other dimensions of physical integrity and autonomy.[361] Assessment of whether particular conduct violates these rights requires an assessment in all the circumstances of the case, having due regard both to the physical and mental effects of that conduct, as well as the conduct of the perpetrator.[362]

107. The Taliban's repression of peaceful protests, including through the use of force, was widely reported.[363] The Taliban equated protests in support of women's rights with opposition to their regime, as demonstrated by the terms in which they refused such requests.[364] [REDACTED].[365] [REDACTED].[366] [REDACTED].[367] [REDACTED].[368] [REDACTED].[369]

108. Likewise, the Taliban took particular measures to repress the activities of women protesters, further illustrating the link between their response to protests and their imposition of discriminatory prohibitions and rules on girls and women. [REDACTED].[370] [REDACTED].[371] [REDACTED],[372] [REDACTED].[373] [REDACTED],[374] [REDACTED].[375] [REDACTED].[376] [REDACTED].[377] [REDACTED].[378]

109. Similarly, male activists were targeted for their activities on behalf of girls and women. [REDACTED].[379] [REDACTED].[380]

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[361] *See e.g.* UDHR, arts. 3, 5, 9, 19 and 20 (freedom of assembly); ICCPR, arts. 6-7, 9-10, 21 (freedom of assembly). *See also e.g.* Preamble ("Recognising that these rights derive from the inherent dignity of the human person"), art. 10(1); ECFR, art. 3(1) ("Everyone has the right to respect for his or her physical and mental integrity"); UN HRC General Comment 35, paras. 2-3, 9 ("Article 9 recognizes and protects both liberty of person and security of person. […] Security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity, as further discussed in paragraph 9 below. Article 9 guarantees those rights to everyone. […] The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained"). On the relationship between freedom of assembly and the right to protest, *see e.g.* UN HRC General Comment 37, paras. 1-2, 4, 6, 8.
[362] [REDACTED].
[363] [REDACTED].
[364] [REDACTED].
[365] [REDACTED].
[366] [REDACTED].
[367] [REDACTED].
[368] [REDACTED].
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[374] [REDACTED].
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[376] [REDACTED].
[377] [REDACTED].
[378] [REDACTED].
[379] [REDACTED].
[380] [REDACTED].

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110. [REDACTED].[381] [REDACTED].[382] [REDACTED].[383]

111. In addition to protesters and activists, the Taliban also targeted male family members as allies of girls or women. [REDACTED].[384] [REDACTED].[385] [REDACTED].[386] [REDACTED].[387]

*(ii) Article 7(1) acts were committed in connection with the severe deprivation of the rights of perceived allies of girls or women*

112. In connection with the persecution of perceived allies of girls or women, Taliban members committed numerous article 7(1) acts against such persons, including imprisonment, torture, rape and other forms of sexual violence, and other inhumane acts.[388] As described above, the Taliban took extreme and violent measures to suppress protest by perceived allies of girls or women to protest against the discriminatory prohibitions and rules imposed by the Taliban.[389] These frequently amounted to, or resulted in, the commission of article 7(1) acts.

113. Perceived allies of girls and women were often held arbitrarily, and incommunicado, and subject to torture, and other acts of sexual violence.[390] [REDACTED].[391] [REDACTED].[392]

114. [REDACTED][393] [REDACTED].[394] [REDACTED],[395] [REDACTED].[396] [REDACTED].[397] [REDACTED].[398] [REDACTED];[399] [REDACTED].[400] [REDACTED].[401] [REDACTED].[402]

115. [REDACTED].[403] [REDACTED].[404] [REDACTED].[405]

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[381] [REDACTED].
[382] [REDACTED].
[383] [REDACTED].
[384] [REDACTED].
[385] [REDACTED].
[386] [REDACTED].
[387] [REDACTED].
[388] *See* Statute, art. 7(1)(e), (f), (g), (k).
[389] [REDACTED].
[390] [REDACTED].
[391] [REDACTED].
[392] [REDACTED].
[393] [REDACTED].
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[398] [REDACTED].
[399] [REDACTED].
[400] [REDACTED].
[401] [REDACTED].
[402] [REDACTED].
[403] [REDACTED].
[404] [REDACTED].
[405] [REDACTED].

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116. Taliban members also committed article 7(1) acts and crimes against members of the civilian population who showed their support for girls and women (or even mere tolerance of them) in subtler, everyday ways. [REDACTED].[406] [REDACTED].[407] [REDACTED].[408]

117. Men were also punished by the Taliban for their perceived failure to control women adequately.[409] [REDACTED].[410] [REDACTED].[411]

### *F.2.e. The victims were targeted because of the Taliban's view of gender*

118. The Taliban's violent repression of the victims' fundamental rights was committed on the grounds of gender.[412] The Taliban sought to impose their highly gendered ideology on the entirety of Afghan society—first, through the conflict against the Islamic Republic of Afghanistan and its elected government, and then through the establishment of the self-declared Islamic Emirate of Afghanistan, once the Republic was overthrown.[413]

119. While the victims were mistreated in a variety of ways, the basis of discrimination against them was the same. All the persecutory conduct attributed to the Taliban in this Application was informed by the Taliban's view of gender. How that view shaped Taliban members' conduct for each victim depended on the intersection of: (a) the Taliban's view of that victim's gender; and (b) the personal conduct of that victim, either conforming or not conforming with the Taliban's interpretation of gender, and in what manner and degree. The fact that Taliban members made numerous and express misogynistic statements,[414] while barely acknowledging even the possibility of non-binary conceptions of gender (or any sexuality other than heterosexuality), does not mean that its discrimination affected only the gender identities and expressions that it recognised (such as heterosexual cisgender girls and women), and not those it did not recognise (such as LGBTQI+ persons). To the contrary, the variety of persons victimised merely reflects different dimensions of the Taliban's gender discrimination.

120. Taliban ideology rigidly prescribes the appearance and behaviour of males and females within Afghan society.[415] The prohibitions and rules applied by them during the First Emirate

[406] [REDACTED].
[407] [REDACTED].
[408] [REDACTED].
[409] [REDACTED].
[410] [REDACTED].
[411] [REDACTED].
[412] Elements of Crimes, article 7(1)(h), Element 3.
[413] [REDACTED].
[414] [REDACTED].
[415] [REDACTED].

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are strikingly similar to those applied since 15 August 2021.[416] During the intervening armed conflict, Taliban members and supporters sought to limit the rights and freedoms of women and girls which had been restored under the Republic, in particular by directing threats and attacks against girls' education, and women's participation in public life.[417] After the takeover in August 2021, the Taliban followed the same pattern by reintroducing similar discriminatory gender-based prohibitions and rules to those enforced during the First Emirate.[418]

121. In particular, the evidence recounted above shows how the Taliban has implemented its ideological conviction that girls and women do not have equal rights to boys and men, nor permit girls and women to exercise basic freedoms in their everyday life.[419] The prohibitions and rules imposed by the Taliban were discriminatory both in intent and in effect.[420] Girls and women were denied access to secondary or university education,[421] to travel independently and to engage in public life, [422] to dress as they chose or to speak in public[423]—merely because of their gender. Taliban ideology insisted that the social role and existence of women and girls must instead be centred on their homes:[424] tending to the household, serving their husbands, and bearing and raising children.[425] Correspondingly, Afghan men were expected to act as enforcers of these reductive gender roles.[426] For example, the imposed *mahram* system obliged boys and men to control the rights and freedoms of their female relatives, and held them accountable for any perceived transgressions of the ideologically-defined gender roles within their household.[427] Likewise, the (significantly less onerous) Taliban rules regulating the personal appearance of men,[428] and the continued educational opportunities made available to boys (even if according to an approved Islamic curriculum),[429] further shows that gender was the foundation for the differentiated treatment.

122. The evidence likewise shows that persons perceived by the Taliban as not conforming with their ideological expectations of gender identity or expression – such as members of the

[416] [REDACTED]. This is unsurprising, as they are based on the Taliban's ideology which remains unchanged, and many current leaders such as AKHUNDZADA also held prominent positions in the First Emirate.
[417] [REDACTED].
[418] [REDACTED].
[419] [REDACTED].
[420] *See e.g.* ICTY, *Naletilić and Martinović* TJ, para. 636; *Krnojelac* AJ, para. 185.
[421] [REDACTED].
[422] [REDACTED].
[423] [REDACTED].
[424] [REDACTED].
[425] [REDACTED].
[426] [REDACTED].
[427] [REDACTED].
[428] [REDACTED].
[429] [REDACTED].

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LGBTQI+ community – were targeted by reason of gender. A strict binary between women and men was central to the Taliban's ideological view of gender. This entailed assumptions not only about appropriate roles and behaviour for each of those genders (including with regard to intimate life and expressions of sexuality) but also about gender identity. Simply put, Taliban members sought to impose their own views of victims' gender identity, regardless of the victims' views or choice of means of gender expression.[430] Non-conforming behaviour was seen as aberrant or sinful, and resulted in harassment or physical violence.[431] For women (and those perceived by the Taliban as women), such non-conforming behaviour included: not wanting to get married,[432] having short hair,[433] and women wearing trousers or other clothing perceived to be inappropriate or masculine.[434] Correspondingly, men (and those perceived by the Taliban as men) considered to resemble women or to present themselves in an insufficiently 'masculine' way were also targeted.[435] Expressions of sexuality inconsistent with the Taliban ideology were prohibited as such, or subject to arbitrary punishment as so-called 'morality crimes'.[436] Perceived LGBTQI+ activists were also targeted.[437]

123. Those who were additionally targeted by the Taliban as perceived allies of girls or women were not necessarily themselves girls or women.[438] Nevertheless, they too were targeted by reason of gender, since the Taliban equated their non-conformity with the Taliban's ideologically-informed views of gender with opposition to that ideology. Perceived allies of girls or women were thus severely deprived of their fundamental rights because they opposed the Taliban's assumptions about gender, including the conduct which is appropriate for girls or women.

124. As perpetrators of the alleged persecutory conduct, Taliban members and persons affiliated with them frequently expressed the specific intent to discriminate on gender grounds. For example:

- [REDACTED].[439]

[430] [REDACTED].
[431] [REDACTED].
[432] [REDACTED].
[433] [REDACTED].
[434] [REDACTED].
[435] [REDACTED].
[436] [REDACTED].
[437] [REDACTED].
[438] [REDACTED].
[439] [REDACTED].

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- [REDACTED].[440] [REDACTED].[441]
- [REDACTED].[442]
- [REDACTED].[443]

125. There are more than reasonable grounds to believe that the Taliban discriminated on the basis of gender, despite some perpetrators' invocation of political and religious concepts intersecting with their reductive view of gender.[444] To the contrary, article 7(3) of the Statute foresees that such concepts may situate and inform perpetrators' understanding of gender, insofar as gender is defined as "the two sexes, male and female, within the context of society".[445] Consistent with the Taliban's aim to establish an explicitly theocratic society in Afghanistan strictly complying with their ideology, the Taliban's reductive interpretation of gender was informed by its understanding of religion and its inter-relation with politics.[446] Accordingly, non-conformity with or resistance to the Taliban's gender interpretation was not only seen as irreligious[447] but equated with political opposition or defiance of the Taliban's authority (illustrated by rhetorical references to perceived historical enemies).[448]

126. [REDACTED].[449] For example:

- [REDACTED][450] – [REDACTED][451] – [REDACTED],[452] [REDACTED].[453]
- [REDACTED].[454]
- [REDACTED].[455]

127. Likewise, while clearly discriminating on gender grounds, the evidence shows that the perpetrators of certain acts sometimes nonetheless also made political and/or religious allusions. For example:

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[440] [REDACTED].
[441] [REDACTED].
[442] [REDACTED].
[443] [REDACTED].
[444] This is without prejudice to the possibility that, at later stages of the proceedings, the alleged persecution could if appropriate be alternatively framed as occurring on grounds of gender, religion, and/or politics.
[445] Statute, article 7(3). *See also* Hayes and Powderly, p. 312-316; Oosterveld (2014), p. 563-580; Oosterveld (2005), p. 55-84.
[446] [REDACTED].
[447] [REDACTED].
[448] There is some evidence that perceived political opposition may also have triggered the particular targeting of some women. [REDACTED].
[449] [REDACTED].
[450] [REDACTED].
[451] [REDACTED].
[452] [REDACTED].
[453] [REDACTED].
[454] [REDACTED].
[455] [REDACTED].

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- [REDACTED].[456]
- [REDACTED].[457]
- [REDACTED].[458]
- [REDACTED].[459]
- [REDACTED].[460]
- [REDACTED].[461]
- [REDACTED].[462]
- [REDACTED].[463]

### F.3. The persecution was carried out as part of a widespread and systematic attack against the civilian population of Afghanistan, pursuant to a State or organisational policy

128. Pre-Trial Chamber II previously found that there is a reasonable basis to believe that the conduct of the Taliban since 1 May 2003 satisfied the contextual elements of crimes against humanity.[464] The Prosecution respectfully submits that this same attack against the civilian population continued after 15 August 2021, when the Taliban seized *de facto* national authority over Afghanistan, enabling them to implement that attack through new means. Rather than relying on armed attacks, kidnappings, and suicide bombings to impose their ideology upon the civilian population, the Taliban could now impose their discriminatory rules and prohibitions on the population directly, and punish those whom they considered did not conform.

#### *F.3.a. The Taliban committed multiple article 7(1) acts against the civilian population of Afghanistan*

129. There are reasonable grounds to believe that the alleged persecution was committed as part of an attack directed against the civilian population of Afghanistan, characterised by "a course of conduct involving the multiple commission of acts referred to in [article 7(1)]".[465] In addition to the breadth of the alleged persecutory conduct itself, described above, the 7(1) acts connected to the alleged persecution encompasses hundreds of incidents including murder, imprisonment, torture, rape, other forms of sexual violence, enforced disappearance, and other

[456] [REDACTED].
[457] [REDACTED].
[458] [REDACTED].
[459] [REDACTED].
[460] [REDACTED].
[461] [REDACTED].
[462] [REDACTED].
[463] [REDACTED].
[464] *Afghanistan* Article 15 Decision, para. 66. *See also* para. 64.
[465] Statute, art. 7(2)(a).

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inhumane acts.[466] Furthermore, this represents only a fraction of the victimisation which may reasonably be inferred from the evidence, occurring across the entire territory of Afghanistan for more than two years, and affecting much of the population.

### *F.3.b. The attack was both widespread and systematic*

130. The Taliban's attack was widespread because the Taliban's imposition and enforcement of its discriminatory rules and prohibitions, amounting to the crime of persecution as described above, occurred across the territory of Afghanistan. Temporally, this conduct commenced soon after the Taliban seized power on 15 August 2021 and continued for over three years, including to the present day.

131. Notwithstanding the limited sample of individual victims cited in this Application, there are reasonable grounds to believe that thousands of Afghan civilians targeted by reason of the identity of a group or collectivity have been victimised by the alleged crimes in light of (i) the nature of the alleged conduct (carried out as an integral part of the Taliban's exercise of *de facto* national authority); (ii) the means available to the Taliban to carry out the alleged conduct (through the Taliban's effective control over the vast majority of the territory of Afghanistan and all of the levers of power, including through the issuing of decrees and other instructions imposing discriminatory prohibitions and rules); and (iii) the ostensible purpose of that conduct (to ensure that *all* persons under the Taliban's control conformed to the Taliban ideology). The scale of the alleged victimisation is further corroborated by reliable open source reporting, which likewise supports the conclusion that victims number many thousands.[467]

132. The attack was also systematic because it was carried out by measures which, while discriminating against the targeted persons, were applicable in principle to *each* such person in Afghanistan. In other words, the Taliban used its *de facto* national authority to try to ensure that *all* targeted persons complied with the prohibitions and rules applicable to them, within the framework of the Taliban ideology. These were enforced by Taliban members and persons affiliated with them according to a consistent *modus operandi*, pursuant to the same ideology. The Taliban created and maintained structures and procedures for this purpose.[468]

### *F.3.c. The attack was carried out pursuant to a State or organisational policy of the Taliban*

133. The Taliban attack directed against the civilian population was committed pursuant to or in furtherance of a State or organizational policy to commit such attack.

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[466] [REDACTED].
[467] [REDACTED].
[468] [REDACTED].

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134. While the Taliban has not been internationally recognised as the legitimate government of Afghanistan, it exercises *de facto* national authority and amply satisfies the definition of an "organisation" for the purpose of article 7—a structure with sufficient capabilities, resources and means to carry out the alleged course of conduct.[469] Notably, the Taliban not only controls *de facto* ministries, but also armed forces, courts, intelligence organs such as the GDI (also known as the *istikhbarat*),[470] and so on. During the non-international armed conflict, which continued until at least 15 August 2021, the Taliban achieved significant tactical victories against State armed forces. When given opportunity, it seized effective control over the vast majority of the territory of Afghanistan swiftly and decisively.[471]

135. The article 7(1) acts comprising the attack – including the alleged persecutory conduct and connected crimes[472] – were carried out pursuant to the Taliban's policy, and were not isolated or random incidents.[473] First, to the extent that the attack was systematic in nature, as alleged, the policy requirement is necessarily met.[474] Second, and in any event, the Taliban actively promoted and encouraged the alleged persecutory conduct and connected crimes, and these were carried out across Afghanistan by Taliban members at all levels of the hierarchy, as well as persons affiliated with them. The factor which bound the Taliban together – their ideology – was the very context and reason for the commission of the alleged persecution. As such, Taliban members and affiliated persons cannot have failed to know or intend that their conduct formed part of the attack on the civilian population carried out pursuant to the Taliban policy.[475]

### F.4. There are reasonable grounds to believe that HAQQANI is responsible for the alleged persecution

136. There are reasonable grounds to believe that **HAQQANI** – the Chief Justice – is responsible for the crime against humanity of persecution. [REDACTED].

#### *F.4.a. [REDACTED]*

137. [REDACTED]

[469] *See e.g.* *Ongwen* TJ, para. 2677; *Bemba* TJ, para. 158; *Katanga* TJ, para. 1119.
[470] [REDACTED].
[471] [REDACTED].
[472] [REDACTED].
[473] *See e.g.* *Ongwen* TJ, para. 2678; *Al Hassan* Confirmation Decision, para. 181.
[474] *See e.g.* *Ongwen* TJ, para. 2679; *Katanga* TJ, paras. 1111-1113.
[475] Elements of Crimes, art. 7(1)(h), Element 6.

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138. [REDACTED].[476] [REDACTED].[477] [REDACTED].[478]

139. [REDACTED].[479] [REDACTED].[480] [REDACTED].

140. [REDACTED].

141. [REDACTED].[481] [REDACTED][482]—[REDACTED]. [REDACTED][483]—[REDACTED]. [REDACTED].[484]

### *F.4.b. [REDACTED]*

142. [REDACTED].[485] [REDACTED].

143. [REDACTED].[486]

#### *F.4.b.i. [REDACTED]*

144. [REDACTED].[487] [REDACTED].[488] [REDACTED].[489] [REDACTED].[490]

145. [REDACTED],[491] [REDACTED]. [REDACTED]:

- [REDACTED].[492]
- [REDACTED].[493] [REDACTED],[494] [REDACTED].[495]
- [REDACTED],[496] [REDACTED].[497] [REDACTED].[498] [REDACTED].[499]

146. [REDACTED].[500] [REDACTED].[501]

[476] [REDACTED].
[477] [REDACTED].
[478] [REDACTED].
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[480] [REDACTED].
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[499] [REDACTED].
[500] [REDACTED].
[501] [REDACTED].

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147. [REDACTED].[502] [REDACTED],[503] [REDACTED],[504] [REDACTED].[505] [REDACTED].[506] [REDACTED],[507] [REDACTED].[508]

148. [REDACTED],[509] [REDACTED].[510] [REDACTED][511] [REDACTED].[512] [REDACTED].[513] [REDACTED].[514] [REDACTED].[515]

*F.4.b.ii. [REDACTED]*

149. [REDACTED]:

- [REDACTED];[516]
- [REDACTED];[517]
- [REDACTED];[518]
- [REDACTED];[519]
- [REDACTED];[520]
- [REDACTED],[521] [REDACTED];[522]
- [REDACTED];[523]
- [REDACTED].[524]

150. [REDACTED],[525] [REDACTED].[526] [REDACTED].[527]

[502] [REDACTED].
[503] [REDACTED].
[504] [REDACTED].
[505] [REDACTED].
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[526] [REDACTED].
[527] [REDACTED].

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151. [REDACTED].[528] [REDACTED],[529] [REDACTED],[530] [REDACTED],[531] [REDACTED].[532] [REDACTED].

*F.4.b.iii. [REDACTED]*

152. [REDACTED][533] [REDACTED].[534] [REDACTED].[535] [REDACTED],[536] [REDACTED][537] [REDACTED],[538] [REDACTED][539]— [REDACTED].[540]

*F.4.b.iv. [REDACTED]*

153. [REDACTED].[541] [REDACTED].[542] [REDACTED].[543] [REDACTED].[544]

154. [REDACTED].[545] [REDACTED].[546] [REDACTED].[547] [REDACTED].[548]

*F.4.b.v. [REDACTED]*

155. [REDACTED].[549] [REDACTED].[550] [REDACTED],[551] [REDACTED].[552]

156. [REDACTED]:

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].

[528] [REDACTED].
[529] [REDACTED].
[530] [REDACTED].
[531] [REDACTED].
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[551] [REDACTED].
[552] [REDACTED].

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- [REDACTED].

*F.4.b.vi. [REDACTED]*

157. [REDACTED].[553] [REDACTED].[554] [REDACTED].[555]

158. [REDACTED],[556] [REDACTED].[557] [REDACTED].[558] [REDACTED].[559]

***F.4.c. [REDACTED]***

159. [REDACTED].[560]

***F.4.d. [REDACTED]***

160. [REDACTED].[561]

## G. JURISDICTION AND ADMISSIBILITY

### G.1. Jurisdiction

161. The crime of persecution described in this Application – carried out in Afghanistan from 15 August 2021 at least until the present – falls within the parameters of the investigation authorised by the Appeals Chamber, namely "[…] an investigation 'in relation to alleged crimes committed on the territory of Afghanistan in the period since 1 May 2003 […]'".[562] The Appeals Chamber has expressly re-confirmed that the Court's jurisdiction extends to crimes committed after the investigation was authorised, and is not limited to incidents previously identified for the purpose of article 15(3) or crimes closely linked thereto.[563]

162. In the Prosecution's submission, the jurisdictional requirement for "a nexus to the armed conflict in Afghanistan" relates only to crimes which are "committed on the territory of *other States Parties in the period since 1 July 2002*".[564] Accordingly, since this Application concerns conduct in Afghanistan, this need not be established. Yet in any event, the alleged persecution *does* have such a nexus—since, for the purpose of the Court's *jurisdiction* in the context of

[553] [REDACTED].
[554] [REDACTED].
[555] [REDACTED].
[556] [REDACTED].
[557] [REDACTED].
[558] [REDACTED].
[559] [REDACTED].
[560] [REDACTED].
[561] [REDACTED].
[562] *Afghanistan* Article 15 AJ, para. 79.
[563] *Afghanistan* Article 18 AJ, paras. 56-59, 62.
[564] *Afghanistan* Article 15 AJ, para. 79 (emphasis added). *See also* paras. 62, 66. Such crimes must be "sufficiently linked" to the situation.

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article 15,[565] the requisite link is factual and does not necessarily require the alleged crime to have occurred while the conflict was ongoing.[566] **HAQQANI** is (and was) a senior member of the Taliban,[567] which was a party to the conflict.[568] Not only did the Taliban's attack on the civilian population – of which the alleged persecution forms part – commence during the conflict, pursuant to the Taliban ideology,[569] but the conflict has enabled and shaped the manner in which the alleged persecution is now committed. Indeed, the Taliban's stated purpose of imposing their ideology on the population of Afghanistan – as they are now doing – was one of the main reasons for pursuing the insurgency against the authorities of the Republic.[570]

163. Further, and in any event, on 28 November 2024, six States Parties referred to the Court allegations of "crimes committed against women and girls [in Afghanistan] after the Taliban takeover in 2021", which they recognised as falling within the parameters of the Court's existing investigation in this situation.[571]

### G.2. Admissibility

164. The Chamber is not required to determine the admissibility of a case in order to issue an arrest warrant under article 58(1) of the Statute, but may nonetheless exercise discretion to do so "when it is appropriate in the circumstances […], bearing in mind the interests of the suspect", such as when there are any "uncontested facts that render a case clearly inadmissible or an ostensible cause impelling the exercise of *proprio motu* review."[572] The Prosecution submits that there is no such basis in this case. Yet, even if so, on the basis of the information

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[565] This is different than the general requirement for the purpose of article 8 of the Statute, which depends on a factual basis for the application of international humanitarian law. By contrast, there is no such requirement for the crimes under article 7 alleged in this Application. *See also* *Afghanistan* Article 15 AJ, para. 61 (recalling the "Prosecutor's truth-seeking function").

[566] The Prosecution continues to monitor the situation in Afghanistan, without reaching a final view as to the continuation of otherwise of the conflict. It notes that the Taliban presently controls the vast majority of the territory of Afghanistan, that members of the former *de jure* government of Afghanistan have fled, and former international partners have withdrawn. But fighting continued after 15 August 2021 in some regions, including by the National Resistance Front in the Panjshir valley, and in the context of sporadic attacks against the Taliban in locations such as Kabul, Kandahar, and Helmand, attributed to the Afghanistan Freedom Front. [REDACTED]. The Prosecution recalls that interruptions or fluctuations in the intensity of the hostilities, or changes in the configuration of the parties involved, do not necessarily imply the termination of a conflict. Rather, what is required is a "peaceful settlement", such as the complete victory of a party to the conflict, or a "lasting absence of armed confrontations" between the parties "without real risk of resumption". *See e.g.* ICRC *Challenges* Report, p. 10-11; *Ongwen* TJ, para. 2684; Dwyer and McCormack, p. 56; ICTY, *Tadić* Jurisdiction AJ, para. 70; *Lubanga* TJ, para. 533; ICRC *Commentary on GCI*, paras. 489, 491, 494; Sivakumaran, p. 253-254.

[567] [REDACTED].

[568] [REDACTED]. *See also* *Afghanistan* Article 15 Request, paras. 115-121.

[569] [REDACTED]. *See also* *Afghanistan* Article 15 Decision, paras. 18-20.

[570] [REDACTED].

[571] 2024 Referral, p. 4.

[572] *DRC* Arrest Warrants AJ, para. 52.

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available, this case is admissible because no State is presently taking relevant action under article 17(1)(a) to (c) of the Statute and it is sufficiently grave for the purpose of article 17(1)(d).

***G.2.a. Domestic proceedings against HAQQANI are not taking place or are inactive***

165. There is currently no indication that any State with jurisdiction is investigating **HAQQANI** for the conduct described in this Application. The Prosecution recalls that, at the end of 2022, the Pre-Trial Chamber determined that "Afghanistan is not presently carrying out […] investigations" and that, at least since 15 August 2021, it had "not acted in a manner that shows an interest" in doing so.[573] While this finding was preliminary in nature, and without prejudice to any further determination of admissibility required under article 19,[574] the Chamber's finding nonetheless supports the view that it need not exercise its discretion to assess admissibility at this time, absent any material change of circumstances.

166. Given the close connection between **HAQQANI** and the Taliban, and the exercise of *de facto* national authority by the Taliban within Afghanistan, the Prosecution has not attempted to confirm with the Taliban whether there are any relevant national proceedings in Afghanistan concerning the allegations in this Application. However, in the circumstances, the prospect of any such proceedings meeting the requirements of article 17 is most unlikely. Notably, as Chief Justice, **HAQQANI** wields ultimate authority over the judiciary in Afghanistan, [REDACTED]. [REDACTED].

***G.2.b. The case against HAQQANI is sufficiently grave***

167. The case amply meets the threshold of article 17(1)(d), which excludes only those "rather unusual cases" which are "of marginal gravity only".[575] While quantitative criteria alone (such as the number of victims) may not be dispositive of the gravity of a given case,[576] it may be a significant factor in this instance. Additionally, factors including the nature of the crimes, their manner of commission, and the impact on victims (taking account of their individual characteristics), and **HAQQANI**'s degree of responsibility likewise suggest that the case is sufficiently grave to be admissible before the Court.

168. In particular, with regard to scale, the Prosecution notes that **HAQQANI** allegedly bears individual responsibility for the persecution of thousands of Afghan civilians by Taliban members and persons affiliated with them. While the Prosecution has presented specific evidence regarding a sample of victims for the purpose of this Application, the evidence

[573] *Afghanistan* Article 18(2) Decision, paras. 56-58.
[574] *Afghanistan* Article 18(2) Decision, para. 60.
[575] *Al Hassan* Gravity AJ, para. 53. *See also* paras. 55-56, 59.
[576] *Al Hassan* Gravity AJ, para. 94. *See also* paras. 88-93.

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establishes reasonable grounds to believe that this sample is representative of much wider victimisation.[577] This strongly militates in favour of sufficient gravity.

169. Additional factors significantly aggravate the gravity of the case. First, a number of victims were of particular vulnerability (such as detainees) or suffered unique harms by virtue of their youth. Second, the alleged persecution was – and continues to be – carried out flagrantly and conspicuously, and is intended to create an enduring regime of oppression which will afflict the targeted persons throughout their lives. Third, the alleged conduct not only violates Afghanistan's international obligations and the internationally recognised rights of Afghan nationals, but is caried out by the very entity – the Taliban – which now purports to claim the mantle of government for the welfare of its people.[578] [REDACTED].[579] [REDACTED].[580]

## H. NECESSITY OF ARREST

170. Consistent with article 58(b) of the Statute, the arrest of **HAQQANI** is necessary: (i) to ensure his appearance before the Court; and (ii) to prevent him from continuing to commit the persecution alleged in this Application or related crimes within the jurisdiction of the Court. For months and years, **HAQQANI** has shown no inclination to respect any law inconsistent with his view of the Taliban ideology. To the contrary, due to his actions based on those beliefs, he is allegedly responsible for the crime of persecution. Accordingly, there is no basis to consider that a summons would be sufficient to secure his appearance before the Court. Indeed, since **HAQQANI** has demonstrated his adherence to these beliefs even in the face of personal hazards (such as those incurred by prominent membership in the Taliban while they were party to a non-international armed conflict), there are reasonable grounds to believe that he will continue to contribute to the alleged persecution, unless and until he is arrested. As the *Amir* AKHUNDZADA recently warned: "It doesn't end here."[581]

## I. CONCLUSION

171. For all the preceding reasons, the Prosecution requests that the Chamber issues an arrest warrant for **HAQQANI**, in accordance with the parameters requested above. The Chamber should also authorise the Registry to transmit, in prior consultation and coordination with the Prosecution, a request for the arrest and surrender of **HAQQANI** to any relevant State identified in consultation with the Prosecution.

[577] [REDACTED].
[578] [REDACTED].
[579] [REDACTED].
[580] [REDACTED].
[581] [REDACTED].

Pursuant to Pre-Trial Chamber II's order, ICC-02/17-249, this document is transferred from the situation record ICC-02/17 into the situation record ICC-02/26.



Karim A. A. Khan KC, Prosecutor

Dated this 23rd day of January 2025
At The Hague, The Netherlands