

**Human Rights Watch Submission to the Committee on the Elimination of
Discrimination Against Women Review of Afghanistan’s third periodic report
75th Session - December 2019**

We write in advance of the 75th session of the Committee on the Elimination of Discrimination Against Women (“the Committee”) relating to Afghanistan’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).

In its third periodic report to CEDAW (24 January 2019, CEDAW/C/AFG/3), the State party provides information on progress made in terms of increasing the contribution of women in the peace process in a meaningful manner, investigating and prosecuting all cases of violence against women under the Elimination of Violence Against Women Law (EVAW), increasing the number of girls enrolled in school, instating beneficial and sustainable health practices, modernizing its Penal Code and developing a Family Law that sets the minimum age of marriage for male and female at 18 years old. Although some progress has been made since the Committee’s last review of Afghanistan, several obstacles remain to the realization of the rights of women and girls guaranteed under CEDAW. This submission will focus on obstacles affecting women’s participation in peace negotiations, elimination of violence against women, ensuring access to education for girls and protection of education in armed conflict, ending the harmful practice of “virginity exams” and the prosecution of “moral crimes”.

1. Women’s Participation in the Peace Process (Articles 7 and 8)

In September 2019, US-Taliban talks broke down, but they have since restarted. Given deep divisions in Afghan society particularly along ethnic lines, a US withdrawal without a larger political settlement among Afghans will not lead to peace. In addition, Afghan women are right to fear that a peace agreement may not mean peace for them—especially because of the struggle they have faced to be included in the discussion.

Under Taliban rule, Afghan women and girls suffered shocking rights violations, including denial of education and freedom of movement. Today, the group’s views on women have moderated slightly but remain highly repressive. For example, the Taliban

now call for “education for all” but in areas currently under their control generally prevent girls from studying beyond puberty.

Afghan women’s rights activists have long feared their rights could be a bargaining chip—and one easily surrendered—in peace negotiations with the Taliban. They have fought for years for a place at the table as negotiators—and been almost entirely rebuffed. And with the Afghan government and other Afghan opposition politicians so far excluded from US-Taliban talks, women’s participation feels more urgent than ever.

US-Taliban negotiations have focused on US troop withdrawal, and whether the Taliban will pledge not to provide a base for international terrorism, with little public discussion of any other aspects of a political settlement, including women’s rights. A US-Taliban deal is meant to be followed by an “intra-Afghan dialogue” where other issues would be discussed including, presumably, women’s rights. After years of pressure from—and exclusion of—women’s rights activists, the Afghan government led by Ashraf Ghani in November 2018 for the first time named women to the government’s delegation to peace negotiations. But it remains unclear what role, if any, that delegation would have in the “intra-Afghan dialogue,” and whether that dialogue would include other Afghan women leaders. Uncertainty over the results of the 2019 presidential elections has cast the future of those talks in further doubt.

As the process moves forward, the Afghan government should be a strong defender of women’s rights to be full participants in the peace process and ensure that any peace deal fully protects women’s rights under CEDAW and the Afghan constitution.

We encourage the Committee to pose the following questions:

- How is the Afghan government preparing to defend women’s rights in the context of peace negotiations?
- What percentage of the Afghan government’s delegation for the intra-Afghan dialogue will be women and how will those women be chosen?

We encourage the Committee to make the following recommendations:

- The Afghan government’s delegation to the intra-Afghan dialogue and all other peace discussions and negotiations should be 50 percent women.
- The Afghan government should make protecting and improving on all aspects of the status of women’s rights a red line in negotiations.

2. Failure to Enforce the Law on the Elimination of Violence Against Women (Article 15)

An estimated 87 percent of Afghan women experience abuse in their lifetimes. In 2009, then-President Hamid Karzai signed legislation that dramatically expanded the list of abuses against women that constituted criminal offenses, and set tough new punishments. This Law on the Elimination of Violence Against Women (EVAW), made assaulting a woman punishable by three to five years in prison. It made child marriage a crime for the first time, making those responsible for such marriages subject to two to five years' imprisonment. But the government has not taken meaningful steps to enforce the law.¹ Research by the UN found that very few reported cases of violence against women were prosecuted. The vast majority of cases either resulted in no action or were resolved through mediation, sometimes without the victim's consent and often offering her no meaningful relief.² The negative experiences women have in the justice system deter many other women and girls from reporting violence.

We encourage the Committee to make the following recommendations:

- Ensure that the Law on the Elimination of Violence Against Women is meaningfully enforced to protect women from abuse and violence, including disciplining police, prosecutors and judges who fail to protect women and girls.
- Track all reported cases of violence against women, including the disposition, means of resolving them, and outcomes, and publish this data annually, disaggregated by province and district.

3. Girls' Access to Education (Article 10)

Afghan government and international donor efforts since 2001 to educate girls have significantly faltered in recent years. An estimated two-thirds of Afghan girls do not attend school.³ As security in the country worsens and international donors disengage from Afghanistan, progress made toward getting girls into school has stalled.

Girls' education is often highlighted as a success story by donors and the Afghan government, and millions more girls are in school today than were in school under

¹ Heather Barr, "A Law Ignored and Another Horror in Afghanistan," commentary, Human Rights Dispatch, January 20, 2016, <https://www.hrw.org/news/2016/01/20/dispatches-law-ignored-and-another-horror-afghanistan>

² "Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication," UNAMA, April 2015, https://unama.unmissions.org/sites/default/files/old_dnn/UNAMA/UNAMA-OHCHR/UNAMA_OHCHR_Justice_through_eyes_of_Afghan_women_-_15_April_2015.pdf

³ "Education" UNICEF Afghanistan, accessed December 12, 2019, <https://www.unicef.org/afghanistan/education>.

Taliban rule. But the stated aim of getting all girls into school is far from realized, and the proportion of students who are girls is now falling in parts of the country. Around 3.5 million children are out of school; 85 percent of whom are girls. Only 37 percent of adolescent girls are literate, compared to 66 percent of adolescent boys.⁴

Afghanistan's government provides many fewer schools for girls than boys at both the primary and secondary levels. In half the country's provinces, fewer than 20 percent of teachers are female—a major barrier for girls whose families will not allow them to be taught by a man, especially as adolescents.⁵ Many children live too far from a school to attend, which particularly affects girls. About 41 percent of schools have no buildings, and many lack boundary walls, water, and toilets – disproportionately affecting girls.⁶

Under Afghan law, education is compulsory through class nine, though in reality many children have no access to education to this level – or sometimes, to any level. Administrative barriers and corruption create additional obstacles, especially for displaced and poor families. Even when tuition is free, there are costs for sending children to school and many families cannot afford to send their children or choose under financial constraints to favor educating sons.⁷ About a quarter of Afghan children work to help their families survive desperate poverty. Many girls weave, embroider, beg, or pick garbage rather than study.⁸

Donors have worked with the Afghan government to develop innovative models to allow girls to study during conflict, including “community-based education,” a network of classes, often held in homes, that allow children, particularly girls, to access education in communities far from a government school. But because these classes are funded solely by donors and implemented by nongovernmental organizations, they have no consistent connection with the government school system and come and go due to unreliable funding cycles.

According to UNESCO, governments should spend at least 15 to 20 percent of its total national budget, and 4 to 6 percent of GDP, on education. Least developed countries,

⁴ United States Agency for International Development (USAID) and European Commission, “Afghanistan Gender Country Profile—final report: short version,” September 21, 2016, p. 9, on file with Human Rights Watch.

⁵ “Afghanistan Statistical Yearbook: 2016-2017,” 2017, pp. 106-7

⁶ Ministry of Education, “Education in Afghanistan: At a Glance, From 2001 to 2016 and beyond,” undated, provided to Human Rights Watch in April 2017 by Deputy Minister of General Education Dr. Ibrahim Shinwari, on file with Human Rights Watch.

⁷ Human Rights Watch, *I Won't Be a Doctor, and One Day You'll Be Sick: Girls' Access to Education in Afghanistan*, 2017, <https://www.hrw.org/report/2017/10/17/i-wont-be-doctor-and-one-day-youll-be-sick/girls-access-education-afghanistan>

⁸ Government of Afghanistan, Central Statistics Organization, “Afghanistan Multiple Indicator Cluster Survey,” p. 125.

should reach or exceed the higher of these benchmarks. In 2016, Afghanistan spent 13 percent of its public expenditure, and 4 percent of GDP, on education.⁹

We encourage the Committee to pose the following questions:

- What progress is the government making on correcting the imbalance between the number of schools for girls versus boys?
- What progress is the government making on recruiting and retaining more female teachers?

We encourage the Committee to make the following recommendations to the government of Afghanistan:

- Increase girls' access to education by institutionalizing and expanding education models that help girls study; and take concrete steps to meet the government's international obligation to provide universal free and compulsory primary education and help make secondary education free and available to all.
- Provide an equal number of schools and school places for girls and boys and ensure that conditions in these schools are equal in terms of adequacy of facilities, staffing, and supplies.
- Ensure that all girls' schools are staffed by female teachers.
- Increase the percentage of GDP it spends on education to meet international best practices.

4. Protection of Education During Armed Conflict (Article 10)

School districts across Afghanistan find themselves on the front lines of the country's armed conflict. In areas under Taliban control, girls schooling is limited to only a few years, or they are banned from education altogether. In areas where the government and insurgents are fighting for control, girls seeking education face heightened security threats including sexual harassment, kidnapping, and acid attacks, as well as targeted attacks and threats against girls' education.

Afghan armed forces and the Taliban also use schools for military purposes. In 2016, Human Rights Watch documented the military use of several schools in Baghlan:¹⁰

⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO) et al., "Education 2030: Framework for Action," December 2015, <http://unesdoc.unesco.org/images/0024/002456/245656E.pdf> (accessed June 14, 2017), art. 105.

¹⁰ Human Rights Watch, Education on the Front Lines: Military Use of Schools in Afghanistan's Baghlan Province, 2016, <https://www.hrw.org/report/2016/08/17/education-front-lines/military-use-schools-afghanistans-baghlan-province>.

When the Taliban first reappeared in the Postak Bazaar area in Dand-e Ghorī in 2009, they took over the second story of Ghulam Jelani Jalali Middle School as a military base. The Taliban burned all the textbooks and teaching materials at the school that did not conform to their stringent Islamist doctrine. Government forces counterattacked while the school was in session, causing the students to flee in a panic; one student suffered shrapnel injuries. The Afghan Local Police (ALP) then deployed on the school's second floor. Nonetheless, the school tried to function, moving some of the older girls to a different building, as many families had refused to send their girls to school because of the regular gunfire from ALP militia members. The Taliban had previously objected to male and female students and teachers studying together, which also played a part in the decision to relocate the female students.

In early February 2016, the Afghan army conducted a clearance operation near the Qalai Khwaja High School in Dand-e Ghorī. During the operation, the military carried out a controlled detonation of an improvised explosive device that the retreating Taliban had placed near the school, and the explosion rendered six of the classrooms unusable. An army contingent remained stationed in the school following the clearance operation until early March when the Taliban recaptured the area.

In April 2016, the Khial Jan Shahid Primary School, located in Omarkhail village in Dand-e Shahabuddin, which enrolled about 350 boys and girls as of April 2016, was occupied by the Taliban. They used the school as a base for about five months. During the military clearance offensive in early 2016, government forces attacked the Taliban fighters based at the primary school, shelling the building with mortars and raking it with gunfire. The military managed to force the Taliban fighters to abandon the school, but the intense battle left the school compound almost completely destroyed.¹¹

Attacks on schools continue. Between January and June 2019, UNAMA documented 25 incidents impacting education. Sixteen incidents were attributed to Taliban, including six incidents of attacks by Taliban targeting girls' schools in Farah province. For instance, on 14 April, Taliban detonated explosives that caused substantial damage to a high school, hampering education for around 1,000 students.¹²

Afghanistan was among the first countries to endorse the Safe Schools Declaration, joining in May 2015. By endorsing the declaration, Afghanistan committed itself to a number of measures aimed at strengthening the prevention of, and response to, attacks

¹¹ Ibid.

¹² "Midyear Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2019," UNAMA, July 30, 2019, https://unama.unmissions.org/sites/default/files/unama_poc_midyear_update_2019_-_30_july_2019_english.pdf

on students, teachers, and schools, including by: collecting reliable data on attacks and military use of schools and universities, providing assistance to victims of attacks, investigating allegations of violations of national and international law and prosecuting perpetrators when appropriate, developing and promoting “conflict sensitive” approaches to education, and seeking to continue education during armed conflict. The have also committed to use the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*.

In April 2016, the education minister wrote to both the ministry of interior affairs and the National Security Council requesting assistance in vacating schools being used for military purposes.¹³ In 2018, the Afghan government stated that their “National Policy on Prevention and Mitigation of Civilian Harm,” provides specific guidelines to be undertaken by security forces which “strictly prohibits ... the utilization of civilian facilities, including schools, hospitals, and clinics, for military purposes.”¹⁴

We encourage the Committee to pose the following questions:

- Can the government share with the Committee a copy of the provisions in the National Policy on Prevention and Mitigation of Civilian Harm strictly prohibiting the use of schools for military purposes?
- Are protections for schools from military use included in any other policies, rules, or trainings for Afghanistan’s armed forces?
- How many schools were either partially or wholly used for military purposes by government security forces during the reporting period, and for what time?

We encourage the Committee to make the following recommendations:

- Congratulate the government of Afghanistan on endorsing the Safe Schools Declaration, and thereby committing to use the *Guidelines for Protecting Schools and Universities from Military Use in Armed Conflict*.
- Address and remedy the disproportionate harm to girls’ access to education as a result of hostilities and military use of schools.
- Issue clear and public orders to all security forces to curtail the military use of schools in line with the Safe Schools Declaration and using the *Guidelines for*

¹³ Letter from Minister of Education to Ministry of Interior Affairs, number 311, April 2016 and Letter from Minister of Education to National Security Council, number 194-196, July 2016, both available in Human Rights Watch, *Protecting Schools from Military Use: Law, Policy, and Military Doctrine*, May 2019.

¹⁴ Statement by the Government of the Islamic Republic of Afghanistan on the United Nations Assistance Mission in Afghanistan Protection of Civilians Annual Report, February 12, 2018.

Protecting Schools and Universities from Military Use during Armed Conflict as a minimum standard.

- Issue clear and public instructions to national and provincial authorities to monitor and report any use of schools by the Afghan security forces.
- Ensure that students deprived of educational facilities as a result of hostilities, the military use of their school, or the need for their school to be repaired or reconstructed, are promptly provided access to nearby alternative schools.
- The ministries of interior and education should collect data on military use of schools by both Afghan security forces and armed groups. Data should include the names and locations of the school being used; the purpose for which they are being used; the duration of the use; the specific security force unit or armed group making use of the school; the enrolment prior to use and attendance during use; impact on students unable to attend school; actions taken by the authorities to end military use of the school; and the damages sustained during the military use of the school. All data should be disaggregated by gender to capture any disproportionate impact on girls.
- The ministries of defence and interior should establish and implement preventive measures, including advance planning and the provision of necessary logistics and equipment, through coordination with the security forces and the education ministry to avoid the military use of schools, and to vacate them expeditiously where armed forces are using them.
- Investigate and appropriately prosecute those individuals responsible for attacks on schools or damaging schools in violation of international law.
- Continue to develop and share examples of its implementation of the declaration's commitments—including concrete measures to deter the military use of schools—with this Committee and other countries that have endorsed the Safe Schools Declaration.

5. “Virginity Examinations” (Article 12)

In July 2018, a new policy was announced by the Ministry of Public Health that promises to bar government health workers from engaging in the abusive practice of forcing women and girls to undergo invasive and medically meaningless vaginal and anal exams to determine whether they are “virgins.”

“Virginity examinations” are a routine part of criminal proceedings in Afghanistan. When women or girls are accused of “moral crimes” such as sex outside of marriage, police,

prosecutors, and judges regularly send them to government doctors who conduct examinations of the genitals that purport to provide information about the individual's sexual history. The reports from these examinations are treated as fact by courts and used at times to justify long prison sentences under Afghanistan's harsh law against sex outside of marriage.

These examinations are invasive, scientifically invalid and conducted without meaningful – or sometimes any – consent. Ending “virginity exams” should be part of broader reform regarding the treatment of women in the justice system.¹⁵

We encourage the Committee to pose the following questions:

- What steps are being taken to ensure the new policy of barring government health workers from forcing women and girls to undergo invasive and medically meaningless vaginal and anal exams is being fully enforced?
- What mechanism has the government put in place to facilitate awareness of the new policy, reporting of health workers who violate the policy, and disciplinary action against those health workers?

We encourage the Committee to make the following recommendations:

- End the harmful practice of “virginity exams” used on women and girls.
- Decriminalize consensual sex between adults and ensure that the justice system distinguishes between consensual sex and rape.

6. Child Marriage (Article 16)

In Afghanistan a third of girls marry before the age of 18.¹⁶ Under Afghan law, the minimum age of marriage for girls is 16, or 15 with the permission of the girl's father or a judge. In practice, the law is rarely enforced, so even earlier marriages occur. The consequences of child marriage are deeply harmful, and include girls dropping out or being excluded from education. Other harms include serious health risks—including death—to girls and their babies due to early pregnancy. Girls who marry are also more likely to be victims of domestic violence than women who marry later.¹⁷

An education official told Human Rights Watch that the government is developing a pilot education program for girls in three districts in Nangarhar province that has both low

¹⁵ Heather Barr, “A Step Towards Ending 'Virginity Exams' in Afghanistan,” Human Rights Watch dispatch, July 10, 2018, <https://www.hrw.org/news/2018/07/10/step-toward-ending-virginity-exams-afghanistan>.

¹⁶ UNICEF, “State of the World's Children 2016,” <https://data.unicef.org/topic/child-protection/child-marriage/>.

¹⁷ Human Rights Watch, *I Won't Be a Doctor, and One Day You'll Be Sick.*

girls' education participation and high rates of child marriage.¹⁸ In April 2017, the Afghan government launched a national plan to end child marriage.¹⁹ But there has been little progress in implementing the plan. Given the government's poor track record of implementing laws and policies designed to protect the rights of women and girls, there is reason for scepticism about the likely impact of these efforts.²⁰

We encourage the Committee to make the following recommendations:

- Fully implement the National Action Plan to end child marriage.
- Strengthen the role of the province-level Child Protection Action Networks (CPANs).
- Ensure that educators, communities and local government officials work with the local CPAN to protect the most vulnerable children, children at risk of child marriage and provide them with access to child protection services.

7. “Moral crimes” (Articles 15 and 16)

Human Rights Watch estimated in 2013 that half of all women in prison and about 95 percent of girls in juvenile detention in Afghanistan were arrested on “moral crimes” charges. These so-called crimes include “running away” from home, and committing or attempting to commit *zina*, or having sex outside of marriage. In most cases, the women and girls accused of these “crimes” were fleeing child or forced marriage or domestic violence. Women and girls who have been raped are often charged with *zina*, alongside their rapist.

Zina is a crime under the Afghan Penal Code and is punishable by 5 to 15 years in prison. “Running away” is not a crime under Afghan law, but police and prosecutors often treat it as a crime, sometimes bringing charges as “attempted *zina*.”²¹

We encourage the Committee to make the following recommendations:

- Reform the Penal Code provisions on “moral crimes” to decriminalize all consensual sex between adults.

¹⁸ Ibid.

¹⁹ Government of Afghanistan and UNFPA, “National Action Plan to End Early and Child Marriage in Afghanistan: 2017–2021,” July 2016, on file with Human Rights Watch, p.10.

²⁰ Heather Barr, “Will Afghanistan Follow Through on Promise to End Child Marriage?: Up to One-Third of Afghan Girls Married Before Age 18,” commentary, Human Rights Dispatch, April 20, 2017, <https://www.hrw.org/news/2017/04/20/will-afghanistan-follow-through-promise-end-child-marriage>

²¹ “Afghanistan: End ‘Moral Crimes’ Charges, ‘Virginity’ Tests: President Ghani Should Honor Pledge not to Arrest Women Fleeing Abuse,” Human Rights Watch news release, May 25, 2016, <https://www.hrw.org/news/2016/05/25/afghanistan-end-moral-crimes-charges-virginity-tests>

- Reform the law to provide a clear and inclusive definition of sexual assault, incorporating rape and marital rape, and defining all non-consensual sex as sexual assault.
- Adopt clear laws regarding the age at which a young person can consent to sex, set tough penalties for an adult who has sex with a child below the age of consent, and ensure that such children are treated as crime victims and not targeted for *zina* accusations.
- Abolish “running away” charges as well as “attempted *zina*” charges.
- Inform justice officials and the police of new rules on “running away” and rape cases, and ensure full compliance by distributing clear and compulsory guidance on these two issues to all police station and prosecution offices.