

# Girl-children's Right to Education

A case study of Afghanistan



## About KidsRights

KidsRights is an international non-governmental organization that promotes the well-being of vulnerable children across the world and advocates for the realization of their rights. We strive for a world where all children have access to their rights and are empowered to realize the great potential, they carry within them. Children are changemakers who have the power to move the world. KidsRights' goal is to aid these changemakers in voicing their opinions and in taking action to bring about change. We support children by commanding global attention for the realization of children's rights and acting as a catalyst to ignite change, together with children and youth. To achieve this goal, our advocacy is supported with research and action. We support local projects developed by children aimed at directly improving the rights of children and stimulating child participation and change-making by youths.

## About International Children's Peace Prize

The International Children's Peace Prize is awarded annually to a child who has made an exceptional difference for the rights of the child and the position of vulnerable children, anywhere in the world. The message of the young winner is broadcast by the international media reaching 3.8 billion people worldwide in 2024. The International Children's Peace Prize is the most important and prestigious youth achievement prize in the world. The International Children's Peace Prize was launched in Rome during the 2005 World Summit of Nobel Peace Laureates chaired by Mikhail Gorbachev. Since then, each year the prize has been awarded by a Nobel Peace Laureate.

Every year, KidsRights Foundation publishes a report on the theme of the winner of the International Children's Peace Prize to highlight the need to prioritize and address specific children's rights concerns. This report is based on the theme of the 2024 winner of the International Children's Peace Prize, Nila Ibrahimi, who is fighting for gender equality and access to education for girls in Afghanistan.

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## Foreword

Afghanistan remains one of the only countries where girls above the age of six are deprived of their right to education. In addition, they are denied the right to live an equal life to men and are deprived of their freedom of movement and freedom of choice. This inequity has not only affected the aspirations and mental health of millions of girls who suffer daily, but it also contributes to many long-term problems for the country. Gender inequity leads to economic instability, political upheaval, and entrenches social and cultural barriers. If girls today believe they have the right to study, it's only because they know about their rights. What must be feared is the day an Afghan girl no longer believes she has the right to be as equal as her male peers.

What helps in this situation is informing the world about the matter. What's happening is gender apartheid that needs to be recognized and acted upon.

I am grateful to the KidsRights Foundation for dedicating this thematic report to this cause, addressing one of the most pressing human rights challenges of our time: ensuring that every girl-child can attend school free from discrimination. It is crucial to expose the legal gaps and practical barriers that prevent girls from exercising their fundamental right to education in order to understand the problem holistically. This report also assesses the adequacy of the international human rights framework in protecting girls' access to education, using Afghanistan as a case study to highlight the severity of the crisis. It further examines recent efforts to hold the de facto government accountable for systemic discrimination against Afghan girls and women.

I'm honoured to contribute to this thematic report as the International Children's Peace Prize Winner 2024, and I hope this initiative contributes to the ongoing call for justice in Afghanistan and for all the girls who deserve a life of equality.

Nila Ibrahimi,

Winner of the International Children's Peace Prize 2024

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## Introduction

Education is widely recognized as a multiplier right for its role in actualizing several other rights guaranteed by human and child rights instruments, concerning both civil and political rights, as well as socio-economic rights. The significance of access to education is further amplified when it concerns individuals, groups and communities that face multi-dimensional disadvantages due to the intersection of several marginalized identities. Conversely, deprivation of access to education has far-reaching implications on their rights, especially concerning health and well-being, life and development, and participation.

Girl-children –who exist in an intersection of discrimination based on age and gender– constitute one such group whose rights are severely impacted due to hindrances on their right to access to education. Beyond academic achievement, education plays a critical role in girl-children's overall well-being. Data suggests that each additional year of secondary education reduces the likelihood of child marriage by six percent, significantly decreasing early childbirth rates and maternal mortality<sup>1</sup>. In developing countries, universal secondary education for girls enhances knowledge of HIV/AIDS, improves healthcare decision-making, and reduces risks of intimate partner violence, under-five mortality, and child malnutrition<sup>2</sup>. While many of these benefits apply to both boys and girls, the World Bank emphasizes the significance of educating girls due to the links between education, child marriage, and early childbirth<sup>3</sup>. Overall, this highlights the interconnected nature of girl's right to education with other rights – including health, life and development, participation, and the broader societal benefits.

Since Kimberlé Crenshaw (1991)<sup>4</sup> introduced intersectionality as an analytical framework, it has gained interdisciplinary significance. A core tenet of intersectional feminism is moving beyond unidimensional analyses—such as a gender-only or age-only perspective—to recognize how multiple factors intersect to create complex systems of oppression. This is particularly relevant in discussions on girl-children's rights, as their dual marginalization based on age and gender exposes them to unique vulnerabilities.

Taefi's (2009, p. 345)<sup>5</sup> argues that "girl-children" is an essential concept for recognizing the distinct challenges faced by female children and serves as a framework to evaluate the adequacy of legal protections afforded to girl-children under key international human and child rights instruments. Taefi<sup>6</sup> applies Intersectional Feminist Theory to the situation of girl-children

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<sup>1</sup> World Bank, *Educating Girls and Ending Child Marriage: A Priority for Africa*, Conference Edition (Washington, DC: World Bank Group, November 2018), <https://documents1.worldbank.org/curated/en/268251542653259451/pdf/132200-WP-P168381-PUBLIC-11-20-18-Africa-GE-CM-Conference-Edition2.pdf>.

<sup>2</sup> World Bank, *Missed Opportunities: The High Cost of Not Educating Girls*, (Washington, DC: World Bank, July 11, 2018), <https://www.worldbank.org/en/topic/education/publication/missed-opportunities-the-high-cost-of-not-educating-girls>.

<sup>3</sup> Ibid. World Bank.

<sup>4</sup> Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review* 43, no. 6 (1991): 1241–99. <https://doi.org/10.2307/1229039>

<sup>5</sup> Taefi, N. (2009). The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child. *The International Journal of Children's Rights*, 17(3), 345-376. <https://doi.org/10.1163/157181809X458049>

<sup>6</sup> Id, p. 361-372.

in conflict settings, advocating for the integration of women's and children's rights discourses. She highlights the inadequacy of existing frameworks and proposes appointing a UN Special Rapporteur for the girl-child as a practical solution.

In parallel, Frödén and Quennerstedt<sup>7</sup> critique age-only approaches to children's rights, arguing that such perspectives obscure injustices stemming from intersecting social categories like race, disability, and migration status. Their analysis underscores how age plays a critical role in rights discourse, particularly in educational contexts. Both Taefi<sup>8</sup> and Frödén and Quennerstedt<sup>9</sup> consider the Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women CEDAW in their analyses, highlighting how girl-children are recognized as gendered rights holders in education and labor contexts. Nonetheless, research suggests that the intersection of age and gender is not being sufficiently considered in international law.<sup>10</sup>

### **Research question and objective**

This report critically examines the adequacy of the international human and child rights framework in safeguarding the right to education of girl-children. By applying an intersectional feminist approach to the existing international legal frameworks, this report provides relevant recommendations for better protecting girl-children's right to education.

### **Methodology**

This report employs desk-based, socio-legal research grounded in both primary and secondary sources. Primary sources include the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). These human and child rights instruments are analyzed to assess their provisions on the right to education, with a particular emphasis on the extent to which they address the intersectional vulnerabilities of girl-children. Secondary sources include academic literature and reports produced by international organizations.

To better understand how age and gender affect girl-children's right to education, the report includes an intertwined case study of Afghanistan which is analysed using the tenets of the intersectional feminist theory. Afghanistan was chosen for the case study due to the ongoing crisis following the Taliban's return to power, which has severely restricted girls' participation

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<sup>7</sup> Frödén, S., & Quennerstedt, A. (2019). The child as a gendered rights holder. *Childhood*, 27(2), p. 3-4. <https://doi.org/10.1177/0907568219886641>

<sup>8</sup> Taefi, N. (2009). The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child. *The International Journal of Children's Rights*, 17(3), p. 368. <https://doi.org/10.1163/157181809X4580492009>.

<sup>9</sup> Frödén, S., & Quennerstedt, A. (2019). The child as a gendered rights holder. *Childhood*, 27(2), p. 5-7. <https://doi.org/10.1177/0907568219886641>

<sup>10</sup> Taefi, N. (2009). The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child. *The International Journal of Children's Rights*, 17(3), 345-376. <https://doi.org/10.1163/157181809X458049>; Also see Frödén, S., & Quennerstedt, A. (2019). The child as a gendered rights holder. *Childhood*, 27(2), 143-157. <https://doi.org/10.1177/0907568219886641>



rights, including their access to education. Notably, the winner of the International Children's Peace Prize 2024 Nila Ibrahimi from Afghanistan has been a key changemaker bringing global attention to the lack of access to education for girl-children. Finally, Afghanistan presents a clear example of how conflict, gender, and age intersect to create multi-dimensional challenges for girl-children.



*Nila Ibrahimi*, winner of the International Children's Peace Prize 2024, experienced gendered discrimination firsthand as Kabul's Education Directorate emitted a decision to ban schoolgirls from singing in public. Refusing to be silenced, Nila recorded herself singing a powerful protest song online, the video then going viral and inspiring other girls to assert their rights and stand up against injustice. This resulted in the law being overturned only 3 weeks later.

## Legal analysis: Girl-children's right to access to education under the international human and children's rights framework

The obligation to specifically ensure the implementation of girl-children's right to education can be traced back to the universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This section, therefore, examines the relevant provisions of the UDHR, ICESCR, CRC and CEDAW to analyse the extent to which these instruments account for girl-children's right to education.

### The Universal Declaration of Human Rights (UDHR)

The UDHR stipulates the right to education in its Article 26, stating that: ***Everyone** has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*<sup>11</sup>

Article 2 of UDHR specifically mentions that the rights enshrined therein apply without any distinction based on sex, among other protected grounds.<sup>12</sup> Hence, Article 26(1) on the right to education, especially when read in conjunction with Article 2, protects the right to education for girl-children.<sup>13</sup> While the UDHR technically is a soft-law instrument (i.e., it is as such not binding), it has achieved the status of *customary international law*, making the provisions binding on all states.<sup>14</sup> However, as rightly noted by commentators, "[if] these rights were protected equally for men and women in adherence with the universal nature of these rights, gender equality would already have been achieved".<sup>15</sup>

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR includes a gender-specific non-discrimination provision in its Article 3, which requires States to "ensure the equal right of men and women" with respect to the rights enshrined in the Covenant. Further, Article 13 of the ICESCR which enumerates the right to education, states that the right is recognised for 'everyone'.<sup>16</sup> Therefore, similar to the UDHR, the ICESCR recognises the right to education for everyone, including girl-children.

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<sup>11</sup> Universal Declaration of Human Rights art 26(1).

<sup>12</sup> Ibid art 2.

<sup>13</sup> See: Fn 7 and accompanying text.

<sup>14</sup> 'International Legal Protection of Human Rights in Armed Conflict' (Office of the United Nations High Commissioner for Human Rights 2011) 9-10.

<sup>15</sup> Eve M. Grina, 'Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings' (2011) 17 Wm & Mary J Women & L 443.

<sup>16</sup> Art. 13, International Covenant on Economic, Social and Cultural Rights.



## **The Convention on the Elimination of Discrimination against Women (CEDAW)**

Convention on the Elimination of Discrimination against Women's (CEDAW) purpose lies in ending discrimination against women in "all its forms and manifestations".<sup>17</sup> Article 10 of CEDAW concerns the issue of education and requires "*States Parties [to] take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education [...]*".<sup>18</sup>

CEDAW's explicit goal of eliminating discrimination against women differentiates it from the other human and children's rights treaties discussed in this research. This is because it stipulates an explicit obligation to provide equal educational opportunities to men and women (read: girl-boys and girl-children), as opposed to relying on a general non-discrimination clause.<sup>19</sup>

The Committee on the Elimination of Discrimination against Women has expressly addressed the right to education in the context of armed conflict in its General Recommendation No. 36. The Committee recommended several measures to protect women's and girl-children's access to education during conflict (and natural disasters), including but not limited to, implementing measures to "*prohibit national armed forces and armed groups from using or occupying schools, school grounds or other education facilities and institutions in a manner that violates international humanitarian law and/or the right to education under international human rights law*".<sup>20</sup> Furthermore, the Committee called upon states to "*demonstrate a proactive commitment to take necessary measures to prevent targeted attacks on educational institutions and to protect women and girls*".<sup>21</sup>

## **The Convention on the Rights of the Child (CRC)**

Article 28 of the CRC guarantees the right to education in the following manner: "*States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular [...] [make] primary education compulsory and available free to all. [...]*".<sup>22</sup> Similar to UDHR discussed above, the CRC contains a non-discrimination clause in its Article 2.<sup>23</sup>

These two provisions together protect the right to education of girl-children, at all times. As noted by the Committee on the Rights of the Child in its General Comment No. 1, "*[discrimination] on the basis of any of the grounds listed in article 2 of the Convention,*

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<sup>17</sup> Convention on the Elimination of All Forms of Discrimination against Women Preamble.

<sup>18</sup> *ibid* art 10.

<sup>19</sup> See: Convention on the Elimination of All Forms of Discrimination against Women art 10 in comparison to Universal Declaration of Human Rights art 2, International Covenant on Economic, Social and Cultural Rights art 2(2) and Convention on the Rights of the Child art 2(2).

<sup>20</sup> Committee on the Elimination of Discrimination against Women, 'General recommendation No. 36 on girls' and women's right to education' para 50(a).

<sup>21</sup> *Ibid* para 50(d).

<sup>22</sup> The United Nations Convention on the Rights of the Child art 28(1)(a).

<sup>23</sup> *ibid* art 2(1).

*whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities".<sup>24</sup>*

Similar to the UDHR, the CRC expressly applies in times of armed conflict and in times of peace.<sup>25</sup> Furthermore, the CRC does not provide a right for State Parties to derogate from any of the rights contained therein.<sup>26</sup> As noted by Thomas Hammarberg, former Vice-Chair of the Committee on the Rights of the Child:

*In fact there is no derogation clause in this Convention, it applies in its entirety also in times of war or emergency. The child has a right to a family environment, to go to school, to play, to get health care and adequate nutrition-also during the armed conflict. The principles of the Convention are valid as well: that all children without discrimination should enjoy their rights, that the best interests of the child be a primary consideration in decisions, that the right to life, survival and development be protected. [...]<sup>27</sup>*

## Discussion

The provisions of UDHR, ICESCR and CRC, while recognise the importance of implementing the rights in a non-discriminatory manner, including the right to education, do not consider or address the specific barriers that hinder girl-children's right to education. CEDAW, being specifically targeted at women, appears to fill this gap, to an extent, by clearly including an explicit obligation on the States to provide equal education opportunities to men and women.

Girl-children's access to education is still far from guaranteed on the ground, due to a multiplicity of factors. While legal equality arguably is guaranteed through the above-discussed non-discrimination provisions, "[the] phenomenon of male dominance over women [and girl-children] is above all one of power. Sexism is not a legal aberration but a pervasive, structural problem".<sup>28</sup> Necessarily, Charlesworth et al. argue that "equality is not freedom to be treated without regard to sex but freedom from systematic subordination because of sex".<sup>29</sup> In this regard, the barriers girl-children are often confronted with in accessing education are structural and culturally dependent.<sup>30</sup>

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<sup>24</sup> Committee on the Rights of the Child, 'General Comment No. 1 (2001) Article 29 (1): The Aims of Education' para 10; The Committee expressly links the denial of access to education to Article 28 CRC (ibid).

<sup>25</sup> Stuart Maslen, 'Relevance of the Convention on the Rights of the Child to Children in Armed Conflict' (1996). 6 Transnat'l L & Contemp Probs 330-331.

<sup>26</sup> ibid.

<sup>27</sup> ibid fn 1.

<sup>28</sup> Charlesworth (n 55) 632.

<sup>29</sup> ibid.

<sup>30</sup> As noted by Akbariavaz et al., "A 2017 Human Rights Watch's report lists a range of obstacles facing girls in education including discrimination by government officials and community members, early marriage, attacks on educational centers, military use of schools, kidnappings, acid attacks, sexual harassment, poverty, forced labor, lack of schools, poor infrastructure, lack of facilities in schools, low quality of education, lack of vocational training, lack of teachers, lack of female teachers, administrative barriers to transferring between schools and lack of cultural acceptance of the need for education for girls" (Khalil Akbariavaz & Pardis Moslemzadeh Tehrani, 'The Role of International Law in Protection against Attacks on Children's Education Rights in Armed Conflict' (2020) 13 J Pol & L 101).

A formal legal recognition of girl-children's right to education still needs to overcome the inequalities inherent to the power structures of the gendered environment girl-children live in.<sup>31</sup> Therefore, girl-children's legal protection from discrimination, through a general and broad provision, concerning the right to education is not adequate to ensure their factual equality. Building on the provisions of CEDAW, the obligations on States must clearly extend to actively addressing the socio-economic and cultural barriers that specifically prevent girl-children from enjoying their right to education.

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<sup>31</sup> Charlesworth (n 55) 635.

## Case study: Girl-children's right to education in Afghanistan

This section of the research on Afghan girl-children is relevant because of the work of the International Children's Peace Prize winner 2024, Nila Ibrahim, who was awarded for her fight for education rights for girls and women in Afghanistan. Her activism highlights the ongoing battle for educational access for girl-children in Afghanistan, where girl-children's rights have been historically violated and ignored. For instance, the ban on schooling beyond primary education for girls by the De Facto Authorities - Taliban ('DFA') in Afghanistan has led to the exclusion of 80% of Afghan girls and young women from schools, which is a staggering 2.5 million.<sup>32</sup> Despite the DFA's ban focusing on post-primary education, 30% of girls in the age of primary schooling are also out of school due to numerous other barriers,<sup>33</sup> including traditional, cultural and socio-economic barriers. This data highlights the importance of considering gender when contemplating children's rights realization in zones of armed conflict.

### Historical context

To further understand gendered educational inequalities, this case study particularly focuses on the status of girl-children and their right to education in Afghanistan. Since the Taliban regained control, rights of women and girl-children have been severely violated, with their freedoms increasingly restricted. However, the struggle to secure right to education for girl children can be traced back to 1978, before the Taliban gained political power, when the government in Afghanistan was developing a strategy for prioritizing free primary education for all children, including girl-children.<sup>34</sup> Under the communist government, they introduced a reform programme that was aimed at combating illiteracy of women in cities and villages. The literacy programmes were not successful in most traditional communities, as the cultural norms did not line up with the modern educational program. Up until then, religious education was prioritized, and girl-children were often excluded from all education because of rigid tribal and cultural norms.<sup>35</sup> The resistance of local communities against education for girl-children can be seen as a recurring challenge.

When the Taliban gained political power in 1996, girls and women were not allowed in any educational or work sphere 'outside'. After the Taliban government collapsed in 2001, many different international and national governmental and non-governmental organizations collaborated to set up new schools and educational programs for both girls and boys. Many girl-children re-entered the educational settings as a result of the subsequent international investments and renewed legal protections.<sup>36</sup> As reported by UNESCO, the number of girl-children attending primary education increased from almost zero to 2.5 million between 2001

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<sup>32</sup> Afghanistan Gender Country Profile 2024 Executive Summary, UN Women, page 5.

<sup>33</sup> Let girls and women in Afghanistan learn, UNESCO, <https://www.unesco.org/en/articles/let-girls-and-women-afghanistan-learn>.

<sup>34</sup> Bamik, Hamidullah. (2018). Afghanistan's Cultural Norms and Girls' Education: Access and Challenges. 4. 83-93.

<sup>35</sup> Idem.

<sup>36</sup> Bamik, Hamidullah. (2018). Afghanistan's Cultural Norms and Girls' Education: Access and Challenges. 4. 83-93.

and 2018.<sup>37</sup> The literacy rates for women of all age groups nearly doubled from 17% to almost 30%.<sup>38</sup> Despite the investments of international organizations in education, still roughly two-thirds of Afghan girl-children remained out of school in 2018.<sup>39</sup>

On August 15, 2021, the Taliban regained power in Afghanistan.<sup>40</sup> The improvements made in the previous decades, particularly with education, employment and participation, have been erased.

This systematic oppression affects both girl-children and women differently, with limitations based on both gender and age. Girl-children are now banned from receiving any education after the sixth grade, effectively cutting off their access to knowledge, independence and future opportunities.<sup>41</sup> Women are banned from most forms of employment, leaving them financially dependent. Their personal freedoms have been severely restricted, as they are not allowed to travel, work, or make any decisions without the permission of a male guardian.<sup>42</sup> With Taliban's gender-based bans and restrictions, women's rights have been entirely stripped away, leaving them completely marginalized and erased from public life.

From an intersectional feminist perspective, girl-children are disproportionately affected due to the oppression of both their gender and their age.<sup>43</sup> Their vulnerability is further exacerbated by socio-economic factors, as those from poorer backgrounds face even greater barriers to education. By specifically targeting girl-children's right to education, the Taliban ensures that an entire generation of female population remains uneducated, disempowered, and unable to participate in society.<sup>44</sup> This will only deepen and further perpetuate the systemic gender inequalities.

### **Afghanistan's obligations under international human and children's rights framework**

Despite signing and ratifying the CRC in 1994, Afghanistan has not actually implemented it and has failed to provide a legal framework to protect the girl-child's specific right to education. In 2011, the Committee on the Rights of the Child expressed "deep concern that in spite of the

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<sup>37</sup> UNESCO. (2023, January). Let girls and women in Afghanistan learn! <https://www.unesco.org/en/articles/let-girls-and-women-afghanistan-learn>

<sup>38</sup> Id.

<sup>39</sup> Bamik, Hamidullah. (2018). Afghanistan's Cultural Norms and Girls' Education: Access and Challenges. 4. 83-93.

<sup>40</sup> Penn, D. (2024, August). Afghanistan: Taliban rule has erased women from public life, sparked mental health crisis. UN News. <https://news.un.org/en/story/2024/08/1153151>

<sup>41</sup> Fetrat, S., & Barr, H. (2024). It's not a dystopian novel — it's Afghanistan today. Human Rights Watch. <https://www.hrw.org/news/2024/08/26/its-not-dystopian-novel-its-afghanistan-today>

<sup>42</sup> Id.

<sup>43</sup> Gehrig, M., Williscroft, C., UN Women, & UN Women Afghanistan Country Office. (2024). *AFGHANISTAN GENDER COUNTRY PROFILE 2024*. UN Women Afghanistan. <https://www.unwomen.org/sites/default/files/2024-06/Gender-country-profile-Afghanistan-en.pdf>

<sup>44</sup> Idem.



establishment of mechanisms to combat [corruption]... children's enjoyment of their rights", particularly in relation to education, were declining at a worrying rate.<sup>45</sup>

Said mechanisms include Education Law in 2008, The Afghan National Development Strategy of 2008; in particular sub-strategies on education, children at risk and children with disabilities, a Juvenile Code in 2005 as well as the Optional Protocol on the Convention on the Rights of the involvement of children in armed conflict on 24 September 2003, the establishment of a Child Protection Action Network (CAPN) in 2003 and the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 19 September 2002.<sup>46</sup> The Education Law (2008), for example, mandated nine years of compulsory education and aimed to expand access to girls and children from rural areas in particular.<sup>47</sup>

Between 2001 and 2021, the then "post-Taliban" era, some accomplishments were achieved in relation to improving the situation of gender inequality. For example, the right to education for all Afghan citizens which was guaranteed in 2004 by Articles 43 and 44 of the constitution, saw an increase in school attendance.<sup>48</sup> By 2020, 10 million children were reportedly enrolled in schools compared to the 1 million in 2001.<sup>49</sup>

However there has also been a notable deterioration in Afghan children's educational rights as a result of all three Taliban regimes (beginning in 1929, 1996 and 2021). The ban against girl-children attending school overtly discriminated against girl-children and goes against the Afghan's state obligation to ensure access to education regardless of sex under Articles 2, 28 and 29. Article 2 requires the Convention to be applied without discrimination on the basis of sex. Article 28 outlines the right of every child to education and Article 29 outlines the extent to which said education should be directed, including understanding and development of fundamental freedoms.

The most recent "vice and virtue" law has further eroded women's and girl-children's rights and freedoms and confirmed wide-spread and systemic gender discrimination leading to UN member states initiation of legal proceedings against Afghanistan.<sup>50</sup> The potential legal case against Afghanistan does not however reference the girl-child's right to education under the

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<sup>45</sup> United Nations, Committee on the Rights of the Child Fifty-sixth session, 17 January – 4 February 2011, CRC/C/AFG/CO/1, page 5

<sup>46</sup> United Nations, Committee on the Rights of the Child Fifty-sixth session, 17 January – 4 February 2011, CRC/C/AFG/CO/1, pages 1-2

<sup>47</sup> Id.

<sup>48</sup> Sebghatullah Qazi Zada & Mohd Ziaolhaq Qazi Zada (2024) The Taliban and women's human rights in Afghanistan: the way forward, *The International Journal of Human Rights*, 28:10, 1687-1722, DOI: 10.1080/13642987.2024.2369584, pages 1694 – 1695.

<sup>49</sup> Sebghatullah Qazi Zada & Mohd Ziaolhaq Qazi Zada (2024) The Taliban and women's human rights in Afghanistan: the way forward, *The International Journal of Human Rights*, 28:10, 1687-1722, DOI: 10.1080/13642987.2024.2369584, pages 1694 – 1695.

<sup>50</sup> Australian Government Department of Foreign Affairs and Trade, Launch of an initiative on accountability for Afghanistan's violations of CEDAW Declaration, 26th September 2024 <https://www.dfat.gov.au/news/media-release/launch-initiative-accountability-afghanistans-violations-cedaw-declaration>.

Convention on the Rights of the Child but references the wider issue of gender-apartheid under CEDAW.

### **Challenging the ongoing gendered discrimination in Afghanistan**

Afghanistan has been under investigation by the International Criminal Court (ICC) since the 1st of May 2003 for alleged crimes against humanity and war crimes.<sup>51</sup> More recently, legal action was initiated by the Netherlands, Canada, Australia and Germany in 2024 at the International Court of Justice (ICJ) against Afghanistan to invoke its obligations under the CEDAW, which Afghanistan had ratified in 2003.<sup>52</sup> The case highlights “various decrees, ordinances and other measures” which have subjected women to “systemic, gender-based discrimination”.<sup>53</sup> ICJ jurisdiction is accepted by states upon signing and ratification of conventions which in turn become international obligations, and therefore applies to Afghanistan.<sup>54</sup>

The case will likely consider the Taliban regime’s Afghan Shia Law 2009 as one of the many restrictions on women’s rights and freedoms.<sup>55</sup> The Shia Law imposed heavy restrictions on a woman’s right to leave the home, Article 133.1 transferred “household” control to the “husband”, banning women from leaving the house without permission.<sup>56</sup> Article 130 transferred the responsibility of a “wife’s maintenance” to the husband which restricts a woman’s freedom to make decisions regarding her social and private life.<sup>57</sup> This law marked a fundamental shift towards gender inequality which has since also restricted girl-children’s rights to education.

The International Court of Justice is the judicial branch of the UN, settling disputes between states in accordance with international law.<sup>58</sup> The ICJ can issue orders with international obligations but the enforcement power of the ICJ is limited.<sup>59</sup>

In practice, the diplomatic note made by the above member states acts as notice to Afghanistan of their violations of the CEDAW.<sup>60</sup> At present, the onus is on Afghanistan to

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<sup>51</sup> Shia Personal Status Law. (2009). *Article 130*. Islamic Republic of Afghanistan.

<https://www.icc-cpi.int/situations-under-investigations>.

<sup>52</sup> The initiative was announced on the 25th September 2024 and is supported by Albania, Andorra, Belgium, Bulgaria, Chile, Croatia, Denmark, Finland, Honduras, Iceland, Ireland, the Republic of Korea, Latvia, Liechtenstein, Luxembourg, Malawi, the Republic of Moldova, Montenegro, Morocco, New Zealand, Romania, Slovenia, Spain, Sweden and the United Kingdom. <https://www.auswaertiges-amt.de/en/aussenpolitik/cedaw-2694096>.

<sup>53</sup> Federal Foreign Office of Germany, Joint initiative to hold Afghanistan accountable for violations of women’s rights under CEDAW, 25 September 2024. <https://www.auswaertiges-amt.de/en/aussenpolitik/cedaw-2694096>.

<sup>54</sup> Responsibility of States for Internationally Wrongful Acts, 2001, Article 2.

<sup>55</sup> Shia Personal Status Law, 2009

<sup>56</sup> Shia Personal Status Law, 2009, Article 133.1

<sup>57</sup> Shia Personal Status Law, 2009, Article 130

<sup>58</sup> Reid Rachel, Afghanistan in Front of the World Court? What can be expected from a legal challenge to the Emirate's violation of women's rights, Afghanistan Analysts Network, 3rd October 2024

<sup>59</sup> Id.

<sup>60</sup> Bringing a Case Before the International Court of Justice for the Rights of Afghan Women and Girls, Open Society Initiative, November 2024, page 5.

respond to the notification. Disagreement or silence on behalf of Afghanistan would establish a “dispute” which would lead to negotiations.<sup>61</sup> Negotiations would then take place between the applicant member states and Afghanistan, and this would require a “genuine attempt” to resolve the claims made. There is no time frame for these negotiations, however if negotiations were to fail, the countries would be required to initiate arbitration which would need to begin within six months of negotiations failing.<sup>62</sup> ICJ jurisprudence requires evidence of “real efforts to engage the other party in resolving disagreement” which can include written exchanges and meetings. Failing negotiation and arbitration, under Article 29 of CEDAW, “the parties may refer the dispute to the ICJ by request.”<sup>63</sup> If the case proceeds to the ICJ, it will be the first time that Afghanistan is summoned to the international court specifically for discriminating against women.<sup>64</sup>

Some commentary suggests that the case could establish a “gender apartheid”.<sup>65</sup> This would expand the current legal definition of apartheid to include gender and strengthen legal protection of women’s rights.<sup>66</sup> It is unlikely that the ICJ will reach this ruling, nevertheless, being the first of its kind, the case will provide a strong basis to further ensure comprehensive legal protection for gender discrimination. A notion which was already being assessed extensively by the International Criminal Court upon release of the Policy on Gender-Based Crimes in 2023 by the Office of the Prosecutor.<sup>67</sup>

Despite limited enforcement, if this case was to go to the ICJ it would highlight the illegality of gender-based discrimination on an international platform. ICJ decisions provide guidance for how other countries interact with Afghanistan, therefore it is likely that countries invested in seeing the ICJ’s orders “lead to tangible outcomes” will reassess their relationships with the de facto government in favour of the Court’s ruling.<sup>68</sup> In addition, other States may also be more likely to offer humanitarian aid and allow asylum as the ruling would evidence the need for protection by officially recognising that women’s rights are being violated.

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<sup>61</sup> Id.

<sup>62</sup> Bringing a Case Before the International Court of Justice for the Rights of Afghan Women and Girls, Open Society Initiative, November 2024, page 5

<sup>63</sup> CEDAW, Article 29

<sup>64</sup> International Bar Association (IBA), Afghanistan: IBA supports ICJ proceedings over women’s rights violations, 3 October 2024. <https://www.ibanet.org/afghanistan-icj>.

<sup>65</sup> Bringing a Case Before the International Court of Justice for the Rights of Afghan Women and Girls, Open Society Initiative, November 2024, page 13

<sup>66</sup> Id.

<sup>67</sup> Policy on Gender-Based Crimes, Crimes involving sexual, reproductive and other gender-based violence, The Office of the Prosecutor, December 2023 <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

<sup>68</sup> Bringing a Case Before the International Court of Justice for the Rights of Afghan Women and Girls, Open Society Initiative, November 2024, page 9

## Conclusion

The exclusion of girl-children from education is contrary to Afghanistan's obligations under international law as a state party to the CRC. This is regardless of the gender-neutral formulation of the right to education under the CRC. This raises the question of whether gender-specific laws would be sufficient to improve the situation of girl-children. The most prominent example of an instrument is the Convention on the Elimination of Discrimination against Women (CEDAW) which explicitly provides for the protection of girl-children's access to education. Despite these legal obligations being applicable to Afghanistan since the ratification of CEDAW in 2003, girl-children were banned from accessing primary education in 2021. This, again, shows that these provisions alone are insufficient in safeguarding girl-children's rights, especially in the absence of political will to respect the states obligations under international law.

This is in line with Charlesworth's observation that international human rights law is ill-equipped to deal with the structural denial of the rights of women and girls. This is because sexism is more than the passing of discriminatory decrees, but a pervasive and structural system of subordination. This is also the case in Afghanistan, where girl-children are denied education through the Taliban for religious-ideological reasons. For women and girls to invoke their rights against infringers, in this case men, a purely legal approach may be insufficient. However, this does not mean that legal avenues may not be taken advantage of to re-establish the rights of girl-children in Afghanistan.

The measures implemented by the Afghan government between and prior to Taliban ruling seemed to be improving the situation for women and girl-children specifically. Notably, the right to education for all citizens was written into the 2004 constitution which increased school enrolments and university entry exam attendance and satisfied both CRC and CEDAW by ensuring education regardless of age and gender.<sup>69</sup>

However, the issue at hand is three-fold, the DFA is not the government which implemented those mechanisms, it has fundamental beliefs that women are inferior and has a blatant disregard for international legal frameworks. Their disregard is notably evidenced by the Taliban's justification for girl-school closures outlined by Hanafi jurisprudence.<sup>70</sup> Article 16 declares that girl-children and women will have access to education only when "the ground is prepared... in line with Islamic principles... and perspectives".<sup>71</sup>

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<sup>69</sup> Sebghatullah Qazi Zada & Mohd Ziaolhaq Qazi Zada (2024) The Taliban and women's human rights in Afghanistan: the way forward, *The International Journal of Human Rights*, 28:10, 1687-1722, DOI: 10.1080/13642987.2024.2369584, page 1695

<sup>70</sup> Afghanistan Analysts Network, The ban on older girls' education: Taleban conservatives ascendant and a leadership in disarray, 13 October 2022. <https://www.afghanistan-analysts.org/en/reports/rights-freedom/the-ban-on-older-girls-education-taleban-conservatives-ascendant-and-a-leadership-in-disarray/>.

<sup>71</sup> Amiri Rahmatullah and Jackson Ashley, Taliban attitudes and policies towards education, Centre for the Study of Armed Groups, 2021, page 23, [https://media.odi.org/documents/taliban\\_attitudes\\_towards\\_education.pdf](https://media.odi.org/documents/taliban_attitudes_towards_education.pdf)

Given that there are no judicial mechanisms under the DFA to restore progress for gender equality in Afghanistan, it is absolutely necessary for the rights of women and girl-children gender discrimination is assessed by appropriate judicial means. It is unlikely that the DFA will respond to negotiations given that they perceive CEDAW as a “western-imperialist imposition that will abruptly modernise and secularise Afghanistan’s cultural and religious traditions.”<sup>72</sup>

In 2023, the Netherlands, Canada, Australia, and Germany indicated their intentions to bring a case against Afghanistan for the violations of its obligations under CEDAW before the International Court of Justice (ICJ). As a state party to CEDAW, Afghanistan consented to the ICJ’s jurisdiction to hear disputes connected to the Convention following the failure of negotiations and then arbitration. While the case could take years to roll out and the women and girls will not gain benefit from the procedure immediately, it does provide a formal legal platform for gender specific crimes to be assessed.

However, if such a case eventually proceeds, it will be crucial for the filing states to consult with Afghan women and girls to ensure that they bring in their perspectives during the proceedings. This would allow more girl children like Nila to come forward as agents of change and take part in their own liberation and be recognized for their contributions in the fight against discrimination. The involvement of those affected could make a potential case before the ICJ with CEDAW as its legal basis an opportunity to consider how victims of intersectional discrimination view themselves as subjects and agents within a system of societal oppression.

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<sup>72</sup> Sebghatullah Qazi Zada & Mohd Ziaolhaq Qazi Zada (2024) The Taliban and women's human rights in Afghanistan: the way forward, *The International Journal of Human Rights*, 28:10, 1687-1722, DOI: 10.1080/13642987.2024.2369584, page 1698