

# AVENUES FOR JUSTICE FOR AFGHAN VICTIMS OF HUMAN RIGHTS VIOLATIONS

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Rawadari is an Afghan human rights organisation that aims to deepen and grow the human rights culture of Afghanistan, ultimately reducing the suffering of all Afghans, especially women and girls. Rawadari helps build an Afghan human rights movement, monitors human rights violations, and pursues justice and accountability for violations. Rawadari works with individuals and collectives inside and outside Afghanistan.

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Decades of war and conflict have resulted in countless victims of war crimes, crimes against humanity and potentially genocide in Afghanistan. Most have never known justice. Without justice – accountability, redress and reconciliation – individual suffering continues and the nation’s cycle of war and violence will not end. Therefore, even as impunity and grave violations continue inside Afghanistan, it is of great importance to identify potential avenues for pursuit of justice. Domestic avenues are currently blocked, but a number of international paths remain. This brief guide identifies viable, international judicial and non-judicial mechanisms for accountability for Afghans and is intended as a reference for activists and civil society organizations.

The current avenues for international justice emerged in the post-world war period, as the international community sought to recover from unimaginable crimes against humanity. States worked together to create laws to prevent the reoccurrence of such atrocities and establish institutions to prevent or prosecute international crimes, including the International Criminal Court. Many of these laws reflected international customary law or legal norms which resonated with the large number of States involved in their creation. These laws and mechanisms are far from perfect and continue to evolve. But with grim prospects for justice inside Afghanistan and through national mechanisms, these mechanisms may be Afghans’ most viable option for justice. Each avenue has its strengths and weaknesses, and would ideally be used in a complementary fashion, to maximize the benefit for victims and the impact.

# INTERNATIONAL CRIMINAL TRIBUNALS

## 1- The International Criminal Court

The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. This international treaty-based court is headquartered in The Hague, the Netherlands and at any one time has judges from 18 different countries, as well as prosecutors and legal staff from all over the world.

One of the ongoing challenges the ICC faces is that three of the major powers, China, Russia, and the United States, are not parties and do not acknowledge the jurisdiction (and sometimes) legitimacy of the Court. In particular, they reject its jurisdiction over states that are not party to the ICC (the ICC has jurisdiction over crimes committed on the territory of a member state even if the perpetrator is a national of a non member country).

The Court aims to hold to account those individuals who are most responsible for these crimes and to help prevent these crimes from happening again. The ICC Rome Statute has expanded the scope of international criminal law to include for example, sexual violence during conflict/war.

The ICC is a court of last resort, which seeks to complement, not replace, national Courts. It is only when country is unwilling or unable to prosecute these international crimes that the court steps in. The court's jurisdiction may be triggered by various mechanisms outlined in its founding document, the 1998 Rome Statute.

The court was established in 2002, which means it only has jurisdiction over crimes committed from July 1, 2002. At its inception it had 123 State Parties ratifying the Rome Statute. In 2003, Afghanistan became a State Party. Since its formation:

- There have been 31 cases opened before the Court (some cases have more than one suspect).
- ICC judges have issued 40 arrest warrants.
- 21 people have been detained and have appeared before the Court.
- 15 suspects remain at large.
- Charges have been dropped against seven people due to their deaths.
- The judges have issued 10 convictions and four acquittals.<sup>1</sup>

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<sup>1</sup> As of January 2024. For up to date information see: <https://www.icc-cpi.int/about/the-court>.

## The ICC and Afghanistan

In October 2022, ICC judges announced that an investigation into crimes against humanity and war crimes in Afghanistan may resume. The investigation had been stalled after a deferral request by the former Afghan government, which was preceded by multiple delays.

The original investigation was to cover serious crimes committed in the country since May 2003, when Afghanistan joined the ICC. This time frame would have included any international crimes committed in context of the Afghan armed conflict since 2003. However, the Prosecutor's current investigation will focus on crimes by the Taliban and Islamic State in Khorasan Province (ISKP) since announcing in September 2021 that he has "deprioritized" crimes by the former Afghan government and international forces, citing the continuing nature of Taliban and ISKP crimes, as well as limited resources.<sup>2</sup> The Court may potentially utilize the framework of gender persecution to hold the Taliban accountable for their current widespread and systematic violations of the rights of women.

## The ICC and Victims' Reparations

At the end of a trial, if perpetrators are found guilty, they may be ordered to pay reparations to the victims of their crimes. The Court may order such reparations to be paid through the Trust Fund for Victims. The legal basis for reparations in this regard is found in general international law principles as well as in instruments such as the 2005 UN Basic Principles on Reparations and the 2007 Nairobi Declaration.

However, while reparations proceedings have followed every conviction by the Court, due to the small number of cases this remedy has rarely been provided, occurring only four times in the history of the Court (details can be found here: <https://www.icc-cpi.int/about/victims>). Beyond court action, reparations can also be ordered or recommended by truth commissions and reparations programs; however, challenges such as identifying sufficient resources to fund payments or arbitrary limitations on such awards are ever present. In some instances, recommendations for symbolic or collective reparations may be a more viable approach.

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<sup>2</sup> <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application>. The prosecutor's decision was criticized by a number of civil society organizations, including the American Civil Liberties Union: <https://www.aclu.org/press-releases/aclu-statement-international-criminal-court-prosecutors-decision-deprioritize>



### **Additional Reading on the ICC:**

The International Criminal Court provides information in English, Dari and Pashto here:

<https://www.icc-cpi.int/afghanistan>

For timeline of action taken by ICC and victim information see: <https://www.icc-cpi.int/victims/situation-islamic-republic-afghanistan>

For the September 2021, ICC Prosecutor submission to the ICC Pre-Trial Chamber to resume its investigation in Afghanistan see:

[https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021\\_08317.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08317.PDF)

Afghan analyst Ehsan Qaane follows the court closely for the Afghanistan Analysts Network. For his writings see here: <https://www.afghanistan-analysts.org/en/pubauthor/ehsan-qaane/>

## **2. The International Court of Justice (ICJ)**

The International Court of Justice (ICJ), also called the “World Court,” is the judicial organ of the United Nations, which settles legal disputes between UN member states. It also offers legal guidance to the UN General Assembly and its agencies. The ICJ, which was created in 1946, is distinct from the International Criminal Court (ICC), but they are complementary institutions with different mandates and jurisdictions.

### **The ICJ handles disputes between states, while the ICC prosecutes individuals.**

Increasingly, the ICJ has become a platform for addressing widespread human rights violations. This approach usually involves one or more states accusing another state of breaching an international human rights treaty. For example, The Gambia filed a case against Myanmar over violations of the Genocide Convention concerning the Rohingya. Ukraine filed two cases against Russia, one for violation of the International Convention on the Elimination of All Forms of Racial Discrimination due to its invasion of Crimea, and another case disputing Russia’s claim that Ukraine is committing genocide under the Genocide Convention. Most recently, South Africa filed a case against Israel for violations of the Genocide Convention.

The ICJ has limitations in its ability to ensure state compliance, since while it issues judgements, it does not have enforcement power. However, in addition to judgements, the Court may issue “provisional measures,” demanding the authorities urgently change their

policies and practices. Non-compliance can be taken before the UN Security Council. Overall, the court has considerable political and juridical authority, with its jurisprudence frequently drawn on by other courts.<sup>3</sup>

Currently, there is movement by Afghan civil society to identify and mobilize a State to bring a case before the ICJ against the State of Afghanistan. The case would address the ongoing grave violations committed by the de facto authorities against women and girls, in relation to the Convention on the Political Rights of Women and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Activists and organizations can support these efforts through the documentation of violations of the rights of women in Afghanistan, and providing advocacy support to pressure a State to bring this case forward. The goal is to refocus international attention on the situation and hold the de facto authorities accountable under international law, cast additional doubt on their legitimacy, and obstruct their attempts at normalization and recognition in absence of any progress on reinstating women's rights.<sup>4</sup>

### Additional Reading on the ICJ:

Additional information regarding the ICJ may be found at: <https://icj-cij.org/home>

For information regarding a potential case on the rights of women and girls in Afghanistan, see here: <https://www.justiceinitiative.org/publications/q-and-a-bringing-a-case-before-the-international-court-of-justice-for-the-rights-of-afghan-women-and-girls>

For Judgments, Advisory Opinions and Orders by the ICJ, see the UN-iLibrary: <https://www.un-ilibrary.org/content/series/24140732>

For the text of CEDAW see here: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

## 3 - Universal Jurisdiction

Universal jurisdiction (UJ) is based on the notion that some crimes such as genocide, crimes against humanity, war crimes, and torture are so egregious that they affect the fundamental security and interests of the international community. The application of UJ is particularly useful for international crimes, which include certain violations of human

<sup>3</sup> ICJ jurisprudence goes back to its establishment in 1946, as well as drawing on its predecessor, the Permanent Court of International Justice, which was established in 1922. <https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times/>

<sup>4</sup> Natasha Arnpriester: "Afghan women could have a case at the International Court of Justice," Washington Post, September 13, 2023. <https://www.washingtonpost.com/opinions/2023/09/13/afghan-women-international-court-justice/>



rights, humanitarian law, or international customary law, that were committed in the past or for those that no other jurisdiction, international or in the country where the crimes were committed, is able or willing to try.

A growing number of countries use UJ to prosecute the most serious crimes regardless of where they have been committed, the perpetrator's nationality, or the nationality of the victim. Today, most countries provide for the investigation of at least one of the most serious international crimes under UJ. Over the past three decades, more than 20 countries have used their authority to initiate investigations and prosecutions.

Over 150 UN Member States have criminalized at least one of the four most serious international crimes, most commonly war crimes.<sup>5</sup> However, many of those countries have enacted legal conditions limiting UJ application, such as that the perpetrator be present in the county, or that the victims be nationals, or have made exercise of UJ subject to approval by government officials and linked to factors such as that an investigation benefits the national security of a country.

Germany has one of the most flexible legal frameworks for UJ. For example, in a 2021 case, a German court found a member of ISIS guilty of genocide, crimes against humanity, and war crimes under absolute universal jurisdiction notwithstanding the fact that the defendant was not a German national or resident, the victims were not German, and the crimes had not been committed on German territory. However, at this writing, it is our understanding that the German war crimes unit will focus on individual perpetrators who are resident or present in Germany.<sup>6</sup>

Another country that has invoked UJ in recent years is the Netherlands. Since 2003, a Dutch court has heard cases of atrocities from over 14 countries, including Afghanistan.<sup>7</sup> The court has considered a case from Afghanistan's communist period (1978 and 1992), involving the prosecution of a former warden of Pul-e-Charkhi accused of serious abuses of detainees in the prison in the 1980s. Several other Afghans have so far been investigated for war crimes in the Netherlands, with one case in the UK.<sup>8</sup>

Depending on the legal framework of the country where the prosecution occurs, there may be reparations available for victims. However, as noted above, court ordered reparations tend to present multiple challenges.

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<sup>5</sup> <https://justicebeyondborders.com/page/about-the-project>

<sup>6</sup> Interview with source.

<sup>7</sup> The International Crimes Chamber in the district of the Hague (this is entirely different from the International Criminal Court, an international organisation, which also happens to be located in The Hague).

<sup>8</sup> For more details on the recent Dutch cases, see the following: <https://www.afghanistan-analysts.org/en/reports/rights-freedom/afghan-war-crimes-trials-in-the-netherlands-who-are-the-suspects-and-what-have-been-the-outcomes/>

For more information on these cases, see the Trial International Universal Jurisdiction Database here: <https://trialinternational.org/resources/universal-jurisdiction-database/>

For additional information about the legal possibilities for universal jurisdiction in different countries around the world, explore the “Justice Beyond Borders” database by the Clooney Foundation for Justice: <https://justicebeyondborders.com/>

## **4 - Criminal prosecution of corporations or corporate officials in international and national courts**

A few national legal systems allow criminal prosecution of corporations (as entities rather than targeting responsible individuals). France is one example, where there is an ongoing prosecution against the cement company Lafarge for complicity in Crimes Against Humanity, for its activities in Syria that allegedly involved knowingly financing ISIS and other armed groups.<sup>9</sup>

Elsewhere criminal prosecutions have been brought against responsible corporate officials as individuals. For example, in 2021 two executives of Lundin Energy were being prosecuted in Sweden, charged with aiding and abetting war crimes in South Sudan.<sup>10</sup>

While the ICC does not have jurisdiction over corporations as such, there have been calls for the ICC to investigate the legal responsibility of corporate officials. For instance, there is a communication alleging responsibility of transnational companies based in Europe for supplying Saudi Arabia and the UAE with weapons used in airstrikes that may amount to war crimes.<sup>11</sup>

This might hold possibilities in the case of Afghanistan, where private security and military companies were sometimes implicated in egregious human rights violations.<sup>12</sup>

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<sup>9</sup> See this media report: <https://www.aljazeera.com/news/2022/5/18/french-court-upholds-syria-charge-against-cement-group-lafarge>

<sup>10</sup> See for instance this blog about the trial from September 2023: <https://www.justiceinfo.net/en/122058-lundin-serious-intimate-sweden-longest-trial-sets-up-for-the-long-haul.html>

<sup>11</sup> ECCHR, December 2019: <https://www.ecchr.eu/en/case/made-in-europe-bombed-in-yemen/>

<sup>12</sup> See for example: Mattieu Aikins, “The Bidding War—How a Young Contractor Became Spectacularly Rich,” March 6, 2016, *The New Yorker*. <http://www.newyorker.com/magazine/2016/03/07/the-man-who-made-millions-off-the-afghan-war>. See also “Warlord, Inc. Extortion and Corruption Along the U.S. Supply Chain in Afghanistan,” Report of the Majority Staff Rep. John F. Tierney, Chair Subcommittee on National Security and Foreign Affairs Committee on Oversight and Government Reform U.S. House of Representatives, June 2010, [http://www.cbsnews.com/htdocs/pdf/HNT\\_Report.pdf](http://www.cbsnews.com/htdocs/pdf/HNT_Report.pdf). Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security*, New York: W. W. Norton & Company, 2015. See also Mattieu Aikins, “Contracting the Commanders: Transition and the Political Economy of Afghanistan’s Private Security Industry,” October 2012, Center of International Cooperation. <https://www.ciaonet.org/attachments/21916/uploads>.

## 5 - Civil litigation in national courts

There are many obstacles to bringing a civil/private legal action in the courts of a state other than where the harm arose, but there are some opportunities.

There is a long history of civil litigation for human rights violations committed abroad in US courts brought by US citizens and non-citizens. This was based initially on the revival of a piece of ancient legislation from 1798, the Alien Tort Claims Act, as well as other subsequent legislation, allowing civil claims in the US for violations of international law abroad, which resulted in multi-million dollar awards against individuals for human rights violations in about 25 cases. In recent years there has been a trend for US courts to limit the scope of this legislation, however, making it significantly less useful today.

Civil litigation often comes up against the obstacle of various types of state immunity, since the alleged perpetrators are frequently state actors.

A more recent phenomenon has been the growth of civil litigation against corporations and corporate officials for human rights violations. This short report from the International Bar Association lists some of the criminal and civil cases brought against corporations and corporate officials over the last few years (there are many recent materials available on this issue).<sup>13</sup>

This path is beyond the scope of this overview, but might be worth further exploration to assess the potential of bringing human rights cases against individuals for human rights violations in the US courts, as well as exploration as to whether there are foreign corporations doing business in/with Afghanistan that could be linked to violations there.

## 6 - Codifying Gender Apartheid

It is worth noting that a campaign has been initiated by women human rights defenders from Afghanistan and Iran, as well as legal experts for the international community, to recognize and prosecute the crime of gender apartheid. While gender persecution is already recognized as a Crime Against Humanity, the heinous and institutionalized nature of the systematic oppression and domination of women and girls by the Taliban is seen to warrant a new crime of Gender Apartheid (which would be complementary to gender persecution). The gravity of apartheid would put pressure on States, the UN and financial institutions to suppress, prevent, prosecute and end gender apartheid. However, realistically it will take years before such a crime is enshrined in international law. Read more about End Gender Apartheid Campaign here: <https://endgenderapartheid.today>

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<sup>13</sup> <https://www.ibanet.org/IBA-War-Crimes-Committee-shines-a-light-on-corporate-liability-cases#:~:text=The%20compilation%20shows%20that%20in,security%20services%2C%20chemicals%20and%20even>

# NON JUDICIAL MECHANISMS / VICTIM-CENTRED PROCESSES

People's Tribunals are independent civil society led movements, also known as Citizen's Tribunals or Women's Tribunals. They can address impunity in the face of legal gaps and political failures of international justice mechanisms, in order to "prevent the crime of silence," as Bertrand Russell famously described, who set up the Russel Tribunal on US crimes in Vietnam in 1966.<sup>14</sup>

In recent decades there have been numerous examples of People's Tribunals. While such tribunals do not have judicial authority or enforcement capability, for many survivors, victims and witnesses they have been a powerful way to tell stories and bring out the facts, seek recognition, restore dignity, create a space for healing and reshape public narratives. Sometimes they have triggered formal recognition and reparations for past crimes (for example, the Women's International Tribunal on Japan's Military Sexual Slavery, more below).

This section provides a few brief examples.

## 1 - Civil tribunals

### Permanent People's Tribunal

The Permanent Peoples' Tribunal (PPT) operates under the auspices of the Lelio and Lisli Basso Foundation, which describes itself as an "international public opinion tribunal competent to rule on any serious crime committed to the detriment of peoples and minorities."<sup>15</sup> It emerged in 1979 as a successor to the Russell Tribunals, which were organized to judge crimes by the United States in Vietnam (1966-67). The PPT is unusual among civil society led tribunals in that it is permanent platform, composed of a network of internationally recognized experts. The PPT has held more than 50 sessions worldwide, highlighting cases of war crimes, crimes against humanity, genocide, "as well as economic, ecological, and systemic crimes."

The Permanent People's Tribunal or similar civil society led efforts could be an option for Afghan activists and human rights organizations. While the breadth of such efforts varies hugely, it does offer the potential for a more expansive time-frame and / or wider range of perpetrators, beyond what can be offered by the current ICC process.

<sup>14</sup> "Prevent the Crime of Silence," Bertrand Russell, 1966 address. <https://www.spokesmanbooks.com/Spokesman/PDF/110Russell.pdf>

<sup>15</sup> <https://permanentpeopletribunal.org/?lang=en>

### **Russell Tribunal on Vietnam, 1966-7**

The Vietnam War (1954-75) was waged between the communist government of North Vietnam (with South Vietnamese allies, the Viet Cong) and the government of South Vietnam, aided by the United States. The Russell Tribunal was constituted of mostly leftist scholars, lawyers and activists, to consider whether the US had committed the crime of aggression, used weapons prohibited under international humanitarian law or committed war crimes including targeting of civilian objects and torture.

### **Global Tribunal on Women's Human Rights, 1993**

Also known as the Vienna Tribunal, this was organized by a group of women's rights NGOs, under the auspices of the Centre for Global Women's Leadership. The aim was to force women's rights into the UN's Vienna Conference on Human Rights, with a demand to ensure violence against women was seen a human rights violation, as well as demanding state accountability.<sup>16</sup>

### **Women's International Tribunal on Japan's Military Sexual Slavery, 2000**

This Tribunal investigated rape and sexual slavery by Japan's Imperial Army in the Asia Pacific region in the 1930s and 40s. It assessed both the criminal responsibility of senior Japanese officials as well as the complicity of the Japanese state. The impact of the tribunal was wide ranging, including recognition of the use of sex slaves (after years of denial), a formal apology and reparations of one billion yen (\$8.3 million). For victims / survivors, the tribunal created space for significant numbers of women to come forward, many years after the crimes were committed, to testify openly about their experiences.<sup>17</sup>

### **Iran People's Tribunal, 2010-3**

The Iran People's Tribunal was a civil society initiative to highlight executions and disappearances. The tribunal cites as an inspiration the Mothers of Khavaran, an association that represents mostly leftist activists who were executed or tortured to death in the 1980s in Iran.<sup>18</sup> The tribunal created a court of international jurists and resulted in a report in 2013.

### **Uyghur Tribunal, 2020-2021**

The Tribunal was established at the request of the World Uyghur Congress to investigate China's alleged genocide and crimes against humanity against Uyghur, Kazakh and other Turkic Muslim populations, and heard evidence in London in two sessions held in 2021. The Tribunal delivered its judgment on 9 December 2021 and drew media coverage in the US and Europe.

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<sup>16</sup> "Demanding accountability : the Global Campaign and Vienna Tribunal for Women's Human Rights," Charlotte Bunch and Niamh Reilly, UNIFEM 1994. <https://digitalibrary.un.org/record/208388?ln=en>

<sup>17</sup> Women's International Tribunal on Japanese Military Sexual Slavery, Christine M. Chinkin, *The American Journal of International Law*, Vol. 95, No. 2, April 2001, Cambridge University Press.

<sup>18</sup> <https://irantribunal.com/>

## Aban Tribunal, 2021-22

The Aban Tribunal was a civil society led inquiry into atrocities committed against protestors by the Iranian government in November 2019, resulting in hundreds of deaths and thousands of injuries. The initial plan was to hold a short hearing in 2021, but it resulted in such an outpouring of communications from other witnesses and victims that a second hearing was held. One significant achievement of the hearing was enhanced public awareness – a media blackout in Iran meant limited domestic and international awareness. The hearings were broadcast live on Iran International and daily on BBC Persian with heavy Voice Of American coverage, reaching a huge Iranian audience. The approach of organisers and subsequent response from victims also gave the tribunal a strong victim centred mandate, providing recognition and dignity.

## 2 - Memorialization

Memorialization is a vital tool for victims' healing and the wider ability of communities and nations to honor, recognize and remember. As described by the Sites of Conscience organization, "Memory is an integral aspect of coming to terms with the past and an important part of any transitional justice process that seeks to set the historical record straight." In fragile communities it can be a sensitive means for civic engagement. Where accountability prospects are slim, it can help set the record straight. Memorialization can also create a means of grieving and remembering for families who do not have access to human remains. By creating space to establish truth and acknowledging multiple narratives, memorialization can help foster an environment for other transitional justice processes to take place, including reconciliation and accountability efforts. Finally, it can contribute to a "Never Again" culture, both within a post-conflict setting and beyond.

Memorialization can include monuments, museums, commemorative ceremonies, apologies, reburials, and memory projects. There are many global examples, including:

### The Gulag museum at Perm 36, Russia

The museum used to commemorate political repression of Stalin's Gulag era, through preservation, research exhibition and education activities. It was repurposed for political reasons in 2014. The spirit of the initiative is now virtually maintained.

### District Six Museum, Cape Town, South Africa

This museum commemorates the forcible eviction of a community in Cape Town in the 1970s by the apartheid government. It houses the personal artifacts of former residents, including letters, newspaper cuttings, art works, letters and audio recordings.

### Nyayo house in Nairobi, Kenya

The house was a former clandestine torture site in the heart of Nairobi, which survivors fought to preserve as evidence of past atrocities.

### **The Comarca Balide, Dili, Timor-Leste**

This former prison was the site of many atrocities during the civil war and is now a multi-function site of culture, peace and memory, including art works and civic space.

### **The Liberation War museum in Bangladesh**

A museum to commemorate the bloody fight for independence from colonial rule, in which three million died. The museum displays artifacts, photographs and documents, most of which were donated by citizens.

### **The Afghanistan Memory Home**

One example of Afghan memorialization is the Afghanistan Memory Home, created by the Afghanistan Human Rights and Democracy Organization. The virtual museum emerged from a decade long “Memory Box Initiative,” which gathered testimony, documents and artifacts from thousands of victims. AHRDO created a physical museum in Kabul in 2019, the Afghanistan Centre for Memory and Dialogue (ACMD), which had to be disassembled for security reasons after the Taliban takeover in August 2021.

## **3 - United Nations Mechanisms**

### **Special Rapporteur on the Situation of Human Rights in Afghanistan**

In October 2021, the UN Human Rights Council adopted a resolution supported by an overwhelming majority of Council members to create a Special Rapporteur on Afghanistan. On 1 April 2022, Richard Bennett was appointed as the Special Rapporteur and mandated to monitor the situation of human rights in Afghanistan and to report on the developing situation of human rights, and make recommendations for improvements; assist in fulfilling the human rights obligations arising from international treaties that Afghanistan has ratified; offer support and advice to civil society; and to seek, receive, examine and act on information from all relevant stakeholders pertaining to the situation of human rights in Afghanistan, among other duties. For more information see: <https://www.ohchr.org/en/special-procedures/sr-afghanistan>

In June 2023, the Special Rapporteur and the Working Group on Discrimination Against Women and Girls published a report on the situation of women and girls in Afghanistan which contained concrete recommendations to the de facto government, the international community and the UN. This report can be found at: <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>

Afghan and international human rights defenders have called for a UN mechanisms with greater powers to contribute to accountability, such as a Fact Finding Mission or Commission or Inquiry or investigative bodies charged with gathering evidence for the purposes of future criminal proceedings. Current examples of such bodies include Fact Finding Missions on Iran



and Venezuela, Commissions of Inquiry on Ukraine, OPT/Israel and Syria and investigative mechanisms on Syria, Myanmar and Iraq.<sup>19</sup>

Unfortunately, to date, there is insufficient political will from member states to create such a mechanism for Afghanistan. The Special Rapporteur's current mandate does have an accountability component, though resources are currently limited for full-fledged investigations and evidence preservation.

#### **4 - Sanctions regimes and reparations**

There are multiple international sanctions against the Taliban and Afghan individuals, some in place for many years (asset freezes, travel bans and arms embargoes). The war in Ukraine has given rise to interesting developments around sanctions and redress, including creation by the Council of Europe of an international compensation mechanism for Ukraine, work aimed at trying to get seized Russian assets for reparation applied for victims, and establishment of an International Claims and Reparations Project at Columbia Law School. The Global Survivors Fund is a relatively new international organisation that aims to promote reparation for conflict related sexual violence. At this writing, they do not appear to have initiated programmes relating to Afghanistan.

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<sup>19</sup> For the full list of bodies mandated by the UN Human Rights Council, see: "International Commissions of Inquiry, Commissions on Human Rights, Fact-Finding missions and other Investigations," OHCHR. <https://www.ohchr.org/en/hr-bodies/hrc/co-is> Others are mandated by the UN Security Council or General Assembly.

# CONCLUSION: CONSIDERATIONS FOR AFGHAN CIVIL SOCIETY

There are multiple considerations for Afghan victims and Afghan civil society, in determining which if any of these avenues they would wish to pursue.

## **Victim Centred Justice**

The principle of victim-centred justice prioritises the safety, rights, well-being and expressed needs and choices of victims and survivors. Some of these options require victims or survivors to provide testimony, with varying degrees of protection for victims, and with the possibility (in criminal trials) of defence access to victims' identities and testimony (with varied level of protections available). In such instances, proceedings would ideally be combined with psychosocial support for victims, who risk re-traumatisation for sometimes uncertain ends, though this requires additional resources.

## **Independence / Conflict sensitivity**

As noted above, some of the international mechanisms have strong associations or are subject to the influence of former parties to the conflict. This can have an impact on the scope of the process, in terms of which perpetrators, crimes and which time periods are addressed. This can lead some to question the independence of the process. Such doubts about judicial independence can arise even if the process might be "balanced" in scope, if states are involved in the mechanism that have associations or past involvement with the conflict (even in states where universal jurisdiction is exercised with relative judicial independence). These perceptions of bias or fairness are particularly pertinent at a time of continued divisions and mistrust. One way of countering such concerns about fairness is to have multiple avenues of accountability taking place simultaneously, and making victim networks and other civil society aware of such complementary efforts. These questions of fairness and balance can also have impacts on cycles of violence, exacerbating grievances of one or more parties to the conflict (past and present). This means that a degree of conflict-sensitivity should be a factor in decision making. However, recent Afghan history has shown that when the interests of "stability" are allowed to overrule the interests of justice, the long-term impact is one of continued impunity and violence.

## **Safety and security**

All of the processes above require some degree of documentation and contact with victims. There are deep concerns for many Afghan civil society actors about safety and security of staff and victims/eyewitnesses. Even where Afghans are in exile / diaspora, they may have ongoing concerns for the safety of their extended family or former colleagues. Many CSOs find that work with diaspora, however, offers greater security than work inside Afghanistan.

Data security is a constant challenge, particularly for civil society efforts (and is tempered by resources and capacity).

## Resources

Many of these processes require considerable resources at a time of chronic humanitarian need inside Afghanistan, and to a lesser extent among Afghan diaspora. State resources for international mechanisms are limited, with competing demands from grave conflicts and injustices in other countries. For civil society led initiatives, funding sources have shrunk, so innovative funding models may be required to create a process or processes that are credible, victim centred and have impact over time.

## Time

Despite the many obstacles and concerns, there is a sense of urgency for many of these avenues. Victims and survivors from earlier eras of the conflict require attention soon. While CSOs and victims' networks have done work with many victims from earlier states of the conflict, they have only scratched the surface, given the scale of harms suffered by Afghans in multiple conflicts.



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