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Civic space and ethnic and religious minorities in Afghanistan

A joint submission by

Asian Forum for Human Rights and Development (FORUM-ASIA)

Safety and Risk Mitigation Organization (SRMO)

Afghanistan LGBTQ Organization (ALO)

for the upcoming

Universal Periodic Review (UPR) of Afghanistan

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Submitting organisations

The Asian Forum for Human Rights and Development (FORUM-ASIA) is a network of 85 members in 23 countries across Asia. It was founded in 1991 in Manila, the Philippines. Its secretariat was established in Bangkok, Thailand. Since then, offices have been opened in Geneva, Jakarta and Kathmandu. FORUM-ASIA works to promote and protect human rights, including right to development, through collaboration and cooperation among human rights organizations and defenders in Asia and beyond.

The **Afghan LGBT Organization (ALO)** operates as a non-governmental organization headquartered in the Czech Republic. Our core focus is on bolstering the Afghan LGBTQI community. Our mission is multi-faceted: to empower Afghan LGBTQI individuals, extend financial assistance and resource accessibility, and amplify their voices. ALO has been actively extending financial support to LGBTQI individuals within Afghanistan and those seeking asylum in Turkey and Pakistan.

The **Safety and Risk Mitigation Organization (SRMO)** is an independent, non-profit, non-political, non-partisan Afghan organization set up to provide safety and risk mitigation assistance to Afghan Women Human Rights Defenders (WHRDs), including Afghan-led civil society organizations. The SRMO was established in February 2013 and formally registered in April 2013 with the Ministry of Economy of Afghanistan. In September 2021, formally registered in the United Kingdom with the Companies House by a group of dedicated Afghans who are experienced in HRD and NGO protection and safety segments.

1. Introduction and previous recommendations

1. This report explores the situation of the rights of ethnic and religious minorities and marginalized communities, in particular the LGBTQI+ individuals and civic space, with a particular focus on rights to freedoms of expression, peaceful assembly and association, human rights defenders and academic freedom.
2. During the previous review, Afghanistan received recommendations to strengthen its institutional and legal framework for the protection of human rights in a range of areas including freedom of religion and belief, enforced disappearances, arbitrary arrest and detention, as well as measures to protect and support journalists, human rights defenders, including, women human rights defenders, humanitarian workers and civil society organizations. Other recommendations included issues of effective remedy, impunity, extrajudicial, summary, or arbitrary executions, prohibition of torture and cruel, inhuman or degrading treatment. Progress in achieving any of the recommendations from the previous cycle of UPR has been reversed with the takeover the government by the Taliban in August 2021.

2. Methodology

3. This report is jointly written and submitted by FORUM-ASIA, SRMO and ALO. Given the dire situation in Afghanistan, and the challenges to civil society organisations to work safely in the country, this report is primarily based on information and data documented by human rights defenders and civil society organisations operating outside of the country. The submission also relies on secondary sources for verification and to fill in the gaps in existing primary data.

3. Ethnic and religious minorities and marginalized communities

Legal Frameworks

4. The 2004 Constitution of Afghanistan names only fourteen ethnicities out of many. It states “the nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and other tribes”⁵. The article adds that “no individual of the nation of Afghanistan shall be deprived of citizenship.” The Constitution does not name other ethnic and religious groups such as Sikhs and Hindus, Christians and Jews, for instance. The Jogi and stateless communities remain undefined and unprotected under Afghanistan’s legal or human rights instruments.
5. Article 130 says; “If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.”¹
6. Article 131 of the Constitution states that “the courts shall apply the Shia jurisprudence in cases involving personal matters of followers of the Shia sect in accordance with the provisions of the law. In other cases, if no clarification in this Constitution and other laws exist, the courts shall rule according to laws of this sect.”²
7. The Shiite Personal Status Law, declared in 2009 by President Hamid Karzia, states that, “to implement this law in the courts, the Supreme Court of the Islamic

¹ The Constitution of the Islamic Republic of Afghanistan. 2004. Accessed via; <https://shorturl.at/vNOQY>

² Ibid.

Republic of Afghanistan shall appoint eligible Shiite judges.”³ If further asserts that, “when issues arise that are not addressed by the provisions of this law, the court shall decide in accordance with Ja’fari jurisprudence based on a current, valid Shiite Marja Taqlid Fatwa [a recognized religious authority that issues ruling on a point of Islamic law]”.⁴

Political context and general situation of ethnic and religious minorities in Afghanistan

8. Afghanistan is, from religion standpoint, a majority Sunni Muslim country, while ethnically, the country remains largely a land of minorities in which no ethnic group constitutes a majority. In a majority Sunny Muslim country, religious minority groups, including the Shia Hazaras, Hindus, Sikhs, Baha’is, Christians, and Jews have historically suffered the most. Owing to more than four decades of continued violence, a significant documentation and statistical gap exist to reliably draw disaggregated demographic data related to ethnic and religious communities. However, according to the International Religious Freedom Report in 2020, the Shia population, majority of whom are Hazaras, is predominantly Jaafari, but it also includes Ismailis.⁵ Other religious groups, mainly Hindus, Sikhs, Baha’is, and Christians, constitute less than 0.3 percent of the population.⁶
9. According to the 2022 Hazara Inquiry Report, the then Acting Minister of Interior of Afghanistan, Massoud Andarabi, suggested in 2019, that IS-Khorasan (IS-K) - posed a particular threat to the Hazara Shia community.⁷ Successive governments of the Republic of Afghanistan have failed to secure, for instance, the predominantly Hazara populated area of Kabul that has been subjected to consistent attacks.
10. On 12 May 2020, three gunmen attacked a maternity clinic in a Hazara Shia neighborhood in Kabul. They killed 24 people, including mothers, newborn babies, and one medical professional. No one claimed responsibility for the attack.⁸ On 24 October 2020, IS-K 4 claimed responsibility for the bombing of an education centre in a Hazara neighbourhood in Kabul, which killed 40 people and injured 70 others.⁹
11. In 2020, UNAMA documented 10 incidents of sectarian-motivated violence against Shia Muslims, Sufi Muslims, and Sikhs, resulting in 308 civilian casualties (112 killed and 196 injured), compared with 2019 when there were 10 incidents resulting in 485 civilian casualties (117 killed and 368 injured).¹⁰ In March 2020, a Sikh temple in Kabul’s Shor Bazar Gurdwara area was attacked by

³Shiite Personal Status Law, 2009, accessed via: <https://shorturl.at/jzR58>

⁴ Ibid.

⁵US Department of State. “Report on International Religious Freedom,” 2020. accessed via: <https://shorturl.at/fhmpu>

⁶ Ibid.

⁷ The Hazara Inquiry Report. 2022. accessed via: <https://shorturl.at/BCJPX>

⁸ Ibid.

⁹ Ibid.

¹⁰ US Department of State. “Report on International Religious Freedom,” 2020. accessed via: <https://shorturl.at/KMPY0>

the Islamic State killing 25 Sikh civilians.¹¹ Reportedly, following the attack, approximately 200 members of the Sikh community departed the country for India, indicating they left because of the lack of security and insufficient government protection.¹²

Latest developments related to ethnic and religious minorities

12. According to the Taliban, Hanafi jurisprudence is the basis for the legal system, and at present the country does not have in place a clear and cohesive legal framework, judicial system, or enforcement mechanisms. The Taliban's so called 'cabinet' remains non-inclusive and non-representative, heavily dominated by all-male and Pashtun members.¹³
13. Since their return to power, the Taliban have launched systematic attacks against ethnic and religious communities, including the Shia Hazara, Tajiks, and Uzbeks. Likewise, Sufis, Sikhs, and Hindus fear persecution by the Taliban and ISIS-KP.
14. Since 2021, targeted attacks on Hazaras in Afghanistan have increased, with Hazara places of worship and schools in Kunduz and Kandahar in October 2021, and Kabul, and Mazar-i-Sharif, among others, in April 2022 targeted. As a result, hundreds of Hazaras, including Hazara children, have been killed, and many more injured. No one claimed responsibility for these attacks. In the first half of 2021 alone, UNAMA documented 20 attacks against Shias/Hazaras, resulting in 143 Hazara civilians killed and more than 300 wounded, bringing the death toll of civilians to 500.¹⁴
15. As of July 2022, more than 25,000 primarily Hazara people have been forcibly displaced by Taliban military campaign.¹⁵ Taliban fighters have been accused of helping to forcibly evict more than 1,000 Uzbek and Turkmen families in northern Afghanistan.¹⁶ The major displacement have taken place across 15 villages in central Daikundi and Uruzgan provinces, where the Taliban systematically evicted at least 2,800 Hazara residence in September 2021. The families took refuge to the neighboring districts and provinces, while leaving their properties and crops behind.¹⁷ During the same period, the Taliban have forced around 400 Hazara families to leave their homes and lands in the Naw Mish district of Helmand province.¹⁸
16. The last member of Afghanistan's Jewish community (Zebulon Simentov who lived in a dilapidated synagogue in Kabul) left the country. This marks the

¹¹Roshan Noorzi. Niala Mohammad, Hashim Habibzada, "Sikhs and Hindus of Afghanistan in Limbo After March Deadly Attack," 2020, Voice of America, accessed via: https://www.voanews.com/a/extremism-watch_sikhs-and-hindus-afghanistan-limbo-after-march-deadly-attack/6188647.html

¹² US Department of State. "Report on International Religious Freedom," 2020. accessed via: <https://shorturl.at/KMPY0>

¹³ The Guardian, "Taliban name all male Afghan cabinet including minister wanted by FBI," 2021, accessed via: [Taliban name all-male Afghan cabinet including minister wanted by FBI | Taliban | The Guardian](https://www.theguardian.com/afghanistan/2021/07/21/taliban-name-all-male-afghan-cabinet-including-minister-wanted-by-fbi)

¹⁴UNAMA report, 2021, accessed via: <https://shorturl.at/awDI7>

¹⁵ US Museum of Holocaust Memorial report, 2022, accessed via: <https://shorturl.at/tADL4>

¹⁶ Zarif Nazar Abubakr Siddique, "Taliban accused of forcibly evicting ethnic Uzbeks and Turkmen in Northern Afghanistan," Radio Free Europe, 2021, <https://shorturl.at/lxEPO>

¹⁷ Human Rights Watch, "Afghanistan: Taliban Forcibly Evicted Minority Shia," October 22, 2021. <https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia>

¹⁸ Ibid.

physical extinction of the Jewish Afghan community. No one from de facto authorities nor from the former government have reacted to it.¹⁹

17. Under Taliban, ethnic and religious communities especially non-Pashtun and Shia groups face extrajudicial killings and enforced mass displacement. Taliban, as a majority Sunni hardline group, have declared edicts and practices that restrict rights and freedoms of religious groups. Reportedly, Christians and Ahmadi Muslims continued to worship only privately at home or in nondescript places of worship, to avoid discrimination and persecution.²⁰

18. Taliban bans on the Shia community include²¹:

- removal of the Shia Personal Status Law as ratified by President Hamid Karzai in 2009
- mass discharging of Shia judges from the national and sub-national judiciary system.
- removal of the teaching of the Shia Jafari doctrine curriculum in higher education.
- removal of Shia national holiday (Ashura) from the country's calendar
- restrictions on Muharram ceremonies

19. Ethnic and religious minorities, especially displaced and marginalized Shia Hazaras, remain cut off from humanitarian aid distributed through the International Committee of the Red Cross due to the Taliban's intervention.²² At times of attacks, Taliban have also cut internet²³ connection and telecommunication which limits access to monitoring and information channel from the ground.²⁴

LGBTIQ+ persons

20. Under Taliban rule, members of the LGBTIQ community (lesbian, gay, bisexual and transgender people) in Afghanistan experience intensified violence and discrimination compared to the past. In addition to being deprived of all their basic rights, they have been arrested, tortured and even killed by the Taliban. Data collected by the Afghan LGBT Organization²⁵, in 2022, in 835 incidents, shows that 72 per cent of the LGBTIQ people who faced the incident(s), were directly

¹⁹ The Guardian, "The last member of Afghanistan Jewish community leaves the country", 2021, accessed via: [https://www.theguardian.com/world/2021/sep/08/afghanistans-last-jew-leaves-country#:~:text=The%20last%20member%20of%20Afghanistan's,old%20Jewish%20community%20rapidly%20dwindled.](https://www.theguardian.com/world/2021/sep/08/afghanistans-last-jew-leaves-country#:~:text=The%20last%20member%20of%20Afghanistan's,old%20Jewish%20community%20rapidly%20 dwindled.)

²⁰ US Department of State. "Report on International Religious Freedom," 2022, accessed via <https://www.state.gov/reports/2022-report-on-international-religious-freedom/afghanistan/>

²¹ FORUM-ASIA statement; 2023, <https://forum-asia.org/?p=38466>

²² Ibid.

²³ Etilaat Roz, <https://www.etilaatroz.com/174285>.

²⁴ Hasht e Subh Daily, "Taliban fighter execute 150 civilians in Balkhab", 2022, accessed via: <https://8am.media/eng/taliban-fighters-execute-150-civilians-in-balkhab/>

²⁵ Afghan LGBTQ Organization, 2023.

abused and harassed by the Taliban. 67 per cent were sexually harassed by the Taliban, most of whom were transgender and lesbian. 85 per cent said that they were harassed by their family and friends during their life. 100 per cent of the people believed that if the Taliban rule continues, their identity as a queer may be exposed and they may be killed. Despite the dire situation for the LGBTIQ community in Afghanistan, their situation remains under reported by national and international monitoring bodies.

4. Civic space – rights to freedom of expression, peaceful assembly and association and human rights defenders

Legal Framework

21. Article 34 of the 2004 Constitution states that:

Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law.

22. Article 36 states, “the people of Afghanistan shall have the right to gather and hold unarmed demonstrations, in accordance with the law, for attaining legitimate and peaceful purposes.”

23. Moreover, the Constitution asserts that, “freedom and confidentiality of correspondence, as well as communications of individuals, whether in the form of a letter or via telephone, telegraph, as well as other means, shall be secure from intrusion. The state shall not have the right to inspect personal correspondence and communications, unless authorized by provisions of the law.”

Political context and general situation of rights to freedoms of expression, peaceful assemblies, association and human rights defenders

a. Journalists

24. Since 2019, journalists and independent media workers have continually faced threats of harassment, arrest, detention, and death both by the former government and the Taliban after 2021. According to Afghanistan Journalists Center (AFJC), in 2020, 8 cases of death of journalists were recorded, while 9 in 2021, none in 2022 and 1 in 2023.²⁶ The AFJC report also shows deterioration in press freedom over the past year, characterized by censorship, detentions, assaults, and restrictions on media outlets, journalists, and particularly women journalists.

25. Since 15 August 2021, to 15 August 2022, a total of 245 cases of violations against media freedom were recorded in Afghanistan by the AFJC. This includes 130 cases of short-term detention of journalists, ranging from one hour to several months, often accompanied by physical violence, insults, and even torture. AFJC also documented 80 instances of threats, 28 incidents of physical harassment, predominantly by Taliban forces, and five cases of injuries inflicted by the

²⁶ AFJC, <https://shorturl.at/xMN08>

Taliban.

26. Over half of the 600 media outlets, including radio, television and other media platforms (online and print), have stopped operations.²⁷ *Hasht-eSubh Daily*, *Zawia Media*, *Radio Azadi* (run by *Radion Free Europe*) and *Voice of America's* Dari and Pashto services have been shut down. They were accused of publishing false information and propaganda against the Taliban.²⁸ Additionally, more than 60 per cent of journalists and media employees have been unable to work since the Taliban assumed power.²⁹ Since the takeover of Taliban, proliferating restrictions on media including on content and bans on operations of media outlets have forced journalists, especially those operating in the country to resort to self-censorship to for fear of reprisals.

b. Human rights defenders (HRDs) and civil society

27. Human rights defenders, especially women human rights defenders and peaceful protestors in Afghanistan alongside activists, artists and musicians, have faced harsh restrictions, abuse, physical violence and harassment, family intimidation, detention and enforced disappearances and, in some cases, death by different parties before the fall of the Republic government.
28. These restrictions and violence including extrajudicial killings and detention against human rights defenders especially women human rights defenders have increased exponentially since 2021 under the Taliban rule. Taliban have completely dismantled civil society in the country. It has imposed bans on women working in international non-governmental organisations and humanitarian organisations, as part of Taliban's policy of gender-based persecution of women, in violation of Afghanistan's Constitution and obligations under international human rights instruments including the International Covenant on Civil and Political Rights to which Afghanistan is a state party. According to CIVICUS Monitor, in 2023, the civic space in Afghanistan has been downgraded from "restricted" to "closed".³⁰
29. Since the Taliban takeover on 15 August 2021, FORUM-ASIA recorded 92 cases of violations against human rights defenders in Afghanistan,³¹ including students, women human rights defenders, non-governmental organisation (NGO) staff, and media workers. This figure marks a significant rise in the cases of violations documented in the country, but it is far from representing the totality of violations occurring on the ground as more cases are likely unreported.
30. Despite the restrictions, the HRDs who work secretly suffer from lack of resources and need psycho-social support to continue their human rights activities. HRDs in exile in neighboring countries such as Pakistan and Iran face numerous challenges such as lack of legal and financial support, getting entry visa, extension of visas, status registration, access to humanitarian aid and assistance, protection under international schemes and right to apply for asylum.

²⁷ Ibid.

²⁸ CIVICUS. <https://shorturl.at/bgGP2>

²⁹ Ibid.

³⁰ Ibid.

³¹ [Library • Uwazi \(forum-asia.org\)](https://forum-asia.org/)

Many HRDs including those who fled persecution of Taliban,³² have been at risk of deportation to Afghanistan by police and border regime. On top of these, the police and security forces have continually abused and harassed HRDs from Afghanistan, even those holding valid immigration documents.

31. With the Taliban's persecution of women, women-led organisations have been completely erased. Women in leadership positions in organisations have been forced to step aside and appoint men. Women are prohibited from registering or obtaining any form of license to operate NGOs, or being involved or employed in any capacity in NGOs or media organisations.
32. On 3 November 2022, Zarifa Yaqobi, a women human rights defender, along four of her colleagues were arbitrarily arrested and detained by Taliban. In January, the Taliban arrested Mortaza Behboodi, a French-Afghan journalist, after he arrived in Kabul for an assignment. Farhat Popalzai, founder of the Spontaneous Movement of Afghan Women, was arrested by Taliban, On 8 November 2022.
33. In March 2023, the Taliban arbitrarily arrested Matiullah Wesa, a well-known education rights activist.³³ A day after his arrest, the Taliban raided his home and confiscated personal belongings. In the same month, the Taliban arrested Rasul Abdi Parsi, a former Islamic studies scholar, for allegedly posting criticisms against the Taliban on social media. Up to this day, all three remain under the Taliban's illegal and unjust detention.
34. In February 2023, women's rights activist Parisa Mobarez, one of the founding members of the Takhar Women's Protest Movement, alongside her brother was arrested at her house in Takhar province. On the same day, women's rights activist, Nargis Sadat, who had been involved in organizing protests against Taliban policies was arrested in a checkpoint in Kabul and she was detained for two months.

c. Academic freedom and the curriculum

35. Before the Taliban takeover, academics, especially the critiques of the government, feared arrest and abuse by the government, while right to education have been restricted and challenged by violent conflicts as well as inter-ethnic discrimination in the distribution of education opportunities. However, after the takeover, Taliban has announced modification of education system. Accordingly, the textbooks should not include "images of living things; depictions of little girls and people doing sports, as well as anatomy images in biology textbooks."³⁴ Further, any mention of democracy, human rights in a positive sense, encouragement for peace, women's rights and education, will be prohibited in the curriculum. ³⁵ Taliban has converted the secular curriculum and schools into religious Madrassas, establishing more religious schools across the country.

³² Freedom House, "A needs assessment of Afghan human rights defenders", 2022-2023, <https://freedomhouse.org/sites/default/files/2023-07/AfghanHRDSReportJan2023edit.pdf>

³³ FORUM-ASIA, "[Statement] Afghanistan: Release human rights defenders unjustly detained by the Taliban in Afghanistan", 2023, <https://forum-asia.org/wp-content/uploads/2023/09/Statement-Afghanistan-Release-human-rights-defenders-unjustly-detained-by-the-Taliban-in-Afghanistan.pdf>

³⁴ The Diplomat, "What Does a Taliban School Curriculum Look Like?", 2022, <https://thediplomat.com/2022/12/what-does-a-taliban-school-curriculum-look-like/>

³⁵ Ibid.

Given Madrassas are centres for mainly religious teachings, with the Taliban's pressure and influence, this change in the education system can create detrimental impact to students' development, which may lead further to deterioration of space for free, critical thinking and academic freedom.

5. Recommendations:

General and cross-cutting recommendations

36. Establish an inclusive, representative government with full, equal and meaningful participation of all ethnic and religious communities, and women, in line with Constitution of the Republic of Afghanistan.
37. End immediately the continuing crime against humanity of gender persecution against women and girls in Afghanistan; and lift immediately all restrictions on women and girls including their right to education, employment, freedom of movement, expression, assembly and association.
38. Ensure the representation of people of Afghanistan especially women, members of ethnic and religious minorities, human rights defenders and members of the civil society organizations including those from exile, in decision making processes regarding the future of Afghanistan.

Institutional framework

39. Restore the judiciary, rule of law, legal system and enforcement mechanisms and other independent oversight institutions in line with international human rights standards as well as the Constitution of the Republic of Afghanistan.
40. Respect and abide by the national legal system and human rights mechanisms, in particular the 2004 Constitution and the 2009 Shitte Personal Law Status, and all international obligations of Afghanistan to uphold fundamental human rights and freedoms.

Religious and ethnic minorities and marginalized communities

41. Review the Constitution of Afghanistan in line with the country's international human rights obligations to ensure full recognition and protection of all human rights and freedoms, in particular the right to freedom of religion or belief, of all ethnic and religious communities in Afghanistan.
42. Preserve religious diversity and protect in accordance with international human rights law and standards all marginalised groups at risk, particularly the Shia Hazaras, Sikhs, Hindus, Sufis, as well as Tajiks, Uzbeks and Turkmen who are subjected to systematic discrimination and violence by Taliban and others.
43. Ensure protection, in law and in practice, of the members of LGBTIQ+ community and the exercise of their fundamental rights and freedoms in accordance with international human rights standards.

44. End immediately the systematic attacks against the Shia Hazaras, which bear hallmarks of genocide and crimes against humanity.
45. Ensure equitable delivery of humanitarian assistance, ensuring that aid and assistance reach all in need including marginalized communities, such as the Shia Hazaras.

Civic space – rights to freedoms of expression, peaceful assembly and association and human rights defenders

46. Lift immediately all restrictions on the fundamental rights of the people of Afghanistan, including their rights to freedom of religion or belief, freedom of expression, and peaceful assembly and association, academic freedoms, access to information and the internet.
47. Immediately release Zholia Parsi, Neda Parwani, Matiullah Wesa, Rasul Abdi Parsi, and Mortaza Behboodi and all other human rights defenders and civil society activists arbitrarily detained by the Taliban.
48. Lift unconditionally and immediately all restrictions on women and girls including their rights to education and employment, and freedom of expression, assembly and association.
49. Protect human rights defenders and civil society organisations, media and media workers in accordance with international human rights standards, remove all arbitrary restrictions on their work.
50. Provide practical protection measures for human rights defenders, members of marginalized groups, journalists and others at risk through flexible humanitarian visas and resettlement options; ensure they receive timely and effective assistance.

International human rights mechanisms

51. Support the establishment by the UN Human Rights Council of an international investigative and accountability mechanism to collect, preserve, and document evidence on all human rights violations in Afghanistan.
 52. Provide unfettered access to all parts of the country to the UN Special Rapporteur on Afghanistan, and all other relevant UN Special Procedure mandate holders.
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