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Statement on the issuance of Taliban criminal procedure code for courts.

Introduction

In recent weeks and in the presence of high-level UN official visit, Afghanistan's human rights and civil society community has been confronted with an extraordinary and repressive Taliban ordinance that purports to displace Afghanistan's penal framework and criminal procedure with a codification for "Taliban courts." The Afghanistan Human Rights Center (AHRC) condemns and rejects the newly signed and circulated "*Criminal Procedure Code for Courts*" and calls upon the United Nations and the international community to take urgent measures to prevent the Taliban from eroding and ultimately erasing Afghanistan's progress in the judiciary and the protection of human rights.

The AHRC does not view this instrument as a routine revision of judicial practice. It represents a dangerous repositioning, restructuring, and redefinition of criminal justice, affecting the substantive definition of crimes and offenses, the methods by which guilt is determined, the equal standing of persons before the law, and the legality, proportionality and range of punishments the system treats as lawful. The ordinance institutionalizes hierarchy and authorizes restrictions that foreseeably result in serious human rights violations. It is incompatible with the rule of law and constitutes a manifest breach of Afghanistan's binding obligations under international human rights law. In practical terms, it signals a return to legal darkness and a profound setback to a century of progress in codification and the incremental modernization of justice in Afghanistan.

Background:

Before August 2021, Afghanistan's criminal justice system despite serious implementation challenges, underwent piecemeal reform aimed at consolidating a modern, codified framework shaped by constitutionalism, statutory legality, and gradual harmonization with international norms. Justice-sector institutions and criminal statutes were regularly reviewed. As part of this trajectory, Afghanistan adopted laws on the structure, mandate, and duties of the courts, as well as the law governing the Attorney General Office (Loy Saranwali). It amended and approved the Criminal Procedure Law in 2014, approved a law against torture in 2016, the law on the elimination of all violence against women, and the Shia personal Status law in 2009 and adopted a new Penal Code in 2017. These instruments, while imperfect in practice, particularly in the context of political instability, insecurity, corruption, and capacity constraints, nonetheless contributed to improved legal coherence, a more predictable exercise of judicial power, and a more rights-oriented criminal policy.

Importantly, reforms sought to align criminal law and procedure with international standards. Afghanistan is party to all major international human rights covenants and a signatory of the ICC. Therefore, the justice framework reflected obligations relevant to fair trial and due process, strengthened prohibitions such as the criminalization of torture, and narrowed the scope of capital punishment to the most serious crimes. It also incorporated, applied, core international crimes and brought domestic criminal code into

closer conformity with international legal norms. It provided protection to victims, witnesses, children and women when they were the victims of a crime. There was a clear division between the role of prosecutors, defendants, judges, attorneys, hierarchy of the court system and a clear layout of criminal procedures conforming with most modern criminal procedures in the world.

That trajectory is now being reversed by the arbitrary practices of the Taliban's theocratic regime. Observers have documented the issuance of hundreds of decrees, directives, and *fatwas*—often overlapping, internally inconsistent, and incompatible with the principles of legality and equality. The situation is further aggravated by the lack of stable publication through a consistent, publicly accessible official gazette. As a result, it is difficult to maintain a comprehensive account of governing texts, to ascertain their normative hierarchy, or to evaluate their validity even within the Taliban's own asserted legal order.

Within the justice sector alone, an array of decrees and instructions, approximately twenty affecting courts, prosecution, and access to justice, has transformed court and adjudicatory institutions into mechanisms of command rather than independent tribunals. These measures have restricted access to justice, undermined legal certainty, and impaired the rights to equality before the law, due process, and a fair trial. Orders directing the "review" of the past twenty years of judicial practice, the purge of women and former judges, and dismantled the Attorney General's Office and replaced it by the Directorate of Overseeing of Implementation of the Amir's orders and decrees and have removed trained prosecutors, effectively barred women from judicial system, and concentrated authority in religious functionaries operating under Taliban control.

The new code: codified discrimination and punitive expansion

The newly issued code, presented as a "criminal procedure code for courts", intensifies these harms. It is the latest in a sequence of Taliban instruments concerning the judiciary and access to justice, and it amplifies the negative consequences of the Taliban's takeover of judicial institutions. The code consists of three sections, ten chapters, and 119 articles. Its provisions institutionalize discriminatory social classifications, revive inhumane punishment, expand capital and corporal punishments, and introduce censorship-type offenses. It also defines accused as a person not charged after proper investigation and proceedings of crime, but anyone who is testified against by one just and or two confidential witnesses before a judge for crimes mentioned in this code. This reflects a deliberate shift in both procedure and penal philosophy, with direct consequences for equality, legality, and fair trial guarantees.

In response, Dr. Sima Samar, Chair of the AHRC, stated:

"By issuing this decree, the Taliban raised several core legal problems that amount to the erosion of legality and predictability, which is a requirement that a criminal justice system be based on the rule of law, clearly define crimes and penalties, ensure public accessibility, and apply without arbitrariness."

The problem with Taliban orders are not only the content of the Taliban rules, but also the manner of law making: orders and instructions, secretive promulgation, limited accessibility, and reliance on discretionary enforcement."

Mohammad Farid Hamid, former Attorney General of Afghanistan, similarly observed:

"The code's provisions are arbitrary, a juxtaposition of ancient *fatwas* from different periods and sources, imposed on a modern judiciary. It stains the administration of justice in Afghanistan and produces grave consequences. Though the Taliban has already applied harsher measures than this for example the law of promotion of virtue and prevention of vice"

Mohammad Musa Mahmodi said: “The text is oversupplied with archaic, vague, and indeterminate terms that resist coherent definition within a contemporary legal system. Although the code is incompatible as a whole with rule of law principles and international human rights standards, several provisions warrant particular attention because they expressly codify inequality, hint into slave and master, authorize discretion outside judicial control, and criminalize expression and belief.”

Furthermore, it promote torture and is void of provision for rights of person or people accused of crimes including access to defense lawyer, trial procedure, witness protection, victim’s role in prosecution, and other issues related to criminal procedures. It also does not provide to elaborate on investigation, evidence, and procedures during trials. The code is imbalanced and disproportioned to the degree that the crime of severe violence against women if she can show a broken bone, injury or bruise, get maximum 15 days of imprisonment (article 32) and casting an evil eye of is punished for one year imprisonment at home. (Article 67) or for game of fighting quails five months of imprisonment.

The AHRC is therefore concerned about the following in the code.

The first book divides the provisions into three parts: (a) principles governing the imposition of criminal sanctions; (b) the stratification and variation of punishment; and (c) the categories of persons subject to punishment and the issuance of verdicts. From the outset, the code reframes punishment not as a consequence imposed under law through independent adjudication, but as a discretionary instrument controlled by the “leader” and, in some instances, delegated to private actors.

Article 4 addresses *hudud* and *ta’zir* and asserts that *hudud* punishments are “determined and well known,” while *ta’zir* may be subject to the discretion of the leader. It further differentiates between Muslims and non-Muslims in the application of *ta’zir*, describing it as “punishment” for the former and “retribution” for the latter—an explicit status-based distinction that repudiates equality before the law. The article also characterizes the application of *hudud* as a prerogative of the leader and suggests that *ta’zir* punishments may be imposed by a husband and by a “master” (slave owner). It goes further by authorizing “every Muslim” who witnesses a “sin” to impose *ta’zir* as part of the prevention of vice, while prohibiting them from imposing *hudud*. The code additionally permits detention where confidential testimony alleges a *hudud*-related “sin,” allowing imprisonment until testimony is collected and “finalized.” These provisions normalize preventive detention without meaningful safeguards and undermine the presumption of innocence by enabling incarceration on the basis of secret testimony and undefined evidentiary standards.

Related provisions reinforce the discretionary and negotiable character of punishment. They contemplate that the leader may suspend, withdraw, or sustain punishment, and that persons may seek “leverage” from the leader to secure the dropping of *ta’zir*. The text also suggests that *qisas* and *ta’zir* may be “inherited” by heirs and that a representative may be appointed in *ta’zir* matters. Even where the code claims that *hudud* applies based on the offense rather than the perpetrator’s characteristics, it expressly provides that *ta’zir* will consider both the “nature of the crime” and the “characteristics” of the accused, inviting differential treatment grounded in social status rather than law.

Article 9 provides perhaps the clearest codification of institutional discrimination. It classifies persons subject to *ta’zir* and prescribes distinct procedural and punitive treatment according to social rank: “mullahs” and high-ranking officials are merely informed of and giving advice about wrongdoing; “elites” and businesspersons are summoned and questioned; ordinary persons are prosecuted and imprisoned; and those characterized as the “low class” are interrogated, prosecuted, tried, and subjected to corporal punishment of up to 39 lashes. This is not simply unequal sentencing; it is stratified criminal process. It

embeds caste-like hierarchy into criminal adjudication and violates the principle that all persons are equal before courts and tribunals and entitled to equal protection of the law without discrimination.

The code also expands capital punishment and severe penalties for offenses defined in ideological and theological terms. Article 14 contemplates execution for “heresy,” for defending views deemed contrary to “Islamic values and beliefs,” and for inviting persons toward “un-Islamic belief”, these categories are so broad that they can be weaponized against religious minorities, including Shi’a communities, as well as Muslim dissenters and reformers. The same article provides for execution in cases of repeated adultery, sodomy, and other “immoral” conduct deemed repetitive, as well as for repeated burglary. Article 16 likewise contemplates execution punishment for those who disrespect religious figures. These provisions breach the legality requirement of precision and foreseeability and criminalize belief and expression in ways incompatible with international human rights standards.

Article 15 is particularly alarming for its explicit recognition of slavery as a legal category within the penal framework. It states that where *had* punishment is dropped, *ta’zir* may be imposed on any accused person “whether free or slave,” male or female, Muslim or non-believer. The inclusion of “slave” as a recognized legal status reflects institutional acceptance of slavery’s legal personality and is irreconcilable with peremptory norms prohibiting slavery and servitude. This was also referenced in Article four, when it cites that Master and Husband can apply *ta’zir*

The repeated reference to slave in a legal document issued by the Taliban is an alarming sound for security in Afghanistan and the world. Likeminded groups around the world may not be shy of reviving the practice in territories under their control.

The code further criminalizes mockery, satire and criticism of religious belief, even days, and introduces offenses that function as censorship provisions. It imposes harsh punishment for satirizing, mocking or joking about religious values or religious rulings, including on days. It also criminalizes criticism of the government and the Taliban; insulting the Emir is punishable by up to 90 lashes and two years’ imprisonment. These provisions directly target protected speech and freedom of expression, converting disagreement into criminal liability.

Additional provisions expand criminal liability for association and sectarian affiliation. Articles 24–26 provide for punishment of individuals aware of meetings of anti-Taliban groups, as well as those who leave the Hanafi school for other sects. Article 27 prohibits inviting others to different sects of Islam or disseminating awareness of other sects and their rituals, punishable by up to ten years’ imprisonment. In effect, the code criminalizes religious choice, peaceful preaches of belief, and communal practice and procession and other conduct protected by the rights to freedom of religion or belief, expression, and association.

The code also intrudes into family life and entrenches gendered coercion. It provides harsh punishment where a woman goes to her father’s or relatives’ home and remains there without permitting her husband to reach her. In cases of severe domestic violence (a broken bone or severe bruise), the code limits punishment to as little as 15 days’ detention if and where the abuse is proved before a judge—an approach that trivializes grievous harm and fails to provide effective protection or remedy. It further provides that if a woman converts to another religion or leaves Islam, she may be sentenced to life imprisonment and flogged every three days for failure to “repent,” institutionalizing coercion of conscience through repeated corporal punishment and torture. According to article 30 children can be beaten up and they are not allowed to seek justice until their bones are broken and teachers and instructors would only be fired from the job. This regulations also panelize talking to women in your neighborhood and asking how are you?

The code permits amnesty or sentence commutation for murder, potentially reducing punishment to one year of imprisonment, undermining the duty to investigate and prosecute grave crimes and the rights of victims to effective remedy. Article 75 provides for an exceptionally lenient sentence for bribery and intermediaries in bribery—up to one year—despite corruption’s systemic impact on the administration of justice and public trust. Such disparities reinforce the conclusion that the code is structured less to administer justice than to consolidate power, immunize favored actors, and intensify coercion against disfavored groups.

Conclusion

Taken as a whole, the code is not a lawful, rights compliant codification of criminal procedure. It formalizes discrimination, expands discretionary punishment, hint to slavery, reduce women to subject of punishment at home and criminalizes belief and expression through vague, ideologically defined offenses. It collapses basic guarantees of due process and fair trial, repudiates equality before courts, and authorizes corporal and capital punishments in ways that facilitate systemic human rights violations. The AHRC reiterates its rejection of this code and urges the United Nations and the international community to respond with urgency and clarity, including by refusing to normalize instruments that entrench inequality, weaken legal certainty and justice, and dismantle the foundations of lawful adjudication.

We also would like to call on Afghanistan people and civil society to raise awareness and mobilize their resources against the Taliban arbitrary and oppressive policies and control.

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