

Failures of Justice: Lack of Accountability for NATO Forces and Other Insurgent Groups in Afghanistan.

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Abstract

This study critically examines the absence of accountability mechanisms for NATO forces and other insurgent groups during Afghanistan's two-decade conflict, with particular focus on the disproportionate impact on civilian casualties. Using both qualitative and quantitative methods, it analyses demographic data on civilian casualties and records of U.S. and NATO airstrikes, drawing on reports from international human rights organizations such as UNAMA and Afghan authorities. The findings reveal that, despite coordinated military strategies, U.S. and NATO air operations frequently caused civilian deaths, mass displacement, and long-term socioeconomic disruption. Outcomes varied across troop-contributing nations, reflecting cultural and strategic differences that led to inconsistent application of multinational directives. Demographic analysis further shows that rural provinces bore the greatest burden, with vulnerability and limited access to justice exacerbating the suffering of affected populations. The results suggest that the U.S. invasion post-9/11, rather than improving security, exacerbated Afghanistan's humanitarian crisis and eroded confidence in global justice mechanisms. The conflict has left enduring consequences for regional stability and international security. The study concludes that accountability for both state and non-state actors remains inadequate and calls for stronger international legal frameworks and culturally informed strategies to prevent similar humanitarian crises.

Keywords: Afghanistan, NATO, Human Rights, Accountability, Civilian Casualties

Introduction

The Afghanistan War, one of the longest and most complex wars in modern history, occurred from 2001 to 2021. It went through several phases, including the first American-led invasion in 2001, the establishment of a transitional government led by Hamid Karzai, subsequent democratic governments, NATO's deployment to conduct counterinsurgency and stabilization operations, and further developments. The increase, subsequent withdrawal of foreign forces, the progressive transfer of security responsibilities to Afghan national security forces, and, lastly, the collapse of the Afghan government in August 2021.¹

During the 9/11 attacks in the USA, which caused the deaths of thousands of civilians, the US administration and NATO countries declared a global war on terror. Initially, the US demanded that the Taliban hand over Osama bin Laden.² When the Taliban refused this demand, an operation named Operation Enduring Freedom began, which was to achieve the complete suppression of terrorist networks and change the Regime of the Taliban and their supporters 7th October 2001.³ Subsequently, the Taliban government was defeated by the US and, at the same time, internal allies in Afghanistan. A new interim government was established according to the Bonn

¹ Zachary Laub and Lindsay Maizland, *Council on Foreign Relations. (Timeline: The U.S. War in Afghanistan, 2022).*

² *The George W. Bush Presidential Library, Address to the Nation on the Terrorist Attacks (20 September 2001)*

³ *National Security Archive, Afghanistan 20/20: The 20-Year War in 20 Documents (2021)*

Agreement, enabling foreign reconstruction interventions and international state-building efforts.⁴ By the end of 2001, ISAF had established a pool of 5,000 civilian instructors to provide military literacy courses throughout Afghanistan and had joined the Kabul Capital Command for security assistance.⁵ At first, the NATO-led force was centred on aiding and stabilizing the newly formed Afghan government. But the mission evolved further into counterinsurgency as the Taliban reasserted themselves and other insurgent groups took hold of territory, especially in the south and east.⁶

The Afghan state, although costly and well-endowed with militias, had been hollowed out by endemic corruption, splintered governance, and reliance on foreign aid and security. NATO concluded its combat operations in 2014 and then launched the Resolute Support Mission, during which NATO forces train and advise only the ANDSF.⁷ But the reduction in foreign forces was marked by a surge in Taliban attacks, casualties among civilians, and the emergence of other terrorist groups, including IS-KP.⁸ The succeeding U.S.-Taliban talks led to the Doha Agreement of February 2020, which outlined a process for withdrawing U.S. and NATO forces in steps as the Taliban committed not to permit any insurgent groups to operate in areas under their control and also agreed to enter into an intra-Afghan dialogue.⁹ Still, the accord did not result in a durable political settlement. Taliban forces quickly took control as foreign troops pulled out. On 15th August, when Kabul fell, they reinstated the Taliban for the second time.¹⁰

The two decades of war had brought immense social and humanitarian costs. Millions of Afghans were internally displaced or went into exile; civilian casualties reached more than 46,000, as per independent estimates; and infrastructure essential for health care, education, and earning a living was methodically destroyed.¹¹ Such protracted instability had corroded state capacity and driven people deeper into poverty, causing trauma and disempowerment across generations of Afghans. This context underscores the importance of investigating Afghanistan's human rights record, not only as a national issue, but as a reflection of international failures in holding parties accountable during conflicts, protecting civilians, and delivering justice after war.¹²

Protection of Civilians in Armed Conflicts and International Humanitarian Law (IHL)

International Humanitarian Law (IHL), also known as the law of armed conflict or the law of war, is the primary legal framework governing the conduct of civilians in times of armed conflict. The four Geneva Conventions of 1949 were supplemented by three Additional Protocols in 1977, which outline the most important rules governing the conduct of hostilities in both international and non-international armed conflicts.¹³ These principles—distinction, proportionality, and necessity—impose binding obligations on all parties to distinguish between combatants and non-combatant civilians. Attacks must not be directed at civilians or civilian objects.¹⁴

⁴ *United Nations, Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement) (5 December 2001).*

⁵ *North Atlantic Treaty Organization (NATO), International Security Assistance Force (ISAF) Key Facts and Figures (2014).*

⁶ *Amnesty International, Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan (2014).*

⁷ *NATO, Resolute Support Mission: Key Facts and Figures (2015).*

⁸ *United Nations Assistance Mission in Afghanistan (UNAMA), Protection of Civilians in Armed Conflict: Annual Report 2020.*

⁹ *U.S. Department of State, Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan and the United States of America (Doha, 29 February 2020).*

¹⁰ *Congressional Research Service, Afghanistan: Background and U.S. Policy in Brief (2021).*

¹¹ *Brown University, Costs of War Project: Human and Budgetary Costs of the Afghanistan War, 2001–2021 (2021).*

¹² *Centre for Civilians in Conflict (CIVIC), Civilian Harm Tracking in Afghanistan: Lessons for Future Operations (2020).*

¹³ *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31; Geneva Conventions (II–IV) and Additional Protocols I and II (1977).*

¹⁴ *Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol I (ICRC/Cambridge University Press 2005).*

These norms were persistently challenged in the Afghan scene. The use of force, despite initially being characterized as an international armed conflict after the U.S. invasion in 2001, had progressively transformed into a non-international armed conflict with diverse parties to the armed conflict directly relevant for human rights and IHL considerations (ANDSF), U.S. and NATO forces, Taliban insurgents, as well as other non-state armed groups.¹⁵ Under Common Article 3 of the Geneva Conventions and Additional Protocol II, all parties must provide humane treatment to civilians and those who have laid down their arms.¹⁶ Patterns of Civilian Harm and Figures from UNAMA since it started working in Afghanistan, and other independent organizations, speak volumes about the devastating consequences for civilians. Between 2009 and 2021, UNAMA recorded more than 46,000 deaths and more than 65,000 injuries.¹⁷

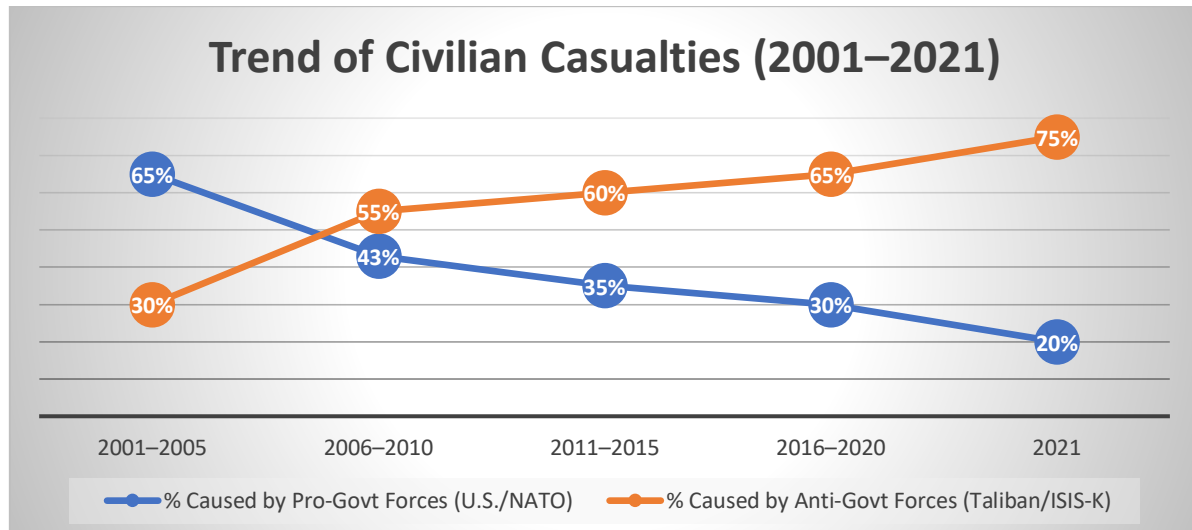
Table 1: Civilian Casualties in Afghanistan 2001–2021

Year	Total Civilian Casualties	Killed	Injured	Caused by Pro-Govt Forces (U.S./NATO)	Caused by Anti-Govt Forces Taliban/ISIS-K
2001–2005	10,000	3,400	6,600	65%	30%
2006–2010	19,000	6,700	12,300	43%	55%
2011–2015	26,000	8,400	17,600	35%	60%
2016–2020	18,500	6,200	12,300	30%	65%
2021	4,500	1,600	2,900	20%	75%
2001–2021	78,000	26,300	51,700		

Source: Compiled from UNAMA Annual Protection of Civilians reports (2011–2021), HRW datasets, and the Ministry of Public Health estimate.

Although anti-government groups, including the Taliban and Islamic State-Khorasan Province, were responsible for most casualties in subsequent years, international forces and Afghan government forces also caused them, particularly through airstrikes and night raids.

Figure 1: Trend of Civilian Casualties 2001–2021



Source: Compiled from UNAMA Annual Protection of Civilians reports (2011–2021), HRW datasets, and Ministry of Public Health estimates.

Frequently, in the early years of the U.S.-led invasion, high-level bombardments failed to distinguish between civilians and soldiers. Events like the July 2002 bombing of a wedding party in Uruzgan and the October 2015

¹⁵ International Committee of the Red Cross (ICRC), *Afghanistan: Classification of Conflict and Applicable Law* (2018).

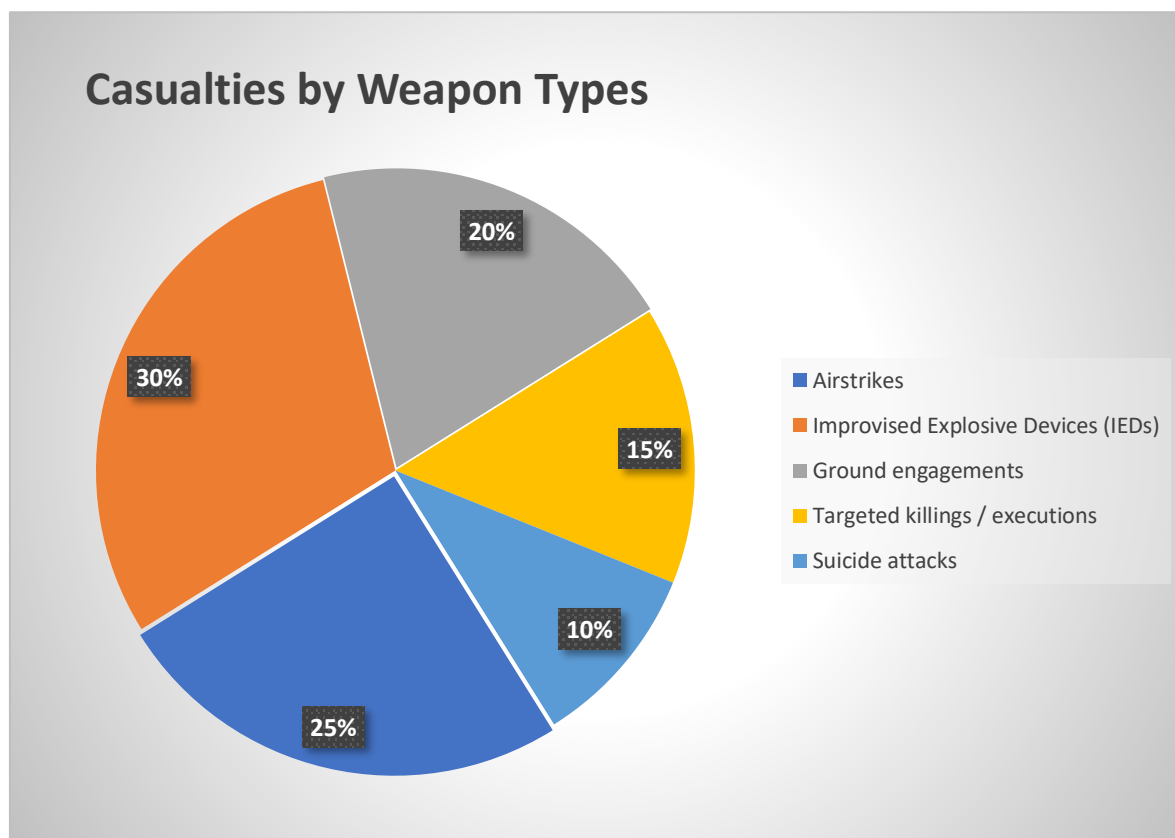
¹⁶ Common Article 3, *Geneva Conventions* (1949); *Additional Protocol II* (1977).

¹⁷ UNAMA, *Protection of Civilians in Armed Conflict: Annual Report 2021* (Kabul, February 2022).

bombing of a hospital in Kunduz, which included a medical aid trauma center, raised grave questions about whether parties to a conflict adhered to the proportionality and protective requirements of IHL.¹⁸

The Kunduz incident alone resulted in 42 civilian fatalities and was later described by the UN as a possible war crime.¹⁹ Another persistent violation of IHL was the arbitrary use of Improvised Explosive Devices (IEDs) by armed groups. Most of these devices, which frequently exploded at markets, mosques, and checkpoints, destroyed countless residences as well as public spaces and typically killed thousands of civilians annually.²⁰

Figure 2: Casualties by Weapon Types



Source: UNAMA Provincial Civilian Casualty Database, 2021

The Taliban's attack on civilian institutions, such as schools, hospitals, and election venues, provided additional evidence of degraded humanitarian norms.²¹ Civilian casualties were not uniformly distributed across Afghanistan. The casualties were disproportionately experienced in rural provinces, including Helmand, Kandahar, Kunduz, Nangarhar, and Ghazni, where insurgent presence was significant and military operations were intensive.²² Conditions in these regions include low literacy rates, insufficient infrastructure, and restricted access to justice, which exacerbate the vulnerability of the impacted populations. The effects on the nation's

¹⁸ Human Rights Watch, *The Air War in Afghanistan: Civilian Casualties and Accountability* (2019).

¹⁹ UN Security Council, *Report of the Secretary-General on the Situation in Afghanistan* (S/2015/942, 10 December 2015).

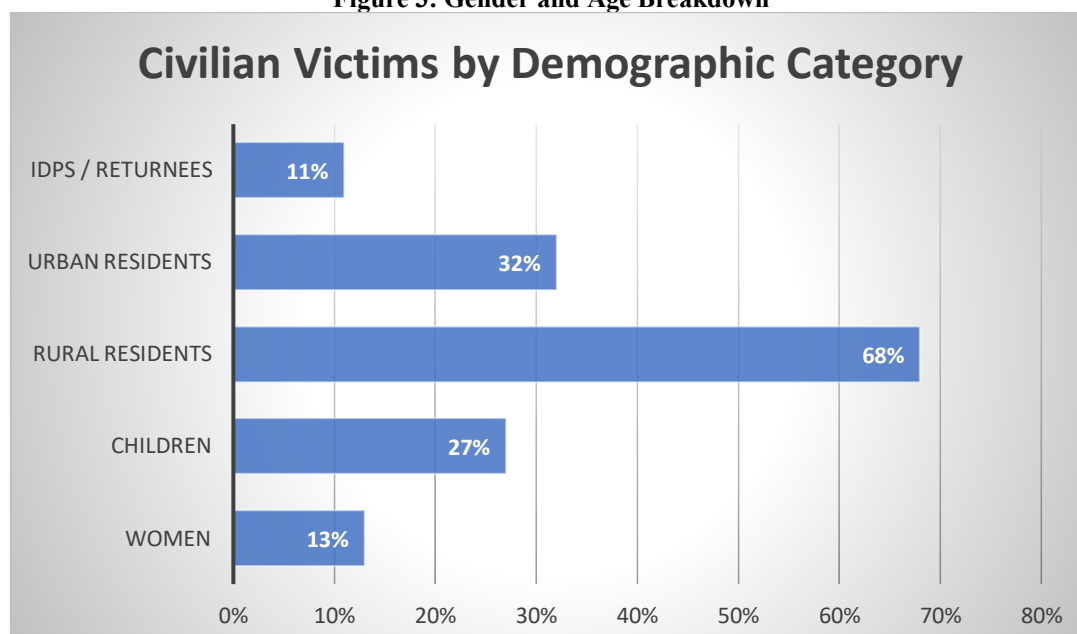
²⁰ UNAMA (n 5) 10–12.

²¹ Amnesty International, *Their Lives on the Line: The Taliban's Targeting of Civilians* (2019).

²² Abeerullah Aabede, V. Vijay Lakshmi & Nimali Thakshila Withanage, *From Ballot to Battlefield and the Erosion of Democratic Governance during the War on Terror in Afghanistan*. (*Journal of Educational Administration: Theory and Practice*, Vol. 30, No. 5, pp. 2480–2493, 2024).

agricultural land and irrigation infrastructure have significantly compromised rural livelihoods, forcing tens of thousands into displacement or dependence on humanitarian assistance.²³

Figure 3: Gender and Age Breakdown



Source: Compiled from UNAMA Annual Protection of Civilians reports (2011–2021), HRW datasets, and Ministry of Public Health estimates.

The fundamental weaknesses of Afghanistan's governance, characterized by corruption, ethnic bias, inadequate civilian compensation, and a pervasive sense of injustice, became predominant. The absence of practical options for restitution or justice in cases of wrongful killing or property damage promotes significant animosity and facilitates the recruitment of insurgents.²⁴ Amnesty International's *Left in the Dark* report 2014 found that NATO's investigations into civilian harm were inefficient.²⁵

2.1 Accountability Deficiencies and the Ambiguity of Conflict

Although NATO and U.S. forces made public pledges to reduce civilian casualties, accountability mechanisms proved ineffective. Probes into airstrike incidents were largely internal, and there was little transparency or punishment for those involved.²⁶ The intricacies of joint Afghan-international operations, combined with two sets of rules of engagement, also muddled accountability. NAMA has regularly called on all parties to conduct independent, impartial investigations that adhere to international standards regarding incidents resulting in civilian casualties.²⁷

Table 2: Civilian Casualties by Province Cumulative 2001–2021

Province	Killed	Injured	Total Casualties	Primary Cause	Notable Events
Helmand	5,200	7,100	12,300	Airstrikes, IEDs	Operation Moshtarak 2010
Kandahar	4,800	5,900	10,700	Suicide Bombings	Urban market attacks
Nangarhar	3,400	4,600	8,000	Drone Strikes	ISIS-K presence

²³ World Bank, *Afghanistan: Rural Development and Livelihoods Report* (2020).

²⁴ Centre for Civilians in Conflict (CIVIC), *Civilian Harm Tracking in Afghanistan: Lessons for Future Operations* (2020).

²⁵ Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan* (2014).

²⁶ Human Rights Watch (n 7) 17–19.

²⁷ UNAMA (n 5) 20.

Kabul	3,100	4,200	7,300	Complex Attacks	Embassy bombing 2017
Kunduz	1,900	2,700	4,600	Airstrikes	MSF Hospital bombing 2015
Others	7,600	10,500	18,100	Mixed	

Source: UNAMA Provincial Civilian Casualty Database, 2021

Nevertheless, the military responded with a counterinsurgency and force protection focus, where suppression often took precedence over intervention. These errors were attributed to the fog of war, which was used to cover up mistakes, and an environment of impunity.²⁸ These Afghan civilians, who had no legal assistance or access to any independent courts, were effectively denied the right to redress under Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR).²⁹

The long-run consequences for civilian well-being have been devastating. By 2021, approximately 17.5 million Afghans required humanitarian assistance, largely due to conflict-induced factors, including displacement, food insecurity, and damage to essential infrastructure, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA).³⁰ The civilian protection failures went beyond immediate casualties to include psychological trauma, interrupted schooling, and collapse of local governing systems. Generational trauma had been created by the long-term exposure of children to violence, and widowed women and orphans suffered from extreme economic and social marginalization and loss of Trust in National and International Institutions. The decline in trust in national and international institutions has further threatened peacebuilding, underscoring that civilian protection is not only a legal imperative but also crucial to sustainable post-conflict recovery and development.³¹

Table 3: Civilian Victims by Demographic Category 2009–2021

Category	Percentage of Total	Key Findings
Women	13%	High vulnerability in air and IED attacks near residential zones
Children	27%	Often victims of unexploded ordnance & school zone attacks
Rural Residents	68%	Limited access to medical care; weak legal recourse
Urban Residents	32%	Suffered during high-profile insurgent attacks
IDPs/Returnees	11%	Affected by displacement & livelihood loss

Source: UNAMA 2020; HRW Afghanistan: The Toll on Children, 2019

Women's Rights and Social Transformation

Before 2001, Afghan women experienced nearly complete marginalization from public life during Taliban governance from 1996 to 2001. Women were deprived of education, work, healthcare, and freedom of movement, constituting a clear violation of Afghanistan's international human rights commitments.³² including under the 1951 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Under the Taliban, women were subjected to stringent gender restrictions based on the Taliban's interpretation of Sharia, demanding hiding and veiling at all times, and prohibiting them from leaving their residences without a male relative

²⁸ Mark Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* (Transaction Publishers 2002).

²⁹ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2(3).

³⁰ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Afghanistan Humanitarian Response Plan 2021* (2021).

³¹ UNICEF, *The Impact of Armed Conflict on Children in Afghanistan* (2020).

³² *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

(mahram).³³ Violations were subject to public flogging or execution by the “Department for the Promotion of Virtue and Prevention of Vice.”³⁴

The restriction of women’s rights during the first period of Taliban rule was about more than just gender; it was an undermining of social capital. Before 1996, women made up a large proportion of Afghanistan’s teachers, health workers, and administrators; their absence had paralyzed public services.³⁵ The consequence was that women’s participation declined, and this collapse damaged education systems and health care facilities in such a way as to resound even post-2001 gender inequality.³⁶ The Taliban regime collapsed in late 2001, and the consequent transition under the Bonn Agreement entered a new chapter for women’s rights in Afghanistan. The 2004 Constitution served as a crucial legal benchmark by formally recognizing gender equality and affirming the state’s obligation to protect women’s rights. Article 22 of the Constitution stipulates that discrimination and distinction between the citizens of Afghanistan are prohibited. Afghan citizens are equal before the law in terms of rights and obligations, irrespective of colour, race, rank, or religion.³⁷ Afghanistan also ratified CEDAW without reservation, strengthening its international commitment to gender equality.³⁸ Implement these commitments as policy. The Ministry of Women’s Affairs (MOWA) was founded in 2002 with the mandate to mainstream gender at all levels of governance, and the Afghan Independent Human Rights Commission (AIHRC) started monitoring violations and promoting women’s roles.³⁹

Supported by international donors, the National Action Plan for the Women of Afghanistan (NAPWA) and the Afghanistan National Development Strategy (ANDS) made gender equality a cross-cutting priority.⁴⁰ Progress was symbolized by education and political participation. Female school enrolment increased from less than 10,000 students in 2001 to more than 3.5 million by 2018, accounting for approximately 39% of the total enrolment.⁴¹ Women joined the civil service, the judiciary, and parliament, with 27% of the National Assembly being female by 2018, one of the highest rates in South Asia. These gains result from women’s agency, even if in an unstable and externally conditioned situation.⁴²

Continuous Challenges and Rural and Urban Difference

This progress in women’s rights was far from perfect and limited to urban areas such as Kabul, Herat, and Mazar-i-Sharif. In the rural Afghanised context, in which nearly 75% of the population lives under deep patriarchal traditions, with low institutional outreach and insecurity looming large, it wasn’t very easy for women to take economic activity as a norm.⁴³ In these areas, women still experienced early forced marriage, were denied inheritance rights, and had no voice in local decision-making.⁴⁴ Tribal justice mechanisms (jirgas and shuras) frequently legitimized discriminatory practices, overriding statutory guarantees of equality.⁴⁵

International aid efforts occasionally adopted a flimsy “empowerment” approach that overlooked the cultural contexts of recipients back home. Given this, donor-funded activities focused on measurable goals (literacy rates, numbers of trainees in vocational training) rather than structural change.⁴⁶ This led to what feminists call islands of emancipation, isolated pockets of literate urban women cut off from society at large. Security challenges were also a critical barrier. Since 2006, the resurgence of a Taliban uprising and targeted assassinations of female police officers, judges, and journalists have brought back an atmosphere of fear.⁴⁷ Human Rights Watch recorded many

³³ Human Rights Watch, *The Taliban’s War on Women* (2001).

³⁴ Amnesty International, *Afghanistan: Women under the Taliban* (1998).

³⁵ Sima Samar, *Human Rights and Women’s Education in Afghanistan* (AIHRC Report, 2004).

³⁶ UNDP, *Afghanistan Human Development Report 2007: Bridging Modernity and Tradition* (2007).

³⁷ *Constitution of the Islamic Republic of Afghanistan* (2004).

³⁸ *United Nations Treaty Collection, Status of CEDAW: Afghanistan* (UNTC, 2003).

³⁹ AIHRC, *Annual Report 2005: Human Rights in Afghanistan* (2005).

⁴⁰ *Government of Afghanistan, National Action Plan for the Women of Afghanistan (NAPWA) (2008–2018)*.

⁴¹ UNICEF, *Education under Fire: The State of Girls’ Education in Afghanistan* (2021).

⁴² *Inter-Parliamentary Union (IPU), Women in National Parliaments: Afghanistan Profile* (2018).

⁴³ World Bank, *Afghanistan Gender Equality Profile* (2020).

⁴⁴ Oxfam, *A Place at the Table: Afghan Women’s Struggle for Peace and Equality* (2014).

⁴⁵ *UN Women, Women, Peace and Security in Afghanistan* (2019).

⁴⁶ Chandra Talpade Mohanty, ‘Under Western Eyes Revisited: Feminist Solidarity through Anti-capitalist Struggles’ (2003).

⁴⁷ UNAMA, *Afghanistan: Mid-Year Report on Protection of Civilians in Armed Conflict* (2019).

instances of intimidation and violence against women engaged in politics or activism, a reflection of the ongoing militarization of gender repression.⁴⁸

3.2 The United States' Withdrawal and the Loss of Achievements in 2021

The U.S.–Taliban Doha Agreement 2020 and the subsequent NATO troop withdrawal in 2021 resulted in a sudden power shift, undoing two decades of momentum for gender. After the Taliban seized power in August 2021, edicts were reissued that limited women's education and employment, as well as their movement.⁴⁹ The Ministry of Women's Affairs was replaced by the Ministry for the Promotion of Virtue and Prevention of Vice, which reintroduced a lot of the same 90s policies.⁵⁰ Girls were prohibited from secondary and higher education nationwide by December 2022.⁵¹ Women were also banned from working in NGOs and subsequently in United Nations offices in 2023, leading to the disappearance of women from public life.⁵² Specifically, these measures amount to the systemic breach of Articles 10 and 11 of CEDAW on equal access to education and employment.⁵³ 2023 as gender apartheid, a phrase that refers to an institutionalized system of segregation and oppression based on gender.⁵⁴

The Taliban's excuse that these are temporary restrictions until a new system of girls' enrolment at school is put in place has no standing either in domestic or international law.⁵⁵ The Constitution of 2004 refers to Afghanistan's 2004 constitution as the last national legal instrument; its gender provisions are suspended by de facto authorities, who do not enjoy international recognition.⁵⁶ From the vantage point of international law and politics, Afghanistan since 2001 illustrates both the potential and limits of formal equality without substantive empowerment. Although legal reforms were designed to conform with international human rights instruments, implementation relied squarely on foreign aid and security assurances.⁵⁷

Institutionally fragile under external support, patriarchal resurgence revealed the hollowness of reform. The feminist critique of post-conflict reconstruction exposes how external interventions often instrumentalize women's rights to advance geopolitical authority, a phenomenon known as "strategic essentialism. Afghan women emerge as victims to be saved, which was used to justify military intervention without addressing Indigenous feminist movements and local agency.⁵⁸ Additionally, gender-based violence was virtually ignored by transitional justice mechanisms. The Action Plan for Peace, Justice and Reconciliation 2005 devoted very little attention to the role of women in general or reparations for wartime sexual violence.⁵⁹ Furthermore, gendered transitional justice tendencies in international accountability.⁶⁰

4. Detention and Torture: The Prohibition of Torture Under International Law

The total ban on torture and ill-treatment is a fundamental principle of international law. It is mentioned in Article 5 of the Universal Declaration of Human Rights (UDHR), Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or

⁴⁸ Human Rights Watch, *You Have No Right to Complain: Education, Social Restrictions, and Justice in Taliban-Held Afghanistan* (2020).

⁴⁹ U.S. Department of State, *Agreement for Bringing Peace to Afghanistan (Doha Agreement)* (29 February 2020).

⁵⁰ UN Assistance Mission in Afghanistan, *Report on Human Rights 2021–2022* (2022).

⁵¹ BBC, 'Taliban Ban Women from University Education in Afghanistan' (21 December 2022).

⁵² United Nations, *Statement by the UN Special Rapporteur on Human Rights in Afghanistan* (April 2023).

⁵³ CEDAW (n 1) arts 10–11.

⁵⁴ UN General Assembly, *Report of the Special Rapporteur on Human Rights in Afghanistan*, A/78/216 (2023).

⁵⁵ Amnesty International, *Death in Slow Motion: Women and the Taliban's Return to Power* (2022).

⁵⁶ Constitution of the Islamic Republic of Afghanistan (n 6) arts 22–44.

⁵⁷ Nadji Al-Ali and Nicola Pratt, *What Kind of Liberation? Women and the Occupation of Iraq* (University of California Press, 2009).

⁵⁸ Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (Macmillan, 1988).

⁵⁹ Government of Afghanistan, *Action Plan for Peace, Justice and Reconciliation* (2005).

⁶⁰ Fionnuala Nattolin, 'Transitional Justice and Gendered War Crimes'. (*International Journal of Transitional Justice*, 2012).

Degrading Treatment or Punishment.⁶¹ As a State Party to these obligations, Afghanistan itself and all forces on its territory are bound. Moreover, Common Article 3 of the Geneva Conventions and Additional Protocol II expressly prohibit violence to life and person, which necessarily includes torture, in international and non-international armed conflicts.⁶² Both of these are express violations of the laws in force at the time by which Afghanistan was bound, but a ban on abuse was unenforced. The protection that human rights law seeks to afford to children caught up in war is extensive; no caveat or exception is provided for situations of armed conflict. Afghan and international actors both conducted practices that constitute torture or ill-treatment, often under the excuse of national security and counterterrorism.⁶³

After the U.S.-led invasion in 2001, the detention apparatus in Afghanistan became a corollary of the Global War on Terror. The Bagram Air Base Detention Facility, the central air base of the United States in Parwan province, north of Kabul, is about 60km (37 miles) away from the capital, where it served as a central prison for terrorism suspects captured in Afghanistan and elsewhere during the U.S.-led war post-9/11.⁶⁴ Human Rights Watch and Amnesty International have documented widespread abuse within Bagram, such as beatings, forcing detainees to assume stress positions for long periods of time, sleep deprivation, prolonged exposure to cold or hot temperatures, and sexual abuse.⁶⁵

The December 2002 deaths of the detainees Dilawar and Habibullah, both Afghan civilians who died after being beaten by U.S. interrogators, are a symbol of that impunity.⁶⁶ U.S. military investigations admitted to “homicide” but led only to minimal disciplinary response, highlighting the absence of genuine accountability.⁶⁷ Additionally, the CIA was holding low-value detainees at its black sites in Afghanistan. Conditions that constituted torture included prolonged forced standing of up to 17 days, water dousing, mock executions, and confinement in coffin-size boxes. 2014 Report of the U.S. Senate Intelligence Committee. Some developed countries still practice corporal punishment, such as lashing or amputations.⁶⁸ These techniques were contrary to both the CAT and the Geneva Conventions, infringing the absolute nature of prohibitions against torture even in time of war or emergency. While the United States has insisted that its conduct was enhanced interrogation techniques, no such category exists in international law: any act of deliberately causing severe physical or mental suffering for purposes of extracting information is considered to be torture.⁶⁹

4.1 Afghan Security Forces and Internal Violations

The National Directorate of Security (NDS) and the Afghan National Police were also consistently identified as perpetrators who abuse detainees. UNAMA’s monitoring, 2011–2019, has indicated that approximately one-third of conflict-related detainees in the custody of the Government of Afghanistan reported being tortured or otherwise ill-treated during interrogation. Torture techniques often reported were beating with cables or pipes, hanging detainees from ceilings, electric shocks, and the use of plastic bags to suffocate victims.⁷⁰

The purpose was to obtain forced confessions, not to prosecute. It violated ICCPR Article 14(3)(g), which protects against being made to confess or testify against oneself.⁷¹ However, implementation was poor despite numerous pledges by Afghan authorities to end such detention practices, including through the National Plan for the

⁶¹ *Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) art 5; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 arts 2 and 16.*

⁶² *Common Article 3, Geneva Conventions (1949); Additional Protocol II (1977).*

⁶³ *UNAMA, Treatment of Conflict-Related Detainees in Afghan Custody (2019) 2.*

⁶⁴ *Human Rights Watch, Enduring Freedom: Abuses by U.S. Forces in Afghanistan (2004) 5.*

⁶⁵ *Amnesty International, USA: Human Dignity Denied – Torture and Accountability in the ‘War on Terror’ (2012).*

⁶⁶ *Tim Golden, ‘In U.S. Report, Brutal Details of 2 Afghan Inmates’ Deaths’. (New York Times 20 May 2005).*

⁶⁷ *Human Rights Watch (n 4) 13.*

⁶⁸ *Ibid. 103–115. Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program (2014)*

⁶⁹ *Manfred Nowak, UN Special Rapporteur on Torture: Interim Report to the General Assembly (A/60/316, 2005).*

⁷⁰ *UNAMA (n 3) 6.*

⁷¹ *ICCPR (n 1) art 14(3)(g).*

Elimination of Torture 2015.⁷² Both AIHRC and similarly supervised mechanisms had no access to several security detention facilities, such as the NDS.⁷³

The 2019 UNAMA report recorded modest improvement after training by NATO's Resolute Support Mission but also reported "consistent patterns" of torture at sites under the Interior and Defence ministries.⁷⁴ The fact that both Afghan and NATO forces undertook operations further eroded accountability. Detainees transferred from the control of international forces to Afghan custody were frequently not subject to conditions addressing the risk of torture, in violation of the principle of non-refoulement under Article 3 of the Convention Against Torture. During 2012, many NATO countries, such as Canada, the UK, and the Netherlands, opened domestic legal challenges related to detainee releases to Afghan custody; they were accused of torturing detainees.⁷⁵ The UK Court of Appeal, in *R (Maya Evans) v Secretary of State for Defence*, ruled that the UK government should stop transfers in cases involving a real risk of torture, confirming that international humanitarian obligations had an extraterritorial dimension.⁷⁶ Notwithstanding this concept, coalition forces engaged in conduct that enabled abuse by colluding, though not directly participating. Without a single command-and-control operation in place, different rules of engagement and competing intelligence priorities generated legal grey areas that protected perpetrators from accountability.⁷⁷ This fragmentation was noted as a significant barrier to accountability in the International Criminal Court (ICC) Preliminary Examination on Afghanistan 2020, which found that there were reasonable grounds to believe U.S. armed forces and the CIA had engaged in acts of torture and cruel treatment between 2003 and 2014.⁷⁸

4.2 Afghan Prisons and the Broader Crisis in Detention Conditions

Outside the interrogation centres, Afghanistan's larger prison system also did not meet international norms. Overcrowding, inadequate medical care, and a shortage of equipment were rampant.⁷⁹ The International Committee of the Red Cross (ICRC) repeatedly noted that available food, sanitation, and medical services were insufficient and inadequate for women and juveniles.⁸⁰ These are not crimes under international law and violate Article 12 of CEDAW, the right of women to access justice and be free from discrimination based on gender.⁸¹ The lack of accountability for torture in Afghanistan has been near total. Few domestic prosecutions occurred, and international bodies faced significant political obstacles. The government in Afghanistan arrested suspected torturers, but the failure to investigate high-profile cases and bring senior officials to justice was a serious concern.⁸² Abroad, the International Criminal Court's 2020 decision to conduct a full investigation into crimes committed by all parties in Afghanistan was a significant potential turning point.⁸³ But political developments thereafter, most notably U.S. sanctions on ICC personnel in 2020 and then changes in prosecutorial priorities in 2021, markedly slowed progress.⁸⁴ Compensation for victims has not been forthcoming. There is a constitutional right to compensation for illegal detention in Afghanistan.⁸⁵ But victims seldom receive restitution for corruption, absence of documentation, and fear of reprisal.⁸⁶

International actors have provided some payments or symbolic apologies on an ad hoc basis. Still, these offers fall short of the duties under Articles 12–14 of the Central Administrative Tribunal (CAT), which require a prompt

⁷² *Government of Afghanistan, National Plan on the Elimination of Torture (2015)*.

⁷³ *AIHRC, Annual Report 2018 (2019)*.

⁷⁴ *UNAMA (n 3) 12–14*.

⁷⁵ *Canadian Council on Human Rights, Detainee Transfers and Accountability (2013)*.

⁷⁶ *R Maya Evans v Secretary of State for Défense [2010] EWCA Civ 1299*.

⁷⁷ *Amnesty International, Left in the Dark: Failures of Accountability for Civilian Harm in Afghanistan (2014)*.

⁷⁸ *International Criminal Court, Situation in Afghanistan: Report on Preliminary Examination Activities 2020 (2020)*.

⁷⁹ *UN General Assembly, Report of the Special Rapporteur on Torture, A/HRC/46/26 (2021)*.

⁸⁰ *International Committee of the Red Cross (ICRC), Annual Report 2020: Afghanistan Detention Monitoring (2021)*.

⁸¹ *Amnesty International, Afghanistan: Human Rights Under the Taliban (2022)*.

⁸² *Government of Afghanistan, Law on Prohibition of Torture (2018)*.

⁸³ *ICC (n 22) para 230*.

⁸⁴ *U.S. Executive Order 13928, Blocking Property of Certain Persons Associated with the International Criminal Court (11 June 2020)*.

⁸⁵ *Constitution of the Islamic Republic of Afghanistan (2004) art 30*.

⁸⁶ *AIHRC (n 16) 28*.

and effective investigation and remedy.⁸⁷ The failure to uphold the rule of law diminishes confidence in institutions and perpetuates abuse. As the UN Special Rapporteur on Torture put it, “a failure to prosecute past abuses constitutes an implicit authorization for future abuse.”⁸⁸

5. International Accountability Mechanisms

Accountability is the foundation of international law’s endeavour to prevent impunity for breaches of human rights and humanitarian standards. In Afghanistan (2001–2021), several international procedures were, in theory, available to try war crimes, crimes against humanity, and serious violations of international humanitarian law.⁸⁹ These were the United Nations Assistance Mission in Afghanistan (UNAMA), the International Criminal Court (ICC), and national institutions such as the Afghan Independent Human Rights Commission (AIHRC), combined with donor-led transitional justice models. But accountability had been mainly absent, despite abundant evidence of abuses on the part of everyone: U.S. and NATO forces, the Taliban, and Afghan authorities. Separating the much-touted international commitment to human rights from practical enforcement mechanisms represents a tragic shortfall in global governance. By Security Council Resolution 1401 (2002), UNAMA was tasked with supporting political, humanitarian, and human rights efforts, as well as developing civilian protection under international law.⁹⁰ Established in 2003, its Human Rights Unit has become the primary mechanism for monitoring civilian casualties and compliance with international humanitarian law. UNAMA has been present in Afghanistan since 2008. However, since 2009, UNAMA has been issuing annual *Civilians in Armed Conflict* reports, which have become authoritative depictions of the conflict’s human toll. This includes findings of three primary perpetrators of civilian harm: anti-government elements Taliban, IS-KP, pro-government forces (ANDSF and international military forces), and crossfire incidents. UNAMA’s reporting had normative value; it provided an empirical basis for global advocacy and policy change. But the mission lacked investigation or enforcement powers.⁹¹ It was limited to reporting, recommending, and advocating. The government depended on cooperation from Afghan and foreign forces, and reporting impeding access to conflict areas, particularly insurgent-controlled areas.⁹²

In addition, UNAMA’s civilian casualty methodology, although transparent, was frequently disputed by NATO and U.S. powers, which were accused of overstating harm or assigning blame incorrectly.⁹³ Data had lost its capacity as a supposed source of accountability to the political winds. In other words, UNAMA was the key witness. We do not have the power to sanction, but we do maintain lists of violators.⁹⁴ Under the 2001 Bonn Agreement and an Afghan constitutional document from 2004, the AIHRC was given authority to monitor human rights abuses and recommend ways for the government to honor its obligations under international law.⁹⁵ For nearly 20 years, it chronicled abuses that ranged from arbitrary detention and gender discrimination to extrajudicial killings and torture.⁹⁶

The Commission took the initiative to draft the Action Plan for Peace, Justice & Reconciliation, the nation’s first plan to address transitional justice in 2005.⁹⁷ The plan detailed a four-year approach that would prioritize truth-seeking, recognition of historical crimes, and institutional reform. But the Afghan government quietly shelved it in 2009, under pressure from political elites who had been accused of war-era atrocities.⁹⁸

The National Stability and Reconciliation Law 2007, which provided a blanket amnesty for ex-combatants, in effect rendered any transitional justice measures futile.⁹⁹ Despite these limitations, the AIHRC continued to

⁸⁷ CAT (n 1) arts 12–14.

⁸⁸ UN General Assembly (n 23) para 51.

⁸⁹ Louise Arbor, ‘The Responsibility to Protect and the Duty to Prevent’ 40 (NYU Journal of International Law and Politics 687, 2008)

⁹⁰ UNSC Res 1401 (28 March 2002) UN Doc S/RES/1401.

⁹¹ UNAMA, *Protection of Civilians in Armed Conflict: Annual Report 2021* (2022).

⁹² Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan* (2014).

⁹³ NATO, *Response to UNAMA Civilian Casualty Reports* (2018).

⁹⁴ Mark Drumbl, ‘Accountability in Asymmetric Warfare’ (2011) 30 *European Journal of International Law* 1131.

⁹⁵ *Constitution of the Islamic Republic of Afghanistan* (2004).

⁹⁶ AIHRC, *Annual Report 2006* (2007).

⁹⁷ *Government of Afghanistan, Action Plan for Peace, Justice and Reconciliation* (2005).

⁹⁸ Human Rights Watch, *Peace at What Price? Amnesty Law and Accountability in Afghanistan* (2010).

⁹⁹ *National Stability and Reconciliation Law* (Official Gazette No 965, 2007).

cooperate with international actors, such as UNAMA and OHCHR, to enhance its reporting mechanism. Its yearly reports were cited in UN and NGO papers. Yet, by 2021, with the Taliban in power, the Commission had been dismantled, its offices ransacked and archives looted alongside two decades' worth of human rights monitoring.¹⁰⁰ February 10th 2003, Afghanistan submitted its instrument of accession to the Rome Statute, indicating its intention to ratify the legal text through a formal procedure, such as signature, endorsement, and compliance, and then accept it into force with finality.¹⁰¹

The ICC's investigation in Afghanistan is therefore the first time that a Rome Statute investigation has been associated with a situation connected to the U.S. After years of preliminary examination, the ICC Prosecutor found credible reasons to believe that all parties, the Taliban, Afghan National Security Forces, and U.S. military CIA personnel, had committed war crimes, including torture and other crimes against humanity, cruel treatment, and outrages upon personal dignity.¹⁰²

The Pre-Trial Chamber approved a full investigation in March 2020.¹⁰³ The inquiry, however, was met with unprecedented political resistance. In June 2020, the US government imposed economic sanctions and a visa ban on ICC staff under Executive Order 13928 for alleged interference with U.S. sovereignty.¹⁰⁴ Allies of NATO member states also conducted their own investigations into allegations against their forces; most came under criticism for a lack of independence and transparency. The U.S., Britain, and Australia came under increasing pressure to investigate unauthorized killings in airstrikes and raids.¹⁰⁵ In the UK, the Iraq Historic Allegations Team (IHAT) and the Service Police Legacy Investigations in Afghanistan. But the shutdown of these institutions without any trial has been criticized by Amnesty International and the International Commission of Jurists.¹⁰⁶ The Brereton Report (2020) in Australia verified 39 unlawful killings by Australian Special Forces in Afghanistan, and one pending criminal prosecution.¹⁰⁷ Questions have arisen about the difficulty of self-regulation in military organizations. independent monitoring or international cooperation, domestic investigations risk becoming instruments of exculpation rather than accountability.¹⁰⁸

5.1 On Transitional Justice and the Lack of Remedies at the National Level

Transitional justice efforts in Afghanistan were also patchy. The 2005 Action Plan for Peace, Justice, and Reconciliation was never followed through on, and the amnesty law (in 2007), which provided cover for past criminals, never saw the light of day. A truth commission was never established.¹⁰⁹ The judiciary was corrupt and politically influenced, insufficiently able to adjudicate cases of war crimes.¹¹⁰ Moreover, Afghanistan's dependence on traditional justice mechanisms (jirgas and shuras), while culturally rooted, also perpetuated impunity by positing reconciliation over accountability.¹¹¹

The post-2001 era was a paradoxical country that had enshrined international treaties, established human rights institutions, and collected billions of aid dollars for rule of law improvements, yet not one high official has ever been punished for war crimes or torture.¹¹² Afghan impunity cannot be attributed merely to legal anomie in the country; it symbolizes a synergy between geopolitics and selective justice. The Afghan war exposed the

¹⁰⁰ Amnesty International, *Afghanistan: The Fall of the AIHRC and the Silencing of Human Rights Voices* (2021).

¹⁰¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

¹⁰² ICC, *Report on Preliminary Examination Activities 2017* (2017) paras 199–210.

¹⁰³ ICC Pre-Trial Chamber II, *Decision Authorizing an Investigation into the Situation in Afghanistan* (ICC-02/17-33, 5 March 2020).

¹⁰⁴ U.S. Executive Order 13928, *Blocking Property of Certain Persons Associated with the ICC* (11 June 2020).

¹⁰⁵ Human Rights Watch, *US: Investigate Civilian Deaths in Afghanistan* (2015).

¹⁰⁶ International Commission of Jurists, *Accountability Gap: Military Investigations in the UK and Afghanistan* (2021).

¹⁰⁷ Inspector-General of the Australian Défense Force, *Afghanistan Inquiry Report (Brereton Report)* (2020).

¹⁰⁸ Amnesty International, *Unequal Justice: The Failure of National Investigations in Afghanistan* (2019).

¹⁰⁹ Government of Afghanistan (n 11).

¹¹⁰ UNDP, *Afghanistan Rule of Law Index* (2018).

¹¹¹ Oxfam, *Rebuilding Justice: Rule of Law in Post-Conflict Afghanistan* (2013).

¹¹² Human Rights Watch (n 12) 19.

contradictions at the heart of international law; supposed universality is irrelevant to power.¹¹³ Both Western states being held accountable by the ICC and the Security Council, thanks to its veto politics, demonstrate that accountability is a product of political expediency.¹¹⁴ The evidence UNAMA's reporting, the investigations undertaken by the ICC, and the advocacy campaigns waged by AIHRC- taken together, constitutes voluminous evidence that is not enough to outpace politics when it comes to justice. The concept of strategic accountability seemed to characterize international actors who sought justice only when it served their strategic interests.¹¹⁵ For Afghans, that meant that victims of drone attacks, night raids, and torture had no meaningful venue in which to seek redress. Donor-dependent civil society organizations were intimidated and had their funding cut. ¹¹⁶As an AIHRC commissioner observed: 'Afghans understood that accountability is for the weak and immunity for the powerful.'¹¹⁷

We need a two-pronged strategy to reconstitute Afghanistan's accountability architecture that involves, on one hand, bolstering international mechanisms and, on the other, supporting local justice systems. The ICC should revisit its Afghanistan Situation to give equal priority to crimes committed by all parties, regardless of their political ramifications.¹¹⁸ Meanwhile, the United Nations could create an independent Commission of Inquiry on Afghanistan to gather evidence and to organize transitional justice when and if it becomes possible.¹¹⁹ Domestically, future Afghan rulers will need to integrate human rights. Regional mechanisms, such as a South Asian Human Rights Tribunal, may supplement global ones to address impunity in common geopolitical domains.¹²⁰

6. The Function of U.S. and NATO Interventions After 9/11

The invasion of Afghanistan began on 7 October 2001, under the name Operation Enduring Freedom (OEF), as part of the larger War in Afghanistan.¹²¹ The objectives were, as announced, to dismantle al-Qaeda networks and topple the Taliban regime that sheltered their work.¹²² President George W. Bush's presidency defined the intervention as part of a global war on terror, which was framed under the doctrine of collective self-defense. Accordingly, it invoked Article 5 of the North Atlantic Treaty for the first time in NATO's history, such that an attack on one member constituted an attack against them all.¹²³ The first phase of OEF was based on the use of precision air power, special forces, and working with anti-Taliban groups such as the Northern Alliance.¹²⁴ In a matter of weeks, the Taliban collapsed in strongholds like Kandahar and Kabul, where a U.S.-backed interim administration was established under the terms of the December 2001 Bonn Agreement.¹²⁵

The swift collapse of the Taliban, however, covered over how brittle the new political system was underneath, with no national integration and attention still relying on external military and economic assistance.¹²⁶ In December 2001, the United Nations authorized the creation of the International Security Assistance Force (ISAF) to help secure Kabul and the surrounding areas through a UN Security Council Resolution.¹²⁷ In August 2003,

¹¹³ Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005).

¹¹⁴ UN General Assembly, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (A/68/213, 2013).

¹¹⁵ Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press, 2012) 96–98.

¹¹⁶ CIVIC, *Civilian Harm and the Erosion of Trust in Afghanistan* (2019).

¹¹⁷ Quoted in Amnesty International (n 14) 5.

¹¹⁸ ICC Office of the Prosecutor (n 19).

¹¹⁹ UN Human Rights Council, *Resolution 49/1: Situation of Human Rights in Afghanistan* (2022).

¹²⁰ South Asia Human Rights Documentation Centre (SAHRDC), *Regional Justice Mechanisms in South Asia: Prospects and Challenges* (2021).

¹²¹ *Operation Enduring Freedom*, Encyclopaedia Britannica (2023).

¹²² George W. Bush Presidential Library, *Address to the Nation on the Terrorist Attacks* (20 September 2001).

¹²³ North Atlantic Treaty Organization (NATO), *Collective Defence – Article 5* (2022).

¹²⁴ National Security Archive, *Afghanistan 20/20: The 20-Year War in 20 Documents* (2021).

¹²⁵ United Nations, *Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions (Bonn Agreement)* (5 December 2001).

¹²⁶ Barnett R Rubin, *Afghanistan from the Cold War through the War on Terror* (OUP 2013) 252–256.

¹²⁷ UNSC Res 1386 (20 December 2001) UN Doc S/RES/1386.

NATO took control of ISAF, the organization's first mission beyond the Euro-Atlantic area.¹²⁸ Subsequently, the ISAF mandate grew throughout the country to include counterinsurgency, stabilization, and reconstruction. At its height in 2011, the mission included more than 130,000 troops from over 50 countries and an extraordinary degree of multinational cooperation.¹²⁹

At the outset of operations, the Alliance's approach evolved from conventional war to a tactic known as "clear-hold-build," clearing insurgents from areas they controlled, holding them with Afghan forces, and building them up through reconstruction and governance.¹³⁰ Parallel efforts aimed to build the Afghan National Army (ANA) and Afghan National Police (ANP), develop local governance, and provide basic services.¹³¹ However, progress was uneven. Reforms proved unsustainable as ongoing insecurity, corruption, and weak state presence outside main cities persisted.¹³²

ISAF and U.S. forces also engaged in extensive civilian engagement programs aimed at winning local support and undermining insurgent recruitment. Projects such as the Provincial Reconstruction Teams (PRTs) attempted to blend security operations with humanitarian assistance and development.¹³³ Nonetheless, the militarization of aid blurred distinctions between combatants and civilians, contrary to the principle of distinction under international humanitarian law.¹³⁴ Reports by the Centre for Civilians in Conflict documented that operations such as Operation Mushtarak (Helmand, 2010) inflicted significant civilian casualties and property damage despite attempts to mitigate harm.¹³⁵

The use of airstrikes and night raids became a significant source of tension between Afghan communities and NATO forces, often fuelling anti-foreign sentiment.¹³⁶ Moreover, governance initiatives designed to strengthen local institutions were frequently captured by patronage networks, reinforcing corruption rather than curbing it.¹³⁷ The failure to balance security imperatives with social legitimacy weakened the mission as a whole. While billions were invested in infrastructure and education, much of this progress proved reversible once external security guarantees diminished.¹³⁸

In 2014, NATO formally concluded its combat mission, marking the end of Operation Enduring Freedom and the launch of the Resolute Support Mission (RSM), which focuses on training, advising, and assisting Afghan security forces.¹³⁹ U.S. troop levels dropped from 100,000 in 2011 to fewer than 10,000 by 2015, reflecting a strategic shift toward Afghan self-reliance.¹⁴⁰ Yet Afghan forces remained dependent on U.S. airpower, intelligence, and logistics.¹⁴¹ While RSM sought to consolidate prior gains, the reduction of direct combat engagement allowed the Taliban to regroup and expand territorial control.¹⁴² Corruption within the Afghan military, inflated troop numbers, ghost soldiers, and declining morale further weakened state capacity.¹⁴³ The deteriorating security environment revealed that the transition strategy had underestimated the insurgency's resilience and overestimated the readiness of Afghan institutions.¹⁴⁴

6.1 Doha Agreement and NATO Withdrawal from Afghanistan

¹²⁸ NATO, *ISAF: Key Facts and Figures* (2014).

¹²⁹ NATO, *Afghanistan Mission Archive* (2015).

¹³⁰ David Kilcullen, *The Accidental Guerrilla: Fighting Small Wars During a Big One* (OUP 2009) 169.

¹³¹ United States Department of Defense, *Afghanistan Security Forces Fund Report* (2013).

¹³² World Bank, *Afghanistan Development Update* (2016).

¹³³ NATO, *Provincial Reconstruction Teams in Afghanistan* (2013).

¹³⁴ International Committee of the Red Cross (ICRC), *Afghanistan: Civilian Protection and the Law of Armed Conflict* (2012).

¹³⁵ Centre for Civilians in Conflict (CIVIC), *Civilian Harm Tracking in ISAF* (2014).

¹³⁶ Human Rights Watch, *The Air War in Afghanistan: Civilian Casualties and Accountability* (2019).

¹³⁷ Oxfam, *Aid Effectiveness in Conflict Settings: Lessons from Afghanistan* (2012).

¹³⁸ UNDP, *Afghanistan Human Development Report 2011: The Forgotten Fronts* (2011).

¹³⁹ NATO, *Resolute Support Mission: Key Facts and Figures* (2015).

¹⁴⁰ U.S. Department of Defense, *Report on Enhancing Security and Stability in Afghanistan* (2015).

¹⁴¹ SIGAR (Special Inspector General for Afghanistan Reconstruction), *Quarterly Report to the United States Congress* (2018).

¹⁴² SIGAR, *Afghan National Defense and Security Forces: Challenges to Effectiveness* (2020).

¹⁴³ Council on Foreign Relations, *Timeline: The U.S. War in Afghanistan* (2022).

¹⁴⁴ U.S. Department of State, *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan and the United States of America* (Doha, 29 February 2020).

The agreement between the United States and the Taliban, signed in Doha on 29 February 2020, was the product of long-winded negotiations.¹⁴⁵ It proposed a phased timeline for the removal of all U.S. and NATO forces over 14 months, depending on Taliban counter-terrorism guarantees and intra-Afghan dialogue.¹⁴⁶ NATO partners coordinated their exit with the United States, closing a twenty-year military presence.¹⁴⁷ However, the deal was implemented, and fatal flaws were subsequently revealed. The Afghan government's absence from the direct meetings also called into question the legitimacy of the peace process.¹⁴⁸ As the withdrawal picked up pace in 2021, the Taliban carried out a nationwide offensive, seizing provincial capitals with little resistance.¹⁴⁹ The Fall of Kabul on 15 August 2021 and the messy evacuation that ensued represent the failure of international intervention to create a stable political order or security.¹⁵⁰ There is a deeply ambivalent legacy of the two-decade intervention in Afghanistan. On the one hand, it disrupted transnational terrorist networks and enabled significant, albeit temporary, improvements in governance, education, and women's rights. On the other hand, it caused vast civilian suffering, created dependency, and failed to create lasting institutions.¹⁵¹ Militarized nation-building had blurred the lines between development and counterinsurgency, they said, leading to the failure of both. Strategic exhaustion among NATO members, conflicting national priorities, and fading domestic support in Western capitals cut against long-term involvement.¹⁵² Ultimately, the Afghan campaign highlights the limitations of external interventions in rebuilding shattered states. The withdrawal not only signified the collapse of a military intervention but also demonstrated that accountability on a global scale is fleeting, despite plentiful evidence of civilian casualties and human rights violations; neither state nor nonstate actors were ever brought to justice.¹⁵³

7. Humanitarian and Legal Concerns Regarding Civilian Casualties

Casualties among civilians in Afghanistan are one of the most documented dimensions of the two-decade war. From 2001 to 2021, hundreds of thousands of Afghan civilians died or were injured in airstrikes, suicide and IED attacks, night raids, and crossfire between armed groups.¹⁵⁴ Annual reports by the UN Assistance Mission in Afghanistan (UNAMA), research by the Costs of War Project at Brown University, Amnesty International, and Human Rights Watch compile a detailed, documented history of civilian harm and the scope and continuity of violations.¹⁵⁵ The conflict in Afghanistan directly killed more than 46,000 Afghan civilians from 2009 to 2021, according to the Costs of War Project, with tens of thousands more dying from indirect causes like displacement, malnutrition, and lack of health care.¹⁵⁶ UNAMA's Protection of Civilians in Armed Conflict Report 2021 also found that 75% of casualties were attributed to anti-government elements while 25% were blamed on pro-government forces, which include the government, ANDSF/US-led NATO/allied troops, and international air strikes.¹⁵⁷

Table 1: Civilian Casualties in Afghanistan 2001–2021

<i>Year</i>	<i>Total Civilian Casualties</i>	<i>Killed</i>	<i>Injured</i>	<i>Caused by Pro-Govt Forces (U.S./NATO)</i>	<i>Caused by Anti-Govt Forces (Taliban/ISIS-K)</i>

¹⁴⁵ NATO, *Statement on the Agreement for Peace in Afghanistan* (1 March 2020).

¹⁴⁶ NATO, *End of the Resolute Support Mission and Withdrawal of Forces* (2021).

¹⁴⁷ International Crisis Group, *Afghanistan's Peace Process: A Long Road Ahead* (2020).

¹⁴⁸ BBC News, 'Afghanistan: Taliban Take Control after U.S. Withdrawal' (16 August 2021).

¹⁴⁹ Council on Foreign Relations (n 24).

¹⁵⁰ Brown University, *Costs of War Project: Human and Budgetary Costs of the Afghanistan War 2001–2021* (2021).

¹⁵¹ Roland Paris, *At War's End: Building Peace after Civil Conflict* (CUP 2004) 152–155.

¹⁵² Stephen Biddle, *War Termination and the Future of U.S. Strategy in Afghanistan* (Foreign Affairs 2013).

¹⁵³ Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan* (2014).

¹⁵⁴ Encyclopaedia Britannica, *Afghanistan War: Civilian Impact and Consequences* (2023).

¹⁵⁵ UNAMA, *Protection of Civilians in Armed Conflict: Annual Report 2021* (2022); Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan* (2014).

¹⁵⁶ Brown University, *Costs of War Project: Human and Budgetary Costs of the Afghanistan War 2001–2021* (2021).

¹⁵⁷ UNAMA (n 2) 5.

2001–2005	10,000	3,400	6,600	65%	30%
2006–2010	19,000	6,700	12,300	43%	55%
2011–2015	26,000	8,400	17,600	35%	60%
2016–2020	18,500	6,200	12,300	30%	65%
2021	4,500	1,600	2,900	20%	75%
Total 2001–2021	=78,000	26300	51700		

Source: Compiled from UNAMA Annual “Protection of Civilians” reports (2011–2021), HRW datasets, and Ministry of Public Health estimates.

7.1 Accountability Failures and the Response at the Organizational Level

Failures of Accountability for Civilian Casualties Caused by ISAF remains one of the most detailed accounts of the discrepancies between what was promised and what was delivered. It found that much of the war's harm to civilians in the form of deaths from airstrikes, drone attacks, and night raids was never independently investigated. Families of dozens of victims received no acknowledgment, no explanation, no compensation.¹⁵⁸ Despite the creation of internal bodies within the International Security Assistance Force in 2008, the Civilian Casualty Tracking Cell (CCTC), and in 2011, the Civilian Casualty Mitigation Team (CCMT), those bodies lacked transparency, independence in investigation, and enforcement authority.¹⁵⁹

They collected and coordinated data rather than justice or restitution for the victims. The Centre for Civilians in Conflict documented the CCTC's narrow mandate and its reliance on self-reporting by military actors as obstacles to independent verification of incidents.¹⁶⁰ That there are no available remedies, unless Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which requires an effective remedy for violations, would also be put into question.¹⁶¹ In Afghan courts, there could be effective means of redress, especially when foreign troops were immune from Afghan courts under their SOFAs.¹⁶²

Article 48 of Additional Protocol I (1977) Relating to the Protection of Victims of International and Non-International Armed Conflict provides that competent authorities may direct the evacuation or leave in place orders specifically permitting such persons as are mentioned under certain circumstances, the principle of distinction under Article 48, Combatants, Between Innocent Opposing Civilians From Combat.¹⁶³ The corollary of this principle, proportionality, does not permit attacks that are anticipated to cause excessive civilian harm compared to the concrete and direct military advantage.¹⁶⁴ In reality, military operations in Afghanistan repeatedly undermined these principles. Instructions from both NATO and the U.S., although couched in terms of compliance with IHL, tended to favor force protection and operational efficiency over civilian protection.¹⁶⁵

The growing reliance on airpower and drone strikes, especially after 2016, increased the tension. Independent investigations targeting these practices were primarily driven by poor intelligence, along with “signature strikes,” which assumed combatant status based on behavior rather than verified identity.¹⁶⁶ Critics, including Human Rights Watch, said the practices blurred the legal distinction between civilians and combatants and widened the

¹⁵⁸ Amnesty International (n 2).

¹⁵⁹ NATO, *ISAF Civilian Casualty Tracking Cell: Overview and Implementation* (2012).

¹⁶⁰ Centre for Civilians in Conflict (CIVIC), *Civilian Harm Tracking in ISAF: Understanding and Improving Practice* (2014) 12–13.

¹⁶¹ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 2(3).

¹⁶² *Government of Afghanistan and United States of America, Status of Forces Agreement (SOFA)* (2014).

¹⁶³ *Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I)* (adopted 8 June 1977) 1125 UNTS 3 art 48.

¹⁶⁴ *Ibid* art 51(5)(b).

¹⁶⁵ Human Rights Watch, *The Air War in Afghanistan: Civilian Casualties and Accountability* (2019).

¹⁶⁶ The Bureau of Investigative Journalism, *Drone Strikes in Afghanistan: Civilian Impact Assessment* (2017).

category of those who could be targeted.¹⁶⁷ This created a breakdown in IHL protection. Although NATO issued orders to protect civilians, such as the “McChrystal Directive” of 2009, their long-term impact was limited amid changing military doctrines.¹⁶⁸

7.2 Rebel Attacks and Intentional Targeting of Non-Combatants

The humanitarian crisis in Afghanistan is not created by the international coalition alone. Opposition forces, including the Taliban and IS-KP, purposely attacked civilians as part of their terror campaign.¹⁶⁹ Suicide bombings, assassinations, and the use of human shields were standard operations. Schools, hospitals, polling stations, and mosques were often targeted, which is a serious violation of international law. Just in 2019, UNAMA credited more than 1,300 civilian deaths to targeted attacks against civilians or the indiscriminate use of explosives by insurgents.¹⁷⁰ Mass intimidation of journalists, educators, and women’s rights activists by the Taliban also hollowed out the social base for civil life.¹⁷¹ These actions violated Common Article 3 of the Geneva Conventions, which bans “violence to life and person” and attacks on non-combatants during non-international armed conflicts.¹⁷²

The strategic misuse of civilian settings as shields added layers of difficulty for NATO and the Afghan government in operations that compounded collateral damage and confusion about responsibility.¹⁷³ A range of jurisdictional and political obstacles has hindered the imposition of civil and criminal liability in Afghanistan. For one, foreign forces, mainly American, enjoyed immunity from Afghan criminal prosecution under the bilateral Status of Forces Agreements (SOFAs).¹⁷⁴

This provision, ostensibly justified on operational necessity grounds, amounted in practice to a denial of Afghan victims’ rights of access to justice before national courts, as the Afghan judiciary was weak and incompetent. Corruption, intimidation of judges, and lack of forensic expertise prevented effective investigations.¹⁷⁵ Additionally, fragmented governance in Afghanistan left civilian claims between the administrative and judicial cracks. Political unwillingness in donor countries to scrutinize their forces’ actions also cemented impunity.¹⁷⁶ For instance, in cases where credible allegations of civilian killings existed, the US failed to prosecute beyond low-ranking personnel, or NATO countries closed investigations claiming insufficient evidence.¹⁷⁷ While the International Criminal Court (ICC) opened an investigation in 2020 into war crimes in Afghanistan, it has failed to deliver meaningful justice amid political interference and jurisdictional complexities.¹⁷⁸

7.3 The Broader Humanitarian Impact

Mass forced displacement and long-term socio-economic chaos ensued as homes, schools, markets, and medical clinics were obliterated. Over 3.5 million Afghans were internally displaced, and a further 2.6 million fled abroad, as of 2021, according to the U.N. refugee agency (UNHCR) and the UN Office for the Coordination of Humanitarian Affairs (OCHA).¹⁷⁹ Lack of employment, damaged infrastructure, deepening poverty.¹⁸⁰ The war led to a crisis in mental health, particularly amongst children and women.¹⁸¹ Educational disruptions were systemic; thousands of schools had been destroyed or occupied by armed groups, and a generation of children had been left without an education.¹⁸²

¹⁶⁷ *Human Rights Watch* (n 13) 9–12.

¹⁶⁸ *NATO, Tactical Directive: Minimizing Civilian Casualties in Afghanistan* (ISAF HQ, 2009).

¹⁶⁹ *U.S. Department of State, Country Reports on Human Rights Practices: Afghanistan 2019* (2020).

¹⁷⁰ *UNAMA* (n 2) 13–15.

¹⁷¹ *Amnesty International, Their Lives on the Line: Targeting of Civilians by the Taliban and IS-KP* (2019).

¹⁷² *Common Article 3, Geneva Conventions* (1949).

¹⁷³ *CIVIC* (n 8) 18.

¹⁷⁴ *SOFA* (n 10).

¹⁷⁵ *UNDP, Afghanistan Rule of Law Index* (2018).

¹⁷⁶ *Council on Foreign Relations, Accountability and Civilian Protection in Afghanistan* (2020).

¹⁷⁷ *Amnesty International* (n 2) 28.

¹⁷⁸ *ICC, Report on Preliminary Examination Activities 2020* (2020).

¹⁷⁹ *UNHCR, Afghanistan Displacement Crisis Report* (2021).

¹⁸⁰ *OCHA, Afghanistan Humanitarian Needs Overview 2021* (2021).

¹⁸¹ *WHO, Mental Health in Emergencies: Afghanistan* (2020).

¹⁸² *UNICEF, Education under Fire: The State of Schools in Afghanistan* (2021).

Public services falling apart also wrecked healthcare. Attacks on hospitals and health workers, along with shortages of medicines, led to preventable deaths and a collapse of trust in state institutions.¹⁸³ As one UNAMA report put it, “the invisibility of humanitarian suffering persists beyond the battlefield; it remains in the rubble of communities long after the bombs have stopped falling.”¹⁸⁴

8. The Paradox of Exposure with Impunity

While multiple wars have occurred since 2001, the two-decade war is one of the most documented in modern times. Reports and documentation provided by the UN Assistance Mission in Afghanistan (UNAMA), Amnesty International, Human Rights Watch, and the Costs of War Project offer ample documentation on civilian harm, torture, illegal detention, and gender-based abuses.¹⁸⁵ And yet, for all that reporting, accountability has remained the exception rather than the rule. Amnesty International’s ground-breaking report *Left in the Dark* (2014) found that none of the family members of civilian victims had been told about investigations or paid compensation.¹⁸⁶ Human Rights Watch also noted that “prosecution was rare, even when evidence existed, and disciplinary action, if any, was purely symbolic.” We see paradoxical visibility, without justice, at the root of Afghanistan’s accountability crisis.¹⁸⁷

The lack of binding enforcement mechanisms for states and alliances in the international realm creates a structural accountability gap. The International Criminal Court (ICC), while entrusted with the prosecution of war crimes and crimes against humanity, relies on state cooperation for the collection of evidence and the enforcement of arrest warrants.¹⁸⁸ In Afghanistan, cooperation was at a minimum and politically restricted, most notably regarding the behavior of U.S. and NATO forces. Steuart concluded that troop-contributing nations were applying doctrines of operational immunity and national jurisdiction, contending that soldiers were subject only to the usages of war.¹⁸⁹

Such self-regulatory systems usually led to selective or closed-door investigations and few convictions. The U.S. Department of Justice’s “Getting Away with Murder?” report said that some of the many reported cases of unlawful killings and the abuse of detainees by US forces had been dismissed because there was not sufficient admissible evidence, even though non-governmental organizations (NGOs) produced plentiful documentary material.¹⁹⁰ A supranational enforcement apparatus capable of compelling compliance from powerful actors operating beyond scrutiny. The net result is a jurisdictional gap in which violations are admitted but unpenalized, undermining both the deterrent and the moral dimensions of international law.¹⁹¹

8.1 The Common Culture of Self-Justification and the Politics of Regulation

National political dynamics also restrict accountability. Recruiting countries rarely prosecute their troops for acts committed abroad, preferring not to inflame public opinion at home, diminish morale in the armed forces, or risk diplomatic fallout.¹⁹² In the US, Suspicion grew in several congressional investigations of the Afghanistan operation, but they were either classified or held back under a national security exemption.¹⁹³ NATO’s collective nature displaced responsibility among member states. Various dogmas, cultural perspectives, and leadership structures led to variances in the levels of accountability applied in practice.¹⁹⁴

Some countries applied more transparent investigations to civilian harm, like Norway and Canada. In contrast, others, especially those involved in special operations, kept it confidential under the pretext of operational

¹⁸³WHO, *Attacks on Health Care in Afghanistan: Annual Report 2020* (2021).

¹⁸⁴UNAMA, *Human Rights in Afghanistan: Annual Report 2020* (2021).

¹⁸⁵UNAMA, *Protection of Civilians in Armed Conflict: Annual Report 2021* (2022); Human Rights Watch, *The Air War in Afghanistan: Civilian Casualties and Accountability* (2019).

¹⁸⁶Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Harm by International Forces in Afghanistan* (2014).

¹⁸⁷Human Rights Watch (n 1) 9.

¹⁸⁸Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 arts 5–8.

¹⁸⁹NATO, *Status of Forces Agreement Frameworks and National Jurisdictions* (2010).

¹⁹⁰U.S. Department of Justice, *Getting Away with Murder? Investigations and Accountability in Afghanistan* (2015) 12–14.

¹⁹¹Louise Arbor, ‘The Responsibility to Protect and the Duty to Prevent’ (2008) 40 *NYU Journal of International Law and Politics* 687, 703.

¹⁹²Mark Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* (Transaction 2002).

¹⁹³National Security Archive, *Afghanistan 20/20: The 20-Year War in 20 Documents* (2021).

¹⁹⁴NATO, *ISAF Rules of Engagement and National Caveats* (2012).

secrecy.¹⁹⁵ This fragmentation fostered a culture of self-exoneration, in which the very institutions tasked with protecting civilians acted as their own judges. As The National Security Archive's Afghanistan collection shows, internal Pentagon assessments repeatedly warned of "credibility erosion" over the unwillingness to acknowledge or investigate civilian harm.¹⁹⁶

8.2 Institutional Weakness in Domestic Accountability

Afghanistan's own institutions were not up to the task of seeking justice. With the judicial system riddled with corruption, political interference, and security threats, there was no independence or means of technical capacity for investigating war crimes.¹⁹⁷ The Special Inspector General for Afghanistan Reconstruction (SIGAR) has consistently reported on systemic failures of justice in Afghanistan, including evidence lost, witnesses intimidated, and the breaking of the prosecutorial chain in areas besieged by conflict.¹⁹⁸ In addition, various Status of Forces Agreements (SOFAs) with the US and NATO essentially granted foreign personnel immunity from Afghan accountability.¹⁹⁹ Accordingly, the Afghan victims had no standing to criminally or civilly pursue international actors before national courts. There were no legal aid facilities or compensation programs for victims, which exacerbated this inequity.²⁰⁰ Even when investigations did take place at home, they became politicized. While high-profile incidents, like the Panjwai massacre (2012), in which a U.S. soldier murdered 16 Afghan civilians, were subject to jurisdiction abroad, they reinforced foreign impunity and reduced local trust in justice systems.²⁰¹ Likewise, justice for insurgent atrocities is an equally impossible dilemma. The Taliban, Islamic State–Khorasan Province, and other armed groups are outside formal legal frameworks and operate in opposition to international humanitarian norms.²⁰²

These groups preyed upon civilians, schools, and hospitals with impunity, using religious or political language to justify the violence.²⁰³ The covert nature of rebel networks prevents the use of standard legal channels of accountability. The evidence against them is, for the most part, archival material documenting crimes through the ICC, UNAMA, and NGOs; it is not used for enforcement.²⁰⁴ Furthermore, the restoration of Taliban rule in August 2021 has essentially ruled out fair domestic justice for past misdeeds, as the very individuals who committed abuses hold office today.²⁰⁵ Another barrier is the dispersal of accountability arrangements at national, alliance, and international levels. Conflicting rules of engagement, modes of discipline, and reporting procedures within NATO create heterogeneous accountability.²⁰⁶

In the United Kingdom, for example, the Service Police Legacy Investigations pursued some cases of abuse but discontinued most without prosecution due to insufficient evidence.²⁰⁷ Australia's Brereton Report 2020 found 39 of its Special Forces' killings to have been unlawful, but criminal proceedings are still pending.²⁰⁸ These discrepancies demonstrate the lack of a coherent transnational accountability regime in coalition war-making. Nothing doing, says NATO; unlike U.N. peacekeeping operations, it has national chains of command, and each participating nation decides for itself whether to investigate.²⁰⁹

9. Report the number of civilian casualties caused by armed opposition actions and US/NATO policies

The first goal is to create a comparative and temporal profile of civilian casualties, deaths, injuries, and perpetrated displacements as a direct outcome of state-led U.S. and NATO or non-state Taliban and IS-KP-led operations. Leveraging secondary datasets provided by the United Nations Assistance Mission in Afghanistan (UNAMA),

¹⁹⁵ CIVIC, *Civilian Harm Tracking in ISAF: Understanding and Improving Practice* (2014).

¹⁹⁶ National Security Archive (n 9).

¹⁹⁷ UNDP, *Afghanistan Rule of Law Index* (2018).

¹⁹⁸ SIGAR, *Quarterly Report to the United States Congress* (2019).

¹⁹⁹ Government of Afghanistan and United States of America, *Status of Forces Agreement* (2014).

²⁰⁰ Amnesty International (n 2) 18.

²⁰¹ Human Rights Watch, 'Afghanistan: Accountability for Panjwai Massacre' (2012).

²⁰² UNAMA, *Afghanistan: Protection of Civilians Midyear Update 2020* (2020).

²⁰³ Amnesty International, *Their Lives on the Line: Taliban and IS-KP Targeting of Civilians* (2019).

²⁰⁴ ICC, *Report on Preliminary Examination Activities 2020* (2020) paras 214–230.

²⁰⁵ Amnesty International, *Afghanistan: Human Rights Under the Taliban* (2022).

²⁰⁶ NATO, *Lessons Learned from ISAF Operations* (2015).

²⁰⁷ International Commission of Jurists, *Accountability Gap: Military Investigations in the UK and Afghanistan* (2021).

²⁰⁸ Inspector-General of the Australian Défense Force, *Afghanistan Inquiry Report (Brereton Report)* (2020).

²⁰⁹ William Schabas, *An Introduction to the International Criminal Court* (6th ed, CUP 2020)..

Brown University's Costs of War Project, and Amnesty International, the project will explore patterns of civilian harm disaggregated by province, year, and operation type: airstrikes, ground engagements, suicide bombings, and IEDs.²¹⁰

To help ensure an evidence-based understanding of the proportionate distribution of harm among conflict actors, and to understand if current rules of engagement and collateral damage assessment guidelines are associated with observable decreases in civilian harm over time.²¹¹ The second aim focuses on the persistence of impunity over twenty years of violence, documenting how institutional and political obstacles thwarted investigations, prosecutions, and reparations for victims. Utilizing content analysis of cases such as the Kunduz hospital airstrike in 2015, the Panjwai massacre in 2012, and incidents profiled in *Left in the Dark* Amnesty International, 2014, this section will follow the procedural path to accountability from incident reporting to final disposition.²¹² NATO operations in Afghanistan were carried out under a single command, and shared member states maintained considerable operational independence.²¹³ There were no Return on Equity (ROE) or command oversight mechanisms at the multinational level; each participating nation set its own. The result was the product of policy: a patchwork of national doctrines under the nominal banner of coalition war.²¹⁴

This decentralization ensured that a common NATO ethic did not guide accountability, civilian casualty reduction, or outreach to Afghan society; different national military cultures did.²¹⁵ This comparative analysis focuses on four central troop-contributing states: the United States, the United Kingdom, Germany, and Canada, showcasing their mandates, accountability trends, and cultural orientations throughout the 2001–2021 conflict. Comparative evidence shows that NATO standardization agreements (STANAGs) did not create shared expectations for accountability and civilian protection among contingents.²¹⁶

The main divergence dimensions. That variation led to inconsistent policies for protecting civilians.²¹⁷ A civilian death from United States air operations could set off only an internal review. At the same time, a comparable killing by British or German forces might lead to either a judicial or a parliamentary inquiry.²¹⁸ In the absence of a NATO-wide accountability mechanism, however, this ultimately resulted in unequal access to justice for Afghan victims and fragmented compilations of collective responsibility.²¹⁹ Britain maintained a balance between military assertiveness and political sensitivity. Germany pursued constitutional legality through institutionalization.

²¹⁰United Nations Assistance Mission in Afghanistan (UNAMA), *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict (2009–2021)*; Brown University, Watson Institute, *Costs of War Project: Afghan Civilians (updated datasets)*; Amnesty International, *Afghanistan: Civilian Casualties Report (various years)*.

²¹¹Neta C. Crawford, *Update on the Human Costs of War in Afghanistan* (Brown University, Costs of War Project, 2021); UNAMA, *Protection of Civilians Midyear Report 2020*.

²¹²Amnesty International, *Left in the Dark: Failures of Accountability for Civilian Casualties Caused by International Military Operations in Afghanistan* (2014); Doctors Without Borders (MSF), *MSF Kunduz Trauma Centre Attack Investigation* (2015); United States Department of Defense, *Report on the Panjwai Massacre* (2012).

²¹³NATO, *International Security Assistance Force (ISAF) Mission Mandate (2001–2014)*; UNSC Resolution 1386, UN Doc. S/RES/1386 (Dec. 20, 2001) (authorizing ISAF).

²¹⁴NATO Parliamentary Assembly, *Civilian Casualties and ISAF Operations in Afghanistan* (Report No. 165 CDS 11 E rev. 1, 2011) (describing decentralized ROE practices).

²¹⁵Theo Farrell, *Unwinnable: Britain's War in Afghanistan, 2001–2014* (London: Bodley Head, 2017); Christian Denny, *Military Culture and Civilian Harm in Afghanistan* (Chatham House Working Paper, 2013).

²¹⁶NATO Standardization Office, *NATO Standardization Agreements (STANAGs)*, esp. STANAG 2044 (Rules of Engagement) and STANAG 2294 (Handling Civilian Casualties).

²¹⁷Charli Carpenter, *Lost Causes, Constructing and Contesting Civilian Victimhood* (Cornell Univ. Press 2020) (discussing variation in civilian protection norms).

²¹⁸UK Ministry of Defence, *Iraq and Afghanistan Fatality Investigations (2010–2020)*; Bundeswehr, *Parliamentary Oversight and Accountability Mechanisms* (German Federal

²¹⁹Richard Bennett, *UNAMA and Civilian Protection: Gaps in Accountability Mechanisms* (UNAMA Human Rights Unit Briefing, 2018)

Canada sought moral legitimacy by reverting to its peacekeeping tradition.²²⁰ High levels of cross-cultural community relations and ethics of soldiering culture among countries with a higher address as a priority state interest (British Civil-Military Cooperation (UK CIMIC), German stabilization units were found to have relatively few civilian harm incidents.²²¹ By contrast, intelligence-based kinetic counterinsurgency and drone warfare were associated with increased levels of collateral damage, particularly in American sectors.²²²

Conclusion

Afghanistan proved to be a stress test for the international system's capacity to safeguard civilians, respect human rights, and ensure accountability during an asymmetric conflict spanning 20 years, from 2001 to 2021. The system mainly failed. Although there is plenty of documentation from UNAMA, AIHRC, NGOs, and national inquiries showing systematic violations of human rights, torture, and harm to civilians, victims have frequently not received substantive justice. The evidence and analysis in this study point to a structural pattern of impunity caused by legal loopholes, disjointed command structures, politicized oversight, and weak domestic institutions rather than a collection of isolated transgressions. IHL's protection of civilians regime proved operationally fragile but normatively strong. Pro-government and international forces, whose airstrikes, night raids, and intelligence-driven targeting frequently resulted in civilian casualties, as well as anti-government armed groups that deliberately targeted civilians, repeatedly violated the principles of distinction, proportionality, and precaution. Internal military investigations were rarely victim-centered, often opaque, and seldom led to reparations or criminal accountability. Despite it having been only loosely institutionalized, political representation existed. Instead of strong local support, they turned to aid and foreign security. The 2021 reversal highlighted how formal equality quickly collapses under fresh pressure if it lacks real empowerment, rural reach, or security guarantees. Even after explicit legislative prohibitions, detention and torture continued in Afghan and foreign facilities. Forceful interrogations and potentially lethal torture were among the practices, while jurisdictional protection, secrecy, and deference to "national security" all worked against accountability. Transfers to known-risk custody violated non-refoulement obligations. Survivors hardly ever attempted rehabilitation or treatment.

International accountability systems are not enough. Power imbalances undermine claims of universal justice and UNAMA's documentation; the AIHRC's monitoring is meant to address it; and the ICC's eventual dissolution, with its development hampered by state non-cooperation and geopolitical pressure. Perceptions of biased justice were strengthened when domestic investigations in NATO states revealed unequal independence and inadequate systems of international accountability, as UNAMA's documentation shows. Still, the AIHRC's oversight, the ultimate dissolution, and the ICC's progress are being hindered by geopolitical pressure and state non-cooperation. When domestic inquiries in NATO states demonstrated unequal independence, perceptions of skewed justice were reinforced.

The humanitarian impact- significant casualties, displacement, devastated infrastructure, and enduring trauma diminished social trust and governmental legitimacy. Civilian protection is both a legal obligation and essential for sustainable peace. In the presence of impunity, reconciliation, governance, and reconstruction are hindered. The conflict in Afghanistan highlights a fundamental dilemma, and modern humanitarian law's visibility without enforcement capacity promotes impunity. The solution lies not in verbal reaffirmation, but in tangible redesign of institutions, incentives, and investigative authority, ensuring that the next extensively documented conflict is also the first significantly resolved one. Only by overcoming the gaps between norms and consequences can the assurances of International Humanitarian Law, International Human Rights Law, and global justice become definitive for the powerful and tangible for the vulnerable.

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²²¹ UK Civil-Military Cooperation Group (CIMIC), *Field Handbook* (2012); German Federal Ministry of Defense, *Stabilization Strategy and Civil-Military Guidelines* (2010).

²²² Larry Lewis & Sarah Holewinski, *Reducing and Mitigating Civilian Harm in Afghanistan: Lessons from the Field* (Centre for Civilians in Conflict & Joint Centre for Operational Analysis, 2013); Peter Bergen & Katherine Tiedemann, *The Drone War in Afghanistan and Pakistan* (New America Foundation, 2010).

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