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THE TALIBAN AND THE RIGHT TO EDUCATION IN AFGHANISTAN
ASSESSING THE IMPLICATIONS OF THE TAKEOVER BY THE TALIBAN IN 2021
ON THE RIGHT TO EDUCATION

Author: Najiba Haidary

Supervisor: Dr. Lisa Maria Heschl E.MA

ABSTRACT

In general, the right to education is counted as a fundamental right for everyone and mainly for children. Based on the Universal Declaration of Human Rights 1948 “the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms “is the goal of the right to education. this right is not only important as an individual but as a group in order to ensure the strengthening of respect for human rights and fundamental freedom.

This thesis will talk about the policy implications of the right to education under the de facto government of the Taliban, which came to power on August 15, 2021. Although the age of the de facto government is short, and yet, the government is still not recognized as an independent state by the international community to expect them to consider of full realization of the right to education, the thesis will aim to assess if the last two decades achievements on primary and secondary education are protected, supported, and further built upon them by the de facto authorities of Taliban.

In total three main chapters, I will assess the right to education in international law, the realization of the right to education by former governments during 2001-2021 for primary and secondary education, and the de facto authorities’ current policy and priorities on protecting the made achievements on the right to education. On the ongoing situation of the de facto government, the thesis will consider the period from August 2021- July 2022.

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LIST OF ABBREVIATION

UDHR – Universal Declaration of Human Rights

ICESCR – International Convention on Economic Social and Cultural Rights

UNCRC – United Nations Children’s Rights Convention

CERD - Convention on the Prohibition of all Forms of Discrimination

CEDAW – Convention on Elimination of Discrimination Against Women

UN – United Nations

UNESCO - United Nations Educational, Scientific and Cultural Organization

UNICEF – United Nations Children’s Fund

UNDP – United Nations Development Program

UNFPA – United Nations Population Fund

USAID - United States Agency for International Development

SDG – Sustainable Development Goals

ILO - International Labor Organization

Rights of Persons with Disabilities (CRPD)

NESP – National Education Strategic Plan

MoE – Ministry of Education

CBE – Community Based Education

ALP– Accelerated Learning Program

TLC – Temporary Learning Center

EiE – Education in Emergency

CHAPTER ONE: INTRODUCTION

A. Background

Education is both a human right and a way to realize others' human rights and values. As an empowerment right, education is the primary power to help everyone as adults and children in a marginalized society to lift themselves out of poverty, weakness, and voicelessness.

Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.¹

Children's education is recognized as one of the best financial and moral investments that States can make for their nations.²

But the importance of education is not just practical: a well-educated, enlightened, and active mind, able to wander to be free and wide, is one of the joys and rewards of human existence.³

Considering the value and the right to education, the ICESCR 1966 dedicates two articles to the right to education, Articles 13 and 14. Article 13, the longest provision in the Covenant is the most wide-ranging and comprehensive article on the right to education in international human rights law.⁴

The Committee on ESCR in its General Comment No.13 has clarified that the right to education like all human rights, imposes three types or levels of obligations on States Parties: the obligations to respect, protect and fulfill.⁵ The obligation to respect means that States must refrain from interfering with or restricting the enjoyment of human rights.

¹UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 Para.1)' (8 December 1999) <https://www.refworld.org/docid/4538838c22.html> accessed 19 May 2022. General Comment No. 13: The right to education (Art. 13) (1999)

² *ibid.*

³UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 Para.2)' (8 December 1999) para 1 <<https://www.refworld.org/docid/4538838c22.html>> accessed 5 July 2022.

⁴ ICESCR 1966 Art 13 reads: "1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this Art. shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Art. and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

⁵UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13)' (8 December 1999) <https://www.refworld.org/docid/4538838c22.html> accessed 5 July 2022. General Comment No. 13: The right to education (Art. 13) (1999) paragraph.2

The obligation to protect requires States to protect individuals and groups against human rights abuses by third parties. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.⁶

Besides Art 13 ICESCR 1966, the CRC 1989 recognizes education as a legal right for every child based on equal opportunity. Its Article 28 guarantees free compulsory primary education for all⁷; progressive free secondary education that should, in any case, be available and accessible to all; and accessibility to higher education based on capacity.

The Government of Afghanistan ratified the CRC in 1994 and made significant improvements regarding the access to education for girls and boys in the last 20 years developing the general welfare of children. Accordingly, the National Constitution of Afghanistan adopted in 2004 protects and guarantees progressive International Human Rights Standards⁸ guaranteeing *inter alia* 9 years of compulsory education and free education for all citizens until the completion of a bachelor's degree.

At the national level, several legal and policy actions were undertaken over the last 20 years to increase access to, and improve the quality of education while reducing disparities between girls and boys, women and men, rural and urban areas, as well as between ethnic populations groups. The international community in the last two decades supported the governments with the education system not only from the legislative and policy-making perspective but also in terms of financing, logistics and construction of the educational institutions.⁹

However, in August 2021, when the government collapsed and the Taliban regime came into power, the hope for further improvements in the educational system or even the maintenance of the *status quo* was smashed.

The reason behind this hopelessness lies in the past and the previously adopted approaches by the Taliban towards education, excluding women and girls at all levels and providing only low-quality and faith-based education to boys. The educational strategy purposed by the de facto governance, is far from regional and international educational standards. The restrictions on access to education is amplified by violent attacks during the Taliban governance, on schools, educational institutes, as well as banning on girls' education.¹⁰

Such environment created a sense of fear and terror related to school visits among citizens, in particular among parents and adolescents.

According to Khalid Sadat, *"Since August 2021, the Taliban de facto government did not focus on any rights of the children including their rights to education. On the contrary, they shut down all the girl's schools, brought limitations to female teacher positions, objected to the dress codes, and called current school curricula western-based and infidel curricula requiring change"*.¹¹

B. Objective

Even though the Taliban's rejection of human rights agendas and priorities is neither new nor undocumented, there is still a need to academically address the current topic and the action of the group.

So far, the Taliban have demolished all the progress made on human rights, such as freedom of expression, freedom of movement and employment for women, women's civil and political participation, Ministry of Women Affairs,

⁶OHCHR | International Human Rights Law' (OHCHR) <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed 19 May 2022.

⁷ Convention on the Right of the Child 1989

⁸ 'OHCHR | International Standards' (OHCHR) <<https://www.ohchr.org/en/special-procedures/sr-education/international-standards>> accessed 19 May 2022.

⁹ *ibid.* Education 2030,

¹⁰ One of the examples of the past policy of the Taliban about the education system is the 2006 Layha or code of conduct. It forbids "work as a teacher under the current state – which is a state in name only – because this strengthens the system of the infidels." Attacks on teachers were encouraged in the 2006 Layha, with the expressive purpose of forcing them to stop work. The policy dictates that teachers should first be 'given a warning', beaten if they continued, and ultimately killed if they refused to stop. Rahmatullah Amiri and Ashley Jackson, 'Taliban Attitudes and Policies towards Education' (2021) Working paper 601 ODI, Centre for the Study of Armed Groups 11.

¹¹ Interview with Khalid Sadat, Education Rights Advocate Zoom Call Interview, June 8, 2022.

Independent Human Rights Commission, by calling them outsider's cultures and phenomena. The thesis at hand aims to analyze and document if the take-over will also impact the rights of the child to education.

The main question to be answered in the research is:

To what extent does Taliban policy respect and implement the right to education?

Some of the subsidiary questions which will also be answered during the analysis process:

- **Is Afghanistan at the risk of losing achievements and investments in primary and secondary education made during 2001-2021?**
- **Is the right to quality education in danger under the de facto government of the Taliban?**

C. Methodology

To answer the research question and the sub-questions, a desk review, containing relevant international laws, general comments, reports, and academic literature will be conducted.

Furthermore, a historical analysis of the pre-Taliban de facto government will be done. This will include the legislation, policies and strategies, and other practical achievements that were made during the ruling of the former governments on the right to education.

To assess the current position of the de facto government at both policy and ground level, since academic work and comprehensive reports on the situation is not in hand, beside the available resources, news reports from the both national and international reliable sources will be assessed, and further to that , 10-15 interviews will be conducted with the members and staff of current none governmental service providers such as the United Nations entities, National and International Non-Governmental Organizations who are involved in education sectors, people on the ground such as teachers, and civil society activists. The consent of the interviewees, privacy and protection of the contents will be honored during the process.

D. Definitions

The right to education in light of international law is much focused on primary education.¹² The right to primary education is counted as one of the indicators for the States Parties as a core minimum obligation, and the further emphasis is also to have it compulsory and free of charge for the citizens in the territories of the States Parties. Still, the right to education as a precondition for development, access to other rights, promotion of understanding and tolerance, and achieving universal peace will not be possible to achieve if the right to secondary education is neglected. This thesis will, thus, apply a more comprehensive approach, focusing as well on secondary education.

In addition, mostly during the secondary education level, the children, either collectively or individually face social, economical and even political challenges.

This thesis applies the hypothesis that the implementation of a right to secondary education, whatever form it takes, reveals the true commitment by States regarding the fulfillment of the right to education. Secondary education is essential for the fulfillment of other rights, which are prescribed under the CRC;¹³ on the same hand, it poses additional challenges to children, parents as well as States to protect, respect, and fulfill the right to education.¹⁴

¹² UDHR 1948Art.26

¹³ CRC 1989, Art. 12 Right to be Heard, Art. 13 Right to Freedom of Expression and Art. 15, Right to Peaceful Assembly are the Arts of the CRC which will be further discussed in next topics.

¹⁴ OHCHR, 'Human Rights Factsheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights' 11
<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf>

CHAPTER TWO: THE RIGHT TO EDUCATION

A. Human Rights Framework

The right to education is an individual right, but at the same time, benefits not only individuals, but also communities, nations, and the global level. Education is fundamentally respected for personal development and empowerment. According to Richard Pierre Claude for instrumental reasons, "Education has the status of a multi-faceted social, economic and cultural human right. It is a social right because in the context of the community it promotes the full development of the human personality. It is an economic right because it facilitates economic self-sufficiency through employment or self-employment. It is a cultural right because the international community has directed education toward the building of a universal culture of human rights"¹⁵

The realization of the right to education is particularly dependent on State willingness as well as the political and economic stability of a country. Government system change, conflict, or the economic collapse of a State may have severe and negative consequences on the right to education, especially if controlling education is understood as means to control the young generation of a country.

The Universal Declaration of Human Rights (UDHR) 1948 and other human rights treaties, therefore, focused on access to education, and various monitoring mechanisms have been established to ensure that States comply with the obligations.

I. The Right to Education and the Universal Declaration of Human Rights (UDHR) 1948

The Preamble to the Universal Declaration of Human Rights (UDHR) 1948 proclaims that every individual and every organ of society strives by teaching and education to promote respect for rights and freedoms.¹⁶

Article 26 of UDHR states:

1. *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit.*
2. *Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
3. *Parents have a prior right to choose the kind of education that shall be given to their children*

When drafting the UDHR 1948, the drafting committee was well aware of the nature and value of the right and that education is not value-neutral.¹⁷

According to Article 26 UDHR 1948, education should have three main goals ranging from individual development to global security. More precisely, Article 26 (2) describes that education shall contribute to:

- (1) The full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.

¹⁵ Richard Pierre Claude, "The Right to Education and Human Rights Education (*Sur - International Journal on Human Rights*, 11 August 2017) 25–37 <<http://httpsright-education-human-rights-education> 2F accessed 11 August 2022.

¹⁶ "The International Bill of Human Rights, Universal Declaration of Human Rights 2.

¹⁷ Richard Pierre Claude (n 14) 2.

(2) The promotion of understanding, tolerance, and friendship among all nations, racial or religious groups; and,

(3) The furthering of the activities of the United Nations for the maintenance of peace.¹⁸

Ad (1) The full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.¹⁹

The UDHR 1948 introduces human beings as essentially free, social, educated, and entitled to participate in critical decision-making. This can refer to any age of the human being based on their capacities and level of knowledge.

The concept of “full development” is intended to capture the enabling qualities of the right to education and to promote the education about human rights capacity of the people’s potential to ensure human dignity.

The full development also means that human personality and dignity are enhanced as a result of which their human rights are promoted such as the right to privacy, political right to seek and disseminate information; civil rights like equality and non-discrimination; economic rights like a decent standard of living; and the right to participate in the community’s cultural life.²⁰

Ad (2) The promotion of understanding, tolerance, and friendship among all nations, racial or religious groups

Ad (3) the furthering of the activities of the United Nations for the maintenance of peace.

Article 26 of UDHR 1948 says education should “further the activities of the United Nations for the maintenance of peace”. Right to education at the maximum level must bring peace both at the societal and global level. Illiteracy, lack of knowledge, and marginalization always can bring benefits for those who in a way want to make the world and the nation more insecure.²¹

II. The Right to Education and the International Covenant on Economic Social and Cultural Rights (ICESCR) 1966

After the UDHR 1948 the ICESCR of 1966, is one of the International Bills of Human Rights, talks comprehensively about the right to education in a binding approach.

The Covenant articles and the General Comments by the Committee on ESCR on the right to education include the most relevant provisions and interpretations that talk about the realization of the right to education by the States Parties and the existing reporting mechanisms.

Articles 13 and 14 ICESCR 1966 talk about the right to primary and secondary education and the progressive realization to achieve it.

It further refers to key substantive contents which support achieving human development that is also flagged in Article 26 UDHR 1948.

Article 13 ICESCR 1966 reads:

“1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace.”

¹⁸ ‘Education - Definition’ http://www.claiminghumanrights.org/education_definition.html accessed 5 July 2022.

¹⁹ Richard Pierre Claude (n 14) 39.

²⁰ *ibid* 4.

²¹ *ibid* 36–43.

2. *The States Parties to the present Covenant recognize that, to achieve the full realization of this right:*

(a) Primary education shall be compulsory and available free to all.

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and by the progressive introduction of free education.

(c) Higher education shall be made equally accessible to all, based on capacity, by every appropriate means, and in particular by the progressive introduction of free education.

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children's schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their convictions.*

4. *No part of this article shall be construed to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles outlined in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."*

General Comment No.11 introduces Plans for Action for Primary Education under Article 14 considering millions of children are out of school in poorer and developing countries, the action plan should introduce compulsory and free of charge education for children. The implementation plans contain the progressive realization²² of the right to education.

General Comment No.13 in paragraphs 4-14 is elaborating on Article 13 of the ICESCR referring to compulsory primary education and the importance of secondary education. Both Articles 13 and 14 are complementary to each other and should be jointly considered while implemented.²³

The convention is following the objectives of the UN Charter and the UDHR 1948 on personal development and dignity, peace and participation, and promotion of understanding among all. These objectives however more reflect the adult persons, the start of the evolution is primary and secondary education. The objectives can be fulfilled by the States Parties when they support the right to education in all layers of society. Though it cannot be limited to the children's primary and secondary education it talks about those groups of children and adults who by different means and reasons are far from the formal structures of the educational system.

General Comment No.13 paragraphs 43,44,45 state the full realization of the right to education by the States Parties with consideration of the constraints. It imposes different obligations for the immediate effect that needs to be fulfilled without any discrimination, and the obligation to take steps towards the full realization of Article 13. It stresses that the obligation should be deliberate, concrete, and targeted with maximum use of the available resources.

Paragraphs 46 and 47 focus on the State Party's obligations to respect, protect, and fulfillment of the education like all the other rights. It further adds that respect for the right to education means avoiding the measures that delay or prevent the enjoyment of the right to education, while the protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. Finally, the obligation of fulfillment by the States Parties means that they must take the measure that enables and assist individuals and communities to enjoy the right to education.

²² ICESCR 1966 Art. 14: Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

²³ 'UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)' (n 23).

Paragraph 49 elaborates and talks about the development of the educational system and the curricula that need to be in line with article 13(1).

Coming to the details, in paragraph 50 of General Comment No.13, Article 13(2) guides the number of specifications to achieve the objective which is stated in the first paragraph.²⁴

It further focuses on interconnected features of the right to education which is essential for both primary and secondary education. These features also introduce the realization of the right to education, which puts more impact and effectiveness on the system.

These features can be stated as below:

- a) Availability: Educational institutions and programs must be available in sufficient quantity in a State.
- b) Accessibility: Educational institutions and programs must be accessible to everyone, without discrimination. It also implies to physical and economic accessibility.
- c) Acceptability: The form and substance of education, including curricula and teaching methods, must be relevant, culturally appropriate, and of good quality.
- d) Adaptability: Education must be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their specific social and cultural contexts.

The four "As" scheme is a useful device to analyze the content of the right to receive an education and the general obligations for a State Party resulting from it.²⁵

The main points of Article 13(2) are interpreted in General Comment No.13. The obligations of the States Parties concerning primary secondary and higher education are the same with no difference. At the same time, compulsory free and primary education should be considered by all the States Parties which is an immediate duty for all the States Parties.

In paragraph 52 of the General Comment No.13, refers to realization of the right to education with consideration of Article 2(1) that emphasizes on nondiscriminatory approach.

The paragraph furthermore talks about the development of a comprehensive national education strategy that includes standards and plans for secondary, higher, and fundamental education which is stated in the covenant. And since the strategy is one of the steps to progressive realization, it needs to have benchmarks, indicators, and monitoring systems on the right to education.²⁶ More specifically, according to the General Comment No.13 paragraph 12, the content of secondary education can vary based on the needs of the States particularly for working children and other marginalized ones bearing in mind the overall objective of full development and human personality in a democratic society

In addition, General Comment No.13 paragraph 54, elaborating the Articles 13 (3) and (4) which speaks about the establishment of the "Minimum Education Standards" by the States Parties and to have a system in place to fund educational services without discrimination.

Overall, the ISESCR 1966 elaborates the right to education in more detailed way and those States who are members of the covenant has the responsibility to consider all the implications in their national systems.

²⁴ ICESCR 1966 Article 13 (1)

²⁵ 'UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)' (n 23).

²⁶ 'UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 Para.52)' (n 1).

III. The Right to Education and the Convention on the Right of the Child (CRC) 1989

The United Nations Convention on the Rights of the Child (CRC) 1989 is an important document that guarantees the rights of children as human rights under international law. The CRC is one of the most prominent conventions that most countries have ratified, which shows the State party's commitments toward the rights of the children more than any other human right.²⁷

Since the convention is legally binding,²⁸ the States with ratified status must consider the implementation at both policy and implementation levels. It focuses on all rights of children as equally important which cannot be taken away from children.

The right to education is included in Articles 28 and 29 CRC and through other articles of the convention, it is indirectly stated.

Article 28 of the CRC 1989, talks about compulsory and free primary education for all under a comprehensive system that inherent dignity of the children and nourishes the talents and the skills to be enhanced by the different programs by the States Parties. Encouragement of different forms of secondary education is a key element of Article 28 CRC.²⁹

Furthermore, States Parties are encouraged to recognize the right to education for children progressively with consideration of equal opportunity for all. From the onset, States are thus required to act based on non-discrimination.

The interpretation of Article 29 of CRC 1989, General Comment No.1 by the CRC Committee on the Aims of Education, provides a very clear overview of what the right to education means in practice.

Some relevant points are highlighted as:

- Article 29 of the convention should be not taken in isolation, but rather needs to be implemented in an interconnected way not only with the general principles of “non-discrimination (Article. 2), but in the best interest of the child (Article. 3), the right to life, survival, and development (Article. 6), and the right to express views and have them taken into account (Article. 12)”³⁰ but also other provisions such as “Rights and Responsibilities of Parents (Articles. 5 and 18), Freedom of Expression (Article. 13), Freedom of Thought (Article. 14), The Right to Information (Article. 17), The Rights of Children with Disabilities (Article. 23), The Right to Health (Article. 24), The right to Education (Article. 28), and The Linguistic and Cultural Rights of Children Belonging to Minority Groups (Article. 30).”³¹
- Education must be child-centered and empowering. This applies to the curriculum as well as the educational processes like the pedagogical methods, and the environment where education takes place.³²
- Education must include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; resolve conflicts in a non-violent manner, develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.³³
- Education system must struggle against discrimination, racism, unfounded fears of racial, ethnic, religious, cultural and linguistic, and other forms of differences that destroy the capacity of the child and prevent them to benefit from educational opportunities.³⁴

²⁷ ‘Convention on the Rights of the Child’ (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 5 April 2022.

²⁸ *ibid.*

²⁹ ‘UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29 (1), The Aims of Education’ <<https://www.refworld.org/docid/4538834d2.html>> accessed 5 July 2022.Para.2

³⁰ ‘UN Committee on the Rights of the Child (CRC), General Comment No. 1 (2001), Article 29 (1), The Aims of Education’ (n 33). Para.6

³¹ *ibid.*

³² *ibid.* Para.9

³³*ibid.*

³⁴ *ibid.* Paras 10,11.

B. The Scope of the Right to Education under Human Rights Law

As has been discussed earlier, primary and secondary education are necessary preconditions for the realization of a wide array of other rights.

The subsequent part aims to develop the substantive content of the right to education. The analysis is based on the scheme developed by the Special Rapporteur on the right to education, appointed for the first time in 1998 by the UN Human Rights Council and who expanded the requirements imposed on States Parties. Katarina Tomasevski, the first special rapporteur, emphasized the government's obligation to make the right to education more effective by ensuring that education is available, accessible, acceptable, and adaptable for children in any location and any form.³⁵

The four characteristics of education will be examined in greater depth here, as they are also expressed in the General Comment on Article 13 ICESCR 1966.

I. Availability

Availability is the first component of the right to education in the Tomasevski framework. First, the essence of the right to education means that no one shall be denied the right to education. A non-discrimination³⁶ approach should be designed for the availability of education for all.

The feature of availability should be considered for secondary education as the same as primary education,³⁷ though there is more emphasis on the State's commitment and fund allocation for free and compulsory primary education. The other side of the obligation is to ensure the availability of schooling, and safeguards against abuses of power by the government,³⁸ meaning that the authorities, in demanding certain political agendas, use the right to education as an excuse or as a tool, and mix it with indoctrination and ideological overtones³⁹. Such examples are seen in several countries where ruling parties politicize the right to education which is reflected in changes in the educational systems, school curricula, and discriminatory approaches.

Availability centers on the government's obligation to provide free and compulsory primary schooling. Nonetheless, post-compulsory education may become an obligation through the "progressive realization"⁴⁰ of human rights. Further on the availability, States should ensure the provision of enough educational infrastructure (institutions and programs) for everyone. These should be equipped with all the materials and facilities needed to function properly in the context, such as buildings, teaching equipment and materials, trained and paid staff, protection from natural elements, sanitation facilities for both sexes, and safe drinking water.⁴¹

A way of effective availability by the States Parties is to engage and support the private sector in the provision of services in the field of education. This is needed in the areas where the government itself is not having sufficient capacity to provide the services. This includes the children who faced an educational backlog or have special needs to access education.⁴² furthermore, there are children and adults who because of their nature of work (migrant children in detention facilities, working children) the right to education is not available for them by the government itself, so the private sectors, as well as Non-Government Organizations (NGOs), are making the education available for them.⁴³

³⁵ See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/312103344> The Right to Education: The Work of Katarina Tomasevski Art. in Comparative Education Review · November 2007 p.497

³⁶ Fons Coomans, 'Exploring the Normative Content of the Right to Education as a Human Rights: Recent Approaches*' 88.

³⁷ CRC 1989Art. 29

³⁸ Ketki Tara Kumaiyan, 'Comparative Analysis of Right to Education Across the World' Uttarakhand Judicial & Legal Review 74.

³⁹ Fons Coomans, 'Exploring the Normative Content of the Right to Education as a Human Rights: Recent Approaches*' 28.

⁴⁰ *ibid* 73.

⁴¹ 'The Right to Education' (ESCR-Net) <https://www.escr-net.org/rights/education> accessed 15 May 2022.

⁴² 'OTRAEDUCACION: The 4 As as Criteria to Identify "Good Practices" in Education' (OTRAEDUCACION) <https://otraeducacion.blogspot.com/2011/10/4-as-as-criteria-to-identify-good.html> accessed 15 May 2022.

⁴³ Fons Coomans, 'Identifying the Key Elements of the Right to Education: A Focus on Its Core Content' 6.

II. Accessibility

Once availability is ensured, we must ask ourselves about accessibility. Not everything available is accessible to everyone. Accessibility matters not only for the primary and compulsory period but also should be facilitated for post-compulsory education if circumstances permit it.⁴⁴ “Accessibility may be impeded by a variety of factors, even though schooling may be nominally available”.⁴⁵

Inaccessibility may have different causes and dimensions, including social status, economy, gender, citizenship, migrant status, disability, race, ethnicity, language, religion, and imprisonment by which a child or adult can experience inaccessibility in education.⁴⁶

General Comment No.13, highlights that, it is the responsibility of the States Parties to ensure a comprehensive accessibility approach to the right to education to address above mentioned factors and make education accessible for all. As a matter of progressive realization, the policies and regulations, political backing, and economic support at the first stage should be in place to ensure accessibility.⁴⁷

Following that, it would be the implementation of the policies and support of the communities that matters to make the progress happen.

Accessibility has various dimensions that need to be further elaborated.

1. Economic Accessibility

Access to education depends on the economic situation of families that either support or does not support children education, depending how the family invest on their children and it happens when the children are at their secondary education.

Just to give some examples: In some countries, where the right to education is not free, most girls automatically are deprived of education. As per the family mindset, only boys are worth the investment and are preferred to gain education over the girls.⁴⁸

Similarly, because of the poor economic situation of families, child labor is a common and often necessary way to increase family income. The survival of families often conflicts, thus, with the right to education and will logically be prioritized over a good quality education for both girls and boys. It must be highlighted that the demand for additional labor force within families concerns boys who are subject to exploitation through forced labor.⁴⁹

Lastly, economic inaccessibility may be related to child marriage. Where secondary education is not accessible or considered more valuable, children drop out of school at a very early age as families do not want to invest in their girl children but rather marry them at a very early age. On the one hand, according to common understanding, marriage will spare girls poverty; on the other hand, pressure from the family income will be relieved and an additional source of income gained.⁵⁰

⁴⁴ Ketki Tara Kumaiyan (n 44) 2.

⁴⁵Steven Klees and Nisha Thapliyal, ‘The Right to Education: The Work of Katarina Tomasevski’ (2007) 51 Comparative Education Review 497, 13.

⁴⁶ *ibid.*

⁴⁷ ‘UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)’ (n 23).

⁴⁸Fons Coomans (n 49) 3.

⁴⁸ Pamela Constable, ‘Boys in Afghanistan Are Becoming Breadwinners for Their Families’ Washington Post <<https://www.washingtonpost.com/world/2022/04/23/afghanistan-child-labor-kids-education>> accessed 5 July 2022.

⁵⁰ Daniela DIEMLING, ‘The Value of Education Experiences of Dalit Mothers in Nepal’ (Masters, vorgelegt an der Karl-Franzens-Universität Graz 2020) 22 <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5473665/full.pdf>.

All these aggravating circumstances are a result of governments⁵¹ failing to adopt proper policies and ensure that sufficient resources are allocated for education, primary and secondary education alike.

As far as both layers of primary and secondary education matter for the development of children and human beings, this needs to be seriously addressed and States Parties should be made responsible for their inactivity resulting in illiteracy, rights violations, and child exploitation. For some of the states where governments rely on additional foreign aid, the international community has the responsibility to act and help them with different approaches of funding and support, to prevent any deprivation of rights to education for the children. In this regard, one can refer to some ad hoc solutions proposed by UNESCO such as conditional cash transfers for families;⁵² school feeding programs; provision of food in exchange for school enrollment; and vocational training for children to support family finances just to name a few.⁵³

2. Physical Accessibility

Physical accessibility means that certain conditions must be fulfilled so that children can reach their school destination.

For instance, physical accessibility is not fulfilled when long walking distances are intractable for children, or school ways are generally unsafe because of either natural or geographical conditions or because of security risks related to e.g. organized crime, gang violence, etc.

When shaping educational policies, States have to pay respect, thus, to the geographical and natural structure of their territories to make schools easily accessible through e.g. public transportation.⁵⁴ Furthermore, educational institutions' facilities must be fully equipped and States must ensure that sanitary facilities and drinking water are available. Mostly for developing countries, where the governments are not able to equip the schools, UNICEF, as a child support agency, provides the facilities of water, sanitation, and hygiene promotion services.⁵⁵

Another issue concerns physical accessibility by children with disabilities. According to reports, in some of the world's poorest countries, up to 95% of children with disabilities are out of school.⁵⁶ States must ensure that educational institutions are accessible for all kinds of disabilities by firstly, removing physical barriers but also by proactively promoting non-discriminative awareness-raising among the children and the communities.

Making education affordable and accessible for all, without discrimination, means that schools and educational institutions are structured in a way that no child feels ignored and neglected to gain education whether it is in terms of school settings, or the educational curriculums and availability of trained teachers. These specifications are additionally emphasized in Articles 2 and 23 of the CRC, Article 24⁵⁷ of the CRPD 2006, and General Comment No.4 of the UN Committee on the Rights of Persons with Disabilities (CRPD) which dedicates 74 detailed paragraphs on inclusive education.

3. Curricular and Pedagogical Accessibility

If learning materials are not accessible to learners, then learners' abilities won't be accessible to educators. Curricular and pedagogical accessibility encompasses conveying education in a language accessible to all; on the other hand, it means that coherent curricula are developed and teachers receive the appropriate training to be able to deliver good quality education.

⁵¹Phineas Rueckert, '10 Barriers to Education That Children Living in Poverty Face' (*Global Citizen*, 13 August 2019) <https://www.globalcitizen.org/en/content/10-barriers-to-education-around-the-world-2/> accessed 5 April 2022.

⁵² Fernando Reimers, Carol DeShano da Silva and Ernesto Trevino, 'Where Is the "EDUCATION" in Conditional Cash Transfer in Education' 24–25 http://uis.unesco.org/sites/default/files/documents/where-is-the-education-in-conditional-cash-transfers-in-education-06-en_0.pdf.

⁵³ 'National Policy for Alternative Education Pathways Meeting the Diverse Learning Needs for the Vulnerable and Marginalized Children and Youth in Lebanon' 25–35 https://en.unesco.org/sites/default/files/national_policy-final_en.pdf.

⁵⁴ 'Challenging Geographies | Educate a Child' (*Educate a Child*) <https://educateachild.org/explore/barriers-to-education/challenging-geographies> accessed 5 April 2022.

⁵⁵ 'Drinking Water, Sanitation and Hygiene in Schools: Data Visualization' (*UNICEF DATA*, 26 August 2018) <https://data.unicef.org/resources/wash-in-schools-data-viz/> accessed 1 July 2022.

⁵⁶Phineas Rueckert (n 56).

⁵⁷ Art. 24: Right to Inclusive Education

Considering that in a State there can be different languages used, the States must program curricula by the mother tongue and ability of students. Besides that, well-trained and professional teachers are of utter importance for the education of the children which requires States to invest in their education. Non-discrimination is crucial for the latter as in some countries, the availability of female and male teachers is a cultural issue that impacts the accessibility of education and can have a direct impact on the enrollment and dropout of students in secondary education.⁵⁸

Curricula must be of direct relevance for the child's social, cultural, environmental, and economic context together with the teaching methods, they ensure the preparedness for present and future needs and therefore must full account of the child's evolving capacities.

General Comment No.1 in paragraph 9 of the CRC Committee on the Aims of Education states "Education must be aimed at ensuring essential life skills are learned by every child and that no child leaves school without being equipped with life skills, to face the challenges that he or she can expect to be confronted with in life".

4. Non-discriminatory Approach to Accessibility

"Educational institutions must be accessible to everyone, without discrimination, in law, and fact".⁵⁹

In both policy and practice, education provided by the State should be of the same quality accessible to all groups in society, without discrimination, and with no preference or degrading on, sex, ethnicity, geographical location, economic circumstances, disability, citizenship, membership of a minority group, religion, or sexual orientation.⁶⁰ The right to education laid down in Article 13 ICESCR 1966 is a universal right granted to every person, regardless of age, language, social or ethnic origin, or another status.

In addition to that, the Convention on the Prohibition of all Forms of Discrimination (CERD) 1965⁶¹ and Convention on Elimination of Discrimination Against Women (CEDAW) 1979⁶² which are legally binding conventions, talk about non-discriminatory approaches to fulfilling the right to education.

⁵⁸ 'OTRAEDUCACION: The 4 As a Criteria to Identify "Good Practices" in Education' (n 48).

⁵⁹ 'UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13(2): The Right to Education (Art. 13 Para.6)' (n 1).

⁶⁰ Klees and Thapliyal (n 51) 27.

⁶¹ CERD 1965. Art.7: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices that lead to racial discrimination and promoting understanding, tolerance, and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination,

⁶² CEDAW 1979 Art. 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies, and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

And finally, ICESCR 1966 Article 2(1) and Article 2 CRC, specifically mentions the indiscriminate approach to the right to education. Accordingly, the non-discrimination obligation requires states actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures⁶³. For example, as highlighted by the CRC Committee, there is a need for collecting disaggregated data to identify discrimination or potential discrimination.⁶⁴ Addressing discrimination may require changes in legislation, administration, and resource allocation, as well as educational measures to change attitudes.

III. Acceptability

Acceptability, as it is stated in General Comment No. 13 on Article 13 of ICESCR, is the form and substance of education, including curricula and teaching methods, these must be relevant, culturally appropriate and of good quality, and in the best interests of the child. This agenda is brightened when the children are counted as subject to the right to education.

The General Comment also says, to make education acceptable for all, the State is obliged to ensure that all schools follow the minimal criteria according to the needs of the communities.

As mentioned above, acceptability refers to the acceptable environment of education for the children. Here it is important to focus more on the cultural aspect of the right to education. Religious acceptability and minority language are the main parts of the agenda, however, other cultural topics such as a safe school environment, politicizing the curricula, and imposing dress codes, are some of the other key elements that matter for the acceptability of the right to education.

Regarding minority rights, international law has emphasized the right of minorities to religious education and education in the mother tongue.⁶⁵

Moreover, the right of minorities to establish, for their account, educational institutions in which they are entitled to use their language, was characterized by the Permanent Court of International Justice as 'indispensable to enable the minority to enjoy the same treatment as the majority, not only in law but also in fact.'⁶⁶ The Court considered these institutions as 'suitable means for the preservation of their racial peculiarities, their traditions, and their national characteristics'. It is in this sense that the right to be educated in the language of one's own choice belongs to the core content of the right to education.⁶⁷ It is one of the elements of a State's obligation to respect that right.

IV. Adaptability

Education must be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their specific social and cultural context, including the evolving capacities of the child.

Adaptability refers to both primary and secondary education of the children. For primary schooling, it is obvious that children with different statuses of sex, gender, disability, ethnicity, and minority status must be considered for the adaptable educational structure.

When it comes to secondary education and the adaptability of the educational system, there should be added terms and conditions to the adaptability because the status of the children in secondary education differs.

⁶³ Klees and Thapliyal (n 51) 27.

⁶⁴ Samantha Besson, 'The Principle of Non-Discrimination in the Convention on the Rights of the Child' [2005] *The International Journal of Children's Rights*. 13: 433-461, 2005. 433 © 2005. Koninklijke Brill NV Printed in the Netherlands. 456 <https://core.ac.uk/download/pdf/20656988.pdf>.

⁶⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 Para.2)' (n 1).

⁶⁶ Ketki Tara Kumaiyan (n 44) 4.

⁶⁷ Gentian Zyberi, 'The International Court of Justice and the Rights of Peoples and Minorities' (2013) 7.

According to the UNESCO World Declaration on Education for All (1990), every person – child, youth, and adult ‘no matter their status’ shall be able to benefit from educational opportunities designed to meet their basic learning needs.⁶⁸

The basic needs can refer to essential tools like literacy, oral expression, and problem-solving, as well as basic learning contents such as knowledge, skills, values, and attitudes that human being needed to survive and live with dignity.⁶⁹

The adaptable education system needs to be further highlighted to the marginalized groups, such as children with disabilities and working children.

1. Children with Disabilities

Going into detail, for the adaptability of the right to education, what first comes to mind is the adaptable system for the children with disability so that children would not need to suffer from adapting themselves to the educational systems.

It means that the traditional method of adaptation shall be ended, and the government’s responsibility is to adapt the educational settings, curricula, and methods for children with disability. According to the report, disability caused a huge number of children to be excluded from the right to education. Because the families on one hand found it shameful to include them in society, on the other hand, they did not find the environment, especially the education system and the structures friendly enough for their children.⁷⁰

2. Working Children

For the children who are deprived of their liberty and the children who do the labor and are also far from the education systems like other children, adaptability would mean providing them with education wherever they are.⁷¹ The International Labor Organization (ILO) laid down the link between the age for completion of compulsory education and the minimum age for employment in 1921, when ILO Convention No. 10 prohibited employment that biases children’s school attendance and set the age at 14, considering that by age of 14, the children shall obtain their compulsory education.⁷²

IPEC (International Program for the Elimination of Child Labor facilitates ‘a process to reform and change in social attitudes and in public and corporate policies that will lead to sustainable prevention and abolition of child labor within a country.’⁷³

⁶⁸ Theresia Degener and Yolán Koster-Dreese (eds), ‘World Declaration on Education for All Meeting Basic Learning Needs: Adopted by the World Conference on Education for All on 9 March 1990’, *Human Rights and Disabled Persons* (Brill | Nijhoff 1995) https://brill.com/view/book/edcoll/9789004479890/B9789004479890_s044.xml accessed 5 April 2022.

⁶⁹ *ibid.*

⁷⁰ Klees and Thapliyal (n 51) 31–34.

⁷¹ Defence for Children – The Netherlands, ‘“UN Study on Children Deprived of Their Liberty Makes Us Feel Uncomfortable. As It Should Do.” – www.childrendeprivedofliberty.info’ <https://childrendeprivedofliberty.info/un-study-on-children-deprived-of-their-liberty-makes-us-feel-uncomfortable-as-it-should-do/> accessed 3 March 2022.

⁷² ‘International Labor Standards on Child Labor’ <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm> accessed 12 March 2022.

⁷³ ‘The International Program on the Elimination of Child Labor (IPEC) What It Is and What It Does’ 6 https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_210580.pdf.

C. The Realization of the Right to Education

I. The Progressive Realization of the Right to Education

Each treaty, regarding the economic, social, and cultural rights expressed the State obligation differently.⁷⁴

For example, Article 2 (1) ICESCR 1966 calls on States Parties to ‘take steps’ to maximize their available resources to achieve progressively the full realization of economic, social, and cultural rights.

The Covenant also calls on the States to guarantee the enjoyment of economic, social, and cultural rights without discrimination and equal rights for all women and men, boys, and girls, and to the adoption of legislative measures.

Article 4 CRC calls on the States to undertake appropriate legislative, administrative, and other measures to implement the rights which are recognized in the CRC, and are also recognized by the ICESCR, which again requires the States Parties to allocate and use their available resources to fulfill the rights and, where needed, within the framework of international cooperation.

Article 4 (2) of CRPD states that:

“About economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, to achieve progressively the full realization of these rights, without prejudice to those obligations contained in the present convention that are immediately applicable according to international law.”

General Comment No. 13 on ICESCR emphasizes that education is “an indispensable means of realizing other human rights” as well as a human right itself. At the same time General Comment No. 11 which focuses on a plan for action for primary education under Article 14 of ICESCR 1966, emphasizes the full realization of education by development and implementation of the plan for action on compulsory primary free education.

II. Measuring the Implementation of the Right to Education

State obligations regarding human rights are threefold. States have the obligation: to respect, protect, and fulfill human rights.⁷⁵

According to the ICESCR 1966, the measurement of the implementation of human rights can be done by using specific indicators proving whether governments are committed to realizing the right to education and are willing to further work on its implementation.

Some of these indicators can be:

1. **Free and Compulsory Primary Education:** States Parties must ensure the commitment to free and compulsory primary education. This act should be reflected not only in policy developments but also in action plans for real and better results.

The ICESCR 1966 in General Comment No.3 introduces Minimum Core Obligations that any State party must implement, and if a State fails to meet these because it does not have the resources, it must demonstrate that it has made every effort and with an immediate approach to use all available resources to satisfy, as a matter of priority, these core obligations. Even if a State has inadequate resources at its disposal, the government must still introduce low-cost and targeted programs to assist those most in need so that its limited resources are used efficiently and effectively. Free and compulsory primary education is the core minimum obligation for the children

⁷⁴ OHCHR (n 13) 18.

⁷⁵ ‘OHCHR | International Human Rights Law’ (OHCHR) <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed 25 March 2022. OHCHR,

that States can perform, the right to secondary education with consideration of all other key elements of accessibility, availability, adaptability, and acceptability is the next part of the progressive realization⁷⁶, because of its value in the society which opens the doors for all the other rights.

2. **Nondiscrimination:** With consideration of General Comment No. 3, General Comment No.13 emphasizes that States have some immediate obligations regarding the right to education, such as non-discrimination based on Article .2 (2) of ICESCR, Discrimination based on (race, color, sex, language, religion, politics, or another opinion, national or social origin, property, birth, disability or another status) must be prohibited. Equal treatment, and the obligation to take deliberate, concrete, and targeted steps toward the full realization of Article 13 (2) ICESCR 1966.
3. **Adopt and Implement a National Educational Strategy:** the strategy must contain provisions for the realization of the right to secondary, higher, and fundamental education for all by the ICESCR 1966.⁷⁷
4. **Right to School Choice by Parents for Their Children:** The State responsibilities mean that the State must respect the liberty of parents to choose schools for their children, and the State must ensure that third parties, including parents, do not prevent girls from going to schools, and the State must take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all.⁷⁸
5. **Non-retrogressive Measures:** States should not allow the existing protection of economic, social, and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. For example, introducing school fees in secondary education which had formerly been free of charge would constitute a deliberate retrogressive measure. To justify it, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact, and fully using its maximum available resources.⁷⁹

D. Challenges to the Right to Education

To address the right to education properly, it must be understood that access to education is dependent on various aspects.

It can have many challenges and obstacles based on the regions, countries, and cultures. But at this point, two main factors which are relevant to the thesis and the context of Afghanistan will be discussed.

As has been pointed out already, poverty might have severe impacts on the possibility of children going to school. Therefore, it is not enough only to ensure the effective realization of the right to education. It is rather necessary to address underlying root causes that might impede access to education. Subsequently, forced child marriage and forced labor will be described to demonstrate the interconnectivity of different human rights issues that need to be addressed to ensure the fulfillment of the right to education.

I. Child Marriage

Child marriage is widely recognized within international agreements as a violation of the human rights of children⁸⁰ to health, education, equality, non-discrimination, and to live free from violence and exploitation. The prohibition of child marriage has been enshrined in the UDHR 1948, the CRC 1989, and the CEDAW 1979. As stated earlier in section 1.4, child marriage is one of the negative coping mechanisms applied by parents to spare girls from poverty and to ensure additional financial supplies.

⁷⁶ Jootaek Lee, 'The Human Right to Education: Definition, Research and Annotated Bibliography(2020) 34 785.

⁷⁷ 'UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 Para.52)' (n 1).

⁷⁸ ICESCR 1966 Art. 13 (3),(4)

⁷⁹ OHCHR, 'Human Rights Factsheet No.33, Frequently Asked Questions on Economic, Social and Cultural Rights' 16 <<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf>>.

⁸⁰ ICESCR 1966 Article 2(1),

Because of its long-term consequences, child marriage also violates the rights of women who were married as children, with serious implications for their health, income, work, autonomy, and life choices. The CRC and CEDAW Committees recently reiterated recommendations that States Parties amend or adopt laws setting the legal minimum age of marriage at 18.⁸¹

According to UNICEF, “Worldwide, more than 650 million women alive today were married as children. Every year, at least 12 million girls are married before they reach the age of 18. This is 28 girls every minute. One in every five girls is married, or in the union, before reaching the age of 18”⁸² The situation is reported even worse in the least developed countries “40 % of girls are married before age 18, and 12 % of girls are married before age 15” because of the poverty and the same for the countries with conflict and humanitarian settings.⁸³

II. Forced Labor

Child labor, unfortunately, has many negative consequences that are not only limited to the children’s health and development, but their future, the next generation, and nations as a whole.

According to UNICEF, it delays the children’s mental and physical development, on the other hand, it keeps the children away from education and links them to long-term poverty that can impact their families and next generations. Especially for girls, the “triple burden” of school, work, and household chores heightens their risk of falling behind, making them even more vulnerable to poverty and exclusion.⁸⁴

The right to education is priorities for all needs. As I earlier mentioned, the States Parties need to design the adaptability of the education system in a way that the children who are under any circumstances removed from the general education system should have the access to education.

For this purpose, International Labor Organization, (ILO) has ratified the Conventions on Minimum Age of Labor and Worst Forms of Child Labor Convention 1999 No. 189, to support the States Parties minimize the risk associated with child labor and helping the children gain education beside their labor.

Minimum Age Convention, 1973 (No. 138)

This fundamental convention sets the general minimum age for children’s employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.

Worst Forms of Child Labor Convention, 1999 (No. 182)

This fundamental convention defines a "child" as a person under 18 years of age. It asks the States to eliminate the worst forms of child labor, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for unlawful activities, in particular for the production and trafficking of drugs; and work which is likely to harm their health, safety or morals.

The convention requires ratifying States to provide the necessary and proper direct assistance for addressing e worst forms of child labor and for their rehabilitation and social integration. It also requires States to ensure access to free basic

⁸¹ Megan Arthur and others, ‘Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities’ (2017) 39 Journal of Women Politics & Policy 16.

⁸² ‘OHCHR | Child and Forced Marriage, Including in Humanitarian Settings’ (OHCHR) <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> accessed 22 April 2022.

⁸³ *ibid.*

⁸⁴ ‘Child Labor’ <https://www.unicef.org/protection/child-labour> accessed 5 June 2022.

education, makes vocational training possible and available for the working children, and prevent them from the worst forms of child labor.

E. The Right to Education as Precondition for the Enjoyment of Other Rights

When children are provided with quality education, they become more aware of themselves and their environment, and they realize further what is concerning them regarding their rights, and how they can have a say about it and express themselves to achieve those rights. Several such interconnected rights for children, at an earlier age and in adolescence age are stated in articles of the CRC.

Any educational platform, especially schools are the places where children find themselves within the same age group of persons. They learn they make friendships, they think together and form their ideas together, no matter what and why. Still, access to education is an enabling environment for them to grow. They observe what is in their environment, in their families, and in their schools, which affects them negatively and positively. They also know how they can address the issues and how they can contribute to solving or changing those issues.

This is the reason that CRC is thinking about giving more importance to the children's thoughts and views either individually or collectively. Although comparing the children with adults, they are not much on an influential level, they need support from the States parties and from their societies to have their voices heard.

CRC 1989 in Articles 13 (Freedom of Expression), 12 (Right to be Heard), and 15 (Freedom of Association),⁸⁵ ensures the children are given the opportunity and ability to form their thought and express their views freely on the matters which are affecting them, either in their homes, in schools, or at the subnational and national levels, considering it's not only about empowering the children to have a voice but also about how these voices should be heard and given due weight.⁸⁶

I. Right to Freedom of Expression

Article 13 of CRC 1989 reads:

1. The child shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or public health or morals.

The CRC Committee states that it is not sufficient that freedom of expression is guaranteed in a country's constitution; children's right to free expression should be explicitly guaranteed in legislation.⁸⁷

Children's right to freedom of expression is closely connected to Articles 15 (Freedom of Association), and 28 and 29 of the right to education and development. So, on the one hand, the children are empowered to get educated, form their views and express them and at the same time, the States Parties are obliged to hear the voice of the children and give them weight.

⁸⁵ David William Archard, 'Children's Rights' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2018, Metaphysics Research Lab, Stanford University 2018) 9 <https://plato.stanford.edu/archives/win2018/entries/rights-children/> accessed 25 April 2022.

⁸⁶ Gerison Lansdown and Ziba Vaghri, 'Article 13: The Right to Freedom of Expression' 65 43 https://doi.org/10.1007/978-3-030-84647-3_8.

⁸⁷ 'Article 13: Freedom of Expression' <https://archive.crin.org/en/home/rights/convention/articles/article-13-freedom-expression.html> accessed 2 April 2022.

Article 13 is one of a group of CRC articles setting out civil and political rights for children. The CRC Committee on Article 13 states that the educational programs and quality education should be designed in a way that improves the ability and skills of the children. In addition, it is important to give equal weight to the children's voices as adults, and their participation should not be limited only to being seen and not heard.

II. Right to Freedom of Association

Article 15 of CRC 1989 States:

"States Parties recognize the rights of the child to freedom of association and freedom of peaceful assembly.

No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".

Among children's right to participation, one of the important methods for the children to express their views is children's assembly. This is when they get together collectively, share their thoughts and express them. The more the knowledge and awareness of the children are strengthened, the more they will be able to associate on a variety of topics to have their rights.⁸⁸

Freedom of association can start with a small group of children who want to share views in schools, support each other on different skills and abilities, share knowledge and experience, and even want to do some volunteer activities to bring change in the lives of the other children of their ages.

Child peer support, children, and youth organizations with the partnership of adult groups help the children grow more because the adults can be good coaches and leaders for them. In a way, this is the transformation of the experience of giving more power to the children's voices and making them think creatively. Association of the children can have the forms of online – internet base, where they should freely express their views and join those who support their ideas on certain things.⁸⁹ According to the General Discussion Report, 2018 Children are meant to be for such activities to bring empowerment and awareness to the other community members, especially to the other children.⁹⁰

III. The Right to be Heard

CRC 1989 Article 12 reads:

"1. States Parties shall assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight by the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".

Article 12 does not impose an age limitation on the children's view, but rather it encourages the States Parties to respect and hear the non-verbal view of the children who are not able to express themselves in proper verbal communication.

It also emphasizes that children do not need to have comprehensive knowledge of the issues that impact them. The State's responsibility is to make sure their voices are given due weight.

The CRC Committee General Comment No.12 further discusses the children's right to be heard and children's right to express themselves about education systems and children's development.

⁸⁸ Lansdown and Vaghri (n 99) 96.

⁸⁹ DGD2018 CHR, 'United Nations Committee on the Right of the Child Days of General Discussion (DGD) 2018 Protecting and Empowering Children as Human Rights Defenders' 16 <2018>.

⁹⁰ *ibid* 36.

In paragraph 105 of the General Comment No.12 the Committee refers to the right to be heard of the children under Article 12 regarding the right to education. It states that “Respect for the right of the child to be heard within education is fundamental to the realization of the right to education”.

2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the convention. The CRC Committee has identified Article 12 as one of the four general principles of the convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests, which highlights the fact that this article establishes not only a right in itself but should also be considered in the interpretation and implementation of all other rights.

CRC Committee in General Comment No.12 urges States Parties to prevent a tokenistic approach to the children’s right to be heard. Because it brings limitations not the views of the children and results in failure to give their views due to weight. Furthermore, for children, effective participation should be counted as a process, not a one-time event, therefore the Committee is suggesting a process for the children to be heard by the States Parties. In paragraphs 132 -134, the Committee explains the step-by-step process for an effective approach to be undertaken by the States Parties. The process will allow for both children and the States Parties to be more strategic, objective-oriented, and clear on their communication and demands.

The process is briefly highlighted below:⁹¹

- (a) Transparent and informative - children must have full access, to age-appropriate information about their right to express their views freely and in the weight given to their views, and how the process of acceptance and hearing of their views will have the potential impact.
- (b) Voluntary- Children participating in this process should be a volunteer and they should not be used to express ideas to others when they participate.
- (c) Children’s views must be treated with respect - they need to be given the opportunities to initiate ideas and activities.
- (d) Relevant - the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills, and abilities. In addition, space needs to be created to enable children to highlight and address the issues they identify as relevant and important;
- (e) They need to be given the opportunity and resources to feel confident while expressing their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities.
- (f) Inclusive- Marginalized children, both boys, and girls should be given equal opportunities without any kind of discrimination on the ground
- (g) Children’s skills further need to be built via training and skill-building approaches- in this process, they should take part beside the adults. For instance, they need support in organizing meetings, raising funds, dealing with the media, public speaking, and advocacy
- (h) Safe and sensitive to risk - in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation, or any other negative consequence of their participation.
- (i) Accountable - States Parties or any other responsible entity must be accountable and ensure accountability to children, and how their views are taken seriously. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be allowed to participate in follow-up processes or activities. Monitoring and evaluation of children’s participation need to be undertaken.⁹²

⁹¹ ‘UN Committee on the Rights of the Child (CRC), General Comment No. 12 (2009): The Right of the Child to Be Heard’ paras 132–134 <<https://www.refworld.org/docid/4ae562c52.html>> accessed 4 April 2022.

⁹² *ibid.*

F. Conclusion

Asking in the research, if the de facto government of the Taliban, via its policy design would be able to protect the achievements made on the right to education during the last two decades.

For that purpose, I needed to analyze how the existing international covenants address and guarantee the primary and secondary rights to education for children.

Human full development and dignity, understanding and tolerance, and universal peace are the core objectives of the right to education according to the UDHR 1948 and other international law instruments.

The progressive realization of the right to education requires a strong commitment from the States Parties. They need to ensure the interconnectivity between primary and secondary education to achieve human development and dignity. The strategy to reach the progressive realization needs to consider the substantive contents of availability, accessibility, acceptability, and adaptability. The substantive contents must be considered in a nondiscriminatory manner for both boys and girls, all ethnicities, and minorities.

Besides that, based on Article 13 of ICESCR 1966, the States Parties must be prepared for any potential challenge that might emerge because of political change, economic collapse, and other social problems that could delay or damage the educational system in a State. such problems can be insecurity, poverty, social norms, conflict, natural disasters, etc, and at any point, the States Parties are responsible to use the maximum efforts, in the frame of minimum core obligations to prevent the marginalization of the children for their right to education and development. Although we have less evidence on the children participation by all means in Afghanistan context, this is important to see it form the human rights law perspective and to reflect the importance of secondary education which leads a democratic society, where all the citizen would have the right to express, participate and their voice should be given the weight by the state.

CHAPTER THREE: THE RIGHT TO EDUCATION IN AFGHANISTAN FROM 2001-2021

In the first chapter, the international legal framework governing the right to education for both primary and secondary education was discussed. Furthermore, light was shed on the question of which steps have to be taken to ensure quality education and how the progressive realization of the right to education can be measured. Further, the right to education, as an opening door for the other rights was also discussed.

As has been pointed out before, for the main question of this thesis, i.e. whether achievements made in the past 20 years concerning the realization of the right to education will be kept or lost due to the takeover by the Taliban, emphasis is placed on secondary education.

This chapter focuses on the achievements made by the governments of Afghanistan over the last two decades, between the two Taliban governments (the first one overthrown in 2001, and the current one taking power in August 2021). We will be assessing the major achievements, the challenges, and the changes that have been brought for the realization of both primary and secondary education. And further, we will discuss the solution strategies of the government to the emerging challenges and lastly, what remains unaddressed?

Emphasizing that, the focus of the chapter will be on both levels of primary and secondary education of both boys and girls in urban and rural areas.

A. Main Achievements between 2001 – 2021: An Overview

Since 2001, the former Governments of Afghanistan took important steps in rebuilding and promoting the education system to safeguard and advance children's rights to education. These efforts concerned not only the primary – enrollment level but also secondary education which is more about the retention and continuation of education. The National Constitution Law (2004) and the Afghanistan Education Law (2008) establish a strong legal framework for the Ministry of Education (MoE), (the entity responsible for managing the educational system). One of the main points in the mentioned legal frameworks is that education became free for all Afghan citizens up to the Bachelor's level, despite the financial implications this had on the government.

The National Education Strategic Plan (NESP III, 2017-2021), further stressed the need to offer education for all, prioritizing quality and relevance, equitable access as well as efficient and transparent education system management.⁹³

From 2001 to 2021, international partners, such as UN agencies and other international donors have provided support at both the policy and the implementation levels.⁹⁴ Besides that other services, campaigns such as the *Back to School* Campaign in 2001,⁹⁵ have been very successful for school enrollment.

UNESCO Afghanistan, in 'A 20 Years Review Right to Education' report provides the figures of the achievements during two last decades:

"Since 2001, there has been enormous progress in enrolment at all education levels reaching a ten-fold increment, from around 1 million students in 2001 to around 10 million (38 % girls) in 2018".⁹⁶

The number of girls in primary school has increased from almost zero in 2001 to 2.5 million in 2018.

⁹³ Islamic Republic of Afghanistan Ministry of Education, 'National Education Strategic Plan (2017 – 2021)' 30 www.moe.gov.af.

⁹⁴ *ibid* 2.

⁹⁵ 'First Supplies Distributed to Kabul Schools as "Back to School" Campaign Picks up Speed - Afghanistan | Relief Web' <https://reliefweb.int/report/afghanistan/first-supplies-distributed-kabul-schools-back-school-campaign-picks-speed> Published March 2002 accessed 1 July 20.

⁹⁶ Laiq Zirack, 'Women's Education: Afghanistan's Biggest Success Story Now at Risk' (*The Diplomat*, 2021) <https://thediplomat.com/2021/09/womens-education-afghanistans-biggest-success-story-now-at-risk/> accessed 4 July 2022.

About 380,000 students were enrolled in higher education in 2018 compared to around 26,000 in 2003.

The teaching workforce increased to around 226,000 teachers in 2018 including around 81,000 women serving all levels of education. The percentage of qualified teachers, according to national standards, steadily increased at all levels of school education reaching around 80% in 2018. External aid represents a large proportion of education expenditure, standing at around 49% in 2020.⁹⁷

Access to education was improved by building 16,532 public and private general schools and the construction of around 8,000 school facilities across the country. Children's, especially girls' access to education was furthermore boosted by Community Based Education (CBE) which brought schooling closer to hundreds of thousands of Out-Of-School Children (OOSC) even in remote socially conservative areas.⁹⁸

Quality education was also improved by the government's effort Informed by Sustainable Development Goal (SDG 4) and the ongoing education reform agenda, curriculum revisions were rolled out, defining measurable learning outcomes for each grade and level. The new curricula equip students with skills, knowledge, and competency-based learning, to become active and productive citizens. To further improve the quality of education in public schools, the MoE recruited and trained thousands of teachers on advanced pedagogical perspectives.⁹⁹ Generally, the two decades since 2001 have seen great steps towards the realization of the right to education. Still, there have been considerable challenges that undermined even further progress as will be explained later.

B. The National Legal Framework on the Realization of the Right to Education

Linking the discussion about the international framework concerning the right to education with the specific Afghan context, it is worth mentioning that Afghanistan ratified most of the core international human rights treaties, including the International Covenant on Civil and Political Rights and International Covenant Economic, Social and Cultural Rights in 1983, the Convention on the Elimination of Racial Discrimination in 1983,¹⁰⁰ the Convention on Elimination of All Forms of Discrimination Against Women in 1980, and the Convention of the Rights of the Child in 1994.¹⁰¹ Furthermore, Afghanistan was one of the 48 first counties that voted in favor of adopting the UDHR.¹⁰²

The ratification of the human rights treaties obliged Afghanistan to incorporate them into domestic legislation and to implement them in practice. Afghanistan made a legal commitment to abide by the international human rights treaties, setting forth in Article 7 of the National Constitution Law that "*The State shall abide by the UN Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights*".¹⁰³ The Millennium Development Goals (MDGs) and the Sustainable Development Goals, Agenda 2030 (SDGs) are additional international commitments that State policies are built on.¹⁰⁴

I. The Right to Education in National Constitution Law (2004)

The National Constitution Law, which entered into force in 2004, was one of the main documents to ensure the human rights of the citizen-based on international treaties and conventions that the government ratified. Article 7 of the National

⁹⁷ UNESCO, 'The Right to Education: What's at Stake in Afghanistan' 7 https://en.unesco.org/sites/default/files/afghanistan_v11.pdf .

⁹⁸ 'Education: Child Deprivation Analysis' 1.

⁹⁹ *ibid.*

¹⁰⁰ 'United Nations Treaty Collection' <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec> accessed 9 June 2022.

¹⁰¹ Sambhav Sharma, 'Afghanistan: Déjà Vu All Over Again, a Collaboration with University of Pittsburg' (*JURIST, Legal News and Commentary*, 2021) <https://www.jurist.org/commentary/2021/08/james-rudolph-biden-administration-taliban-afghanistan-crisis/> accessed 24 April 2022.

¹⁰² 'Afghans' Right to Vote Is Enshrined in the Constitution and a Fundamental Human Right' (*UNAMA*, 9 October 2018) <https://unama.unmissions.org/afghans-right-vote-enshrined-constitution-and-fundamental-human-right> accessed 24 April 2022.

¹⁰³ National Constitution Law 2004 Art.7: The state shall observe the United Nations Charter, interstate agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. The State shall prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants.

¹⁰⁴ 'A-SDGs' (*Sustainable Development Goals*) <https://sdgs.gov.af/> accessed 24 April 2022.

Constitution Law concerns the implementation and consideration of the international legal frameworks in national legislation and policies which must be reflected in national legislation.

Additionally, Article 22 of the National Constitution Law refers to the equality and non-discrimination of women and men before the law and for the enjoyment of all human rights guaranteed by the National Constitution Law.¹⁰⁵ Articles 43 and 44¹⁰⁶ of the National Constitution refer to the right to education ensuring that the right to education is free of charge until a bachelor's degree is obtained, while it is compulsory up to grade nine, (which indicates a period of primary education according to the international standards).¹⁰⁷

II. The Education Law 2008

In 2008 an Education Law was adopted by the MoE to address equal rights, free compulsory education until grade nine, and free education until the ending of BA based on Articles 17 and 43 -47 of the National Constitution Law.¹⁰⁸

The Education Law has many objectives concerning quality education, Islamic values, human rights, and training of qualified and professional teachers in all areas of modern science and technology.

Article 2 of the National Education law explains the objective of the Law, the summary is as below:

1. Ensure equal rights of education and training for the citizens of the Islamic Republic of Afghanistan through the promotion and development of a universal, balanced, and equitable educational manner.
2. Educate children, youth, and adolescents as pious, Afghans and useful and sound members of the Society; about human rights, protection of women's rights, democracy, and elimination of every kind of discrimination, in light of the Islamic values and prevention of addiction to narcotics.
3. Strengthen the spirit of the individual, social responsibilities, and observance of law by teachers, lecturers, *Madrasas* (Religious Schools), and the rest of the employees of the MoE;

¹⁰⁵ National Constitution Law 2004 Art. 22: Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, men and woman, have equal rights and duties before the law.

¹⁰⁶ National Constitution Law 2004 Art.43: Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state. To expand balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken.

Art. 44: The state shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country. Article 45 The state shall devise and implement a unified educational curriculum based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.

¹⁰⁷ Delawar Nazir Zoy, 'Fair Access of Children to Education in Afghanistan' 8

<http://www.iccwtnispcanarc.org/upload/pdf/1635331981Fair%20Access%20of%20Children%20to%20Education%20in%20Afghanistan.pdf>

¹⁰⁸National Constitution Law 2004 Art. 43: Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state. To expand balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken.

Art. 44: The state shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country.

Art. 45: The state shall devise and implement a unified educational curriculum based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.

Art. 46: Establishing and administering higher, general and specialized educational institutions shall be the duty of the state.

The citizens of Afghanistan shall establish higher, general, and specialized educational as well as literacy institutions with the permission of the state.

The state shall permit foreign individuals to establish higher, general, and specialized institutions in accordance with the provisions of the law. Admission terms to higher educational institutes of the state and other related matters shall be regulated by law.

Art. 47: The state shall devise effective programs for fostering knowledge, culture, literature, and arts. The state shall guarantee the copyrights of authors, inventors, and discoverers, and shall encourage and protect scientific research in all fields, publicizing their results for effective use in accordance with the provisions of the law.

4. Provide an opportunity for the participation of the students' parents/ guardians and other members of the society in the management affairs and obtaining moral and financial cooperation for the promotion and development of education.
5. Educate and train citizens by active participation to promote economic and social affairs in the reduction of poverty in the country.
6. Ensure intermediate (basic) compulsory education and provide grounds for secondary education, by the requirements of the society.
7. Ensure and develop teacher's training education, Islamic education, technical, professional, vocational, and artistic education in the country.
8. Promote and improve the academic and professional level of teachers, lecturers, directors, and the rest of the employees of the MoE.
9. Develop a unified educational curriculum, following contemporary and up-to-date standards.¹⁰⁹

Furthermore, Articles 3 and 4 talk about equal rights to education for all children, free and compulsory education until grade 9, free education for the children, and teacher training by the government.¹¹⁰

One of the main achievements of the Education Law was the support of the private sector for education. Before the law entered into force, all schools and educational institutions were related to the government. Therefore, some related specialized services have been limited because the government was not able to provide them, like access to education for children with special needs, which was considerably improved with the adoption of the law. Furthermore, specific uniforms and unified curricula with contents of human rights values have been other achievements of the Education Law.¹¹¹

III. The National Education Strategic Plans I, II and III (2006- 2021)

Since 2001, three national strategic plans for education (NESP) have been adopted. The next part will focus on the first one from 2006 –2010 and the third from 2017- 2021. It is important to mention though, that due to the political changes in autumn 2021 the third phase was not completed.

The strategic plans were based on the Millennium Development Goals (MDGs) followed by the Sustainable Development Goals Agenda 2030, (SDGs) and are the main tool for measuring the achievements and challenges for the realization of the right to education in the country. In each strategic plan, accessibility, quality education, and management are the main components that are followed by the specific programs based on the times of the strategy development.¹¹²

These strategies are towards the progressive realization of the right to an education that is stated in article 14 of the ICESCR 1989.¹¹³

¹⁰⁹ Afghanistan Education Law 2008 Art.2

¹¹⁰ Afghanistan Education Law 2008 Art3: The citizens of the Islamic Republic of Afghanistan have equal rights to education without any kind of discrimination.

Art.4: (1) The intermediate (basic) education in Afghanistan is compulsory.

(2) Preschool educational level, intermediate (basic) education, secondary, technical professional, vocational, artistic, formal Islamic education, higher education, (Thirteenth and fourteenth grades) teachers' training, literacy, and basic practical education in the public education and training institutions are provided for free.

¹¹¹ 'BBCNazer.Com | زندگی و آموزش | حرف های مردم: قانون معارف |

https://www.bbc.co.uk/nazer/lifeandlearning_dari/story/2011/08/printable/110811_ws-aep-pt-wk33.shtml accessed 4 July 2022.

¹¹² Ministry of Education, 'NESP III (2017-2021' (n 1) 10.

¹¹³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, Paragraph 52, available at: <https://www.refworld.org/docid/4538838c22.html> [accessed 4 July 2022]

The NESP I 2006-2010 was adopted at a time when the educational system was at an initial level and much development was needed regarding the availability of school facilities, trained and professional teachers, books, and other equipment. Though, the demand for school enrollment was very high.

According to the first National Education Strategic Plan (NESP I) in 2006 the situation regarding schools and the right to education was as followed:

- *More than 5.4 million children were in 2006 enrolled in schools, 35% of which were girls, compared to a little more than one million in 2001 with almost no girls enrolled;*
- *Half of the school-age children were still estimated to be out of schools with significant gender and provincial disparities;*
- *The number of teachers has grown 7-fold, but only 22% of them met the minimum qualifications of Grade 14. Only 28% were female and located primarily in urban areas;*
- *There was no new curriculum for secondary school. Since 2001, curriculum development has concentrated on the first six years of school;*
- *Although more than 3,500 school buildings have been constructed only 25% of schools have usable buildings;*
- *Nearly 6% of schools have been burned or closed due to terrorism in the previous 18 months; and*
- *Some 30,000-50,000 students graduated from high school every year; only one-third of them were admitted to universities, and the rest joined the pool of unemployed.¹¹⁴*

Considering the provided situation, the MoE, in the first strategic plan (NESP I) has introduced eight programmatic areas to improve the situation of the education system by 2010.¹¹⁵

For each of the programs the goals and objectives were set, to respond to the shortcomings that are highlighted above.

NESP I:

For the NESP I the eight programmatic areas are:

Program One. General Education including(Access, Quality, and Management)

To improve the net enrolment rate for girls and boys in primary grades.

Program Two. Teacher Education and Working Conditions

To build a national cadre of qualified school teachers to improve the learning achievement of all students.

Program Three. Education Infrastructure Rehabilitation and Development

To provide a secure, conducive learning environment and workspace for all students, teachers, and education administrators.

Program Four. Curriculum Development and Learning Materials

To develop a quality modern national curriculum for primary and secondary schools based on Islamic principles and values that will meet national, regional, and international standards.

Program Five. Islamic Education

To develop a modern broad-based Islamic education system for all Afghans.

Program Six. Technical and Vocational Education and Training

¹¹⁴ Islamic Republic of Afghanistan Ministry of Education, 'National Education Strategic Plan For Afghanistan 2010-2014' 11
www.moe.gov.af.

¹¹⁵ ibid 10.

To provide relevant, quality technical and vocational education opportunities to male and female Afghans to equip them with marketable skills that meet the needs of the Labor market in the country and the region.

Program Seven. Literacy and Non-formal Education

To develop a long-term literacy program to empower communities and individuals to build a productive, secure, and literate nation.

Program Eight. Education Administration Reform and Development

To develop the Ministry of Education into an effective, accountable, fully funded, and functioning public institution that facilitates education for all.¹¹⁶

NESP II:

NESP II sets below programmatic priorities for the period of 2010 – 2014. Brief programmatic priorities for the NESP II are described below. It introduces lesser programmatic priorities comparing NESP I but follows a similar agenda for the strategic period.

According to the NESP II, the strategic plan has been developed in light of the results achieved and lessons learned from the implementation of NESP I (2006-2010).

The plan is structured around five priority programs designed to enable the MoE to achieve the main objectives of the education system and contribute to the economic and socio-cultural development of the country, as well as its political stability and security".¹¹⁷

Program One: General and Islamic Education

All school-age children will have equitable access without discrimination to quality education.

Program Two: Curriculum Development, Teacher Education, and Science and Technology Education

To provide quality modern textbooks and learning materials according to the new curriculum, based on Islamic principles and national values, considering modern educational standards.

Program Three: Technical and Vocational Education and Training

To provide relevant and quality technical and vocational education for both males and females.

Program Four: Literacy

To provide literacy to males and females aged 15 and above to enable them to develop their knowledge and potential and participate fully in their community and wider society.

Program Five: Education Management

To provide a proper, conducive, and safe learning and administrative environment for all students and educational staff.¹¹⁸

NESP III:

Following the objectives of the strategic plans, I would like to highlight the three main objectives of the NESP III.

1. **Quality relevance**, which further focuses on knowledge, skills, and values to prepare the generation for viable employment in the national and international labor market
2. **Equitable access**, which focuses on inclusive access and quality learning opportunities for everyone especially women and girls

¹¹⁶ Islamic Republic of Afghanistan Ministry of Education, 'National Education Strategic Plan for Afghanistan (2006-2010' 49–88 <www.moe.gov.af>.

¹¹⁷ Ministry of Education, 'NESP II(2010-2014' (n 22) 1.

¹¹⁸ *ibid* 59.

3. **Efficient and transparent management**, which must be cost-effective, efficient delivery of equitable quality education services at the national and sub-national levels.¹¹⁹

As I earlier mentioned, the development of strategic plans is part of the first steps that can be taken by the States Parties on the progressive realization of the right to education. In general, the right to secondary education and girls' education has included two main components of the strategic plans, as well as other laws concerning education rights.

In addition to the above-mentioned documents, a number of other policies have been developed and implemented to respond to the existing challenges that were found or emerged during the two decades 2001-2021. These policies will be introduced in the coming topics of the chapter.

Still, having 3.5 million children out of school, 60% of the girls, was still bad news, especially considering the huge financial support and human resource support that the ministry had.¹²⁰

C. The Implementation and Realization of the Right to Education

For two decades the governments of Afghanistan showed a sincere commitment to respect, protect and fulfill the right to education to the best of their ability. Concerning the availability, accessibility, adaptability, and acceptability of education

Key UN agencies, such as UNICEF, UNESCO, UNFPA, and UNDP, and key donor agencies including but limited to USAID, World Bank, the governments of Japan, Norway, Sweden, UK, and others played a key role in supporting the government financially and technically.¹²¹

This section will discuss how Afghanistan has implemented some of the policies about the before-mentioned four "A's" and the unsolved challenges thereto.

In Afghanistan, 63.3% of the population is below the age of 25,¹²² underlying the importance of the realization of the right to education. The main achievements made relate to both primary and secondary education, are construction of schools and the relevant infrastructure, re-development of the standard curriculum, the establishment of formal and community-based schools to cover more students, and the provision of education services for minorities such as *Kuchi* (Nomad) and *Sikh* tribes, and the other achievements that will be discussed further.

Despite all efforts, the realization of the right to education has been impeded by several persisting issues such as insecurity, poverty, cultural and negative practices, conflicts, and natural disasters.

I. Accessible Educational Structures

1. Formal Schools

As I highlighted earlier, by launching the Back-to-School campaign in 2001, the rate of enrolments raised to an eight-fold increase over the following two decades, from less than 1 million to 9.2 million students (39 % girls) in 2018.¹²³

UNICEF and other stakeholders supported MoE on an increase in enrollment at the primary level. The stakeholders also helped the Ministry to establish 16,532 public and private general schools and construct 8,000 school facilities across the country.

¹¹⁹ Ministry of Education, 'NESP III (2017-2021)' (n 1) 13–15.

¹²⁰ Morten Sigsgaard, UNESCO-IIEP and Inter-Agency Emergencies, 'Education and Fragility in Afghanistan: A Situational Analysis' [2009] [http://ist-iiep.iiep-unesco.org/cgi-bin/wwwi32.exe/fin=epidoc1.in/?t2000=026907/\(100\)](http://ist-iiep.iiep-unesco.org/cgi-bin/wwwi32.exe/fin=epidoc1.in/?t2000=026907/(100)).

¹²¹ Ministry of Education, 'NESP III (2017-2021)' (n 1) 40.

¹²² UNESCO, 'The Right to Education: What's at Stake in Afghanistan' 12 https://en.unesco.org/sites/default/files/afghanistan_v11.pdf.

¹²³ 'Education: Child Deprivation Analysis' (n 6) 1.

Further regarding the girls' access to education, and other out-of-school children in remote and conservative areas, the MoE, accelerated enrollment by establishing Community Based Education (CBE).¹²⁴

MoE in consultation with other agencies and organizations developed a set of pre-planned, cost-effective school designs that take into consideration a wide range of variables, including locally available materials, access for disabled students, safety, and the environment. The MoE has encouraged donors and partners to choose the most appropriate of these designs when building additional schools.¹²⁵ The number of schools rose from 6,039 to 1,418,019 from 2002 to 2012.¹²⁶

Considering Afghanistan's harsh geography¹²⁷ and hard-to-reach areas, it has been challenging for the government to build accessible school buildings accessible for all potential students. In some of the mountainous provinces, for instance, in northern and central parts of Afghanistan, villages are on average 10 km away from the centers of the district, often only reachable by very narrow and hard-to-reach paths. Such structures make accessibility difficult for students of any age, especially for girls and children with disabilities living in rural areas.¹²⁸

2. Community-Based Schools (Community-Based Education and Accelerated Learning Centers)

Because of the geographic structure of Afghanistan and insecurities, children often could not reach formal schools. The geographic factors were often aggravated by other circumstances, and children on their way to school were subjected to different insecurities including harassments, the risk of abduction and other concerning incidents. To ensure the accessibility of the right to education for all including girls and children with disabilities, and also to provide the opportunity for those girls and boys whose ages are over the school-age (because as a result of many circumstances they could not go to schools at their proper ages), the MoE developed a strategy of Community Based Education (CBEs) and Accelerated Learning Center (ALC).

The National Guidelines on CBE in 2018 defined "CBE is the outreach education into underserved areas that is part of the formal education system in Afghanistan". CBE consists primarily of Community-Based Classes (CBC) and Accelerated Learning Programs (ALP). These mechanisms jointly are established by the MoE and the implementing partners as an alternative to formal school settings where there are:

"(1) lack of gender-appropriate public school that features hygiene facilities with running water and female teachers for girls.

(2) Children live within a walking distance of more than three kilometers from a public school, or live within three kilometers and face severe and documented inhibitors to attendance, such as constant insecurity, geographic barriers, harassment, and/or other protection issues verified by the MoE.

(3) One or more students have missed the opportunity for formal education, or with ALP, are above enrolment age for enrolment into the hub school".¹²⁹

CBE is considered an extension of a hub school, (a government school that serves more than one village) and comes under the oversight of the MoE regarding the setting of standards, curricula, payments of teachers' salaries, and training. A CBE class generally consists of 25 to 30 students and is run in a space identified and often provided by the community, which also has the responsibility to maintain it. CBE teachers, typically, have lower formal qualifications than teachers in public

¹²⁴ 'Child Deprivation Analysis - Education (Nov 12_ 2020) FINAL Clean Version (002). Pdf' 1.

¹²⁵ Morten Sigsgaard, UNESCO-IIEP and Inter-Agency Emergencies, 'Education and Fragility in Afghanistan: A Situational Analysis' [2009] [https://ist-iiep.iiep-unesco.org/cgi-bin/wwwi32.exe/jin=epidoc1.in/?t2000=026907/\(100\)](https://ist-iiep.iiep-unesco.org/cgi-bin/wwwi32.exe/jin=epidoc1.in/?t2000=026907/(100)).

¹²⁶ United Nations, 'United Nations Development Assistance Framework For Afghanistan 2015 -2019' 3 <https://planipolis.iiep.unesco.org/en/2015/united-nations-development-assistance-framework-afghanistan-2015-2019-6280>.

¹²⁷ Afghanistan Case Study Situation Analysis on the Effects of and Responses to COVID-19 on the Education Sector in Asia. 14 <https://www.unicef.org/rosa/media/16466/file/Afghanistan%20Case%20Study.pdf>

¹²⁸ Terrence Jantzi and others, 'Mid-Term Evaluation of the Increasing Access to Basic Education and Gender Equality Programme (Afghanistan)(2015-2019)' (The United States Agency for International Development (USAID) 2019) Evaluation 20 <<https://www.unicef.org/afghanistan/media/4106/file/CBE%20Evaluation%20Report.pdf>>.

¹²⁹ Islamic Republic of Afghanistan Ministry of Education, 'Community Based Education Policy and Guidelines January 2018' 16.

schools. It is estimated that half a million children were enrolled in CBE in 2016 in comparison to over 9 million enrolled in schools.¹³⁰

3. The Infrastructure of Schools

Considering the capacity of the government during the period, it was not able to equip all formal schools with the required furniture, water, and sanitation systems. Approximately 50% of formal schools had sanitary facilities and less than 50% were furnished across the country, compared to the beginning of the 2000s, when even no proper educational school existed.¹³¹

4. Teaching Personnel (Availability and Quality)

To support girls' education and promote gender equality within the educational system, it is important to have both qualified female and male teachers. As one of the topics for cultural adaptability, this is important to consider that according to cultural values of Afghanistan, adolescent girls mostly at the secondary education level, need to be taught by female teachers.

During the last two decades, the rate of female teachers increased on an annual basis and many mechanisms are established to support the promotion of female teachers, such as Teacher Training Colleges.¹³²

From 2015 to 2021 there has been an increase of 7.4% in the total number of female teachers from 33.3% to 40.7%¹³³ Additionally, based on chapter six of the Education Law, the training of professional teachers in all fields of formal and informal, religious studies as well as technical vocational studies are ensured.¹³⁴

In 2019, President Ghani issued a statement pledging that the MoE would train 100,000 teachers who were supposed to undertake a higher education program to earn bachelor's degrees. The President announced that 57,000 teachers would be allowed to complete a program of semi-higher education. He also boasted that all short-term teachers would be appointed as fixed-term teachers.¹³⁵

According to Zafar Shayan in his paper "four Teacher Training Colleges were functional in four out of 30 provinces with a total of 190 male students and 50 male lecturers in 2001. Female students did not have access to Teacher Training Colleges at the beginning of the 2000s" he adds that "in 2013, there were about 288 Teacher Training Centers in the country. Around 68,000 students were studying of which 24% were women."¹³⁶


¹³⁰ *ibid* 1.

¹³¹ United Nations (n 35) 11,12.

¹³² Ministry of Education, 'NESP III (2017-2021)' (n 1) Summary Page,11.

¹³³ *ibid* 1.

¹³⁴ Afghanistan Education Law 2008 Arts.24,25

¹³⁵  [https://kابلnow.com/2021/04/afghan-education-system-struggles-to-overcome-hinderling-challenges/](https://secure.gravatar.com/Avatar/537409a76d2305c3abd2b55f509f6b04?s=50,#038;r=g' and #038;r=g 2x' class='avatar avatar-50 photo' height='50' width='50' /> Kabul Now·3 min read, 'Afghan Education System Struggles to Overcome Hinderling Challenges' (<i>KabulNow</i>, 17 April 2021) <a href=) accessed 14 May 2022.

¹³⁶ Zafar Shayan, 'Gender Inequality in Education in Afghanistan: Access and Barriers' [2015] *Open Journal of Philosophy*, 2015, 5, 277-284 8, 5 <https://www.scirp.org/journal/ojpp/>.

5. Curricula

Building a strong nation starts from building strong, aware, and knowledgeable persons, and it starts with children. The way they are taught in childhood becomes part of their personalities and behaviors.

In addition to all components of quality education which is needed to build great personalities in society, curricula play the most important role. The contents of curricula are always important to be very strategic, at the same time, natural from all aspects of politics. They should meet the main objective of education which is self-development leading to a peaceful nation and world.

Unfortunately, the last four decades of war in Afghanistan severely impacted and politicized its education system and one of the most obvious examples is the way the curricula were developed during different periods.

Curricula in place before and during the Taliban government in the 1990s were shaped by the political and violent agenda of politicians and *Mujaheddin* (fighters) of the given period. For instance, the primary words taught for learning the alphabet included killing Soviet soldiers Jihad(holy war),¹³⁷ etc.

In math, to give another example, to measure distances, the reach of firearms between the *Mujaheddin*(Fighters) and the Soviet Union soldiers was used. Similar examples can be found in other subjects such as history, geography, and science.¹³⁸

These curricula were bringing violence and extremism to the mindset of children. Based on the commitments of the government in the previously described Education Law and the relevant strategies such as the Sustainable Development Goals (SDGs)¹³⁹ on quality education, curricula have been revised defining measurable learning outcomes for each grade and level. Focusing on competency-based learning, the new curricula equip students with skills, knowledge, and competencies to become active and productive citizens,¹⁴⁰ replacing corporatized traditional learning with a transformative education.

¹³⁷ Sigsgaard, Morten, 'On the Road to Resilience: Capacity Development with the Ministry of Education in Afghanistan 51 <http://www.iiep.unesco.org/en/publication/road-resilience-capacity-development-ministry-education-afghanistan> .

¹³⁸ *ibid* 1.

¹³⁹ 'Education: Child Deprivation Analysis' (n 6) 1.

¹⁴⁰ *ibid* 10.

II. Access to Education for All in Afghanistan?

The right to education is widely supported in the National Constitution Law of Afghanistan of 2004. It was the beginning of a democratic government, where the National Constitution Law¹⁴¹ and all relevant policies and strategies¹⁴² had to reflect the human rights.

Before 2001, the government had not concentrated on the right to education for specific minorities such as religious and social minorities. The vulnerability continues despite the undertaken steps towards accessibility to the right to education. Some of the area will be discussed further.

1. Girls as Vulnerable Group

Girls have always been particularly vulnerable and their access to education has been constantly challenged throughout the years at the primary and secondary levels. Even though general circumstances such as the security situation and the widespread poverty kept challenging the right education for girls, important steps have been taken by the government of Afghanistan to bring additional attention to the phenomenon. Talking about the legal bases, Articles 43 and 44 of the National Constitution Law¹⁴³ ensure the equal right to education and free and compulsory right to education for all.

As already been pointed out, since the fall of the Taliban government in 2001, student numbers increased from 900,000 students to over 9.2 million students enrolled in 2017, with 39% girls.¹⁴⁴

Still, there were barriers to girls' education. According to a 2016-2017 Accelerated Learning Center study, "around 1.3 million primary school-age girls are not attending education against 864,000 boys of the same age."¹⁴⁵

For children of secondary school age, the number out of school are 1.3 million girls and 804,000 boys".¹⁴⁶

According to the statistics, as school grades go higher, the rate of girls' participation decreases", the rate of girls' education gets lower. According to NESP 2, "of the 10,998 general education schools, 6071 are primary, 3061 are lower secondary and 1866 are upper secondary. Around 15% are girls' schools, 35% are boys' schools, and 50% are schools for both boys and girls who learn in different shifts. Of the total 412 rural and urban districts there are only 151 districts with at least one upper secondary girls' school; others do not have any upper secondary girls' schools".¹⁴⁷

The report shows that the number of girls' schools was still roughly about half the number of boys' schools in 2011.

In principle, the mixed schools are open for both boys and girls, usually in separate shifts.

Regarding the reported numbers of enrollment (Grades 1-12) from 2002-2011 in general education "the percentages of the female students in general education are 28% in 2002, 34% in 2003, 33% in 2004, 34% in 2005, 35% in 2006 and 2007, 36% in 2008, 37% in 2009, 38% in 2010 and 39% in 2011. In 2013, 10.5 million students were studying at 16,600 schools 38% of them were females. There were 210,000 teachers with 32% of them being women. In 2014, 1.7 million were enrolled which reaches to 11.5 million students of which 42% were females".¹⁴⁸

¹⁴¹ National Constitution Law 2004 Art. 44: The state shall devise and implement effective programs to create and foster balanced education for women, improve the education of nomads as well as eliminate illiteracy in the country

¹⁴² Afghanistan Education Law 2008 Art. 17: Intermediate (Basic) educational level comprises grade first to the end of grade ninth, provided free and compulsory in a balanced and equitable manner, by the educational standards, considering the number of population and *Kuchies* residing in the area.

¹⁴³ National Constitution Law 2004 Arts: 43,44

¹⁴⁴ Ministry of Education, 'NESP III (2017-2021)' (n 1) 25.

¹⁴⁵ 'Education: Child Deprivation Analysis' (n 6) 6.

¹⁴⁶ Children deprivation analysis p.5

¹⁴⁷ Ministry of Education, 'NESP II(2010-2014)' (n 22) 28.

¹⁴⁸ Zafar Shayan (n 45) 5.

While based on girls' education policy there are an estimated 3.7 million out-of-school children – out of whom 60% are girls, for every 100 urban boys, only 78 urban girls attend school; in rural areas, the number plunges to 50 girls for every 100 boys. So, this is important to have them back into the education system.¹⁴⁹

To respond to the girls out of school the MoE with the support of International partners developed the Girls Education Policy in 2018 which had three main deliverables of Quality and Relevance,¹⁵⁰ Equitable Access¹⁵¹, and Efficient and Transparent Management.¹⁵²

In terms of policy, the issues such as lack of female teachers, tackling gender-based violence, community support, addressing social norms, and gender-sensitive curricula were targeted to be solved by 2020.

Three strength of the system to support girls' education is mentioned in this policy which are

1. Eagerness of the girls to get an education.
2. Political will – the commitment of the government of Afghanistan to support girls' education, and,
3. Support of the international community – the development partners support.¹⁵³

It seems that at the policy level, the MoE has been rich and has the full support of the international community, while, when it comes to the implementation level, it seems that many challenges and barriers are still warning the realization of the right to education.

2. The Kuchi Tribes

Kuchi means 'Nomad' in the Dari (Persian) language. *Kuchis* are Pashtuns from southern and eastern Afghanistan. They are a social rather than ethnic grouping, although they have some of the characteristics of a distinct ethnic group. Though traditionally nomadic, many have settled in different parts of the country.¹⁵⁴

The National Multi-sectoral Assessment of *Kuchi* in 2004 estimated that there are about 2.4 million *Kuchis* in Afghanistan, with around 1.5 million (60%) remaining fully nomadic; though the rest of them have been settled.¹⁵⁵

The primary attendance of the *Kuchi* children at school is only 2.5 % compared to a national average of 44.2 %. Further, only 1.2 % of *Kuchi* children attended secondary school in 2020. The youth literacy rate is just 6.5 % among *Kuchi* youth compared to the national youth literacy rate of 54 %. Similarly, the gender parity index (relation of girls to boys) was incredibly low at 0.07, compared to 0.66 and 0.30 for urban and rural youth, respectively.¹⁵⁶

3.3.2.3. Children in Religious Minorities (*Sikh* – Hindu)

For more than 500 years *Sikh* Hindu minorities have been living in Afghanistan. They are a well-established community in the country but have been a vulnerable group against all the political changes and the conflicts which happened in Afghanistan during the last 40 years of war. During the 1980s, 200,000-500,000 *Sikh* people were living in Afghanistan's large cities in Kabul and other central, east, and southern parts of the country.¹⁵⁷

The right to education and equality before the law for them is guaranteed in the National Constitution Law.¹⁵⁸

¹⁴⁹ Islamic Republic of Afghanistan Ministry of Education, 'Girls' Education Policy 2018' 4.

¹⁵⁰ *ibid* 7.

¹⁵¹ *ibid* 11.

¹⁵² *ibid* 13.

¹⁵³ *ibid* 7.

¹⁵⁴ Minorityrights, 'Kuchis' (*Minority Rights Group*, 19 June 2015) <https://minorityrights.org/minorities/kuchis/> accessed 14 May 2022.

¹⁵⁵ 'Population and Demography — Afghanistan' (*World Food Program*, 18 December 2012)

<<https://web.archive.org/web/20121218195206/http://foodsecurityatlas.org/afg/country/socioeconomic-profile/introduction>> accessed 14 May 2022.

¹⁵⁶ 'Afghanistan Education Equity Profile for Adolescent Girls' 7.

¹⁵⁷ 'Explainer: Who Are the Afghan Sikhs?' <https://web.archive.org/web/20200331144838/https://theconversation.com/explainer-who-are-the-afghan-sikhs-30699> accessed 31 March 2022.

¹⁵⁸ National Constitution Law Art.43

Hindu and *Sikh* children constitute a category of Afghan children who have very limited access to education. In the year 2007, a special primary school was built by the MoE for Hindu and *Sikh* children in one of the central provinces which compared to the other provinces had the majority there. This school had the capacity of about 100 students at a time.

The school curriculum is related to the religious traditions and values of Hindus and *Sikhs* and a part of the textbooks is in Hindi. The representatives of the *Sikh* minority had a role in developing the textbooks. Some of these textbooks are in Dari¹⁵⁹, which are made available for the students of this school by the MoE.¹⁶⁰

Similarly, based on a request from the residents in the other provinces, the departments of education have supported opening schools for *Sikh* minorities.

Still, there is a gap in education law and the national educational strategic plans on reflecting the right of *Sikh* minorities to access education.

3. Children with Disabilities

Afghanistan as a country with 40 years of continuous war and instability needs more time and support to be able to standardize its education system and other systems for the children and the nation. Similarly, the progressive realization of the right to education needs further efforts especially when it comes to inclusive education.

According to Human Rights Watch, four decades of war have left Afghanistan with one of the world's highest populations of people with disabilities, including many with amputations, and vision or hearing problems.¹⁶¹ An analysis by the Asia Foundation indicates that 79 % of adults and 17 % of children are estimated to live with some form of disability, while 8.9 % of the population live with a severe disability. 17.3 % of children aged 2-17 have a mild, moderate, or severe disability. As a result of the better counting and the conflict, the data on people with a disability in 2019 rose to 13.9% from 2.7% which was recorded in 2005.¹⁶²

Although there is a legal¹⁶³ and policy commitment to support children with disabilities in their education, in practice this support is offered by NGOs and international organizations.¹⁶⁴ On the State side, there is one school for students with visual impairment which accommodates 150 students only. 900 students with hearing impairments are additionally covered in four provinces by MoE. The MoE is supported by the UN agencies and international organizations to pilot 29 inclusive educations where the children with disabilities and without disabilities are learning together. But still, the problem remains unchanged, since as mentioned because of the long-term conflict the provided services are insufficient and 95% of children with disability are out of school.¹⁶⁵

A 2012 study showed that “only 48% of male children with disabilities attended school when compared to 68% of their non-disabled peers, and a mere 15% of girls with disabilities attended school when compared to 43% of their non-disabled peers.”¹⁶⁶

¹⁵⁹ Afghanistan National Language

¹⁶⁰ Nazir Zoy (n 15) 53,55.

¹⁶¹ ‘Afghanistan: Women with Disabilities Face Systemic Abuse’ (*Human Rights Watch*, 27 April 2020) <https://www.hrw.org/news/2020/04/27/afghanistan-women-disabilities-face-systemic-abuse> accessed 2 July 2022.

¹⁶² Tabasum Akseer, ‘Model Disability Survey of Afghanistan 2019 - Afghanistan | ReliefWeb’ (*ReliefWeb*, 2020) <<https://reliefweb.int/report/afghanistan/model-disability-survey-afghanistan-2019>> accessed 4 July 2022.

¹⁶³ National Constitution Law 2004 Art.3: The citizens of the Islamic Republic of Afghanistan have equal rights to education without any kind of discrimination.

Afghanistan Education Law 2008 Art. 15: Education of Persons with Special Needs - Education of children and adults who need special education and training, and due to different reasons are left behind from education and training, shall be provided in different educational levels, in accordance with its related rules.

¹⁶⁴ ‘Education: Child Deprivation Analysis’ (n 6) 3.

¹⁶⁵ Ministry of Education, ‘NESP III (2017-2021)’ (n 1) 30.

¹⁶⁶ Parul Bakshi, ‘Unpacking Inclusion in Education: Lessons from Afghanistan for Achieving SDG4’ 9.

4. Children in Emergencies (Education during Emergency Situations)

Children who are in emergencies are receiving quality learning opportunities via the special mechanism of Education in Emergency (EiE)

This mechanism is a global platform that provides educational services for children affected by crises.

Sadly, the insecurity and the natural disaster have been two challenges for the community to be displaced and the children access to education was interrupted time to time.

In addition to that, the forced return of the people from neighboring countries such as Iran and Pakistan required additional efforts by the government.¹⁶⁷

The situations in a country that is dependent on external funding in terms of the provision of the main services such as health and education require emergency support to be delivered in a specific and urgent manner. The MoE has made significant improvements regarding the right to education across the country, but the above challenges did not allow it to provide full and quality access to education for all children. In terms of supporting the education agenda in an emergency context, the UN agencies and other international donors have been not only funding programs but also implementing them for the communities who have been in severe need with the collaboration of MoE.¹⁶⁸ Although, in nature, the emergency support is fast and short, considering the situation of Afghanistan's vulnerability, multi-year funding and program design for education have been considered and suggested by MoE.¹⁶⁹

In 2022, according to the EiE cluster, approximately 8 million children with (3,804,830) girls in Afghanistan need education in emergencies (EiE), in such situations, the only method that can be effective to connect the children with education are ALCs¹⁷⁰ and TLSs (Temporary Learning Centers), especially in Internally Displaced People (IDP) camps.

At the same time, for returnees, the government eased the enrollment processes and tried to integrate children into formal schools in an accelerated manner to enable children to re-enter mainstream education.¹⁷¹

III. Factors Impeding Access to Education and the Realization of the Right to Education

1. General Insecurities and Inaccessibility of Schools

Since 2001, education has been under attack by the Taliban by different means.

One of the major characteristics of the Taliban is that they are against women and girls' education and social participation, whether under their governance or any other leadership. The period of Taliban governance in the 1990s will be discussed in detail in another chapter, however, in this part, I would like to highlight that insecurity and the unstable political situation were one of the biggest challenges to the educational system in Afghanistan from the years 2001 –2021.

The Taliban's attacks on the right to education for girls were different, while most of them have been performed against girls' schools. Acid attacks, kidnapping, "night letters" threatening students and teachers, the use of improvised explosive

¹⁶⁷ UNESCO (n 5) 40.

¹⁶⁸ Education Cluster UNICEF, 'Education Cluster Strategy 2022-2023' 6–12 <<https://reliefweb.int/report/afghanistan/education-cluster-strategy-2022-2023>>.

¹⁶⁹ *ibid*.

¹⁷⁰ *ibid* 9.

¹⁷¹ UNOCHA, 'Afghanistan 2019 Humanitarian Response Plan: Mid-Year Review of Financing, Achievements and Response Challenges' 12 <https://reliefweb.int/report/afghanistan/afghanistan-2019-humanitarian-response-plan-mid-year-review-financing> .

devices, gunfire, and school closure for girls above the fifth grade were frequent examples of direct attacks against girls' schools.¹⁷²

In addition to that, killing, beheading, and life-threatening teachers have been another type of attack on the education system. Attack on school buildings from time to time, by drone attacks, putting on fire or object of bomb attacks, have been among others. Despite the ongoing attacks, enrollment rates increased from 900,000 in 2001 to an estimated 6.1 million by the end of 2008.¹⁷³ In 2008, because of the severe attacks on the education system including buildings, personnel, and students, the dropouts among the students started.¹⁷⁴ According to reports, 722 incidents affecting education, for example, attacks on schools and other educational institutions, their staff, and/or students were recorded between 2004 and July 2008.¹⁷⁵

This horrible situation was the reason for concern among the students and families, whether their children, both boys, and girls should attend school.¹⁷⁶

Besides the above-mentioned direct threats and attacks against the educational system, school buildings have been used as shelters for the armed attacks by the Taliban.¹⁷⁷

According to the reports, the MoE has been in negotiation with the Taliban in different provinces of the south and east, where their presence was widespread. The ministry agreed to accept the curricula presented by the Taliban.¹⁷⁸ It also accepted if schools were changed to *Madrastas* (religious schools) to ensure that children can attend schools.¹⁷⁹

As one of the human rights obligations toward the right to education, Afghanistan endorsed the Safe School Declaration on 29 May 2015.¹⁸⁰

The only educational structure that was kind of safe from the direct attack of the Taliban were community-based schools. The reason for their relative safety was that the communities and elder people protected them; secondly, the educational interventions were considered limited compared to formal schools.

Although this can be still counted as an achievement of the MoE for the right to education, the nature of the right to education which is self-development was far to reach and has never been easy, especially for secondary education.

2. Poverty (Child Labor)

The right to secondary education, like in most other developing countries, is a big challenge for Afghanistan. The overall rate of poverty is very high and is getting higher year by year due to certain reasons of extended conflict and intermittent natural disasters such as earthquakes, floods, droughts, and landslides.¹⁸¹

¹⁷² 'War Is Driving Girls Out of School - Afghanistan | ReliefWeb' <https://reliefweb.int/report/afghanistan/war-driving-girls-out-school> accessed 4 April 2022.

¹⁷³ Marit Glad and Assistants: Masoud Kohistani and Abdul Samey Belal, 'Knowledge on Fire: Attacks on Education in Afghanistan Risks and Measures for Successful Mitigation' (2009) 10.

¹⁷⁴ Rahmatullah Amiri and Ashley Jackson, 'Taliban Attitudes and Policies towards Education' (2021) Working paper 601 ODI, Centre for the Study of Armed Groups 30, 10.

¹⁷⁵ Marit Glad and Assistants: Masoud Kohistani and Abdul Samey Belal (n 82) 12.

¹⁷⁶ Ashley Jackson and Rahmatullah Amiri, 'Like It or Not, Governments Must Negotiate with the Taliban to Ensure Girls' Access to Education' *The Telegraph* (18 February 2021) <<https://www.telegraph.co.uk/global-health/women-and-girls/like-not-governments-must-negotiate-taliban-ensure-girls-access/>> accessed 29 April 2022.

¹⁷⁷ United Nations High Commissioner for Refugees, 'Refworld | Education Under Attack 2018 - Afghanistan' (*Refworld*, 2018) <https://www.refworld.org/docid/5be94317a.html> accessed 9 May 2022.

¹⁷⁸ Jackson and Amiri (n 85).

¹⁷⁹ <https://www.telegraph.co.uk/global-health/women-and-girls/like-not-governments-must-negotiate-taliban-ensure-girls-access/> the telegraph.

¹⁸⁰ Ministry of Education, 'NESP III (2017-2021)' (n 1) 58.

¹⁸¹ 'Afghanistan: Disaster Risk Management & Resilience Program' (*World Bank*) <<https://www.worldbank.org/en/programs/afghanistan-disaster-risk-management-and-resilience-program>> accessed 4 April 2022.

Afghanistan has ratified both conventions of Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labor Convention, 1999 (No. 182) in 2010, but still, there are many emerging causes, (insecurity, disaster and unemployment) that the government could not respond effectively.

According to the 2016- 2017 Afghanistan Multidimensional Poverty Index (A-MPI), the poverty index stands at 51.7 % and increased to 61.4 % due to the COVID-19 impact.¹⁸²

Several households with an average of seven family members are a big challenge for people in Afghanistan since it has a direct impact on the earnings and income of the families, and managing their expenditures including the school of the children.¹⁸³

The MPI of Afghanistan, based on data for 2016-2017, finds that 56.4 % of children are poor, as compared to just under half of adults. The MPI goes up to 0.345 for children living in rural areas, compared to 0.107 for children in urban areas.¹⁸⁴

Here both girls' and boys' right to education is at risk, since boys, at the age of secondary education, which is after the age of 13-15, engage in child labor to keep the balance of the income and support the family income financially. While the boys' education is clearly prioritized over a girl's education, girls are often required to take care of the younger siblings and do house chores which also constitutes a form of gender-based discrimination. As shown in reports among girls engaged in child labor, only 34 % are attending school while more than half of boys engaged in child labor are still going to school.¹⁸⁵

According to the Multidimensional Poverty Index 2016–17 report, more than half of Afghan children are deprived of school attendance, while girls face the additional burden of deprivation from basic schooling.¹⁸⁶

Another survey's findings on child labor show the dependency of poor households on child labor to generate income. In 2013-2014, the Afghanistan Living Condition Survey (ALCS) indicates that 2.7 million children between the ages of 5 and 17 years (or 27 % of the total population) were in child labor. Approximately 46 % of these children were between 5 and 11 years of age. Males accounted for 65 % of the child laborers. Poverty rates were found to be higher in households where one child was engaged in child labor, and the rate increased as more children were involved in child labor activities. For poor/low-income households the opportunity cost of attending school remains a critical factor for non-participation.¹⁸⁷

In addition to that, boys are more at risk of unsafe and illegal migration at this age, they undertake illegal migration to go to neighboring countries to work and earn money for their families. Illegal migration is life-threatening and constitutes a major challenge to the right to education.

Another negative coping mechanism that impacts the girls' secondary education is child marriage. Although it will be further discussed below in more detail, child marriage is very widespread among families with lower incomes. Girls are being married and the income of the *Dowry*¹⁸⁸ family will overtake their living expenses.

Although the government is claiming to provide free education, families still face financial barriers in the form of ancillary costs. For many poor families in Afghanistan, it is the indirect cost (school supplies, uniforms,¹⁸⁹ transport, and food) of schooling that limits parents' ability to support their children's education. This has forced families to give up and make their children engage in child labor as opposed to staying in school.¹⁹⁰

¹⁸² 'Education: Child Deprivation Analysis' (n 6) 10.

¹⁸³ Christine Mougne, 'Trees Only Move in the Wind, A Study of Unaccompanied Afghan Children in Europe' (2010) PDES/2010/05 17.

¹⁸⁴ 'Education: Child Deprivation Analysis' (n 6) 5.

¹⁸⁵ 'Afghanistan Education Equity Profile for Adolescent Girls' (n 66) 7.

¹⁸⁶ 'Afghanistan Multidimensional Poverty Index (A-MPI)' https://ophi.org.uk/wp-content/uploads/AFG_Trifold_vs6_ENG_online.pdf.

¹⁸⁷ Central Statistics Organization, 'Afghanistan Living Condition Survey 2016-17' (2018) Analysis Report 54.

¹⁸⁸ *Dowry (Toyana)* is an amount of money or property certain number of cows and sheep, especially in rural areas of Afghanistan in exchange for the girl's marriage, the family of the boy- the groom is paying the family of the girl. And usually, it is very high in rural areas and can be a good property for the families of the girl to help their family financing for some years.

¹⁸⁹ 'Afghanistan Education Equity Profile for Adolescent Girls' (n 66) 11. Afghanistan

¹⁹⁰ 'Education: Child Deprivation Analysis' (n 6) 10.

3. Harmful Traditional Practices (Child Marriage)

Afghan children have long been adapted to a range of pernicious social norms and traditional practices. Girls face particular risks, including honor killings, domestic abuse, and sexual violence. Child marriage - often an attempt to reduce the economic burden of a large family - is common. Nationwide, at least one in three girls is married by age 18. According to a 2018 study, 42 % of households reported at least one instance of child marriage.¹⁹¹

Child marriage, especially for girls is not new in Afghanistan and its neighboring countries. It is common in both rich and poor families, but mostly in poor families, where they marry their children to support the other family members,¹⁹² as it was mentioned in the previous section. Child marriages are more common in rural areas also because of their protection from the wars and conflicts, violence, and exploitations that can happen to families by opposite groups, or parties of the conflicts.

When it comes to the right to education and child marriage, child marriage is one of the reasons children drop out of school after primary education. Families in rural areas believe that reading and writing are the whole purposes of education and girls can obtain that by attending primary education. Some research findings show that there are links between school attendance and child marriage. The findings say that child marriage was the third most reported reason for girls dropping out of school (19%), while it was the fifth most common reason for boys (2%).¹⁹³ That's why it is thought by the communities that it's better to stop their education after primary education. Girls are not allowed to continue their education if they get married too.¹⁹⁴ Family responsibilities and having a child after marriage are the main purpose of life for adolescent girls and mostly marriage is preferred for the girls rather than education or work.

Since Afghanistan has ratified the CEDAW, it was obliged to prevent child and forced marriages as part of other gender-based violence.¹⁹⁵ For this purpose, the Ministry of Women Affairs with the other women support entities and the line ministries have drafted the family law, suggesting the age of girls 18 like boys, since in the current civil law, the age of girls to marry is 16 and can be even 15 with permission of the father or the judge.¹⁹⁶ But the drafted family, despite having strong back of the government was not passed by the parliament. The Girls Education Policy 2018 also suggested number of strategies to prevent child marriage and support girls' education.

D. Conclusions

The amount of support from the international community and the demand of the nation were the core opportunities for the governments to promote the right to education. Although comparing the amount of support the governments did not make significant changes to the education system, still they succeed to make a system and base for the right to education. The main success includes the formal and informal education systems that could respond to different existing challenges and support of the private sector who could help the gaps, and with the combination of all, the governments could build the way to available, accessible, adaptable, and acceptable system. On the realization of the right to education, the developed strategies and policies was effective for the government to keep pushing the agenda for the quality education. Despite mentioned challenges that the education system was facing, the government maintained a nondiscriminatory approach and tried to address the obstacles causing children remain out of school.

Accessible education for children with various forms of disability, lack of proper school buildings, effective alternatives for child labor and child marriages, and strong monitoring of the system in general are the unsolved challenges towards the right to education by the governments before August 2021

¹⁹¹ UNICEF Child Alert December 2019 'Preserving Hope In Afghanistan Protecting Children in the World's Most Lethal Conflict' (2019) 14 https://www.unicef.org/rosa/media/5186/file/UNICEF_Child_Alert_Preserving_Hope_Afghanistan.pdf.

¹⁹² UNICEF Afghanistan, 'Child Marriage in Afghanistan Changing the Narrative' 19.

¹⁹³ *ibid* 17.

¹⁹⁴ Islamic Republic of Afghanistan Ministry of Education (n 59)

¹⁹⁵ 'CEDAW.C.AFG.1-2. Pdf' 26 <<https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.AFG.1-2.pdf>> accessed 15 July 2022.

¹⁹⁶ UNICEF Afghanistan (n 102) 10.

CHAPTER FOUR: THE TALIBAN AND THE WAY FORWARD FOR THE RIGHT TO EDUCATION

The Taliban took over political power in the autumn of 2021. By that time, they promised full consideration of citizen rights including women's right to employment and girls' right to education.

But people's mindsets toward them have been different. The anti-women's liberty idea is at the core of the religiously motivated political agenda of the Taliban. Under their control, wherever that has been, restrictions, challenges, and marginalization of women and girls were the rule.¹⁹⁷

Before analyzing in more detail, the policies of the Taliban after their return to full power in August 2021, it is important to examine their policies on the right to education during the decade of 1990s and what they ruled out from 2001- 2021 on the areas under their control, where they were having activities against the former government.

Taking this comparative perspective allows for a quite clear prediction of what will happen with the right to education for both girls and boys.

A. The Taliban and the Right to Education during the 90s (1996-2001)

When the Taliban came to power in 1996, as per their perception, their core objective was to establish an Islamic policy representing and implementing the pure values of the Islamic model which was in place at the beginning of Islamic history.¹⁹⁸

Based on these perceptions, they also changed the structure of the educational system. They revised the curricula and removed all unwanted subjects. Since there was only a little importance attributed to educational management and only a few funds available to support the Wahabi – Saudi Arabia-based faith schools and *Madradas*,¹⁹⁹ books needed to be imported from Pakistan. The education sector was deprived like all other sectors. During the mentioned period, only 29% of boys and less than 1% of girls had access to primary education.²⁰⁰

The Taliban drafted a constitution during the 1990s but never finished it.²⁰¹ That constitution foresaw free and compulsory education until the intermediate level.

Accordingly, the draft constitution does not mention girls' education or girls' secondary education. The only reference made is that women's education should be limited to Islamic Sharia Special Law, but it is not clear what special law they refer to.²⁰² Still, the meaning of education from the Taliban perspective is not comparable to what education is understood under human rights law.

During the 1990s, Taliban officials argued that they simply could not support female education²⁰³ as funds to create the segregated system for male and female education were missing. Regardless of the rationale, they present now, the fact is that the vast majority of girls' schools were shut under the Taliban, and the movement imposed severe restrictions on women's ability to participate in public life (including teaching) and access basic services such as education and healthcare.²⁰⁴

¹⁹⁷ Amiri and Jackson (n 83) 8.

¹⁹⁸ Borhan Osman and Anand Gopal and Introduction by Barnett Rubin, 'Taliban Views on a Future State' 8 <https://cic.nyu.edu/sites/default/files/taliban_future_state_final.pdf>.

¹⁹⁹ Amiri and Jackson (n 83) 8.

²⁰⁰ *ibid.*

²⁰¹ Ikramuddin Kamil, 'What the Taliban's Constitution Means for Afghanistan' (*Fair Observer*, 26 January 2022) <https://www.fairobserver.com/region/central_south_asia/ikramuddin-kamil-afghanistan-constitution-taliban-news-afghan-world-news-43794/> accessed 2 July 2022.

²⁰² Amiri and Jackson (n 83) 8–10.

²⁰³ 'History of Education in Afghanistan - Afghanistan | Relief Web' <https://reliefweb.int/report/afghanistan/history-education-afghanistan> accessed 27 June 2022.

²⁰⁴ Amiri and Jackson (n 83) 10.

The more the Taliban was criticized by the international community for its treatment of women and girls, the more they seemed to further restrictions.²⁰⁵

B. The Taliban and the Right to Education 2001-2021

In chapter two, it was highlighted that insecurity was one of the biggest challenges to the right to education. Most of the causes of insecurity, such as attacks on schools, the killing and kidnapping of teachers, and the burning of school buildings can be traced to the Taliban.

In this chapter, I will discuss the philosophy behind insecurities.

The 2006 *Layha*,²⁰⁶ or code of conduct, forbids ‘work as a teacher under the current State because the State is only by name, but the main rulers of the states are foreigners. Therefore those who promote such schools and support them either as teachers should be prohibited and killed because this strengthens the system of the infidels. Attacks on teachers were encouraged in the 2006 *Layha*,²⁰⁷ with the express purpose of forcing them to stop work. The policy dictated that “teachers should first be ‘given a warning’, beaten if they continued, and ultimately killed if they refused to stop”. Attacks on schools increased significantly after these guiding principles were issued by the Taliban.²⁰⁸ In 2007, on average one student or teacher was killed per day and almost half of all the schools in the south were closed due to violence in 2008.²⁰⁹

In some areas, strong communities wanted education for their children and stood against the order of the Taliban. The community representatives advocated for the right of their children and to have the schools open at least for their sons. This happened mostly in south eastern parts of Afghanistan during a period when the Taliban attacks on schools reached a peak.²¹⁰

C. The de-facto Taliban government and the Right to Education (2021 and ongoing)

At the moment, the de facto authorities of the Taliban, are advocating for their recognition by the international community. Yet, they are not in the position to have observations or any disagreements on the international treaties and conventions that the government of Afghanistan has signed before 2021. Instead, if they are asked by the media they use and repeat

²⁰⁵ ‘History of Education in Afghanistan - Afghanistan | ReliefWeb’ (n 112).

²⁰⁶ 2006 *Layha*

Art. 24: It is forbidden to work as a teacher under the current state – which is a state in name only – because this strengthens the system of the infidels. True Muslims should apply to study with a religiously trained teacher and study in a mosque or similar institution. Textbooks must come from the *Mujaheddin* period of the Emirate.

Art. 25: Anyone who works as a teacher or mullah under the current state – which is a state in name only – must be given a warning. If he nevertheless refuses to give up his job, he must be beaten. Of course, if a teacher or mullah continues to instruct contrary to the principles of Islam, the district commander or group leader must kill him.

Art. 26: The organizations [NGOs] that come to the country are tools of the infidels. In the guise of serving, they are destroying Islam, so all their activities are banned, whether it is [building] roads or anything else, or clinics or schools or a *Madrasa* or anything else. If a school fails to heed a warning to close, it must be burned. But all religious books, for the sake of respecting them, must be secured beforehand. 2009 *Layha*

Section 8. Education

Art.42: All the activities regarding education in the structure of the Islamic Emirate shall be according to the principles and guidance of the Education Commission. Provincial and district officials carrying out their educational affairs shall follow the policy of the Commission [this policy is not specified in the *Layha*].

Section 8. Education Art. 59: All the activities regarding education, within the designated organization structure of the Islamic, Emirate shall be according to the principles and guidance of the Education Commission. Provincial and district officials carrying out their educational affairs shall follow the policy of the Commission [this policy is not specified in the *Layha*].

Source: translation of the *Layha* published by the Afghanistan Analysts Network (Clark, 2011).

²⁰⁷ Afghanistan Analysis Network ‘20110704_CKlark_The_Layha.Pdf’ 2–5 https://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/10/20110704_CKlark_The_Layha.pdf accessed 28 June 2022.

²⁰⁸ Antonio Giustozzi and Claudio Franco, ‘The Battle for the Schools’ 29, 5.

²⁰⁹ Amiri and Jackson (n 83) 12.

²¹⁰ *ibid* 11.

the narrative that “if it is not in opposition with Islamic Sharia, we would accept it”.²¹¹ But at the national level, they dismissed the National Constitution Law 2004, which can impact the strategies and laws developed for the right to education.²¹²

I. The Right to Education at the Policy Level

The first significant change was the dismissal of the National Constitution Law 2004²¹³, which guaranteed equality among men and women and the right to education, free and compulsory education till grade 9, and the implementation of international treaties.²¹⁴

Following the National Constitution Law 2004, the policies, such as the girls’ education policy (2019) Afghanistan Education Law (2008) NESP III (2017-21) have been developed based on the international covenants and the Afghan National Constitution Law 2004, yet, the administration has not taken any action, but further, they will have their considerations on revision or voiding of the above-mentioned policy documents.²¹⁵

Instead of National Constitution Law 2004, the Taliban announced that they will temporarily implement provisions of the Afghan Constitution Law which were enacted in 1964 during King Zahir Shah.²¹⁶ Taliban believed that the Constitution Law 1964 is per se the Sharia Law.²¹⁷

The selected Constitution Law 1964 has the Articles which talk about the type of the government Article 1(1), criteria of the King Article 8, responsibilities of the king Article 9, the preferred religious sect for the rule of law Article 2(1).²¹⁸ Currently, the de facto authorities are implementing these provisions from the Constitution.

²¹¹ ‘Taliban Wants to Implement the “1964 Constitution” in Afghanistan, after All, What Is There in It, Which Will Benefit?’ (News NCR, 30 September 2021) <https://www.newsncr.com/world/taliban-wants-to-implement-the-1964-constitution-in-afghanistan-after-all-what-is-there-in-it-which-will-benefit/> accessed 28 June 2022.

²¹² *ibid.*

²¹³ Ayaz Gul, ‘Taliban Say They Will Use Parts of Monarchy Constitution to Run Afghanistan for Now’ (VOA, September 2021) <https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html> accessed 4 July 2022.

²¹⁴ Interview with Sima Ghani, Head of NGO Working for Orphan Children, Zoom Call Interview 10 June 2022.

²¹⁵ *ibid.*

²¹⁶ <https://indianexpress.com/article/explained/taliban-plan-to-temporarily-adopt-parts-of-1964-constitution-what-it-could-mean-7542412/>

²¹⁷ ‘The Taliban Plans to Adopt the 1964 Constitution of Afghanistan. Terms and Conditions Apply’ <<https://www.timesnownews.com/international/article/the-taliban-plans-to-adopt-the-1964-constitution-of-afghanistan-terms-and-conditions-apply/818801>> accessed 28 June 2022.

²¹⁸ Constitution Law 1964 Art. 8: The King shall be an Afghan national, a Muslim, and a follower of the Hanafi doctrine.

Article 9: The King has the following rights and duties:

- a) Holds Supreme Command of the armed forces of Afghanistan.
- b) Declares war and armistice,
- c) Summons and inaugurates the Loya Jirga (Great Council).
- d) Inaugurates the ordinary session of the Shura (Parliament).
- e) Summons and inaugurates the extraordinary sessions of the Shura (Parliament).
- f) Dissolves the Shura (Parliament) and decrees new elections, which shall be held
- g) within three months from the date of the dissolution of the Shura (Parliament).
- h) Signs laws and proclaims their enforcement.
- i) Issues ordinances.
- j) Grants credentials for the conclusion of international treaties, in accordance with the provisions of the law.
- k) Signs international treaties.
- l) Appoints the Prime Minister and accepts his resignation. Appoints Ministers on
- m) the recommendation of the Prime Minister and accepts their resignations.
- n) Appoints the non-elected members of the Meshrano Jirga (House of the Elders) and appoints its president from amongst its members.
- o) Appoints the Chief Justice and Justices of the Supreme Court.
- p) Appoints Judges and high-ranking civil and military officials and grants them retirement in accordance with the provisions of the law.
- q) Accredits the Heads of Afghanistan’s diplomatic missions to foreign States; appoints permanent Representatives of Afghanistan to international organizations and accepts the credentials of foreign diplomatic representatives.
- r) Proclaims and ends the state of emergency.
- s) Remits and pardons sentence

Art.11: The name of the king is mentioned in ‘khubahs’.

On equal rights and the right to education, the Constitution Law 1964 mentions equality of all before the law in Article 25²¹⁹ and compulsory primary education, in Article 35.²²⁰

but the question is if the de facto authorities will consider these provisions, or only will select what is beneficial for them.²²¹

II. The Practical Priorities in the Field of Education of the Taliban

In two early chapters, it was explained that the realization of the right to education starts from the policy design and comprehensive strategy and continues with the steps to implement them. States Parties must use the maximum resources towards the right to education, even though they are not in place for a long time.²²² The de facto authorities are not expected to take appropriate steps to realize the right to education, but, claiming themselves as a legitimate government for Afghanistan, however, they could at least protect the achievements made during the two decades before the takeover, or try to minimize the challenges that children face regarding their access to education.

1. Religious Schools (Madrasas)

At the time of the takeover, the Taliban continued their policy on education and the promotion of religious schools. At the first field visit of the appointed minister of education to one of the provinces, he announced the establishment of 3 – 10 small religious schools in each district and one large religious school per province.²²³ Although he even did not name any of these *Madrasas* for female students, the focus on religious education remains unchanged.

Based on the estimated number by Human Rights Watch, the Taliban have the budget to establish hundreds of religious schools, but they do not have an interest to provide any form of education to girls.²²⁴

According to the news and witnesses from the fields, many places such as former TV and radio stations, Teacher Training Colleges, secular schools, and scientific laboratories are transformed into religious schools.²²⁵ According to the acting minister of education, the Taliban have a strong belief in religious studies and want to increase it in each district and every city across the country as they believe the Quran includes the verses of science, and by memorizing the Quran there is no

Art.15: The King is not accountable and shall be respected by all. He takes the following oath, in the presence of the members of the Royal family, the members of the Government, and the Justices of the Supreme Court, in a joint sitting of both Houses of the Shura (Parliament): "In the name of God, the great, I swear to be conscious of His Omnipresence in all my actions, that I shall protect the sacred principles of the religion of Islam, shall guard the Constitution, shall protect the independence and territorial integrity of the country as well as the laws of the State and the rights of the people; and, invoking Divine Assistance, shall reign in accordance with the provisions of the Constitution of Afghanistan and devote my efforts to the well-being and progress of the Afghan nation."

²¹⁹ Constitution Law 1964, Art. 25: The people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law.

²²⁰ Constitution Law 1964, Art. 34: Education is the right of every Afghan and shall be provided free of charge by the State and the citizens of Afghanistan. The aim of the State in this sphere is to reach a stage where suitable facilities for education will be made available to all Afghans, in accordance with the provisions of the law. The Government is obliged to prepare and implement a program for balanced and universal education in Afghanistan.

It is the duty of the state to guide and supervise education.

Primary education is compulsory for all children in areas where facilities for this purpose are provided by the State. The State alone has the right and duty to establish and administer the institutions of public and higher learning. Outside this sphere, Afghan nationals are entitled to establish technical and literacy schools. Conditions for the establishment of such schools, their curricula, and the conditions of learning in such schools are to be determined by law. The Government may grant permission, in accordance with the provisions of the law, to foreign persons to establish private schools for the exclusive use of foreigners.

²²¹ Ikramuddin Kamil, 'What the Taliban's Constitution Means for Afghanistan' (*Fair Observer*, 26 January 2022)

<https://www.fairobserver.com/region/central_south_asia/ikramuddin-kamil-afghanistan-constitution-taliban-news-afghan-world-news-43794/> accessed 4 July 2022. https://www.fairobserver.com/region/central_south_asia/ikramuddin-kamil-afghanistan-constitution-taliban-news-afghan-world-news-43794/

²²² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, Paragraph 52, available at: <https://www.refworld.org/docid/4538838c22.htm> [accessed 4 July 2022] General comment 13 paragraph 52

²²³ 'RFI - RFI, 21 May 2022) <https://www.rfi.fr/fa/AF> accessed 28 June 2022.

²²⁴ "'War On Education": Taliban Converting Secular Schools Into Religious Seminaries' *RFE/RL* (09:46:28Z)

<https://gandhara.rferl.org/a/taliban-secular-schools-converted-madrasahs-education/31914672.html> accessed 28 June 2022.

²²⁵ 'TV Channel Complex Converted to Religious Seminary in Balkh' (*TOLONews*) <https://tolonews.com/afghanistan-178299> accessed 2 July 2022.

need to study scientific subjects. They very recently converted Abdul Hai Habibi High School which was considered one of the most modern and prestigious government schools in southeastern Afghanistan and that was equipped with a science laboratory, library, and computer lab into a religious school. They forced its 6,000 students and 130 teachers to leave the school.²²⁶

Religious schools are furthermore an instrument of power as these schools are used to impose the Taliban ideology on children. Children do not have another chance except to learn whatever is accepted by the Taliban. Consequently, as the curricula reflect the ideology of the Taliban, once they finish school, children will adhere to the same extremist ideology as the Taliban.²²⁷ According to the new policy of the Taliban, over 4,244 new religious schools will be constructed that need to be funded by the current national budget of Afghanistan.²²⁸ Currently, the government of Afghanistan, under the national budget, is not able to provide the teacher's salaries, not even for boys' schools and it is questionable how well they budget the construction and funding of the new thousands of religious schools.²²⁹

2. A Ban on Secondary Education for Girls

Banning girls' secondary education is now a global matter. It seems that all the main media channel across the globe has reported school closure for the girls in Afghanistan. As this is one of the most exceptional cases on the right to education for girls in the world, especially in the 21st century.

At this point, I would like to quote the statements of the Taliban foreign minister 26 years ago. His name is Sher Mohammad Abbas Stanekzai, and he is now one of the senior officials of the Taliban de facto government in Doha, Qatar. In 1996, in a CNN first-ever western interview with the Taliban²³⁰ when he was asked about women and girls' rights to work and education, he answered that "I know that in western media there is propaganda that we are against women's education, that is not right and correct we just have told them that for the time being they should not come to office and school, so until the time that we can come out with some sort of solution on or we can provide them separate places that they can be educated or the can work in the offices" Those promises never happened though.

26 years later, the same journalist interviewed one of the other senior officials of the Taliban Sirajuddin Haqqani, again referring to the situation for girls and women and the same response was given to CNN stating "...The problem is education based on the Afghan way of thinking and understanding the cultural aspect of Afghanistan there is an issue of making arrangements of Islamic rule and principles that exists in Afghanistan concerning the issue of hijab because if someone is giving away their daughters or sisters they do that based on the total trust we must establish the conditions for that we can ensure their honor and security. We are acting to ensure this".²³¹

What can be taken away from this interview? The fact is that the Taliban has never changed its attitude towards women and girls' education and work nor towards other social and political rights of everyone.²³²

In the past twenty years, more girls than ever were able to attend school, at both primary and secondary levels, and many of the girls were able to obtain a college degree. More than 3.6 million girls were enrolled by 2018 – more than 2.5 million

²²⁶Abubakar Siddique, based on reporting by RFE/RL's Radio Azadi, "'War On Education': Taliban Converting Secular Schools Into Religious Seminaries' RFE/RL (Afghanistan, 09:46:28Z) <https://gandhara.rferl.org/a/taliban-secular-schools-converted-madrasahs-education/31914672.html> accessed 5 July 2022.

²²⁷Radio Free Europe, 'the plan to create large religious schools in the provinces; Some knowledgeable people: The goal of the Taliban is to recruit soldiers' رادیو آزادی (08:28:54Z) <https://da.azadiradio.com/a/31894488.html> accessed 5 July 2022.

²²⁸Milad Dolatpour, 'The Taliban Establish a Large Jihadist School in Kabul' (ا.ر.اف.ای - RFI, 21 May 2022) 2 July 2022. <https://www.pixstory.com/story/girls-education-heather-barr-says-world-delegates-just-hold-meetings-and-take-pictures/96899>

²²⁹Education Cluster UNICEF (n 77) 8.

²³⁰'Years Ago, Amanpour Interviewed Taliban. Here's What She Saw', *Interview with Taliban Officials* (2021) <https://edition.cnn.com/videos/world/2021/09/02/taliban-afghanistan-womens-rights-1996-amanpour-intl-ldn-vpx.cnn> .02/2021,

²³¹Exclusive: Amanpour Speaks with Taliban Deputy Leader - CNN Video <https://www.cnn.com/videos/world/2022/05/16/amanpour-sirajuddin-haqqani-interview-part-1-intl-vpx.cnn> accessed 5 July 2022.

²³²Sippi Azerbaijani Moghaddam, 'The Taliban Is Holding Girls' Education Hostage in Afghanistan – the Question Is, Why?' (*The Conversation*) <<http://theconversation.com/the-taliban-is-holding-girls-education-hostage-in-afghanistan-the-question-is-why-179976s>> accessed 2 July 2022.

in primary school and over 1 million in secondary. The increase in girls in secondary education was particularly remarkable, with nearly 40% enrolled in 2018 compared with 6% in 2003.²³³

After the Taliban took over in August 2021, they announced that girls will be automatically promoted for one year, and until further notice by March 2022, they need to stay at home.²³⁴

On 20 March the de facto government announced the opening of schools for both boys and girls at both primary and secondary levels. The day after, however, on the first day of school, which was 21 March 2022, they closed it again for girls in secondary education and made them wait until further notice.²³⁵

This action provoked reactions within the national and international community, human rights and United Nations institutions across the globe, the media outlets, and even religious scholars and politicians from other states parties reacted by calling for the re-opening of schools for girls. None of these calls and actions had any impact on the decision of the de facto government.

The need for creating a protected environment and to agree on a Sharia-based dress code for girls to attend schools are the two main excuses that the de facto authorities always tell the media, human rights institutions, and the UN agencies for limiting the girl's rights to education.²³⁶

The separate schools for girls and boys, with only female teachers for girls, would already be a safe environment for girls in the understanding of the Taliban. About the school uniforms: school uniforms are black with white scarves and cover the girl's bodies completely. It is obvious, thus, that the de facto authorities only want to have something to say without actually and simply not wanting girls to get an education.²³⁷

Each of the policies of the Taliban has its long-term implication for the right to education, and once these policies are accepted by the communities it might not be possible to reverse them easily and it might take generations again to do so.²³⁸

III. Other Factors Undermining the Right to Education under the Taliban

In the last chapter, some of the barriers to the right to education such as insecurity, poverty, and social norms were discussed, and how the former government, by taking some steps, was trying to respond to those challenges at both policy and implementation levels. Those challenges however were targeting children at any age and level of education, but the most impact is on children at the age of adolescence, in secondary education.

Unfortunately, under the current Taliban regime, already existing challenges are increasing for children as they become more marginalized and impacted by the attitudes and strategies of the de facto authorities.²³⁹ It seems that the authorities do not care about the rights of the children but create an even worsening situation for them. The establishment of religious schools may cause long-term radicalization and extremism that not only impact the children's minds and attitudes but will automatically lead to their defamation at the regional and international levels.²⁴⁰

Regarding the ban on the girl's right to education, locking them at home risks their future and increases the danger of child marriage, mental health problems, disappointment, waste of their time and opportunities, and many other negative harms.²⁴¹ Those families who still have the financial abilities, although their number is very low, will migrate to neighboring

²³³Grant Farr, 'Female Education in Afghanistan After the Return of the Taliban' (*E-International Relations*, 23 April 2022) <https://www.e-ir.info/2022/04/23/female-education-in-afghanistan-after-the-return-of-the-taliban/> accessed 1 May 2022.

²³⁴'Girls Sent Home in Tears as Taliban Reneges on Plans to Allow Female High School Students in Afghanistan' *ABC News* (23 March 2022) <https://www.abc.net.au/news/2022-03-23/afghan-students-tears-taliban-orders-girls-schools-remain-closed/100934526> accessed 28 June 2022.

²³⁵By Mushtaq Yusufzai and Rhoda Kwan, "'This Isn't a Wise Decision': Taliban Reversal on Girls' Education Met with Condemnation' (*NBC News*, April 2022) <https://www.nbcnews.com/news/world/taliban-afghanistan-girls-education-ban-reversal-condemnation-rcna21941> accessed 25 June 2022.

²³⁶Exclusive: *Amanpour Speaks with Taliban Deputy Leader - CNN Video* (n 140).

²³⁷Interview with Sadat (n 146).

²³⁸Interview with Ghani (n 123).

²³⁹Education Cluster UNICEF (n 77) 9.

²⁴⁰Interview with Nilla Yaqobi, UNICEF Education Sector Employee Zoom Call Interview June 18, 2022.

²⁴¹Interview with Ghani (n 123).

countries to provide opportunities to their daughters.²⁴² However, millions of families and their children will remain in an uncertain situation. Although this cannot be the end of the story, since the de facto authorities are unofficially in the power with almost eleven months of governance, still, their history of discriminatory approach and radicalization decreases the hope for a good future for the children.

1. Insecurity

It is important to note that the Taliban in general fail to maintain security in the cities and the provinces for the citizens. Several deadly attacks have happened that caused a high number of casualties among students of Hazara Minorities.²⁴³

The failure of the de facto government on establishing the security of the citizens has raised a lot of questions. Regarding education, recent attacks on schools by different groups, because of which 85 people died and 147 were wounded including a huge number of students, created fear among families and children, neither boys do not attend school anymore, not even primary school.²⁴⁴

As a result of the recent conflict between the de facto military and the National Resistance Front of Afghanistan (NRFA), mostly from Tajik tribes, the de facto authorities started investigating school children about their parents, family members, and relatives²⁴⁵ in some of the schools to discover NRFA members.²⁴⁶ Such an environment of horror and terror created in schools by the de facto authorities also caused parents and students not to attend the schools.

According to reports, some of the current schools and education institutions are turned into military bases that were constructed by international donor agencies. One of the schools is reportedly located in the northern part of Afghanistan which is turned into a military base.²⁴⁷ These are some of the few examples that can be brought here, although there can be hundreds of such incidents that are hidden and are not reported by the locals as a result of fear and life-threatening situations.

2. Child Labor

As was discussed in chapter two, children in Afghanistan already suffered from child labor as one of the barriers to their right to education. Child labor is a negative coping mechanism for poverty reduction. Since the Taliban's takeover, employment opportunities decreased and the financial system of many families and communities collapsed.²⁴⁸ Besides that, the education system was negatively impacted and a lot of disturbance happened in terms of the teacher's absence, timetable, and many more.

The impact of poverty on the children got more severe after the takeover by the Taliban because most of the families who had jobs in the government or non-government institutions became jobless. Neither male nor female children have been an exception and they had to quit school and start laboring to finance their families.²⁴⁹ According to a survey conducted by Save the Children in February 2022,²⁵⁰ 82% of Afghans have lost income since the collapse of the former government and

²⁴² Interview with Sadat (n 146).

²⁴³ Reporterly, 'It's Like The Holocaust: Hazara Genocide Under Taliban Regime Continues Endlessly' (*Reporterly*, 19 May 2022) <https://reporterly.net/latest-stories/its-like-the-holocaust-hazara-genocide-under-taliban-regime-continues-endlessly1/> accessed 26 April 2022.

²⁴⁴ Heather Barr and Associate Director, Women's Rights Division, 'A Bleak Future with Education Under Attack in Afghanistan - Afghanistan | ReliefWeb' (*ReliefWeb*, 20 April 2022) <https://reliefweb.int/report/afghanistan/bleak-future-education-under-attack-afghanistan> accessed April 26 2022.

²⁴⁵ Mohammad Shaker Rasa, 'Taliban Collecting Personal Information of Students in Kabul' (*Hasht-e Subh Daily*, 5 June 2022) <https://8am.af/eng/taliban-to-collect-personal-information-of-the-students-in-kabul/> accessed 1 July 2022.

²⁴⁶ Hasht-e Subh, 'Taliban Interrogate Pupils in Khairkhana Area, North of Kabul' (*Hasht-e Subh Daily*, 5 June 2022) <https://8am.af/eng/taliban-interrogate-pupils-in-khairkhana-area-north-of-kabul/> accessed 26 June 2022.

²⁴⁷ Mohammad Shaker Rasa, 'Taliban Changes a Public School into Military Base in Samangan' (*Hasht-e Subh Daily*, 28 May 2022) <https://8am.af/eng/taliban-changes-a-public-school-into-military-base-in-samangan/> accessed 26 April 2022.

²⁴⁸ UNAMA, 'Afghanistan: 500,000 Jobs Lost since Taliban Takeover' (*UN News*, 19 January 2022) <https://news.un.org/en/story/2022/01/1110052> accessed 5 July 2022.

²⁴⁹ *ibid.*

²⁵⁰ Save the Children, 'AFGHANISTAN: A Fifth of Starving Families Sending Children to Work as Incomes Plummet in Past Six Months' (*Save the Children International*, 14 February 2022) <https://www.savethechildren.net/news/afghanistan-fifth-starving-families-sending-children-work-incomes-plummet-past-six-months> accessed 5 July 2022.

18% of the families said that they had no choice other than to send their children to work. It means that an estimated one million children are engaged in child labor. Child labor is more common in bigger cities than the rural areas.²⁵¹

Boys are engaged more in hazardous work, while girls are engaged in house cleaning labors with the lowest income being 0.10 USD per day²⁵² Furthermore, several of the children continued undertaking unsafe migration to neighboring countries or to earn money for their families. According to human rights institution officials in Iran, the number of Afghan child laborers has increased by 20-fold since the Taliban assumed power.

Such vulnerabilities of the children automatically exclude them from the right to education.

According to one of the interviewee for the thesis, Khalid Sadat, *“The families and the children themselves, prioritize work over education to survive and this situation is a violation of international treaties and the obligation of the States toward fulfillment of the human basic rights and the right to education”*.²⁵³

In both the short and long run, it will be a question if the de facto government will be able to find a solution for the emerging issues of poverty and its impact on education or not, and what would be the policy implications to suggest an alternative for the increased poverty. The questions of why the children should bear the burden of political deals and political changes and why they should pay the price of the situation that they are not accountable for remain unanswered.

3. Child Marriage

In chapter two it was discussed that child marriage has been one of the famous and mostly used alternatives and barriers to the right to education for girls, mainly at the secondary level. The rate of child marriage has been high in the country for the last four decades of war and conflict.

The former government, by ratifying the CEDAW 1979 and CERD 1965, and with the support of the international community and UN agencies via setting up laws and policies and awareness-raising mechanisms, tried to decrease the practice of child marriage and promote girls' education.

Child marriage exists for many reasons among Afghan communities, and there are three main ones. First is a traditional and religious practice that families want their daughters to marry by the time they reach puberty, no matter at which age they are, they are counted ready to have a child and must marry.²⁵⁴

Secondly, it is used as a negative coping mechanism for financing the family. Most poor families whether they believe in cultural and religious perspectives of child marriages do not prioritize the right to education, but rather they marry their children to wealthier families to get good financial support for at least a period.²⁵⁵

In addition to that, since the girls are more vulnerable in a conflict situation and their protection is a big concern for families, mostly during conflict and instabilities, families, to protect their children, undertake child marriage for their children.²⁵⁶

Coming to the current situation, in December 2021, the Taliban released a decree and announced saying women should not be considered “property” and must consent to marriage although it is not explicit about the certain age of marriage, which is 16 based on the Afghanistan Civil Law. But still, the reports and evidence show that since the Taliban takeover, the number of child marriage cases has increased.²⁵⁷

The reason for the increase can be all the above-mentioned causes that families undertake child marriage, especially in poorer²⁵⁸ and rural areas. Furthermore, the Taliban takeover which resulted in more mental insecurity among the

²⁵¹ Pamela Constable, 'Boys in Afghanistan Are Becoming Breadwinners for Their Families' *Washington Post* <https://www.washingtonpost.com/world/2022/04/23/afghanistan-child-labor-kids-education/> accessed 6 July 2022.

²⁵² Safe the Children (n 159).

²⁵³ Interview with Sadat (n 146).

²⁵⁴ UNICEF Afghanistan (n 102) 27. UNICEF 2018 Child Marriage in Afghanistan- Changing the Narrative p.27

²⁵⁵ De Silva de Alwis, 'Spike in Child Marriages May Be “the Most Disturbing Fallout of the Taliban Takeover”' (November 2021) <https://www.law.upenn.edu/live/news/14262-spike-in-child-marriages-may-be-the-most> accessed 29 May 2022.

²⁵⁶ UNICEF Afghanistan (n 102) 34.

²⁵⁷ 'Taliban Bans Forced Marriage of Women in Afghanistan' <https://www.aljazeera.com/news/2021/12/3/taliban-bans-forced-marriage-calls-for-equal-rights-for-women> accessed 28 June 2022.

²⁵⁸ Akmal Dawi, 'Afghanistan Poverty Bears More Child Brides' (VOA, May 04, 2022) <https://www.voanews.com/a/afghanistan-poverty-bears-more-child-brides/6556599.html> accessed 29 May 2022.

communities once again damaged all the gains and efforts toward ending child marriage that was established by the former government during the two decades.

Having a strict religious attitude of the de facto government, the government is not keen to prevent child marriage but rather supports it and since the girl's education is not a priority for them anymore, this makes it easy for those community groups who are willing to perform child marriages.

Having said that, it seems that the result of the takeover has deeply impacted the achievements that were made during the last decades by the former governments on human development and dignity. The de facto government not only lost what was gained on the children's right to education, but also caused even worsening the situation for the children's mental, social, economic, and health situations.

D. Conclusion of the Chapter

In the conclusion of the chapter, I can highlight some of the key findings. It has been almost a year that the Taliban are in power, and they mean to be in power for a longer period. They claim the government and rule the country after the takeover and are advocating regionally and globally for recognition and legitimacy. But their actions do not help them to be recognized as a government.

As it was highlighted, the Taliban policy seems unchanged regarding the rights of children and women since the 1990s. They still have discriminatory and radicalized ideologies towards women and children and every citizen in Afghanistan.

They do not recognize any secular and human rights-based education system which is obvious from the way they react to girls' education as well as the promotion of religious schools.

While still many challenges in terms of four "As" accessibility and availability, adaptability, and acceptability of education to the children remain unsolved and even have deteriorated, the de facto authorities do not put any single effort to address them and bring ease for the children to access what remained as an educational system from the former government.

Voiding the National Constitution Law and ignoring the other policies and strategies, and the practical achievements which were made previously, shows the purpose the de facto authorities, that they want their own faith based attitude towards education with no focus on the human development and personal dignity.

By observing such a disappointing situation on the right to education, even in long term, it does not seem that the children will resume to enjoy the normal education that they used to enjoy.

CHAPTER FIVE: CONCLUSIONS

The questions guiding the research in this thesis at hand were:

1. To what extent does Taliban policy respect and implement the right to education?
2. Is Afghanistan at the risk of losing achievements and investments in primary and secondary education made during 2001-2021?
3. Is the right to quality education in danger under the de facto government of the Taliban?

To answer the questions, as a first step the importance and scope of the right to education were examined from the human rights perspective. States Parties to human rights instruments must respect, protect, and fulfill human rights and have respective obligations to implement human rights provisions at the national level.

The right to education refers to both primary and secondary education as it is also emphasized in Article 13 of the ICESCR 1966. To focus only on primary compulsory education will not be sufficient to reach the objectives of education, which include, among others, human development and dignity. Therefore, States Parties need to adopt the right strategies to address both primary and secondary education.

Afghanistan by signing the international human rights conventions such as ICESCR 1966, CRC, 1989, CEDAW 1979, and CERD 1965, has taken significant steps towards the realization of the right to education in a non-discriminatory way. A set of policies and laws including the National Educational Strategic Plan 2006 – 2021 and the National Education Law 2008, with several policies on different thematic areas such as Girls' Education Policy 2018 and Out of School Children policy

Concerning the practical fulfillment of the right to education the construction of schools (the number of schools increased from 3,400 in the early 2000s to 16,400), the development and adoption of quality curricula, and the establishment of Teacher Training Centers in each province to respond to the lack of female teachers, and Back-to-School Campaigns which resulted in a steady growth of numbers of enrollment (from 900,000 male students in 2001 to more than 9.5 million students, 39 % of whom have been girls by 2020) have been the major achievements of the former government in the field of education.

However, since the takeover by the Taliban, there is not any significant positive change that can be attributed to the Taliban. Instead, the orders, decrees, and announcements made related to the right to education seem to reverse all the progress made making access to good quality education an illusion again.

The ban of girls' secondary education institutions, the promotion of religious schools, discussions on changing secular curricula, and a school environment that gets increasingly one of horror and terror are representative of the losses of the two-decade achievements by the de facto authorities. Because such act is against the principle of none-discrimination which is emphasized in UDHR 1948, ICESCR 1966, CRC 1989, CEDAW 1979, CERD 1965, National Constitution Law 2004 and the relevant national polices and strategies.

Even though one year is not a long time for assessing the performance of a new government, in the case of the Taliban, which is not a recognized government, it can be clearly stated that their takeover had a highly negative impact on the realization of the right to education and relevant previous achievements have been already eradicated.

Claiming themselves a legitimate authority in Afghanistan now, Taliban could show a better result of their takeover of the women and children if they wanted their government to be accepted and legitimized by the international community. But sadly, because of their nature of attitude, they do the opposite which not only disappoints the Afghan nations but also the international community.

The Taliban use education as a political tool. They have been politicizing education without considering the impartiality of children and their vulnerabilities.

What is left is the 'hope' only, if that the Taliban change their position and approaches not only to the right to education for girls but also to the substance of education which would allow Afghan children to become part of the global community.

If not, the current and future generations with different talents and potential expertise will be marginalized with no connection to the regional and global standards of education

Radicalization of the schools will create the fear among the other states not to accept the students and children for the education and any other means to their countries to prevent possible instabilities.

It is beyond the scope of this thesis to assess what could be done by the EU and the international community to change the situation for the children in Afghanistan. I only want to say that they need to end the empty speeches with empty voices and must act. Every day passing without access to education, development, and knowledge, the world loses the talent of millions of children who could contribute to a better and peaceful world. And not only this, the dark future of the children will definitely expand to the region and globe with extremely negative impacts on social, economic and political situation.

Therefore, as a last word of the thesis, there must be meaningful actions in a diplomatic framework by the EU and the international community to prevent such tragedies.

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