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IN BRIEF

GENDER ALERT — Afghan women’s and girls’ rights under Decree No. 12 on Criminal Rules of Courts

In January 2026, the de facto authorities (DFA) in Afghanistan passed Decree (No. 12) on Criminal Rules of Courts (hereafter, the Decree) to align the application of discretionary punishments by primary courts.¹ The Decree represents a first step toward formalising the application of *ta’zīr* (discretionary) offences – the least severe category of criminal offense. While the Decree does not arguably constitute a comprehensive criminal law framework, the DFA have to date governed through decrees, directives, and ad hoc judicial practice that disproportionately target women and girls by systematically restricting their access to education, employment, movement, expression, and public life. Implemented inconsistently and opaquely, this regulatory environment has prioritised control and punishment over legal certainty and protection, progressively eroding women’s rights and legal status, leaving women with no recourse for justice.

Comprising 119 articles across three chapters and ten sections, the Decree codifies crimes subject to judicial discretion (*ta’zīr*),² and expands discretionary authority in two critical ways: (i) by granting penal authority to private individuals, and (ii) by establishing tiered punishments based on social status.

The Decree reinforces gender hierarchy as an organising principle, empowers husbands to implement *ta’zīr* punishments, normalises violence as a tool of family governance, and conditions women’s safety on compliance rather than framing it as a foundational, protected right. The resulting social and psychological consequences – particularly for women and girls – risk being profound and enduring, with sustained normalisation of such norms over time further entrenching gender-based inequalities and violence across society.

This Gender Alert examines the substantive provisions of the Decree and their consistency with international legal principles, analysing how they are likely to be interpreted, implemented, and enforced in practice, and assessing their immediate and future impact on Afghan women’s and girls’ rights, access to protection, and participation in civic life.

Decree No. 12 in context

The Decree does not exist in a vacuum – its provisions form part of a coherent legal structure that consolidates power, shields loyal actors, and exposes women, people living in poverty,

1. The Decree was signed by the Emir on 5 January and, on 8 January 2026, the de facto Supreme Court disseminated it to all courts: see de facto Supreme Court, 20 January 2026, [Mizan Gazette, Issue #123](#).

2. This category of crimes is distinct from *hudūd* (violations of the “rights of God,” such as theft, adultery, drinking alcohol, or apostasy) and *qisās* (violations of the “rights of individuals,” such as bodily harm or killing), which carry Quranically prescribed punishments. By contrast, *ta’zīr* encompasses a broad category of offenses including minor theft, public disorder, administrative violations, economic crimes, moral offenses, and family-related matters.

minorities, and dissenters to heightened vulnerability.³ The Decree's impact is compounded by a judicial system demonstrating significant deficits in transparency, effective oversight, independence and fairness⁴ – reflected in opaque procedures, absence of independent oversight mechanisms, and subordination of courts to political and ideological authority.⁵ Within this environment, the DFA have regularly carried out public floggings as judicial *ta'zīr* punishments,⁶ creating a climate of anticipatory compliance that the Decree risks exacerbating.

If implemented as state policy, the Decree risks breaching established international human rights principles enshrined in treaties to which Afghanistan remains a State Party, including guarantees of equality before the law and freedom from discrimination.⁷ Afghanistan's compliance with these instruments,

and with international human rights law in general, remain a central prerequisite for its political engagement with the international community,⁸ as reflected in ongoing international accountability mechanisms.⁹

Despite DFA claims that the Decree represents longstanding implementation of *Sharia*, similar to the Law on the propagation of virtue and prevention of vice (PVPV Law),¹⁰ it has drawn criticism within Islamic legal and political discourse. Muslim and Afghan legal experts have described the Decree as collective condemnation of Afghans and a legalization of violence by private actors,¹¹ contradicting foundational Islamic teachings on human dignity, justice and equality before the law, the Cairo Declaration on Human Rights in Islam¹² and Afghanistan's own explicitly Islamic Constitutions of 1923 and 2004.¹³ In response to international criticism, senior DFA officials

3. This pattern is evident across multiple legislative instruments issued since August 2021, including the August 2024 "Law on the propagation of virtue and prevention of vice" (PVPV Law), December 2021 women's rights decree, and others. See a more comprehensive list of decrees here: UN Women. 2025. [Afghanistan Gender Index 2024](#).

4. United Nations Human Rights Council. 2025. [Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett](#). A/HRC/59/25. 59th session; Amnesty International. 2025. [Afghanistan: Authorities must reinstate formal legal frameworks, rule of law and end four years of injustice and impunity](#).

5. Available reporting demonstrates close alignment between judicial structures and DFA ideological authority. The de facto Ministry of Justice has stated that criticism of legislative texts amounts to criticism of *Sharia* law itself, and legislative drafts are reviewed by religious scholars for compliance with DFA interpretations of *Sharia*. Judges are reportedly appointed from scholars trained in DFA-approved madrassas, with professionally trained judges and lawyers having been systematically replaced after August 2021. Public statements by the Chief Justice frame courts primarily as instruments for implementing religious and policy directives rather than independent arbiters of law. UN General Assembly and Security Council. 2025. [The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General](#). A/79/947 S/2025/372. UN General Assembly and Security Council. 2024. [The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General](#). A/79/675–S/2024/876. OHCHR. 2023. [Joint statement by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Afghanistan on the Day of the Endangered Lawyer](#).

6. This practice has been widely documented by UNAMA. Between 1 October and 31 December 2025, UNAMA Human Rights documented judicial corporal punishment against at least 287 individuals (253 men, 30 women, three boys and one girl): UNAMA. 2026. [Update on the situation of human rights in Afghanistan: October–December 2025](#). United Nations Assistance Mission in Afghanistan.

7. Internationally, Afghanistan remains a party to core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

8. As noted in the Special Coordinator's report presenting a roadmap for Afghanistan's reintegration into the international community: United Nations Assistance Mission in Afghanistan (UNAMA). 2023. [Report of the Independent Assessment Pursuant to Security Council Resolution 2679 \(2023\)](#). S/2023//856. United Nations, November 2023.

9. Notably, the CEDAW Committee has initiated an inquiry into possible grave and systematic violations against women and girls, allowing for evidence collection and authoritative findings, albeit without binding domestic effect. In parallel, the International Criminal Court Prosecutor's investigation into Afghanistan remains active and has increasingly focused on policies affecting women and girls, including conduct that may amount to gender-based persecution. For further information on accountability mechanisms, see: UN Women. 2023. [Expert Group Meeting Report: International Strategies and Tools to Address the Situation of Women and Girls in Afghanistan](#). New York: UN Women.

10. Promulgated on 21 August 2024, the PVPV Law was widely regarded as the first time a comprehensive set of laws had been passed, giving a clear, and concerning, insight into the path the DFA were taking on women's rights and democracy: UNAMA. 2025. [Report on the Implementation, Enforcement and Impact of the PVPV Law in Afghanistan](#).

11. Rawadari, "Press Release Regarding the Implications of the Criminal Procedure Code for Courts Issued by the Taliban," accessed January 2026; Former Attorney General of Afghanistan, Mohammad Farid Hamidi (@MohFaridHamidi) (X, 27 January 2025) <https://x.com/MohFaridHamidi/status/2014859224925290512> accessed 3 February 2026; Musawah Movement. 2026. "Law won't protect women from all violence", Instagram post, 4 March 2026.

12. The [Cairo Declaration on Human Rights in Islam](#) is a non-binding declaration adopted by the Organization of the Islamic Conference (now the Organization of Islamic Cooperation, OIC) on 5 August 1990 in Cairo setting out a framework of human rights articulated with reference to Islamic principles.

13. Government of Afghanistan, *Constitution of Afghanistan (1923)*, art. 8, which affirmed equality of Afghan subjects before the law: "All the

emphasised the Decree's religious basis and cautioned against interpretations that separate the Decree from Islamic law.¹⁴

Impact of Decree No. 12 on Women's and Girls' Rights

Women's legal personhood is dismantled and discrimination is institutionalised

Within the Decree's framework, women's legal status is fundamentally redefined. **The Decree establishes a system of hierarchy, where legal status is mediated through male authority and social rank.** Women are no longer guaranteed equality before the law, vested with reciprocal legal authority, nor recognised as a protected legal category,¹⁵ as they were under the 2004 Constitution.¹⁶ The Decree instead regulates women through marital status and behaviour and almost exclusively refers to them through their marital status (eg. "wife").¹⁷ This legal framing mirrors and reinforces prevailing courtroom practices in which women's voices, credibility, and professional authority are systematically discounted, including through the treatment of women defence lawyers, further entrenching women's exclusion from equal participation in the justice system.¹⁸

The Decree further dismantles equality before the law with a stratified legal order that bases type and severity of punishment on gender, social rank, and proximity to power.¹⁹ According to the Decree, society is divided into four classes where "religious scholars and high-ranking persons" as well as "elites" are shielded from formal punishment for *ta'zīr* offences, while harsher penalties, including corporal punishment, are imposed on those designated as "middle class" and "lower class." This structure entrenches impunity and strengthens the authority and power of male figures, especially DFA-affiliated actors.

In a context of fear and uncertainty, legal insulation translates into social authority – community members increasingly defer to those whose actions are unlikely to be punished, reinforcing their influence over disputes, moral judgments, and daily governance.²⁰ Meanwhile, structural discrimination and exclusion from power, education, and economic resources likely ensures that women will be disproportionately concentrated in the lower categories, making them more vulnerable to control and formal and informal punishment.²¹ This vulnerability is compounded for non-Sunni Muslim women. Article 2(8) designates the Sunni faith as the dominant religious doctrine and classifies other beliefs as "heretical" (*mubtadi*), opening an additional axis of discrimination against women from

subjects of Afghanistan are free and equal before the law" And "No person may be deprived of liberty except in accordance with the law".

14. Deutsche Welle (Dari), Interview with de facto Spokesperson Zabiullah, 31 January 2026. <https://www.youtube.com/watch?v=iNlkDxH3rK0>

15. Article 67 is unique in labeling women who have a child with unknown paternity as a protected class, criminalizing the accusation of *zina* (adultery) against this group of women. This reflects an important but insufficient acknowledgement that women are disproportionately targeted in regulating sexual conduct.

16. Under the 2004 Constitution, Afghan women were explicitly recognised as equal legal subjects and provided a protected status. Article 22 affirmed that "the citizens of Afghanistan – whether man or woman – have equal rights and duties before the law," while other provisions imposed positive obligations on the state to address structural gender inequality. For example, Article 54 required the state to "adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother."

17. The term "woman" or "women" is used to ban "an illicit relationship with a non-mahram woman" (Article 37), prohibit "looking at neighbouring women" (Article 28), prescribe punishment for an "apostate woman" (Article 58), and in two forms of protected category against false accusations of *zina* (Article 67).

18. Key informants reported that judges increasingly discourage or obstruct legal representation, advising that women defendants "do not need lawyers" and warning that lawyers complicate proceedings. Women lawyers described being pressured to remain deferential or risk exclusion from courtrooms altogether, further undermining women's access to equality before the law: Key informant interview on 5 February 2026 with female defence lawyer.

19. Article 9 states that "With regard to the perpetrator, the *ta'zīr* shall be classified into following levels: (1) *Ta'zīr* for the *ulama* (scholars), high ranking people: The *Ta'zīr* applicable to such persons, as imposed by the judge, is by way of a warning in the following terms: "It has come to my notice that you are engaging such-and-such acts"; (2) *Ta'zīr* for nobles (*ashrāf*), such as tribal chiefs and merchants: The *Ta'zīr* applicable to the aforementioned persons, as imposed by the judge, is by admonishing them and summoning them to appear before the court; (3) *Ta'zīr* for the middle-class members of the society: For the aforementioned people, *Ta'zīr* shall be by ordering their appearance before the court and by ordering their imprisonment; (4) *Ta'zīr* for the low-level people: The *Ta'zīr* applicable to the aforesaid people is by threatening and flogging. However, where the *Ta'zīr* is imposed at the maximum level, such as thirty-nine (39) lashes, the offender shall not be struck with the *dura* (whip) repeatedly on a single part of the body." Note that 39 is the maximum number of lashes that can be prescribed for *ta'zīr* crimes. Forty lashes can be applied for *hudūd* crimes.

20. Key informant interview on 4 February 2026, an Afghan woman linked to civil society networks.

21. The top two categories "*ulama* (scholars), high ranking people" and "*ashrāf* (nobles), such as tribal chiefs and merchants" are defined in terms that implicitly exclude women. Under current Taliban policy, each of these roles is effectively restricted to men, rendering the classification itself a mechanism of gendered exclusion.

Shia, Ismaili, and other minority communities – who already face intersecting forms of marginalisation based on ethnicity, geography, and religion.

Taken together, legal authority, protection, and accountability are redistributed along gendered and status-based lines, normalising inequality, **shielding those closest to power from meaningful sanction, and transforming women’s position in law from rights-holders to objects of governance**. Scholars have argued that this framework stands in direct tension with core principles of Islamic jurisprudence – including legal principles of *musāwāt* (equality) and *‘adl* (justice) – as well as the *maqāsid al-shari’a*, the higher objectives framework used to assess the compatibility of legal rules with changing social conditions, which reject privilege based on rank and require accountability to be grounded in conduct rather than status.²² Similarly, the ethical principle of *karāmah* (human dignity) stands in contrast with the Decree.²³ It is likewise incompatible with international legal standards guaranteeing equality before the law and protection from discrimination.²⁴

Male enforcement authority and violence against women are legally-sanctioned

The Decree authorises “husbands”, “fathers”, and “masters”,²⁵ to act as enforcers of moral discipline outside formal judicial institutions, including through corporal punishment. In doing so, it embeds gender-based violence within the legal framework and formally acknowledges

relations of domination.²⁶ The Decree further permits *ta’zīr* to be imposed by “any Muslim” in the moment they observe a person committing a sin,²⁷ or for the purpose of “public interest.”²⁸ In this way, control and violence risk being legitimised as religious obligation. This reflects a departure from core procedural safeguards embedded in rule of law and Islamic jurisprudence which vests penal authority exclusively in recognized institutions and subjects it to judicial oversight.²⁹ In practice, given entrenched patriarchal norms and the gendered hierarchy codified in the legal framework, this authority is likely to be exercised solely by men.

The Decree reframes violence as discipline and legal enforcement by authorizing private individuals to impose *ta’zīr* even in the absence of clearly defined criminal conduct or evidentiary thresholds. **In effect, the regulation shifts enforcement authority from judicial institutions into families and communities, creating conditions under which corporal punishment by individual men is effectively legitimised as state-sanctioned violence.** As a result, the Decree creates strong incentives for anticipatory compliance, a pattern already documented following previous DFA regulations, and risks entrenching self-policing, over-enforcement, and gendered control over time. Multiple provisions also explicitly authorize men to punish their wives and children, including through specific examples legitimizing violence both for punishment (responsive) and discipline (prospective or corrective).³⁰ This approach is in breach of the prohibition of torture and cruel, inhuman, or

22. Consultations with Afghan Islamic law experts on 16 and 23 February 2026 describe how justice (*‘adl*), equality (*musāwāt*) and freedom are higher objectives, or *maqāsid*, that guide contemporary interpretation of legal rules. *Maqāsid* provides the principal internal framework within Islamic jurisprudence for evaluating legal rules in light of overarching moral purposes and changing social conditions.

23. Ibid.

24. These standards are covered by article 2(1) (non-discrimination), article 8 (prohibition of slavery and servitude), and article 26 (equality before the law) of the International Covenant on Civil and Political Rights.

25. Note the term used for “master” – repeated in several provisions in the Decree – lacks sufficient context to determine its meaning.

26. Article 4(5) states that “The implementation of *hadd* is the prerogative of the Imam (leader) but *Ta’zīr* punishment can be administered by the husband and the slavemaster as well.”

27. Article 4(6) provides, “Every Muslim who witness a perpetrator of offences falling under divine rights category, shall have the authority to administer *ta’zīr* punishment, since this comes under the propagation of virtue and prevention of vice, but he/she does not have the authority to administer the Prescribed Punishment (*hadd*).”

28. Article 48 provides, “*Ta’zīr* may also be imposed, even in the absence of a criminal offence, on grounds of public interest, for example, a father may administer *ta’zīr* to his ten-year-old child for negligence in performing prayers, and similar matters.” The *de facto* spokesperson clarified that the implementation of *ḥudūd* punishments, including whipping or imprisonment are the responsibility of the *de facto* government, not individuals, though this is not clearly stated anywhere in the Decree: Deutsche Welle, Interview with *de facto* Spokesperson Zabiullah, 31 January 2026, <https://www.youtube.com/watch?v=iNkDxH3rK0>.

29. Consultations with an Islamic law expert described how authoritative jurists across Islamic schools, including Ḥanafī authorities such as al-Sarakhsī and al-Kāsānī, consistently treat *ta’zīr* as “entrusted to the discretion of the judge” (مفوض إلى رأي القاضي) in order to prevent vigilantism, private vengeance, and the arbitrary exercise of power based on personal bias. See also Cook, Michael. 2000. *Commanding Right and Forbidding Wrong in Islamic Thought*. Cambridge University Press.

30. For example, Article 4(5) states “*ta’zīr* punishments can be administered by the husband.” Article 48 allows for the use of *ta’zīr* on children. Article 4(3) provides for *ta’zīr* to be administered to minors in cases of “correction”.

degrading treatment,³¹ in direct contrast to the ethical foundations underpinning Islamic teachings,³² and contravenes the Cairo Declaration and its emphasis on the family as a unit founded on dignity, mutual responsibility, and lawful authority, rather than coercion.³³

The lack of explicit definitions of “sin” and “public interest”, as well as “corruptors”³⁴ and “immoral persons”,³⁵ in the Decree allow existing gendered legal and social discrimination to shape enforcement in practice. Already subject to intense scrutiny over a dense and restrictive patchwork of rules governing behaviour, dress, and mobility, women risk being disproportionately perceived as offending and therefore more frequently exposed to arbitrary punishment from private individuals. In this way, **morality and religious concepts are codified without clear definitions or safeguards and applied in a gender-specific manner, increasing women’s exposure to coercion and violence.**

Although the Decree criminalises physical violence against a “wife”, it prohibits such violence only where it results in “fracture, injury, or the appearances of bruising on her body,” and only where the wife can prove her claim before a judge.³⁶ This burden to prove a claim – not imposed on victims of any other crimes prohibited under the decree

– is, in practice, further compounded by systemic barriers that already constrain women’s access to justice. Women are required to be accompanied by a *mahram* to access courts – for a married woman, this is frequently her husband. Women defence lawyers are scarce and themselves face discrimination within courtrooms when they practice.³⁷ Prevailing social norms actively discourage women from speaking on their own behalf.³⁸ Additionally, the requirement of visible injury effectively permits not only physical violence that leaves no visible marks, but also entirely excludes sexual and psychological violence, despite their capacity for severe and lasting harm.³⁹

Even when women experiencing violence meet the evidentiary conditions, the maximum penalty for offenders is limited to 15 days imprisonment.⁴⁰ **This punishment is less severe than those imposed for other conduct punishable by *ta’zīr*, including cruelty to animals and trespassing,** which result in five months and two months imprisonment, respectively.⁴¹ This disparity signals institutional tolerance of such abuse, reinforcing impunity, in stark contrast to international legal standards, which recognise violence against women as a serious violation with profound physical and psychological consequences requiring meaningful accountability.⁴²

31. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1, 2(1), 16 (defining torture as acts by or with acquiescence of public officials and requiring prevention); ICCPR, art. 7; CEDAW, arts. 2(e), 5(a), 16(1) (requiring elimination of discrimination and guaranteeing equality in marriage and family relations); CRC, arts. 19(1), 37(a) (requiring protection from violence and prohibiting torture and cruel, inhuman or degrading treatment of children).

32. Musawah. 2024. [Authority in Muslim family laws: rethinking Qiwamah and Wilayah](#). Knowledge Building Brief 05.

33. Article 20 of the Cairo Declaration provides for the right to live in security and free from torture or degrading treatment; Article 5(c) provides that “The State and society shall ensure the protection of the rights of the family and its members, strengthening of the family ties, and the prohibition of all forms of violence or abuse in the relations among its members, particularly against women, children, persons with disabilities and the elderly.”

34. “Corruption” can result in the most severe penalties, including the death penalty, for persons falling within broadly and ideologically framed categories of promoting or persisting in corruption “to safeguard public interest”. Article 14 authorises the death penalty (with authorization of the *Emir*) for categories defined in broad and ideological terms, including: “A person who persists in *fasad* (corruption)”, “Promoter of corruption”, “Apologist for false beliefs in opposition to Islam”, “A person who calls others to a false belief in opposition to Islam, including the leaders and trainers of the heretical and the corrupters”. Similarly, Article 16 provides, that if a Muslim blasphemes he shall be deemed an apostate and, where the offence is proved without the offender having repented, shall be liable to be put to death as a *ta’zīr* measure.

35. These terms are used throughout the Decree, including articles 4(6) and 48, as well as in articles 13 which allows for punishments of demolition of property among corruptors and immoral persons.

36. Article 32 requires a judge to sentence a husband to fifteen days’ imprisonment provides if he “beats his wife with severe beating, such that it results in a fracture, a wound, or bruising on the body becomes apparent, and the wife proves her claim before the judge.”

37. Key informant interviews on 5 and 12 February 2026 with female defence lawyers.

38. *Ibid.*

39. Similar permissive logic applies to other relationships of authority, including article 30 which only prohibits physical violence against children by teachers “in such a way that it breaks a bone, or cuts the skin, or causes bruises on the body.”

40. Compared to Article 31 that criminalises “a person who beats his father or mother, or disrespects them”, which does not mention a proof requirement before a judge, and provides punishment of 30 lashes and five months imprisonment.

41. Examples of *ta’zīr* with longer punishment than violence against women include: entering another person’s home without permission: two months imprisonment (Article 63); gambling: four months imprisonment (Article 66); forcing animals or birds to fight: five months imprisonment (Article 70); refusing to sell stockpiled goods: one month imprisonment (Article 71).

42. Musawah. 2023. [Ending violence against women in Muslim families](#). Policy Brief #08.

At the point where women may attempt to escape violence, the Decree criminalises women leaving their marital home without a husband's permission and punishes family members who shelter them.⁴³ This provision formally dismantles one of the last remaining informal protection pathways available to women experiencing domestic violence,⁴⁴ particularly in a context where formal legal safeguards have already been dissolved. These provisions transform the continuum of abuse into a closed legal loop: **violence within the home is legally minimised – treated as less serious, less credible, and less worthy of intervention – while efforts to leave it are criminalised**, effectively redefining survival as wrongdoing and legitimising the infliction of violence itself.

Expression, dissent and social trust are systematically eroded

The Decree fundamentally alters criminal responsibility by removing intent as a requirement for liability, instead permitting punishment on the basis of presence, awareness, association or relationships and movements – a shift with a dangerous effect on civil society and public life.⁴⁵ As a result, **individuals may be punished not for committing a defined criminal act, but for proximity to conduct deemed sinful, corrupt, or subversive** – a risk to which women are disproportionately exposed, as their actions and inactions are already subject to heightened scrutiny and restricted by gender-specific regulations.⁴⁶ Similarly, the breadth and vagueness of these provisions make it effectively impossible to fully avoid liability. Perceived

repeated non-compliance with restrictions – which, due to their expansive scope and ambiguous framing, may include ordinary acts of agency or organised efforts to provide essential services to women – risks being reframed as subversion or moral wrongdoing, intensifying fear, anxiety, and self-censorship and deepening the psychological burden of daily compliance.⁴⁷

Against this backdrop, the Decree also punishes silence. Failure to act in response to perceived moral wrongdoing can itself attract liability, compelling individuals to demonstrate loyalty and compliance proactively.⁴⁸ For women, this obligation is particularly acute. Already navigating a legal and social environment that monitors their conduct, appearance, and movement, women face pressure not only to comply personally but to visibly enforce compliance within their households and immediate communities. This positions them simultaneously as subjects and instruments of control.

This chilling effect is further entrenched by provisions that criminalise criticism of the Emir, DFA personnel and criticisms of Islam.⁴⁹ The first reported application of the Decree resulted in enforcement of Article 18 in Badghis on 10 February 2026, where an individual was given the maximum sentence of 39 lashes and one year imprisonment for insulting the Emir at a public gathering.⁵⁰ Additionally, the Emir is given the authority to order what is permissible in Islam, contravention of which is subject to *ta'zīr*, ensuring the Emir's interpretation of Islam supersedes all others.⁵¹ In effect, this equates DFA policies with religious doctrine

43. Already a norm in most of Afghanistan, women must ask their husband's permission to visit their family home. Article 34 now criminalises this, sentencing both the wife and family members who "obstruct her return" to three months' imprisonment in situations where she repeatedly leaves without her husband's permission or a *Sharia*-based justification.

44. On 31 January, DFA spokesperson Zabihullah Mujahid clarified that women facing domestic violence have the right to leave for their safety. However, this interpretation is not reflected in the text of the Decree and therefore lacks legal certainty, leaving its application subject to discretion and inconsistent enforcement by de facto primary court judges: Deutsche Welle (Dari), Interview with *de facto* Spokesperson Zabiullah, 31 January 2026. <https://www.youtube.com/watch?v=iNikDxH3rK0>

45. Several provisions criminalise proximity, awareness, and association: Article 24 punishes failure to report "subversive meetings" of opponents of the government with two years' imprisonment; Article 25 punishes sheltering combatants, insurgents, or "corruptors" with five years' imprisonment and 39 lashes; Article 40 punishes association with "immoral persons" with one month's imprisonment, doubled upon repetition; and Article 59 criminalises dancers, those who commission them, and spectators alike.

46. The absence of explicit safeguards against torture or coerced confession not only creates serious risk of abuse in detention, but reinforces the broader chilling effect of the Decree – where the prospect of arbitrary detention and coercion becomes itself a tool of compliance. Key informant interview on 5 February 2026 with female defence lawyer.

47. *Ibid.*

48. See footnote 45 on Article 24.

49. The Decree criminalises dissent at every level: insulting "the Imam" (Emir) carries 39 lashes and one year's imprisonment (Article 18); insulting "Emirate affiliated leaders" carries 20 lashes and six months (Article 23(2)); and Article 17 extends criminal liability to mockery of *Sharia* and Islamic rites, insulting sacred days of Islam, or stating that the instructions of jurists or ulama are unacceptable.

50. Amu TV, 15 February 2026, "[Exclusive: Taliban begin enforcing new penal code](#)".

51. Article 19(1) and (2) set one month imprisonment for persons who disobey an order "[i]n permissible matters, where the *Imām* issues

and collapsing the distinction between political authority and the presentation by the DFA of religious truth. For women, this is particularly consequential as **it forecloses not only political dissent but the Islamic legal and ethical arguments that have historically provided the strongest grounds for contesting restrictions on women's rights and freedoms.**

In a context where advocacy for women's and girls' rights is frequently framed as opposition to the DFA,⁵² these measures effectively close the space for discussion on their basic rights and fundamental freedoms as recognised under international and Islamic law. In practice, this dynamic has already been observed in relation to public expression of support for girls' education, which has been progressively silenced.⁵³ Similarly, attempts by women to speak in court or public settings are increasingly interpreted as defiance of authority rather than requests for justice.⁵⁴ These provisions remove any lawful space for critique, oversight, or disagreement with state power.

Provisions criminalising association – particularly those that remove the intent requirement – carry profound implications for women's civic engagement and freedom of expression. Women who continue to participate in civil society, community initiatives, or informal spaces for dialogue already do so under heightened risk. The Decree further increases their exposure by attaching liability to proximity, association, or perceived awareness of wrongdoing. **Fear of reporting, collective punishment, or**

reputational harm places additional pressure on women to withdraw from civic activity, while also discouraging organisations, employers, and community actors from maintaining engagement with women.⁵⁵ In practice, this further narrows the already constrained space for women to organise, advocate, or sustain networks that enable expression and mutual support, increasing the risks borne by those who continue to safeguard spaces for dialogue, resistance, or rights-based engagement.

This legal architecture **risks incentivising and normalising informant systems by making safety contingent on distancing oneself from perceived wrongdoing** and, where necessary, reporting others. Within this environment, women face heightened risk due to their visibility as subjects of moral and legal regulation and their reliance on informal networks to access information, services, and support.⁵⁶ As relationships are reorganised around fear and self-preservation, social networks that previously provided informal protection, support, and coping mechanisms for women are progressively dismantled. Community-based solidarity, information-sharing, and mutual assistance erode, expression is replaced by enforced silence as a condition of survival, and social cohesion gives way to suspicion. Fear of accusation and liability also extends into everyday interactions, leading many men in public-facing roles – such as taxi drivers and shopkeepers – to avoid contact with women altogether.⁵⁷ As a result, women are disproportionately isolated, and further excluded from information, collective coping, and protection.

an order and acting upon that order becomes obligatory," or acts contrary to an order "[i]n permissible matters, where the *Imām* issues a prohibition and, by reason thereof, the matter becomes *ḥarām* (prohibited)."

52. As early as 2024, consultations with groups of Afghan men indicated that raising issues perceived as relating to women's rights – even by community or religious leaders – was widely viewed as a form of opposition to the de facto authorities, making such issues difficult to raise publicly: UN Women, IOM and UNAMA. 2024. [Summary Report of Countrywide Women's Consultations](#). April.

53. Afghanistan International, "[Women's Education Questions Off-Limits, Says Taliban Minister](#)," 25 August 2024. See also the detention of education advocates Matiullah Wesa in March 2023: VOA, "[Taliban Detain Afghan Girls' Education Advocate](#)," 28 March 2023; and Ismail Mashal in February 2023: Al Jazeera, "[Taliban detains professor who protested ban on women's education](#)," 3 February 2023.

54. Key informant interview on 5 February 2026 with female defence lawyer.

55. In a key informant interview on 4 February 2026, an Afghan woman linked to civil society networks described increasing family pressure on women to withdraw from work, alongside growing concern that employers may terminate the remaining women's contracts.

56. Ibid.

57. Ibid.

Recommendations

Recommendations for the consideration of the DFA:

Review the Decree to meet Afghanistan's commitments to the CEDAW, and in particular:

- **Suspend the application of provisions that pose immediate protection risks:** As an urgent harm-prevention measure, suspend enforcement of provisions authorising private punishment, corporal punishment, collective liability, and penalties based on association, presence, or silence, pending further review.
- **Introduce clear safeguards, definitions, and limits on discretion:** Clarify and narrowly define offences, particularly moral and belief-based provisions, to ensure that criminal liability is based on clearly defined conduct rather than status, belief, or association. Establish evidentiary standards and proportionality requirements to reduce potential for arbitrariness.
- **Ensure protection from violence in the domestic sphere:** Review and amend provisions relating to family discipline to ensure that any form of violence against women and children is not authorised or normalised, that harm including psychological and sexual violence are not excluded, and that women are able to seek safety, shelter, and assistance without fear of punishment to themselves or their families.
- **Decouple punishment from social status and rank:** Reconsider provisions that differentiate legal consequences based on social class, rank, or affiliation, with a view to ensuring that accountability is grounded in conduct rather than status and that all individuals are treated equally before the law.
- **Provide assurances on freedom of belief, expression, and conscience:** Clarify that belief, opinion, and peaceful expression – including silence or non-participation – do not in themselves give rise to criminal liability, and review provisions that permit severe penalties for belief-based or expressive conduct.
- **Strengthen judicial safeguards and oversight:** Take steps to enhance transparency, consistency, and oversight within the justice system, including limits on delegated enforcement, and mechanisms to prevent misuse of discretionary authority.

- **Engage with diverse Islamic legal scholarship:** Consider inclusive dialogue with a diverse body of Islamic scholars, including jurists from Afghanistan and the wider Muslim world, to assess the Decree in light of established Islamic principles, including justice (*'adl*), equality before the law (*musāwāt*), human dignity (*karāmah*) and the higher objectives of the *Sharī'a* (*maqāsid*).

Recommendations to the international community:

- **Use engagement frameworks to seek concrete safeguards:** Where dialogue or engagement with the de facto authorities occurs, prioritise engagement on specific, measurable steps to mitigate foreseeable harms arising from the Decree, with particular attention to reducing risks for women and girls.
- **Strengthen protection and documentation mandates:** Support enhanced gender-differentiated documentation of the application and impacts of the current legal framework, including through gender-sensitive monitoring of enforcement, evidentiary practices, and sentencing disparities, to inform protection responses and future accountability processes.
- **Maintain principled and coordinated engagement:** Ensure that diplomatic, humanitarian and development engagement, assistance, and cooperation do not contribute to the normalisation of legal frameworks that institutionalise discrimination, arbitrary punishment, or violence, and that engagement remains consistent with international human rights standards.
- **Prioritise protection-oriented assistance:** Sustain and, where possible, expand support for women-led civil society organisations and humanitarian actors providing protection, legal information, psychosocial support, and essential services to women, girls, and other vulnerable groups disproportionately affected by the legal environment.
- **Encourage principled religious and legal dialogue:** Support inclusive engagement among Islamic scholars and institutions from diverse schools of thought and dialogue with the DFA to examine the Decree in light of widely recognised Islamic principles of justice (*'adl*), human dignity, and equality before the law.