

## POLICY BRIEF

# DESIGNING THE RIGHT INVESTIGATIVE MECHANISM FOR AFGHANISTAN

## Introduction

This policy brief synthesizes key findings from the HRC59 side event "From Call to Action: Designing the Right Investigative Mechanism for Afghanistan" organised on June 17, 2025 by the Center for Dialogue and Progress - Geneva (CDP-G) with support from cosponsors, Action for Development, Malala Fund, Center for Human Rights Advocacy and the End Gender Apartheid Campaign. The panel, moderated by **Hamid Formuli** (CDP-G), brought together UN Special Rapporteur **Richard Bennett**, Human Rights Watch's Afghanistan Researcher **Fereshta Abbasi**, and legal expert and PhD candidate at Melbourne Law School, **Azadah Raz Mohammad** to address the urgent need for establishing an independent accountability mechanism for Afghanistan and offer recommendations on its scope and format, keeping the victims, efficiency and financial limitations at the center.



# The Case for an Independent Investigative Mechanism

## Deteriorating Human Rights Landscape

Three years since the first call for an independent investigative mechanism for Afghanistan, the human rights situation has dramatically worsened.

All panelists emphasized the catastrophic deterioration of human rights in Afghanistan since the Taliban's return to power. Fereshta Abbasi highlighted severe restrictions on women and girls' rights and freedoms, fomented by the "Propagation of Virtue and Prevention of Vice" (PVPE) law.

Richard Bennett highlighted the broader context of systematic violations, noting that the situation extends beyond women's rights to encompass restrictions on freedom of expression, peaceful assembly, and the rights of ethnic and religious minorities. He emphasized that these violations constitute part of a systematic attack on the civilian population.

## Documentation and Evidence Preservation Gaps

Fereshta Abbasi highlighted critical gaps in current documentation efforts, noting that existing mechanisms lack the capacity for comprehensive evidence collection and preservation necessary for future prosecutions. She stressed that without proper documentation, countless violations are occurring with complete impunity.

Azadah Raz Mohammad reinforced this concern through her research findings, emphasizing that the current ad-hoc approach to documentation is insufficient to address the scale and systematic nature of violations occurring in Afghanistan.

Richard Bennett acknowledged the documentation challenges, noting that while the Special Rapporteur mandate provides important monitoring and reporting functions, it lacks the investigative depth and evidence preservation capacity that a dedicated mechanism could provide. Additionally, its full potential has never been reached due to the liquidity crisis and the absence of the resources allocated by the Council's resolution.

## Proposed Mechanism Design and Scope

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### Hybrid Model Approach:

Azadah Raz Mohammad presented detailed research-based recommendations for a hybrid investigative mechanism drawing from successful UN accountability mandates, including:

- **Pre-prosecutorial functions** that would allow for confidential findings and comprehensive evidence collection while protecting sources and witnesses, for potential future criminal prosecutions.
- **Public reporting mechanisms** for conducting inquiries into grave human rights violations and making findings public to maintain international attention, as a pattern based investigations.
- **A dual mandate** structure that addresses both systematic human rights violations and individual criminal responsibilities, ensuring comprehensive coverage
- **Coordination protocols** with existing mechanisms to avoid duplication while maximizing effectiveness

She emphasized that this hybrid approach would allow the mechanism to serve both immediate accountability needs and longer-term transitional justice objectives, providing flexibility to adapt to changing circumstances in Afghanistan.

## Complementary Functions and Comprehensive Scope

Richard Bennett stressed that a new mechanism should complement existing mandates, while providing stronger investigative capacity. He emphasized the importance of a "joined-up process" between UN system components.

Fereshta Abbasi supported this complementary approach while stressing that the mechanism must have sufficient independence and resources for thorough investigations, with authority to identify perpetrators, build cases, and support future prosecutions.

### All panelists agreed that the mechanism should comprehensively cover:

- Gross violations of IHL and IHRL
- Systematic violations against women and girls, including what may constitute gender apartheid.
- Crimes against ethnic and religious minorities, including targeted persecution.
- Restrictions on fundamental freedoms
- Past violations that have never been properly investigated
- Ongoing documentation of current abuses to prevent evidence loss

## Financing and Implementation Challenges

### Funding Mechanisms

Richard Bennett acknowledged significant challenges from the UN's liquidity crisis, noting the mechanism would most likely require voluntary member state funding beyond approved PBIs. However, he emphasized that funding challenges shouldn't prevent establishment given the situation's urgency.

Fereshta Abbasi stressed that inadequate funding would undermine effectiveness and credibility, emphasizing that member states must provide sustained financial support.

The panel highlighted that an independent mechanism modeled closely on the existing ones for Syria or Myanmar will enable it to receive direct extrabudgetary contributions, which will be key in the current operative environment, and urged member states and donors to step up if they are serious about accountability.

### Operational Considerations

The panelists recognized several implementation challenges:

**Access limitations:** The mechanism would need to operate primarily from outside Afghanistan due to Taliban restrictions

**Security concerns:** Protecting sources and witnesses would be paramount

**Coordination requirements:** Ensuring effective collaboration with existing UN mechanisms and civil society organizations.

Azadah Raz Mohammad noted that successful mechanisms require significant upfront investment in infrastructure, personnel, and security measures, particularly in challenging environments.

## Civil Society Role and Engagement

All panelists emphasized the critical role of Afghan civil society in advocating for and supporting the mechanism. Hamid Formuli noted that the unanimous call from over 90 organizations demonstrates unprecedented unity among Afghan and international civil society groups. Richard Bennett highlighted the importance of centering civil society voices in all discussions about Afghanistan's future, emphasizing that any accountability mechanism must be responsive to the needs and priorities of the Afghan people, particularly women and marginalized communities.



## Vision for the Future of the Special Rapporteur Mandate

Richard Bennett envisions the Special Rapporteur mandate as an essential ongoing complement to any future investigative mechanism, serving four critical functions: continuous monitoring and reporting on Afghanistan's human rights situation through regular and thematic reports; providing timely recommendations to authorities, member states, and donors; conducting strategic advocacy in public forums and behind-the-scenes to maintain pressure and support for Afghan civil society; and engaging directly with Afghans inside the country to amplify their voices and provide hope. Despite currently operating with only 30% of allocated resources due to the UN's liquidity crisis, Bennett emphasizes that the Special Rapporteur's unique capacity for real-time monitoring, targeted advocacy, and direct engagement with Afghan civil society makes it indispensable alongside any new accountability mechanism.

Hamid Formuli reiterated the support from Afghan and international civil society organizations to the continuation of the SR's mandate as reflected also in the joint CSOs letter.



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## Other discussions: Addressing Gender Apartheid

Richard Bennett strongly supported efforts to codify gender apartheid in international law, viewing it as essential for addressing the systematic nature of violations against women and girls in Afghanistan. He noted that this legal development would provide a stronger framework for accountability efforts.

Azadah Raz Mohammad emphasized that her research supports the legal basis for characterizing the Taliban's systematic restrictions as gender apartheid, providing additional justification for international intervention through an investigative mechanism.

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## Conclusion

The panel demonstrated clear consensus on the urgent need for an independent investigative mechanism for Afghanistan. The systematic nature of violations, particularly against women and girls, combined with significant documentation gaps, creates a compelling case for international action. The proposed model with pre-prosecutorial and casebuilding function and comprehensive mandate offers a practical approach addressing both immediate documentation needs and longer-term accountability objectives.



## Key Recommendations:

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### To all Member States:

- **Support the establishment** of an independent investigative mechanism.
- **Provide adequate voluntary funding**, ensuring uninterrupted operations despite liquidity crisis.
- **Support the codification of gender apartheid**, strengthening legal accountability framework.
- **Implement targeted sanctions** against perpetrators.
- **Prepare for future transitional justice** by preserving evidence and supporting victims
- **Protect Afghan civil society** advocates and human rights defenders

## To the UN Human Rights Council:

- **Adopt a resolution** establishing the mechanism building on longstanding civil society calls and growing member state support, at the September session of the Council.
- **Design the mandate to be comprehensive** and able to investigate and document past and ongoing violations, and include pre-prosecutorial functions, building cases, and establishing individual criminal responsibility.
- **Ensure the mandate's independence**, building on successful existing mechanisms, also to enabling it to receive extra budgetary contributions.
- **Ensure complementarity with existing mandates**, particularly the Special Rapporteur.
- **Establish coordination protocols** with other UN bodies and international justice mechanisms, including feeding national investigations.
- **Prioritize civil society engagement** in mechanism design and implementation.

## To Civil Society:

- **Continue unified advocacy** for mechanism establishment.
- **Support documentation efforts** while ensuring witness protection.
- **Maintain international attention** on Afghanistan's human rights crisis.
- **Prepare for engagement** with the mechanism once established.



*The establishment of an independent investigative mechanism for Afghanistan represents a critical opportunity to break the cycle of impunity and demonstrate international commitment to human rights and accountability. The time for action is now!*

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