

# Torture and its Consequences: How Victims of the Taliban’s Acts of Torture can Hold the Taliban Responsible

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## Introduction

It is a hot summer day in eastern Afghanistan. While warfare rages between the Afghan government and the Taliban, a group of families flee their homes into the mountains.<sup>1</sup> There is not enough food for the families, so a small group returns to their village to scour for meals.<sup>2</sup> The unarmed men looking for food are then

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<sup>1</sup> *Afghanistan: Taliban Responsible for Brutal Massacre of Hazara Men - New Investigation*, AMNESTY INT’L (Aug. 19, 2021), <https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/> [https://perma.cc/2JC9-RNNR] [hereinafter *Amnesty International on Hazara Massacre*].

<sup>2</sup> *Id.*

captured by Taliban soldiers.<sup>3</sup> The Taliban show no mercy and torture the captured men.<sup>4</sup> The Taliban beat the prisoners, shoot them multiple times, and then carved the muscles off of their arms.<sup>5</sup> Some of their bodies are unceremoniously dumped in a creek.<sup>6</sup> A couple of months later, journalists are thrown in prison for reporting on a protest.<sup>7</sup> Immediately after arriving to jail, these journalists are beaten for four hours by Taliban soldiers wielding metal pipes.<sup>8</sup> These acts of torture, and many others, happened in the summer of 2021.<sup>9</sup> This article will address the possible legal remedy for these victims and their families. Specifically, this article will focus on how these victims in Afghanistan can claim that the Taliban have violated the United Nations Convention against Torture.

This note will analyze potential claims of violations of the United Nations Convention against Torture by the Taliban. Part I will explore the stories of five Afghan men who were tortured by the Taliban. Part II will discuss the United Nations Convention against Torture (“UNCAT”) and how it applies to the Taliban. Specifically, it will focus on (A) the relevant procedures and (B) three cases of alleged violations of UNCAT. Part III will analyze the admissibility of a claim against the Taliban and potential violations of UNCAT by the Taliban. Part IV concludes.

## I. Facts

This article begins with two specific claims of torture brought against the Taliban.

Between July 4 and July 6 of 2021, Taliban forces were responsible for the torture of three Hazara men in the Ghazni province of Afghanistan.<sup>10</sup> The Hazara are an ethnic minority in Afghanistan that “have faced long-term discrimination and

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Fatema Hosseini, *Taliban fighters tortured my journalist colleagues. They risk their lives to tell the truth*, USA TODAY (Sept. 10, 2021, 8:09 AM) <https://www.usatoday.com/story/opinion/voices/2021/09/10/afghanistan-journalists-beaten-covering-womens-rights-protest/8264250002/> [<https://perma.cc/QH5E-M54B>].

<sup>8</sup> *Id.*

<sup>9</sup> *See id.*; *see also* Amnesty International on Hazara Massacre, *supra* note 1.

<sup>10</sup> *Amnesty International on Hazara Massacre, supra* note 1.

persecution” in the country.<sup>11</sup> Three Hazara men that fell victim to Taliban torture were Wahed Qaraman, Jaffar Rahimi, and Saed Abdul Hakim.<sup>12</sup> Wahed Qaraman was a forty-five-year-old man when he was tortured.<sup>13</sup> The Taliban broke Qaraman’s legs and arms, shot him in the leg, pulled his hair out, and beat his face in.<sup>14</sup> Jaffar Rahimi, a sixty-three-year-old man, had the muscles in his arms “carved off,” and died as a result of his injuries.<sup>15</sup> Sayed Abdul Hakim, a forty-year-old man, was “beat[en] with sticks and rifle butts, [while] his arms [were] bound,” and he was shot four times.<sup>16</sup> Similar to Rahimi, Hakim also died from his injuries.<sup>17</sup>

In addition to the three Hazara men, the Taliban have also tortured journalists.<sup>18</sup> On September 8, 2021, Taqi Daryabi and Nematullah “Nemat” Naqdi were covering protests against the Taliban’s decision to abolish the Ministry of Women’s Affairs.<sup>19</sup> Taliban fighters arrested the two journalists and sent them to prison, where they were placed in separate cells for approximately four hours.<sup>20</sup> The reason for their arrest: reporting on protests that the Taliban did not want the media to cover.<sup>21</sup> According to Daryabi and Naqdi, “[t]hey were punched . . . lashed and hit with water pipes.”<sup>22</sup> They both “lost consciousness several times” as a result of the torture.<sup>23</sup> After hours of torture, the Taliban released Daryabi and Naqdi from custody.<sup>24</sup> Right before their release, a Taliban official informed both Daryabi and Naqdi that by covering an illegal protest, they were breaking the law and would not be let off so easily for a

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<sup>11</sup> *Afghanistan: Taliban ‘tortured and massacred’ men from Hazara minority*, BBC NEWS (Aug. 20, 2021), <https://www.bbc.com/news/world-asia-58277463> [<https://perma.cc/GEP7-35UA>] [hereinafter BBC News on Hazara Massacre].

<sup>12</sup> *Id.*

<sup>13</sup> *Amnesty International on Hazara Massacre*, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See* Hosseini, *supra* note 7.

<sup>19</sup> *Id.*

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

second offense.<sup>25</sup> This statement should have been confusing because no protests were outlawed at the time of Daryabi and Naqdi's arrest.<sup>26</sup> Daryabi and Naqdi stumbled out of captivity, so weak that they were unable to walk without support.<sup>27</sup> Their bodies were covered with the physical marks of torture.<sup>28</sup>

## II. Background Law

The United Nations Convention against Torture ("UNCAT")<sup>29</sup> applies to the Taliban's actions as described above. The next subparts discuss UNCAT and (1) the relevant procedures (part A.) and (2) three cases of alleged violations of UNCAT (part B.).

### A. Relevant Law and Procedures

The United Nations Committee against Torture ("UNCAT") entered into force on June 26, 1987.<sup>30</sup> UNCAT was created out of a "[d]esir[e] to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world, . . ."<sup>31</sup> Afghanistan is a State Party of this treaty.<sup>32</sup>

The three relevant articles for analyzing the Taliban's actions

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<sup>25</sup> Ali Latifi, *Taliban accused of torturing journalists for covering protests*, AL JAZEERA (Sept. 9, 2021), <https://www.aljazeera.com/news/2021/9/9/talibans-violence-against-women-reporters-intensifies> [<https://perma.cc/3XWK-EYJM>].

<sup>26</sup> Soon after Taqi and Nemat's release, the Taliban declared that protests must be approved by the Ministry of Justice 24 hours beforehand. *Id.*

<sup>27</sup> Hosseini, *supra* note 7.

<sup>28</sup> "Daryabi's lower back, upper legs, and face were covered with deep red lesions. Naqdi's left arm, upper back, upper legs, and face were also covered in red welts." *See* Latifi, *supra* note 25.

<sup>29</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, T.I.A.S. No. 94-1120.1, U.N.T.S. 1465 [hereinafter United Nations Convention against Torture].

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Status of Ratification Interactive Dashboard: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS HUM. RTS.: OFF. OF THE HIGH COMM'R, <https://indicators.ohchr.org/> [<https://perma.cc/5MVJ-XRPB>] [hereinafter Status of Ratification Interactive Dashboard: UNCAT] (Afghanistan signed UNCAT on February 4, 1985 and ratified it on April 1, 1987).

are Article 2(1),<sup>33</sup> Article 12,<sup>34</sup> and Article 13.<sup>35</sup> Article 2(1) states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”<sup>36</sup> Article 12 provides that “[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”<sup>37</sup> Finally, Article 13 delineates:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.<sup>38</sup>

These three articles of UNCAT are analyzed in the three cases discussed in Part II.B. of this article.

In order to understand the background of potential violations of UNCAT, it is critical to understand the Optional Protocol to the Convention against Torture (“OPCAT”), a supplemental treaty to UNCAT.<sup>39</sup> For reference, Afghanistan is also a State Party to OPCAT.<sup>40</sup> OPCAT binds State Parties to allow investigatory visits to areas that may be of concern.<sup>41</sup> OPCAT gives this power of investigatory visits to the U.N. Subcommittee on Prevention of Torture (“SPT”) and State Parties’ national preventive mechanisms (“NPMs”).<sup>42</sup> The SPT and NPMs are given “such privileges and

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<sup>33</sup> United Nations Convention against Torture, *supra* note 29 at art. 2(1).

<sup>34</sup> *Id.* at art. 12.

<sup>35</sup> *Id.* at art. 13.

<sup>36</sup> *Id.* at art. 2(1).

<sup>37</sup> *Id.* at art. 12.

<sup>38</sup> *Id.* at art. 13.

<sup>39</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, preamble, June 22, 2006, U.N.T.S. 2375 [hereinafter Optional Protocol to the Convention against Torture].

<sup>40</sup> Status of Ratification Interactive Dashboard: UNCAT, *supra* note 32 (Afghanistan ratified OPCAT on April 17, 2018).

<sup>41</sup> See Optional Protocol to the Convention against Torture, *supra* note 31 at art. 4(1).

<sup>42</sup> See *id.* at art. 2, 3. NPMs are supposed to be bodies that “regularly examine the treatment of the persons deprived of their liberty in places of detention” and “make

immunities as are necessary for the independent exercise of their functions.”<sup>43</sup> OPCAT is, however, designed as a deterrent.<sup>44</sup>

When OPCAT cannot prevent torture, and accusations of torture surface, the Committee against Torture is then utilized.<sup>45</sup> The Committee against Torture (“CAT”) is designed as a method to investigate claims of violations by State Parties of the United Nations Committee against Torture.<sup>46</sup> CAT can investigate allegations by State Parties against other State Parties<sup>47</sup> and individuals against State Parties.<sup>48</sup>

Individuals who file complaints to the CAT must satisfy two requirements before being heard. First, the claim cannot be one which has already been “examined under another procedure of international investigation or settlement.”<sup>49</sup> Second, the complainant must have “exhausted all available domestic remedies” before filing the claim.<sup>50</sup> The one exception to this requirement is that the second requirement is waived when “the application of the

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recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture . . .” *Id.* at art. 19(a-b).

<sup>43</sup> *Id.* at art. 35.

<sup>44</sup> “Just the fact that the SPT and NPMs have the power to access any place where persons are deprived of their liberty serves as a deterrent to abusive practices, increases transparency and promotes accountability for acts of torture and ill treatment committed in places of detention.” *OPCAT 10 years later: a renewed commitment to the prevention of torture*, INT’L DET. COALITION (June 22, 2016), <https://idcoalition.org/news/opcat-10-years-later-a-renewed-commitment-to-the-prevention-of-torture/> [<https://perma.cc/FQ35-BST5>].

<sup>45</sup> See Optional Protocol to the Convention against Torture, *supra* note 31 at art. 16(4) (stating that if a State Party fails to cooperate with the SPT or fails to implement improvements recommended by the SPT, the CAT “may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention”). If a person is the victim of State sponsored torture, the deterring effect of OPCAT has not worked. Instead, the torture victim would likely want to use the CAT because the CAT can investigate torture allegations against State Parties. See United Nations Convention against Torture, *supra* note 29 at arts. 20-22.

<sup>46</sup> See United Nations Convention against Torture, *supra* note 29 at arts. 20-22. CAT was created by article 17 of UNCAT. See *id.* at art. 17.

<sup>47</sup> *Id.* at art. 21(1)(a-b).

<sup>48</sup> *Id.* at art. 22.

<sup>49</sup> *Id.* at art. 22(5)(a).

<sup>50</sup> *Id.* at art. 22(5)(b).

remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.”<sup>51</sup>

### B. Cases

CAT has heard three relevant cases: (1) *Evloev v. Kazakhstan*,<sup>52</sup> (2) *Ramírez v. Mexico*,<sup>53</sup> and (3) *Bendib v. Algeria*.<sup>54</sup> These three cases demonstrate CAT’s interpretation of the UNCAT, and directly impact the analysis of whether the Taliban can be held liable under the UNCAT for their actions described in Part I. Each case analyzed potential violations of articles 2(1), 12, and 13.<sup>55</sup> However, each case also had an area of focus relevant to this article. *Evloev v. Kazakhstan* discussed the admissibility of claims of UNCAT violations,<sup>56</sup> *Ramírez v. Mexico* elaborated on violations of Article 12,<sup>57</sup> and *Bendib v. Algeria* explained what happens when a State Party refuses to participate in the CAT proceedings.<sup>58</sup>

#### 1. *Evloev v. Kazakhstan*

Oleg Evloev, a thirty-eight-year-old man, was arrested on murder charges based on statements made by an unnamed individual, D.T.<sup>59</sup> D.T. later retracted his statements and said “that he was forced to write them under psychological pressure and [] torture by police officers.”<sup>60</sup> Police arrested Evloev with the goal of forcing Evloev to confess to a group of murders.<sup>61</sup> As a result, Evloev alleged, *inter alia*, violations of articles 2(1), 12, and 13 of UNCAT.<sup>62</sup>

<sup>51</sup> *Id.*

<sup>52</sup> *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision ¶¶ 4, 5, and 8 (Dec. 17, 2013).

<sup>53</sup> *Ramírez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶ 17.8 (Oct. 14, 2015).

<sup>54</sup> *Bendib v. Algeria*, CAT/C/51/D/376/2009, Decision ¶ 4 (Dec. 23, 2013).

<sup>55</sup> *See Evloev* at ¶ 9; *see Ramírez* at ¶ 17; *see Bendib* at ¶ 6.

<sup>56</sup> *See Evloev* at ¶¶ 4, 5, and 8.

<sup>57</sup> *See Ramírez* at ¶ 17.8.

<sup>58</sup> *See Bendib* at ¶ 4.

<sup>59</sup> *See Evloev* at ¶¶ 2.1, 2.2.

<sup>60</sup> *Id.* at ¶ 2.1.

<sup>61</sup> *Id.* at ¶ 2.3 (stating that “at least six police officers hit him in the area of his kidneys; threatened him with sexual violence . . . put a gas mask on his head, repeatedly interrupting the air flow, causing him to choke; and inserted hot needles under his nails.”).

<sup>62</sup> *Id.* at ¶¶ 3.2, 3.3.

Kazakhstan argued that the claim should not be heard by the CAT because it was not admissible.<sup>63</sup> Kazakhstan essentially argued that, because Evloev did not apply for supervisory review from the Kazakhstan Supreme Court or appeal the city prosecutor's refusal to charge anyone connected to the alleged torture, Evloev did not exhaust his domestic remedies.<sup>64</sup>

Regarding Evloev's decision to not apply for supervisory review from the Supreme Court, the CAT found it persuasive in Evloev's favor that he appealed the judgment of one decision to the Supreme Court and his appeal was rejected.<sup>65</sup> Also, the CAT considered that Kazakhstan had not "provided sufficient information to demonstrate the effectiveness of filing a complaint . . . under the supervisory review procedure about ill-treatment or torture, . . . ."<sup>66</sup>

The Committee also decided that Evloev's lack of an appeal did not make Evloev's claims inadmissible.<sup>67</sup> The CAT emphasized that either Evloev or one of his family members complained to different government authorities of Evloev's torture on seven different occasions.<sup>68</sup> The CAT decided that this was enough to show that "the competent authorities have been notified of the complainant's allegations of torture"<sup>69</sup> and that making "reasonable efforts and attempts to have domestic remedies exhausted, but without success," will trigger the exception to exhausting domestic remedies.<sup>70</sup>

As a brief note, the Committee found Kazakhstan in violation of Article 2(1) because of the torture that Evloev suffered.<sup>71</sup>

## 2. *Ramírez v. Mexico*

Ramírez and three other individuals were kidnapped by members of the Mexican Army.<sup>72</sup> They were tortured into "agree[ing] to confess to the public prosecutor" to committing

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<sup>63</sup> *See id.* at ¶¶ 4.1-4.8.

<sup>64</sup> *Id.* at ¶ 4.8

<sup>65</sup> *See id.* at ¶ 8.5.

<sup>66</sup> *Id.*

<sup>67</sup> *See id.* at ¶ 8.4.

<sup>68</sup> *See id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at ¶ 8.6.

<sup>71</sup> *See id.* at ¶ 9.2

<sup>72</sup> *Ramirez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶¶ 2.1, 2.3 (Oct. 14, 2015).



kidnapping and possessing weapons.<sup>73</sup>

Despite the complainant not exhausting all domestic remedies, the CAT found that the domestic remedy exception<sup>74</sup> applies as the domestic processes were “unreasonably prolonged or . . . unlikely to bring effective relief.”<sup>75</sup> One persuasive factor was the Committee’s finding that Mexican authorities failed to make “any notable advances in the investigation of the case,”<sup>76</sup> as Ramírez’s case sat idle for around six years. Furthermore, the CAT found that the National Human Rights Commission, the body investigating Ramírez’s claims, had no authority to offer a binding decision.<sup>77</sup> Thus, the Committee ruled that “domestic remedies have been unreasonably prolonged and are ineffective.”<sup>78</sup>

Once establishing jurisdiction, the CAT found Mexico responsible of multiple violations of CAT.<sup>79</sup> One of its violations was against Article 2.<sup>80</sup> Several factors were considered in this decision, with an emphasis on the factual finding that the individuals were tortured while imprisoned with no ability to contact their families or a lawyer.<sup>81</sup>

Another crucial piece of this decision is the CAT’s discussion of Mexico’s violation of Article 12.<sup>82</sup> The CAT states that “promptness is essential to ensure that the victim may not continue to be subjected to torture because, in general, the physical traces of torture soon disappear.”<sup>83</sup> Furthermore, “if it [a State Party’s investigation into torture] can be shown not to have been conducted promptly and impartially,” then Article 12 is violated.<sup>84</sup> As promptness is tied to the period of time before physical marks of

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<sup>73</sup> *Id.* at ¶ 2.7.

<sup>74</sup> *See* United Nations Convention against Torture, *supra* note 29 at art. 22(5)(b).

<sup>75</sup> *Id.* at ¶ 16.4.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at ¶ 16.3 (stating that “in the case of the National Human Rights Commission, the recommendations are non-binding.”).

<sup>78</sup> *Id.* at ¶ 16.6.

<sup>79</sup> *See id.* at ¶¶ 17-18.

<sup>80</sup> *Id.* at ¶ 17.5.

<sup>81</sup> *Id.*

<sup>82</sup> *See id.* at ¶ 17.8.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

corporal torture disappear,<sup>85</sup> a domestic court's investigation must start promptly after the alleged torture. Investigation into the Ramírez case was delayed for years.<sup>86</sup>

### 3. *Bendib v. Algeria*

In this case, Mounir Hammouche, the son of Djamila Bendib, was kidnapped and tortured to death by members of Algeria's Intelligence and Security Department ("DRS").<sup>87</sup> Algeria, the State Party, did not participate in the hearing.<sup>88</sup> Algeria "refus[ed] to communicate any information on the admissibility and/or merits of the complainant's claims."<sup>89</sup> The CAT reminded its readers that State Parties are required to participate in the hearing process.<sup>90</sup> The CAT decision emphasized that when a State Party does not participate in a CAT proceeding, "due weight must be given to the complainant's allegations, . . ."<sup>91</sup> If a complainant's allegations are properly substantiated when a State Party refuses to participate, the CAT will likely rule in favor of the complainant.<sup>92</sup> The CAT proceeded to find Algeria in violation of multiple articles of UNCAT, including Article 2(1), Article 12, and Article 13.<sup>93</sup>

## III. Analysis

### A. *Admissibility of a claim against the Taliban*

In order for a claim to be admissible, two conditions must be satisfied. First, the claim cannot be one which has already been "examined under another procedure of international investigation or settlement."<sup>94</sup> Generally, this means no other international investigations or settlements have occurred.<sup>95</sup> Second, the complainant must have "exhausted all available domestic remedies"

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<sup>85</sup> *See id.*

<sup>86</sup> *See id.*

<sup>87</sup> *Bendib v. Algeria*, CAT/C/51/D/376/2009, Decision ¶¶ 2.1-2.4 (Dec. 23, 2013).

<sup>88</sup> *Id.* at ¶ 4.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *See id.*

<sup>93</sup> *Id.* at ¶ 7.

<sup>94</sup> United Nations Convention against Torture, *supra* note 29 at art. 22(5)(a).

<sup>95</sup> *See id.*

before filing the claim.<sup>96</sup> An exception to the second condition occurs when “the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.”<sup>97</sup>

The Afghan Constitution provides a domestic process for individuals who are victims of acts of torture,<sup>98</sup> including listing the “Fundamental Rights and Duties of Citizens.”<sup>99</sup> Regarding torture, Article 29 states that the “[n]o one shall be allowed to order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished.”<sup>100</sup> The article goes on to add that “[p]unishment contrary to human dignity shall be prohibited.”<sup>101</sup> The Afghan Constitution proceeds to explain what an individual should do if they believe that they are the victim of a human rights violation.

To monitor respect for human rights in Afghanistan as well as fostering and protecting that respect, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights.<sup>102</sup>

Thus, it appears clear that Wahed Qaraman, Jaffar Rahimi, Sayed Abdul Hakim, Taqi Daryabi, and Nematullah “Nemat” Naqdi have a valid claim for the Afghanistan Independent Human Rights Commission (“AIHRC”). The AIHRC should assist these five individuals in their claims of violations of Article 29 of the Afghan Constitution.<sup>103</sup>

However, the Taliban’s rise to power raises serious questions

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<sup>96</sup> *Id.* at art. 22(5)(b).

<sup>97</sup> *Id.*

<sup>98</sup> *See* Afghanistan’s Constitution of 2004, ch. II, [https://www.constituteproject.org/constitution/Afghanistan\\_2004.pdf?lang=en](https://www.constituteproject.org/constitution/Afghanistan_2004.pdf?lang=en) [<https://perma.cc/JQN5-Z555>].

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at art. 29.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at art. 58.

<sup>103</sup> *See supra* Part I (explaining how these five men were tortured). Also, the violent, brutal, and humiliating acts described in Part II are, on its face, violations of human dignity. *See supra* Part II.

regarding whether this avenue remains a viable path for these five individuals to pursue. The AIHRC believes that they are unable to properly respond to claims of human rights violations in Afghanistan.<sup>104</sup> In a press release on September 18, 2021, the AIHRC stated, in pertinent part, the following:

Since August 15 the AIHRC continues in office but has been unable to fulfil its duties to the Afghan people. All AIHRC buildings have been occupied by Taliban forces, . . . . The leadership of the AIHRC is deeply concerned about the inability of the commission to carry out its functions, particularly given serious allegations of ongoing human rights violations, . . . . The Afghan people need an independent human rights body where they can take concerns about infringements of their rights, with confidence that in doing so they will be safe and their concerns investigated by a rights respecting institution. The inability of the AIHRC to carry out its duties, combined with the legitimate concerns of civil society leaders and journalists about restrictions on freedom of expression, has led to a dramatic reduction in the ability of Afghans to monitor and protect serious violations of human rights.<sup>105</sup>

The exact body that was designed to investigate claims of human rights violations does not believe that they are able to do so. In a statement that indirectly confirms the AIHRC's concerns, the deputy minister of the Ministry of Information and Culture of Afghanistan, Zabihullah Mujahid, said the following in response to European Union concerns of human rights violations in Afghanistan:

As long as we are not recognized, and they make criticisms (over rights violations) [sic], we think it is a one-sided approach. It would be good for them to treat us responsibly and recognize our current government as a responsible administration. Afterward, they can share their concerns lawfully with us and we will address their concerns.<sup>106</sup>

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<sup>104</sup> See Press Release, Afg. Indep. Hum. Rts. Comm'n, Statement on the status of the Afg. Indep. Hum. Rts. Comm'n (Sept. 18, 2021) [https://www.aihrc.org.a/home/press\\_release/91138](https://www.aihrc.org.a/home/press_release/91138) [<https://perma.cc/UWD8-VV6R>] [hereinafter Statement by AIHRC].

<sup>105</sup> *Id.*

<sup>106</sup> See Abdullah Walizada, *After Recognition We Will Address Rts. Issues: Mujahid*, TOLO NEWS (Sept. 21, 2021), <https://tolonews.com/afghanistan-174730> [<https://perma.cc/QH5W-V75S>]; see also Ali M Latifi, *Rights groups accuse Taliban of*

Deputy minister Mujahid clearly states that the Taliban will not address complaints of human rights violations until the Taliban's government is recognized. Emblematic of the lack of hope in the AIHRC's ability to investigate complaints, when internet users click on the button on the AIHRC webpage titled "Submit Complaints," they receive a message saying "404 Page Not Found."<sup>107</sup>

The Taliban would likely argue that the exception to going through the domestic processes is not met. They would remind the CAT that CAT stated that "reasonable efforts and attempts to have domestic remedies exhausted, but without success."<sup>108</sup> Given that there is no proof that any of the five alleged victims have complained to the AIHRC, no reasonable efforts or attempts have been made here. Additionally, the Taliban would reference *Ramírez v. Mexico* to argue that not enough time has passed for the domestic processes to be deemed unreasonably prolonged or ineffective.<sup>109</sup>

Despite the aforementioned potential by the Taliban, the exception to the requirement of going through domestic processes in order to go to CAT is met. Although there is no evidence that the five alleged victims have attempted to file complaints through the AIHRC, any potential application of remedies would be unreasonably prolonged or would be unlikely to bring effective relief to five men who are victims of the violation of the UNCAT.<sup>110</sup> The AIHRC has publicly stated that it does not believe that it is able "to carry out its duties."<sup>111</sup> Even if the AIHRC wanted to carry out its duties, their website does not allow individuals to submit complaints of torture violations.<sup>112</sup> Further, Mujahid stated that the

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*rolling back civil liberties*, AL JAZEERA (Sept. 20, 2021), <https://www.aljazeera.com/news/2021/9/20/rights-groups-accuse-taliban-of-rolling-back-civil-liberties> [https://perma.cc/3HSA-76GR].

<sup>107</sup> See *Submit Complaints*, AIHRC (last visited Oct. 3, 2022), <https://www.aihrc.org.af/apps/complaint/> [https://perma.cc/5WH4-JDFS].

<sup>108</sup> *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision ¶ 8.6 (Dec. 17, 2013).

<sup>109</sup> The CAT explained that six years passing after relevant authorities became aware of alleged acts of torture means that the domestic process has been unreasonably prolonged. See *Ramírez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶ 16.4 (Oct. 14, 2015).

<sup>110</sup> See United Nations Convention against Torture, *supra* note 29 at art. 22(5)(a) (stating that the one exception to the requirement of exhausting all domestic remedies is when "the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.").

<sup>111</sup> Statement by AIHRC, *supra* note 106.

<sup>112</sup> See *supra* note 109.

Taliban will not address accusations of human rights violations.<sup>113</sup> Relevant governmental bodies explicitly stating that no relief will be given to victims<sup>114</sup> bolsters the argument that victims will be unable to receive effective relief.

There are similarities between the five men's potential claims and the *Ramírez v. Mexico* case. In *Ramírez*, the investigative body in Mexico was only able to issue non-binding recommendations.<sup>115</sup> Likewise, the AIHRC believes that it cannot offer any binding relief.<sup>116</sup> To supplement this, the five men can argue that "the competent authorities have been notified of the complainant's allegations of torture,"<sup>117</sup> as evidenced by the widespread media coverage on these incidents.<sup>118</sup>

It is highly likely that if any of the five men filed complaints of violations of UNCAT to CAT, their claims would be admissible. Their potential claims have not already been the subject of international investigations. Additionally, AIHRC and Mujahid's explicit comments demonstrate that any potential relief would be unreasonably prolonged or unlikely to be granted. Since there was no international investigation into these acts, the first element of admissibility is satisfied. Further, as any potential domestic remedies would be unreasonably delayed and unlikely to bring effective relief, the exemption to the second factor should apply.

#### *B. Analysis of Potential Violations of UNCAT by the Taliban*

The Taliban violated three portions of UNCAT in its treatment of the five men. First, the Taliban violated Article 2(1) by torturing the five men and denying them the right to a lawyer.<sup>119</sup> Second, the Taliban violated Article 12 by banning prompt and impartial

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<sup>113</sup> See Walizada, *supra* note 108; see also Latifi, *supra* note 25.

<sup>114</sup> See *id.*

<sup>115</sup> See *Ramírez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶ 16.3 (Oct. 14, 2015).

<sup>116</sup> The AIHRC stated that it "is deeply concerned about the inability of the commission to carry out its functions." See Statement by AIHRC, *supra* note 106.

<sup>117</sup> *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision ¶ 8.4 (Dec. 17, 2013).

<sup>118</sup> These events have been reported by, among others, Amnesty International, BBC News, USA Today, and Al Jazeera. See *Amnesty International on Hazara Massacre*, *supra* note 1; see *BBC News on Hazara Massacre*, *supra* note 8; see *Hoseini*, *supra* note 7; see *Latifi*, *supra* note 25.

<sup>119</sup> See *Amnesty International on Hazara Massacre*, *supra* note 1; see also *Hosseini*, *supra* note 7.

investigations into allegations of torture.<sup>120</sup> Third, the Taliban violated Article 13 by denying the five men the right to complain and have their cases heard in a prompt and impartial manner by competent authorities.<sup>121</sup>

### *1. Article 2(1) Violation*

First, the Taliban violated Article 2(1) of the United Nations Convention Against Torture. Article 2(1) states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”<sup>122</sup> The CAT has previously held that the combination of being tortured and not having “access to an independent lawyer” are factors that jointly demonstrate when a State Party has failed to prevent acts of torture.<sup>123</sup>

In the case of *Evloev v. Kazakhstan*, the mere fact that the torture occurred at the hands of the government meant that Article 2(1) was violated.<sup>124</sup> In the cases of the three Hazara men, the Taliban military did not provide them access lawyers.<sup>125</sup> The two journalists had their phones taken when they arrived at the police station.<sup>126</sup> Sitting in a jail cell, without access to a telephone, prevented the two journalists from calling lawyers, even if they had wanted to. The Taliban violated Article 2(1).

### *2. Article 12 Violation*

Second, the Taliban violated Article 12 of the United Nations Convention Against Torture. Article 12 provides that “[e]ach State

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<sup>120</sup> See Statement by AIHRC, *supra* note 106; see also Walizada, *supra* note 108; see also *Submit Complaints*, *supra* note 106.

<sup>121</sup> See *Amnesty International on Hazara Massacre*, *supra* note 1; see also Hosseini, *supra* note 7.

<sup>122</sup> United Nations Convention against Torture, *supra* note 29 at art. 2(1).

<sup>123</sup> The CAT stated, “that the complainants . . . remained in incommunicado detention for four days, . . . without access to an independent lawyer . . .” *Ramirez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶ 17.5 (Oct. 14, 2015). “During this period, they were questioned by the military under torture, . . . . In the light of these circumstances, the Committee considers that the State party has failed to take effective measures to prevent acts of torture as required by article 2, paragraph 1, of the Convention.” *Id.*

<sup>124</sup> See *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision ¶ 9.2 (Dec. 17, 2013).

<sup>125</sup> See *Amnesty International on Hazara Massacre*, *supra* note 1; see also *BBC News on Hazara Massacre*, *supra* note 8.

<sup>126</sup> Latifi, *supra* note 25.

Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”<sup>127</sup>

There is reasonable ground to believe that acts of torture have been committed in Afghanistan. Between July 4 and July 6 of 2021, Taliban forces were responsible for the torture of three Hazara men in the Ghazni province of Afghanistan, and the<sup>128</sup> torture of two journalists.<sup>129</sup> As required in Article 12, Afghanistan should have ensured a prompt and impartial investigation conducted by competent authorities.<sup>130</sup>

Authorities have conducted neither prompt nor impartial investigation into the torture of the Hazara men or the two journalists. In response to concerns from the European Union about human rights violations, the deputy minister of the Ministry of Information and Culture of Afghanistan, Zabihullah Mujahid spoke on the issue.<sup>131</sup> He stated that the Taliban’s Afghanistan will not investigate claims of human rights violations until they receive recognition by the international community.<sup>132</sup> This explicit statement signals the indefinite suspension of investigations into human rights violations in Afghanistan. As the CAT has previously stated, promptness of investigation is connected to how long “the physical traces of torture” last on an individual’s body.<sup>133</sup> Thus an indefinite investigative suspension into human rights violations prevents any prompt investigations as required by Article 12.

Given that the competent authorities are indefinitely banned from conducting prompt and impartial investigations of the torture of the five men, the Taliban’s Afghanistan violated Article 12 of UNCAT.

### 3. Article 13 Violation

Third, the Taliban violated Article 13 of the United Nations Convention Against Torture. Article 13 provides that:

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<sup>127</sup> United Nations Convention against Torture, *supra* note 29 at art. 12.

<sup>128</sup> See *Amnesty International on Hazara Massacre*, *supra* note 1.

<sup>129</sup> See Hosseini, *supra* note 7; see also Latifi, *supra* note 25.

<sup>130</sup> See United Nations Convention against Torture, *supra* note 29 at art. 12.

<sup>131</sup> See Walizada, *supra* note 108.

<sup>132</sup> *Id.*

<sup>133</sup> See *Ramirez v. Mexico*, CAT/C/55/D/500/2012, Decision ¶ 17.8 (Oct. 14, 2015).



Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.<sup>134</sup>

Violations of Article 13 and Article UNCAT are very similar, and the CAT in *Evloev* and *Ramírez* combined its discussion of these violations of these articles.<sup>135</sup> In *Evloev*, the CAT emphasizes that when there is “no prompt, impartial and effective investigation” into torture allegations and those responsible for torture have not been prosecuted, both Articles 12 and 13 are violated.<sup>136</sup> *Evloev* cites facts supporting an Article 12 violation to find that Article 13 has also been violated.<sup>137</sup> *Ramírez* reaffirms *Evloev*’s holding, finding that Article 12 violations are also Article 13 violations.<sup>138</sup> Therefore, because the Taliban violated Article 12,<sup>139</sup> they also violated Article 13.

The Taliban’s violation of Article 13 can further be independently found within the analysis of a potential Article 12 violation. As previously mentioned, the government body’s current stance is that the Taliban’s Afghanistan will not investigate claims of human rights violations until they receive recognition of its legitimacy by the international community.<sup>140</sup> Additionally, the government body tasked with assisting claims of torture,<sup>141</sup> the Afghanistan Human Rights Commission, has stated that it does not believe that it can do its job.<sup>142</sup> This disillusionment that individuals subjected to torture do not have the right to file a complaint nor have their cases heard in a prompt and impartial manner by competent authorities.

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<sup>134</sup> United Nations Convention against Torture, *supra* note 29 at art. 13.

<sup>135</sup> See *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision ¶¶ 9.3-9.6 (Dec. 17, 2013); see *Ramírez* at ¶¶ 17.6, 17.8, 17.9.

<sup>136</sup> See *Evloev* at ¶ 9.3.

<sup>137</sup> See *id.* at ¶ 9.6.

<sup>138</sup> See *Ramírez* at ¶¶ 17.6-17.9 (using the same reasoning to conclude that Article 12 and Article 13 were violated).

<sup>139</sup> See discussion in Part III(B)(2) of this article.

<sup>140</sup> See Walizada, *supra* note 108.

<sup>141</sup> See Afghanistan’s Constitution of 2004, *supra* note 100, at art. 58.

<sup>142</sup> See Statement by AIHRC, *supra* note 106.

#### IV. Conclusion

Afghanistan violated articles 2(1), 12, and 13 of the UNCAT. Therefore, potential claims by Wahed Qaraman, Jaffar Rahimi, Sayed Abdul Hakim, Taqi Daryabi, and Nematullah “Nemat” Naqdi are admissible to the Committee Against Torture. Only two questions remain: (1) how will potential cases proceed before CAT if Afghanistan refuses to participate, and (2) what will happen if Afghanistan refuses to comply with the CAT’s sanctions?

First, the CAT will still hear and decide a case even if the State Party refuses to participate.<sup>143</sup> Thus, a potential boycott by Afghanistan of the CAT will not prevent victims’ cases from being heard.

However, it is unclear what power the CAT has if Afghanistan chooses to ignore the CAT’s sanctions. The *Evloev*, *Bendib*, and *Ramírez* cases do not discuss how the CAT will enforce its judgments on the State Parties being sued.<sup>144</sup> The UNCAT does not discuss enforcement measures either.<sup>145</sup> However, the UNCAT explains that the CAT submits annual reports to the U.N. General Assembly.<sup>146</sup> The General Assembly may decide to take action based off of the CAT’s decisions, but the UNCAT does not mention required General Assembly action.<sup>147</sup> Article 30 of the UNCAT states that disputes between State Parties about “the interpretation or application of this Convention” will be arbitrated if negotiation cannot resolve the dispute.<sup>148</sup> This does not, however, provide individuals the right to use arbitration to request the enforcement of the CAT’s decisions. In fact, the UNCAT is silent on the issue of enforcement.<sup>149</sup> Despite the good intentions of its founders, the lack of explicit mechanisms for individuals to ensure the CAT’s decisions are properly enforced remain a definitive defect in the UNCAT and the CAT.

State Parties have the power to propose amendments to the

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<sup>143</sup> See *Bendib v. Algeria*, CAT/C/51/D/376/2009, Decision ¶ 4 (Dec. 23, 2013).

<sup>144</sup> See *id.*; see also *Evloev v. Kazakhstan*, CAT/C/51/D/441/2010, Decision (Dec. 17, 2013); see also *Ramírez v. Mexico*, CAT/C/55/D/500/2012, Decision (Oct. 14, 2015).

<sup>145</sup> See United Nations Convention against Torture, *supra* note 29.

<sup>146</sup> *Id.* at art. 24.

<sup>147</sup> See *id.*

<sup>148</sup> *Id.* at art. 30(1).

<sup>149</sup> See *id.*

UNCAT per Article 29.<sup>150</sup> Ideally, State Parties will provide a mechanism for enforcement of the CAT's decision through an amendment to the UNCAT. Unfortunately, even if an amendment receives the required two thirds State Party support,<sup>151</sup> State Parties who disagree with the amendment are not bound by the amendment.<sup>152</sup> The CAT's decisions will prove to be unenforceable, unless all of the State Parties unanimously accept an amendment creating an enforcement mechanism for the CAT's decisions.

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<sup>150</sup> *Id* at art. 29(1).

<sup>151</sup> *Id* at art. 29(2).

<sup>152</sup> *Id* at art. 29(3).

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