

An assessment of the Taliban's ideological and policy positions on social justice and labour laws

Ibraheem Bahiss



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Foreword

The fall of Kabul to the Taliban in August 2021 ushered in a new period of modern Afghan history. For many Afghans, it is by far a zero hour, however. On the one hand, Taliban rule is not a new phenomenon in the country. The insurgents had been able to expand territorial control over the past decade gradually. Although many Afghans born and raised in urban areas remember their previous period in power from the mid-1990s to 2001 as childhood stories told by elder relatives, it is deeply embedded in the collective memory.

On the other hand, there is an endemic socio-economic crisis, staggering poverty and unemployment, inequality and aid dependency, that overshadowed most of the improvement of living conditions during the twenty years of heavy international presence after 2001. It has not vanished with the end of the Islamic Republic but rather worsened in the past months. In addition to the dramatic brain drain from Afghanistan's existing institutions, capital flight and the suspension of international financial support, it is questionable that the country's new rulers bring the necessary understanding, awareness and capacity to mitigate the socio-economic disaster Afghans face. Quite the contrary, the Taliban have an abysmal record on civic rights, social liberties and equality, the key to achieving and maintaining societal peace and economic wellbeing. Under their previous rule, unions like the National Union of Afghanistan's Workers and Employees were prohibited, too.

The Intra-Afghan negotiations in Doha started in September 2020 and faltered amid the collapse of President Ashraf Ghani's government, yet also served the purpose of a communication platform between the Taliban leadership and the international (donor) community at a point in time where a transitional government was understood as the most realistic scenario by international observers. Remarkably, the Taliban negotiators in Doha explicitly expressed their intent to "align policies to international standards." Such a commitment is of utmost importance for their efforts to overcome international isolation, especially at a point where international donors draw at least rhetorical lines in the sand for their future engagement, such as the continued commitment to democracy, the rule of law, and human rights.

One of Afghanistan's international commitments often overlooked in discussions overshadowed by counter-terrorism considerations stems from its government joining the International Labor Organization (ILO) in 1934. Ever since, it ratified numerous conventions on labour rights, critical steps towards social justice and sustainable economic development. While the Afghan workers' current reality is overshadowed by the withdrawal, the government collapse and its toll on the economy, the Afghan state's inability to intervene on their behalf and guarantee their rights is one of many sources of grievances and desperation in the country. To fulfil the Afghan people's rightful demands and expectations that any future political system will address these needs, it is also crucial that social partners in Afghanistan adhere to the ILO Constitution.

The public and academic discourse about the Taliban's positions, principles and practices are – for obvious reasons – dominated by questions of war and peace, as well as universal rights with a particular focus on women and minorities. So far, a comprehensive analysis of the Taliban's approach to social justice and labour rights in theory and practice is missing. This report aims at helping social dialogue partners in Afghanistan and internationally to assess opportunities for mutual understanding and cooperation in one of the essential areas of Afghanistan's future social and economic development.

FES is grateful to the author of this unique report— Ibraheem Bahiss, and their research team, for conducting interviews and generating knowledge under significant personal risk in the final days of the Islamic Republic. Their report provides readers with in-depth insights into thought and albeit rudimentary policy conversations on socio-economic governance.

Dr Magdalena Kirchner
Country Director, FES Afghanistan
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Introduction

With the start of intra-Afghan talks in 2020, there was growing interest in the Taliban's positions on an array of social and political issues. The Taliban had deliberately maintained ambiguity on key policy issues, perhaps in an effort to maintain the coherence of a broad-based resistance movement.¹ Be that as it may, in both the Doha Agreement of February 2020 and the Doha Negotiations agenda items, the Taliban had signalled their intent to align policies to international standards.

Given that Afghanistan has been a member of the International Labour Organisation (ILO) since 27 September 1934 and is considered an "original" member State of the ILO (since it was an original member of the League of Nations), the Taliban's compliance with international labour norms could prove an important litmus test for how far it is willing to compromise in order to normalise its relations with the international community. Of the 190 conventions set forward by the ILO, Afghanistan has ratified 19, with 17 currently in force. These consist of five fundamental conventions, one governance convention and 13 technical conventions. The fundamental conventions ratified by Afghanistan include those on equal remuneration, the abolition of forced labour, prohibition of discrimination, minimum age convention and the prohibition on the worst forms of child labour conventions. In 2003, ILO officially established a liaison office in Kabul, its first permanent presence in the country, to provide support for a number of national programmes and projects. Since July 2010, the organisation has introduced the Decent Work Country Programme for Afghanistan with a specific focus on employment discrimination, as well as forced and child labour.

This report seeks to identify Taliban views, policies and practices based on the five fundamental conventions that Afghanistan has ratified. The field research for this study was conducted in mid-2021 to better understand Taliban policies and positions on key labour norms, in an effort to identify the extent to which the group might be willing to align its policies with international labour norms and

identify controversial areas that the group would struggle to adopt.

While the Taliban's military takeover of the country in August 2021 reduces the need for the group to compromise on difficult choices, it also makes it difficult for the group to adopt strategic ambiguity as a long-term policy on key issues, including labour norms. Being in de facto and virtually unchallenged control of the country, the group has increasingly displayed a tendency to adopt a uniform policy on key issues, in a marked departure from its approach as an insurgency, where local commanders played a key role in formulating and implementing policies at communal levels.

The ongoing economic crisis, compounded by the COVID pandemic, drought, collapse of the previous government and the economic measures introduced against the Taliban, has resulted in ordinary Afghans finding themselves without jobs and savings. Hundreds of thousands have lost salaries due to job losses and the collapse of the previous government. Drought has ravaged the agricultural sector, which dominates the labour market. The freezing of state assets and cutting of aid has spiralled a fiscal crisis, virtually nullifying the ability of businesses to sustain themselves or grow. The resulting abject poverty has pushed the meagre progress the ILO and other organisations made over the past decade even further back.

How the Taliban respond to these myriads of problems will play an important role in determining the economic and social future of the country. In light of this, understanding the Taliban's policies and positions on labour norms takes an even more important role. While the group does have strong ideological stances on some labour-related issues, there is ample room for influencing and shaping Taliban behaviour on a wide range of labour-related issues. How international organisations and states engage with the Taliban on these issues could play an important role in the future of labour norms in Afghanistan.

¹ Others have concluded that such ambiguity is a result of insufficient internal consensus on these issues. This conclusion goes against the idea that the Taliban are first and foremost an ideological movement. Ashley Jackson, Rahmatullah Amiri, "Governance, violence, and aid: the donor-Taliban dilemma," 12/11/2020. <https://l4p.odi.org/blog/governance-violence-and-aid-the-donor-taliban-dilemma>

Methodology

The research team interviewed 15 individuals across two main categories between June and July 2021. These included Taliban members, including senior officials within the insurgency, as well as civilians living in Taliban-influenced or controlled areas. For the fieldwork, Ghazni and Paktika in the south and south-east, and Takhar and Kunduz in the north and northeast were chosen. These areas were selected due to the diversity of the population between the areas, as well as the level of control the group exerted. Looking at these differences, it was necessary to gauge how the Taliban developed policies while looking at the diversified nature of the province. Additionally, the research team interviewed a wide range of both national labour activists and members of international labour advocacy. In order to better understand official Taliban policies, the research team also conducted direct interviews with Taliban officials based in Afghanistan, Qatar and Pakistan. These interviews were conducted remotely via phone or messaging apps or through trusted intermediaries. For each claim or incident, the researchers sought to differentiate where respondents had personally eye-witnessed incidents or heard about them through secondary sources. The research team also sought to corroborate any claims through sources believed to be independent of each other. Where incidents were not corroborated, the author has expressly caveated those in the report.

Outline

This report is divided into two major parts. Part I delves into the ideological and political factors that underpin the Taliban's policies and views on labour norms. It does so by looking at the Taliban's general position on the role of government in regulating the economy before discussing their views on labour norms. Part II looks at the group's practices and policies in relation to specific labour areas, beginning with areas with a level of overlap between the Taliban's views and ILO norms, such as trade unions. It then considers areas with widening gaps between Taliban practices and international norms, including in the areas of force and child labour as well as gender discrimination.

Acknowledgments

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Ideological and Political Factors underpinning the Taliban's Labour Approach

The Taliban and Market Regulation

To understand the Taliban's approach to labour regulation, it is important to delve into the Taliban's understanding of the role of government in market regulation, based on classical Islamic texts. Although classical Islamic jurisprudence did not heavily regulate labour relations, the Taliban have developed an understanding of how a modern government should regulate such relations based on the general principles derived from classical texts.

The Taliban's position does not seem to be derived solely from Hanafi jurisprudence but rather draws from all four major Sunni fiqh schools of thought. In practice, the Taliban seems to be more focussed on regulating markets through decrees that proscribe certain practices and behaviours. As an insurgency, there was little evidence in the Taliban's practice that suggested a positive reinforcement aimed at economic growth. Instead, their regulatory framework was largely one that was punitive in nature and more focussed on proscribing and regulating perceived negative behaviour.

The level of market regulation differed from one locality to the next and was often driven by local imperatives. In Ghazni, for example, the Taliban were primarily focused on regulating medicine to ensure that medicine that has expired is not sold in the market. In Paktika, Takhar and Kunduz, however, they also regulated prices of different commodities. In the northern provinces of Takhar and Kunduz, the Taliban tasked specific officials with inspecting commodities and designated phone numbers where people could call to lodge complaints against traders.

Again, the commodities being regulated differed based on locality but could include a number of high usage

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items such as bread, meat and petrol. It is worth pointing out that inspection of goods for expired medication is not specifically mentioned in classical jurisprudential rulings. Controlling the prices of goods is similarly a deviation from the Hanafi jurisprudential school as that school does not support the regulation of prices.²

However, Taliban respondents were able to rationalise these policies by either drawing from rulings from other jurisprudential schools of thought (such as on the issue of controlling prices of commodities) or by generally referring to the capacity of a government to regulate policies to address communal needs or prevent harmful practices from emerging. In fact, Taliban respondents saw it as their duty to prevent the proliferation of practices that were proscribed in Islam (referred to as Haram), such as the sale of alcohol, gambling or prostitution. They also saw it as the role of the government to prevent haram practices, including fraud and misrepresentation. For example, the insurgents would check butcher shops in areas under their control to ensure dog or donkey meat is not sold by mischaracterising as beef or lamb.³

² Ibn Abideen states that governments or “ruler shall not determine prices, as in, it is makrooh or disliked as stated in Multaqi (referring to Multaqi al Abhur”. Raddul Muhtar (Beirut: Dar al Marefa, 2007), vol 9, at 573. The Hanafi school however, does support price controls if prices are artificially inflated by a 100% rise or more. See Ibn Nujaim, Bahr ul Raiq, (Beirut: Dar al-Kutub al-Ilmiyah, 1997), vol 6, at 371.

³ The research was able to identify a significant fear amongst respondents that the practice of selling dog and donkey meat (as well as meat from dead carcasses) was quite a common practice and needed to be combatted. Several respondents cited stories they had heard of such practices in their localities. It is also worth mentioning that the sale of dog, donkey or carcass meats is prohibited according to most Islamic schools of thought.

Similarly, according to respondents in Paktika province, the insurgents would test fuel dispensation to ensure businesses were not reducing the volume of petrol. Local Taliban officials and commanders would similarly weigh bread to check if bakeries were reducing the size of bread loaves while retaining the prices. This regulatory behaviour, however, was not limited to practices prohibited in Islamic schools of thought. According to Taliban respondents, the government also had the capacity to proscribe specific behaviour based on communal needs or to prevent the general proliferation of what was deemed harmful practices. Thus, for example, a government could prohibit certain items, such as opiates, or specific practices, such as selling expired or lower quality goods, based on public interest arguments. A large portion of the Taliban's regulatory behaviour was rationalised based on this principle. Although the notion of public interest or protection of communal rights is generally found in Islamic jurisprudence, the insurgents appear to have utilised it to promulgate certain policies that do not necessarily align with Hanafi jurisprudence.

It is difficult to conclusively determine what drove the local Taliban commanders to regulate certain market behaviours while not others. This was particularly the case with regulation that was not aligned with Hanafi jurisprudence or did not have precedence in Islamic jurisprudence. One hypothesis could be that the insurgents sought to replicate state institutions and therefore emulated the state's behaviour for legitimacy. Certainly, Taliban respondents and interlocutors often justified market regulation by referring to the purview of governments to regulate such domestic markets. However, this does not necessarily explain the discrepancy between different localities, which will be discussed below.

One possible factor that explains this divergent local behaviour is the Taliban perception or belief of how locals would react to certain policies. Some policies were introduced due to local support for such policies, per some local respondents. One local respondent from Ghazni

province, while discussing the insurgents' regulatory policies, pointed out: "The people know about their rights and about the responsibility of the government. The people will demand work and education from the government; they are not the people of 100 years ago."

For example, the checking of butchers to ensure correct meat was being sold was generally only introduced in some urban centres with a level of local fear that incorrect meat was commonly sold by some butchers. Although our research was unable to determine how widespread this fear of incorrect meat being sold was within specific localities, many of our respondents did affirm a level of communal paranoia regarding this. This was also the case with qualities of medicine, with some respondents reporting fears that veterinarian medicine was sold to humans in addition to expired medication. As for price control, some respondents did report that communities supported policies to control prices of essential commodities due to fear that local merchants artificially inflated prices to maximise profit. In light of this, it is posited that local Taliban commanders would tend to regulate this divergently based on whether there was local support for such policies, whether the group had the capacity to implement them, and whether they believed that the formulation and/or implementation of such policies would result in a level of local support or legitimacy for the group.

This synthesis of classical Islamic positions and modern government behaviour was not limited to the issues of regulating the quality or price of goods and commodities, at least theoretically. Taliban respondents suggested that governments could act to prevent the monopolisation of goods or services if it causes inflation of prices or exploits the needs of ordinary people. This position is consistent with the classical Hanafi position,⁴ albeit our research could not identify any instances where the Taliban has imposed such rules. It is worth pointing out that the classical Hanafi position on monopoly differs slightly from the modern conception of antitrust laws⁵, and it remains unclear whether, when the Taliban do impose such

⁴ See for example, *al Mauso'atul fiqhiyyah* (Kuwait: Ministry of Hajj and Awqaf, 1983), vol. 2, at 90-94.

⁵ For example, the Hanafi jurisprudence limits monopoly only to storable food commodities, although Abu Yusuf, one of the three main luminaries of the school, takes the position that it applies to all foods as well as clothes and other things. Similarly, Hanafi jurisprudence has different rules on when a judge can order the breakup of monopolies.

rules, they will define such rules based on the classical conception or expand it to parallel the more expansive modern application by utilising the 'public interest' rationale. For example, while Hanafi jurisprudence does not advocate for price limits, it does proscribe monopolisation of food products or withholding food supply to inflate prices artificially. The Taliban appear to have taken the underlying principle of equitable access to goods and services and applied it to market regulation by introducing set prices for certain goods. A Taliban shadow district governor for Takhar province put this argument as follows: "If businessmen misuse the absences of law, then Islamic jurisprudence allows the government to release a price list. The aim is the wellbeing of a community, where goods should be affordable for every person."

Punishments for violations of Taliban policies similarly differed. In most cases, Taliban search parties would burn expired medication to prevent its resale. Additionally, they might also order the closure of the medical store for a short period of time.⁶ In one instance in Paktika's Muttakhan district, a fuel pump was ordered closed for one week as it was providing less fuel than the advertised litres. There were also examples of shopkeepers being imprisoned or beaten. In two instances, butchers who allegedly sold improper meat had their faces blackened and were paraded publicly in the city.

Since the Taliban's military takeover of Afghanistan and becoming its de facto government, the Taliban have adopted similar economic and fiscal policies, albeit at a national scale. Faced with a looming financial crisis, the Taliban have been forced to consider and adopt various

measures to stall or reverse the dire economic situation in the country.

In many cases, the insurgents have resorted to the same rudimentary, prescriptive policies that rely on punitive actions for non-compliance rather than rewards-based policies that seek to stimulate the economy by inducing economic investment or factor in the complexities of the modern economic environment. Even after coming to power, the Taliban have implemented price controls on certain commodities in some areas. For example, Taliban officials distributed price control lists in Herat and Kunduz. However, they have not done this uniformly or in all localities.⁷ The method for determining prices of commodities is often rudimentary, and the end result can be somewhat arbitrary. Often, Taliban officials would consult with merchants, determining the prices of raw material, transport and other expenses before arriving at a final price for the product. If there are changes in any of the above, sometimes, the Taliban would amend the stipulated price to reflect these changes.

Often, however, due to the insurgents' lack of understanding of complex financial dealings, the results could appear arbitrary, causing a complete suspension in the import of such commodities, the flourishing of black markets, or the continued import of goods with little profit margins for merchants. A similar scenario unfolded in October 2021 when the Taliban officials sought to regulate the prices of airfares for airlines operating between Kabul and Islamabad.⁸ This was reminiscent of the Taliban's past practice of regulating the prices for public transport when locals had complained about rising costs.⁹

⁶ Examples cited to us ranged from a few days to one week.

⁷ Price lists in Takhar and Kunduz continue to be enforced as of December 2021. It is unclear whether this is an indication that the Taliban government will continue the practice of applying divergent policies at local levels or simply a continuation of the insurgency practices until the new government centralises policymaking.

⁸ Following the Taliban's takeover, all commercial flights to Kabul ceased except for flights operated by the Pakistan International Airline (PIA) and Kam Air. Airlines tickets steadily increased following the Taliban's takeover, with PIA charging nearly \$2,500 for flights that previously cost \$120-\$150 before the Taliban's takeover. The airlines justified these spikes due to increased insurance premiums as the country was treated as a warzone by insurance providers. The Taliban warned both PIA and Kam Air to slash prices to pre-Taliban takeover or risk being suspended from operating. This sparked an international row between the two countries. The Pakistani Ambassador met with the Minister of Aviation and Transport but that does not appear to have resolved the issue as since then, PIA suspended its flights to the country and the Pakistani government suspended Kam Air flights to Pakistan.

⁹ This practice had previously been enforced in Ghazni province, according to respondents.

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Some economic policies also appear to be driven by political considerations. For example, following their takeover, the Taliban ordered a ban on lapis lazuli stones, possibly in an attempt to renegotiate contracts with exporting companies or possibly to seek to utilise the country's natural resources as leverage in improving ties with outside powers.¹⁰ Where the Taliban officials have attempted to adopt a more proactive policy, it has been characterised by a similar rudimentary approach. In September 2021, the new Taliban authorities instructed telecommunications firms to improve mobile services for Taliban supporters in the southern provinces. This prescriptive command-style policymaking manifests in other areas as well, including fiscal issues. Taliban officials have promulgated several fiscal decrees in an attempt to slow down the collapse of the Afghan economy following the suspension of development aid and freezing of the country's financial reserves. These include the ban on taking foreign currencies outside Afghanistan, limitations on bank withdrawals, ordering merchants to only trade in the afghani currency and others.¹¹

Taliban on Labour Norms

Given the Taliban's de facto control of Afghanistan, the crashing economy, and the fact that Afghanistan is an “original” member-state of the ILO, the Taliban's views and practices on labour norms could have major implications for its relations with ILO. In many ways, the Taliban's regulation of labour norms would be considered minimalistic. This could be due to several reasons. On many labour-related issues, Taliban respondents and interlocutors would skirt questions by arguing they had not reached the role of governance and these issues would be addressed when the time arrived.¹²

Where they did discuss such issues, Taliban interlocutors stressed a vision of a labour market where employment involved free bartering between individuals and government intervention was only required to prevent or remedy gross injustices.

There was also a lack of in-depth understanding of modern labour norms and their essential notions. Taliban interlocutors did not display any awareness of the exploitative nature of employment relations and the need to create parity between different parties. This lack of understanding of modern labour norms was not limited to the Taliban but was quite widespread in the rural areas and even urban areas where research was conducted.

Given the Taliban's rural roots, it is not surprising that the movement was not very active in the sphere of labour rights. In many ways, this approach was consistent with the Taliban's overall regulatory behaviour. The movement mostly only tends to heavily regulate activities or behaviour if there is a strong ideological imperative or some pragmatic reason that benefits the insurgency. If neither exists, it generally does not seek to impose any rules.

¹⁰ Researchers in Badakhshan have confirmed reports that the Taliban shut down some lapis lazuli mines in Badakhshan province. In other instances, the Taliban have abrogated previous government-negotiated contracts and renegotiated at a higher price. See: <https://bakhtarnews.af/ps/د-وا-ونون-اک-د-ت-ش-و-ک-راهرگن-ن-د-ری-زو-م-ل-ور-ت-پ>

¹¹ For an illustration of Taliban responses to the economic crisis since taking power, see: Crisis Group, “Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe”, 06/12/2021. <https://www.crisisgroup.org/asia/south-asia/afghanistan/317-beyond-emergency-relief-averting-afghanistans-humanitarian-catastrophe>

¹² The fieldwork, as well as many of the interviews with interlocutors were conducted prior to the Taliban's takeover of the country.

Even the limited market regulation of the movement as an insurgency can largely be attributed to either ideological reasons (presenting itself as an Islamic government fulfilling roles historically associated with such governments) or to practical reasons (where it financially benefits the insurgency with the collection of revenue or is seen as a means to win over local support).

However, as the movement has taken over the entire country, this might create more pressure on it to regulate labour rights more heavily. As the country grapples in the throes of an economic crisis, it would be worth watching to see if the Taliban adopt a more laissez-faire approach to labour rights in an attempt to foster job creation or seek to introduce more protective regulation to facilitate the urban constituency that is more cognizant of labour norms.

One senior Taliban cleric from Ghazni explained that so long as the contractual elements of labour-hire are fulfilled, the government (or, in this case, the Taliban) would not interfere in such relations. He argued: "In Islam, the ruling of labour-hire is defined. There are certain elements that are needed. The time period must be stipulated; the parties must be defined, the remuneration must be defined, the labour to be carried out must be defined. These are all requirements of a labour-hire agreement. Once the parties freely choose these, then the government cannot interfere in such a relationship, regardless of the terms agreed upon. If the two sides agree to a 16-hour workday, then the government cannot interfere with dictating that they must not work for such long hours. This is because the parties are discerning adults who seek their interest and can conduct their own affairs."

Another former Taliban district governor and a senior member of the movement, however, argued that the government could interfere if there is a strong public interest imperative. He stated that: "If the terms are such that people suffer from them and complain or later realise that the term is detrimental, then they have a right

of appeal. For example, if the agreed remuneration is well below the market value and the labourer only realises this afterwards, then they have the right to appeal. So, if employers are exploiting the vulnerabilities of the employees, then such exploitation must be prevented."

Another Taliban deputy governor in the north of the country similarly argued that there was no prohibition on how many hours some consensually agreed to unless the length of time had an impact on the physical health of labourers, in which case, the government must step in to prevent such harms.

In many ways, these rationales were aligned with classical Islamic jurisprudential positions that generally only focus on legal elements of contractual relations but, from a legal theory perspective, often focus on creating parity between the different parties. Early Islamic jurists often adopted legal positions by arguing for the need to protect weaker parties, including consumers, labourers and the poor and the weak. Some Taliban interlocutors and respondents also displayed an awareness that now, as a government, the movement would need to take more regulatory measures to bring the movement's practice in line with the country's labour obligations. While these individuals did not always have a grasp of all labour obligations, they tended to view many international labour norms to be somewhat aligned with the group's ideology. The reason for this, according to some respondents, was that both international labour law and Islamic jurisprudence were chiefly concerned with the wellbeing of peoples and communities, and, therefore, there was no prohibition on an "Islamic government" to regulate labour laws.

In the professional spheres, such as medical doctors, artisans and merchants, the Taliban was primarily concerned with retaining market prices. This applied both ways, in preventing employers and contractors from undermining the market value but requiring the work to be performed below the market value as well as preventing labourers and professionals from charging above the market value. Respondents in many of the

¹³ Similar behaviour can also be observed on the issue of dowry, where the Taliban acknowledge a bride's right to demand whatever dowry she pleases, yet has often stipulated limitations on how much dowry can be demanded, arguing that the inability of grooms to pay high dowry causes communal harm.

researched areas cited examples where the Taliban had interfered to prevent such practices that were viewed as exploitative. In some ways, this can be viewed as contradictory to the group's professed position of allowing contracting parties freedom to set the terms of the agreement. However, in light of the group's strong focus on regulating market prices, both for services and commodities, this practice is not surprising.¹³ In Ghazni's Qarabagh district, for example, the group prevented one tractor driver from charging above the market value after locals complained about it to the movement.

In the public sector, the Taliban's behaviour, as an insurgency, could largely be characterised as a hands-off approach. One reason for this was that the group did not pay for the salaries of public sector workers, including those in the health and education sectors. Therefore, it did not attempt to regulate these sectors heavily. It is posited that perhaps this was due to the group's desire to minimise disruption to these services.¹⁴ Be that as it may, the Taliban have at times interfered in the work of these sectors, including by regulating attendance as well as requiring the prioritising of their members, particularly those wounded in combat. The group would also interfere in the appointment of staff members. In Ghazni province, one respondent explained that "if the Taliban introduced someone to a role, he would have to be appointed. Otherwise, the group could prevent an outside appointee from coming to the area and working in their position."

Even where the group did not formally object, outside appointees would often need the insurgents' approval before entering Taliban-controlled areas to assume their positions. In Ghazni's Deh Yak district, a new appointee had to wait three weeks so that the Taliban could do a "background check" on the person before granting permission to resume their role as the head of the district

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education department. Government or NGO-salaried medical and education staff would often get their salaries deducted if they were deemed to be absent for a prolonged period. Deductions in salaries appeared to have been seen as an effective deterrent and were applied in other cases as well. In Takhar province, a medical staff who was accused of molesting a female colleague had his salary permanently reduced as part of his punishment.

In terms of support for the unemployed or those losing their jobs due to disability, the Taliban's approach, again, was more informed by a worldview largely differing from international labour norms. Taliban respondents argued that it was the duty of a state to provide support to the vulnerable ones in the community, such as orphans, the poor, and so forth. In general, the Taliban did not see any obligation on a government to provide support to those unable to find employment or continue employment unless they fell into the "needy" category.¹⁵ Taliban respondents did argue that the government was responsible for providing support to the populace, but that was to be determined by their wealth and needs. So, if a person was poor and in need of support, they should receive stipends from the government regardless of whether this need arose due to the loss of a job or something else. On the other hand, if a person is wealthy, then he or she will not receive such support even if the person was incapacitated from a work-related accident or had suffered a loss of employment.

¹⁴ With the Taliban's takeover of Afghanistan, some foreign countries have offered to pay salaries for health workers and teachers, with the understanding that Taliban does not seek to over-regulate these sectors. So far, this demand has not been resisted by the group.

¹⁵ Worth noting that "needy" is legal term employed in classical Islamic jurisprudence. See for example: *al Mauso'atul fihiyyah* (Kuwait: Ministry of Hajj and Awqaf, 1983), vol. 37, at 297.

¹⁶ Usually, Taliban officials would rely on village elders and clerics to identify which families were worthy of assistance. Oftentimes, families affiliated with the security forces or the government were not provided with such supports. although there were some examples of such families receiving aid from the Taliban, when they were deemed "needy" by the community.

It is worth pointing out that this position, while it overlaps with international labour norms in many ways, is the product of Taliban ideology and classical Islamic thought that places great value on helping the poor and needy. Respondents were able to point to several examples of Taliban distributing aid to communities. Sometimes the aid was disbursed based on those identified as the poorest and neediest within the community.¹⁶ Other times, aid was provided to families of Taliban fighters killed or injured in the fighting. Also, other times, aid was provided to families of civilian casualties of skirmishes.

Taliban interlocutors claimed the group keeps records of families for aid distribution purposes, although these records were not shared with the researchers. It is posited that the Taliban's focus on providing aid to civilian victims and Taliban fighters was primarily driven by political considerations, whereas support to poor and needy members of the community was more an ideological imperative.

It was unclear whether the Taliban supported the notion of work-related accident compensation or injury resulting in fulfilling employment tasks. It appears that such cases could be judged on a case-by-case basis where compensation is offered only if such an injury is the result of gross employer negligence or unfair work demands. Some Taliban interlocutors pointed out that the fact that the group pays ongoing support payments to incapacitated fighters and disabled civilians shows that the group might be willing to provide support to those disabled by work-related accidents. This would, however, ultimately be a political decision.

Be that as it may, for now at least, the notion of support to those unemployed did not appear prominently in the approach of the insurgents. One member of a union from Kunduz summarised the Taliban's approach in the following manner:

"If someone loses their job, they do not offer support either. They have no programme to address this issue. Here, many schools have been destroyed (due to fighting), and they have not attempted to fix these nor compensate those that lost their livelihood."

Since taking over the country and becoming its de facto government, the Taliban has largely maintained these patterns of behaviour. It has mainly continued to regulate conduct based more on ideological and political considerations than anything else. For example, most ministries have announced deadlines for civil servants to return to work, with those not attending being considered as having abandoned their duties. On the other hand, most ministries have asked women to abstain from reporting for duty, with the promise that the group would continue to pay their salaries.

"If someone loses their job, they do not offer support either. They have no programme to address this issue. Here, many schools have been destroyed (due to fighting), and they have not attempted to fix these nor compensate those that lost their livelihood."

Most of these decisions appear to be motivated by political or ideological considerations rather than ensuring compliances with Afghanistan's international obligations or international labour norms. A silver lining, however, could be that as the group continues to seek international recognition, there is an opportunity for ILO and other labour organisations to influence the group's behaviour on these issues if the movement judges that greater compliance with ILO standards would increase its chances of being seen as a responsible state actor in the international forum.

Potential Areas of Conflict with ILO Standards

Trade Unions

Freedom of association is a key labour norm under international labour law. The Freedom of Association and Protection of the Right to Organise Convention is one of ILO's eight fundamental conventions and one of the few that Afghanistan has not ratified. Successive Afghan governments compliance with this fundamental right has been questionable.¹⁷ In 2016, the government of Afghanistan mandated the seizure of all property of the National Union of Afghanistan Workers and Employees (NUAWE) as well as a number of other unions.¹⁸

The Taliban have a similarly checkered history in dealing with trade unions. Championing workers' rights was an important political slogan of Afghanistan's communist governments in the 1980s. Government-loyal trade unions also flourished during that period. For some Taliban interlocutors, this close association between trade unions and communist governments led to an association of trade unions with communist ideology. For that reason, the Taliban appeared to be unwelcoming of trade unions, and few such groups existed during their rule in the 1990s.¹⁹ As an insurgency, the group initially also appeared to oppose the formation of trade unions for various reasons. Sometimes these entities were seen as vehicles to social engineer Afghanistan into a western-style entity. If trade unions were led by people closely associated with the former communist regimes or the newly formed western-backed government, then this

also drew opposition to the notion of trade unions. There were also reports of the Taliban targeting trade unionists in the past,²⁰ although Taliban interlocutors denied these claims. However, over time, it appears the insurgents significantly moderated their stance on this issue.

Some civilian respondents in Kunduz that deal with trade unions told that when unions first started flourishing in the city some years ago, they were met with scepticism by the Taliban and often opposed by them.²¹ However, after trade unionists began visiting Taliban commanders to explain the role of these entities, the group changed its position and granted permission to trade unions. The insurgents found such organisations useful for propagating their decrees and rules to specific industries and sectors. Before the Taliban's takeover, field research suggested that there were numerous trade unions and literacy clubs active in Kunduz province. Trade unions existed for money exchangers as well as medical suppliers. These unions would often interact with both the erstwhile

“ Senior Taliban respondents in the north often claimed to support the formation of trade unions. Some based this position on the right to freedom of association, which they argued was guaranteed in Islam. ”

¹⁷ For a brief history of the Afghan labour movement, see: Thomas Ruttig, "May Day on Workers Street: Trade unions and the status of labour in Afghanistan", Afghanistan Analysts Network, 2014, available at: <https://www.afghanistan-analysts.org/en/reports/economy-development-environment/may-day-on-workers-street-trade-unions-and-the-status-of-labour-in-afghanistan/>

¹⁸ Industrial Global Union, Global labour movement condemns seizure of union property by government of Afghanistan, 2018, available at: <https://www.industrial-union.org/global-labour-movement-condemns-seizure-of-union-property-by-government-of-afghanistan>

Also see: Shadi Khan Saif, "Afghan Labourers Hostage to Bitter Squandering", Fair Planet, 2020, available at: <https://www.fairplanet.org/editors-pick/afghan-laborers-hostage-to-bitter-squandering/>

¹⁹ Freedom House, Freedom in the World 2001 – Afghanistan, 2001, available at: <https://www.refworld.org/docid/5278c9a35.html>

²⁰ Adrienne Woltersdorf, Let the first Afghan trade unionist to be killed by the Taliban be the last, 28 February 2014, available at: <https://www.equalti-mes.org/let-the-first-afghan-trade-unionist-to-be-killed-by-the-taliban-be-the-last?lang=en#.YYffdyORr0o>

²¹ It is worth noting that the concept of trade union in Afghanistan was generally interpreted more broadly by respondents and taken to include informal or non-registered entities. Often, artisan guilds and industry sectors had representatives that interacted with the government and insurgents. Similarly, respondents often include literacy clubs and other associations when responding to questions around trade unions.

government and the insurgents to resolve issues. Another respondent from Yangi Qala in Takhar province stated he had founded an academy for the propagation of literary arts and had not faced any interference from the Taliban nor heard of other such organised groups facing such challenges. He also mentioned that the district market had a trade union. This was at a time when the insurgents had complete control of the district centre.²²

Senior Taliban respondents in the north often claimed to support the formation of trade unions. Some based this position on the right to freedom of association, which they argued was guaranteed in Islam. One Islamic legal scholar that was not affiliated with the insurgents took a similar approach, arguing that the formation of trade unions enabled people from different fields to compete for their rights and better protect their rights. He argued that given this Islamic argument, the Taliban would find it difficult to oppose the activities of trade unions. Some Taliban respondents echoed these arguments, stating that “as all the people cannot reach the government, every field needs to have a representative to share the issues of their respective fields with the leaders of the government”. Taliban affiliated members, however, sometimes tended to caveat this freedom by arguing that unions had to work “constructively” by sharing their views and concerns with the government. Other interlocutors also stated that if trade unions began undermining an “Islamic government”, then such a government could take steps to curtail the activities of such unions.

It can be argued that in many ways, the Taliban’s approach to trade unions is determined by a utilitarian lens. For now, the Taliban have found trade unions to be an effective vehicle that at one point normalised the insurgency by acting as a conduit between government authorities and the insurgents. As the insurgents gained strength and adopted a regulatory role in the markets, these trade unions provided a platform to hear the concerns of this

sector and allow the insurgents an effective means to promulgate their rules. The insurgents often relied on market trade unions to publicise rules around prices of commodities, rules around medical stocks and other market-related decrees.

So far, since taking over the country, the new rulers of Afghanistan have adopted divergent policies towards various associations and unions. In some cases, the group have taken over independent associations.²³ In other instances, trade unions and associations have been allowed to operate, at least for now.²⁴

Forced Labour

Due to chronic conflict and insecurity, a culture of impunity, and a strong sense of communal obligation, Afghanistan has a history of certain forms of communal or individual forced labour. One common form of communal labour, known as Baygar or Hashar as a long history in the country. The use of this type of levied work has periodically been utilised by the state and, at the subnational level, even by tribes, to find cheap or even free human resources for specific works or other tasks.

Historically, governments have relied on such mechanisms, requiring tribes to furnish armed men for combat. Other times, this practice had been utilised for public works. Individual forms of forced labour often apply to prisoners or those forced to work due to family debt or bonded labour. Although Afghanistan has ratified the Abolition of Forced Labour Convention since 1963, many of these practices have continued to persist, with successive governments often turning a blind eye to prevalent violations.²⁵

Some observers noted that the (previous) government did not fully meet minimum standards for the elimination of trafficking or make significant efforts to do so. They

²² Worth pointing out that at least some of these trade unions continue to operate since the Taliban’s takeover.

²³ See: Michael Cross, “Outrage at Taliban takeover of Afghanistan bar association”, The Law Society Gazette, 2021, available at: <https://www.lawgazette.co.uk/news/outrage-at-taliban-takeover-of-afghanistan-bar-association/5110804.article>

²⁴ On 4 December 2021, an association of construction workers assembled at a gathering in Kabul, demanding that the Taliban government pay an estimated \$5 billion dollars of unpaid invoices owed by the previous government and appoint an Minister of Municipality Reconstruction so that these unpaid invoices be processed.

accused the government of a pattern of sexual slavery in government compounds commonly known as *bacha bazi* and the recruitment and use of child soldiers.²⁶ In some ways, the Taliban's views and practices did not significantly depart from those of other actors in the country.

“ **Individual forms of forced labour often apply to prisoners or those forced to work due to family debt or bonded labour. Although Afghanistan has ratified the Abolition of Forced Labour Convention since 1963, many of these practices have continued to persist, with successive governments often turning a blind eye to prevalent violations.** ”

In principle, the Taliban did appear to oppose the use of forced labour. Taliban clerics argued that individuals are free to enter contractual or non-contractual relations to perform works. If a person wished to perform any work pro bono out of goodwill, then this was a welcomed act. On the other hand, if a person wished to perform a task in exchange for remuneration, then this was well within their right, and the other party was required to pay the agreed remuneration. One prominent Taliban cleric from Ghazni province explained this as follows: “In Shariah, no one is allowed to force someone to work. In the early years of Islam, captured Infidel prisoners could become slaves (and thus used for forced labour), but that no longer applies.”

He went on to explain that it was well within a government's purview to stipulate minimum remuneration that must be paid in order to minimise exploitation or forced labour. However, the same respondent also argued that in cases of emergencies, the government could levy individuals to perform communal tasks. According to him, Islamic jurisprudence stipulates that when an Emir orders a community to perform a certain task, then it becomes obligatory for that community to obey such orders, including for the performance of levied tasks.

Our fieldwork, however, focussed on the Taliban's use of a type of levied work locally known as Baygar and Hashar. Fieldwork suggested the Taliban regularly levied this type of work, asking villagers to provide human resources for communal services such as the repairing of roads and bridges. In the fieldwork, some respondents in Takhar also claimed that the previous government's security forces would at times recruit locals to assist with the transport of weapons or dig trenches during fights. Our research suggested that the insurgents similarly utilised this practice for conflict-related works, including in the demolition of security checkpoints, as well as in the transport of weapons and fighters.²⁷

Our fieldwork suggested that the Taliban also relied on this levied work for certain public works. Interviews with civilians generally also suggested a level of acceptance of this practice in many communities. Public works for which the Taliban utilised this practice was generally limited to projects that benefitted that specific community, including the building and repair of roads, the building of local mosques or madrassas, and the repair of damaged bridges. The insurgents would often call on specific individuals or families to partake in such endeavours. At times, individuals that owned requisite tools for the task,

²⁵ Afghanistan has not ratified the Protocol of 2014 to the Forced Labour Convention, 1930. Due to the report's focus on Taliban perspectives, this report did not explore why the previous government did not ratify this Protocol. It is posited that the expansive scope of the Protocol, as well as the prevalence of many of these forms of forced labour in the country and divergent cultural understandings of forced labour could have been part of the reason for non-ratification.

²⁶ Office to Monitor and Combat Trafficking in Persons, “2021 Trafficking in Persons Report: Afghanistan” U.S. Department of State, 2021, available at: <https://www.state.gov/reports/2021-trafficking-in-persons-report/afghanistan/>

²⁷ Other organisations noted the prevalent compulsion of civilians for war purposes by all sides. These include the forcing of civilians to defend isolated outposts, the use of civilians to transport weapons or fighters, and the use and recruitment of child soldiers.

such as tractors, were called on by the Taliban to furnish that equipment or personally partake in the fulfilment of these tasks.

According to Taliban respondents, the group only called upon the use of this levied practice where communities themselves called for it. They also denied that there was a need for forced labour as, according to them, public works were generally commissioned and carried out by internationally funded non-governmental organisations. Although it is possible that some individuals or groups within a community might lobby the insurgents to call for this levied work for a particular task, the process does not appear to be all-encompassing as some respondents denied personal knowledge of such communal lobbying.

To what extent levied individuals felt compelled to respond to such calls to attend a particular project continues to remain unclear. On the one hand, most respondents, including non-Taliban respondents, tended to argue that partaking in such calls for Hashar was a moral obligation as the projects benefitted the entire community. On the other hand, most also suggested that there was some level of perceived compulsion as few would dare to refuse to partake in such levied calls openly. There were some small instances where communities refused to respond to such calls. For example, in Takhar, after the insurgents overran a security checkpoint, the Taliban asked locals to bring equipment to destroy the checkpoint. However, after the local community refused, the insurgents had to call workers from outside the area to demolish the redoubt. In other instances, for example, when Taliban fighters request to be transferred from one area to another, respondents suggested the group would use force if individuals refused to oblige. Given the possibility of inviting Taliban reprisals, it appeared that few individuals were willing to refuse demands by the insurgents to lend equipment or personnel for such levied tasks.

Taliban respondents also suggested that they invariably compensated individuals for incurred costs, for example, the cost for hiring equipment as well as the wages of tractor drivers and others. Our research could not conclusively determine that this was a uniform practice. However, we were able to identify some examples where the Taliban paid nominal compensation. Remuneration appeared to be more common with the insurgent's business ventures, such as remuneration for workers involved in lucrative mines in the north. The Taliban similarly claimed to compensate individuals for harm suffered, for example, if a tractor was destroyed by government fire during levied tasks. The research was able to identify one case in Ghazni, where the insurgents partially compensated the owner of an excavator after his equipment was destroyed in a drone strike.

As international support becomes paralysed in the country and the Taliban struggle to finance such public works, it will be worth watching to see if the group increases its use of this practice. Afghanistan's imploding economy is also likely to increase already prevalent cases of bonded labour, human trafficking and the use of communal work.²⁸ As the Taliban struggle to ward off economic crises and grapple with existential threats, it is unlikely that the movement will focus on combatting these practices and might even encourage increased use of some practices such as communal labour. However, given that the Taliban's views largely overlap with ILO norms in this sphere, there is an opportunity for ILO to leverage the Taliban's desire for normalisation with international organisations and for donors to leverage aid in order to encourage the new de facto authorities to formulate robust legal frameworks and implementation mechanisms for the combatting of some of the worst forms of forced labour.²⁹

²⁸ For the prevalence of these practices even before the Taliban's takeover and implosion of economy, see: Office to Monitor and Combat Trafficking in Persons, "2021 Trafficking in Persons Report: Afghanistan" U.S. Department of State, 2021, available at: <https://www.state.gov/reports/2021-traffic-king-in-persons-report/afghanistan/>

²⁹ One small example where the Taliban's desire for international normalization is their recent edict banning forced marriages. Although it remains to be seen to what extent these new rules will be implemented, it is worth pointing out that force marriage is considered a form of forced labour by the ILO. .

Child Labour

Despite being a signatory to the Minimum Age and the Worst Forms of Child Labour conventions, child labour is a prevalent practice in Afghanistan.³⁰ An estimated quarter of Afghan children between ages 5 and 14 work for a living or help their families.³¹ Before the fall of the previous government, the U.S. Department of Labor noted that Afghanistan had made minimal advancements in eliminating the worst forms of child labour.³² Children are often subjected to the worst forms of child labour in the context of commercial sexual exploitation (bacha bazi), armed conflict, and forced labour in the production of bricks and carpets, while the Afghan law does not sufficiently criminalise forced labour, debt bondage, or the commercial sexual exploitation of children.³³

The Taliban's approach to child labour was one that sought to strike a delicate balance between their ideological inclinations and the needs of a society tinkering on the precipice of abject poverty. Taliban respondents stated that children should not be required to work until they reach puberty and, even then, should not do heavy labour until their bodies have strengthened, which according to respondents, would usually be between 17 and 18 years of age. One cleric explained that "Allah has absolved them from praying until they reach adolescence, so how can they be required to work". If a child is of sound mind and wishes to undertake work, then Taliban respondents argued that such children should be allowed to partake in work unless the labour is such as to cause them bodily or mental harm.

According to Taliban respondents, while children help their families with chores and family-related tasks, there was no obligation on them to earn income for

their families. Even their parents could not order pre-adolescence children to work and earn income for the family. However, given the prevalence of poverty in much of the rural areas, combined with the fact that many families did not have abled-bodied or alive male adults, our research found a widespread prevalence of children in the workforce. Depending on the area, children would work in farms, market shops, as street vendors or working as apprentices with merchants and artisans. For the most part, children would work in fields that did not necessarily involve heavy physical exertion. However, one respondent from Ghazni claimed that children were working in narcotic factories in the southern region of Afghanistan. Due to the area being outside the scope of the research, this claim could not be verified.³⁴ Although this research did not delve into the gender dimensions of child labour, previous studies claimed the country has one of the highest gender disparities globally, with girls more likely to do household chores and boys doing more employment-based jobs.³⁵

According to Taliban respondents and interlocutors, while such children should not be working and instead of attending schooling, given the social needs of their families, sometimes it was necessary for them to work. According to most of these respondents, it was the duty of the state to furnish the livelihoods of these children so that they could continue their education and improve

“ Afghanistan’s imploding economy is also likely to increase already prevalent cases of bonded labour, human trafficking and the use of communal work. ”

³⁰ Afghanistan ratified both conventions in 2010.

³¹ HRW, "They Bear All the Pain: Hazardous Child Labor in Afghanistan", Human Rights Watch, 2016, available at: https://www.hrw.org/report/2016/07/15/they-bear-all-pain/hazardous-child-labor-afghanistan#_ftn1

³² Bureau of International Labor Affairs, "2020 Findings on the Worst Forms of Child Labor", U.S. Department of Labor, 2020, available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/afghanistan>

³³ Ibid.

³⁴ Child labour is considered endemic in the country and not just limited to insurgent-controlled areas. For an example of child labour in the northern previously government-controlled areas, see: ILO "Child Labour Assessment in Balkh and Samangan Provinces, Afghanistan", International Labour Organisation, 2015, available at: https://www.ilo.org/asia/countries/afghanistan/WCMS_496512/lang-en/index.htm

their prospects. When queried, many respondents also stated that children must not work in some fields, including in the poppy fields, due to fear of exposure and addiction to drugs. Similarly, they should not work in the mining sector due to the heavy physical requirements of those roles. These views are somewhat aligned with the position of the previous Republic's legislation.

The Afghan Comprehensive Child Act, which itself proved to be highly controversial, sought to prohibit types of work that are beyond the physical ability of a child and have an adverse effect on the child's physical and mental development.³⁶ This definition, which was less restrictive than ILO's assuming that all work was likely to harm the health, safety or morals of children, and was still never fully ratified by parliament due to opposition from hardliners, was only ever adopted in principle and was not implemented.³⁷

With the Taliban as well, there was little to suggest the group had sought to implement their views in areas it controlled. This research suggested that in some areas, vulnerable children often did work in various sectors, including in labour-intensive and hazardous roles. In most researched areas, we were unable to identify any clear Taliban directives or guidance to locals around the employment of children in the labour force.

ILO Convention No. 138 on Minimum Age specifies that the minimum legal age for "light work" be set at 15 years while hazardous work is limited to 18 years of age. In theory, there is a level of convergence between the views of Taliban respondents and this principle. In

practice, however, the insurgents have not taken steps to enforce this convention or their views in this sphere.

As a de facto government, whether the Taliban will be willing to take steps to combat child labour in the country remains to be seen. On the one hand, the worsening economic crisis in the country and the high proportion of families with children as primary bread earners make it difficult for the group to take strong actions in this field unless it can provide financial assistance to those affected by any proposed laws. The controversy surrounding the legal definition of a child, which plagued the previous government, is likely to re-emerge even more intensely if the Taliban attempt to formulate a legal definition of a child in the context of labour norms. It seems difficult to envision the Taliban adopting a definition of a child as someone under 18 years.

On the other hand, the National child labour strategy and action plan 2018-2030, signed between ILO and the previous government's Ministry of Labour, Social Affairs, Martyrs and Disabled (MOLSAMD),³⁸ contains little that could be considered irreconcilable with the views of Taliban respondents spoken to in this research. The group might be tempted to cooperate with ILO on this issue as part of an attempt to normalise relations with international institutions and pave the way for formal recognition in the global legal order. The Action Plan also offers an opportunity for ILO to engage with the new rulers of Afghanistan on an issue that forges relations between the two and advances a crucial international agenda in the country.

³⁵ ILO "Measuring children's work in South Asia: Perspectives from national household surveys", International Labour Organisation, 2015, p78, available at: https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_359371/lang--en/index.htm

³⁶ This legislation became controversial between the traditional and liberal elements of Parliament with traditionalists arguing that in Islam, a child becomes an adult after reaching puberty and legislation's suggestion that a child becomes an adult at age 18 was arbitrary and a western conception,, see: Rohullah Sorush "Child Rights Protection Law in Afghanistan: Can the parliamentary chaos be resolved?", Afghanistan Analysts Network, 18 March 2020, available at: <https://www.afghanistan-analysts.org/en/reports/rights-freedom/child-rights-protection-law-in-afghanistan-can-the-parliamentary-chaos-be-resolved/>

³⁷ For a discussion on the previous government's child labour policies, see: International Labour Organisation "National Child Labour Legislation, Policy and Programme Review", ILO, 2018, available at: https://www.ilo.org/ipec/Informationresources/WCMS_667736/lang--en/index.htm

³⁸ Afghanistan: National child labor strategy and action plan 2018-2030, available at: https://www.ilo.org/ipec/Informationresources/WCMS_666015/lang--en/index.htm

Public Sector Employment

Nepotism has been a consistent feature of the Afghan public sector. As highly coveted job opportunities offering job security, social status and stable remuneration, public sector job recruitment has often been considered quite corrupt.³⁹

Favouritism in many ways also pervaded Taliban practices in the public sector, reminiscent of the wider phenomenon in this sector.⁴⁰ The Taliban were heavily involved in the public sector of areas under their control and appeared to regulate or meddle in this sector. Given that the insurgents purported to be a *de facto* and *de jure* government in areas under its control, this heavy-handed approach was somewhat understandable. More importantly, this sector offered an important avenue for the insurgents to gather funds and reward loyalists. This appeared to be the main rationale behind the insurgent's involvement in employing various individuals to government-salaried positions.

In almost all areas where research was conducted, there was evidence of a varying degree of Taliban involvement in controlling employment of government-paid positions. Many non-Taliban respondents, particularly those working in these sectors, described Taliban involvement that would be considered akin to nepotism. Individuals with close relations with the insurgents or were viewed favourably were often prioritised for highly-paid jobs. In contrast, those viewed with suspicion or lacking insider relations within the movement could often be overlooked. Individuals seeking jobs in Taliban-controlled areas that failed to consult the insurgents and seek their permission often found the insurgents opposing their appointment in such positions. In Ghazni's Deh Yak area, one doctor who had passed the medical exam and was appointed to a position in the district stated that the Taliban rejected his appointment because he had failed to consult with the insurgents prior to his appointment.

Appointees that resided outside insurgent-controlled areas were often viewed with suspicion and overlooked for those that ordinarily resided within Taliban-controlled areas. If the previous government appointed individuals to position under insurgent-controlled areas, the Taliban would usually conduct a separate exam to determine the candidate's suitability. Although the research was unable to determine the exact contents of this exam, most stated that a background check of the candidate was a normal and prominent aspect of it. The insurgents would enquire about the candidate, their previous work history, political affiliation and even their extent of religious knowledge. Candidates that failed this test would not be allowed to assume their positions. In addition, appointees would be prone to losing their positions if the insurgents introduced another candidate in their stead. In Kunduz province, a respondent's close friend, a medical doctor, lost his position in the anti-COVID provincial team after the insurgents introduced another candidate to replace him. In Ghazni province, trainee doctors with contacts within the insurgency were appointed to medical positions and received salaries normally reserved for fully qualified doctors.

The fieldwork was able to identify some instances where the Taliban siphoned the salaries of people on government or NGO payrolls. In some instances, the Taliban deducted money from salaries for lack of performance, such as long periods of absenteeism. In some instances, salaries were permanently reduced as a form of punishment for some grave violations of social norms. However, in other instances and some provinces, salaries were regularly siphoned off as a habitual practice. It was difficult to conclusively state whether this was a systematic approach adopted by the Taliban or a practice left to local commanders.

According to respondents in Kunduz province, the insurgents deducted salaries of staff members for non-attendance. There did not appear to be a stipulated

³⁹ UNODC, "Corruption in Afghanistan: Recent patterns and trends", United Nations Office on Drugs and Crimes & Islamic Republic of Afghanistan High Office of Oversight and Anti-Corruption, 2012, available at: https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corruption/CCorruption_in_Afghanistan_FINAL.pdf

⁴⁰ Nizam Rezahi, "Favoritism – a Heinous Phenomenon in Afghanistan", The Khaama Press News Agency, 2021, available at: <https://www.khaama.com/favoritisma-heinous-phenomenon-in-afghanistan-87678/>

period of absenteeism before salaries would be deducted. However, most respondents suggested that the period of absence had to be longer than a few days before the insurgents would resort to deduction of salaries. The deductions in salaries were often determined on the proportion of absent days during that period. However, in Takhar, some respondents from the education sector claimed that the insurgents deducted 250 Afghanis for each day of absence.

In Ghazni's Andar district, the Taliban took money from both educational and medical staff. The insurgents applied various means to siphon money. Sometimes the group would appoint individuals to educational institutions who would not teach or attend work. However, the salaries of these ghost workers would be paid to their account and presumably, forwarded to the insurgents. Other times, staff that worked for prolonged periods without pay would only be paid for a period, with the remaining salary being withheld by the Taliban. One respondent explained this predicament where a colleague worked for nine months but was only paid for seven of it. The remaining money, according to this respondent, was pocketed by the insurgents. Several other sources corroborated this claim. It is difficult to determine insurgent motives, but some interlocutors excused this behaviour due to the insurgents' lack of understanding of government financial systems. According to them, the Taliban would often take non-regular payments, considering it extra payments by the government. At the same time, generally regular salaries would continue to be given to the government employees. Our research in Ghazni also identified a case where the employing NGO withheld a proportion of their workers' salaries, claiming the move was justified due to business losses. Locals appealed to the insurgents who mediated the claim, resulting in the workers being paid a slight proportion of the withheld funds. According to some respondents familiar with this case, many suspected that the insurgents and the employing agency had connived to only agree a smaller portion of that fund while dividing up the remaining between themselves.

Given the nature of this case, the researchers could not verify if there was a deal between the employing agency and the insurgents.

Gender Discrimination

The Taliban's position on gender-based discrimination is likely to be a key challenge for relations between the Taliban and international actors due to the wide gap between Taliban views and international labour norms.

It is worth noting that women have often faced barriers to outside-the-home employment that are sometimes independent of the Taliban. Cultural norms also played an important role. For this reason, women, particularly in rural areas, primarily relied on home-based income generation through carpet weaving, sewing, tailoring, agricultural work, taking care of livestock, and selling dairy products.⁴¹ Other factors include the level of economic development, education attainment, institutional setting and access to credit and other inputs.⁴²

Even during the previous government, women often faced systemic barriers to outside employment. One author noted the barriers to female employment in the education sector, under the previous government, in the following terms: "The Afghan government's own assessment of the education sector suggests that an average teacher pays their first year's salary in bribes to get their job... In addition, many teachers go for months without pay and must pay bribes throughout their tenure. Male teachers often have second jobs, which allows them to maintain their teaching positions (albeit often with frequent absenteeism). Women would face greater obstacles in pursuing such a strategy."⁴³ Be that as it may, according to some estimates, women participating in the labour force had seen a steep rise since around 2012.⁴⁴

All these factors aside, the Taliban's policies of discrimination between genders have always tended to go beyond cultural or other factors and suggest a strong

⁴¹ ILO Afghanistan "Afghanistan: Time to move to Sustainable Jobs, Study on the State of Employment in Afghanistan", International Labour Organisation, May 2012, p 7, available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_182253.pdf

⁴² Ishani Desai and Li Li, "Analyzing Female Labor Force Participation in Afghanistan", Women's Policy Journal (Harvard University), 2016, available at: <https://wpj.hkspublications.org/wp-content/uploads/sites/23/2018/11/DesaiLi.pdf>

ideological streak. During the 1990s, the Taliban's then de facto government introduced severe restrictions on female education and work that essentially amounted to a ban and drew the ire of the ILO and other international organisations.⁴⁵ At the time of this fieldwork, however, the Taliban's attitudes towards women in the workforce were quite mixed. While, in general, Taliban views on women in the workforce are restrictive, the research was able to identify some divergence of opinion in Taliban respondents from different localities. In general, Taliban officials from the northern provinces had more accommodating views regarding women in the workforce than Ghazni province. Based on separate fieldwork carried out by the authors in 2020, it can be claimed that even the views of respondents from Ghazni were relatively lax when compared with views of Taliban from the southern heartlands of Helmand, Kandahar, and the surrounding areas. Overall, there was some level of discrepancy in how the Taliban viewed women in the workforce. Some Taliban respondents took the view that women did not have the right to work outside their homes. This rationale was informed by the argument that as Islam placed the burden of winning a family's livelihood on a man, therefore, women should not work and instead focus on domestic duties. One senior Taliban commander expressed this argument as follows:

"In Islam, women do not have a right to work as their nafaqa (means of subsistence) and other needs are obligated on their husbands. Islam has given women so many rights that even their household chores should be done by other servants so that women are not burdened too much. The women's duties are to be dutiful wives, remain well dressed and be disposed to please their husbands. That is why they do not have the right to work. For this reason, women are not obligated to breastfeed

their children like that is a burden, so why would she be required to work. However, if there is work that is not physically exhausting and benefits society, then Islam gives them the right to work in those fields, and they are to be duly compensated for their work."⁴⁶

Other senior Taliban respondents, particularly from the northern provinces, argued that women should work in not physically taxing fields as their bodies were not suitable for harsh physical works. According to these respondents, women could work in a field that required mental acuties, such as in educational, health, and other professional sectors.

Some ideological positions also served as limitations on the role of women. The majority of Taliban respondents argued that women could not become criminal judges or heads of state. These positions were in line with classical Hanafi jurisprudence, which states that women can be judges in civil and criminal matters⁴⁷ except for some criminal cases relating to hudood (punishments that correspond to particular crimes) and qisas (retributive justice for murder).⁴⁸ Some senior Taliban respondents also expressed willingness for female involvement in various businesses if they catered to female-only clientele. One respondent from Takhar, for example, stated that while women could not work in hotels, yet if a woman were to open a hotel for women only, then she could be able to do so. This gap between the views of the Taliban in the north and south is not limited to the sphere of female work alone. Other scholars have noted a similar gap in attitudes towards education.⁴⁹

By and large, however, Taliban respondents introduced a plethora of barriers to female work. In addition to limiting the types of works women should carry out and

⁴³ Ashley Jackson "Life under the Taliban shadow government", Overseas Development Institute, June 2018, p 15.

⁴⁴ World Bank, "Labor force participation rate, female (% of female population ages 15+) (modelled ILO estimate) – Afghanistan", World Bank, 2021, available at: <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=AF>

⁴⁵ See for example, the Commission on the Status of Women, Forty-fifth session, Agenday item 3 (a), 2001, available at: <https://www.un.org/womenwatch/daw/csw/ECN6-2001L5REV1.htm>

⁴⁶ This is a reference to classical Islamic jurisprudential position that a husband cannot compel his wife to breastfeed his child and if the mother chooses not to breastfeed the child, then the husband must hire help to breastfeed the child or pay the mother wage for breastfeeding the child.

⁴⁷ Ali al-Marghinani, *Al-Hidayah* (Karachi: Bushra, 2016), vol. 3: 206. See also: Abu Bakr al-Kasani, *Badai al-Sanai fi tarteeb al-Sharai*, (Beirut: Dar al-Kutub al-Ilmiyah, 2003), vol. 9: 86.

the requirements of hijab, Taliban clerics, also stated that females could not conduct long-distance travel without male relatives. Some Taliban clerics also argued that the male guardian's permission was a prerequisite for a woman's right to work. One Taliban affiliated cleric from Ghazni stated that "if the husband has not given permission, a woman cannot even offer the midnight prayer". He moreover argued that the husband's acquiescence was so essential that even the state could not overrule him by giving blanket permission to women to work. Other non-Taliban respondents, particularly Islamic clerics that graduated from non-madrassa institutions, disagreed and stated that if a husband prevents his wife from working, he would be considered impinging on her right to work. However, he further explained that in such a scenario, according to Hanafi jurisprudence, the woman could work, but her husband would no longer be required to furnish her subsistence and means of living. Taliban respondents from the north of the country also offered differing opinions on the requirement of husbands' acquiescence. One respondent stated that "a woman should not do anything without the permission of her husband. If a woman is not married, she definitely needs the permission of her parents and brothers". Another respondent stated that if a man refuses to allow his wife to work, then the wife can resort to judicial institutions to enforce her right to work. This, however, was not an opinion generally shared by most Taliban respondents.

Be that as it may, where women did work in various fields, the insurgents tended to accord them certain labour rights. For example, Taliban respondents argued that where a man and a woman have similar skills and experience, they should be equally remunerated. Discrepancies in wages should be due to experience, skills and social needs and not due to gender.

In many Taliban controlled rural areas, women health workers often received higher wages than their male counterparts due to the high demand for female workers and the unwillingness of many female professionals to work in insurgent-dominated areas. Some Taliban respondents stated that if a woman were to complain that she receives less salary than her male counterparts, the Taliban would be willing to interfere and investigate such cases. These respondents were unable to cite specific examples where the insurgents had interfered in such a case. There were, however, some cases where the Taliban had intervened when female workers had complained of harassment. In one case in Khanabad, the Taliban imprisoned a doctor in a container for several days, physically beat him, and slashed his ongoing salary after a female colleague brought a case of sexual harassment against the accused.

These challenges have only multiplied manifold since the Taliban's takeover of the government. The Taliban have thus far only allowed women to return to a handful of the public sectors.⁵⁰ The Ministry of Women's building has been assigned to the newly established Ministry for Promoting Virtue and Prohibiting Vice, while the status of the Ministry of Women remains in limbo. While some women in the private sector have been allowed to return to work, in the absence of clear policy statements and positions, this phenomenon appears minimal and prone to reversal. While the Taliban Emir's special decree on Women's Rights enumerates several fundamental rights, it conspicuously does not mention the right to education or work. In the span of the few months since the Taliban's takeover, Afghanistan has already risen to the top of the list of worse countries for women.⁵¹

⁴⁸ Hudood are prescribed punishments for certain crimes such as amputations for thieves and highway robbers, or lashes for adultery and accusing someone of adultery without proof. Qisas is the right of the murdered victim's family to seek or forego the capital punishment.

⁴⁹ See for example, Rahmatullah Amiri and Ashley Jackson, "Taliban attitudes and policies towards education", ODI Centre for the Study of Armed Groups, February 2020, at 12, stating: "While Taliban in the south attacked schools and teachers, some Taliban in the north (as well as some areas of the east) punished children and their parents for not attending school and compelling absentee teachers – in government schools – to show up for work."

⁵⁰ Women have been allowed to return to work in the education and health sectors as well as a few limited security sector positions.

⁵¹ See for example, GIWPS, "Women Peace and Security Index", Georgetown Institute for Women, Peace and Security, 2021, available at: <https://giwps.georgetown.edu/the-index/>

Conclusion

The Taliban's takeover of Afghanistan, their ideological inclinations on labour norms, and their desire for international acceptance create dynamics that present both opportunities and challenges for influencing their approach to labour norms. The past two decades have brought about a transformation in the Taliban's views on a number of labour norms. The Taliban of today appear willing to align their policies with international norms so long as this alignment does not result in a perversion of the movement's core ideological beliefs. Instead of seeking differentiation, the Taliban's middle and top strata appear keen to seek normalisation and acceptance by the international community.

At the same time, many of Afghanistan's labour challenges, and the consequent tensions with ILO, appear independent of any regime change in the country. Chronic warfare, insecurity and illegality have greater rife conditions in the country for the exploitation of the weak and vulnerable. The most vulnerable members of the society, including the poor, women, and children, are often exploited in various forms ranging from human trafficking to modern slavery to sexual exploitation. Successive governments, due to the weakness of state institutions and the reliance on subnational actors, have often turned a blind eye to the suffering of this strata when not partaking in the exploitation.

For most of the past two decades, however, the ILO, cognizant of the fact that many of the labour challenges of Afghanistan required a more comprehensive approach, focussed on building state institutions' capacity and tackling the underlying challenges, rather than holding the government to account for widespread violations. Its in-country programmes primarily focussed on the formulation of regulations and job creation to undercut the underlying factors contributing to the prevalent exploitation.

With the return of the Taliban, the ILO is once again at a crossroads. It must choose whether to continue with the accommodating approach of the past two decades or return to the confrontational stance of the 1990s.

On the one hand, the Taliban's desire to normalise relations with international states and institutions, particularly when this detente does not require difficult ideological or political compromises, offers an opportunity for the ILO to influence the new authorities' stance on issues pertaining to labour norms. Already, the Taliban have displayed capacity and willingness to make some compromises on issues where their ideological inclinations do not clash significantly with such norms. On some of the issues such as the freedom of association, equal remuneration, forced labour and child labour, there is a significant convergence between the Taliban's views and international labour norms. For the Taliban, alignment of their policies on these issues offers an opportunity to signal a willingness to be a responsible actor in the international political order. For the ILO, these provide an opportunity to test the new political realities in the country and trial methods to nudge positive behaviour.

On the other hand, the Taliban's views on women in the workforce and discrimination-based gender remain significantly distant from what could be considered acceptable norms.⁵² Given the Taliban's strong ideological beliefs on the social roles of women in Afghanistan's context, progress on these issues is likely to be difficult, gradual and piecemeal.

At the same time, attempts to ostracise the new government is not likely to elicit a positive response and may risk unravelling much of the work the ILO has done over the past two decades. The ILO, like many other international states and organisations, is caught between a choice to accommodate the Taliban that factors the new authorities' idiosyncrasies or attempt to isolate, undermine or ostracise this new setup with little prospect of a near-term change in Afghanistan's labour woes.

⁵² See for example, Borhan Osman and Anand Gopal "Taliban views on a Future State", Centre on International Cooperation, July 2016, at 53.

About the report

Drawing on interviews mainly with local Taliban and civilians living in Taliban-controlled areas, this report looks at Taliban views and practices in relation to key labour norms, specifically considering Afghanistan's obligations under international labour laws. Although fieldwork was carried out just before the Taliban's takeover of the country, its findings have acquired special significance as the group has become the country's de facto authority.

About the authors

Ibraheem Bahiss is an independent analyst and consultant on Afghanistan. He assesses peace and conflict developments in Afghanistan through open-source research, interviews, trend analysis, and program documentation. His reporting synthesises field-based insights with qualitative analysis. He holds bachelor's degrees in law and political science along with a master's degree in law from the University of Waikato. Ibraheem's work has been published by various international media and research organisations.

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Responsible

Dr. Magdalena Kirchner
Country Director FES Afghanistan

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About the cover photo

Children transporting firewood. Kamaluddin Behzad town, Area 13, Herat, Afghanistan, 22/10/2019. FES/Jamshid Ismail

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