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Right to education in Afghanistan and the impact of the media

El derecho a la educación en Afganistán y el impacto de los medios de comunicación

Abstract:

Over the years scholars have researched how societies in conflict develop educational practices and examined the part education plays in creating or sustaining conflict. Afghanistan, due to its changing regimes and general uncertainty, is among the countries with the lowest rates of enrolment in modern education and of adult literacy. Given the 2021 developments, this article will focus on the legal obligations regarding the access to education, the history of the situation, the possible impact of current events, the positive role media can have when it comes to providing information to people living in conflict and the tangible impact the media has on the enrolment percentages.

Keywords:

Afghanistan; gender equality; media; right to education; Taliban; women's rights

Resumen:

Por años, académicos han investigado cómo las sociedades en conflicto desarrollan sus prácticas educativas y han examinado el papel que desempeña la educación en la creación o el mantenimiento de los conflictos. Afganistán, debido a sus regímenes cambiantes y a la incertidumbre general, se encuentra entre los países con las tasas más bajas de matriculación en la educación moderna y de alfabetización de adultos. Dada la evolución en el año 2021, este artículo se centra en las obligaciones legales relativas al acceso a la educación, la historia de los hechos, el posible impacto de los acontecimientos actuales, el papel positivo que pueden tener los medios de comunicación a la hora de proporcionar información a las personas que viven en conflicto, y el impacto tangible que tienen los medios de comunicación en los porcentajes de matrícula.

Palabras clave:

Afganistán; derecho a la educación; derechos de la mujer; igualdad de género; medios de comunicación; Talibán

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Summary. 1. Introduction. 2. Summary of the situation. 3. Scope of the relevant provisions. 4. Government's duties. 5. Analysis of the situation in the field. 6. Role of the Media. 7. Conclusion.

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1. Introduction

The situation of armed conflict in the Islamic Republic of Afghanistan (Afghanistan) has been ongoing since 1978. The case escalated when the armed uprising, instigated by various groups including the Taliban, transformed into guerrilla-type combat against the Government and its supporters, in an attempt to gain control. The groups allegedly, amongst others, executed a significant number of attacks against protected objects, including schools, mosques and hospitals. Consistent with Taliban's doctrine, women have been attacked and threatened via the means of "intimidation, death threats, abductions and killings". Resulting in women and girls not attending school or work due to the "climate of fear". On the other side, according to the International Criminal Court's (ICC) findings, the Taliban is believed to have conscripted or enlisted children under 15 and made them take part in the hostilities. (Situation in the Islamic Republic of Afghanistan (Public redacted version of "Request for authorisation of an investigation pursuant to article 15", 20 November 2017, ICC-02/17-7-Conf-Exp), 2017, pp. 7-60)

Given the recent events, the fall of Kabul on the 15th of August 2021, the writer wanted to take this opportunity to use this platform for advocacy for the conservation of women's and children's rights (Internacional Criminal Court, 2017; Bowcott, 2020). This piece will focus on the right to education, which is recognised by the Afghan Constitution and various international legal instruments, and the complications brought on by the existence of an armed conflict. To illustrate the magnitude of this issue, in 2019 around 3-5 million Afghan children were out of school (85% of whom are girls). This figure becomes more important when we notice that only 37% of girls is literate, compared to 66% of their counterparts (Human Rights Watch, 2019). It is abundantly clear that education has extensive influence on minors' development and their ability to exercise their freedoms, to develop skills, overcome discrimination and more broadly to live fulfilling lives (Human Rights Watch, 2009).

2. Summary of the situation

The armed conflict stems from the 1978 coup d'état, which put the People's Democratic Party of Afghanistan (PDPA) in power. The PDPA ruling led to "a massive repression, sparking local revolts and mutinies within the army". This, in conjunction with the disputes and coups inside the factions, caused the Union of Soviet Socialist Republics (USSR) to invade Afghanistan in 1979. Which in time gave a rise to the mujahideen, a "nationwide resistance movement among both tribal and urban groups". The mujahideen received aid, mainly weapons, from, among others, the United States (US). The USSR withdrew in 1988. However, both the US and the USSR carried on providing, military and economic help to their clientele. The Government was dependent on the militia groups, in return supplying them with USSR provided money and weaponry. When the USSR backed Government collapsed, in 1992, a four year long civil war between the rival mujahideen groups broke out. The groups executed various attacks and used excessive force, which resulted in the deaths of thousands of civilians and left vast parts of the capital in ruins ("Request for authorisation of an investigation pursuant to article 15", 2017). This chaos enabled the rise of the Taliban. (2017, pp. 10-11)

In regard to education, the PDPA led Government put pressure on an increase of the school enrolment numbers and introduced an adult study program. Those plans faced a considerable amount of criticism and educational institutions were deliberately targeted, by the mujahideen. The rural areas took the hardest beating. Many teachers got attacked or killed and the schools were ruined. The attacks against the sector persisted during the civil war. Later on, the schools became one of Taliban's main targets (Glad, 2009, p. 7). Taliban's oppression comprised of: "edicts restricting movement, the denial of the right to work, beatings and other physical abuse, arbitrary detention and a near ban on post-pubescent girls' education". The influence of these differed across the regions and the execution was inconsistent and unforeseeable (Human Rights Watch, 2010, p. 16).

The parents kept their children out of school due to fear, spread by means of "public announcements and night letters". Furthermore, the Taliban set school buildings ablaze or destroyed them using "IEDs, rockets and grenades". (2017, p. 61)

In 2003 the Asian Development Bank estimated that 80% of all school buildings had been damaged or were in ruins (Glad, 2009). Girls' schools were targeted disproportionately often ("Request for authorisation of an investigation pursuant to article 15", 2017). The United Nations research showed that during that period only 3% of girls received any form of primary education (Human Rights Watch, 2010). At the same time, there is reason to believe that the Taliban recruited and trained children under 15. According to the Human Rights Watch (HRW), boys starting at the age of six were recruited and taught religious subjects for as long as seven years (Human Rights Watch, 2016).

These children have allegedly been used to commit suicide attacks or carry munitions. This cycle continued until well after Taliban's "fall" in 2001 (between 2010 and 2014 the recruitment and use of 401 children was reported) (Situation in the Islamic Republic of Afghanistan (Public redacted version of "Request for authorisation of an investigation pursuant to article 15", 20 November 2017, ICC-02/17-7-Conf-Exp), 2017, pp. 74-65)

The general situation did not improve much directly after 2001 either. Over a thousand various attacks were reported (amongst them: grenades, night letters or verbal threats and murder of students and personnel) between January 2006 and December 2008 (Glad, 2009). However, in spite of the dangers, some home schools for girls were established, with the help of different UN organisations and NGO's working in the country (Glad, 2009). In 2002, around one million children were enrolled in formal education, and by the 2008-2009 academic year, this number exceeded six million (Glad, 2009).

From 2010 to 2021, the Taliban appeared to have mostly halted its attacks, they however continued to impose their (educational) policies via the means of threats and violence. In practice they still controlled the "school curricula, textbooks, hiring of teachers, and set other conditions such as bans on mixed education and on girls' secondary education" (2017, p. 73). Within their curricula the Taliban focused almost solely on religious studies and the children are usually not taught English (Giustozzi & Franco, 2020).

As of summer of 2021, after the announcement by US President Biden of the complete withdrawal of American troops from Afghanistan by 31 August 2021, the Taliban troops advanced across the country leading to the fall of capital Kabul on the 15th of August (Mohammad et al., Standing with Afghanistan: Women's Rights and the Role of International Law, 2021). Officially, the Taliban leaders have announced that they want to grant women rights "according to Islam". This however has been met with great skepticism, including by women leaders in Afghanistan. These worries have sadly become reality, seeing as this July the United Nations reported the number of women and girls killed and injured in the first six months of the year nearly doubled compared to the same period the year before (Mohammad & Sapiano, 2021). The Taliban in time also reimposed discriminatory restrictions on women, including the rule stating that women should not leave their homes without an accompanying male relative and have also requested households to marry off one of their daughters to the Taliban fighters. Girls have been banned from school and their freedom of movement has been severely restricted. This has resulted in fears over the re-introduction of the burqa and further discriminatory treatment of women (Mohammad et al., 2021). Some women have even had to destroy evidence of their education and life outside the home (Mohammad & Sapiano, 2021).

3. Scope of the relevant provisions

Nationally, article 43 of the 2004 Afghanistan's Constitution establishes that education "is the right of all citizens which shall be provided up to the level of the B.A. free of charge by the State". The administration must, as codified in articles 43 and 17, "devise and implement effective programs for a balanced expansion of education all over Afghanistan, provide compulsory intermediate level education" and "adopt necessary measures for promotion of education at all levels" (Human Rights Watch, 2016, p. 112)

However, when previously mentioned attacks happen, as part of armed conflict, the rules of International Humanitarian Law (IHL) apply simultaneously (Henckaerts & Doswald-Beck, 2005). IHL is the section of international law that deals with and regulates the conduct of hostilities (Melzer & Kuster, 2016).

IHL governs the military actions of the combatants and balances it against the principle of humanity and humane treatment. This area is made up of two paths: the law of The Hague (the law of war) and the law of Geneva (the humanitarian law) (Pictet, 1975). This piece only focuses on the second part.

To understand the applicability of this domain of law, we first must unravel the meaning of the armed conflict term. IHL distinguishes between two types of armed conflicts, namely: the international armed conflicts (between two or more States) and non-international armed conflicts (International Committee of the Red Cross (ICRC), 2008). Non-international armed conflicts, such as this situation, are defined, by the International Criminal Tribunal for the former Yugoslavia in the Tadic case, as follows: "protracted armed confrontations occurring between Governmental armed forces

and the forces of one or more-armed groups, or between such groups arising on the territory of a State (party to the Geneva Conventions).

The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation" (Prosecutor v. Dusko Tadic aka "Dule" (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction), 1995, pp. 561-568).

The universally ratified Geneva Conventions, lay down the groundwork in regard to International Law for humanitarian treatment during armed conflict (International Committee of the Red Cross (ICRC), 2009). In this case, it is art. 3 of the Geneva Conventions which is relevant as it encompasses "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties". This definition includes "armed conflicts in which one or more non-Governmental armed groups are involved" (International Committee of the Red Cross (ICRC), 1949, p. art.3). Which is the part the Afghanistan situation falls under (Office of the Prosecutor, 2017). In short, this article, in conjunction with art. 11 (which prohibits any form of derogation), strictly forbids attacks on civilians or civilian objects. Schools qualify as civilian objects, as long as they are not occupied and utilised by the enemy's armed forces. Students, teachers, and so forth are protected given their civilian status, unless they are "directly taking part in the hostilities" (Muzima, 2018). It is the Government's duty to then sufficiently grant that protection.

4. Government's duties

The committed acts can also be seen as human rights violations, which infringe on the people's right to education. Human Rights Law (IHRL) and IHL law have the same purpose namely protecting persons (Hyll-Larsen, 2010). During armed conflicts, the above explained IHL applies and is viewed as *lex specialis* (Anderson et al., 2011). Nevertheless, IHRL is continuously applicable, keeping in mind that some civil and political rights can be suspended or suppressed (derogated from) in case of "public emergency threatening the life of the nation, such as an armed conflict".

Besides what has been mentioned above, the Declaration of the Rights of the Child states that children due to their "physical and mental immaturity, need special safeguards and care, including appropriate legal protection" (Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19 (entered into force 20 November 1959), 1959). The Universal Declaration of Human Rights takes a similar approach: "motherhood and childhood are entitled to special care and assistance" (The United Nations General Assembly, Draft Committee, 1948). Pointing out that children are one of the most vulnerable parts of the population and have been given extra insurances under domestic and international law, especially during situations of armed conflict (International Committee of the Red Cross, 2020). More concretely, the Convention on the Rights of the Child (CRC) obligates the States to: "take all feasible measures to ensure protection and care of children who are affected by an armed conflict" (UN General Assembly, 1989, p. art. 38). One of the fundamental guarantees codified in Protocol II is that the children will obtain the required care and aid, especially:

“that they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence, of those responsible for their care” (UN General Assembly, 2000, p. art. 4(3)).

Concerning the use of child soldiers, article 38 of CRC, requires the States to: “respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts, take all feasible measures to ensure that under-15-year-olds do not take a direct part in hostilities, refrain from recruiting them into armed forces and give priority to the oldest when recruiting 15- to 18-year-olds” (UNESCO, 2007). Protocol II follows the same pattern. (UN General Assembly, 2000, p. art.1)

In addition to the above, the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention on the Elimination of Discrimination against Women (CEDAW) establish the existence of similar duties, all of which have been ratified by Afghanistan (UN General Assembly, 1966; UN General Assembly, 1989).

However, the right to education is classified as a progressive right. By means of the ratification of the international agreements the State agrees to: “take steps . . . to the maximum of its available resources to the full realisation of the right to education” (UN General Assembly, 1966, p. art.2(1)) The law does not specify what level of education has to be put forward, except the following: “primary education must be compulsory and available free to all and secondary education must be available and accessible to every child”. (Convention on the Rights of the Child, 1990, art. 28)

The prohibition of discrimination, on the other hand, has a different legal standing. The Committee on Economic, Social and Cultural Rights, the body which interprets the provisions of the ICESCR, has stated that: “the prohibition against discrimination enshrined in art. 2(2) of the ICESCR is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination”.

The Government is obligated to provide education “on the basis of equal opportunity and without discrimination of any kind irrespective of the child’s race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status”. (Convention on the Rights of the Child, 1990, arts. 28(1), 2(1)) Meaning that, even though the applicable law allows the continuation of, for example, the existence of separate educational systems or institutions for the various genders, these have to “offer equivalent access to education, provide teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study” (General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013).

Regarding the possibility of derogation, the Committee on the Rights of the Child stressed that States should “take measures to secure the rights of all children within their jurisdiction in times of armed conflict” and that “the principles of the Convention are not subject to derogation in times of armed conflict” (UN Committee on the Rights of the Child, 28 September - 9 October 1992).

Article 4 of ICESCR states that Governments can only make use of the derogation provisions if such is “determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”. (Government of Australia, 2020) The UN Committee established that these limitations have to be: “proportional and must be the least restrictive alternative where several types of limitations are available, and that even where such limitations are permitted, they should be of limited duration and subject to review”. Additionally, acts which are retrogressive to the fulfilment of the human rights have to be adequately justified (Australian Government Attorney-General’s Department). In general recommendation 73(c), the CEDAW Committee established that States should: “ensure that new constitutions provide for temporary special measures, apply to citizens and non-citizens, and guarantee that women’s human rights are not subject to derogation in states of emergency” (General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013).

5. Analysis of the situation in the field

As a result of the conflict, a vast number of children live too far from a school to be able to participate, which impacts girls particularly (Human Rights Watch, 2019). Before 2021, community-based education has granted access to education to many of these girls, however this was never meant to be a long-term solution. Additionally, even though the government schools are tuition- free, the families still face various costs. For example, they are still expected to buy the supplies and often must purchase textbooks (HRW, 2017, p. 20). These costs are generally enough for the children to be kept at home, seeing as around 25% of Afghan children has to work, for their household, to sustain through impoverishment. Girls “weave, embroider, beg, or pick garbage rather than study”. (HRW, 2019, p. 4) Moreover, parents frequently prefer to grant the access to education to the sons, “girls’ education is seen as wholly undesirable or acceptable only for a few years before puberty” (recognising that in Afghanistan 30% of girls gets married under 18, which indisputably leads to discontinuation of their education) (Blum et al., 2019).

Even if they overcome these first hurdles, the absence of infrastructure, materials and monitoring frequently results in the children “studying in a tent with no textbook for only three hours a day” (Blum et al., 2019). Around 41% of government schools does not have actual buildings, even when they do, they are overpopulated most of the time (Human Rights Watch, 2019). In addition, the existing buildings are often “damaged, decrepit and lacking furniture and supplies”. One- third of the schools lacks non- toxic tap water and over half does not have toilets. Lastly, as of before 2021, overcrowding, as a consequence of the prescribed gender segregation, lead to schools having to split the days into two or three parts, creating an insufficient amount of time to correctly cover the curriculum.

On the other side, teaching is no longer viewed as a preferable profession and adults with an insufficient level of education and training are recruited for the positions (HRW, 2017, p. 21). Furthermore, there is a general shortage of professionals (Centner, 2012). The lack of accountability

results in situations where the teachers are often not present and usually do not get replaced. This combined with the deficit of, especially female teachers prepared to be stationed in the rural regions has undercut the success of the undertaken efforts.

Moreover, the teachers face many obstacles such as: “short school shifts, gaps in staffing, low salaries (often under US\$100 a month) and the impact of poor infrastructure” (HRW, 2017, p. 22). Additionally, the present corruption, in its various forms, undermines the sector notably (Centner, 2012).

The previously explained legal framework requires the Government to ensure that all children are able to receive sufficient education. It obligates the States to abstain from hampering the exercise of the right to education, such as the refusal of access to certain individuals or groups. They are also required to take preventative measures to ensure that third parties do not undermine the application of the right education, for instance sheltering primary schools from attacks.

Violations can take place through either acts of commission (when the Government actively interferes or permits others to interfere with the exercise of the right) or omission (when the Government does not undertake any action to actualize the right, even when it has the essential resources). Three main ways in which a State can violate its duty are: (legislative) retrogression, discrimination and failure to take measures to provide accessible education (Anderson, Hofmann and Hyll-Larsen, 2011, pp. 111-112).

As of 2019/2020, Afghanistan spent around 13% of its public expenditure and 4% of its GDP on education, which is less than prescribed by UNESCO (Human Rights Watch, 2019). The reality, as illustrated above, is that to this day a significant number of minors still does not receive basic education and even if they do it often does not surpass class nine. There is no effective way of locating out-of-school children and (re)enrolling them. The families who choose to keep their children at home do not face any consequences (HRW, 2017, p. 41). The ongoing attacks and the lack of resources create real obstacles (Human Rights Watch, 2019, p.6; Beaumont, 2019). Furthermore, given the present gender norms, attempts to encourage parents to educate their daughters could be seen as controversial and result in violence (Sudduth, 2009, p. 584). The situation after the summer of 2021 remains highly uncertain, however it is clear that women and girls will be highly disadvantaged.

6. Role of the Media

This century (social) media plays a significant role with regards to the spread of the information about people's rights and the situation on the ground when it comes to their violations. Furthermore, the documentation of current affairs is all the more important in the pursuit of justice, as an educational tool as well as possible evidence. Film is also commonly being used for advocacy, fundraising, illustrating the plight of the people, in real time allowing for significant impact. Protests such as the one organized by Afghan women in Kabul against Taliban rule, the regime's new curbs on their rights and Pakistan's influence on the country are now being broadcasted visually (live) all over

the globe. Cell Phones are now being used as cameras, replacing the more rigid camera teams, which allows for flexibility and to capture and post the ongoing events immediately. Images taken at the airport during the evacuation will stay in the minds of people for at least a generation, the quality of the footage being insignificant. Phones have become the witness of the day, allowing for messages such as “We want equal rights, we want women in government,” and “Why is the world watching us silently and cruelly?” are being seen directly by key players (Bloch, 2021).

It is vital for the younger generation to see messages like the ones mentioned above and to understand the importance of what they stand for. This shift in thinking is enabled by various platforms, the media being the most convenient and accessible one. Alongside the previously mentioned more broad messages, the importance of education, especially for girls has been explicitly expressed in various (news) reports, which have been watched by an extensive part of the population. Even though the following is extremely hard to measure, it has at least planted a seed in the citizens/ parents’ minds, which will hopefully lead to them following through and putting emphasis on their children receiving education.

7. Conclusion

The law is clear, every child deserves to receive an education, no matter the conditions prevailing in their country of residence (Azhar, 2012). Additionally, education in situations of armed conflict is especially important, given that these children are the most vulnerable to various types of exploitation (Richards, 2011). Despite the allocation of humanitarian aid “poor security in many parts of the country, lack of infrastructure and inadequate numbers of trained personnel” severely restrict the ability to realise a substantive upswing, these issues will only become more pressing as the situation develops over the next couple of months of 2021 (Human Rights Watch, 2004). The visual media plays a vital role in keeping an eye on the situation allowing politicians and civil society to put pressure on the Taliban, and to amplify the voices of the girls and women in the country encouraging the various aid organisations to continue to take action to help the most affected and endangered (Azhar, 2012). In doing so, even though it is extremely difficult to extract the exact numbers from the field at the moment, raising awareness about the importance of keeping the schools accessible, especially for girls.

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