

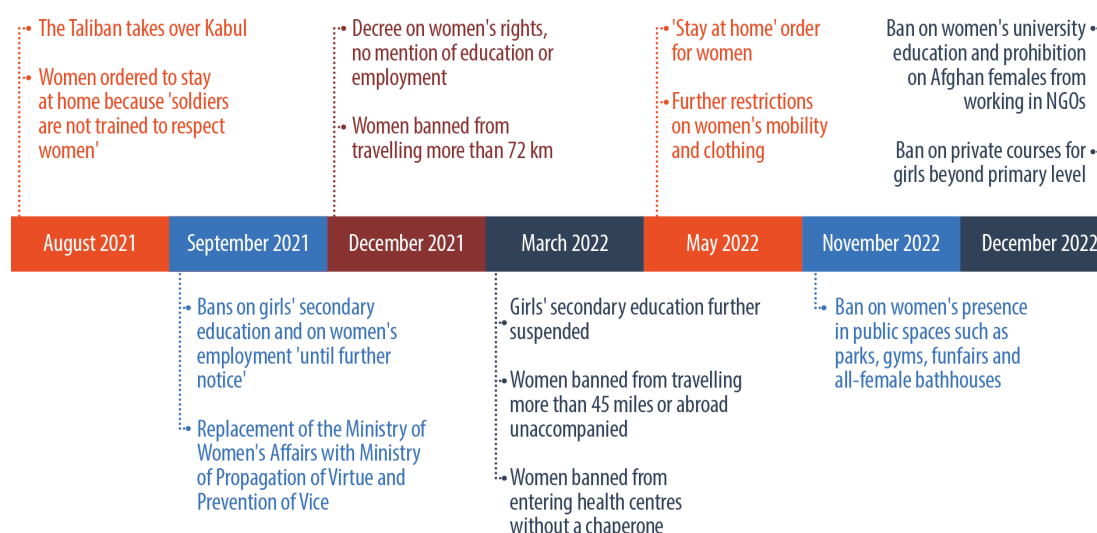
## Refugee status for all female Afghan asylum-seekers

Since December 2022, some EU countries have been granting refugee status to all female Afghan asylum-seekers, solely on grounds of gender. This decision is based on the worsening situation in Afghanistan, in particular for women and girls, with the level of discrimination deemed sufficiently serious to amount to persecution of a social group, as defined in the 1951 Refugee Convention, and fulfilling the requirements for granting refugee status.

### Context

Following the withdrawal of international forces from Afghanistan in July 2021 and the collapse of the Afghan government, the Taliban returned to power. Policies enforced by the Taliban are having a severely detrimental [impact on women's and girls' rights](#). In July 2022, the United Nations (UN) Assistance Mission in Afghanistan [published](#) a report on the human rights situation in the country. It described a progressive undermining of women's education and employment rights, and the impossibility for them to participate fully in public and social life. Examples of the restrictions placed on women and girls are given in Figure 1.

Figure 1 – Timeline of main restrictions on women's rights under the Taliban (2021–2022)



Source: [Women's rights in Afghanistan: An ongoing battle](#), EPRS, April 2023.

According to [Human Rights Watch](#), Afghanistan is in a deep humanitarian and financial crisis, with rampant malnutrition and food shortages. Women and girls have been disproportionately affected: excluded from the majority of jobs, they face restricted access to food and basic necessities.

### Afghans asylum-seekers in the EU

[Asylum applications lodged](#) in the EU+ countries (EU Member States plus Norway and Switzerland) by Afghan nationals peaked at 18 200 in September 2021. Afghans constituted the largest group of asylum applicants in EU+ countries in 2022, with between 8 000 and 9 100 applications submitted per month.

In August 2021, the United Nations High Commissioner for Refugees (UNHCR) issued a [non-return advisory](#) for Afghanistan, calling for the suspension of return procedures for Afghan nationals even when asylum applications had been rejected.

In December 2021, the European Union Asylum Agency (EUAA) [reported](#) that several EU+ countries, namely Germany, Finland, the Netherlands, Norway, Sweden and Switzerland, had suspended return proceedings for Afghan asylum-seekers whose applications had not been successful. In November 2021, recognition



rates for Afghan asylum-seekers were as high as [92%](#). However, according to the EUAA 2022 [asylum report](#) there were significant differences in recognition rates for Afghan applicants among the EU Member States, ranging from 11% in Bulgaria to 99% in Poland and Spain.

## Legal framework

### United Nations 1951 Convention relating to the Status of Refugees (Refugee Convention)

A refugee is defined in Article 1A(2) of the UN 1951 Convention as a person who 'owing to well-founded fear of being **persecuted** for reasons of race, religion, nationality, **membership of a particular social group** or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

To be recognised as a refugee, a person must show well-founded fear of persecution for one of the reasons stated in the Refugee Convention: race, religion, nationality, or membership of a particular social group or political opinion. While gender is not among these categories, it is [accepted](#) that women and girls may be considered a social group for the purposes of meeting the legal definition of refugee as per Article 1A(2), as they are often subject to differentiated treatment.

There is no globally accepted legal definition of persecution, but the [UNCHR handbook](#) considers 'serious violations of human rights' to constitute persecution for the purposes of determining refugee status.

Afghan women's and girls' rights, like those of all women and girls, are protected under international human rights declarations and treaties such as the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#), the [European Convention on Human Rights](#), the [Convention on the Rights of the Child](#) and the [Convention on the Elimination of All Forms of Discrimination Against Women](#).

### EU law for determining refugee status – the Qualification Directive

Under Article 9 of the [EU Qualification Directive](#), for an act to qualify as persecution, it must be either 'sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights' or 'an accumulation of various measures, including violations of human rights, that is sufficiently severe as to affect an individual'.

### Legal interpretations

Some academics [have concluded](#) that the accretion of breaches of fundamental rights of Afghan women and girls since December 2022 is so serious that they are at risk of persecution collectively. In their '[Country Guidance: Afghanistan](#)', the EUAA concluded that for women and girls in Afghanistan, 'well-founded fear of persecution would in general be substantiated'. This position is based upon Taliban policy and their interpretation of sharia – Islamic religious – law, suppressing women's and girls' access to healthcare, education and work, as well as their freedom of movement and expression. In addition, there is no internal protection alternative within Afghanistan if the applicant were to relocate, considering the humanitarian crisis and safety issues.

## Countries recognising all Afghan women and girls as refugees

### Sweden

On 6 December 2022, the Swedish Migration Agency [recognised](#) that the degradation of Afghan women's and girls' rights qualifies as persecution on the basis of gender and, thus, they would be granted refugee status and a resident permit. The [new legal position](#) adopted would permit the review of older applications.

### Finland

In December 2022, the Finnish Immigration Service [updated](#) their guidelines to grant refugee status to all female applicants from Afghanistan.

### Denmark

In February 2023, Denmark's Refugee Appeals Board [announced](#) that asylum would be granted to all women and girls from Afghanistan based solely on their gender. Moreover, all applications from female Afghan nationals that had been rejected between August 2021 and February 2023 would be reopened.