

GENDER APARTHEID INQUIRY

SHATTERING WOMEN'S RIGHTS, SHATTERING LIVES

**Parliamentary Ad-Hoc Inquiry Into The
Situation Of Women And Girls In
Afghanistan And Iran**



MARCH 2024

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Femmes en Afghanistan

Photo credit: Laurence Brun/Gamma-Rapho (via Getty Images)

The cover is an artistic portrayal of the current situation of women and girls in Afghanistan - based on the photograph 'Femmes en Afghanistan' from 1972 taken by Laurence Brun of young students walking down the streets of Kabul.

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If you are a girl in Afghanistan, the Taliban has decided your future for you. You cannot attend secondary school or university. You cannot find open libraries where you can read. You see your mothers confined, unable to work, go to the park, get a haircut, or even see a doctor. (...)

If we, as a global community, fail to stand in opposition to gender apartheid in Afghanistan, we send a devastating message to girls and women everywhere: That you are less than human. That your basic rights are up for debate. That we are willing to look away.

Malala Yousafzai, human rights advocate and Nobel Peace Prize laureate

Executive Summary

Gender apartheid is not a crime currently recognised under international law. In both the Apartheid Convention and the Rome Statute, international law defines apartheid with reference to racial oppression and no reference is made to gender. In the Rome Statute, apartheid is defined as ‘inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.’¹ The reader only has to change the words relating to race and replace them with the word ‘gender’ and we are immediately defining what is taking place currently in Afghanistan. Or indeed in Iran, although the mistreatment of women there is more complex and nuanced.

Apartheid is the denial to part of the community of full participation in their society. No freedom of speech; no freedom of association; in Afghanistan, no right to education; no participation in the legal system or decision-making processes; no access to power. In Iran, women do have access to education, though some courses are exclusive to men, but certainly cannot hold positions of authority. In both countries, there are clear strictures as to clothing and the covering of hair.

The Rome Statute provides for the crime of gender persecution, including in its list of crimes against humanity. ‘Persecution’ is defined as meaning ‘the intentional and severe deprivation of fundamental rights contrary to international law’ and ‘gender’ meaning ‘the two sexes, male and female, within the context of society.’² However, while it is important to criminalise gender persecution it is not an effective response to the institutionalised nature and scale of the situation faced by women and girls in some parts of the world. The situation of women and girls in Afghanistan and Iran has been seriously deteriorating in recent times, and as a result, there have been increasing calls for gender apartheid to be codified in international law. Indeed, the experience of women and girls in Afghanistan and Iran, although different in some respects, requires a more accurate representation in law, and it is for this reason that the crime of gender apartheid is advocated. The systematic and systemic nature of their oppression warrants the introduction of a unique crime, which would demand urgent state action to

¹ See: Article 7(2)(h) of the Rome Statute.

² See: Article 7(3) of the Rome Statute.

address the absence of rights for women and the denial of full participation as equal citizens in their societies.

This report, which is produced with the voices of women from Afghanistan and Iran, maps the situation of women and girls in these countries and engages with the debate on the codification of gender apartheid. At this stage, the report focuses on the situation of women and girls in these two countries, although the Inquiry recognised that women and girls in other countries may be subjected to similar practices. Recognising that any codification is a long-term project, the report further looks at what can be done right now to alleviate their suffering and reaffirm their human dignity and rights.

Recommendations for the UK Government

Awareness Raising and Education

- Recognise the scale and nature of the situation of women and girls in Afghanistan and Iran, including gender persecution, as per its legal definition, and gender apartheid, as per its working definition.
- Publicly condemn the treatment of women and girls in Afghanistan and Iran, including as amounting to gender persecution and gender apartheid, and call for accountability for their treatment.
- Engage on the recommendations of the joint report of the UN Special Rapporteur on the situation of human rights in Afghanistan and the UN Working Group, and also the UN Special Rapporteur on Iran, and other UN bodies.
- Support and accommodate inquiries with women and girls from Afghanistan and Iran, as far as reasonably safe, to give a platform to these women and girls to discuss their experiences and the effect on their lives.
- Amplify the stories and experiences of women in Afghanistan and Iran to have a better understanding of the lived reality of women and girls under gender apartheid laws and policies.

- Organise an international conference on the issue of gender apartheid, bringing together experts from South Africa, as well as, Afghan and Iranian advocates and experts to share their experiences and discuss best practices in responding to the issue of racial and gender apartheid.

Policy and Diplomatic Responses

- Make the situation of women and girls in Afghanistan and Iran a foreign policy priority.
- Use every opportunity to raise the issue of gender apartheid against women and girls in Afghanistan and Iran, including:
 - Making formal submissions at the UN before, among others:
 - The UN Human Rights Council;
 - The UN General Assembly;
 - The UN Security Council;
 - The Independent International Fact-Finding Mission on the Islamic Republic of Iran;
 - The Commission on the Status of Women;
 - The UN Special Rapporteur on Afghanistan;
 - The UN Special Rapporteur on Iran.
 - Impose targeted sanctions against all those responsible for the suppression of the rights of women and girls in Afghanistan and Iran, unilaterally, and/or jointly with other countries.

Legal Responses

- Formally support avenues to ensure that gender apartheid is codified and the language is adopted by States and international bodies, including in:
 - The Convention on Crimes Against Humanity;
 - The Rome Statute;

- Within domestic legislation.
- Engage international and domestic courts with available evidence, including:
 - The International Criminal Court (Afghanistan):
 - In the current investigations authorised to be undertaken by the ICC Prosecutor, engage and encourage the opportunity to investigate crimes committed by the Taliban as the crime of gender persecution.
 - Make submissions for the widening of the scope of the investigation to include the crime of genocide against the Hazara, and the specific gendered lens of these crimes which crossover with gender persecution.
 - Provide assistance to women's organisations collecting data on human rights violations against women and girls and guide them throughout the process (of Article 15 submissions).
 - The International Court of Justice (Afghanistan):
 - Explore the option of instituting proceedings for violations of CEDAW;
 - Explore the option of instituting proceedings for violations of the Genocide Convention, for the targeting of the Hazara by the Taliban, and within it, raise the issue of the specific targeting of women and girls;
 - Domestic courts - using the principle of universal jurisdiction, explore options of bringing proceedings for international crimes.
 - Amend the domestic criminal law to widen the scope of the International Criminal Court Act 2001 and the International Criminal Court Act (Scotland) 2001 to enable prosecutions for international crimes where the alleged perpetrator is not a UK national or resident.

Practical Assistance (incl. Humanitarian)

- Map the assistance available to women and girls in Afghanistan and Iran.
- Identify the areas of urgent need and the best ways to address them, including by:
 - Funding grassroots organisations providing practical assistance to women and girls in Afghanistan and Iran.
- Introduce visas for women and girls fleeing Afghanistan, as implemented by other countries.

Further to Explore

- Examine the use of torture against women in detention in Afghanistan and Iran;
- Examine how members of minority communities are being uniquely affected by gender apartheid, in particular, the Hazara women in Afghanistan and the Baha'i women in Iran, among others;
- Examine how technology is being used to target women and girls in countries such as Iran.

Table of Contents

I. Introduction	14
II. The Situation of Women and Girls in Afghanistan and Iran	20
1. The Definition of Apartheid and Gender Apartheid	22
2. The Situation in Afghanistan	25
2.1. Inhumane Acts in the Context of Systematic Oppression	29
2.1.1. Education	31
2.1.2. Employment	32
2.1.3. Movement	34
2.1.4. Expression, Assembly, Association	35
2.1.5. Access to Justice	36
2.1.6. Other Restrictions and Concerns	38
2.2. Institutionalised and Systematic Discrimination and Domination	39
2.3. The Impact of the Restrictions	41
3. The Situation in Iran	46
3.1. Inhumane Acts within the Context of Systematic Oppression	48
3.1.1. Education	48
3.1.2. Employment	49
3.1.3. Movement	50
3.1.4. Expression, Assembly, Association	51
3.1.5. Access to Justice	52
3.1.6. Other Restrictions and Concerns	53
3.2. Institutionalised and Systematic Discrimination and Domination	55
3.3. The Impact of the Restrictions	57
III. Another Tool for the Toolbox: Gender Apartheid	58
1. The Development of the Concept of Gender Apartheid	60
2. Gender Apartheid and Gender Persecution	65
3. Legal Responses	71
3.1. Avenues for Codifying Gender Apartheid	72
3.1.1. Additional Protocol to the Apartheid Convention	72
3.1.2. The Rome Statute Amendment	73

GENDER APARTHEID INQUIRY

3.1.3. Draft Convention on Crimes Against Humanity	74
3.1.4. CEDAW and General Recommendations	75
3.2. Other Legal Avenues to Address Gender Apartheid	78
3.2.1. Sanctioning the Perpetrators	80
3.2.2. Criminalising Gender Apartheid	81
3.2.3. Assistance for Women and Girls in Afghanistan and Iran	82
3.2.4. Engaging International Bodies	83
4. The Broader Issue	83
5. The UK Government's Position on Gender Apartheid	86
IV. Conclusions and Recommendations	91

I. INTRODUCTION

Recent years have seen several initiatives raising the issue of gender apartheid, as a response to the deteriorating situation of women in Afghanistan and Iran. Among others, several dozen Afghan and Iranian women launched a campaign ‘End Gender Apartheid Today’³ to shine a light on the situation of women and girls in both countries and engage the international community to work together to address it by way of codifying gender apartheid in international law. On 6 March 2023, Richard Bennett, United Nations Special Rapporteur on the situation of human rights in Afghanistan, presented his report on the situation in Afghanistan stating that the situation of human rights in the country continued to deteriorate since his last report in 2022 and indicated that **‘measures have been taken to erase women from all public spaces.’**⁴ In his report, Special Rapporteur Richard Bennett concluded that *‘the cumulative effect of the Taliban’s systematic discrimination against women raises concerns about the commission of international crimes.’*⁵ As he was presenting the report, he indicated that *‘the cumulative effect of the restrictions on women and girls (...) was tantamount to gender apartheid.’*⁶

In July 2023, in a joint report to the UN Human Rights Council, Special Rapporteur Richard Bennett and Dorothy Estrada-Tanck, Chair of the UN Working Group on discrimination against women and girls, indicated that the situation of women and girls in Afghanistan was the worst globally.⁷ As they found:

While the backlash against women’s and girls’ rights has unfolded in different countries and regions in recent years, **nowhere else in the world has there been an attack as widespread, systematic and all-encompassing on the rights of women and girls as in Afghanistan. Every aspect of their lives is being restricted under the guise of morality and through the instrumentalisation of religion.** The discriminatory and

³ See: <https://endgenderapartheid.today/>.

⁴ See: <https://www.ohchr.org/en/news/2023/03/human-rights-council-hears-human-rights-situation-eritrea-remains-dire-and-shows-no>.

⁵ Ibid.

⁶ Ibid.

⁷ See: <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>.

restrictive environment, the climate of fear and the lack of accountability for the wide range of violations documented by the experts in the present report make it impossible for women and girls to exercise their rights, restrains all persons and organisations from defending them, and emboldens further abuses. **The pattern of large-scale systematic violations of women's and girls' fundamental rights in Afghanistan, abetted by the Taliban's discriminatory and misogynistic policies and harsh enforcement methods, constitutes gender persecution and an institutionalised framework of gender apartheid.**⁸

The report further elaborated on the issue of gender apartheid stating that it could be understood as **'inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one gender group over any other gender group or groups and committed with the intention of maintaining that regime.'**⁹ This is also the working definition considered for the purposes of this Inquiry. The report explained that:

Gender apartheid framing emphasises that **exclusion of and discrimination against women and girls is institutionalised** and, as such, is a grave and systematic human rights violation that breaches the Charter of the United Nations, the principle of equality and non-discrimination and the fundamental spirit and norms of international human rights law.¹⁰

Similarly, the situation of women in Iran has been described by UN experts as gender apartheid. UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Professor Javaid Rehman, indicated in a report in August 2023 that **'Iranian women and girls are subjected to gender-based apartheid, targeting and discrimination... having been excluded from all platforms for democratic dialogue or reform.'**¹¹

As the Inquiry was finalising its report, in February 2024, experts from the UN Working Group on discrimination against women and girls, including Dorothy Estrada-Tanck (Chair), Claudia Flores, Ivana Krstić, Haina Lu, and Laura Nyirinkindi, issued a statement indicating that *'in Afghanistan, Taliban edicts, policies and practices constitute an institutionalised system of discrimination, oppression and domination of women and girls, amounting to gender*

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ See: UN, News, 'Iran must safeguard basic freedoms and protect human rights: UN expert. Available at: <https://www.ohchr.org/en/press-releases/2023/10/iran-must-safeguard-basic-freedoms-and-protect-human-rights-un-expert>.

apartheid.¹² They called for the inclusion of gender apartheid as a crime against humanity under Article 2 of the draft Convention on Crimes Against Humanity currently under consideration by the UN General Assembly's Sixth Committee.

The July 2023 report of Richard Bennett and Dorothy Estrada-Tanck recommended States mandate a report on gender apartheid as an institutionalised system of discrimination, segregation, humiliation and exclusion of women and girls, with a view to developing further normative standards and tools, galvanising international legal condemnation and action to end it and ensuring its non-repetition.¹³

This Inquiry report, while not mandated by States, aims to respond to the call from Richard Bennett and Dorothy Estrada-Tanck for further inquiry into the issue and identify recommendations for the UK Government. This Inquiry report is a means for UK Parliamentarians to engage and challenge the UK Government's silence on the issue and failure to respond to calls for codification of gender apartheid and to address the situation with proactive and comprehensive steps.

The Inquiry Team

The Parliamentary Panel engaged in the Inquiry consisted of Parliamentarians working on the situation of women and girls in Afghanistan and Iran and was chaired by Baroness Helena Kennedy of the Shaws KC. Parliamentarians involved in the Inquiry include:

The Baroness Kennedy of The Shaws KC (Lab), chair

The Baroness Hodgson of Abinger CBE (Con)

¹² See: <https://www.ohchr.org/en/press-releases/2024/02/gender-apartheid-must-be-recognised-crime-against-humanity-un-experts-say>.

¹³ In October 2023, the Human Rights Council adopted a resolution that, among other things, requests the UN Special Rapporteur Richard Bennett to prepare a report on the phenomenon of an institutionalised system of discrimination, segregation, disrespect for human dignity and exclusion of women and girls, building on the joint June 2023 report. See: UN HRC Resolution 54/1. Available at: <https://documents.un.org/doc/undoc/gen/g23/212/43/pdf/g2321243.pdf?token=Vv7RogFKCtZ8vyDie2&fe=true>.

'23. Requests the Special Rapporteur, with the support of other relevant special procedure mandate holders and treaty bodies and with temporary, specific and relevant expertise to be provided by the Office of the High Commissioner, to prepare a report on the phenomenon of an institutionalised system of discrimination, segregation, disrespect for human dignity and exclusion of women and girls, building on the report submitted to the Human Rights Council at its fifty-third session,⁴ and to present it to the Council at its fifty-sixth session, to be followed by an enhanced interactive dialogue.'

Joanna Cherry KC MP (SNP)

Rt Hon Caroline Nokes MP (Con)

Several other Parliamentarians have participated in oral hearings, engaged the UK Government, and/or also expressed their support to the Inquiry, and they will be involved with the next stages of engaging with the findings and recommendations of the report.

Inquiry Secretariat

The Inquiry is convened by the International Bar Association's Human Rights Institute (IBAHRI), including the IBAHRI senior programme lawyer Dr Ewelina Ochab, who is acting as the Inquiry lead and the principal author of the report. Further assistance is provided by IBAHRI programme lawyer Emily Foale, IBAHRI programme coordinator Aine MacDonald, and IBAHRI interns: Beyza Yanikoğlu and Francesca Ceravolo.

The Inquiry has benefited from the expertise of international experts working on the issue of apartheid and gender apartheid, including through their participation in a mapping session, and further advice. The experts include: Justice Richard Goldstone, Professor Rangita de Silva de Alwis, Professor Patricia Andrews, Professor Karima Bennouna, Professor Ann E. Mayer, and Gissou Nia.

Aims of the Inquiry

The aims of the Inquiry were to:

- i. Consider the situation of women and girls in Afghanistan and Iran;
- ii. Assess the scale and nature of the situation and analyse it against the existing legal definitions of crimes;
- iii. Explore the concept of gender apartheid and how it fits within the existing legal crimes, what are the shortfalls and how they could be addressed;
- iv. Assess how the situation of women and girls in Afghanistan and Iran fits into the concept of gender apartheid;

- v. Identify justice and accountability avenues for legal recourse and engage them with the evidence gathered and outline international responsibility thereof.

Objective

The main objective of this Inquiry was to consider the situation of women and girls in Afghanistan and Iran and identify practical and meaningful steps that can be taken to address it, as a matter of urgent international concern, including within the context of gender apartheid.

Methodology and Timetable

The Inquiry proceeded in five stages.

First, it undertook a short scoping exercise, identifying the evidence in relation to the situation of women and girls in Afghanistan and Iran (and any gaps in the evidence), and a session with a group of experts in the field, to discuss the issue of gender apartheid.

Second, it conducted an open call for submissions relating to evidence, facts on the ground and the application of relevant law. The Inquiry received several submissions from individuals and civil society organisations. Some of the information was submitted anonymously due to the fear of repercussions. The open call for submissions was widely advertised, including on social media.

Third, it organised oral hearings with experts and witnesses. The Inquiry Panel has heard from over 30 witnesses - including lived experience witnesses from Afghanistan and Iran, international law experts and journalists. The oral hearings were used to explore further the situation of women and girls in these countries but also the proposals to codify gender apartheid as a crime in international law.

Fourth, the Inquiry published a report on its findings and recommendations.

Fifth, the Inquiry will engage domestic and international bodies with the findings and recommendations upon completion of the Inquiry.

Acknowledgements

The Inquiry Team would like to thank all the brave women of Afghanistan and Iran, and beyond, who contributed to the Inquiry, among others Fawzia Koofi, Maryam Ahmadi (pseudonym), Tamana Zaryab Paryani, Metra Mehran, Naheed Farid, Rana Rahimpour, Shadi Sadr, Azam Jangravi, and others.

The Inquiry is also grateful to many Afghan and Iranian women, who are not named here, due to security concerns, however, their contribution was invaluable and inspired the Inquiry members to do more.

The Inquiry Team would also like to thank all those who reviewed and commented on the draft report, including Justice Richard Goldstone, Fereshta Abbasi, Gissou Nia, Professor Rangita de Silva de Alwis, Professor Karima Bennoune, Laila Alikarami, and Professor Javaid Rehman.

II. THE SITUATION OF WOMEN AND GIRLS IN AFGHANISTAN AND IRAN

The situation of women and girls in Afghanistan and Iran has been on a downward spiral for a long time, however, certain events in these countries exacerbated this trend. The issue is explained in this section.

The situation of women and girls in those countries must be also read within the context of the general situation, including the deteriorating situation of human rights more broadly, as brought about by extremist ideologies. As indicated by Farhat Easar, an Afghan human rights defender and activist, in her written submission:

Women's oppression in Afghanistan and Iran is a reflection of the greater issue of the normalisation of oppression and the erosion of women's human rights in both nations. Radical Islamist doctrines have significantly contributed to the violation of women's rights, especially their access to work, education, autonomy, and bodily control. Throughout the histories of Afghanistan and Iran there have been moments of growth and freedom for women, but the advent of extremism has frequently undermined these advances. Short-term economic and political objectives are given precedence by the repressive regimes in power over long-term universal principles and human rights, especially women's rights. Due to cultural and ideological issues, women continue to experience gender-based abuse, repression, and lack of autonomy.¹⁴

This is an issue requiring further attention. Many will still remember the photographs of Afghan and Iranian women from a few decades ago, where they were enjoying all the freedoms that are now limited, with these limitations differing between the countries. The photographs of women in Afghanistan and Iran today are the very opposite of it and show how the human rights of women, in parts of the world, cannot be taken for granted.

¹⁴ Farhat Easar, written submission.

The situation of women and girls in Afghanistan and Iran has received some international attention over recent years.¹⁵ This report and the Inquiry did not aim to restate them all but engage and provide a platform for women from Afghanistan and Iran, and also international experts and civil society organisations working with them, to be able to comment on the issue and seek their input on how to address the situation. The Inquiry followed the UK Government's mantra of a victim/survivor-centric approach of '*nothing about them, without them.*'

This section aims to consider the situation of women and girls in Afghanistan and Iran and explore whether this treatment could meet the working definition of gender apartheid. First, the section explains what the analysis of gender apartheid would need to show. Second, it attempts to engage with the evidence received by the Inquiry and consider whether and how

¹⁵ Among others: **Iran:** Amnesty International, "They violently raped me": Sexual violence weaponised to crush Iran's 'woman life freedom' uprising (2023) Available at: <https://www.amnesty.org/en/documents/mde13/7480/2023/en/>; Amnesty International, Human rights in Iran: Review of 2022/2023 (2023) Available at: <https://www.amnesty.org/en/documents/mde13/6596/2023/en/>; OHCHR, Situation of Human Rights in the Islamic Republic of Iran - Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Javaid Rehman, A/HRC/52/67 (2023) Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5267-situation-human-rights-islamic-republic-iran-report-special>; Nasrin Sotoudeh, *Women, Life, Freedom: Our Fight for Human Rights and Equality in Iran* (2023) Cornell University Press; Abdul Bar Mursyid, *The Dilemma of Iranian Women: From Position to Rights Restrictions*. (2023) *An-Nisa: Journal of Gender Studies*, 16(1) 77. Available at: <https://annisa.uinkhas.ac.id/index.php/annisa/article/view/135>.

Afghanistan: International Commission of Jurists and Amnesty International, *The Taliban's war on women: The crime against humanity of gender persecution in Afghanistan* (2023) Available at: <https://www.amnesty.org/en/documents/asa11/6789/2023/en/>; Amnesty International, *Afghanistan: The Rule of Taliban: A year of violence, impunity and false promises* (2022) Available at: <https://www.amnesty.org/en/documents/asa11/5914/2022/en/>; Amnesty International, *Death in slow motion: Women and girls under Taliban rule* (2022) Available at: <https://www.amnesty.org/en/documents/asa11/5685/2022/en/>; Amnesty International, "They are the revolution": Afghan women fighting for their future under the Taliban rule (2021) Available at: <https://www.amnesty.org/en/documents/asa11/4968/2021/en/>; UN Women, *Expert Group Meeting on International Strategies and Tools to Address the Situation of Women and Girls in Afghanistan* (2023) Available at: <https://www.unwomen.org/en/digital-library/publications/2023/09/expert-group-meeting-report-international-strategies-and-tools-to-address-the-situation-of-women-and-girls-in-afghanistan>; Human Rights Watch, *Four Ways to Support Girls' Access to Education in Afghanistan Lessons for donors from Afghan students, teachers, and principals* (2022) Available at: <https://www.hrw.org/news/2022/03/20/four-ways-support-girls-access-education-afghanistan>; Human Rights Watch, *Afghanistan: Taliban Deprive Women of Livelihoods, Identity Severe Restrictions, Harassment, Fear in Ghazni Province* (2022) Available at: <https://www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity>; Human Rights Watch, *Afghanistan: Taliban Abuses Cause Widespread Fear Women in City of Herat Describe Loss of Freedoms Overnight* (2021) Available at: <https://www.hrw.org/news/2021/09/23/afghanistan-taliban-abuses-cause-widespread-fear>; United Nations Assistance Mission in Afghanistan (UNAMA), *Report of the Secretary-General: The situation in Afghanistan and its implications for international peace and security* (2023) Available at: <https://unama.unmissions.org/secretary-general-reports>; Heather Barr, *The Taliban and the Global Backlash Against Women's Rights* (2024) *Georgetown Journal of International Affairs*, Available at: <https://gjia.georgetown.edu/2024/02/06/the-taliban-and-the-global-backlash-against-womens-rights/>.

the evidence meets these elements of gender apartheid. This is not intended to be a full and detailed legal analysis.

1. THE DEFINITION OF APARTHEID AND GENDER APARTHEID

Article 7 of the Rome Statute defines apartheid as:

inhumane acts of a character similar to those referred to in paragraph 1 [of the Statute], committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

In terms of the elements of the crime, one has to show that:

1. The perpetrator committed an inhumane act against one or more persons.
2. Such act was an act referred to in Article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups.
5. The perpetrator intended to maintain such a regime by that conduct.
6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁶

The working definition, as referred to by the UN Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls, replaces the word 'race' with 'gender':

¹⁶ See: The Rome Statute Elements of the Crime.

inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one gender group over any other gender group or groups and committed with the intention of maintaining that regime.¹⁷

In order to analyse gender apartheid, this would need to be reflected in the elements of the crime, as identified above. (It is not the purpose of the report to comment on the proposed working definition of gender apartheid and whether other wording and approach was needed.)

The report does not consider all the above elements of the crime and focuses on 1) inhumane acts 2) within the context of systematic oppression and 3) knowledge and intention to maintain the regime.

It is crucial to emphasise that there is no jurisprudence in relation to apartheid that would help with the analysis, and also the academic analysis on the topic is limited. Nonetheless, the following aspects are taken into consideration:

1) and 2) Inhumane acts within the context of an institutionalised regime of systematic oppression and domination

While ‘inhumane acts’ are not defined in the Rome Statute, these have to be read in line with Article 7(1) of the Rome Statute, and indeed, be similar in quality or seriousness to other crimes against humanity under that article. Also, while the Rome Statute does not define inhumane acts, further guidance can be drawn from inhumane acts listed in Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) with the revised list, to reflect the issue of gender, including:

(a) Denial to a member or members of a gender group of the right to life and liberty of person:

(i) By murder of members of a gender group;

(ii) By the infliction upon the members of a gender group of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhumane or degrading treatment or punishment;

¹⁷ UN Human Rights Council, ‘Situation of women and girls in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls’, A/HRC/53/21. Available at: www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur.

- (iii) By arbitrary arrest and illegal imprisonment of the members of a gender group;
- (b) Deliberate imposition on a gender group of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a gender group from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group, in particular by denying to members of a gender group basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- d) Any measures including legislative measures, designed to divide the population along gender lines by the creation of separate reserves and ghettos for the members of a gender group;
- (e) Exploitation of the labour of the members of a gender group, in particular by submitting them to forced labour;
- (f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

In relation to the requirement for the inhumane acts being committed within the context of an institutionalised regime of systematic oppression and domination, this is the aspect of the crime that differentiates it from 'persecution.'¹⁸ The discriminatory plan or policy had to be 'institutionalised' and enforced (whether **de jure** with legal decrees or **de facto**).¹⁹

The definition of what constitutes a 'regime' varies among experts, whether as '*a method or a system of organising or doing something*,'²⁰ as '*an established law or practice by a government or prevailing order*,'²¹ among others.

¹⁸ ILC, The 1996 Draft Code of Crimes.

¹⁹ Ariel Bultz, 'Redefining Apartheid in International Criminal Law' (2013) Criminal Law Forum 205, 223;

²⁰ Christopher Hall, 'The Crime of Apartheid' in Otto Triffterer (ed), Commentary on the Rome Statute of the International Criminal Court (CH Beck Verlag, 2008) 264.

²¹ Christine Byron, War Crimes and Crimes against Humanity in the Rome Statute of the International Criminal Court (Manchester University Press, 2009) 242.

Furthermore, the criterion of systematic oppression by the regime *'suggests that there exists some controlling and harsh treatment of the group.'*²²

3) Knowledge and intention to maintain the regime

The crime of apartheid requires the perpetrators to be aware of the factual circumstances, for example, the nature and gravity of their acts, but also the intention of maintaining the institutionalised regime of systematic oppression and domination over the group. As such, it would not be enough to show the effects of the systematic oppression and domination but the purpose of maintaining the regime must be established as well (specific intent).

The below focuses predominantly on the inhumane acts, but also comments on knowledge and intention.

2. THE SITUATION IN AFGHANISTAN

The Taliban taking over Afghanistan in August 2021 reversed over 20 years of progress made in relation to the rights of women and girls in Afghanistan, although as emphasised by Fereshta Abbasi, researcher at Human Rights Watch, the progress was fragile and many challenges continued even over these 20 years. This progress came after the Taliban reign in Afghanistan between 1996-2001, and repression that it brought upon Afghanistan.

Fawzia Koofi, Afghan politician, writer, and women's rights activist, explained to the Inquiry that before the Taliban takeover in 2001:

Women were part of the progress of their country. They were judges. Women constituted 25% of the Parliament. There were five women ministers. Girls constituted 40%²³ of school children. 30% of university professors were women, the number was

²² Carola Lingaas, 'The Crime against Humanity of Apartheid in a Post-Apartheid World' (2015) 2 Oslo Law Review 86.

²³ Other witnesses indicated different numbers. For example, Fereshta Abbasi mentioned that the percentage of girls in schools was closer to 33% and in some provinces only 15%. In some rural areas the number would be less than that.

on the increase. But it was not only the numbers that were dramatically changing in Afghanistan, but also social transformation.²⁴

She added that:

During negotiation [on political settlement and a permanent and comprehensive ceasefire], [the Taliban said] that they would respect women's rights and it is on the record. They said they respect women to go to university and get a PhD, and they respect a woman to become a minister. They were making those rosy statements during negotiation to make all of us trapped into the belief that there is a kind of Taliban 2.0, that they have changed.²⁵

Unfortunately, shortly after taking over, the Taliban not only ignored these promises but took active steps to undermine the promises one by one. In 2023, Afghanistan ranked 146th (out of 146 countries reviewed) on the Global Gender Gap Report 2023, which benchmarks the current state and evolution of gender parity across four key dimensions (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment).²⁶ In the 2023 Index, Afghanistan registered the lowest performance across all subindexes, with the exception of the Health and Survival subindex, where it takes the 141st position. However, considering recent developments, even this marker is expected to deteriorate. This data from the Global Gender Gap Report 2023 suggests that **the situation of women and girls in Afghanistan is the worst in the world**. This data is further substantiated by reports coming from the region, including the testimonies from lived experience witnesses who spoke to the segregation and exclusion of women from society, exclusion and segregation to a level not seen anywhere in the world right now, but segregation that has been experienced in the world in the past. Indeed, the reports how women were banned access to parks, gyms and public baths, universities, working for domestic and international NGOs, and that *'measures have been taken to erase women from all public spaces,'*²⁷ brings clear parallels to mind.

While the data from the Global Gender Gap Report 2023 is highly concerning, it is crucial to remember that behind these numbers, there are stories of women and girls whose lived reality

²⁴ Fawzia Koofi, oral hearing.

²⁵ Fawzia Koofi, oral hearing.

²⁶ See: Global Gender Gap Report 2023. Available at: https://www3.weforum.org/docs/WEF_GGGR_2023.pdf.

²⁷ See: Human Rights Council, News. Available at: <https://www.ohchr.org/en/news/2023/03/human-rights-council-hears-human-rights-situation-eritrea-remains-dire-and-shows-no>.

has changed, more or less, overnight. The Inquiry has heard several testimonies of serious human rights violations suffered by women in Afghanistan.

Among others, **Tamana Zaryab Paryani**, a human rights defender who was detained and tortured by the Taliban, told the Inquiry about the abuse she suffered when she was detained for three weeks.²⁸ As she testified, she was subjected to ‘needling’ whereby needles would be inserted into the tips of her fingers and under her nails. Needling is a method of torture used throughout history, considered to be extremely painful. On other occasions, a plastic bag would be put over her head to cause her suffocation or her head would be put under water, to cause the feeling of drowning. All of these methods amount to torture.

A **human rights defender**, under the pseudonym of **Maryam Ahmadi**, told the story of a young woman, Asma [name changed] who,

has already gone through the trauma of two [miscarriages] due to the physical violence and beatings bestowed upon her by her husband. Asma filed a complaint against her husband to the court run by the Taliban government. After examining the case, the Taliban judge decided to give Asma two choices, neither of which involved punishing her husband who was the perpetrator. Either Asma would apologise to her husband and then return to her life of abuse, carrying on as if nothing had happened, or, should she reject that option, then she’d be sent to jail. Asma has now been languishing in prison for several months.²⁹

She further testified to the Inquiry that the suppression of the rights of women and girls in Afghanistan comes with serious consequences for their well-being and mental health:

Collectively, Afghani women are already facing a mental health crisis of epic proportions. (...) **Female suicide is now endemic in my country.** For this reason, I joined a team to train as a mental health counsellor for preventing suicide among women and girls in Afghanistan. Through my journey, I met Ferozan [name changed]. She was an employee of [the former Government] in Afghanistan. When the Taliban took over, she lost her job, her family treated her violently leading to her suicide attempt.³⁰

As Metra Mehran, a gender and policy advisor for the Strategic Litigation Project at the Atlantic Council, testified before the Inquiry:

²⁸ Tamana Paryani, oral hearing.

²⁹ Maryam Ahmadi, oral hearing.

³⁰ Ibid.

In 2023, the highest judicial office of the country, the Attorney General's Office, was renamed the General Directorate for Monitoring and Follow-up of Decrees and Directives. This restructuring has played a significant role in curtailing the rights of women. In the past two weeks, as a consequence of the implementation of these decrees and the new office that was renamed and restructured, **they are taking women in groups from the street and dragging them and beating them.** We had a horrible video that came out yesterday that the **women were horribly beaten up, and then they dragged them to a car and took them to an unknown place. They imprisoned them for a few days, tortured them, and then their families had to go and give grantees to be released.** Last week when the Taliban spokesperson confirmed this act, he said that, yes, they do it as chastisement of women. This statement reflects the degrading and inhuman perspective the Taliban has towards women. **They take the personhood from women which is necessary ideologically and pragmatically for their regime to sustain.**³¹

Alex Crawford OBE, one of Britain's most renowned war and foreign correspondents, told the Inquiry about some of the messages she is receiving from young women from Afghanistan. As she recounted:

A young woman, she is 24, [told me] they don't go out anymore. [The Taliban] imposed and enforced what they call the bad hijab law. They are calling it hijab, but actually, they want a full-covering burqa. They want every woman who steps out in public to have a mahram, a male escort, which presents problems if the only person working is a male, if you do not have a father, if you do not have a husband, if you do not have a brother, or they are doing something else because they are working to try and feed the entire family. They have to cover their faces, their hands, and their feet, they are not allowed to even wear jeans underneath the burqa, or sneakers. (...) They started enforcing this bad hijab law, which led to the rounding up of women who they perceived as not wearing the full dress code that they wanted. They made a lot of arbitrary and random arrests. This young girl was not arrested, but she was beaten up for, in this case, someone felt that she was not wearing the full burqa. Her male relative was arrested and held and only freed after what she called "negotiation," which involves several things, sometimes handing over money as a kind of fine, always agreeing to not do it again, and further threats about what might happen to the relatives if they do continue to disobey.³²

³¹ Metra Mehran, oral hearing.

³² Alex Crawford OBE, oral hearing.

Alex Crawford added that as she was walking into the Inquiry hearing, the Taliban, the *de facto* authority, put out a statement to deny any such treatment of women.³³ The lived reality on the ground is very different to the information spread by the Taliban.

Naheed Farid, an Afghan politician in exile and the youngest member of the Afghan parliament, commented that women and girls in Afghanistan are living through a dark era:

They feel abandoned. They feel betrayed. They endure a regime of gender apartheid, which is one of the deepest human rights crises in the world. Afghanistan remains the only country on the whole planet that denies girls and women their very basic rights. **The Taliban's only agenda is to erase women and women are becoming the lost generation.** They have been denied their very basic right to education. We all know how important it is to have educated women. This is unfortunate because the Taliban see their future in a radicalised country. This is their agenda. They use women as bargaining chips. They use women as a tool to pressure the international community to get more money and to have more power and resources. They are in collaboration with all other dangerous and authoritarian regimes in the region, that are mostly built on patriarchy, like the Iran regime and terrorist groups. (...) This is so urgent, so many women are now under Taliban arrest. I can give you a long list of women who have disappeared, and whose families don't know anything about them. Many families don't raise this because of cultural issues. The cultural issue in Afghanistan is something that we must keep under consideration. Families are choosing to stay quiet, not to raise the issue of their daughter's disappearance because of the shame that they have in this issue. That's why many girls have disappeared and the families don't raise their voice after this.³⁴

2.1. INHUMANE ACTS IN THE CONTEXT OF SYSTEMATIC OPPRESSION

An examination of the Taliban decrees and practices in Afghanistan is necessary in order to ascertain the extent to which they may amount to 'inhumane acts.' This includes looking at the restrictions on the right to education and the right to work, the denial of the right to freedom of opinion and expression, of the right to freedom of peaceful assembly and association, among others.

³³ Ibid.

³⁴ Naheed Farid, oral hearing.

The restrictions on the human rights of women and girls are omnipresent. Malala Yousafzai, human rights advocate and Nobel Peace Prize laureate submitted to the Inquiry that:

If you are a girl in Afghanistan, the Taliban has decided your future for you. You cannot attend secondary school or university. You cannot find open libraries where you can read. You see your mothers confined, unable to work, go to the park, get a haircut, or even see a doctor.

The evidence is clear: Afghan girls and women are living under gender apartheid. The international community must stand with them, championing their rights and dignity with clear, decisive action.

As an advocate for girls and women globally, the UK should endorse the inclusion of gender apartheid language in the draft Crimes Against Humanity Treaty and rally fellow member states behind this cause.

If we, as a global community, fail to stand in opposition to gender apartheid in Afghanistan, we send a devastating message to girls and women everywhere: That you are less than human. That your basic rights are up for debate. That we are willing to look away.³⁵

Horia Mosadiq, Afghan human rights activist, political analyst and journalist, indicated in her written submission to the Inquiry how the Taliban introduced decree after decree to deny the rights of women and girls in the country:

Alone between August 2021 and December 2023, the de-facto authorities issued **nearly 100 decrees that severely curtailed the most fundamental human rights of women and girls**, including freedom of movement, the right to participate in public affairs, the right to work and to education, access to healthcare and justice, and the right to culture.³⁶

Indeed, even the Ministry for Women's Affairs, previously constituted in Afghanistan, was replaced by the Ministry of Vice and Virtue, which also enforces morality policing of women's dress and lives.

As Fawzia Koofi testified before the Inquiry that the Taliban's treatment of women and girls is not warranted in religion or culture, **'What the Taliban do is beyond words, what the Taliban**

³⁵ Malala Yousafzai, written submission.

³⁶ Horia Mosadiq, written submission.

do is not related to our religion and has no roots in our culture. They have launched a war against women, and they have tried to increase this suppression day by day.³⁷

The below explores some of the areas of women's and girls' lives mostly affected by the changes brought about by the return of the Taliban.

2.1.1. EDUCATION

Since taking over power in Afghanistan, the Taliban took several steps to severely reduce women's and girls' access to education. Among others, in March of 2022, the Taliban indefinitely banned secondary schooling for girls.³⁸ In December 2022, the Taliban decreed an indefinite ban on university education for women. They were also banned from learning in mosques and tutoring centres in private universities.³⁹ Freedom Now, a non-governmental organisation based in the US, submitted to the Inquiry that *'these policies represent a significant setback for women's educational opportunities and have long-term consequences for their empowerment and advancement.'*⁴⁰

Alex Crawford told the Inquiry that the Taliban are also closing some female madrasas, the only places where girls could still get some form of education:

They are closing even that female madrasa close to the all-female medical university I covered in one of my documentaries. Both of them got shut down. It is very much specifically aimed at females.⁴¹

However, Fereshta Abbasi provided information to the Inquiry that the Taliban have expanded some female madrasas and are planning to increase these establishments for girls. The issue is currently being researched by scholars in Sweden.

³⁷ Fawzia Koofi, oral hearing.

³⁸ Several submissions. See for example: Horia Mosadiq, written submission, Freedom Now, written submission

³⁹ Ibid.

⁴⁰ Freedom Now, written submission.

⁴¹ Alex Crawford OBE, oral hearing.

While the denial of access to schooling has resulted in the emergence of underground schools, in person and online, there remains a challenge that this informal schooling is not recognised in Afghanistan, and other parts of the world, and will not help women and girls to further their careers of their choosing in the future. Furthermore, these informal schools continue to be haunted by the Taliban. As such, they cannot be considered as an alternative to formal schooling options.

2.1.2. EMPLOYMENT

After education, employment is yet another area severely restricted by the Taliban. As the Taliban took over Afghanistan in August 2021, women lost their jobs across many sectors, especially any public offices and positions of power. All prosecutors were fired in August 2021, and while a few male prosecutors were called back to work, no female prosecutors were reinstated.⁴² Similarly, all judges were dismissed, and the Taliban appointed an *'all-male cadre of Taliban members educated in madrasas, schools offering basic religious education, rather than legal training.'*⁴³ In December 2022, Afghan women were barred from working for local or international non-governmental organisations.⁴⁴ In April of 2023, Afghan women were banned from working for United Nations agencies.⁴⁵ Despite the ban, some women continue their work. Fereshta Abbasi referred the Inquiry to a study from October 2023 suggesting that *'organisations continue to report that they are able to operate with women and men: 28% of respondents are fully operating with women and men and 43% are partially operating with women and men.'*⁴⁶ The same study suggests a high percentage of women (who still manage to work for these organisations) not coming to the office (42%). While some women may be able to continue working, this comes with risks that no one can protect them from.

⁴² The Law Society of England and Wales, written submission.

⁴³ Ibid.

⁴⁴ Horia Mosadiq, written submission.

⁴⁵ Ibid.

⁴⁶ See: UN Women, Tracking Impact Report on the ban on women working with NGOs, INGOs and UN in Afghanistan (October 2023). Available at: <https://reliefweb.int/report/afghanistan/tracking-impact-report-ban-women-working-ngos-ingos-and-un-afghanistan-seventh-snapshot-october-2023>.

The Law Society of England and Wales submitted to the Inquiry that women have been excluded from the legal profession. As they indicated:

Women are excluded from taking qualifying examinations, renewing their licences, or appearing in court, despite comprising a quarter of lawyers. The Taliban have not yet issued a single licence for a female lawyer. Female lawyers have been told to wait for a decision on whether there would be a possibility of renewing their licence or of granting licences to female lawyers generally.⁴⁷

The lack of women in the legal profession has a profound effect on women's access to justice. This is explained later on.

Dr Lutforahman Saeed, a professor of law who used to teach at Kabul University and train female judges, commented that the Taliban has been claiming that they accepted the right to education for women and girls but needed to introduce some arrangements. However, in relation to the right to work, the Taliban then suddenly made an announcement banning women from the workplace. He added that this was a systematic and very obvious violation of women's human rights.⁴⁸ Dr Saeed told the Inquiry that, as far as he is aware, Kabul University still has some female professors in both law faculties, but they are not able to go to university and teach. *'There is no opportunity to teach. Only male professors and male students can go and teach.'*⁴⁹

There is further a clear link between the denial of education and the denial of employment opportunities. Despite the fact that some women continue to be allowed to study midwifery and obstetrics, this is a severely limited opportunity for women who already have secondary and higher education. Now that girls are banned from secondary and higher education, they will not be able to progress into further education in the profession. The Taliban have not addressed the issue. Furthermore, according to Freedom Now, while some sectors, such as health and education, still allow women to work in a limited capacity,

[Women] face substantial challenges in finding suitable employment. The Taliban has imposed restrictions on women's ability to work in both the public and private sectors, even instructing women civil servants to stay home. This systematic exclusion of

⁴⁷ The Law Society of England and Wales, written submission.

⁴⁸ Dr Saeed, oral hearing.

⁴⁹ Ibid.

women from the workforce has resulted in a significant loss of skilled female professionals across various fields.⁵⁰

Alex Crawford explained how female journalists have been affected by the Taliban reign: *'The Taliban authorities visit all the TV stations on a regular basis and take issue with what they are reporting. The women have been wiped off completely. They are not allowed. They are told to go home because there are no jobs for them.'*⁵¹

2.1.3. MOVEMENT

Ever since taking over Afghanistan, the Taliban have been limiting women's movements step by step. Among other restrictions, in December 2021, women were prohibited from travelling more than 72 km without a male chaperone.⁵² As Freedom Now submitted:

The Taliban has implemented a strict Mahram policy, which forces women to be accompanied by a male guardian (Mahram) in public spaces. This policy severely restricts women's freedom of movement and independence, impeding their ability to travel or engage in various activities without a male relative. The Mahram policy reinforces gender-based discrimination and hampers women's full participation in society.⁵³

In November 2022, the Taliban banned women from parks, gyms and public baths.⁵⁴

The Taliban also closed beauty salons for women, which limited women's movement and social engagements even more. As Alex Crawford explained, *'these salons were a safe environment, which was again, only female, but it gave them the opportunity to meet and talk.'*⁵⁵ She further added that:

⁵⁰ Freedom Now, written submission.

⁵¹ Alex Crawford OBE, oral hearing.

⁵² Horia Mosadiq, written submission.

⁵³ Freedom Now, written submission.

⁵⁴ Horia Mosadiq, written submission.

⁵⁵ Alex Crawford OBE, oral hearing.

When the Taliban came in, they even segregated the use of parks. The park would be designated for men, for example, on Mondays, Wednesdays, and Fridays, and women on certain days, in certain hours, but all that is being restricted as well. (...) that stops just any sort of discussion or debate or rising up.⁵⁶

Alex Crawford noted that: ***‘Their homes became their prisons. They cannot go out and they cannot see people and they have to self-learn and look after each other. But they are getting more and more depressed on a daily basis.’***⁵⁷

2.1.4. EXPRESSION, ASSEMBLY, ASSOCIATION

Freedoms of expression, assembly and association have been severely limited in Afghanistan since the Taliban took over the country. This adds to the shrinking space for women in the public square, as they are ultimately prevented from protesting their dire situation. While some women have been able to organise peaceful protests, these have often been met with excessive use of force and violence. Some of these attacks have been covered by international media.⁵⁸ Freedom Now submitted to the Inquiry on how the restrictions on the right to freedom of expression and assembly have been affecting women human rights defenders:

Women human rights defenders in Afghanistan are particularly vulnerable under Taliban rule. These courageous advocates for human rights and equality have been subjected to arbitrary arrests, brutal torture, and imprisonment. The Taliban's violent response to their peaceful protests demonstrates a deliberate suppression of their voices and efforts. Such blatant human rights violations not only undermine the progress made in advancing women's rights but also instil fear and silence those fighting for gender equality.⁵⁹

Furthermore, the Taliban are mastering the skills of public relations. Commenting on the issue, Naheed Farid told the Inquiry that:

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ See: Aljazeera reporting here: <https://www.aljazeera.com/news/2022/8/13/taliban-disperse-rare-womens-protest-in-kabul>.

⁵⁹ Freedom Now, written submission.

The hardest part is that we have Taliban with more ability to highlight their story and their narrative and we have women who cannot raise their voice. If they protest, they get out of the street like Tamana, they will get arrested. They have no means to raise their voice.⁶⁰

This raises the need to focus on documenting the treatment of women and girls in the country, supporting those who speak out, ensuring that their voices are heard, and challenging the false narratives spread by the Taliban.

2.1.5. ACCESS TO JUSTICE

The removal of women from the public square and from employment has wide-ranging implications for women and girls, including their access to justice. The lack of women judges, lawyers, and other women in the legal profession ultimately means that women and girls do not stand a chance of seeking redress. This is of particular concern as violence against women is on the rise, while avenues for redress are on the decrease. The Law Society of England and Wales submitted to the Inquiry a litany of issues women suffer when trying to access justice. Among others:

The majority of judicial bodies will reportedly not accept women's petitions. For instance, in one case, a woman went to court to file a claim against her husband. However, a decision was made by the person in charge of security at the gates of the court that the woman must either live with her husband with dignity or be sent to prison.⁶¹

The Law Society of England and Wales further added that:

Women may only appear in matters in which they are a party, and in many cases, must then be accompanied to court by a male family member or send a male relative in their place. In one northern province, it was reported that the lack of a male family member meant that a woman's application would not even be considered by the court, meaning that access to the court for women could only be obtained through a male relative. Testimony of women is not always accepted and, even if it is, it is generally given less

⁶⁰ Naheed Farid, oral hearing.

⁶¹ The Law Society of England and Wales, written submission.

weight than the testimony of a man. It has been frequently reported that it would take the testimony of two women to provide the equivalent to that of one man.⁶²

The Law Society of England and Wales also commented on the situation of women in detention and other challenges, including:

Women in detention have been denied access to lawyers and were not informed of the charges against them or brought before a judge. Women have been detained incommunicado, and their families denied information about their whereabouts. In many cases, instead of a formal trial, their release from detention was contingent on their ability to call on influential contacts, on paying bribes, or on their willingness to sign “agreements” committing to refraining from protesting or speaking publicly of their detention. The Special Prosecutor’s Office and Special Court for the Prohibition of Violence against Women and the Prohibition of Harassment of Women have been abolished without any replacement. The Taliban have taken steps to reverse or drop previous court cases that upheld women’s rights and protections. Moreover, the absence of a functioning legal system has resulted in an increased reliance on traditional and informal dispute-resolution mechanisms, including meetings of tribal jirgas, community elders, muftis, or imams. These mechanisms lack legal knowledge and safeguards, often fail to respect the rights of women, children, and minorities, and often impose arbitrary punishments not consistent with international human rights standards.⁶³

As Metra Mehran, an Afghan human rights defender, testified before the Inquiry:

The decrees make us [Afghanistan] the only country on Earth where basic fundamental human rights are legally stripped away. (...) The decrees systematically dismantled all existing mechanisms, laws, policies and institutions that were designed to eliminate violence against women or protect women. The first of the decrees that came eliminated the Law on Elimination of Violence Against Women. The Afghanistan Human Rights Commission, the Commission to Eliminate Violence Against Women, shelters and safe houses, all of them are banned for women. One of the decrees issued was to move the women who are victims of domestic violence to the prisons.⁶⁴

The Taliban's treatment of women and girls translates into societal treatment of women and girls. MADRE, an international non-governmental human rights organisation, and Rawadari, a UK-based Afghan human rights organisation, submitted to the Inquiry that:

⁶² Ibid.

⁶³ The Law Society of England and Wales, written submission.

⁶⁴ Metra Mehran, oral hearing.

The implementation of discriminatory decrees and orders not only altered the societal dynamics regarding women but also exposes the darker side of anti-women and discriminatory behaviours within families. The absence of protective legal frameworks leaves women entirely vulnerable to abuse, both inside and outside their homes.⁶⁵

This, combined with the lack of female legal representation, means that women have no option to seek redress. Womankind Worldwide submitted to the Inquiry that:

A majority 88.4% [of interviewed women] have not been able to access police or court services. Many were reluctant to seek redress in Taliban courts and preferred informal channels including family elders, Wakil Guzar, and religious leaders.⁶⁶

2.1.6. OTHER RESTRICTIONS AND CONCERNS

Women athletes

The Taliban introduced several other decrees adding extra strains to the ever-diminishing rights of women and girls. Among others, in September of 2021, girls and women were banned from playing sports.⁶⁷ Hogan Lovells submitted to the Inquiry an in-depth report on the situation of female athletes. The report concluded that:

Between 2001 and 2021, when the Taliban weren't in control of Afghanistan, the situation for women who wanted to participate in sports was challenging – many women faced resistance and harassment by the male community and from their families – but gradually improving. More and more women were able to actively pursue sports, Afghan women's national teams were formed and even travelled internationally.

Since the Taliban takeover in 2021, things have radically changed. Women are not allowed to participate in sports anymore and any form of physical activity has been rendered impossible for women. Former athletes, who were well known throughout the country or in their neighbourhoods, have to face the most severe punishments. Their

⁶⁵ MADRE and Rawadari, written submission.

⁶⁶ Womankind Worldwide, written submission. This refers to a study conducted by the Women's Regional Network (WRN) which, between June to July 2023, conducted 15 Community Conversations (CCs) involving 500 women representing various provinces and diverse backgrounds, complemented by extensive desk review. The research was conducted in 11 of Afghanistan's 34 provinces, namely Balkh, Bamyan, Herat, Jawzjan, Kabul, Kunduz, Laghman, Nangarhar, Nimrooz, Paktia, and Panjshir.

⁶⁷ Horia Mosadiq, written submission.

families are also directly affected. Some of these women were able to flee the country, but those women who are still in Afghanistan are living in hiding and constant fear.⁶⁸

Ethnic and religious minority women and girls (intersectionality)

The evidence submitted to the Inquiry suggests that there is also intersectionality within the treatment experienced by women who also belong to ethnic and religious minority groups, such as the Hazara.⁶⁹ Indeed, Naheed Farid told the Inquiry that in Hazara areas, the Taliban are much harsher on women due to their religious identity.⁷⁰ This was elaborated by Lina Tori Jan, Afghanistan Policy Lead at Georgetown Institute for Women, Peace and Security, who said that *‘with women from minority groups we see the impact because they are at the crossroads of many different identities that get targeted by the different systematic policies and oppression that the Taliban put in place.’*⁷¹ Homira May Rezai, Chair of the UK Hazara Council, exemplified how this specific risk faced by Hazara women - persecuted for both their gender and ethnicity/religion - has not been properly recognised in UK Government’s responses to the fall of the Afghan Government in 2021.⁷² The issue has been raised with the UK Government in 2022 with findings and recommendations of the Hazara Inquiry.⁷³

2.2. INSTITUTIONALISED AND SYSTEMATIC DISCRIMINATION AND DOMINATION

The crime of gender apartheid would require that the inhumane acts have been *‘committed for the purpose of establishing and maintaining domination by one gender group of persons over any other gender group or groups.’* Having identified the dominant group, here the Taliban reinforcing patriarchy and men's dominance over women, the next question that must be

⁶⁸ Hogan Lovells International LLP, written submission.

⁶⁹ Fereshta Abbasi, oral hearing.

⁷⁰ Naheed Farid, oral hearing.

⁷¹ Lina Tori Jan, oral hearing.

⁷² Homira May Rezai, oral hearing.

⁷³ See: Hazara Inquiry, Afghanistan Report. Available at: <https://www.hazarainquiry.com/>.

considered is whether the acts have been committed for the purpose or intention of maintaining domination by the Taliban over women and systematically oppressing them.

The breadth and consistency of the above explained infringements suggest that they do not occur in isolation but are part of a system that operates to control and dominate women and girls in Afghanistan and to suppress any opposition to that domination.

Horia Mosadiq submitted to the Inquiry that:

These policies, embedded in Afghanistan's law and institutions, establish a system of governance where women are segregated and systematically excluded and discriminated from public spaces and spheres. In Afghanistan, women are socially, economically, and culturally discriminated against on the basis of gender. Under the Taliban Regime, Afghan men have become the permanent guardians and custodians of Afghan women, which leads to the ultimate disempowerment and subjugation of the latter. In the last two years, [Afghanistan] has become a regime of gender apartheid where women are relegated to subordinate positions, with no means to access independence or justice whatsoever. Gender apartheid in Afghanistan is enforced through physical and legal practices, in the form of sharia punishments and institutionalised decrees.⁷⁴

Freedom Now added that:

The situation of women in Afghanistan can be accurately described as gender apartheid. Women are being systematically erased from all facets of public life simply because of their gender. Women are unjustly denied their fundamental rights to education, employment, and freedom of movement based solely on their gender. The Taliban's deliberate issuance of edicts specifically targeting women's rights, including limiting access to health services, is a clear indication of their intent to physically eliminate women from society.⁷⁵

Between January and February 2024, the Organisation for Policy Research and Development Studies (DROPS), a policy-oriented research institute, surveyed 3640 women and girls across 26 provinces in Afghanistan as part of the BISHNAW (meaning 'listen' in Dari) initiative, on the topic of gender apartheid which revealed that 75.6% of interviewees believed that women and girls in Afghanistan were subjected to systematic oppression and domination:

⁷⁴ Horia Mosadiq, written submission.

⁷⁵ Freedom Now, written submission.

- 2444 (or 67.14%) responded that they would describe the restrictions imposed on women and girls by the de facto authorities as systematic oppression and domination of women and girls.⁷⁶
- 307 (or 8.43%) somewhat agreed.
- 567 (or 15.58%) said no.
- 210 (or 5.78%) did not know and 112 (or 3.08%) did not answer.

The same study looked into whether the interviewees believed that the Taliban intended to create a society where women and girls are subordinated to men and boys. The responses revealed that 2,243 (or 61.62%) women and girls agreed, while 888 women and girls (or 24.40%) disagreed:

- 1036 (or 28.46%) agreed
- 1207 (or 33.16%) strongly agreed
- 509 (or 13.98%) neither agreed nor disagreed
- 719 (or 19.75%) disagreed
- 169 (or 4.64%) strongly disagreed.

Research of this sort is invaluable to show the women's understanding and perception of the situation in the country, even if otherwise their voices are not heard.

From the above examination of the inhumane acts perpetrated by the Taliban in Afghanistan, it is clear that such acts do not occur in a random and isolated manner but are part of a widespread and oppressive regime that is both institutionalised and systematic. This regime is founded on a discriminatory ideology that accords separate and unequal treatment of women.

2.3. THE IMPACT OF THE RESTRICTIONS

The Taliban's treatment of women and girls, with the litany of decrees affecting all aspects of their lives, has had devastating consequences on their well-being and as such, requires urgent international attention.

⁷⁶ DROPS, written submission.

The Taliban's dire treatment of women and girls also translates into societal treatment. While violence against women and girls had been an issue before the Taliban takeover, August 2021 became a turning point in relation to progress made on addressing the crime. As Womankind Worldwide submitted to the Inquiry that, between June and July 2023, Women's Regional Network (WRN) conducted 15 Community Conversations (CCs) involving 500 women representing various provinces and diverse backgrounds, from 11⁷⁷ of Afghanistan's 34 provinces. Their researched revealed that:

With Afghanistan last among safety rankings for women worldwide, women reported various forms of violence, with **71% experiencing violence from family or community members and 77% enduring violence from the Taliban and other non-state actors. More than half (56%) of women reported having faced harassment or feeling insecure, 91% experienced discrimination due to being women; and a high 86% of these women believe their basic human rights have been violated. It is worth noting that more than 76% of the women have faced violence intersecting with their ethnicity, language, religious beliefs, or physical disability.**⁷⁸

Deprived of their rights in public, and subjected to dire treatment at home, women and girls in Afghanistan are in a particularly vulnerable situation. Metra Mehran indicated that:

In Afghanistan, women are systematically denied their basic rights and freedoms, leading to their **complete dehumanisation and exclusion from public life.** (...) women are marginalised and stripped of their human dignity, perpetuating gender inequality and hindering their personal growth and empowerment. Moreover, women face unimaginable levels of oppression and discrimination. **They are effectively silenced, erased, and treated as subordinate entities, leaving them without a voice or agency.** This ongoing denial of their fundamental rights traps them in a cycle of despair, with limited access to even the most essential aspects of a dignified existence like humanitarian aid and health services. Women are denied access to public services, legal services, and other crucial aspects of daily life, further deepening their marginalisation, and obstructing their ability to live fulfilling lives.⁷⁹

Alex Crawford commented on the new reality faced by women in Afghanistan which ultimately entraps them in a vicious circle of oppression without any way out:

There is every obstacle put in front of a woman from pre-puberty to actually being able to succeed, education being the most important one, because if you don't learn

⁷⁷ Balkh, Bamyān, Herat, Jawzjan, Kabul, Kunduz, Laghman, Nangarhar, Nimrooz, Paktia, and Panjshir.

⁷⁸ Womankind Worldwide, written submission.

⁷⁹ Metra Mehran, written submission.

properly how to read or write, or question or grow or learn how to be a surgeon, or learn how to be a psychiatrist, or a lawyer or a judge and study law, how are you going to be able to contribute to civil society? You cannot. So that starts with education. Then it is work. If you're not allowed to do any work, you are not allowed to earn anything, never mind the quality of the work, you are not allowed to actually earn money that obviously has a massive impact on what you can provide for your family and the reliance you have on a man. You are then told what to wear, when you are allowed to go out, where you are allowed to go.⁸⁰

Apart from the litany of restrictions, women and girls have also been paying the bitter price for the dire situation in the country. As the George W. Bush Institute submitted to the Inquiry:

Some desperate and distraught parents have made the agonising choice of selling their children (mostly their daughters, infants, and unborn babies) in a heartbreaking attempt to ward off starvation and repay debts. Taliban members have paid up to 1-2 million Afghanis for young brides, according to the independent Afghan media outlet Hasht-e-Subh. A Wall Street Journal examination of the Taliban's use of forced marriage described the current reality as often amounting "to kidnapping and rape."⁸¹

The severe restriction of the human rights of women and girls and their omnipresent segregation in Afghanistan have serious consequences on women's mental health. Womankind Worldwide submitted to the Inquiry that *'notably, 86% of Afghan women surveyed (...) are facing significant mental health challenges, with only 17% of them able to access mental health services.'*⁸²

Furthermore, there is a lot of fear among women in the country which will ultimately exacerbate the mental health crisis, depression and hopelessness felt by many women and girls. Alex Crawford, when speaking to the Inquiry, recounted how a young female journalist she mentored was so scared to be identified that she went underground:

She was sending me messages that she was very scared about ever being identified. Even to the point that she did not want to name the huge region she was in. I said, "Listen, that is a whole region, you don't need to worry about that, don't give any identifying information that might lead to tracking you down in a market or a street." She was writing a weekly diary for me. But she has now gone underground. I am having

⁸⁰ Alex Crawford OBE, oral hearing.

⁸¹ George W. Bush Institute, written submission.

⁸² Womankind Worldwide, written submission.

to talk to her through an intermediary, because she is too scared, even sending anonymous emails.⁸³

As Alex Crawford told the Inquiry, *'there is a huge amount of mental health problems as a result of all of this, even the ones that have come out.'*⁸⁴ These mental health issues persist among the women who managed to leave Afghanistan, who often feel guilty for leaving Afghanistan behind. During the evacuations from Afghanistan, especially mid-2021, many women leaders left the country out of fear of persecution and certain death. Naheed Farid told the Inquiry about the difficult decision she faced when the Taliban took over - living in fear and facing death, or leaving everything behind.⁸⁵ She recounted:

It was very hard for me because I remembered my mom's stories of how she had to escape from the same city when she escaped the Soviet Union occupation, with her daughter by her side. She experienced the same rate of oppression that I was experiencing. This means we have an intergenerational victimisation of women - conflict forced them to leave their homes, their countries, and their cities, and leave everything behind. But that also means that we are resilient. We go back, we fight back, and we want our country to be free from oppression and from authoritarianism and from regimes like the Taliban.⁸⁶

Many other women, especially women politicians, judges, lawyers, journalists and others faced the same decisions. Alex Crawford recounted the well-being of the family she helped to evacuate to Ireland a few weeks before the oral hearing, *'many of them have serious depression that is quite ingrained. They were all contained in two rooms, 24 hours a day.'*⁸⁷ Alex Crawford further told the Inquiry that Afghan women feel being erased by the Taliban and forgotten by the international community:

I think they are feeling really desperate, absolutely hopeless and defenceless, and unable to do anything. If they are 20-something, all that they can remember is actually being encouraged to go to school, being encouraged to get skills. They were living in an environment, which was never that easy, because of the insecurity and the various terrorist acts which were ongoing, and the difficulty of having the armed troops there. This was an ongoing challenge. But they lived in an environment where they thought

⁸³ Alex Crawford OBE, oral hearing.

⁸⁴ Ibid.

⁸⁵ Naheed Farid, oral hearing.

⁸⁶ Ibid.

⁸⁷ Alex Crawford OBE, oral hearing.

they were going to be doctors, judges, lawyers, teachers. They had dreams. This is a whole generation who feel really now completely powerless. (...) There has been a handbrake turn on everything. It could not be more drastic. They have gone from having these relatively focused dreams, to now feeling completely vulnerable, incredibly vulnerable, and very frightened about being pushed into marriage, which they don't want, away from their family. Every time they go out there, they are putting their lives and their possible small amounts of freedom at risk. (...) **Almost every young woman I have spoken to has either thought about suicide or has tried suicide. And that is a pretty desperate state of affairs.**⁸⁸

Freedom Now submitted to the Inquiry that the despair among women and girls in Afghanistan results in some women contemplating suicide to escape the oppression:

The future for Afghan women and girls is filled with uncertainty and challenges as their basic rights continue to be denied. The Taliban's persistent attacks further tighten their oppressive control, leaving women feeling trapped and hopeless. It is disheartening to learn that **some women Freedom Now have spoken to express thoughts of despair and contemplate ending their lives, as they feel imprisoned in their circumstances.** These women possess the potential to build meaningful lives through education, employment, and active participation in rebuilding Afghanistan, but they are now confined to their homes, and **stripped of hope.** Moreover, disturbingly, women across Afghanistan we are in contact with have reported a distressing rise in domestic violence and mental health issues. Under the Taliban, there are no remedies available for women to address these challenges.

The situation is critical, demanding immediate action to ensure the safety, well-being, and rights of Afghan women. The harm women and girls have already suffered will affect them for their whole lives and their families for generations, and every day that they live under the Taliban's abuses that harm deepens.⁸⁹

Metra Mehra indicated in her written submission that:

The current situation represents an escalating human rights emergency, where the fundamental rights and dignity of Afghan women and girls are systematically violated. (...) Disturbingly, in Afghanistan, **the rates of child marriage and suicide have surged, highlighting the urgency of addressing these issues.** Moreover, as time passes and girls are kept out of school, their chances of returning to education drastically diminish, effectively undermining their future prospects. The systematic oppression they endure in various spheres of life, including education, employment, cultural involvement, and

⁸⁸ Ibid.

⁸⁹ Freedom Now, written submission.

freedom of movement, erect formidable barriers that impede their personal growth and ability to contribute to society.⁹⁰

Fawzia Koofi told the Inquiry that it is difficult to assess the true level of suicide among women, as the issue is taboo:

[Suicide] is a social taboo. Many do not want to talk about this because they think it is their problem, because they think it is their fault. They think it is their daughters' fault. This is why they do not report that. Only two days ago, a woman killed herself after she was released from Taliban prison because of what was done to her. She was an activist. When you are denied your basic fundamental rights, education, work, mobility, everything your existence is being questioned. You suffer from mental health. And nobody talks about the mental health problem. I think what we want to propose today here is basically to bring some culture of accountability. Because what happens in Afghanistan could affect any woman, could affect any people with less power, anywhere in the world.⁹¹

Access to professional help to address the growing mental health crisis is severely limited in Afghanistan. To add to this crisis, in January 2024, as indicated by Fawzia Koofi, the Taliban issued an edict stopping women organisations, and civil society organisations who work on mental health and on social awareness for women, from working in these areas.⁹²

3. THE SITUATION IN IRAN

The situation of women and girls in Iran has been of great concern for many years, although often more subtle than as seen in Afghanistan over the last two years. The suppression of women's rights in Iran became even more prominent after the death of Mahsa Amini. Mahsa Amini, 22, was arrested by Iran's morality police in September 2022. According to reports, she was severely beaten during her arrest and transfer to the Vozara Detention Centre.⁹³ Mahsa Amini died in the hospital on 16 September 2022. Her death has sparked protests across Iran.

⁹⁰ Metra Mehran, written submission.

⁹¹ Fawzia Koofi, oral hearing.

⁹² Fawzia Koofi, oral hearing.

⁹³ See: Situation of human rights in the Islamic Republic of Iran - Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman (A/HRC/52/67). Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5267-situation-human-rights-islamic-republic-iran-report-special>.

Thousands of people have taken to the streets in cities throughout Iran. They have been calling for accountability for Mahsa Amini's death, an end to violence and discrimination against women in Iran, and an end to their compulsory veiling. These peaceful protests have been met with excessive, unlawful, use of force, which resulted in several fatalities, including children and young women. Furthermore, new laws and policies were introduced to exercise extra pressure on women, to suppress any opposition.

In 2023, Iran ranked 143rd (out of 146 countries) on the Global Gender Gap Report 2023.⁹⁴ The segregation of women and girls in Iran is omnipresent although often differs from the situation in Afghanistan, in particular in the area of education. As commented by Gissou Nia, a human rights lawyer and senior fellow at the Atlantic Council, in her testimony to the Inquiry, women in Iran have some rights, and these are often shown to the international community to counter any arguments of oppression. However, oppression remains an everyday language of women in Iran:

There are a lot of women in higher education, but there is also a lot of legal oppression still. Women cannot obtain a passport and travel abroad without their legal guardian's permission, which is exclusively in the hands of fathers for daughters and husbands for wives. This has resulted in female athletes not being able to leave the country and being excluded from significant sports tournaments. Although there are a lot of women in higher education in Iran, they are denied the right to study in certain university fields, such as aerospace engineering, so it is not equal for them. Testimony of a woman is worth half that of a man in a courtroom. Women cannot enter sports stadiums. There has been a lot of media about that. Women have been jailed for trying to just watch football. In Iran, men are allowed to have up to four wives, and they can engage in any number of temporary marriages that they want. The list goes on. But women are restricted, and almost always within the family, they're not equal to men in inheritance, divorce, marriage, or custody, they cannot ride a bike, and they cannot sing solo in public. There is a lot of inequality. (...) The reality is that the legal framework is incredibly oppressive. It is important to address that and to dismantle that. The Iranian government does spend a lot of time going to the United Nations engaging with different countries and talking about how they are a champion for women, and that they seek to ensure that women can live out their full potential in the home. **Their view is that women belong in the domestic sphere, and they removed the choice of women to either determine whether or not they wish to do that for themselves or if they wish to have a robust career and pursue the fields of study that they wish and engage in public life in the way that they wish.**⁹⁵

⁹⁴ See: https://www3.weforum.org/docs/WEF_GGGR_2023.pdf.

⁹⁵ Gissou Nia, oral hearing.

3.1. INHUMANE ACTS WITHIN THE CONTEXT OF SYSTEMATIC OPPRESSION

Rana Rahimpour, an Iranian-British journalist who worked for the BBC, commented on what it means to be a woman or girl in Iran:

From the moment you are born a girl in Iran, you become a second-class citizen, and you lose many of your rights as an individual. At the age of seven, when you go to school, you have to wear a headscarf, and the schools are segregated. Growing up, you cannot travel abroad without permission from either your father or later your husband, and you are not allowed to dance, you are not allowed to sing solo, are not allowed to ride a bicycle. You are not allowed to study certain subjects at [university]. There are so many rights that are automatically taken away from you, as a result of being a woman.⁹⁶

The Azadi Network, a non-governmental organisation based in the UK, submitted to the Inquiry that *‘women and girls [in Iran] are treated as second-class citizens, including in relation to marriage, divorce, child custody, employment, inheritance and political office.’⁹⁷* As they added:

Women are not allowed to ride bicycles or motorbikes, cannot enter stadiums to watch sports, cannot sing or dance. Women are excluded from public spaces such as having their own section on public transport, female-only sections in parks, separate canteens at universities etc. Women are not accepted in the military.⁹⁸

Several laws contribute to this treatment of women and girls in Iran. The issues are discussed below.

3.1.1. EDUCATION

While in general, women and girls can access education, there are restrictions that require further attention. The Azadi Network submitted to the Inquiry that:

⁹⁶ Rana Rahimpour, oral hearing.

⁹⁷ Azadi Network, written submission.

⁹⁸ Ibid.

An Iranian educational policy implemented in 2012 restricted access to higher education for women in 30% of Iran's public universities, mostly in sciences and engineering. Some universities have a cap on the number of female students they admit. These policies have had a negative impact on female labour force participation and employment and an impact on marrying at a young age. Iranian women make up over 50% of university students, but only 15% of these graduates become employed.⁹⁹

3.1.2. EMPLOYMENT

Similarly, as in the case of education, employment opportunities are restricted. The Azadi Network pointed out that:

Women are forbidden from having certain occupations in Iran: real estate agent, judge, president, oil industry, specific jobs in city hall, working in a boat, army, fire department and bike courier. (...) Men are preferred by employers for managerial positions. There is inadequate legal protection for sexual harassment in the workplace.¹⁰⁰

Leila Alikarami, an Iranian lawyer and human rights advocate, testified to the Inquiry that while there are women judges, their role is very limited:

Although women can indeed be appointed as judges, their authority may sometimes be limited compared to their male counterparts. For instance, in certain instances, such as in the Court of Appeal where a male judge holds the position of president, female judges can participate in decision-making processes, but the ultimate authority to sign the verdict rests with the president of the court, who is typically male. Similarly, in family courts, while women can serve as judges, they may not always have the power to sign the verdict; however, they can still contribute to shaping the final decision. Thus, despite progress in appointing women to judicial roles, disparities in authority between male and female judges persist.¹⁰¹

Similarly, Leila Alikarami commented that although there are women parliamentarians, women are barred from becoming the President.¹⁰² She further added that while women are prohibited from certain jobs, husbands can also restrict their wives from any employment opportunities.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Laila Alikarami, oral hearing.

¹⁰² Ibid.

3.1.3. MOVEMENT

Women and girls also suffer from restrictions to their movement. Among others, a husband has the right to forbid his wife from obtaining a passport to travel abroad and or even prevent her from travelling abroad if she already has a passport. As a result, women are often not considered for jobs where extensive travel is involved due to the uncertainty created by these challenges.¹⁰³

Women can ‘gain’ various rights, including the right of movement, at the time of entering marriage. However, Rana Rahimpour provided testimony about the hurdles women experience when trying to seek these rights, explaining that:

We have reported that, at times, the registrar would encourage men not to give up these rights. You can only get it by negotiations at the time of marriage. Many women are not aware of these things, women who are not educated about it.¹⁰⁴

Furthermore, apart from having limited movement, women are also segregated and excluded from various places. Shadi Sadr, an Iranian lawyer, human rights advocate and journalist, produced for the Inquiry a non-exhaustive list of places where women and girls are segregated in Iran, including:

- ‘Entrance to judicial complexes, some government offices, and some universities is separated for men and women. The main purpose of such segregation is to have agents check the hijab status of women entering the premises and prevent those who are improperly veiled.
- Primary and high schools, whether public or private.
- All sports complexes, swimming pools, and water parks. Thus, a family cannot enjoy a sports facility together. Mothers cannot see their sons swimming, and fathers cannot see their daughters.
- Some universities, such as Tabriz Islamic Art University. In most universities, certain areas in libraries, restaurants, computer sites, etc., are designated separately for men and women.
- Some public transport.
- The lines for buying bread in some cities.
- In parks in some religious cities, women and men are not allowed to collectively exercise together, and there are designated areas for each sex.

¹⁰³ Azadi Network, written submission.

¹⁰⁴ Rana Rahimpour, oral hearing.

- Some public libraries.
- On any beach, there is a very small, completely curtained area designated for women who want to swim, while men can swim everywhere else.
- Marriage ceremonies and parties take place in restaurants or rented venues.
- All mosques and pilgrimages are strictly gender-segregated.¹⁰⁵

Shadi Sadr further commented that:

Women continually find themselves segregated into inferior and unsafe versions of services or locations enjoyed by their male counterparts, structural reinforcement of their position as second-class human beings. Persistent resistance against these exclusionary policies has exposed women to harassment, arbitrary arrests, and torture and ill-treatment by authorities.¹⁰⁶

3.1.4. EXPRESSION, ASSEMBLY, ASSOCIATION

Recent months have seen how women's rights to freedom of expression, assembly and association have been violently challenged. Shadi Sadr submitted to the Inquiry how nationwide protests, under the unifying slogan 'Woman, Life, Freedom,' following the killing of Mahsa Amini, have been violently suppressed:

Security forces carried out a ruthless crackdown on the demonstrations. Protesters, especially those burning their scarves and mobilising the crowds, faced severe mistreatment during arrests, in detention centres, and even fatalities at the hands of state forces.¹⁰⁷

Rana Rahimpour testified to the attacks she faced in carrying out her work as a journalist covering the situation in Iran, even reaching transnationally when she was living in the UK. She recalled her conversations with her parents being recorded, and her parents' passports confiscated for one year.¹⁰⁸ Caoilfhionn Gallagher KC, barrister at Doughty Street Chambers, told the Inquiry how the Iranian regime suppresses freedom of expression and media freedom more broadly, including by banning BBC Persian service, but also how it targets Iranian

¹⁰⁵ Shadi Sadr, written submission.

¹⁰⁶ Ibid.

¹⁰⁷ Shadi Sadr, written submission.

¹⁰⁸ Rana Rahimpour, oral hearing.

journalists and their families outside of Iran, as part of its practice of transnational repression.¹⁰⁹

3.1.5. ACCESS TO JUSTICE

Women's access to justice is severely limited. Professor Javaid Rehman explained some of the issues in relation to access to justice:

In Iran, the age of criminal responsibility in Iran is nine lunar years for girls, whereas it is 15 for boys. The age of marriage for girls is 13 and even younger girls could be married. We have received cases of very young girls [being married], sometimes they're forced into marriages, and then they react. Instead of being recognised as victims, because of this age of criminal responsibility, they are regarded by the criminal justice system as criminals and they are then sometimes executed if charged and convicted of certain serious crimes. Tragically, Iran continues to execute children. We receive information on young girls who have reacted violently to domestic violence, and then they are executed.

The Iranian Penal Code states that the amount of blood money is still half of that of a male so women are effectively deprived of recognition of being equal even when they are killed. Iranian Penal Code exonerates perpetrators of honour killing and reduces their punishments. For example, there are exemptions for men who kill their children or grandchildren. There are exemptions for criminal liability and retribution in kind for a man who witnesses his wife committing adultery with a man and kills either or both of these parties. (...)

If you look at many civil proceedings, the evidence of women either does not count or is half of the evidentiary value. This is a great disadvantage to women in very important litigation. Women are deprived of half of their inheritance.

Women are again heavily discriminated against in family law. For example, a girl needs to have the permission of a father to get married, she cannot get married to a non-Muslim man, and polygamy is still permissible for men. (...) The husband has the authority, including the right to prevent his wife from taking employment, she cannot travel abroad, and she cannot have any kind of personal autonomy and make decisions if she does not have permission from her husband. There are very serious restrictions in family law, for example, in marriage, in divorce, in custody and guardianship.¹¹⁰

¹⁰⁹ Caoilfhionn Gallagher KC, oral submission.

¹¹⁰ Javaid Rehman, oral hearing.

3.1.6. OTHER RESTRICTIONS AND CONCERNS

The hijab laws in Iran have resulted in a litany of challenges faced by women and girls in the country that go much further than 'just' being harassed, receiving a warning or fine, and have had deadly consequences for many women and girls. Professor Javaid Rehman indicated that:

Women have suffered for a very long time, because of this policy of enforced hijab. It is the policy where there has been no compromise that has been made since 1979. But since President Ibrahim Raisi came into power, there has been a lot more repression of girls and women. So we know the tragic story of Mahsa Amini. But Mahsa Amini was not the only woman or girl. There have been many other victims of this kind of violence and brutality that have been faced by these girls and women. And just to highlight **over 537 victims are there who have been killed by the state since the protest movement started last year, which has included over 70 children, many of them girls, and there has been no accountability for that.** But what the state instead has done - it has become a lot more ruthless in its approach. There is currently a bill in the Iranian parliament, which is much more oppressive and draconian in its effect. There is the likelihood of imprisonment, the likelihood of fines. There are other forms of punishment, for example, there will be travel bans, there will be confiscation of passports, there will deprivation of citizens' rights, and all of that, just because girls and women who refuse to wear the enforced hijab, would be presented to courts and will be subjugated to this kind of humiliation and physical and financial and all forms of punishment.

We also have seen that hundreds and thousands of text messages are being sent to girls and women. There have been fines imposed on these girls and women. Vehicles have been impounded because the hijab law is not only when women and girls are walking in public, in the streets, it also applies when you are in your private vehicles. And these fines are imposed on these girls and women when they are sitting in the privacy of their cars and yet they are captured by [CCTV] cameras. We also know that the morality police have come back on the streets of Iran with a great vengeance. I have received numerous reports of women being confronted, detained and then tortured and transferred to police stations. Thousands of businesses have been shut down, even as we speak. (...) These businesses have been shut down because the state is saying that they are in some sense complicit or supporting women who come to their premises without wearing the hijab, or not wearing the hijab properly.¹¹¹

Shadi Sadr commented in her written submission on research in relation to the enforcement of the hijab law:

¹¹¹ Javaid Rehman, oral hearing.

A research conducted by the human rights organisation, Justice for Iran, examining official records and statements spanning from 2003 to 2013 confirms that more than 30,000 women in Iran were arrested by the morality police during this decade for either not wearing hijab or wearing it improperly.¹¹² Official reports indicate the issuance of over 460,000 warnings to women, with 7,000 compelled to pledge compliance with Islamic hijab laws while a minimum of 4,385 women faced charges and legal prosecution. In the same period, more than 460,000 women received verbal notifications from the morality police.¹¹³

It would be crucial to examine the data from recent years and see how the trends have been or are changing.

Shadi Sadr further commented on how technology is being used to persecute women, including in women-only spaces:

Increasingly, surveillance cameras in public spaces, particularly thoroughfares, are being utilised by the police in Iran to identify and penalise women who do not comply with the mandatory hijab rule. Advanced AI technology has amplified the state's surveillance capabilities, particularly with the proliferation of CCTV cameras in cities like Tehran. This heightened surveillance includes the use of traffic cameras to spot women driving without a headscarf, leading to harassment, the marking of their cars in records, and subsequent vulnerability to police stops, harassment, and arbitrary fines. This situation makes it challenging for individuals resisting mandatory hijab to lead a normal life, impacting their ability to sell their cars and exposing them to continuous scrutiny and control by authorities. Surveillance itself remains a key tool through which gender apartheid is maintained in Iran. Even in women-only spaces, women are under the watch of the state through plainclothes agents or supporters of the Islamic government who act on the state's behalf.¹¹⁴

Azam Jangravi - an Iranian Information Security Analyst at Citizen Lab, Toronto University, and human rights advocate, once imprisoned in Iran for not wearing the hijab - explained how the Nazar system of surveillance is implemented in Iran to monitor women through a system of cameras and systems that can detect women through facial recognition, utilising Chinese spyware.¹¹⁵

¹¹² Justice for Iran, 'Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran', 23.

¹¹³ Shadi Sadr, written submission.

¹¹⁴ Ibid.

¹¹⁵ Azam Jangari, oral hearing.

Rana Rahimpour referred to the case of Roya Heshmati who was lashed 74 times in January 2023, as *'she posted a photo of herself on her Facebook account, which was just showing her from behind and she was wearing a red top and a long black skirt, which to many it's a very modest outfit, but then she was arrested detained for 11 days and lashes.'*¹¹⁶

3.2. INSTITUTIONALISED AND SYSTEMATIC DISCRIMINATION AND DOMINATION

As considered earlier in the report, the crime of gender apartheid would require that the inhumane acts have been *'committed for the purpose of establishing and maintaining domination by one gender group of persons over any other gender group or groups.'*

From the above examination of the inhumane acts perpetrated by the Iranian regime, it is clear that such acts cannot occur in a random and isolated manner but are part of a widespread and oppressive regime that is both institutionalised and systematic. It can be argued that the Iranian regime, reinforcing patriarchy and men's dominance over women, has imposed the above-discussed limitations on women's rights for the purpose or intention of maintaining domination by the Iranian regime over women and systematically oppressing them.

Shadi Sadr commented that:

The institutionalised regime of systematic oppression within the context of Iran can be characterised as state-sanctioned control imposed on all women and girls solely based on their gender, disregarding any other distinct identity. The primary tools to maintain this regime are mandatory hijab and gender segregation, enforced through the criminalisation of defiance and the discipline of disobedience.¹¹⁷

She further added that:

Their persistence in committing inhumane acts despite extensive public resistance and the associated political costs, as well as from the existing and proposed laws and policies. A review of legislation passed by the Islamic Republic Parliament or adopted by other legislative and governing bodies, some of which have been discussed in

¹¹⁶ Rana Rahimpour, oral hearing.

¹¹⁷ Shadi Sadr, written submission.

previous sections, clearly demonstrates the intent to perpetuate systematic oppression based on gender. This includes mandatory hijab rules and gender segregations that control women's bodies and behaviours, along with public, civil, and criminal laws that ensure male dominance.

The new draft law on hijab being discussed in the parliament signals the intent of Islamic Republic officials to uphold gender apartheid as a system of governance, imposing even more restrictive and severe punishments on those who defy the oppressive gender discriminatory laws and segregation policies. Furthermore, officials of the Islamic Republic have explicitly expressed their intention to uphold a system of oppression, dividing society along gender lines and perpetuating male superiority over women's subjugation by controlling women's bodies and behaviour in a deeply gendered society. An example, among countless others, is the speech made by Khamenei, the Supreme Leader of the Islamic Republic, in December 2023, where he emphasised that women have the duty to protect the family by giving birth and safeguarding society from the perceived threat of sexual attraction. He stated that the concept of gender equality is absolutely wrong. His religious orders (fatwas), available on his website, align with the most oppressive and discriminatory policies against women.¹¹⁸

Shadi Sadr further commented on the status of women in Iran:

Women in Iran have been grappling with a unique situation for over four decades, where their entire existence is affected by a system of oppression and dominance that establishes a tier system based on gender. Men, as a group, are regarded as superior first-class human beings, while women are deemed subjugated second-class human beings. Any defiance of the strict mandatory hijab rules or manifestation of protests is punishable by law. These laws, discriminatory and inhumane in nature, are implemented with excessive force, humiliation, intimidation, and derogatory actions, involving arbitrary detention, torture, ill-treatment, and even murder. Administrative measures are in place to maintain gender segregation as a constituting component of the hijab rules. Laws and practices also guarantee male dominance in any relations involving men and women, whether in private or public realms and at any level, from family to societal and political, violating women and girls' fundamental human rights, such as the right to education, work, freedom of movement, and the highest attainable standard of health. (...) The Iranian authorities, in their efforts to maintain a regime of oppression and dominance, have committed inhumane acts involving the imprisonment or deprivation of liberty of a large number of women and girls for more than four decades. Women detained for improperly wearing hijab or not wearing it have been subjected to torture, including rape and other forms of sexual abuse, leading to fatalities in some cases.¹¹⁹

¹¹⁸ Shadi Sadr, written submission.

¹¹⁹ Ibid.

3.3. THE IMPACT OF THE RESTRICTIONS

The restrictions on the rights of women and girls, which deems women and girls as second-class citizens, have devastating consequences on their well-being. Shadi Sadr indicated that *'the severity of violence against women and girls due to their disobedience of mandatory hijab rules has caused great suffering and serious injury to their bodies and mental or physical health.'*¹²⁰

The issue requires further attention.

¹²⁰ Ibid.

III. ANOTHER TOOL FOR THE TOOLBOX: GENDER APARTHEID

The above section engages with some evidence to suggest that the treatment of women and girls in Afghanistan and also in Iran could fall within the purview of gender apartheid, as per the working definition. Yet again, currently, gender apartheid is not explicitly codified under international law nor domestic law, and in turn, gender apartheid cannot be addressed as such. This does not mean that the treatment of women and girls in Afghanistan and Iran cannot be addressed at all - and indeed - the crime of gender persecution can be of assistance. The Rome Statute covers the crime of gender persecution as a crime against humanity with 'persecution' meaning '*the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity*'¹²¹ and 'gender' meaning '*the two sexes, male and female, within the context of society.*'¹²² **However, there are limitations to how the crime of gender persecution is an effective response to the institutionalised nature of the dire situation women and girls face in Afghanistan and Iran.**

Apartheid is currently defined around the issue of racial oppression and domination. Justice Richard Goldstone, a South African retired judge who served in the Constitutional Court of South Africa, and prolific anti-apartheid advocate, reminded the Inquiry what apartheid in South Africa meant:

South Africa's apartheid laws demeaned and persecuted all black South Africans, from the day they were born in segregated hospitals, that were reserved only for black persons, until the day they died, and were buried in cemeteries that were reserved only for black bodies. **The apartheid laws controlled every aspect of the lives of black South Africans.** It ensured that they received inferior education and were not allowed employment in the most lucrative jobs that were reserved for white South Africans only. It made it extremely difficult for young black people to enter what were regarded as white universities. They were not allowed to live in residential areas that were reserved for white people only, which included, needless to say, all of the cities. They were compelled to live in ghettos on the outskirts of cities for the benefit of their white inhabitants.

¹²¹ See: Article 7(2)(g) of the Rome Statute.

¹²² See: Article 7(3) of the Rome Statute.

In short, **there was hardly any time on any day that a black South African was not demeaned by the apartheid system of racial oppression.** It was the systemic nature of apartheid that made South Africa the pariah of the international community. That policy was very openly, if not brazenly, legislated and implemented. (...) There was literally not a single white South African who could have been unaware of and complicit in the degradation of fellow black South Africans.¹²³

Justice Richard Goldstone further emphasised the systematic nature of apartheid as it was enforced in South Africa. He noted that:

It is also important to emphasise that the victims of apartheid consisted of a vast majority of South Africans. This is often a neglected factor. There's not a minority that was oppressed, but a huge majority that perhaps makes the apartheid system unique. This is relevant in this context in that the discrimination and degradation of women in Afghanistan and Iran is also against what is probably a majority of the people.¹²⁴

He further added that women and girls, who live under the regimes of the Islamic Republic of Iran and the Taliban in Afghanistan, live in extremely systematic and structural war against them. **'It is clear that these repressive governments strictly segregate women and men.'**¹²⁵

Naheed Farid testified to the similarities between the treatment of women and girls in Afghanistan and apartheid in South Africa. As she emphasised:

If we talk about apartheid, if we go back to the South African regime of apartheid, you will see so many similarities, for example, in education segregation. In South Africa, they had the Bantu Education Act, along similar lines, the Taliban have been banning education, secondary education and higher education [for women and girls]. The Suppression of Communists Act was worded in such a way that anyone who opposed government policy could be deemed as a communist and they arrested everyone without trial and were killed. Segregation in public space. This happened in South Africa, where people could not use the public service, and so many other premises and transportation. The same as women in Afghanistan - women could not attend and could not travel more than 72 kilometres without their husbands, their chaperones, because they are women. In South Africa, the Mines and Works Act prevented black people from working. The Taliban are also doing the same thing. (...) The legal discrimination is that women cannot have access to their legal rights because they are women. This also happened in South Africa.¹²⁶

¹²³ Justice Goldstone, oral hearing.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Naheed Farid, oral hearing.

The UN Special Rapporteur on Afghanistan Richard Bennett, in his oral testimony, expressed that he has heard some people may have concerns about the expansion of the concept, and application of apartheid to wider circumstances than the horrors committed in South Africa. However, as Justice Goldstone, amongst others, emphasised, given the institutionalisation of discrimination against women in these contexts, it was appropriate to expand the definition of apartheid to accurately encompass the experiences of women in these countries. It is crucial to remember the nature and severity of the oppression that black people suffered in South Africa. However, we must be mindful of the fact that similar practices may be used against other groups of people, especially if discrimination and persecution continue to be ignored and neglected and allow impunity to flourish. As such, we cannot exclude the possibility that similar practices can be used based on gender, and indeed, against women and girls in Afghanistan and Iran.

1. THE DEVELOPMENT OF THE CONCEPT OF GENDER APARTHEID

The concept of gender apartheid is not a new one and has been reappearing over recent decades to portray the dire situation of women and girls in various parts of the world. Testifying before the Inquiry, Professor Karima Bennoune, the Lewis M. Simes Professor of Law at the University of Michigan Law School, explained the development of the concept stating:

In the 1990s, women from a number of Muslim majority countries started using the term gender apartheid to describe the fundamentalist project that was on the rise in a number of contexts that was really about institutionalising the subordination of women as the mode of governance.’ The first time, in fact, this term was used in the UN system was in 1999, when the person who was then the [UN] Special Rapporteur on Freedom of Religion or Belief, Abdelfattah Amor (Tunisia), applied the term apartheid to what the Taliban were doing then. It is no accident that the first person in the UN system to do this was from a Muslim-majority country, one that is fairly liberal in its treatment of women, because he recognised that what was happening in Afghanistan under the Taliban in the 1990s, **was not just about religion, or culture, but was very much about the fundamentalist politics of building a system of government that systematically**

excludes and oppresses women. Now we are seeing a repeat of that, unfortunately, with the Taliban's return to power.¹²⁷

The first time a UN body used the phrase was in 1999 to characterise the situation of women under Taliban rule.¹²⁸ The 1999 UN report identified that:

The Taliban has introduced what is in point of fact a system of apartheid in respect of women, based on its interpretation of Islam: exclusion of women from society, employment and schools, an obligation for women to wear the burqa in public and restrictions on travel with men other than members of the family.¹²⁹

The issue has been further studied by scholars and experts.

In 2000, Ann Elizabeth Mayer, Associate Professor Emeritus of Legal Studies and Business Ethics at the Wharton School of the University of Pennsylvania, wrote about the situation of women in some Middle Eastern countries as revealing patterns of systematic, egregious gender discrimination.¹³⁰ She raised the issue that gender apartheid, **'despite its direct analogies to racial apartheid, has largely been seen as a relatively benign phenomenon.'**¹³¹ Furthermore, as she pointed out, *'to date international law has failed to classify such treatment as a kind of apartheid, and the international community has failed to impose sanctions to deter such treatment of women.'*¹³² Ann Elizabeth Mayer indicated that,

Efforts are being made to forestall attacks on gender apartheid by persuading the international community that gender apartheid is justified by the motives behind it. **States make arguments to the effect that discriminatory treatment of women embodies religious teachings and cultural values, and such rationalisations for gender apartheid are tolerated when analogous arguments would never be accepted as rationalisations for racial apartheid.**¹³³

¹²⁷ Karima Bennoune, oral hearing.

¹²⁸ E/CN.4/1999/58.

¹²⁹ Ibid.

¹³⁰ Ann Elizabeth Mayer, 'A "Benign" Apartheid: How Gender "Apartheid" Has Been Rationalised' (2000) 5 UCLA Journal of International Law and Foreign Affairs, 237-338.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid., 102.

This is particularly visible in the International Court of Justice (ICJ) advisory opinion in the case of *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276*¹³⁴ where the ICJ indicated that:

In order to determine whether the laws and decrees applied by South Africa in Namibia, which are a matter of public record, constitute a violation of the purposes and principles of the Charter of the United Nations, the question of intent or governmental discretion is not relevant; nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants. (...) Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.¹³⁵

The ICJ made it clear that claimed valid motives for apartheid – such as cultural or religious justifications are unacceptable and irrelevant as per the UN Charter, and thus contrary to international law.

Penelope Andrews, John Marshall Harlan II Professor of Law at New York Law School, in her paper published in 2001, argued that even within the racial apartheid in South Africa, women were subjected to gender apartheid:

Under traditional law and culture, women were denied a host of rights: the right to own land, the right to custody of their children, and the right to be chief or elected as chief. **These laws and policies, bolstered by an apartheid ideology that insisted on the second-class status of women within African society, cemented their inferior status; this legacy will continue to haunt women for many generations.**¹³⁶

Karima Bennoune, engaging with the Taliban treatment of women, defined gender apartheid as *'a system of governance, based on laws and/or policies, which imposes systematic segregation of women and men and may also systematically exclude women from public*

¹³⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 131.

¹³⁵ *Ibid.*

¹³⁶ Penelope Andrews, 'From Gender Apartheid to Non-Sexism: The Pursuit of Women's Rights in South Africa' (2001) 26 *North Carolina Journal of International Law and Commercial Regulation* 697.

spaces and spheres.¹³⁷ In her scholarship on gender apartheid, she has also emphasised the element of systematic oppression.¹³⁸ As she explained:

Gender apartheid is anathema to [the] foundational norms of international law, every bit as much as racial apartheid was to the analogous principles prohibiting race discrimination. Ultimately, as racial apartheid was for Black South Africans, **gender apartheid is an erasure of the humanity of women**. Every aspect of female existence is controlled and scrutinised.' She concluded that 'there is no escape from gender apartheid. The solution cannot be the departure of half the population of the country.'¹³⁹

The above provides only a brief summary of some of the debates around the concept of gender apartheid. However, until now, these have not resulted in sustained engagement or moves toward explicit codification. The deteriorating situation of women and girls in Afghanistan and Iran, as combined with greater awareness raising and engagement led by Afghan and Iranian women, including with the End Gender Apartheid Campaign, has triggered more international attention than ever before. It cannot stop there. The growing understanding of the dire situation of women and girls in Afghanistan and Iran warrants not only short-term attention but long-term comprehensive responses.

As the situation of women and girls is deteriorating in Afghanistan and Iran, and any political 'dialogue' with those in power has not delivered any palpable change, it is crucial to use any means available to fight for these women and girls, their present and their future.

In December 2023, in response to the draft Convention on Crimes Against Humanity, out of the 30 States responses, six specifically mentioned gender apartheid, namely, Afghanistan, Australia, Brazil, Malta, Mexico, and the United States, and 16 raised gender-related issues.¹⁴⁰

Among others, Dr. Nasir A. Andisha, Ambassador and Permanent Representative of Afghanistan United Nations and Other International Organisations in Geneva, (although not a representative of the Taliban), recommended making an amendment on gender apartheid to the draft Convention on Crimes Against Humanity:

¹³⁷ See: Karima Bennouna, 'The International Obligation to Counter Gender Apartheid in Afghanistan' (2022) 54 Columbia Human Rights Law Review. Available at: <https://hrlr.law.columbia.edu/files/2022/12/Bennouna-Finalized-12.09.22.pdf>.

¹³⁸ Ibid., 49, 56, 60.

¹³⁹ Ibid.

¹⁴⁰ See responses here: <https://www.un.org/en/ga/sixth/78/cah.shtml>.

“Gender Apartheid,” as we propose it to be recognised, involves practices or/and incitement to them where one or more gender groups (most commonly women and girls) are systematically segregated, discriminated against, and denied fundamental human rights, including the right to education, work, freedom of movement, to the right to participate in social, political, and economic life, by another gender group.

Recognising “Gender Apartheid” as a crime against humanity would be a historic step in the right direction for global human rights legislation. It would not only offer a framework for international accountability but also serve as a deterrent against the perpetration of such acts. This amendment would also align with the Sustainable Development Goals, particularly Goals 5 and 16, which aim to achieve gender equality and empower all women and girls and peace, justice, and strong institutions.

The inclusion of “Gender Apartheid” in the draft treaty would also send a powerful message to the international community that gender-based discrimination in its most extreme forms will not be tolerated and that the global legal framework is adapting to address evolving forms of crimes against humanity.¹⁴¹

Malta indicated that the definition of the crime of apartheid should be broadened to include *‘inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one gender group over another gender group or groups and committed with the intention of maintaining that regime.’*¹⁴² Malta proposes the following amendment (in underline) to the definition of the crime of apartheid, contained in Article 2(2) (h) of the draft articles:

“The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups, **or by one gender group over another gender group or groups, and committed with the intention of maintaining that regime.**¹⁴³

As emphasised by Malta:

The codification of the crime of gender apartheid will enable victims and survivors – present and future – to hold perpetrators to account for the totality of crimes committed by systematised oppression which the crime of gender persecution alone cannot and does not capture.¹⁴⁴

¹⁴¹ See full response here: https://www.un.org/en/ga/sixth/78/cah/afghanistan_e.pdf.

¹⁴² See: https://www.un.org/en/ga/sixth/78/cah/malta_e.pdf.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

States calling for codification of gender apartheid is an important step forward. However, many countries which always claim to be standing up for women and girls remained silent.

The below discusses why it is crucial to codify gender apartheid, focusing on the differences between gender apartheid and other crimes, in particular, the crime of gender persecution as a crime against humanity.

2. GENDER APARTHEID AND GENDER PERSECUTION

Justice Richard Goldstone when discussing the two concepts of gender apartheid and gender persecution, during the scoping session, emphasised that:

Persecution really does not encapsulate the systemic nature of the issue, of a society in which every single woman and every single girl in the whole society, we are talking about millions of people, are being persecuted. It is the systemic nature that one needs to underline.¹⁴⁵

Testifying before the Inquiry, he further added that:

The systematic oppression of women [in Afghanistan and Iran] clearly constitutes a crime of persecution. Persecution is a crime that is defined as severe discrimination that results in the denial or infringement of fundamental rights, or those fundamental rights of those women. The offence is the crime against humanity of gender persecution. **The problem, and the main reason we are here today, is that the crime of gender persecution fails, in my view, to recognise the systemic and societal nature of the discrimination that is being practised against women, in these societies in Iran and Afghanistan. In the same way, in the case of South Africa, persecution on grounds of race would have failed to capture the nature of the cruel and evil system of apartheid.** (...) As has been pointed out in the excellent brief produced by the Atlantic Council, if one substitutes gender for race in the definition of apartheid, one captures fully what the cruel regimes are doing to women in Iran and Afghanistan.¹⁴⁶

¹⁴⁵ Scoping session with experts, IBAHRI, 18 July 2023.

¹⁴⁶ Justice Goldstone, oral hearing.

Professor Karima Bennouna commented that both concepts are important and need to be part of our language. She discussed what should be the toolkit that human rights defenders have in these contexts. She explained that:

We need the strongest and most diverse toolkit that international law can possibly provide because these people are confronting literally impossible situations and very particular threats. (...) We have prohibitions on racial apartheid and racial persecution in international law, we need the same complete, holistic approach with regard to what happens to women, and what happens on gender grounds. (...) these are not alternatives. They are complements that may be used for different reasons.¹⁴⁷

She further added that:

Persecution focuses on intentional and severe deprivation of fundamental rights, by reason of the identity of the group. This very helpfully stresses the severity and the discriminatory motivation. However, **[gender persecution] does not adequately implicate the institutionalised or ideological nature of the abuses in question or the way in which they reflect the entire governance model of the government or the de facto authorities. And this is where the definition of apartheid is particularly helpful if you compare the language in the Rome Statute on persecution and apartheid.**¹⁴⁸

Professor Javaid Rehman, testifying before the Inquiry, described gender apartheid as a crime,

Manifested, as an official state policy, which is imposed through laws, policies and practices to enforce an institutionalised regime of segregation of genders, resulting in systematic and systemic oppression and domination by one gender group, and the total subjugation or subordination or non-existence of any other gender group or groups.¹⁴⁹

He further added that:

Gender apartheid is not exclusive to other established legal principles, including gender discrimination, and gender-based persecution, although the concept of gender apartheid, in my view, is much broader, and much more encompassing. In addition, gender apartheid has a high threshold, which is inappropriate for all situations of gender discrimination and gender-based persecution, there are nevertheless firmly established cases where the situation of girls and women cannot be described other

¹⁴⁷ Scoping session with experts, IBAHRI, 18 July 2023.

¹⁴⁸ Ibid.

¹⁴⁹ Javaid Rehman, oral hearing.

than gender apartheid. In my view, the most established examples would be Afghanistan, and what we will discuss in the case of the Islamic Republic of Iran.¹⁵⁰

In a written submission to the Inquiry, the Strategic Litigation Project at the Atlantic Council indicated that:

There is a range of arguments for how gender apartheid is distinct from, yet complementary to the crime of gender persecution. While gender persecution can apply to a range of current country contexts, apartheid accurately captures the specific harms that Afghan and Iranian women face, in the systems they live under. There is a power in recognition of those specific harms and putting legal consequences to those more specifically defined actions. (...)

The crime of gender apartheid is distinct from the crime of gender persecution in two other important ways. First, it arguably includes different underlying crimes— namely, crimes that constitute violations of human rights law. The crime of gender apartheid encompasses systematic, pervasive state discrimination that restricts women from full citizenship and self-determination. This systematic and profound discrimination and oppression, seen as an underlying act, represents a severe violation of human rights law but does not necessarily constitute stand-alone crimes against humanity, which is what is required to charge the crime of persecution under the Rome Statute of the International Criminal Court. Second, the crime of gender apartheid (and apartheid more generally) has different kinds of perpetrators as the focus of prosecution—not only those who were closely involved in the gruesome underlying acts of gender persecution such as murder, rape, and enslavement—but the legislators, judges, and law enforcement officers who advocated for and upheld the legal regime that undergirds the very phenomenon of gender Apartheid.¹⁵¹

Freedom Now submitted to the Inquiry that gender persecution and gender apartheid are also distinct in the consequences they prompt:

Evidence of gender persecution can trigger prosecution of specific individuals—likely few in number—for specific criminal acts. A finding of gender apartheid has broader implications, as it requires action by others—other states, international institutions, private sector actors, sporting bodies, etc. would all be obliged to take action to ensure that they are not complicit in apartheid.¹⁵²

Metra Mehran submitted to the Inquiry that gender apartheid is different and distinct from gender persecution in that:

¹⁵⁰ Ibid.

¹⁵¹ Strategic Litigation Project at the Atlantic Council, written submission.

¹⁵² Freedom Now, written submission.

Gender apartheid refers to a system of institutionalised and systematic discrimination, segregation, and domination based on gender. It involves the establishment of separate and unequal systems that systematically oppress one gender group, denying them basic rights and freedoms. This discrimination is deeply rooted in the structures and institutions, with oppressive policies and practices integrated into the governance system like Iran and Afghanistan. In contrast, gender persecution is a broader concept that encompasses intentional and severe deprivation of fundamental rights based on gender. While gender persecution addresses specific acts, gender apartheid goes beyond that and emphasises the structural and systemic nature of discrimination at the state level or governance system. Recognising the need for concerted efforts to dismantle the discriminatory systems in place.¹⁵³

MADRE and Rawadari indicated that:

Gender apartheid is a regime that believes in the inferiority of women to men as humans and has a range of policies oppressing all aspects of their rights and freedoms. Gender Apartheid helps to illuminate the societal structures of gender discrimination and how it deeply impacts women and girls within a society.¹⁵⁴

Testifying before the Inquiry, Professor Karima Bennouna explained that many women human rights defenders from Afghanistan consider the situation of women in the country to constitute gender apartheid:

When I carried out my research for the paper, I did a series of interviews with 17 Afghan women human rights defenders, from every region of the country from every ethnic group. I was really struck by how uniformly, with one dissenter, they agreed with the characterisation of the country's situation as gender apartheid already at that time in 2021. They did this for a number of reasons. They found it to be a very accurate description of the situation. They were also aware of the way in which apartheid law had helped to end the situation facing black South Africans, so they wanted international law to learn from its successes. Taking away from those interviews, for me, **gender apartheid is basically the systematic segregation of women and men imposed through law and policy as a governing ideology.** It involves the exclusion of women in Afghanistan, the near total exclusion of women from all aspects of public life. It involves the erasure of the humanity of women. One of the Afghan women I interviewed said, "The Taliban view women as less human than men." It involves systemic oppression. And in all these ways, it mirrors the situation of non-white South Africans during the apartheid regime in that country.¹⁵⁵

¹⁵³ Metra Mehran, written submission.

¹⁵⁴ MADRE and Rawadari, written submission.

¹⁵⁵ Karima Bennouna, oral hearing.

She further added that:

There has been tremendous support from South African jurists and others, including very prominent people like Justice Goldstone, including Professor Penelope Andrews, the first black woman Law Dean in South Africa, who made the suggestion 10 years ago that in fact, you could use the definition of apartheid from the 1973 Apartheid Convention, and simply add gender to it, in order to accurately reflect situations like that in Taliban Afghanistan.¹⁵⁶

It is crucial to emphasise that among the overwhelming amount of evidence in support of codifying gender apartheid, the Inquiry received a submission indicating that the codification is not needed, as the concept is already adequately covered within the crime of gender persecution. Ms. Reem Alsalem, the United Nations Special Rapporteur on violence against women and girls, expressed her reservations about codifying yet another crime stating that the crime of gender persecution, as crimes against humanity in the Rome Statute, should be utilised here.¹⁵⁷ As such, she did not consider that there was any value added to the codification of gender apartheid. Special Rapporteur Reem Alsalem also warned about the politicisation of the concept of gender apartheid and the responsibilities that will emanate from the codification of the crime, which would then speak to the political will of countries to codify it.

Testifying before the Inquiry, Professor Karima Bennouna addressed these concerns indicating that:

The added value of the apartheid framing is that it makes clear, just as was the case with racial apartheid, that this is an illegal situation to be ended, not the appropriate topic of sort of piecemeal, so-called constructive engagement. It maintains the stigma on the perpetrators, and it heightens the profile of the international opponents of gender apartheid. It also gives rise to the responsibility of other states, they cannot be complicit with apartheid, and they cannot engage with the perpetrators of apartheid in a way that shows complicity in gross abuses. All of this can accurately fit into the Rome Statute definition of apartheid. If you again, simply add gender, following the suggestion of leading South African expert like Penny Andrews, and what we were talking about here is inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one gender group over any other

¹⁵⁶ Ibid.

¹⁵⁷ Reem Alsalem, oral hearing.

gender group or groups and committed with the intention of maintaining that regime.¹⁵⁸

Dr Aldo Zammit-Borda, Reader in International Law at City, University of London, indicated in his written submission that:

The main harm of gender persecution is discrimination on the basis of gender, i.e. a perpetrator specifically targets a group or a person within that group for inhumane acts because of their gender. The main harm of gender apartheid is domination on the basis of gender, i.e. a perpetrator intends to maintain a regime of systematic oppression and domination by committing an inhumane act against one or more persons belonging to the subjugated group. As noted above, therefore, the crime of gender persecution and the emerging concept of gender apartheid are not co-extensive. Establishing and maintaining an institutionalised regime of systematic oppression and domination on the basis of gender is a far broader concept: it describes a system that normalises the dehumanisation, oppression and domination of one group over any other group or groups, defined by gender.¹⁵⁹

Furthermore, as identified by the Strategic Litigation Project at the Atlantic Council, adding gender apartheid to the toolbox to address crimes targeting women and girls could strengthen the responses:

Gender persecution is sparingly prosecuted as a crime, with convictions rare to none. An increased focus on gendered crimes, including the crime of gender apartheid, could urge prosecutors to think more deeply about gender crimes and focus more on evidence gathering around those crimes. Codifying the crime of gender apartheid will only be additive to this focus, not subtractive. Indeed, international criminal law has both racial apartheid and racial persecution as crimes. There is no clearly articulated reason for why international criminal law cannot also have both gender apartheid and gender persecution as crimes.¹⁶⁰

Considering the fact that crimes targeting women and girls are ever-present and the suppression of the rights of women and girls are ever-growing, it is crucial to explore new ways that could help to send a strong message that such treatment of women and girls will not be accepted but also to bring about meaningful change.

¹⁵⁸ Karima Bennoune, oral hearing.

¹⁵⁹ Aldo Zammit-Borda, written submission.

¹⁶⁰ Strategic Litigation Project at the Atlantic Council, written submission.

3. LEGAL RESPONSES

When discussing the differences in the approaches taken to address racial apartheid and similar practices against women, Ann Elizabeth Mayer stressed that the legal approaches to the issue have been significantly different, with, for example, both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often described as an international bill of rights for women, and the Declaration on the Elimination of Discrimination Against Women, being toothless in comparison to the Apartheid Convention.¹⁶¹ As she indicated:

Neither of these documents condemns gender discrimination in the kind of forceful terms used in declarations and conventions dealing with racial discrimination and apartheid. One recalls that the Apartheid Convention in Article II speaks of “inhumane acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.” CEDAW never expressly says that men are “oppressing” women, nor does it describe regimes of gender discrimination as being used for purposes of male “domination” of women. The omission of such characteristics is significant because many of the same patterns of oppression and domination that were recognised as underlying South African apartheid can be found in the ways that men have subjugated women, especially in some Middle Eastern countries where women are completely excluded from roles in the political establishment. Thus, one could say that the language of CEDAW, in avoiding terms like “oppression” and “domination,” opens the door to various depictions of women’s status that attempt to portray the treatment of women as the product of culture rather than politics.¹⁶²

Furthermore, contrary to the Apartheid Convention, CEDAW does not criminalise either the policies or the practices of gender discrimination, even where they manifest the most rigid and harmful forms of segregation and discrimination, although it requires States to take measures to eliminate all forms of discrimination against women.

During the scoping session, part of oral hearings with the Inquiry, Professor Rangita de Silva de Alwis, Associate Dean of International Affairs at the University of Pennsylvania Law School, explained that:

¹⁶¹ Ann Elizabeth Mayer, ‘A “Benign” Apartheid: How Gender “Apartheid” Has Been Rationalised’ (2000) 5 UCLA Journal of International Law and Foreign Affairs, 237-338.

¹⁶² Ibid.

The Taliban in Afghanistan is the archetype where systematic discrimination against and exclusion of women has become the form of government. These are not practices. This is the governing ideology. As such, one cannot use the ordinary human rights approach of having the government show up in Geneva and making recommendations and encouraging them to move forward. What one needs is precisely what South Africans needed in support of their own movement against apartheid, which is concerted, principled, law-based international support. The means that we have, the ordinary means of addressing human rights situations, are not working here. We need something better. Gender apartheid is not a perfect framework. However, it is an incredibly important one for not only characterising what the Taliban are doing and other similar governments and entities but also for having a way of shaping the international response that we need.¹⁶³

3.1. AVENUES FOR CODIFYING GENDER APARTHEID

During the scoping session, experts discussed various options for the codification of gender apartheid, including exploring the option of an additional optional protocol to the Apartheid Convention, an amendment to the Rome Statute, and the inclusion in the Convention on Crimes Against Humanity.

3.1.1. ADDITIONAL PROTOCOL TO THE APARTHEID CONVENTION

One of the proposals was to introduce an additional protocol to the Apartheid Convention that would expand the understanding of apartheid, moving away from the focus on racial segregation and oppression only and including gender. Justice Richard Goldstone indicated that *‘a project on gender apartheid is an appropriate response to the egregious persecution being suffered by girls and women in Afghanistan and Iran.’*¹⁶⁴ However, as he continued:

An additional optional protocol to the Apartheid Convention is not the way forward. The Apartheid Convention was obviously aimed directly and solely at apartheid in South

¹⁶³ Ibid.

¹⁶⁴ Scoping session with experts, IBAHRI, 18 July 2023.

Africa, and it took many years before the international crime of apartheid was recognised as a self-standing crime. In modern international humanitarian law, it is a self-standing crime, not related at all to the manner in which it was implemented in South Africa.¹⁶⁵

3.1.2. THE ROME STATUTE AMENDMENT

Another discussed option was to make an amendment to the Rome Statute. As mentioned above, the Rome Statute already includes the crime of apartheid, as crimes against humanity.

Justice Richard Goldstone supported this idea stating that:

The most direct way to criminalise gender apartheid internationally would be to amend the definition of the crime in the Rome Statute. To achieve this, a substantial coalition of state parties would be required to support it. **To amend the Rome Statute requires a supermajority.** (...) In the coming year, there is bound to be a major effort to amend the Rome Statute to broaden the jurisdiction of the court in respect of the crime of aggression. If this happens, it would be a very good idea to piggyback on that development, with regard to gender apartheid.¹⁶⁶

Justice Goldstone continued that *'the first step would be to achieve a wide consensus on the definition of gender apartheid. The other further step would be to get support for the amendment.'*¹⁶⁷ Professor Hannah Garry, Professor from Practice and the Executive Director of the Promise Institute for Human Rights at the UCLA School of Law, emphasised how codifying the crime of gender apartheid in the Rome Statute will cut to the core of the issue of accountability for these crimes, and since the difference between gender apartheid and gender persecution is articulated in gender apartheid being institutionalised, it is the most senior in leadership who are the targets for these crimes, which is the focus of the International Criminal Court.

¹⁶⁵ Scoping session with experts, IBAHRI, 18 July 2023.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

3.1.3. DRAFT CONVENTION ON CRIMES AGAINST HUMANITY

Gissou Nia testified to the Inquiry that, together with Professor Karima Bennoune, she is working on ensuring that the wording of gender apartheid is incorporated in the draft Convention on Crimes Against Humanity. The draft Convention on Crimes Against Humanity, apart from codifying the crimes, is to mirror the Convention on the Prevention and Punishment of the Crime of Genocide in introducing specific obligations upon States to prevent and punish the crimes.

Similarly, Metra Mehran submitted to the Inquiry that the draft Convention on Crimes Against Humanity is the place to introduce gender apartheid:

The ongoing review process in the Sixth Committee is a critical chance for states to ensure that the status and demands of women in Iran and Afghanistan are not overlooked. Recognising gender apartheid as an international crime can catalyse further UN action, allowing any party to call upon UN bodies to take Charter-based action to prevent and suppress the crime of apartheid. It would also impose heightened obligations on states parties to implement relevant UN resolutions, reinforcing efforts to address gender-based violence and discrimination.¹⁶⁸

While the work on the convention is ongoing, and as such, it is possible to introduce additional or alternative language, there were some concerns raised in relation to extending the language.

Justice Goldstone, during the scoping session, explained the challenges of this approach in that if the issue does not get consensus, it would not proceed. Indeed, the lack of consensus is responsible for the stagnation of the draft convention. The lack of consensus is visible even without expanding the scope of the definition of crimes against humanity. Furthermore, Justice Goldstone raised concern that the objection could then jeopardise any proposal to amend the Rome Statute. Justice Goldstone further pointed out that:

Even if the Crimes Against Humanity Convention includes the language of gender apartheid, that would not make it an international crime. The convention does not have any direct effect, at least on the Rome Statute, or the International Criminal Court. That

¹⁶⁸ Metra Mehran, written submission.

is the reason the way forward is an amendment to the Rome Statute, which would elevate gender apartheid to an international crime.¹⁶⁹

Other experts have advocated the push for greater inclusion of gendered aspects of crimes - including gender apartheid - in the draft Crimes against Humanity Convention, for which several States have already expressed support, as explained above.

3.1.4. CEDAW AND GENERAL RECOMMENDATIONS

In addition to the above, it is also crucial to engage the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The Inquiry accommodated a roundtable, on the fringes of the Inquiry, with the CEDAW Committee (later CEDAW Committee roundtable) to ensure that the issue could be discussed by experts. During the session, Honourable Nicole Ameline, French politician, lawyer, diplomat and women's rights advocate, who led the roundtable, raised the possibility of the CEDAW Committee including the crime of gender apartheid in their upcoming General Recommendation 40 on the equal and inclusive representation of women in all decision-making processes.¹⁷⁰ The draft will be published in February 2024, and General Recommendation 40 will be adopted at the end of the year. CEDAW's General Recommendations are considered authoritative statements and used as interpretive tools to clarify and expand the statutory provisions in the CEDAW with respect to the human rights of women and State accountability. General Recommendation 40 calls for gender equality in women's decision-making in all areas of public and private.

Professor Rangita de Silva stressed that what we see in Afghanistan is the *'complete erasure of women and the critical presence of women in Parliament, but what we see now is a complete erasure of women's leadership in the public sphere and in the legislative process'*, emphasising why this demonstrated the need to link General Recommendation 40 to gender apartheid.¹⁷¹

¹⁶⁹ Scoping session with experts, IBAHRI, 18 July 2023.

¹⁷⁰ CEDAW Committee Roundtable, Gender Apartheid Inquiry.

¹⁷¹ Ibid.

Professor De Silva quoted David Rothkopf, an American foreign policy, national security and political affairs analyst and commentator, stating that *'the underrepresentation of women in positions of power is proof not so much that men still dominate the top of the pyramid as it is of a system of the most egregious, widespread, pernicious, destructive pattern of human rights abuses in the history of civilisation.'*¹⁷² She stressed that the inclusion of gender apartheid in General Recommendation 40 highlights how this is not just an issue of conflict-related sexual violence and female bodily autonomy, which continues to downplay the importance of women's intellectual and leadership contributions.

Madeleine Rees OBE, British lawyer and current Secretary General of the Women's International League for Peace and Freedom, commented that there must be wide consensus on a definition, which in her opinion applies to Afghanistan, in order to ensure that the definition continues its passage through the UN system, especially in the Sixth Committee, and evades resistance by States. Madeleine Rees highlighted the aspect of prevention noting that *'If we are anticipating the inclusion of gender apartheid, then this includes the obligation of prevention of apartheid. So, for now, we must insist that the recognition of apartheid regimes cannot take place, as apartheid is already cogent in international law.'*¹⁷³ As such, it is crucial to use the apartheid law pending codification.

Catherine Amirfar, Co-Chair of Debevoise & Plimpton's International Dispute Resolution Group and the Public International Law Group, highlighted how norms in international law considered *jus cogens*, are limited to prohibitions of aggression, genocide, slavery, crimes against humanity, torture, right to self-determination, racial discrimination and apartheid.¹⁷⁴ She raised that many have highlighted how the failure to raise gender discrimination to *jus cogens* norms, necessitates the expansion of apartheid to consider gender, to fill the gap beyond the crime of gender persecution.¹⁷⁵ She further added that:

The failure to address *jus cogens* norms through a gender-based normative framework risks perpetuating profound failures of accountability and leaves victims and survivors

¹⁷² CEDAW Committee Roundtable, Gender Apartheid Inquiry.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ See also: Patricia Sellers, 'Jus Cogens: Redux' (2022) AJIL, 116:281-286. Available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/jus-cogens-redux/5F5862E6FA0E955ABF1A54068635852F>.

without remedy. It also fails to take account of the substantial progress made in understanding gender-based crime since the definition of apartheid was codified some 25 years ago in the Rome Statute.¹⁷⁶

On the distinction between gender apartheid and gender persecution, and thus the necessity of its inclusion in CEDAW's General Recommendation 40, she reiterated:

Now the key distinction between gender apartheid and gender persecution is the contextual element of institutionalisation, in my view. Sometimes you hear that has to do with the gravity, the gravity of pervasive crimes, but in fact, it is the institutionalisation, it's the regime. It's the intention of maintaining that regime, which is quite different from gender persecution. In my view, and that takes me to my second point, you can think about gender apartheid, impacting a group here women and girls, as best understood as a form of governance, it's based on laws or policies systematically designed to segregate women, while depriving them of political, economic, social, civil, educational, and other human rights. And so the key element in defining gender apartheid, in my perspective, is the existence of the institutionalised regime of systematic oppression and domination, which in my view makes this so central to the discussion of what it means, as many of us have said in the room to have equal and inclusive representation of women in decision making systems that lies at the heart of General Recommendation 40.¹⁷⁷

Across this discussion, several speakers raised how scholars have assessed that the prohibition of violence against women and girls has become *jus cogens* as part of the peremptory norm mandating the absolute prohibition of torture. As such, there can be no arguments for cultural relativism, and no system which allows for such practices. Indeed, in 1993, Hilary Charlesworth and Christine Chinkin highlighted that '*it must be asked whether any theory of human rights law which singles out race but not gender discrimination (...) is not flawed in terms both of the theory of human rights and of the United Nations doctrine.*'¹⁷⁸ Professor Karima Bennouna noted in her paper that,

Unfortunately, while racial discrimination is correctly considered a *jus cogens* norm, some continue to perceive the case for gender discrimination to fit in this category as an argument *de lege ferenda* (the law as it should be). In 2019, the International Law Commission (ILC) (a body which has included few women) declined to add any new *jus*

¹⁷⁶ CEDAW Committee Roundtable, Gender Apartheid Inquiry.

¹⁷⁷ Ibid.

¹⁷⁸ Hilary Charlesworth and Christine Chinkin, 'The Gender of Jus Cogens' (1993) Human Rights Quarterly 15, 1, 63. See: <https://ohrh.law.ox.ac.uk/jus-cogens-and-the-lack-of-a-universal-gender-equality-norm/>. See also: Mary H. Hansel, "'Magic" or Smoke and Mirrors? The Gendered Illusion of Jus Cogens' in *Peremptory Norms of General International Law* 471, 490 (Dire Tladi ed., 2021).

cogens norms to its existing list, which includes systematic race, but not sex, discrimination. However, the jurisprudence of the Inter-American Court of Human Rights has treated the principles of equality and non-discrimination generally as *jus cogens* norms, stating that “the principle of equality before the law (...) and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.”¹⁷⁹

Furthermore, as stressed by Professor Rangita de Silva de Alwis, the rights of women beyond their right to live free from violence, and to have bodily autonomy, must be given equal status, thus necessitating the inclusion of gender in the *jus cogens* norm of apartheid to dissuade arguments of cultural relativism.

Moreover, institutionalised gender persecution and extreme segregation create a deliberate erasure of women in public life and decision-making, and an institutionalised framework of gender erasure in public leadership. A fundamental goal of General Recommendation 40 is to condemn severe, widespread, systematic and all-encompassing violations on the rights of women and girls in every corner of the world.

3.2. OTHER LEGAL AVENUES TO ADDRESS GENDER APARTHEID

Professor Karima Bennouna emphasised that the gender apartheid project must be more than only focused on international criminal law:

The criminalisation of apartheid, at the international level, was profoundly important in the ways that Justice Goldstone suggested, it created the entire basis for international action on apartheid and the refusal to normalise apartheid or to accept so-called constructive engagement with apartheid, which is what the Afghan women in

¹⁷⁹ Karima Bennouna, ‘The International Obligation to Counter Gender Apartheid in Afghanistan’ (2022) 54 Columbia Human Rights Law Review 67. See also: Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, 101 (17 September 2003). ‘Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.’

particular are up against at now (...). But I have never thought about this purely as a question of international criminal law and to do so is a profound mistake. It is a human rights framework that operates much more broadly. We need those prosecutions in The Hague but what we also need is a concerted international effort. We need international standards, applying to transnational corporations, international organisations like the UN, and as well as governments in how they engage with the apartheid actors, including the responsibilities not to be complicit with apartheid, and not to participate in apartheid, which we are even seeing the UN somewhat now being willing to operate without women staff, and so on. We really need to learn from the anti-apartheid struggle of the 20th century and the way in which the law and the criminalisation then become a platform for huge political campaigning and setting standards for the entire international community's response.¹⁸⁰

As such, Professor Karima Bennouna, while strongly supporting efforts to explicitly codify gender apartheid in the draft Convention on Crimes Against Humanity Convention, also proposed to consider other types of action at the same time.

She further added that:

We need to use a forward-looking interpretation of current apartheid law. We can do this because the South African government itself has played a really heroic role here, and the Human Rights Council has acknowledged that what is happening in Afghanistan is gender apartheid and called for a similar response to it to that which ended de jure racial apartheid in South Africa. We need to go ahead with the apartheid law that we have from the 20th century, which focuses on racial apartheid and apply it with a forward looking interpretation to gender apartheid. (...) We have many states supporting the language [of gender apartheid]. We have six states, now raising the issue of codification of gender apartheid, in the context of drafting the Crimes Against Humanity Convention, which is now under discussion. And that brings me to the codification. We have a key opportunity for doing that. (...) But let me say that codification in the best-case scenario will also take a long time. We need to be applying this framework now.¹⁸¹

The UK could use its existing or introduce new mechanisms to address gender apartheid, but also use its strong position on international level.

¹⁸⁰ Karima Bennouna, oral hearing.

¹⁸¹ Ibid.

3.2.1. SANCTIONING THE PERPETRATORS

Sarah Elizabeth Dill, partner at Anethum Global, in her submission to the Inquiry, emphasised that:

One avenue to pursue compelled reforms on women's rights and protections in Afghanistan would be to pursue a multi-faceted approach combining diplomacy, strategic narratives, and individualised targeted sanctions under the human rights regime.¹⁸²

The importance of using targeted sanctions against the perpetrators was also identified by Caoilfhionn Gallagher KC, in her oral submission.

The UK has a legal framework for imposing Magnitsky-style sanctions. The Sanctions and Anti-Money Laundering Act 2018 (the 2018 act) created a domestic legal framework to allow the Government to impose new sanctions, or to update or lift existing ones, after the end of the Brexit transition period, including financial sanctions and travel ban. In July 2020, the Government used powers in the 2018 act to make the Global Human Rights Sanctions Regulations 2020. When considering whether to designate someone under the global human rights sanctions regime, the Secretary of State must have 'reasonable grounds' to suspect the person is involved in relation to human rights violations or abuses. The Secretary of State must also be satisfied that the designation is appropriate, having regard to the purpose of deterring or providing accountability for such activities, among others.

As emphasised by Caoilfhionn Gallagher KC:

The UK already takes unilateral action in relation to certain topics where there are grave human rights abuses abroad. In relation to the Magnitsky sanctions, for example, the UK does not wait for the international community to act. The UK would make a finding that there are grave abuses happening in, for example, Russia and China, with these particular individuals involved.¹⁸³

She added that the UK could make unilateral declaration on the issue of gender apartheid, make it a priority area, and introduce targeted sanctions against those most responsible.

¹⁸² Sara Elizabeth Dill, written submission.

¹⁸³ Caoilfhionn Gallagher KC, oral hearing.

3.2.2. CRIMINALISING GENDER APARTHEID

Without waiting for the codification of gender apartheid under international law, the UK could introduce gender apartheid into its domestic criminal laws and so enable the investigation and prosecution of the crime under the principle of universal jurisdiction.

Currently, apartheid is criminalised under the International Criminal Court Act 2001 (ICCA 2001) and the International Criminal Court (Scotland) Act 2001 (ICCA (Scotland) 2001), which incorporate crimes against humanity, as defined in Article 7 of the Rome Statute, into the domestic law.¹⁸⁴ If the Rome Statute was to be amended to include gender apartheid, no further changes to the ICCA 2001 and ICCA (Scotland) 2001 would be needed.

Without the change to the Rome Statute, an amendment to the ICCA 2001 and the ICCA (Scotland) 2001 would be required to enable the prosecution of gender apartheid. Considering the way in which the Rome Statute is incorporated into the domestic law, this may pose some challenges.

Furthermore, in order to enable effective prosecutions of international crimes committed abroad by individuals who are not UK citizens or residents, it would be crucial to change domestic law and among others, the way in which the law on universal jurisdiction operates in the UK.¹⁸⁵ As stipulated under Sections 51 and 58 of the ICCA 2001 and Section 1(2) of the ICCA (Scotland) 2001, if the international crimes are committed outside of the UK, they could be prosecuted only if they are committed by UK citizens or residents. As such, these provisions ensure extra-territorial application of the law, and not universal jurisdiction.

Good examples of countries with broad application of universal jurisdiction are Germany and Argentina.¹⁸⁶ The approaches in these countries should be considered for replication.

¹⁸⁴ Section 50 of the ICCA 2001 and Section 1 of the ICCA (Scotland) 2001.

¹⁸⁵ See: REDRESS and Clooney Foundation for Justice, 'Strengthening Accountability for International Crimes in England and Wales' (2023). Available at: <https://redress.org/publication/global-britain-global-justice-strengthening-accountability-for-international-crimes-in-england-and-wales/>,

¹⁸⁶ See: Article 118 of the Argentina National Constitution and Article 5 of Law 26,200/06, Law for the Implementation of the Rome Statute, approved by Law No. 25390 and ratified on January 16, 2001, of the International Criminal Court.

3.2.3. ASSISTANCE FOR WOMEN AND GIRLS IN AFGHANISTAN AND IRAN

The UK should map the assistance available to women and girls in Afghanistan and Iran, and all existing projects funded by the UK. This mapping exercise should identify how many women and girls directly benefit from those projects and to what extent. Furthermore, it should include gaps that require urgent response.

The UK should explore how best to assist women and girls in Afghanistan and Iran by supporting grassroot organisations working with women and girls in these countries.

The UK should also introduce visas for women and girls fleeing Afghanistan. Several countries have taken this approach. For example, in December 2022, the Swedish Migration Agency recognised that the suppression of Afghan women's and girls' rights qualifies as gender persecution and, thus, female applicants would be granted refugee status and a resident permit.¹⁸⁷ In December 2022, the Finnish Immigration Service updated their guidelines to grant refugee status to all female applicants from Afghanistan.¹⁸⁸ In January 2023, the European Union Agency for Asylum (EUAA) has published an updated joint assessment of the situation in Afghanistan which concluded that:

The accumulation of various measures introduced by the Taliban, which affect the rights and freedoms of women and girls in Afghanistan, amounts to persecution. Such measures affect their access to healthcare, work, freedom of movement, freedom of expression, girls' right to education, among others. Some women and girls in Afghanistan may also face other forms of ill-treatment amounting to persecution (e.g. forced marriage, such as child marriage, honour-based violence). For women and girls in Afghanistan, well-founded fear of persecution would in general be substantiated.¹⁸⁹

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, this to reflect the gender persecution in Afghanistan.¹⁹⁰

¹⁸⁷ See: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/747913/EPRS_ATA\(2023\)747913_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/747913/EPRS_ATA(2023)747913_EN.pdf).

¹⁸⁸ See: <https://migri.fi/en/-/refugee-status-to-afghan-women-and-girls>.

¹⁸⁹ See: https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_Country_Guidance_Afghanistan_EN.pdf.

¹⁹⁰ See: <https://www.berlingske.dk/danmark/foerste-kvinde-og-pige-faar-dansk-asyl-efter-aendret-praksis>.

3.2.4. ENGAGING INTERNATIONAL BODIES

The UK should use every opportunity to raise the situation of women and girls in Afghanistan and Iran, also as gender apartheid, including before the UN Human Rights Council, the UN General Assembly, the UN Security Council, the Independent International Fact-Finding Mission on the Islamic Republic of Iran, the Commission on the Status of Women, the UN Special Rapporteur on Afghanistan, the UN Special Rapporteur on Iran, and others.

The UK should engage international courts with available evidence of the dire situation of women and girls in these countries, including the International Criminal Court (ICC) and the ICJ. For example, in the case of Afghanistan, the UK could engage the ICC in relation to investigations authorised to be undertaken by the ICC Prosecutor, engage and encourage the opportunity to investigate crimes committed by the Taliban as the crime of gender persecution. The UK should also make submissions for the widening of the scope of the investigation to include the crime of genocide against the Hazara, and the specific gendered lens of these crimes which crossover with gender persecution. The UK should also provide assistance to organisations collecting data on human rights violations against women and girls in Afghanistan and guide them throughout the process (of Article 15 submissions).

In relation to ICJ engagement, the UK could explore the option of instituting proceedings against Afghanistan for violations of CEDAW or for the targeting of the Hazara in breach of the duties under the Convention on the Prevention and Punishment of the Crime of Genocide, and within it, raise the issue of the specific targeting of women and girls.

4. THE BROADER ISSUE

When considering how best to respond to the situation of women and girls in Afghanistan and Iran, it cannot be overlooked that there is a broader issue at stake. As Fawzia Koofi testified before the Inquiry:

What the Taliban do has actually inspired many other military extremists and radicalised groups around the world. Look what is happening in Pakistan. I personally think if the

Taliban had not taken power in Afghanistan, Hamas would have not been able to do what it did. If the Taliban were not given power in Afghanistan, the Ukraine war would not have happened the same way. In other countries, the calibre of victory inspired many. For the moment, the women are being erased, their existence is being denied by the Taliban.¹⁹¹

Furthermore, as indicated by the UN Special Rapporteur Richard Bennett,

It is important not to normalise the policies and behaviour that are unacceptable and anathema to the standards of human rights and the fight for women's equality, and which has implications for accelerating a global rollback on women and girls' rights. It is important to hold the Taliban de facto authorities to account for their policies on women and girls. And most of all, perhaps, it's important to find ways to support the women and girls of Afghanistan, men and boys in bringing about the change that's needed for them to realise their human rights as soon as possible, not least, through the policies and actions of governments such as the UK.¹⁹²

Dorothy Estrada-Tanck, Chair of the United Nations Working Group on Discrimination Against Women, who joined the CEDAW Committee roundtable, told the Inquiry that:

As signalled by the working group on discrimination against women and girls since 2018, we are witnessing a global gender backlash. We are seeing regressions in the defence of women's and girls' human rights and in their recognition in the law concerning, for example, the issues of domestic violence, how gender-based violence is conceived, and how discrimination is understood, we are seeing regressions, and that not only in these very extreme cases, as Afghanistan and Iran can exemplify, but also in different parts of the world. The working group has raised the voice of alarm since 2018. I do think that how we have seen this gender backlash unfold and evolve in these last six years, through these very extreme cases, but also in other parts of the world, also in democratic countries, and also in the positions of certain political parties, that we are witnessing these regressions which go against CEDAW Convention, also against the Covenant on Economic, Social and Cultural Rights. If one thinks of the right to education of girls in Afghanistan, this is a clearly regressive measure that violates the convention to which Afghanistan is a party as well. And we see that globally, this is also a test of the multilateral system. **If we do not place a red line to what is happening to women and girls in Afghanistan and in Iran, we are also sending a message to the rest of the world and to these hardliners in other countries.** The working group, when it was created in 2010, by the Human Rights Council, was called on discrimination in law and practice. Because we see that it is not only in norms, but also in certain traditions or in certain understandings of religious norms and social practices that we see discrimination, not only in its most evident form, and violence, on the

¹⁹¹ Fawzia Koofi, oral hearing.

¹⁹² Richard Bennett, oral hearing.

conceptualisation of violence as the most visible form of discrimination, but also in many issues of everyday life. Even in these systematised, institutionalised forms of structural discrimination against women and girls, as we see in Afghanistan, and as we pointed out in the joint report.

As a working group, we are very much looking forward, together with colleagues of the special procedures, to accompany that discussion to contribute to the discussion on the draft convention on crimes against humanity, and how best to conceive gender apartheid. That's one of the crucial points on how this debate will move forward. (...) It is crucial also to keep the voices of women and girls at the centre. (...) We also need to bring forward the women, peace and security agenda. Many countries have committed to placing women's voices at the centre of prevention of conflict, during conflict, post-conflict reconstruction.¹⁹³

Fawzia Koofi warned about the short attention span moving focus from one conflict to another and how this creates conditions which will then be abused by the perpetrators:

The Taliban actually use this opportunity [of a conflict in the Middle East] to further enforce their edicts. From my experience, I think the pressure on the Taliban will work. I think the pressure has always been extreme. There were 28 countries with military presence in Afghanistan that were fighting the Taliban, from that extreme, the world all of a sudden moved, and became friends with the Taliban, signed an agreement and deed and regarded them as a partner for counterterrorism. That partnership, that deal, actually empowered the Taliban and paved the way for their return. (...) I personally believe political pressure including activating the instruments, such as the ICC, and the ICJ, and codifying gender apartheid, will actually work because somebody has to be held accountable for violating women during the conflict, and also post conflicts. And this does not only apply to Afghanistan, Afghanistan is a very special and unique case because what happens there, doesn't happen anywhere else in the world. But actually, women's rights violation in conflict areas is a common phenomenon, we see it in front of our eyes.¹⁹⁴

Javaid Rehman submitted to the Inquiry that although the Inquiry is focusing on Afghanistan and the Islamic Republic of Iran, the concept of gender apartheid is much more pervasive:

As an Islamic lawyer and a Muslim constitutionalist, I see elements of that in many parts of the Muslim world. And that is where complications arise. It is not so straightforward to reject cultural or religious interpretations in all that, some of the issues where women are effectively the subject of apartheid and persecution, this is not in isolation

¹⁹³ Dorothy Estrada, oral hearing.

¹⁹⁴ Fawzia Koofi, oral hearing.

in other Sharia practising countries or in fact, other countries where a religion or culture has a lot of influence.¹⁹⁵

As stressed by Professor Karima Bennoune, it is crucial to emphasise that most Muslim majority countries do not apply Taliban-like restrictions as a governance model. The situation in Taliban-run Afghanistan, but also in Iran, is unique. In any event, the responses to the situation of women and girls in Afghanistan and Iran will define the treatment of women and girls elsewhere. The failure to act now, and impunity for this dire treatment, will translate into a similar situation elsewhere.

5. THE UK GOVERNMENT'S POSITION ON GENDER APARTHEID

The issue of gender apartheid has been referred several times in Parliamentary debates.¹⁹⁶ So far, the UK Government has not confirmed its position on the issue, despite being prompted to do so.

In March 2023, Baroness Kennedy of The Shaws KC asked the UK Government about its position:

One issue being raised at the UN now, in its Human Rights Council, is (...) the apartheid convention and whether its definitions of race should be expanded to include gender. All the same components of not allowing women to have access to civil society, participation in politics or education can certainly be seen in Afghanistan, and should be called out for happening there because apartheid is a crime—a crime against humanity. The inclusion of gender in that definition is about addressing the serious ways in which women's non-participation is increasing in such places. We now see that in Iran too. Is the Minister raising the issue of expanding apartheid to include the question of gender?

Lord Ahmad of Wimbledon, Prime Minister's Special Representative for Preventing Sexual Violence in Conflict and Minister of State (Middle East, North Africa, South Asia, United Nations and the Commonwealth), responded:

¹⁹⁵ Javaid Rehman, oral hearing.

¹⁹⁶ See: <https://hansard.parliament.uk/search?searchTerm=gender%20apartheid&partial=False&sortOrder=1>.

Within the context of UN discussions at the moment, there is a very regressive prevailing attitude among certain countries on reopening things which have already been determined, including definitions of gender. This is now causing great concern. We often talk about like-minded countries but there are un-like-minded like-minded countries, if I can phrase it that way, leading the charge so we must remain firm on this. I assure the noble Baroness of my good offices, and those of the FCDO and all colleagues, in ensuring that we keep girls' and women's rights very much at the forefront of our international policy.¹⁹⁷

In March 2023, in the House of Commons, the Rt. Hon. Vicky Ford, former Minister, stated that:

Afghanistan, with 4 million girls not at school, women not allowed to work, and women subjected to public floggings, rape and torture. It is gender apartheid at its worst. As the Afghan women said to me yesterday, if an Afghan girl cannot go to school and an Afghan woman cannot leave her home, why can the Taliban send their daughters not just out of their homes but out of their country to go to school in other countries? What they ask of the UK Government is that we and our allies impose travel bans on the Taliban, and do more to sanction their assets.¹⁹⁸

The issue was not commented upon by the Minister.

In April 2023, Lord Alton of Liverpool asked the Government, *'what steps they are taking to address gender apartheid in Afghanistan and Iran; and what consideration they are giving to recognising gender apartheid as a crime under international criminal law.'* The Government's response avoided the question on the recognition of gender apartheid and simply stated:

In Afghanistan, the UK Government has repeatedly condemned the Taliban's decisions to restrict the rights of women and girls. Since April 2021, the Government has disbursed £532 million to Afghanistan, and committed that at least 50 per cent of those we reach with our aid are women and girls.

In Iran, the UK Government supports women and girls standing up for fundamental rights, holding the Iranian regime to account. We raise human rights directly with the Iranian authorities. We work with international partners and NGOs. We supported a UN Fact Finding Mission and Iran's removal from the UN Commission on the Status of Women.¹⁹⁹

¹⁹⁷ See: <https://hansard.parliament.uk/Lords/2023-03-09/debates/028B2B92-F8F7-4BEA-8091-13F98942E689/IranToxicChemicalAgents?highlight=gender%20apartheid#contribution-2333E102-8934-4AB0-9777-19DD60301D65>.

¹⁹⁸ See: <https://hansard.parliament.uk/Commons/2023-03-09/debates/0D1BC6BE-CBAC-4303-B1E6-1308EF5C7DF7/InternationalWomen%E2%80%99SDay?highlight=gender%20apartheid#contribution-0468515A-355F-4148-B8F7-F5CEE686A972>.

¹⁹⁹ See: <https://questions-statements.parliament.uk/written-questions/detail/2023-04-19/hl7266>.

In May 2023, in the House of Lords, Lord Alton of Liverpool asked:

On Iran, (...) will the Minister explain why the Iranian national guard has not been proscribed as a terrorist organisation and say whether we can expect to see action on this soon? Can he tell us about the plight of Iranian journalists, especially women, who are still in prison and about the gender apartheid faced by Iran's women and girls?

The response did not engage with the issue of gender apartheid.²⁰⁰

In September 2023, in the House of Lords, Baroness Hussein-Ece asked a question on the issue of gender persecution and gender apartheid:

Do the Government accept that the deteriorating situation for Afghan women, as we have heard, amounts to gender persecution, which is a crime against humanity? This has happened in plain sight of the world over the last two years. What global support is taking place, such as we had in 2001 when the world rallied behind the cause of Afghan women? If Afghan women's rights were important in 2001, surely they are just as important in 2023? What support is taking place globally to bring this gender apartheid, or gender persecution, to an end?

Lord Ahmad of Wimbledon's response to the question focused on humanitarian assistance:

My Lords, recognising the important work the noble Baroness has done in this respect, I think I speak for everyone in saying that what is happening in respect of the rights of women and girls in Afghanistan is abhorrent. It is against the very traditions of the faith that the Taliban claim to follow; it is not right, it is simply wrong. That is why we are working with key partners within the Islamic world—for them to seize back the narrative on empowerment of women and girls' rights and education. On our specific support, we are working with key agencies. I have already alluded to the figures but—just to share with the noble Baroness—we are supporting 4.2 million people with food assistance, of whom 2 million are women and girls. The issue of nutrition is high on our agenda, as well as empowering them through education.²⁰¹

During the same debate, Baroness Kennedy of the Shaws KC pressed the Minister to engage with the issue, stating:

My Lords, perhaps by a slip of the tongue the expression "gender apartheid" was just used by a previous speaker. Increasingly, that terminology is used by Afghans who are here in exile, by the international community and by lawyers. A great deal of research

²⁰⁰ See: <https://hansard.parliament.uk/Lords/2023-05-03/debates/7EF5B5BD-CE87-4E45-B140-7B7D6C518DB0/ForeignPolicy?highlight=gender%20apartheid#contribution-3EAB44EF-D42D-4AA1-BFCE-7B049E1C4D40>.

²⁰¹ See: <https://hansard.parliament.uk/Lords/2023-09-11/debates/DCD767D6-80C0-42CB-93E3-194D77E425DA/AfghanistanAidForWomen?highlight=gender%20apartheid#contribution-DE76BD3E-5072-4C75-A62B-5750CBE7A12A>.

has been done in support of it by South African lawyers, because apartheid means denial of participation in society—keeping apart. I wonder whether that is language that is accepted, and might be used by, the Foreign Office and whether the full force of the Foreign Office could be put behind amending the Rome statute so that it included gender apartheid as a crime against humanity.

Lord Ahmad of Wimbledon responded only that:

My Lords, the noble Baroness with her legal background has far more insights into the technicalities and changes that she is proposing, but I can say to her that what is happening to women and girls in Afghanistan is nothing short of abhorrent and we need to do our utmost to ensure that we stand up for their rights and afford them the protections that we can. I assure the noble Baroness that we are working in a very focused manner on that objective.²⁰²

In December 2023, in the House of Lords, Baroness Hodgson of Abinger asked the Government about the issue of gender apartheid, *'since the Taliban came in power in 2021, they have stopped women having access to education and basically pushed them back into their homes. Many are calling this gender apartheid. How will we ensure that the women of Afghanistan can play their part in their country, going forward?'*

Lord Cameron of Chipping Norton, Foreign Secretary, avoided the issue yet again, responding:

It is appalling how women are treated in Afghanistan. I gave some of the points earlier about access to school, education and university, and even to public spaces. We have to use the maximum leverage that we have. Of course, while we need to help people in Afghanistan who are facing great food insecurity and huge difficulties around shelter and livelihoods—and we are helping—we can do that through United Nations organisations, rather than through the Government of Afghanistan. We should continue to do that and use the pressure that we have to say to the regime that it needs to change its ways with respect to women and girls.²⁰³

In response to one of the debates where the issue has been raised by Brendan O'Hara MP and Wendy Chamberlain MP, in January 2024, Andrew Mitchell MP, the Minister of State, Foreign, Commonwealth and Development Office, avoided the issue yet again, stating:

²⁰² See: <https://hansard.parliament.uk/Lords/2023-09-11/debates/DCD767D6-80C0-42CB-93E3-194D77E425DA/AfghanistanAidForWomen?highlight=gender%20apartheid#contribution-DE76BD3E-5072-4C75-A62B-5750CBE7A12A>.

²⁰³ See: <https://hansard.parliament.uk/Lords/2023-12-05/debates/D2488B4C-FAB5-458A-A1F6-AB67D84B4C18/TalibanRelationsAndAfghanRefugees?highlight=gender%20apartheid#contribution-A1094660-FA73-48D0-BF47-7AB5280E933E>.

The hon. Member for North East Fife spoke about gender apartheid. She is entirely right to make that point. She spoke about the merger and said she hoped that development and foreign policy were marching in step in Afghanistan. She will have seen the words of the Foreign Secretary, Lord Cameron, yesterday to the Foreign Affairs Committee and noted his and my determination to achieve that effective result.²⁰⁴

As it is clear from the above, every time the issue of gender apartheid has been raised in the UK Parliament, the Government Ministers would avoid engaging on the issue.

²⁰⁴ See: <https://hansard.parliament.uk/Commons/2024-01-10/debates/19F84C7C-9CD8-4297-9F31-903E6B485644/AfghanistanUKGovernmentPolicy?highlight=gender%20apartheid#contribution-9D7D61EE-7112-412D-AA46-E5EFD38CDAEC>.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

There is growing evidence to suggest that the treatment of women and girls in Afghanistan and Iran could meet the working definition of gender apartheid. This requires further attention, including to ensure that the evidence is collected and preserved in a way that would ensure its use in court (one day). The situation of women and girls in Afghanistan and Iran, independently of their legal classification or determination as gender persecution, gender apartheid or other crimes, requires urgent international attention.

As it is clear from expert testimonies, there is an important distinction between what is defined as gender persecution and the scope of what experts refer to as gender apartheid. The distinction is such as to warrant a different approach to addressing the issue with a litany of responses, including legal responses, but not limited to them.

The response to apartheid in South Africa provides an example of very practical approaches of the international community accepting that certain situations reach a level that the existing mechanisms and approaches cannot effectively address. The response to apartheid in South Africa can and should guide responses to the situation of women and girls in Afghanistan and Iran, but also recognise that the particular situations of women and girls in both countries differ, and the responses must be tailored accordingly.

Recommendations for the UK Government

Awareness Raising and Education

- Recognise the scale and nature of the situation of women and girls in Afghanistan and Iran, including gender persecution, as per its legal definition, and gender apartheid, as per its working definition.
- Publicly condemn the treatment of women and girls in Afghanistan and Iran, including as amounting to gender persecution and gender apartheid, and call for accountability for their treatment.

GENDER APARTHEID INQUIRY

- Engage on the recommendations of the joint report of the UN Special Rapporteur on the situation of human rights in Afghanistan and the UN Working Group, and also the UN Special Rapporteur on Iran, and other UN bodies.
- Support and accommodate inquiries with women and girls from Afghanistan and Iran, as far as reasonably safe, to give a platform to these women and girls to discuss their experiences and the effect on their lives.
- Amplify the stories and experiences of women in Afghanistan and Iran to have a better understanding of the lived reality of women and girls under gender apartheid laws and policies.
- Organise an international conference on the issue of gender apartheid, bringing together experts from South Africa, as well as, Afghan and Iranian advocates and experts to share their experiences and discuss best practices in responding to the issue of racial and gender apartheid.

Policy and Diplomatic Responses

- Make the situation of women and girls in Afghanistan and Iran a foreign policy priority.
- Use every opportunity to raise the issue of gender apartheid against women and girls in Afghanistan and Iran, including:
 - Making formal submissions at the UN before, among others:
 - The UN Human Rights Council;
 - The UN General Assembly;
 - The UN Security Council;
 - The Independent International Fact-Finding Mission on the Islamic Republic of Iran;
 - The Commission on the Status of Women;
 - The UN Special Rapporteur on Afghanistan;

- The UN Special Rapporteur on Iran.
- Impose targeted sanctions against all those responsible for the suppression of the rights of women and girls in Afghanistan and Iran, unilaterally, and/or jointly with other countries.

Legal Responses

- Formally support avenues to ensure that gender apartheid is codified and the language is adopted by States and international bodies, including in:
 - The Convention on Crimes Against Humanity;
 - The Rome Statute;
 - Within domestic legislation.
- Engage international and domestic courts with available evidence, including:
 - The International Criminal Court (Afghanistan):
 - In the current investigations authorised to be undertaken by the ICC Prosecutor, engage and encourage the opportunity to investigate crimes committed by the Taliban as the crime of gender persecution.
 - Make submissions for the widening of the scope of the investigation to include the crime of genocide against the Hazara, and the specific gendered lens of these crimes which crossover with gender persecution.
 - Provide assistance to women's organisations collecting data on human rights violations against women and girls and guide them throughout the process (of Article 15 submissions).
 - The International Court of Justice (Afghanistan):
 - Explore the option of instituting proceedings for violations of CEDAW;
 - Explore the option of instituting proceedings for violations of the Genocide Convention, for the targeting of the Hazara by the Taliban, and within it, raise the issue of the specific targeting of women and girls;
 - Domestic courts - using the principle of universal jurisdiction, explore options of bringing proceedings for international crimes.
 - Amend the domestic criminal law to widen the scope of the International Criminal Court Act 2001 and the International Criminal Court Act

(Scotland) 2001 to enable prosecutions for international crimes where the alleged perpetrator is not a UK national or resident.

Practical Assistance (incl. Humanitarian)

- Map the assistance available to women and girls in Afghanistan and Iran.
- Identify the areas of urgent need and the best ways to address them, including by:
 - Funding grassroots organisations providing practical assistance to women and girls in Afghanistan and Iran.
- Introduce visas for women and girls fleeing Afghanistan, as implemented by other countries.

Further to Explore

- Examine the use of torture against women in detention in Afghanistan and Iran;
- Examine how members of minority communities are being uniquely affected by gender apartheid, in particular, the Hazara women in Afghanistan and the Baha'i women in Iran, among others;
- Examine how technology is being used to target women and girls in countries such as Iran.

