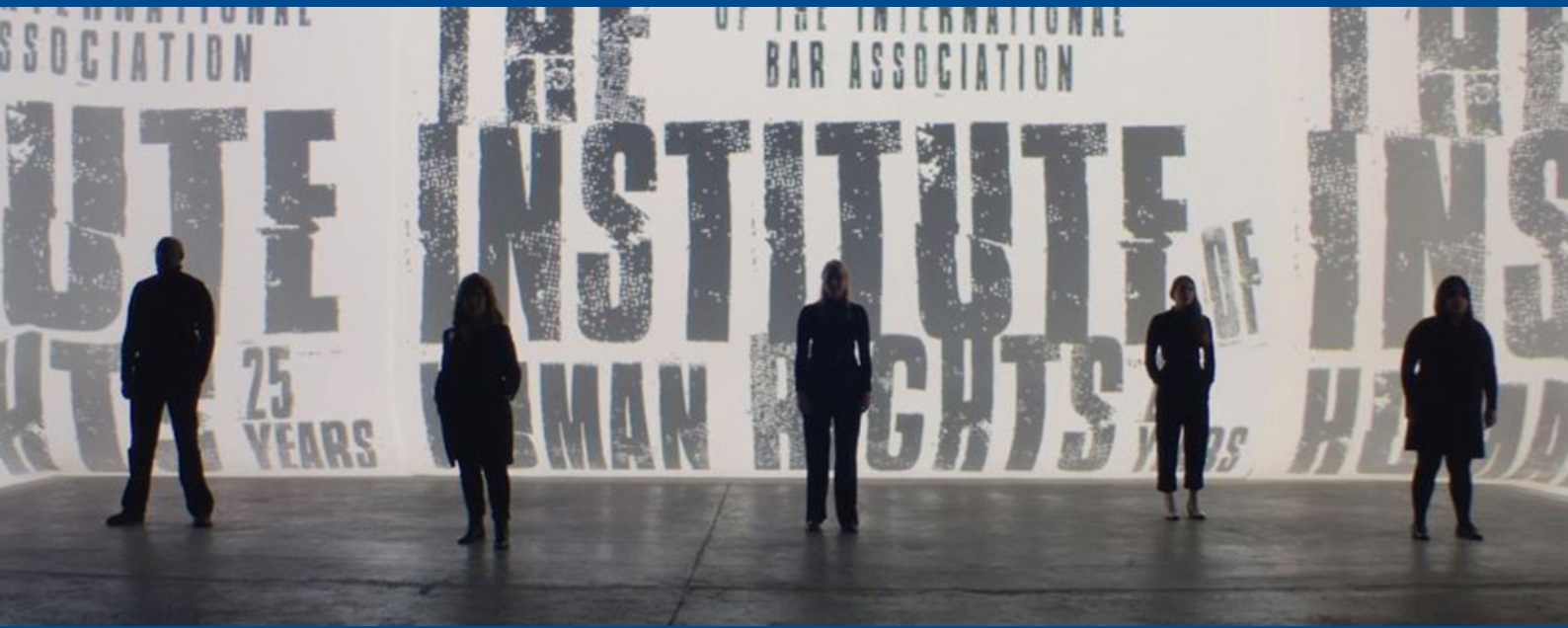




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# **Gender Apartheid: Parliamentary Advocacy Toolkit**

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# 1. Introduction

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’.<sup>1</sup> The Rome Statute provides for the crime of gender persecution, including it 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’.<sup>2</sup> 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 years, 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 for. The systematic and systemic nature of their oppression warrants the introduction of a unique crime, which would demand urgent state action to address the absence of rights for women and the denial of full participation as equal citizens in their societies.<sup>3</sup>

For gender apartheid to be codified, it is crucial to ensure greater awareness and knowledge of the issue among governments and parliaments globally, in addition to the general public.

While several governments are already engaged on the issue, the topic of gender apartheid continues to be globally underrepresented at parliamentary level. This is a lost opportunity if parliaments in democratic countries are to challenge the government’s inaction or inadequate responses. Engaging parliaments could help to engage governments and so contribute to greater support to the campaign on the international level. Furthermore, parliamentary discussions contribute to the development of soft law which in turn helps to contribute to the adoption of language and practice, with the ultimate aim being codification. As codification in international law is always a lengthy process, a necessary prerequisite to this is the usage of terminology at national levels to increase political will, and international consensus through norm building.

**This briefing explains the work done on gender apartheid by British politicians and outlines how this approach could be adopted in other countries.**

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

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

3 See: Atlantic Council and Global Justice Centre, Legal Brief. Available at: <https://endgenderapartheid.today/download/brief/Gender%20Apartheid%20Brief.pdf>.

## 2. The Gender Apartheid Inquiry (UK)

The issue of gender apartheid has been referred to several times in parliamentary debates.<sup>4</sup> So far, the UK Government has not confirmed its position on the issue of gender apartheid, despite being prompted to do so.

In March 2023, Baroness Kennedy of The Shaws KC asked the government about its position on gender apartheid. 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:

'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.'<sup>5</sup>

In March 2023, in the House of Commons, the Rt. Hon. Vicky Ford, the 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.'<sup>6</sup>

The issue of gender apartheid 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 of 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.

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

5 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>.

6 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>.

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.’<sup>7</sup>

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.<sup>8</sup>

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?’<sup>9</sup>

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.’<sup>10</sup>

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 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.’

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

8 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>.

9 See: <https://hansard.parliament.uk/Lords/2023-09-11/debates/DCD767D6-80C0-42CB-93E3-194D77E425DA/AfghanistanAidForWomen>.

10 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>.

Lord Ahmad of Wimbledon ignored the question responding:

‘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.’<sup>11</sup>

In December 2023, in the House of Lords, Baroness Hodgson of Abinger asked the Government about the issue of gender apartheid:

‘As my noble friend just said, 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, ignored 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.’<sup>12</sup>

In response to one of the debates where the issue was 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, ignored the issue yet again stating:

‘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.’<sup>13</sup>

**As it is clear from the above, every time the issue of gender apartheid has been raised in the UK Parliament, the government ministers have avoided engaging on the issue.**

This is also why the International Bar Association’s Human Rights Institute (IBAHRI) worked with Baroness Kennedy LT KC to establish an ad-hoc Parliamentary Inquiry to examine the issue and identify recommendations for the government, which would help to elicit a more formal response from the government and push the issue up the parliamentary agenda.

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11 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>.

12 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>.

13 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>.

## *The Inquiry*

The ad-hoc inquiry consisted of parliamentarians working on the situation of women and girls in Afghanistan and Iran. It was chaired by Baroness Helena Kennedy of the Shaws LT KC. Parliamentarians involved in the Inquiry included:

- **The Baroness Kennedy of The Shaws LT KC** (Lab), chair of the Inquiry;
- **The Baroness Hodgson of Abinger CBE** (Con) (co-chair of the All-Party Parliamentary Group on Women, Peace and Security);
- **Joanna Cherry KC MP** (SNP) (Chair of the Joint Committee on Human Rights);
- **Rt Hon Caroline Nokes MP** (Con) (Chair of the Women and Equalities Committee); and
- **Lisa Nandy MP** (Lab) (Shadow Minister for International Development).

Several other parliamentarians have also expressed their support for the Inquiry, and they will be involved in the next stages of engaging with the findings and recommendations of the report.

## *Inquiry secretariat*

The Inquiry was convened by the IBAHRI, including the IBAHRI senior programme lawyer Dr Ewelina Ochab, who was acting as the Inquiry lead and the principal author of the report. Further assistance was provided by IBAHRI programme lawyer Emily Foale, as well as the IBAHRI programme coordinator and interns.

The Inquiry has benefitted from the expertise of international experts working on the issue of apartheid and gender apartheid, including through participation in a mapping session and further advice. The experts included Justice Richard Goldstone, Professor Rangita de Silva de Alwis, Professor Patricia Andrews, Professor Karima Bennoune, 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 the shortfalls are 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 engagement 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 timeframe*

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 heard from over 30 witnesses – including lived experience witnesses from Afghanistan and Iran, international law experts and journalists. The oral hearings were used to further explore the situation of women and girls in these countries and 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.

As a follow-up from the Inquiry, parliamentarians involved in the Inquiry engaged other Members of Parliament with parliamentary questions and debates. In addition, members of the government were engaged through letters and oral and written questions.

The government has not issued a formal response to the report and its recommendations. However, the government provided some responses to parliamentary questions concerning the report including by stating:

‘The FCDO is aware of the report. There are complex legal and political questions which arise in considering any new crime of ‘gender apartheid’. We are considering these questions and consulting legal advisers and subject matter experts. The situations of women and girls in Afghanistan and Iran are distinct and we will consider the unique circumstances of each country when assessing the recommendations of the Inquiry.

We have repeatedly condemned Taliban and Iranian policies and actions that restrict the rights of women and girls. Officials from the UK Mission to Afghanistan regularly press Taliban acting ministers to reverse their harmful policies on women and girls. Since Iran’s mass protests of 2022-23, we have sanctioned 94 individuals or entities for human rights abuses,

including senior decision-makers responsible for Iran’s oppressive hijab law. We will continue to work with the international community to address women and girls’ rights issues in Afghanistan and Iran.’<sup>14</sup>

The Gender Apartheid Inquiry report is not an end in itself but a means to engage further on the topic. Further plans of the Inquiry include:

- parliamentary roundtables with the engagement of Afghan and Iranian women;
- further examination of the situation of women and girls in Afghanistan and Iran including the issue of intersectionality; and
- cross-governmental meetings with Afghan and Iranian women.

### 3. Engaging national parliaments

There are several options for the general public to engage parliamentarians across global democracies.

#### **Write to your Member of Parliament/representative**

Constituents can write to or otherwise contact their Members of Parliament/representatives about the issue of gender apartheid and ask to:

- table questions asking the government whether and how they will support the campaign to end gender apartheid;
- apply for parliamentary debates on the topic of gender apartheid and the situation of women and girls in Afghanistan and Iran;
- organise parliamentary briefings and sessions with Afghan and Iranian women and legal experts to discuss the issue of gender apartheid; and
- write to the relevant minister to raise the issue of gender apartheid and call for the support of codifying gender apartheid within the Convention on Crimes against Humanity.

#### **Approach relevant all-party parliamentary groups/parliamentary caucuses**

Within parliaments, there are several parliamentary groups consisting of parliamentarians interested in specific topics or regions. Search for groups focused on:

- women, peace and security;
- women’s rights/women’s issues;
- UN engagement;

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<sup>14</sup> See: <https://questions-statements.parliament.uk/written-questions/detail/2024-03-22/hl3562>.

- Afghanistan or Iran; and
- international law, among others.

If there is no such group or caucus, write to your representative asking whether they would be willing to establish a group which could engage on the topic.

If the representative cannot do that, examine past parliamentary debates and identify representatives who have been engaging in the situation of women in Afghanistan or Iran and approach them instead.

## Approach parliamentary committees

Parliaments have committees consisting of members examining and reporting on areas ranging from the work of government departments to foreign affairs. Such committees often run inquiries on specific topics. The outcomes of these inquiries are public and many require a response from the government.

Review which parliamentary committees are active in your national parliament and write to them asking to examine the issue of gender apartheid and what the legislator would need to do to codify gender apartheid and/or support the international efforts to codify gender apartheid.

## Ad-hoc inquiries

In many parliaments, there is a possibility of establishing ad-hoc inquiries – groups of parliamentarians – to examine a specific issue. The Gender Apartheid Inquiry in the UK Parliament was an ad-hoc inquiry. It was established to examine the issue of gender apartheid and will not look into other unrelated issues.

# 4. Engaging the European Parliament

The European Parliament is one of the legislative bodies of the European Union and one of its seven institutions. Together with the Council of the European Union, it adopts European legislation, following a proposal by the European Commission.

The European Parliament is made up of 705 Members, who are directly elected.

The European Parliament has 27 committees including one on foreign affairs. These committees could be contacted to engage with the situation of women and girls in Afghanistan and Iran.

**See more here: [www.europarl.europa.eu/committees/en/home](http://www.europarl.europa.eu/committees/en/home)**

## 5. Engaging the Parliamentary Assembly of the Council of Europe

The Parliamentary Assembly of the Council of Europe (PACE) is the parliamentary arm of the Council of Europe, a 46-nation international organisation dedicated to upholding human rights, democracy and the rule of law.

The PACE has several committees including one on legal affairs and human rights.

**See more here:** <https://pace.coe.int/en/pages/committee-5/AS-JUR>

Representatives of PACE could introduce motions for resolutions, which in turn could result in a report and resolution on the topic being adopted, with recommendations to all member states of the Council of Europe.

## 6. Engaging the Inter-Parliamentary Union (IPU)

The IPU is the global organisation of national parliaments. The IPU has become a unique global convening power for parliamentary networking, especially through its Assemblies. The Assembly is the IPU's main political body through which the IPU's Member Parliaments adopt parliamentary resolutions on global issues. It plays a pivotal role in addressing global issues including through its four thematic standing committees on Peace and Security, Sustainable Development, Democracy and Human Rights and the United Nations. IPU Assemblies – formerly known as Inter-Parliamentary Conferences – are held twice a year either in Geneva or hosted by member parliaments.

Ways that the IPU could include gender apartheid in the Assembly Agenda are:

1. A member could propose that their geo-political group run a side event on it.
2. A member could ask for it to be on the official agenda, but this would need to be approved by the Executive Committee.
3. It could be raised in the Women's Forum.
4. It could be raised during a gender parity debate.
5. Leaders of the delegation could raise it in their general debate speech.
6. Members could raise it with other countries in any bilateral meetings they might have.

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