



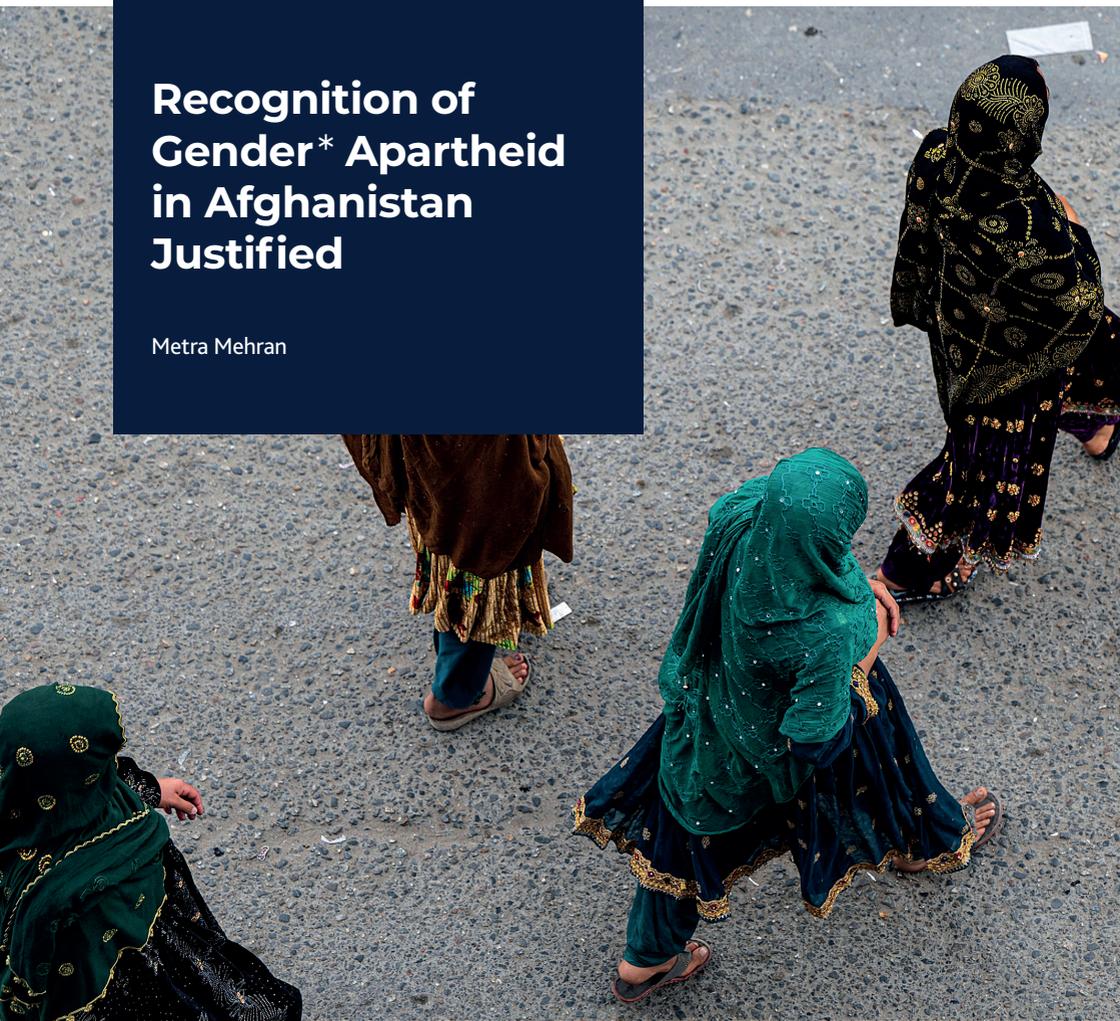
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AFGHANISTAN RESEARCH NETWORK

# Recognition of Gender\* Apartheid in Afghanistan Justified

Metra Mehran





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*\*The term 'gender apartheid' and 'sex-based apartheid' are used interchangeably here. While acknowledging the complex arguments as to the relationship between gender and sex in other contexts, as short-hand the term 'gender apartheid' is used throughout, in order to explicitly connect to the body of literature and ongoing debate that uses this term, to which this paper seeks to contribute.*

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## Abstract

This paper critically examines the decrees issued by the Taliban since August 2021, reasoning that their actions constitute “Inhumane Acts” and are in violation of international law. The central argument put forth is that the Taliban regime exemplifies a systemic analogy to apartheid, where institutionalized gender-based discrimination and segregation have resulted in severe marginalization and exclusion of women, comparable to apartheid South Africa. To support this argument, the paper draws on Article II of the Apartheid Convention as the primary reference and guiding principle for assessing the Taliban's decrees related to women. In doing so, it aims to contribute to the existing literature by providing evidence in support of legal and feminist efforts calling for the recognition of gender apartheid in Afghanistan.

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## Key Takeaways

- ▶ The decrees issued and implemented by the Taliban in Afghanistan against women deprive them of basic rights, dignity, and freedoms necessary for their well-being, autonomy, and personal fulfillment. The issuance and implementation of the vast majority of decrees means that the discrimination against women is not just a matter of individual acts of violence, but a systematic and integral part of the Taliban's system of governance/ruling.
  - ▶ The Taliban are perpetrating 'Inhuman Acts' against women in Afghanistan, with respect to gender, that are identical to those prohibited in Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid with respect to racial groups. Their policies are designed to maintain power and men's control over women. Every "Inhumane Act" defined as apartheid with respect to race is applicable to the situation of women as a group in Afghanistan.
  - ▶ The Taliban's decrees against women in Afghanistan constitute gender apartheid, which involves physical separation and systemic discrimination against women. These policies violate fundamental norms of women's human rights and equality. Cultural and religious beliefs cannot be used to justify human rights violations, especially in cases of apartheid, as recognized by the International Court of Justice.
  - ▶ Recognizing gender apartheid is critical because it acknowledges the severity and scale of the problem in Afghanistan and draws attention to its urgency. It also provides a legal framework for holding the perpetrators accountable and seek redress for its victims.
  - ▶ Recognition of gender apartheid complements existing laws on gender-based persecution and can contribute to ending gender-based violence and ensuring accountability for perpetrators. Recognition of gender apartheid would also encourage state parties to prosecute non-nationals for crimes committed in the territory of a non-state party where the accused is physically within the jurisdiction of a state party.
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## Introduction

Since regaining power in August 2021, the Taliban, an internationally recognized terrorist group, known for their extremely oppressive ideology against women, imposes strict restrictions on women's rights and confines them to their homes. They deprive women of basic freedoms to make social, economic, political, and legal choices, including engaging in employment, education, their children's future, places of residence, marital choices, inheritance, and other related matters, which are necessary for their well-being, autonomy, personal fulfillment, and capacity to compete equally in society. In light of their religiously construed fear of women as sources of temptation and sin,<sup>1</sup> and enabling male domination, the Taliban justify control over women's entitlement to personal autonomy, privacy, body, and agency.

Much like the previous era of Taliban rule between 1996 and 2001, women have been entirely excluded from public life, denied access to essential (sometimes lifesaving) services (health, education, humanitarian aid) and information; and are deprived of basic rights, such as safety, employment, freedom, and personal fulfillment. The international legal system, and the United Nations as an organization, set out clear legal standards to prevent this dehumanisation.

All international human rights conventions prohibit discrimination on the grounds of gender. Most specifically, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes international legal frameworks to eliminate discrimination against women.<sup>2</sup> While these conventions prohibit the Taliban's discriminatory practices, unlike the Apartheid Convention,<sup>3</sup> which criminalizes racial apartheid itself, they do not criminalise gender apartheid as a structural practice of discrimination, even where it entails strict forms of segregation and are characterized by severe, pervasive, and injurious forms of discrimination. However, as the impact of Taliban's decrees against women on the basis of their gender does result in injurious forms of discrimination, the status of women in Afghanistan should be recognized as "gender apartheid". Gender apartheid recognition would enable the UN and the international community to develop treaties and policies necessary for holding the Taliban to account and countering their extreme, harmful policies against women.

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## Universality of Apartheid Beyond Race: Understanding Gender Apartheid

The International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA) defines apartheid as the strongest form of discrimination and recognizes it as an international crime. Apartheid means “apartness” in Afrikaans, an official language of South Africa. The Apartheid policy adopted by the South African government between 1948-1994 segregated people based on race and imposed political and economic oppression and discrimination. The human rights violations committed under this policy and its heinous nature provoked both national and international reactions. In response, the international community adopted a series of conventions that resulted in the 1973 International Convention on the Suppression and Punishment of the Crime and recognized apartheid as a crime against humanity.

The Apartheid Convention's intention to have a broader scope than South Africa is demonstrated in several international instruments established both before and after the end of apartheid. The Geneva Conventions' Additional Protocol I, in 1977, classified apartheid as a “grave breach” of the Protocol without geographic constraints.<sup>4</sup> The International Law Commission's Draft Code of Crimes against the Peace and Security of Mankind, adopted in 1991, recognized apartheid as a crime without any reference to South Africa, and the revised Draft Code, approved in 1996, recognized institutionalised racial discrimination as a crime against humanity.<sup>5</sup> The “crime of apartheid” was included in the Rome Statute of the International Criminal Court as a form of crime against humanity in 1998.<sup>6</sup> It can be concluded that while the Apartheid Convention was created specifically to address apartheid in South Africa, it was framed in general terms, and now is included as a crime against humanity under both customary international law and the Rome Statute of the International Criminal Court.

Gender apartheid and racial apartheid share similarities in terms of segregation and discrimination. While the specific experiences of individuals and groups under these systems differ, it is important to recognize the commonalities in the oppression that both forms of apartheid perpetuate. In terms of segregation, both systems involve the physical separation of individuals based on their identity. Under racial apartheid, individuals were segregated into different neighborhoods, schools, and public spaces based on race. Similarly, gender apartheid in Afghanistan separates individuals based on sex, including school<sup>7</sup> and public space<sup>8</sup> segregation.

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Discrimination is also a common element. Under racial apartheid, individuals were discriminated against based on race, with Black South Africans facing systemic discrimination and violence. Analogously, gender apartheid discriminates against individuals based on sex, with women facing systemic oppression and violence, denying basic human rights to women and girls in Afghanistan.

International human rights law is grounded in the principles of equality and non-discrimination and, in light of this purpose, it should set standards for human rights universally. Currently, international law does not define "gender apartheid" as a legal term or concept. The similarities between gender apartheid and racial apartheid offer significant grounds to broaden the definition of apartheid to include systematic discrimination against women. Karima Bennoune, in a recent paper, has reviewed international law and has concluded that substituting "race" with "gender" is warranted within international law.<sup>9</sup> She argues that the Taliban are contravening both fundamental norms on women's human rights and equality and the UN Charter itself. The following section of this paper employs the substitution argument to analyze the phenomenon of gender apartheid in Afghanistan, examining its social, cultural, and political contexts and implications.

## Gender Apartheid in Afghanistan

Since 15 August 2021, the Taliban has issued more than 40 decrees<sup>10</sup> that systematically discriminate and strictly control every aspect of women's lives in Afghanistan. Taliban-issued decrees on women represent the largest number of decrees compared to all other regulations combined.<sup>11</sup> Article II of the Apartheid Convention is the main point of reference and guiding principle to demonstrate how the Taliban's decrees could amount to "Inhuman Acts" as they are being perpetrated against women in Afghanistan in the context of an institutionalised system of segregation and male domination. Article II outlines the principles and the corresponding list of acts considered to be "inhuman" and how they constitute apartheid.<sup>12</sup> Article II declares that in order for these "Inhuman Acts" to be considered as apartheid, they "must be carried out in a systematic manner with the purpose of creating and upholding the dominance of one racial group over another".<sup>13</sup>

## Inhuman Acts

### Article 2(A): Right to Life and Liberty

- a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - I. By murder of members of a racial group or groups;
  - II. By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
  - III. By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

The Taliban has issued a series of decrees that sentence women to forced marriages, domestic violence, enforced disappearance, arbitrary arrests, torture, and extrajudicial killings without any due process and access to justice. These decrees violate women's rights to life and liberty on a regular basis.

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On 9 January 2022, Haibatullah Akhunzada, the Taliban's Amir (chief), announced canceling all "illegal" laws (referring to anything but Sharia law) that were passed in Afghanistan in the last 20 years.<sup>14</sup> All laws, policies, and institutions (the courts and prosecution offices) that supported women's rights have been debarred, including the Elimination of Violence Against Women Law (EVAW), which defined and criminalised gender-based violence and support, such as prosecuting perpetrators, providing access to support centers/safe houses, offering urgent and free health services, and granting access to legal aid.<sup>15</sup> In addition, the Taliban dismantled institutions tasked with monitoring human rights violations, investigating allegations of human rights abuses, championing the protection and advancement of women's rights, and advocating for the elimination of gender-based discrimination.

- 17 September 2021: Replaced Ministry of Women's Affairs with Ministry of Propagation of Virtue and Prevention of Vice;<sup>16</sup>
- 16 May 2022: Dissolved Afghanistan's Human Rights Commission.<sup>17</sup>

A recent investigation by Etilaatroz, a media outlet from Afghanistan, found that:

In the one and half years of Taliban control, 159 women were killed by direct fire of the Taliban forces. They imprisoned and tortured at least 1,115 women in 24 provinces of Afghanistan. The report reveals that most women imprisoned were charged with "moral corruption" and "illicit relationships" including offenses such as traveling without a male guardian, interacting with men in public, and speaking on the phone with men. The detainees are confined in cramped and humid conditions, often lacking basic amenities, such as heating facilities, blankets, and mattresses.<sup>18</sup>

These figures reflect data from 24 provinces of the 34 Afghan provinces and instances where women have spent more than a month in prison. The actual number is likely to be significantly higher, as families do not report imprisonment of their family members due to risk of severe Taliban punishment and the potential repercussion of cultural shame associated with the issue.

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On 13 August 2021, the Taliban issued their first decree ordering imams to produce lists of unmarried women aged 12 to 45 for their fighters to marry.<sup>19</sup> Forced marriage is a serious violation of an individual's human rights, denying them the liberty and freedom to make their own choices in life.<sup>20</sup> Understanding the Taliban's misogynistic nature means these marriages result in a denial of life, as it puts women at risk of emotional, physical, and sexual abuse. In a recent report, Amnesty International highlighted the case of Elaha Delawarzai:

She was forced to marry Qari Saeed Khosty, a former spokesperson for the Taliban Ministry of the Interior.<sup>21</sup> Elaha posted a video on social media on August 30, 2022, where she said, "He was raping me every night," and, "Every night he would beat and torture me." She also claimed that he filmed her during sexual acts and threatened to release the videos.<sup>22</sup> Since the video release, she is being held at a Taliban prison and there has been no further information about her.

In September 2021, the Taliban audited shelters and organizations that provided protection services for the victims of domestic and gender-based violence. During the audit, reports indicate Taliban militants forcefully entered shelters, interrogated residents, and staff, and made them sign a letter agreeing not to let women leave the shelters without Taliban permission. The Taliban threatened to send married residents back to their abusers and marry single residents off to Taliban soldiers.<sup>23</sup> In July 2022, an Amnesty International report confirmed the Taliban has transferred many survivors "into the detention system, including to Pul-e-Charkhi prison."<sup>24</sup> Access to shelter from domestic violence is a matter of life and liberty under international human rights law.<sup>25</sup> Denying shelter to victims of domestic violence can put women's life at risk and curtail liberty, confining them to abusive situations.

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The Taliban has also issued a number of decrees to execute multiple public floggings of women without due process—79 women have been flogged in public, based on these verdicts.<sup>26</sup> Below are three examples:

- ▶ 11 November 2022: Nine women are flogged 39 times each in public in Takhar province, on charges of adultery, theft, and running away from home;
- ▶ 17 November 2022: One woman is publicly flogged in Bamiyan for allegations of having a premarital affair;<sup>27</sup>
- ▶ 23 November 2022: Three women are flogged in front of a large crowd in a football stadium in Logar province for alleged crimes, including theft, “violating social behavior rules” or “illegal relationships”;<sup>28</sup>

The acts described above undermine principles of equality and non-discrimination and are in direct contravention of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In some of the above cases, men have been punished too. However, they have had the chance to defend themselves before the informal Taliban’s Jirgas (a tribal council) where punishments are decided. The Taliban’s informal justice system and decision making never has room for women and they never get to defend themselves. The denial of these fundamental rights has far-reaching consequences for the affected individuals, their families, and communities, and constitutes a grave breach of human dignity.

## **Article 2 (C)**

Article 2(c) of the Apartheid Convention lists nine essential rights and freedoms that, if denied, would harm the oppressed group’s ability to participate fully and develop in society. These include civil and political rights, as well as elements related to the group’s socio-economic and cultural advancement.

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## Right to Education

Afghanistan is the only country in the world where women institutionally and legally are denied the right to an education.<sup>29</sup> The decrees, issued individually, gradually dismantled the right to an education; initially it prevented male teachers to teach girls then segregated classes and closed schools, universities and private courses.

- 30 August 2021: A ban on co-education is declared, men are prohibited from teaching girls;<sup>30</sup>
- 12 September 2021: Girls' secondary schools are shuttered and banned;<sup>31</sup>
- February 2022: Universities are asked to enforce gender-segregated classrooms;<sup>32</sup>
- 7 October 2022: Women are blocked from choosing agriculture, mining, civil engineering, veterinary medicine, and journalism as their major at university, with the Taliban stating that these subjects are not suitable for women;<sup>33</sup>
- 20 December 2022: University education for all female students in Afghanistan is suspended indefinitely;<sup>34</sup>
- 22 December 2022: Girl's education beyond grade six and via private courses is banned.<sup>35</sup>

The Apartheid regime in South Africa similarly sought to control and restrict access to education as a means of perpetuating racial segregation and inequality. The Bantu Education Act of 1953 was a central piece of apartheid legislation that established a separate and unequal education system for Black South Africans.<sup>36</sup> Under this act, Black students were only allowed to study certain subjects that were deemed appropriate for their future roles as manual laborers and domestic workers, such as agriculture and home economics. They were not allowed to study subjects such as mathematics, science, and English literature, which were considered more advanced and reserved for white students. Also, Black schools received less funding and resources than white schools. This severely limited their ability to acquire the skills and knowledge necessary to compete on an equal footing with white South Africans for higher-pay and better skilled jobs. In comparison, the Taliban decrees in Afghanistan not only restrict quality of education or access to schools but have entirely banned education for women and girls beyond grade six.

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The South African apartheid system restricted access to education, employment, and other opportunities based on race, while the Taliban policy bases this on gender. The restriction on women's education reinforces asymmetrical gender roles and promotes traditional patriarchal views: women ought to remain confined at home, denying women and girls agency, and perpetuating gender inequality. Both apartheid systems serve to create and reinforce social and economic disparities that are difficult to overcome, with lasting consequences for the affected group's social, economic, and political status. Therefore, the Taliban's policy to ban women's education should be seen as a form of gender apartheid that perpetuates social inequality and hinders progress towards gender equality.

### **The Right to Nationality and The Right to Leave and Return to The Country**

The Taliban has banned women from accessing identification documents:

- Withhold women's identity cards and passports in the absence and approval of a male family member;<sup>37</sup>
- 27 March 2021: Banned women from traveling abroad without a male chaperon.<sup>38</sup>

One of the most significant ways in which the Taliban discriminate against women is denial of the right to nationality. Under the Taliban's regime, women are not recognized as citizens, and are therefore unable to obtain identification documents, such as national identity cards, passports, or birth certificates, for themselves nor for their children. A male member of the family has to give approval. Without identification documents, women are unable to travel, obtain work, or access public services or humanitarian aid—further worsening their already limited status. On 15 January 2022, a Taliban gunman arbitrarily shot two women (a mother and daughter) while they were standing in the biometric queue inside a passport office.<sup>39</sup> The inability to obtain identification documents also makes women vulnerable to exploitation, human trafficking, and forced marriage, as they have no legal proof of their age, identity, or marital status.

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The travel-ban on women to leave and return to the country is also limiting women's access to education, employment, healthcare, and other opportunities, such as obtaining medical treatment unavailable in Afghanistan. Furthermore, travel restrictions are controlling and oppressive, effectively imprisoning women within the country and limiting their ability to seek asylum or escape from violence or persecution. In private conversations, imprisoned women protesters say the Taliban took their passports and restricted them from traveling prior to their release. The apartheid regime in South Africa restricted the movement of Black South Africans through policies such as the Pass Laws, Bantustans, and forced removals, effectively limiting their freedom of movement and making it difficult for them to leave or move within the country.<sup>40</sup> The Taliban also use these restrictions as a tool of control and oppression that serve to reinforce existing inequalities.

## Right to Work

Through a variety of decrees, the Taliban has banned women's rights to work.

- 20 September 2021: Professional/working women are ordered to stay home until further notice;<sup>41</sup>
  - 29 September 2021: Women are banned from attending and teaching at Kabul University;<sup>42</sup>
  - 22 March 2022: A decree is issued stating that "women must not be employed in offices and must not leave home";<sup>43</sup>
  - 18 July 2022: Women employees at the Ministry of Finance are directed to send their male relatives to take their jobs if they want to be paid their salaries;<sup>44</sup>
  - 10 August 2022: Female flight attendants are removed from their jobs;<sup>45</sup>
  - 28 October 2022: Women's seats from the Commission of Media Violations are removed;<sup>46</sup>
  - 27 December 2022: Women-run bakeries are banned in Kabul;<sup>47</sup>
  - 24 December 2022: Women are barred from working in national and international NGOs;<sup>48</sup>
  - 04 April 2023: Women are banned from working for the United Nations offices in Afghanistan<sup>49</sup>
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Banning women's employment rights not only amounts to inhuman acts as defined in the apartheid convention but is incompatible with the Universal Declaration of Human Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and International Covenant on Civil, Political Rights (ICCPR). Laws like the Natives Act of 1923<sup>50</sup> or the Industrial Conciliation Act of 1924<sup>51</sup> restricted the rights of Black South Africans to live and work in urban areas or limited their access to employment opportunities. In Afghanistan, the right of women to work is not merely limited, but completely eliminated.

Today, millions of women in Afghanistan do not have access to the resources necessary to provide for themselves. This has reinforced patriarchal power structures, increased domestic violence, increased morbidity and mortality rates, and increased suicide and depression.<sup>52</sup> One of the most immediate and direct impacts is poverty cycles and the pressure this has placed on an already crumbling Afghan economy. Millions are starving amid corruption and incompetence, while women continue to be excluded at great economic cost.<sup>53</sup> The impact of limiting women's economic activity is not limited to women alone. It is also imperative to recognize the far-reaching consequences it has on their children, their families, and the wider population.

## **The Right to Freedom of Expression and Opinion**

Women in Afghanistan are denied the right to freedom of opinion and expression through censorship decrees enforced by Taliban soldiers and their Ministry for the Propagation of Virtue and the Prevention of Vice.

- 25 August 2022: Women are ordered to remain indoors (at home) because soldiers are not trained to respect women and their safety cannot be guaranteed;<sup>54</sup>
  - 22 November 2021: Women are banned from appearing in television dramas;<sup>55</sup>
  - 26 December 2021: Drivers are banned from playing music in cars and having women passengers without hijab;<sup>56</sup>
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- 7 May 2022: Head-to-toe covering for women is imposed;<sup>57</sup>
- 29 August 2022: Female students are ordered to cover their faces on campus;<sup>58</sup>
- 26 September 2022: Media outlets are ordered to ensure female TV guests must cover their faces.<sup>59</sup>

Under the Taliban's rules, women are expected to dress modestly and avoid public appearances. These restrictions have limited women's ability to express their opinion freely in public spaces. They have also used violence and intimidation tactics to silence women who speak out against these policies. Women's rights activists, journalists, and other public figures have been threatened and harassed, and some have been targeted for assassination. Additionally, the Taliban has shut down media outlets and censored content that report on women. Four out of five women journalists are no longer working.<sup>60</sup> Taliban soldiers conduct house-to-house searches for journalists—those working for western media outlets are particularly targeted.<sup>61</sup>

Under apartheid in South Africa, the Suppression of Communism Act<sup>62</sup> and the Publications and Entertainments Act<sup>63</sup> oppressed and restricted the right to freedom of expression and opinion for Black individuals. Anti-apartheid activists were arrested, detained, tortured, and even assassinated, while critical publications and journalists were banned and harassed.<sup>64</sup> As a result, the majority of the Black population faced significant consequences for expressing their opinions, which limited their ability to challenge the apartheid regime.

In South Africa, racial apartheid aimed to suppress the voices of non-white people, while in Afghanistan, gender apartheid aims to suppress women's voices—both systems utilize similar tactics such as censorship, intimidation, and violence to silence those who oppose the regime.

## **The Right to Freedom of Peaceful Assembly and Association**

- 8 September 2021: the Taliban's Ministry of Interior issues a decree banning all demonstrations and gatherings.<sup>65</sup>

The Taliban has severely restricted the right to peaceful assembly and association. This decree was issued in response to women's protests even though it does not specify sex. However, the recipient of its impacts and implementation have been gendered and used to ban women's protests and arbitrarily arrest and imprison them. The Taliban consistently employ excessive force to suppress and disperse women's demonstrations using gunfire, tear gas, electroshocks, whipping, and beating.<sup>66</sup> They also arbitrarily arrest, imprison, and impose cruel punishments and torture on women protesters and their family members. They have beaten, detained, and confiscated journalists' equipment that report women's protests.<sup>67</sup> These restrictions have stifled women's ability in Afghanistan to continue their peaceful protests against serious violations of their basic human rights.

## **Article 2(D)**

### **Segregation**

- 13 March 2022: Enforcement of segregation of women and men's offices is ordered;<sup>68</sup>
- 6 April 2022: Women are prohibited from entering public parks, except on two designated days;<sup>69</sup>
- 25 August 2022: Women are banned from going to parks where park authorities cannot ensure segregation between men and women;<sup>70</sup>
- 10 November 2022: Women and girls are banned from public parks and gyms.<sup>71</sup>

The Taliban's gender segregation policies, effectively confining women indoors, have been extensively documented. This has resulted in significant disparities in all areas of life, including educational and economic opportunities between men and women. Similar to apartheid South Africa, the Taliban's system of segregation is reinforced through discriminatory beliefs and practices that underlie the ruling group's ideology.

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In South Africa, apartheid was based on the belief in the inherent superiority of white people over Black people and other people of color. Similarly, the Taliban's ideology is based on a fundamentalist interpretation of Islamic Sharia that asserts the superiority of men over women. This belief system is used to justify gendered restrictions on women's movements, access to education and employment, and participation in public life.

### **Article 2(E) Exploitation of Labor, in particular, Submission to Forced Labor**

Decrees issued relating to women's rights to work, education, clothing, and freedom of movement subject women to harms defined in Article 2 (e) of the Convention against Apartheid. As women cannot work legally, many have little choice but to enter the informal labor market, often under poor working conditions and low pay, which can be considered exploitation of labor. Taliban policies have also created conditions that are conducive to forced labor. For example, the 2022 State Department report on Afghanistan found that "the Taliban abducts and coerces adult women into forced labor. The Taliban maintains detention facilities in which it compels detainees, including child and adult sex trafficking victims charged with 'moral crimes,' into forced labor".<sup>72</sup> Plus, they are vulnerable to misuse by informal labor market employers, characterized as forced labor. Furthermore, poverty and economic vulnerability as a result of unemployment could also lead to broader forms of exploitation, subjecting women to sexual and gender-based violence, including rape and forced marriage, as well as physical and psychological abuse. The current circumstances have led families to marry off their daughters, with reports indicating exploitation of Afghan women and girls sold for marriage to avoid the Taliban in Afghanistan, India, Iran, and Pakistan through sex trafficking and domestic servitude.<sup>73</sup>

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## **Article 2(F) Persecution of Organizations and Persons Who Oppose a Prevailing System of Apartheid**

As outlined above, the Taliban continuously employ excessive force to break up women's public protests. They also arbitrarily arrest, detain, forcibly disappear, torture, and kill demonstrators and their relatives without justification.<sup>74</sup> Cases of arbitrary arrests, imprisonment, torture, and extra-judicial killings of women protesters that was explained under the rubric of Article 2(a) and Article 2(c) of the Convention fall into this category too. The systematic targeting of women political leaders, human rights defenders, civil society activists, and journalists can be understood as persecution for opposing the Taliban regime within the meaning of Article 2(f).

At the time of writing, a new wave of arbitrary arrests of women protesters have begun in Afghanistan. The Taliban arrested Zarifa Yaqoubi and her four male colleagues at their press conference held at the inauguration of the Women's Movement for Equality in Kabul on November 03, 2022.<sup>75</sup> In November, they also arrested many other women protesters including Farhat Popalzai, Zainab Rahimi, Humira Yusuf, and Narges Sadat in Kabul and Parisa Mobarez in Takhar province. The use of arbitrary arrests and detention is consistent with the tactics of the Taliban who seek to suppress women's protests and create a culture of fear and oppression.

On 19 January 2022, a group of the Taliban gunmen raided houses of women who were organising the protest in Kabul. They raided Tamana Zaryab Paryani, Parwana Ibrahimkhel, Mursal Ayar's houses and took them to the Taliban's intelligence detention center. Tamana Zaryab Paryani's three sisters, the youngest being 13-years-old, were also taken with her that night.<sup>76</sup>

In September 2021, the Taliban attacked a protest in Mazar City and detained approximately 80 protesters, the majority of whom were women. Investigative reporting for Zan Times shows that 115 women were hospitalized after the protests. Following the incident, the bodies of eight women were discovered in various locations around the city, while nine remain missing. The other detained women protestors were eventually released after being held without charge for 45 days.<sup>77</sup>

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On 12 February, 2022 the Taliban raided a safe house in Kabul where women protesters were hiding, arresting 29 women, including their partners and children.<sup>78</sup> On 21 February, the Interior Ministry of the Taliban released a forced confession video of these women in which they apologised for their opposition to Taliban rule and stated that the intention behind their protest was “getting moved out of Afghanistan”.<sup>79</sup> Later, an Amnesty International report found they faced limited access to basic necessities, such as food, water, ventilation, hygiene products, and medical care. They were forced into signing documents in which they and their relatives agreed not to protest again or to discuss their detention experiences publicly.<sup>80</sup>

These cases are prevalent but due to the fear of the Taliban and traditional sensitivities, people often do not report neither their detention nor the precise details of their conditions and treatment in prison.

## **Institutionalized and Systematic Discrimination and Domination**

Article 2 of the Apartheid Convention requires that, for the commission of the crime of apartheid, the inhuman acts must have been committed for the purpose of instituting and sustaining domination by one racial group of persons over another racial group of persons and systematically oppress them.<sup>81</sup>

The vast majority of the decrees issued in relation to women are issued by the Ministry of Promotion of Virtue and Prevention of Vice. They all carry legal authority and are systematically enforced by Taliban gunmen and moral police. It means that the discrimination of women is not just a matter of individual acts of violence, but an integral part of the Taliban's system of governance.

The Taliban system is designed to maintain power and control of a particular group (men) over another group (women). Ideologically, the Taliban believe in the superiority of men based on their narrow interpretation of Islamic law and cultural norms, which the group uses to justify oppressing women. For instance, the decree that ordered women to wear all-covering burqa in public stated, "in case of violation of this rule, a woman's male 'guardian,' such as her father, brother or husband, would be punished."<sup>82</sup> It systematically authorizes men to have control over women.

Similarly, other policies described earlier in this paper create a context in which women and girls are systematically disadvantaged and marginalized, and where their rights and freedoms are severely restricted. In addition to these measures, the Taliban use violence as a means of enforcing their rules and controlling women, including sexual violence and forced marriages.

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## Conclusion

The evidence presented in this paper demonstrates that every "Inhumane Act" defined as apartheid is applicable to the situation of women in Afghanistan—in some instances creating comparable consequences to apartheid South Africa. In addition, the application of the Taliban decrees are a clear violation of fundamental human rights principles and norms. The Taliban policies and practices have dehumanized women, limited their ability to participate fully in society, and perpetuated their subordination to men. Recognizing gender apartheid is critical because it acknowledges the severity and scale of the problem in Afghanistan and draws attention to its urgency. This recognition would also provide a legal framework for holding the perpetrators accountable and seek redress for its victims.

The issue of whether recognition of gender apartheid serves any purpose when gender-based persecution is already considered a crime against humanity in Article 7(1)(h) of the Rome Statute<sup>83</sup> has sparked some discussions. However, the recognition of gender apartheid remains crucial because customary international law on gender-based persecution may not always be clear, and enforcement of customary norms may be more challenging than enforcement of treaty-based obligations.<sup>84</sup> Designating the situation in Afghanistan as constituting gender apartheid could also create awareness of the issue, raise pressure for change, and lead to the introduction of new laws that criminalize gender-based violence and provide greater protection for victims.

Moreover, it will allow state parties to prosecute non-nationals for crimes committed in the territory of a non-state party where the accused is physically within the jurisdiction of a state party. State parties will also be obliged to adopt legislative, judicial, and administrative measures to prosecute and punish individuals responsible for acts prohibited by the Convention. This recognition will also be able to catalyze further UN action by enabling that any party can call upon UN bodies to take Charter-based action to prevent and suppress the crime of apartheid, and by giving states parties heightened obligations to implement relevant UN resolutions.<sup>85</sup>

The recognition can also lead to the development of international treaties and conventions that require states to take action to prevent and address gender apartheid. Thus, the recognition of gender apartheid remains an essential aspect of international criminal law that can contribute to ending gender-based violence and ensuring accountability for perpetrators. The recognition of gender apartheid can complement existing laws such as gender-based persecution, and work together to prevent and address the dire systematic gender-based violence in Afghanistan.

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Furthermore, the Taliban has utilized religious and cultural justifications to defend their persistent marginalization of women and implementation of gender-based discrimination.<sup>86</sup> Unfortunately, this flawed reasoning has been perpetuated by some international apologists, leading to the depoliticization of laws and policies which negatively impact women. For instance, Permanent Representative of Pakistan to the UN, Ambassador Munir Akram, said that "the Taliban restrictions on women are part of Pashtun culture".<sup>87</sup> Women delegates from Afghanistan participating in CSW67 collectively, where I was present too, expressed that cultural and religious beliefs should not be used to legitimize the violation of women's rights by the Taliban. Breaches of fundamental rights shall not be overlooked, excused, or justified based on culture.

Moreover, it is important to recognize that international law does not allow for comparative judgments in cases concerning apartheid. The International Court of Justice (ICJ) refused to consider the purposes and objectives underlying South Africa's apartheid policies, including the religious beliefs and cultural values of the Afrikaners, in its 1970 Advisory Opinion regarding Namibia.<sup>88</sup> The ICJ's decision makes it clear that cultural and religious beliefs cannot be used to justify human rights violations, especially in cases of apartheid.

The recognition of gender apartheid in Afghanistan is a key responsibility of international human rights laws and the United Nations. It serves the spirit of international laws by upholding the fundamental human rights principles and promoting gender equality. The international community has developed a comprehensive framework of human rights laws and norms to protect all individuals from discrimination and to ensure their basic human rights are respected and upheld.

Gender apartheid represents a grave violation of these principles, as it systematically denies women and girls their rights and freedoms based solely on their gender. Thus, it is imperative the international community recognizes gender apartheid in Afghanistan and sends a clear message that such abuses will not be tolerated.

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## Endnotes

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- <sup>68</sup> (Letter from the Ministry for the Propagation of Virtue and the Prevention of Vice: Women's offices should be separated from men's, 2022)
- <sup>69</sup> (Aljazeera, 2022)
- <sup>70</sup> (Picheta & Mahmood, 2021)
- <sup>71</sup> (Associated Press, 2022)
- <sup>72</sup> (Trafficking in Persons Report: Afghanistan, 2022)
- <sup>73</sup> (Trafficking in Persons Report: Afghanistan, 2022)
- <sup>74</sup> (Ex-Detainees Describe Torture, Mistreatment of Their Families, 2022)
- <sup>75</sup> (Zan Times, November)
- <sup>76</sup> (Front Line Defenders, 2022)
- <sup>77</sup> (Nader & Mousawi, 2022)
- <sup>78</sup> (Harrison, 2022)
- <sup>79</sup> (Esfandiari, 2022)
- <sup>80</sup> (Detention and torture of peaceful protesters, 2022)
- <sup>81</sup> (International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973)
- <sup>82</sup> (Voice of America, 2022)
- <sup>83</sup> (International Criminal Court, 1998)
- <sup>84</sup> (Brown & Grenfell, 2003)
- <sup>85</sup> (Bennoune, 2022)
- <sup>86</sup> (The Office of the High Commissioner for Human Rights, 2022)
- <sup>87</sup> (Kabul Now, 2023)
- <sup>88</sup> (International Court of Justice, 1971)
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## About Us

PeaceRep: The Peace and Conflict Resolution Evidence Platform is a research consortium based at Edinburgh Law School. Our research is rethinking peace and transition processes in the light of changing conflict dynamics, changing demands of inclusion, and changes in patterns of global intervention in conflict and peace/mediation/transition management processes.

Consortium members include: Conciliation Resources, Centre for Trust, Peace and Social Relations (CTPSR) at Coventry University, Dialectiq, Edinburgh Law School, International IDEA, LSE Conflict and Civiness Research Group, LSE Middle East Centre, Queens University Belfast, University of St Andrews, University of Stirling, and the World Peace Foundation at Tufts University.

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