

26-27 July 2023, Istanbul, Türkiye

Expert Group Meeting on International Strategies and Tools to Address the Situation of Women and Girls in Afghanistan

Photo: UN Women/Sayed Habib Bidel

1. Introduction

UN Women in Afghanistan convened an Expert Group Meeting in Istanbul from 26 to 27 July 2023. It explored the **efficacy of existing global human rights, political and diplomatic tools for addressing Afghanistan's unprecedented women's rights crisis**. Twenty-three Afghan and international experts participated, representing academics, specialists in international law, women's rights leaders, and current and former UN officials working in/on Afghanistan. This note summarizes key discussions points and findings. It does not reflect the views or positions of UN Women or the United Nations. In the spirit of the Chatham House Rule, the document refers to no names or affiliations.

Mutually reinforcing decrees introduced by the Taliban after its takeover of Afghanistan now affect every aspect of women's lives. While the implementation and impact of gender-specific decrees vary within the country, the pattern and intention are aimed at systematically erasing the rights of women and girls. The Taliban's vision for the State of Afghanistan is inextricably linked to the structural denial of the personhood of women.

Efforts by the international community to reverse the Taliban's decrees on women and girls have not resulted in their formal removal or improvements in women's well-being and rights. Statements condemning Taliban actions and decisions, made by different parts of the international community, have been unsuccessful in triggering substantive changes to date. While there have been some exemptions to decrees negotiated by international and national organizations, these are reactive and focus on humanitarian access rather than addressing the underlying women's rights crisis. They are often time-bound and specific to a sector or location. Overall, these short-term fixes are not a viable means of responding to the severity of the attacks on women's rights. If anything, they expose a lack of coherence and solidarity in international responses.

Two years after the Taliban takeover, there has been only a limited reorientation of the international community's strategy to tackle the most extensive attack on women's and girls' rights in the modern era. Members of the Taliban remain on multiple sanctions

lists¹ and are unable to travel without exemptions, with some additional listings in the new European Union Global Human Rights sanctions regime.² Afghanistan's assets remain frozen in the United States of America, and the Taliban do not have a formal seat at the United Nations as they remain unrecognized as a government. A gradual non-renewal of previous exemptions to the travel ban has occurred, however, and the UN Security Council has introduced no new sanctions on the Taliban since the takeover. The Council has progressively introduced stronger language on women's rights and reacted quickly to several Taliban provocations, such as by passing a resolution condemning the ban on women working for the United Nations (April 2023) and holding meetings in direct response to Taliban decisions impacting women.

The United Nations Human Rights Council established a Special Rapporteur on the situation of human rights in Afghanistan in 2021, and in 2022, granted an expanded mandate, sometimes referred to as an "SR+."³ This was an important step but no commission of inquiry or fact-finding mission has been established to track women's rights and human rights violations, despite emphatic demands from Afghan human rights defenders and international non-governmental human rights organizations for stronger accountability measures. The International Criminal Court has made no indictments. There has been no clear strategy put forth by the international community with the declared goal of reversing Taliban policy perpetrating gender oppression.

At the same time, several countries in Afghanistan's immediate neighbourhood and broader region continue to engage through Kabul-based diplomatic presences, including on security and economic issues, with economic relations primarily focused on short-term, relatively low-risk trade relations.⁴ Some experts stated that the region does not have the luxury of disengaging given core security and other interests such as water. They highlighted that references to women and girls appear in various regional statements, such as the Moscow Format and the Shanghai Cooperation Organization declarations as well as the consensus from the May 2023 Special Envoys meeting on priorities, including on human and women's rights, counternarcotics and counterterrorism.⁵ Other experts stressed that trade between these countries and discussions of mutual interest, such as on counternarcotics, counterterrorism and water supplies, strengthen the Taliban's negotiating hand. Some transactions turn a blind eye to the Taliban's treatment of women and girls or label this a "cultural" issue of "national sovereignty" rather than a political issue that involves international law.

Gender equality, however, is central to the international order inaugurated by the Universal Declaration of Human Rights and all the treaties that have followed. The extent and severity of the women's rights crisis therefore demands significantly more from the international community. The status quo has left the Taliban largely unchallenged in their systematic attack on women's rights. Rather, the victor mentality has bred the expectation that the international community will adapt to the Taliban's governance preferences. This threatens Afghanistan's long-term development prospects. Most fundamentally, it allows the contemporary consolidation of a sociopolitical order founded on systematic and extreme restrictions on women's civil and political rights, and undermines the foundation of global human rights treaties.

While unique in its degree of organization and cruelty, the dismantling of women's rights in Afghanistan parallels how illiberal and authoritarian leaders use structural misogyny in other contexts in what has been characterized as a broad current backlash against women's rights and gender equality.⁶ So far, international reactions to these global developments have been muted, even though they violate globally agreed norms, standards and goals on gender equality.

¹ UN sanctions were initially imposed in 1999 via UN Security Council resolution 1267. The Security Council imposed limited sanctions, in the form of air and financial embargoes, to compel the Taliban to cease providing sanctuary and training to terrorists. Resolution 1988 (2011) was followed by resolutions 2082 (2012), 2160 (2014), 2255 (2015), 2501 (2019) and 2557 (2020) concerning sanctions against the Taliban and other individuals and groups associated with them.

² For more on the European Union listing of acting Taliban ministers, see: www.consilium.europa.eu/en/press/press-releases/2023/07/20/human-rights-violations-eu-lists-18-individuals-and-five-entities-responsible-for-gender-based-violence-and-linked-to-the-navalny-and-kara-murza-cases/.

³ The Human Rights Council enhanced the mandate of the Special Rapporteur by formally introducing an investigative and fact-finding dimension. While the Special Rapporteur is an important part of the human rights ecosystem that is monitoring violations in Afghanistan, Afghan and international non-governmental organizations (NGOs) have called for a UN-mandated accountability mechanism with the mandate and capacity for full-scale evidence collection and preservation.

⁴ The level of risk in trade relations could increase as several large-scale contracts were signed in August 2023.

⁵ United Nations Assistance Mission in Afghanistan, 2023. "Secretary-General's statement following two-day meeting of special envoys on Afghanistan." 3 May. <https://unama.unmissions.org/secretary-generals-statement-following-two-day-meeting-special-envoys-%C2%A0%C2%A0afghanistan>.

⁶ Human Rights Council, 2018. Report of the Working Group on the issue of discrimination against women in law and in practice. A/HRC/38/46. www.ohchr.org/en/special-procedures/wg-women-and-girls/report-reasserting-equality-counteracting-rollbacks. Working Group on discrimination against women and girls, 2020. Gender Equality and Gender Backlash. www.ohchr.org/en/special-procedures/wg-women-and-girls/gender-equality-and-gender-backlash.

The severity of the women’s rights crisis in Afghanistan has spurred reflection on the adequacy of existing diplomatic, legal and political tools for calling out and demanding accountability for mass abuses of women’s rights. The situation demands a coherent global response to dangerous violations of universal human rights treaties but international legal tools as well as diplomatic and sanctions mechanisms were not designed to respond to such extensive State-sponsored gender oppression. The inefficacy of the international response to women’s rights in Afghanistan is increasingly linked to emerging evidence that other groups – such as the Houthis in Yemen – are taking heed of the lack of meaningful international action to prevent and respond to systematic attacks on the rights of women and girls, paving the way for impunity and emboldening patriarchal forces to further roll back gender equality.⁷

In response to this systematic denial of women’s rights, Afghan women – inside and outside the country – have suggested that the concept of “gender apartheid” accurately captures the comprehensive nature of gender-based oppression in their country today. This notion could potentially mobilize and focus global condemnation of gender-based persecution in ways that might support a stronger and more consistent international response.⁸ UN leaders have used the term in high-level deliberations, including the Security Council.⁹ The term also appeared in a report released by the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls at the fifty-third session of the Human Rights Council in June 2023. The report called on the Human Rights Council to produce a stand-alone report on gender apartheid.¹⁰

Currently, there is no explicit codification of gender apartheid in international law. The concept is increasingly recognized, however, with several academic and policy definitions.¹¹ Use of the term in contexts other than Afghanistan¹² has largely been political and for public advocacy purposes, and so far, use by Member States or the United Nations has not triggered any diplomatic actions or sanctions. Some legal experts have put forth legal arguments calling for actions to create explicit recognition of gender apartheid within international law, contending that existing legal frameworks, including gender persecution, are neither designed for nor adequately address a situation like the comprehensive gender-based oppression in Afghanistan. Further, these experts contend that gender apartheid and gender persecution are vital, complementary concepts, as are racial persecution and racial apartheid.

The Expert Group Meeting concluded the following:

- **Existing tools were not built to address mass, institutionalized, systematic, State-sponsored gender oppression.** Tools available to the international community cannot respond to women’s rights crises where the subordination of women and denial of their personhood are fundamental to State power.
- **The concept of “gender apartheid” has merits in responding to the situation in Afghanistan.** It is compelling in that it refers to a great deal of already established international law on racial apartheid, and invokes a history of shared international revulsion at the systematic deprivation of the rights of an entire population group. It vividly invokes a regime of control and violence fixated on punitive limitations on the mobility and rights of a people based only on one aspect of their identity. The term is “triggering”, meant to spur shock and galvanize concerted international action by States and non-state actors, such as banks, transnational corporations and sporting entities.
- In some circumstances, particularly for those whose day-to-day activities require a working relationship with the Taliban, it may be difficult to refer to “gender apartheid”. The term may be poorly understood, especially as it has no

⁷ Jafarnia, Niku, 2023. “Houthis Violating Women’s and Girls’ Rights in Yemen.” 6 February. Human Rights Watch. www.hrw.org/news/2023/02/06/houthis-violating-womens-and-girls-rights-yemen.

⁸ For example, #EndGenderApartheid. See: <https://endgenderapartheid.today/>.

⁹ Including UN Secretary-General António Guterres, UN Women Executive Director Sima Bahous, Special Rapporteur on the situation of human rights in Afghanistan Richard Bennett and UN High Commissioner for Human Rights Volker Türk.

¹⁰ United Nations Office of the High Commissioner on Human Rights, 2023. 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, para. 100(c).

¹¹ Definitions include: “[G]ender apartheid is 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 spaces and spheres.” See Bennoune, Karima, 2022. “The International Obligation to Counter Gender Apartheid in Afghanistan.” Columbia Law Review 54(1). <https://hrlr.law.columbia.edu/files/2022/12/Bennoune-Finalized-12.09.22.pdf>. See also the Report of the Special Rapporteur on the situation of human rights in Afghanistan, para. 95: “Although not currently a crime under the Rome Statute, there are proposals for the application of the definition of the crime against humanity of apartheid in the Statute to gender. Adapting the definition of article 7.2 (h), gender apartheid could be understood as inhumane acts committed in the context of an institutionalized 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.”

¹² Other contexts where the terms have been used include Iran, Saudi Arabia and Yemen.

cultural resonance for the Taliban and does not reflect their own understanding of the rationale behind the restrictions they impose. Using it could impact day-to-day engagement, though many experts noted that since the status quo is a diplomatic stalemate, use would have limited or no impact. Other experts emphasized that the term could provide a justification for the international community to fully disengage, with adverse consequences for the broader population given the humanitarian and economic situation. Overwhelmingly, experts suggested that **those who are in roles to apply the term should do so**, especially given the importance of **not undercutting the leadership of Afghan women human rights defenders** – inside the country and in exile – who have asked for solidarity in deploying the strongest possible terms to condemn the Taliban. The international community should not shirk from explicitly “**calling it by its name**”.

- **Different tools can be pursued in tandem**; gender apartheid and gender persecution are not mutually exclusive. Experts broadly agreed that gender apartheid is the framework within which gender persecution occurs. Multiple frameworks can be applied without competing with one another.
- **Further work is urgently needed to develop gender apartheid** as an applied legal concept. Codifying gender apartheid is a long-term, uphill battle with many political obstacles related to the global backlash against gender equality and the sidelining of women’s rights and gender issues in peace, security and humanitarian discussions. This current moment is one of a particular opportunity, however, given the high-profile nature of the Taliban practice of gender apartheid, and the increasing use of this concept by governments, including South Africa, as well as UN officials and experts. Moreover, the challenges do not invalidate the need to urgently develop tools to respond to this unprecedented manifestation of State-led misogyny and hopefully prevent similar abuses elsewhere. All advancements in women’s rights and gender equality have been led by advocates who are not discouraged by the presumption that the global dynamics undermining their work are somehow insurmountable.
- Clarity is needed on **what engagement with the Taliban means in practice for women’s rights and human rights**. The status quo and future efforts to increase engagement could lead to de facto recognition and normalization of relations between the Taliban and Member States, especially as the latter continue to engage based on domestic calculi that rarely prioritize women’s rights.
- There are many ways to describe the situation in Afghanistan, including a humanitarian crisis, a human rights crisis, a women’s rights crisis, an economic crisis and a mental health crisis. The dominant narrative at present is that of a humanitarian crisis, first and foremost. **Reduction to a singular crisis narrative inhibits opportunities to see crises as interlocking and mutually-reinforcing**. Advocacy must frame the situation as a women’s rights crisis – and a gender equality crisis more broadly. It requires the same urgency as a humanitarian emergency, and the recognition that it poses consequences not only for Afghanistan but also for respect for human rights globally.
- Further thinking is needed on how to structure an **effective campaign** with specific policy recommendations for the international community. It is worth noting lessons from the international anti-apartheid campaign targeting South Africa, including its use of time-bound goals such as obtaining the release of Nelson Mandela. Building an international campaign requires thinking through nuanced questions such as: What exactly do we want the international community (and States, in particular) to do? Can we identify a progression of targets/goals? Is isolating the Taliban a main tactic, and, if so, with respect to all spheres, economic, political and so on, or only some? An international campaign also needs to identify measures to hold members of the Taliban and the Taliban as a whole accountable for rights violations while leveraging policy changes, without inflicting additional harm on the Afghan people more broadly.

1. Context Analysis

Since August 2021, the clearest agenda of the Taliban has been the oppression of women, despite initial promises to restore and guarantee women’s rights within the framework of sharia law. The introduction of over 50 edicts targeting women and girls has undeniably stripped women of a wide range of basic rights and freedoms, reducing them to second-class citizens. In the words of

some Afghan women, this has eroded their humanity and personhood. The edicts are evidence of a systematic, planned assault on women's rights that is foundational to the Taliban's vision of sharia, the State and society.

The concept of a so-called Taliban 2.0,¹³ a reformed, more progressive Taliban than the one seen from 1996 to 2001, is unhelpful. It discourages clarity in seeing the Taliban for whom they are – a group of ideologues, governed by a rigid set of precepts, intent on establishing their version of an Islamic utopia. This requires the complete subordination of women and their erasure from public life and public institutions, denial of their access to basic rights such as health and education, and deprivation of mobility and other liberties so that women are restricted mainly to their households. While a range of authoritarian systems in the world threaten women, movements and governments that systematically manipulate religion as a tool of coercion pose particularly serious obstacles for women's rights and related advocacy.¹⁴

The Taliban's victor mentality has severely limited the international community's influence, especially on women's rights. There is virtually no willingness to compromise, especially on the part of the Taliban's Kandahar-based leadership, which remains opposed to meeting representatives of the international community. Some Experts saw the Taliban as willing to fight another 20- or 200-year war for control of the country, signalling that the Taliban are broadly understood as a segment of society with political grievances and ambitions that must be addressed. Some also see the Taliban as an anti-imperialist movement. While anti-imperialism was a major mobilization factor in South Africa, with the anti-racial apartheid movement seen as both anti-imperialist and against racial oppression, and galvanizing global support and solidarity in a decolonizing world, global mobilization linked to anti-imperialism is not at the forefront of the current context.

Geopolitics have evolved significantly since the anti-racial apartheid era. Islamic fundamentalist movements in a variety of contexts are often strongly rejected by women's human rights defenders who argue that the anti-imperialist mantle they claim is misleading, designed to detract from their international connections (and funding sources).

Afghan women, while diverse in their views and demands, are united in calling for accountability for mass violations of women's rights. While rates of civilian casualties and other conflict-related harms to the overall population have declined following the Taliban takeover, the safety of women and girls has dramatically worsened due to Taliban actions since August 2021. This is not captured by approaches such as tracking civilian casualties. Further, the Taliban's abolition of human rights bodies and crackdown on media freedom render threats to women and girls largely invisible. The Taliban almost immediately dismantled the system to respond to gender-based violence, including shelters, legal assistance, specialized prosecution units and courts, and the Ministry of Women's Affairs. It repealed the 2009 Law on the Elimination of Violence Against Women. Women and girls experiencing violence have virtually no recourse to State assistance.

The space to address human rights violations has almost completely disappeared with the abolishment of the Afghanistan Independent Human Rights Commission. There is no transparent, inclusive and rights-based judicial system or prosecutorial service to hold members of the Taliban or those aligned with them to account. The abolition of the Attorney General's Office and the introduction of the de facto Grand Directorate for Monitoring and Implementation of Decrees and Orders point to increasing social control and monitoring of the lives of women and girls.

Afghan women – inside and outside the country – have suggested that “gender apartheid”¹⁵ is an accurate description of the gender-based oppression practiced by the Taliban. Using the term could potentially mobilize and focus global condemnation of this persecution in ways that might generate stronger, more consistent international action and responses.¹⁶ Drawing lessons from history, they have highlighted how the campaign against the South African State's pursuit of racial apartheid in the 1970s and 1980s was catalytic in ending white supremacist governance. Could a global mobilization against gender apartheid, which is already nascent, sharpen legal and diplomatic responses to human rights abuses in Afghanistan and trigger cooperation by other States and third parties in demanding an end to women's oppression?

¹³ The term Taliban 2.0 is often used to differentiate the Taliban from their first period of rule (1996 to 2001).

¹⁴ United Nations Office of the High Commissioner on Human Rights, 2017. Report of the Special Rapporteur in the field of cultural rights – Note by the Secretary-General. A/72/155. www.ohchr.org/en/documents/thematic-reports/a72155-report-special-rapporteur-field-cultural-rights-note-secretary.

¹⁵ For example, #EndGenderApartheid. See: <https://endgenderapartheid.today/>.

¹⁶ While there is no unanimity yet in terms of gender apartheid, women inside and outside the country have called for its use, particularly by the international community.

Surveys of Afghan women inside the country have also found that most women want the international community to continue engagement with the Taliban but not at the expense of their rights. In other words, there is not blanket opposition to engagement by Afghan women that could lead to policy changes related to improving women's rights and addressing the humanitarian and economic needs of the population.¹⁷

Afghanistan is experiencing a multipronged crisis that involves breaches of women's rights, a humanitarian emergency, an economic disaster, issues of political representation, a downturn in mental health and climate change fallout, to name a few. The defining framing for the crisis has become humanitarian, especially as development aid has been suspended, resulting in a pivot to life-saving assistance. While access to communities has improved in the absence of armed conflict, the December 2022 decree banning women from working for international and national NGOs (aside from limited exemptions applied in a varied manner across the country) and its subsequent extension in April 2023 to Afghan women working for the United Nations has worsened the humanitarian crisis, deepened its disproportionate impact on women and girls, and undermined principled aid delivery, especially of services "by women, for women". These orders have further shrunk the space for women-led and women-focused organizations. The central focus on the humanitarian crisis, which is inherently short term, has introduced inconsistencies in the international response to women's rights and led some actors to deprioritize making women's rights central to all international responses. **The narrative that women's rights can be left until later or cannot be raised as that could hinder humanitarian access constrains a coherent international response to the women's rights crisis.** Reformulation of the crisis beyond humanitarian terms is imperative. The high cost of meeting humanitarian needs is not sustainable in the long-run, and by design, humanitarian response through its focus on meeting life-saving needs has limited impact on transforming the root causes of a crisis.

2. Assessment of international responses

A range of international human rights and political strategies and tools have been employed – albeit unsuccessfully to date – to change the trajectory of women's rights in Afghanistan and influence the Taliban's decision-making and behaviour. Overall, experts considered these actions to be short-term and inadequate in their ability to address the State-sponsored nature of gender oppression.

The Security Council has progressively introduced stronger language vis-à-vis women's rights since 2021. It has reacted quickly to several Taliban provocations, such as by holding meetings in direct response to Taliban decisions impacting women. In April 2023, it passed a resolution following the ban on women working for the United Nations.¹⁸ Sanctions against Afghanistan under Security Council resolution 1988 (2011),¹⁹ however, have not been updated, beyond negotiating a humanitarian exemption, since the Taliban took power in August 2021. Exemptions to the travel ban ended in 2022 but only after significant pressure by human rights defenders and advocacy by Member States. Thus far, the UN Credentials Committee has deferred the decision to allow the Taliban to take Afghanistan's seat at the United Nations. Broader geopolitics, including the ongoing war in Ukraine, have dominated the Security Council's agenda and are inhibiting consensus and stronger positions on women's rights.

Other political efforts to discuss Afghanistan's future have fallen short of moving women's rights issues forward. Existing formats, such as the Doha meeting with Member States convened by the UN Secretary-General²⁰ and the Moscow Format,²¹ have been criticized for excluding Afghan women.²² Particularly within the immediate region, Member States continue to engage regularly with the Taliban on issues linked to their own domestic concerns, such as drug trafficking, terrorism, water

¹⁷ See data collected by Bishnaw and a recent publication based on in-country consultations conducted by UN Women, IOM and UNAMA.

¹⁸ Security Council resolution 2681 (2023). <https://digitallibrary.un.org/record/4010002?ln=en>.

¹⁹ United Nations Security Council. "Security Council Committee Established Pursuant to resolution 1988 (2011)." www.un.org/securitycouncil/sanctions/1988#work%20and%20mandate

²⁰ In May 2023, the Secretary-General convened Special Representatives for Afghanistan from 21 different Member States and three regional organizations to reinvigorate international engagement around key challenges, including human rights, counterterrorism and inclusive governance.

²¹ The Moscow Format refers to a platform that brings together Special Envoys on Afghanistan from Afghanistan, China, India, Iran, Pakistan and the Russian Federation. It was initially created to facilitate talks between the Islamic Republic of Afghanistan and the Taliban. Since the Taliban takeover, the platform has continued and engaged on key issues facing Afghanistan.

²² The Taliban were not invited to the Doha meeting.

access, trade and migration. The region was described as not having the luxury to disengage even as the normalization of relations, such as through trade, could lead to de facto recognition.

Total disengagement and isolation of the Taliban was not considered desirable, especially for actors in-country grappling with an acute humanitarian crisis. Experts viewed progressive normalization as more likely than formal recognition, yet the former could put women's and girls' rights at risk of being obscured or permanently sidelined, including through de-prioritization in the humanitarian response, and in the focus on counterterrorism, counternarcotics and trade. Humanitarian actors said they needed to engage to discuss issues such as access and guarantees of safety for humanitarian workers.

Experts expressed concerns that international and bilateral actors show anticipatory compliance with the Taliban's determined masculinism in existing engagement efforts, such as by sending all-male delegations and, in some cases, failing to raise women's rights in exchanges. Scattered requests for exemptions to edicts and bans against women and girls were characterized as expressions of "chaotic accommodation" that make outsiders beholden to arbitrary Taliban decisions and that compromise or sacrifice rights-based approaches for small, unstable, short-term gains.

Since the takeover, different international actors have publicly condemned the actions of the Taliban on women's rights by issuing statements. These statements were appreciated but considered ineffective absent concrete actions to bring change to the actual lives of women and girls.

The Human Rights Council mandated the creation of a Special Rapporteur for Afghanistan in 2021.²³ The Special Rapporteur, appointed in 2022 alongside the Working Group on discrimination against women and girls, issued a report on the situation of women and girls in Afghanistan that was presented to the Human Rights Council at its fifty-third session in June 2023. This report explicitly referred to gender apartheid, calling for a special stand-alone report on the subject. UN experts have also referred to gender persecution against Afghan women and girls, a crime against humanity under the Rome Statute.²⁴

An additional complexity is the humanitarian crisis, triggered in part by the suspension of development aid following the Taliban takeover. Given the humanitarian imperative to ensure the non-politicization of assistance, there was significant concern around minimizing women's rights and the broader political crisis. The bans on women working for NGOs and the United Nations were analysed as posing significant dilemmas for the United Nations, creating tensions and diluting coherence in the international response. The need to reconcile the "stay and deliver" directive for the United Nations in Afghanistan while finding paths to address women's rights issues has resulted in a dilemma that has seemed irreconcilable for the international community as custodians of the global human rights regime.

Applying a women's rights approach to resolving this dilemma – in other words, finding solutions that see the women's rights crisis and the humanitarian crisis as interconnected and needing to be resolved together, in ways compatible with international law and principles pertaining to both – is an urgent priority. Some experts stressed the need for an integrated view of the human rights and humanitarian crises, noting a joint paper by the Office of the High Commissioner for Human Rights and the High Commissioner for Refugees in 2013, which asserted that "[t]he protection of human rights is central to ensuring an effective humanitarian response" and that strategies should be developed to ensure that in all circumstances, "[t]he protection of human rights and engagement in humanitarian action are mutually reinforcing rather than 'traded off' against each other".²⁵

²³ United Nations Office of the High Commissioner on Human Rights, 2023. 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. <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur>. United Nations Office of the High Commissioner on Human Rights, 2022. Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan. A/HRC/51/6. www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur.

²⁴ For example, see United Nations Office of the High Commissioner on Human Rights, 2022. "Afghanistan: Latest Taliban treatment of women and girls may be crime against humanity, say UN experts." Statement, 25 November, Geneva. www.ohchr.org/en/statements/2022/11/afghanistan-latest-taliban-treatment-women-and-girls-may-be-crime-against

²⁵ United Nations Office of the High Commissioner on Human Rights and the United Nations High Commissioner for Refugees, 2013. The Protection of Human Rights in Humanitarian Crises. Joint background paper, 8 May. www.globalprotectioncluster.org/sites/default/files/2022-12/ohchr-unhcr_joint_paper_en.pdf.

3. Additional tools and strategies

Given the severity of the situation for women and girls and the potential for impunity to take hold regardless of human rights treaties, experts spoke to the importance of **pursuing multiple tracks of work that are useful and not mutually exclusive**. These include deploying existing tools that have not yet been used and developing new tools more fit for purpose in a situation of State-sponsored mass oppression based on gender.

Existing tools to deploy

While existing tools are not fully equipped to address State gender oppression, and gender apartheid is not a specific crime against humanity, there are principles and actions that can and should be invoked. Experts discussed the following:

- Support and act on the recommendation to mandate a joint **report on gender apartheid** by the Special Rapporteur for Afghanistan and the Working Group on discrimination against women and girls.²⁶ The report could propose ways to develop further normative standards and tools, including paths to legally define gender apartheid.
- Undertake **joint missions** between different **Special Procedures** mandate holders, especially given the relevance of most Special Procedures to Afghanistan.
- Support the **International Criminal Court** to investigate crimes of gender persecution and support indictments of senior Taliban leaders. Cases could creatively explore the relationship between gender apartheid (which is not explicitly included in the Rome Statute but which could be derived from a gender-inclusive definition of apartheid) and gender persecution (which is in the Rome Statute).
- Pursue State v. State options or advisory opinions via the **International Court of Justice**, including by citing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Political Rights of Women and violations of jus cogens norms. The case of *The Gambia v. Myanmar* concerning alleged violations of the Convention against Genocide was cited as an example of the Court analysing a case of universal legal relevance. This option would require identifying a Member State or States to back such a case and greater understanding of who would represent the State of Afghanistan as a respondent before the International Court of Justice, given that the Taliban is not recognized as a legitimate government representing the State.²⁷
- Explore the possibility of innovative litigation in available fora using gender-inclusive definitions of existing apartheid law, following the model of the International Criminal Tribunal for Rwanda's Jean-Paul Akayesu case, which recognized that rape could constitute a genocidal practice despite its omission from the Genocide Convention.²⁸
- Trigger and support a request by Member States of the General Assembly (requiring a two-thirds majority) for an **Advisory Opinion of the International Court of Justice** on the definition, scope and legal implications of gender apartheid.
- Incorporate gender apartheid as a specific crime within the draft **Crimes against Humanity Treaty**.
- Support a **CEDAW General Recommendation** on gender apartheid.

²⁶ United Nations Office of the High Commissioner on Human Rights, 2023. 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, para. 100(c). The experts recommend that 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, galvanizing international legal condemnation and action to end it and ensure its non-repetition.”

²⁷ Precedent exists where a de facto government, that of the State of Honduras, acted as an applicant and in 2009 presented a case against Brazil before the International Court of Justice. The case was withdrawn in 2010 but may still be relevant to consider in relation to the current scenario. For more information, see Gray-Block, Aaron, 2009. “Honduras Takes Dispute against Brazil to U.N. Court.” Reuters, 29 October. www.reuters.com/article/us-honduras-brazil-un-idUSTRE59S3SC20091029. International Court of Justice, 2009. Certain Questions Concerning Diplomatic Relations (Honduras v. Brazil). www.icj-cij.org/case/147. Akande, Dapo, 2009. “Dispute Concerning Honduran Government Crisis Heads to the International Court of Justice (UPDATED).” EJIL:TALK!, 30 October. www.ejiltalk.org/dispute-concerning-honduran-government-crisis-heads-to-the-international-court-of-justice/.

²⁸ International Crimes Database. “The Prosecutor v. Jean-Paul Akayesu.” <https://internationalcrimesdatabase.org/Case/50/Akayesu/>. Gunawardana, Asoka de Z., 2000. “Contributions by the International Criminal Tribunal for Rwanda to Development of the Definition of Genocide.” Proceedings of the Annual Meeting (American Society of International Law) 94 (April 5-8): 277-279. www.jstor.org/stable/25659411.

- Galvanize countries with a **feminist foreign policy** to provide leadership and mobilize Member States to better address the women’s rights crisis, including by granting refugee status to Afghan women and girls who have fled the country.
- Engage the region on the links between women’s rights and their specific interests vis-à-vis Afghanistan such as counternarcotics, counterterrorism, security and water.
- Support States where domestic legislation allows the exercise of universal jurisdiction by national tribunals to apply this jurisdiction in relation to gender apartheid.
- Call for pressure through **human rights accountability mechanisms** in treaties to which Afghanistan is a party,²⁹ such as through exceptional reporting by the de facto authorities (for example, to the CEDAW Committee in January 2023),³⁰ the presentation of “shadow” reports by civil society and the presentation of individual communications to treaty committees where legally available. While Afghanistan is not a party to the Optional Protocol to CEDAW, which allows such communications, it is a party to the Optional Protocols of the Convention against Torture, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. This opens the door for women and girls in applicable situations, with adequate protection, to present communications. Another avenue entails inquiry procedures by Committees for serious, grave or systematic human rights violations as foreseen in the three Optional Protocols; such procedures are better suited to address State-sponsored violations.
- Advocate for the **Human Rights Council** to create a new separate human rights accountability mechanism that can address gender apartheid. This could complement the in-country work of the Office of the High Commissioner on Human Rights and be structured to ensure that resources are not diverted from in-country documentation of violations.
- Explore tools that the **Security Council** has yet to pursue, including by establishing a Commission of Inquiry, mandate the creation of ad hoc legal tribunals to respond to mass violations of rights and update the 1988 Sanctions Regime criteria to include women’s rights violations.
- Influence the Independent Assessment mandated by the Security Council – due in November 2023 – to ensure women’s and girls’ rights robustly feature across all findings and recommendations, and that the process meaningfully consults with diverse Afghan women.
- Frame Afghanistan as a test case for the Secretary-General’s New **Agenda for Peace**, which emphasizes dismantling structural misogyny to achieve sustainable peace. This could be an entry point to hold the UN system and other large international stakeholders – such as the World Bank – to account.³¹ Sustainable Development Goals 5 (gender equality) and 16 (peace, justice and strong institutions) are potential entry points for the accountability of international actors.
- Call for an Emergency Special Session on resolutions from the Human Rights Council, the General Assembly or other bodies that refer to and condemn “gender apartheid” in Afghanistan.

Development of new tools

Experts emphasized the urgency of further developing the legal concept of gender apartheid. While this was considered a lengthy process – and as such, existing apartheid law could also be interpreted in a gender-inclusive way pending further development – it was seen as vital, since existing international mechanisms to uphold women’s rights have been unable to respond to systems where the oppression of women is foundational to governance.

²⁹ Afghanistan is party to the: Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and the three Optional Protocols thereto; the Convention on the Political Rights of Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.

³⁰ Committee on the Elimination of Discrimination against Women, 2023. “Information received by the Committee on the Elimination of Discrimination against Women – Afghanistan.” 22 May. <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/received-info/information-from-the-de-facto-authorities-of-Afghanistan.pdf>.

³¹ United Nations Office of the High Commissioner on Human Rights, 2023. A/HRC/53/39: Gendered inequalities of poverty: feminist and human rights-based approaches. www.ohchr.org/en/documents/thematic-reports/ahrc5339-gendered-inequalities-poverty-feminist-and-human-rightsbased. It includes specific recommendations to international economic and development institutions, such as the World Bank, International Monetary Fund, etc., on gender equality in trade, investment and business that could be adapted to apply to the interaction of these institutions and their Member States with Afghanistan.

Third-party action was considered important as it underscores the legal obligation of other States to end an illegal situation. Defining and codifying gender apartheid would also pressure other actors, such as transnational corporations and sporting bodies, to avoid complicity with grave abuses. The concept of gender apartheid could bring coherence to international responses by triggering specific responses by third parties, which gender persecution does not prescribe. While the definition of gender persecution was an extremely important legal advancement, its focus on individual prosecutions is insufficient in responding to situations where gender oppression is fundamental to State logic and, in Afghanistan, to the broader command structure of the Taliban. Gender apartheid can be seen as the framework in which gender persecution occurs.

Areas to develop the application of a gender apartheid framework include its definition, elements of the violation/crime, legal content, responsibility and actions to trigger third-party cooperation. Particular attention should go towards holding the Taliban, both individual actors and the broader entity, accountable; strengthening the obligation of the international community to stand firm when the Taliban crosses red lines on women's rights; and determining how to use existing apartheid frameworks pending formal codification.

While experts viewed the development of gender apartheid norms and definitions as crucial, this would not be a magic bullet or quick win. They considered political will to be the most essential ingredient, regardless of tools deployed, to hold the Taliban to account for violating women's rights. Reflecting on the South African context, efforts to isolate the regime and make it a pariah held long-term consequences for its social fabric, including in sowing the seeds of corruption and contributing to xenophobia. Isolation from the global community impacted the cultural psyche of the nation, and while the campaign to stop racial apartheid successfully ended the white supremacist regime, it also had some significant flaws.

Starting the long fight to codify gender apartheid is an urgent priority since the phenomenon is not wholly specific to Afghanistan. Gender apartheid has been invoked in Iran. In Yemen, Houthi-controlled areas exhibit elements of gender apartheid, with Yemeni women increasingly use this terminology to describe their situation.

4. Women's preferences in resisting other comparable cases of comprehensive persecution

A clear message from women's rights advocates has been the need to "call it by its name" – to label and condemn State-sponsored systematic oppression and exploitation of women as gender apartheid. Gender apartheid has been used by women leaders and women human rights defenders to describe other contexts such as Iran.³² Women on the ground and in exile from these countries have consistently urged deploying the strongest possible terms to call out patriarchy and to highlight what the State-organized oppression of all women and girls feels like to them, and what it means for their lives, mental health and hopes. Women inside these countries are often willing to pay a high price for using nomenclature like gender apartheid. It is critical that the international community not self-censor or undercut efforts by women to mobilize for their rights and well-being on their own terms.

Public advocacy efforts, like the campaign to end gender apartheid,³³ which is "ownerless" and "brandless", seek to tackle gender apartheid globally and create solidarity among women from different countries who are experiencing it. Deploying this term is important to delegitimize a political organization or system predicated on the oppression of women as a group.

The clearly planned, step-by-step dismantling of women's rights in Afghanistan, coupled with the Taliban's insincere promises to eventually restore some rights, are key characteristics of patriarchal regimes that strip women of autonomy, access to resources and protection from violence. When the international community reacts optimistically or ignores false promise, as it often has in Afghanistan, this results in delayed and ineffective responses that risk emboldening patriarchal regimes and creating impunity for their actions. Even more dangerously, such a situation could create incentives for like-minded regimes. Amid the women's rights crisis in Afghanistan, the international community has applied international tools belatedly, ineffectively and without full conviction, failing to discourage or weaken autocratic patriarchs in Afghanistan and globally.

While women from different contexts face different forms of gender apartheid, Afghanistan may be the most extreme current example. Experts saw a dangerous new form of patriarchy emerging in Afghanistan that requires urgent attention

³² <https://endgenderapartheid.today/>.

³³ The campaign focuses on Iran and Afghanistan. See: <https://endgenderapartheid.today/>.

and analysis; this includes the stripping away of power from men in households in favour of the growing intrusions of the State inside the home. Individual men are held to account for any freedom women in their households may enjoy; for instance, they are punished if women leave the house without a chaperone or fail to use the officially sanctioned hijab. The Taliban is potentially changing the shape of patriarchy by compelling all men to become complicit in misogyny, depriving men of their power to make their own choices in the private sphere, and policing men to ensure universal and consistently applied deprivations of women's rights.

5. Strategic considerations/global political dynamics

Global political dynamics have fundamentally changed since the global campaign to end racial apartheid in South Africa, where global solidarity with black South Africans grew from the broader post-colonial moment of revulsion against explicit white supremacist policies. Other elements that helped galvanize global solidarity were clear, time-bound goals, supportive neighbours, white allies and backing from South Africans in exile. People inside and outside coordinating and working together played a critical role.

Today, in a different global moment, there is a lack of global consensus, especially in the political sphere, on challenging the many forms of patriarchy. The same revulsion against white supremacy cannot be said to exist against male supremacy. This reflects the incomplete nature of the global normalization of women's rights as human rights. It also mirrors an anti-feminist, broader patriarchal backlash of which Afghanistan is an extreme and globally unprecedented example. This geopolitical reality, in a multipolar and increasingly unstable world, makes it unlikely that there will be global agreement that gender apartheid (or some other term that conveys as vividly the systemic nature of persecution and oppression in Afghanistan) is unacceptable and should invoke concrete consequences.

Despite the complexity of these challenges and the limited prospects for galvanizing consensus, these were not seen as reasons to hesitate in working towards developing legal and political tools for naming and recommending actions. If racial apartheid could be recognized for what it is, the same is possible for gender apartheid. Every advance on women's rights has been led by women undaunted when people said "never." This is the time for optimism, determination and innovation.