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INSTITUTIONALISED SUBORDINATION AND STRUCTURAL FEMICIDE: GENDER APARTHEID, STATE RESPONSIBILITY AND INTERNATIONAL LAW IN AFGHANISTAN AND IRAN

~ *Bhounika Sarang*

Abstract

This paper examines whether the systematic exclusion of women and girls under Taliban rule in Afghanistan, and the regime of compulsory control maintained by the Islamic Republic of Iran, amount to “gender apartheid”, and how such institutionalised subordination generates conditions of structural femicide. Drawing on the Rome Statute, the Apartheid Convention, CEDAW, the ICCPR and the law of State responsibility, it argues that although gender apartheid is not yet a codified crime, existing law, above all the crime against humanity of gender persecution, already reaches much of the conduct at issue, as the International Criminal Court’s warrants against four senior Taliban officials, unsealed on 5 October 2026, confirm. It evaluates the ongoing negotiations on a crimes against humanity convention and concludes that codification remains valuable for its expressive, preventive and diagnostic functions. The study is current to 8 October 2026.

Keywords: *Gender apartheid; structural femicide; gender persecution; crimes against humanity; State responsibility; Afghanistan; Iran; CEDAW; Rome Statute*

I. Introduction

Gender-based discrimination remains one of the most persistent challenges of the contemporary international human rights order. In recent years, scholars, practitioners and survivors have increasingly described its most extreme form as “gender apartheid”: a system in which women and girls are segregated, subordinated and excluded from public life by law

and policy, solely because of their gender.¹ Although the label is not a term of art in treaty law, its use by Afghan women's rights defenders since the late 1990s² and, more recently, by senior United Nations officials has moved it from the margins of feminist theory to the centre of legal debate.

That debate has acquired unusual institutional momentum. The General Assembly has convened a conference of plenipotentiaries to negotiate a convention on the prevention and punishment of crimes against humanity,³ and the UN High Commissioner for Human Rights has urged States to give serious consideration to enumerating gender apartheid as a distinct crime.⁴ In parallel, on 5 October 2026, Pre-Trial Chamber II of the International Criminal Court (ICC) unsealed four warrants of arrest against senior Taliban officials for the crime against humanity of gender persecution.⁵ The law is moving, while conditions on the ground continue to deteriorate.

This project examines the relationship between gender apartheid and structural femicide through the cases of Afghanistan and Iran. It asks three questions. First, can gender apartheid be given analytical content that is faithful to the legal notion of apartheid? Secondly, how do State laws and institutional practices in the two countries create conditions in which violence against women is licensed, normalised or left unpunished? Thirdly, what do international human rights law and international criminal law currently provide in response, and where do their gaps lie? The study is doctrinal, drawing on treaty texts, judicial decisions and the findings of United Nations investigative bodies. Because access to both countries is restricted and much evidence derives from monitoring organisations, factual claims are attributed to their sources and should be read with that limitation in mind.

II. Conceptualising Gender Apartheid

Gender apartheid is best understood as a regime of institutionalised domination rather than a catalogue of discriminatory acts. Its defining features are, first, that the subordination is *group-*

¹Phyllis Chesler, *The Death of Feminism: What's Next in the Struggle for Women's Freedom* (Palgrave Macmillan 2005). Chesler characterises gender apartheid as a regime that confines women to a separate and inferior sphere under male guardianship.

²Feminist Majority Foundation, 'Campaign to Stop Gender Apartheid in Afghanistan' (late 1990s).

³UNGA Res 79/122 (2024); UN General Assembly Sixth Committee, 'Crimes against humanity' (80th session) <<https://www.un.org/en/ga/sixth/80/cah.shtml>>.

⁴OHCHR, 'Türk urges ambition on crimes against humanity treaty' (Press Release, 30 January 2026).

⁵ICC, 'ICC Pre-Trial Chamber II unseals four arrest warrants in Situation in Afghanistan' (Press Release, 5 October 2026); *Situation in the Islamic Republic of Afghanistan* ICC-02/17.

based, attaching to women and girls as a class; secondly, that it is *systematic and officially sanctioned*, operating through decrees, codes and enforcement bodies rather than isolated abuse; and thirdly, that it is *purposive*, aimed at preserving a hierarchy in which men hold permanent authority over women's movement, conduct and bodily autonomy.

The analogy to apartheid is doctrinal as well as rhetorical. The International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) defines the crime as inhuman acts committed for the purpose of establishing and maintaining "domination by one racial group of persons over any other racial group" and systematically oppressing it.⁶ The Rome Statute likewise requires inhumane acts committed in the context of "an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups", with the intention of maintaining that regime.⁷ Stripped of the racial qualifier, these definitions contain four structural elements: an institutional regime, systematic oppression, domination of one group over another, and an intention to maintain the regime. Each is capable of being satisfied where a State excludes women and girls from education, employment, public office and free movement by law and enforces the exclusion through a dedicated apparatus. What the instruments lack is a gender equivalent of the racial qualifier. That omission, rather than any conceptual deficiency, is the legal gap.

The analogy is not uncontested. Apartheid in South Africa was built on territorial and spatial separation, whereas patriarchal systems typically bind women into households controlled by men, so that "segregation" may be an imperfect descriptor. Others fear that a new label may fragment the law or imply a hierarchy among crimes against humanity.⁸ These objections go to drafting rather than to the underlying phenomenon. The better view is that "gender apartheid" names the *structural character* of a regime, while "gender persecution" names the *conduct* through which it is enforced. The concepts are complementary rather than rival.

⁶International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243, art II.

⁷Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(2)(h).

⁸For the response that gender persecution is already a crime against humanity and that there is no hierarchy among such crimes, see Human Rights Watch, 'Gender Apartheid Should Be an International Crime' (14 July 2025).

III. Structural Femicide: From Individual Killing to State-Enabled Violence

The term “femicide” was popularised by Diana Russell, who defined it as the killing of females by males because they are female.⁹ Latin American scholars, notably Marcela Lagarde, developed the related notion of *feminicidio* to capture the State’s contribution: impunity and institutional failure convert individual killings into a systemic phenomenon for which the State bears responsibility.¹⁰ The problem is not marginal. UNODC and UN Women estimate that around 83,000 women and girls were intentionally killed worldwide in 2024, of whom some 50,000 were killed by intimate partners or family members.¹¹

“Structural femicide” extends this analysis by drawing on Johan Galtung’s concept of structural violence: harm built into social and legal arrangements, which appears as unequal life chances rather than as an act by an identifiable perpetrator.¹² It is an analytical rather than a legal category and must be used with care. It does not claim that every killing of a woman in a given State is State-caused. It claims that law and policy can create conditions that make such killings more likely and less likely to be punished.

Three mechanisms are of particular relevance. The first is *legal licensing*: rules that exempt or mitigate liability for violence against women, so that the abuser enjoys a legal privilege. The second is *foreclosure of exit*: the removal of the economic, educational and physical means by which a woman might leave an abusive household, through employment bans, guardianship requirements and restrictions on movement. The third is *impunity*: the absence of accessible, gender-sensitive remedies, so that reporting is futile or dangerous. Where all three coexist, violence is not an aberration within the system but a foreseeable product of it.

A methodological caution follows. In both countries, reliable disaggregated data on gender-related killings is scarce because of restricted monitoring, under-reporting and the absence of official statistics. The argument advanced below is therefore one of legally created risk and foreseeability, supported by documented legal provisions and United Nations findings, rather than of statistically proven causation.

⁹Diana EH Russell and Jill Radford (eds), *Femicide: The Politics of Woman Killing* (Twayne 1992); Diana EH Russell, ‘Defining Femicide and Related Concepts’ in Diana EH Russell and Roberta A Harmes (eds), *Femicide in Global Perspective* (Teachers College Press 2001).

¹⁰Marcela Lagarde, ‘Del femicidio al feminicidio’ (2006) 6 *Desde el Jardín de Freud* 216.

¹¹UNODC and UN Women, *Femicides in 2024: Global Estimates of Intimate Partner/Family Member Femicides* (November 2025).

¹²Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6 *Journal of Peace Research* 167.

IV. The Codification Gap: Apartheid, Persecution and the Crimes Against Humanity Treaty

International criminal law already contains three relevant building blocks. The first is the crime against humanity of *apartheid*, which is confined to racial groups.¹³ The second is the crime against humanity of *persecution*, defined as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group, and expressly extending to persecution on grounds of “gender”.¹⁴ The third is the Statute’s definition of gender as “the two sexes, male and female, within the context of society”,¹⁵ a formulation that Pre-Trial Chamber II has now read as requiring an interpretation beyond a purely biological conception of sex.¹⁶

The Court’s practice on gender persecution is still young. The Office of the Prosecutor adopted a dedicated policy in December 2022.¹⁷ In *Al Hassan*, the first case in which a gender persecution charge went to trial, the Trial Chamber’s reasoning was divided: a majority accepted that persecution on gender grounds had occurred in Timbuktu, but the accused was convicted only of persecution on religious grounds.¹⁸ The Afghanistan warrants are therefore the provision’s most significant application to date. Pre-Trial Chamber II found reasonable grounds to believe that the Taliban’s Supreme Leader Haibatullah Akhundzada, Chief Justice Abdul Hakim Haqqani, Education Minister Habibullah Agha and Higher Education Minister Neda Mohammad Nadim persecuted girls, women and persons not conforming to Taliban gender policy, and, on political grounds, persons perceived as “allies of girls and women”. It held that gender persecution encompasses systemic and institutionalised harm, including the imposition of discriminatory societal norms.¹⁹ Because article 7(1)(j) is limited to racial groups, the Chamber necessarily proceeded under the persecution provision. Accountability for

¹³Rome Statute, arts 7(1)(j) and 7(2)(h); Apartheid Convention, art II.

¹⁴Rome Statute, arts 7(1)(h) and 7(2)(g). Persecution must be committed ‘in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court’.

¹⁵Rome Statute, art 7(3); see Valerie Oosterveld, ‘The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?’ (2005) 18 Harvard Human Rights Journal 55.

¹⁶ICC, Press Release (5 October 2026) (public redacted version of ‘Decision unsealing four warrants of arrest’).

¹⁷ICC Office of the Prosecutor, *Policy on the Crime of Gender Persecution* (7 December 2022).

¹⁸*Prosecutor v Al Hassan* (Trial Judgment) ICC-01/12-01/18 (26 June 2024); see ‘Al Hassan: The International Criminal Court’s First Judgment on Gender Persecution (Part 1)’ (*Opinio Juris*, 2 August 2024).

¹⁹ICC, Press Release (5 October 2026); ICC Office of the Prosecutor, ‘Statement on the issuance of arrest warrants in the Situation in Afghanistan’ (8 July 2025). The warrants for Akhundzada and Haqqani were issued on 8 July 2025 and those for Agha and Nadim on 9 September 2025.

individual leaders therefore has not required the apartheid label, but the label would capture something persecution does not: the regime-level character of the conduct.

The treaty process offers a chance to close that gap. The International Law Commission's Draft Articles of 2019, which form the baseline text, largely follow the Rome Statute definition but omit a definition of gender.²⁰ Under General Assembly resolution 79/122, a preparatory committee met on 19–30 January 2026, States were invited to submit amendment proposals by 30 April 2026, a second preparatory session will follow in 2027, and the conference is to sit for three weeks in early 2028 and again in 2029.²¹ Several delegations expressed openness to enumerating gender apartheid, but as of March 2026 only Malta had tabled concrete language, proposing a narrow amendment of the existing apartheid crime to cover gender.²²

Whether codification adds value is a fair question, since gender persecution already exists. Three considerations suggest that it does. First, enumeration has an expressive and preventive function: the convention's duty to prevent applies to each listed crime, and naming the crime signals that the *regime*, not merely its individual acts, is the wrong. Secondly, apartheid arguably avoids the "in connection with" requirement that attaches to persecution, which may simplify proof against structural policies. Thirdly, it would align the law with the analysis long offered by survivors. Against this, drafters must avoid a definition so narrow that it fails to reach gender-diverse victims, a risk that would be heightened if the Rome Statute's "two sexes" formulation were imported unchanged.

V. Afghanistan: A Legally Engineered System of Subordination

Since 15 August 2021, the Taliban have exercised de facto authority in Afghanistan and have issued a steady stream of edicts that remove women and girls from public life. One advocacy compilation counts more than 250 edicts since 2021, at least 157 of them directed at women and girls.²³

Education illustrates the pattern most clearly. Secondary schools were closed to girls in March 2022 and universities to women in December 2022, followed by the closure of medical

²⁰International Law Commission, 'Draft articles on Prevention and Punishment of Crimes Against Humanity', *Report of the International Law Commission, 71st session* (2019) UN Doc A/74/10.

²¹UNGA Res 79/122; Sixth Committee, 'Crimes against humanity' (79th and 80th sessions).

²²'Taking Stock of the Proposal to Codify Gender Apartheid in the Crimes against Humanity Convention' (*Opinio Juris*, 10 March 2026).

²³Feminist Majority Foundation, 'Taliban Criminal Code Authorizes Beating of Wives as Long as It Does Not "Break Bones"' (2026). The figure is an advocacy compilation and should be treated as indicative.

institutes; the Taliban described the first two measures as temporary, yet they remain in force.²⁴ In August 2026 UNESCO estimated that some 2.4 million girls had been excluded from secondary education since 2021, and stated that Afghanistan remains the only country in the world that formally bans girls and women from secondary and higher education.²⁵ Restrictions on employment, including in humanitarian and non-governmental work, and the elimination of women from governance, complete the exclusion from public life.

The Law on the Propagation of Virtue and the Prevention of Vice, promulgated in August 2024, gave these controls statutory form. It prohibits women's voices and bare faces in public and empowers the Ministry of Vice and Virtue to impose warnings, detention and other penalties.²⁶ The *mahram* requirement, under which women must be accompanied by a male guardian, further restricts access to work, healthcare and justice.

The most consequential recent development is the criminal code signed by the Taliban's Supreme Leader in January 2026 and circulated to provincial courts.²⁷ Reports indicate that it permits husbands to physically "discipline" wives and children so long as the violence does not cause broken bones or open wounds; that it distinguishes *hadd* from *ta'zir* punishments in a way that authorises husbands and "masters" to impose the latter; and that it leaves other physical, psychological and sexual violence unaddressed. Civil society organisations report that even where injury is proved the penalty may be as little as fifteen days' imprisonment, and only if the woman can show bruises, wounds or fractures.²⁸ In the vocabulary of Part III, this is the paradigm of legal licensing: the State does not merely fail to prevent violence but defines a threshold below which it is lawful.

The effects extend to health. With women excluded from medical training and restricted in their movement, access to the female practitioners on whom many women depend is shrinking. The UN Special Rapporteur on Afghanistan, Richard Bennett, reported in 2026 on systemic

²⁴'Taliban have barred 2.4 million Afghan girls from school' (FBC News, 12 August 2026), reporting UNESCO; 'UNESCO: 2.4 Million Afghan Girls Have Been Deprived of Education Since 2021' (*KabulNow*, August 2026).

²⁵'2.4 million Afghan girls shut out of secondary school 5 years after Taliban takeover, UN says' (Associated Press, 11 August 2026).

²⁶'UN denounces Taliban's ban on women's voices being heard in public' (Euronews/AP, 25 August 2024).

²⁷Jurist, 'New Taliban penal code legalizes domestic violence against women' (February 2026); IPS, 'No Bones Broken, No Crime Committed: Inside the Taliban's New Rules on Violence Against Women' (21 April 2026), citing Rawadari. Reports differ on the date of signature (4 or 7 January 2026), and the instrument is formally a procedural code for courts, widely described as a "penal code".

²⁸'Joint Civil Society Statement: Two Years of the ICJ-CEDAW Afghanistan Initiative' (Global Centre for the Responsibility to Protect, 25 September 2026).

restrictions on women's access to healthcare and stated that the findings provided further evidence that the Taliban are committing crimes against humanity.²⁹

Accountability efforts now run on four tracks. First, the ICC warrants discussed above; Afghanistan has been a State Party to the Rome Statute since 2003, so the Court's territorial jurisdiction is secure. Secondly, on 6 October 2025 the Human Rights Council established an independent investigative mechanism to collect, consolidate and preserve evidence of international crimes in Afghanistan, though it has no prosecutorial powers and depends on funding.³⁰ Thirdly, on 11 December 2025 the Permanent People's Tribunal for Women of Afghanistan, sitting in The Hague, found that the Taliban had committed crimes against humanity; as a people's tribunal its findings are persuasive rather than binding.³¹ Fourthly, Australia, Canada, Germany and the Netherlands announced in September 2024 that they were invoking article 29 of CEDAW against Afghanistan, a path that can lead to the International Court of Justice. Nearly two years on, civil society organisations report no public sign that negotiations are advancing and have called on the four States to proceed to arbitration.³²

VI. Iran: Control, Resistance and Repression

Iran's system differs in form. Women have access to education and employment, but the legal architecture subordinates them in family law, criminal law, dress and mobility. The Constitution guarantees women's rights only "in conformity with Islamic criteria";³³ article 1105 of the Civil Code designates the husband as head of the family; article 301 of the Islamic Penal Code (2013) exempts a father or paternal grandfather from retaliation (*qisas*) for killing a child; and article 630 of the Book of *Ta'zirat* allows a man who finds his wife in the act of adultery with a willing partner to kill both.³⁴ Comprehensive legislation criminalising domestic

²⁹Jurist, 'UN report details systemic restriction of access to healthcare for Afghan women' (2026).

³⁰International Commission of Jurists, 'Afghanistan: UN Human Rights Council establishment of an independent investigative mechanism is a major step towards accountability' (6 October 2025); Human Rights Watch, 'UN Rights Council Creates Afghanistan Accountability Body' (6 October 2025).

³¹Jurist, 'New Taliban penal code legalizes domestic violence against women' (February 2026).

³²Global Centre for the Responsibility to Protect, 'Joint Civil Society Statement: Two Years of the ICJ-CEDAW Afghanistan Initiative' (25 September 2026); Just Security, analysis of the CEDAW article 29 process (2026) <<https://www.justsecurity.org/151401/justice-women-afghanistan-cedaw/>>.

³³Constitution of the Islamic Republic of Iran, art 21.

³⁴Civil Code of Iran, art 1105; Islamic Penal Code of Iran (2013), art 301; Islamic Penal Code, Book Five (*Ta'zirat*), art 630. For commentary see Middle East Institute, 'Iranian women campaign to stop the rise in honor killings'.

violence has long been absent, and reform proposals have repeatedly stalled.³⁵ These provisions operate as legal licensing in the sense described in Part III: they reduce the legal cost of killing certain women.

Compulsory hijab is the most visible instrument of control. The death of Jina Mahsa Amini in September 2022 in the custody of the morality police triggered nationwide “Woman, Life, Freedom” protests. The UN Independent International Fact-Finding Mission on Iran concluded in March 2024 that the State bore responsibility for the physical violence that caused Amini’s death and that the crackdown on the protests involved crimes against humanity, including murder, torture and rape; its second report, in March 2025, found that authorities continued to commit acts of persecution against women and girls.³⁶ A “Hijab and Chastity” law adopted in 2024 was suspended but not repealed, and enforcement continues through prosecutions, vehicle impoundment, business closures and digital surveillance. Human Rights Watch notes that the reported retreat from violent arrests in some cities reflected the authorities’ preoccupation with national security rather than any recognition of women’s rights.³⁷ Women’s everyday defiance of the dress code, which researchers describe as a “quiet revolution”, continues at considerable personal risk.

The most recent protests have a wider political dimension. Demonstrations that began in late 2025 over inflation, currency collapse and rising prices evolved into broader opposition to the political system. In January 2026 the Fact-Finding Mission warned that the crackdown mirrored the patterns documented in 2022 and called for the restoration of internet access;³⁸ activist groups outside Iran put the death toll at no fewer than 8,000, a figure that remains unverified.³⁹ In September 2026 the Mission reported that many of the violations amounted to crimes against humanity, including murder, imprisonment, torture and other inhumane acts committed as part of a widespread and systematic attack against civilians.⁴⁰

³⁵The New Arab, ‘Iran teen’s “horrific” murder by husband sparks new calls for protection of women and girls’ (2022), quoting Amnesty International and the UN Special Rapporteur on Iran; the position should be verified against current sources.

³⁶Human Rights Watch, ‘Iran: Impunity Reigns 3 Years After Crackdown on Protests’ (16 September 2025); NBC News, ‘Iran launches crackdown on women defying hijab dress code’ (2024), reporting the Mission’s March 2024 findings.

³⁷Human Rights Watch, *World Report 2026: Iran*; UN News, report on the March 2025 findings of the Independent International Fact-Finding Mission on Iran (14 March 2025), on the “Noor” plan of April 2024.

³⁸UN News, ‘Fact-finding mission urges Iran to end protest violence and restore internet’ (9 January 2026).

³⁹‘How Iran gets away with it: The struggle to bring “architects of atrocities” to trial’ (*The National*, 6 October 2026).

⁴⁰UN News, ‘UN fact-finding mission on Iran focuses on plight of civilians’ (17 September 2026).

Characterisation is more contestable than in Afghanistan. Iranian women are not formally excluded from education or employment, so the structural elements of exclusion and segregation are only partly satisfied. The stronger legal description is institutionalised gender-based persecution, supported by the Mission’s findings, combined with the structural-femicide risk conditions identified in Part III. Accountability options are also narrower. Iran is not a party to the Rome Statute, so ICC jurisdiction would require a Security Council referral or an acceptance of jurisdiction, and the principal routes are the Mission’s evidence-gathering and the exercise of universal jurisdiction by third States.

VII. Comparative Analysis

The two cases differ in degree, form and legal posture, and the differences matter for both characterisation and remedy.

Dimension	Afghanistan	Iran
Legal form	Decrees; Vice and Virtue Law (2024); criminal code (January 2026)	Civil Code; Islamic Penal Code (2013); compulsory hijab regime; Hijab and Chastity law suspended, not repealed
Education	Girls barred from secondary school (2022); women from universities (December 2022)	Open to women; dress-code surveillance and sanctions
Employment and public life	Barred from most public and NGO roles; excluded from governance	Permitted, but constrained by spousal authority and hijab enforcement
Violence and remedies	Husbands may “discipline” short of fractures or open wounds (2026 code)	Arts 301 and 630; no comprehensive domestic-violence statute
Treaty position	CEDAW (2003, no reservations); ICCPR; Rome Statute	ICCPR; ICESCR; CRC; not a party to CEDAW or the Rome Statute

Dimension	Afghanistan	Iran
Accountability	ICC warrants; investigative mechanism; CEDAW art 29 initiative (stalled)	UN Fact-Finding Mission findings; no ICC jurisdiction absent referral

Three conclusions follow. First, gender apartheid is better understood as a spectrum than a binary. Afghanistan satisfies every structural element of formal, State-enforced exclusion and fits the concept most readily; Iran exhibits institutionalised subordination and control with partial inclusion, and is better described as gender persecution generating structural-femicide risk. Secondly, both regimes anchor their legal order in religious authority, the Taliban expressly rejecting CEDAW as incompatible with their reading of Sharia,⁴¹ and Iran qualifying equality by “Islamic criteria”. Under general international law, however, neither may rely on internal law to excuse non-performance of its obligations. Thirdly, both meet dissent with repression, which shows that the protection of women’s rights cannot be separated from freedoms of expression and assembly.

VIII. State Responsibility under International Law

State responsibility arises from the breach of an international obligation that is attributable to a State.⁴² Three questions follow: which obligations bind, whether the conduct is attributable, and who may enforce.

Obligations. Both States are parties to the International Covenant on Civil and Political Rights, which requires respect for Covenant rights without distinction as to sex (art 2(1)), equal enjoyment by men and women (art 3) and equality before the law (art 26), and protects freedom from cruel and degrading treatment (art 7), freedom of movement (art 12), expression (art 19) and peaceful assembly (art 21).⁴³ Compulsory veiling enforced by detention, bans on women’s movement and the suppression of protest for gender equality each engage these provisions. Both are also parties to the International Covenant on Economic, Social and Cultural Rights,

⁴¹American Society of International Law, Human Rights Interest Group Newsletter (June 2025), noting Afghanistan’s ratification of CEDAW in 2003 without reservations and the Taliban’s rejection of the Convention.

⁴²International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts 1–2, *Yearbook of the International Law Commission 2001*, vol II(2) 26 (ARSIWA).

⁴³International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Iran ratified in 1975 and Afghanistan acceded in 1983. See Human Rights Committee, General Comment No 28 (2000) on equality of rights between men and women, CCPR/C/21/Rev.1/Add.10.

which guarantees the right to education (art 13) and equal enjoyment of economic, social and cultural rights (art 3), and to the Convention on the Rights of the Child.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the most comprehensive treaty on the subject, but it binds only one of the two States.⁴⁴ Afghanistan acceded in 2003 without reservations and is bound by, among others, article 2(f) (modifying or abolishing discriminatory laws and customs), article 5(a) (modifying social and cultural patterns), article 7 (political and public life), article 10 (education), article 11 (employment) and article 16 (marriage and family relations). Iran is not a party to CEDAW; its obligations in this field derive principally from the ICCPR, the ICESCR, the Convention on the Rights of the Child and general international law. The principle of due diligence is not stated in CEDAW's text. It was developed by the CEDAW Committee in General Recommendations 19 and 35, which hold that States may be responsible for private acts of violence if they fail to act with due diligence to prevent, investigate and punish them.⁴⁵

Due diligence in practice. The principle has roots in *Velásquez Rodríguez v Honduras*,⁴⁶ and has been applied to domestic violence in *Opuz v Turkey*, where the European Court of Human Rights held that Turkey's failure to protect the applicant and her mother amounted to sex discrimination,⁴⁷ and to femicide in *González et al ("Cotton Field") v Mexico*, where the Inter-American Court held Mexico responsible for failing to prevent and investigate the killings of women in Ciudad Juárez, in a context of gender-based discrimination.⁴⁸ These are cases of State *failure* to protect. Afghanistan and Iran present a harder problem: the State is not merely an inadequate protector but, through its own laws, an author of the conditions of risk. Due-diligence analysis is then displaced by direct attribution.

Attribution and continuity. Conduct of State organs is attributable to the State, and conduct of an insurrectional movement that becomes the new government of a State is considered an act of that State.⁴⁹ The Taliban's lack of formal recognition therefore does not release Afghanistan from its treaty obligations, and a State may not invoke its internal law, including religious law,

⁴⁴Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 1, 2(f), 5(a), 7, 10, 11 and 16.

⁴⁵CEDAW Committee, General Recommendation No 19 (1992), para 9; General Recommendation No 35 (2017) on gender-based violence against women, CEDAW/C/GC/35.

⁴⁶*Velásquez Rodríguez v Honduras* (Merits) IACtHR Series C No 4 (29 July 1988) paras 172–175.

⁴⁷*Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009).

⁴⁸*González et al ("Cotton Field") v Mexico* IACtHR Series C No 205 (16 November 2009).

⁴⁹ARSIWA, arts 4 and 10(1).

as justification for failure to perform a treaty.⁵⁰ Recognition does, however, complicate representation before international bodies, a point that features prominently in the debate on the CEDAW initiative.

Enforcement. Obligations under human rights treaties are owed *erga omnes partes*, so that any State Party may invoke responsibility without showing special injury, as the International Court of Justice confirmed in *Belgium v Senegal* and in *The Gambia v Myanmar*.⁵¹ That is the legal premise of the article 29 initiative. Its principal hurdle is procedural: article 29 requires negotiation and then arbitration before ICJ jurisdiction is available, and in *Armed Activities (DRC v Rwanda)* the Court held that CEDAW's conditions had not been satisfied by the applicant's protests.⁵² After more than twenty-two months without visible progress, there is a risk that the initiative stalls without producing a record that the Court would accept. Norms of this kind also seep into domestic law: the Supreme Court of India, for example, drew on CEDAW to give content to constitutional guarantees in *Vishaka v State of Rajasthan*.⁵³

IX. The Girl Child: Exploitation, Forced Labour and Early Marriage as Gendered Harms

The structural analysis would be incomplete without the girl child, who bears the compounded effects of age and gender. The ILO and UNICEF estimate that nearly 138 million children were in child labour in 2024, around 54 million of them in hazardous work.⁵⁴ Children are also exposed to slavery-like practices: commercial sexual exploitation, forced begging and illicit activities, recruitment into armed conflict, and exploitative domestic service. Girls are disproportionately affected by sexual exploitation and carry a "triple burden" of school, labour and household duties that makes them more likely to leave education. The legal framework is dense: the Slavery Convention of 1926, the Supplementary Convention of 1956, which treats servile marriage and child exploitation as slavery-like practices, ILO Convention No 182 on

⁵⁰Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331, art 27.

⁵¹*Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* [2012] ICJ Rep 422, paras 68–69; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Preliminary Objections) [2022] ICJ Rep 477, paras 107–108; see also *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* [1970] ICJ Rep 3, paras 33–34.

⁵²*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)* (Jurisdiction and Admissibility) [2006] ICJ Rep 6, paras 87–93.

⁵³*Vishaka v State of Rajasthan* (1997) 6 SCC 241.

⁵⁴ILO and UNICEF, *Child Labour: Global Estimates 2024, Trends and the Road Forward* (June 2025).

the worst forms of child labour, and articles 32 and 34–36 of the Convention on the Rights of the Child.⁵⁵

The link to the present study is analytical. Exclusion from school removes one of the principal protective factors against child marriage and child labour, and economic dependence on male guardians increases pressure to marry girls early. It is a reasonable inference that mass exclusion of girls from education in Afghanistan heightens these risks, although this requires empirical confirmation. Child-focused protection is thus not a separate topic but a dimension of the structural analysis: it shows how institutionalised gender subordination begins in childhood and reproduces itself across generations.

X. Conclusion and Recommendations

This study has argued that gender discrimination in Afghanistan and Iran is not a series of isolated inequalities but is embedded in legal frameworks, institutional practices and State policy. Gender apartheid supplies an analytical lens for the regime-level character of that subordination, and fits Afghanistan most readily; structural femicide describes the risk conditions that legal licensing, foreclosure of exit and impunity generate. Existing law is not silent. The ICC warrants of 2025, unsealed on 5 October 2026, show that gender persecution can be charged against the architects of such a system, and the ICCPR, CEDAW and the law of State responsibility establish that the conduct is internationally wrongful and attributable. But enforcement remains weak, and the absence of an enumerated crime of gender apartheid leaves the structural dimension unnamed.

The following recommendations are offered:

1. **Codify gender apartheid in the crimes against humanity convention.** States should table and support concrete language at the 2027 preparatory session and the 2028–2029 conference, either as a new enumerated crime or by amending the apartheid crime to cover gender. The definition of gender should reflect the interpretation adopted by Pre-Trial Chamber II rather than the “two sexes” formulation of article 7(3) of the Rome Statute.

⁵⁵Slavery Convention (1926) 60 LNTS 253; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) 266 UNTS 3, art 1; ILO Convention No 182 (1999), art 3; Convention on the Rights of the Child (1989) 1577 UNTS 3, arts 32 and 34–36.

2. **Secure cooperation with the ICC.** States Parties should give effect to their cooperation obligations under Part 9 of the Rome Statute by refusing to host or engage the four suspects, and non-parties should support enforcement. Engagement with the Taliban, including on deportations, should not normalise the regime or trade accountability for access.
3. **Operationalise and fund the Afghanistan investigative mechanism, and advance the CEDAW initiative.** The four applicant States should move article 29 from negotiation to arbitration without further delay, and make the record of their efforts public to the extent possible.
4. **Address Iran's legal licensing of violence.** The international community should press Iran to repeal articles 301 and 630, to adopt comprehensive legislation on violence against women, to repeal rather than merely suspend the Hijab and Chastity law, and to ratify CEDAW. Third States should consider investigating and prosecuting under universal jurisdiction, and the Fact-Finding Mission's mandate should be sustained.
5. **Protect and empower women's rights defenders and refugees.** States should fund Afghan and Iranian women-led documentation and legal-aid initiatives, include women in all peace and political processes, and recognise gender persecution as a ground for refugee protection.
6. **Improve data on gender-related killings.** United Nations bodies and donors should support independent femicide observatories and standardised definitions so that the structural-femicide argument can rest on robust empirical evidence.

The recognition and naming of gender apartheid will not by itself restore a single classroom or protect a single woman from violence. But law shapes what States understand to be intolerable, and a legal order that names the systematic subordination of half of humanity as a crime is better placed to prevent it.