

Gender Apartheid in Afghanistan:

Foreign Policy Responses

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Executive Summary

Nearly two years on from the Taliban's takeover, diplomatic efforts have so far failed to anticipate or halt the unfolding regressive regime in Afghanistan. Feminist foreign policy approaches can guide both normative and practical efforts to protect and defend women's fundamental rights in the country and support local actors to create alternative spaces for women's and girls' to reclaim their rights to education, employment, and political agency. This paper makes the case that governments employing a feminist foreign policy approach – as well as those who claim to prioritise gender equality – must use the term “gender apartheid” to signal their condemnation in the strongest terms.

The situation of women and girls in Afghanistan is becoming more critical every day under the Taliban's terror regime of gender apartheid. The international war fought by militaries has ended but the war against women and girls has escalated. Egregious violations of human rights and pervasive gender-based violence are occurring, targeting women protesters, women associated with the previous government, and ethnic-minority women. The Taliban regime not only restricts the rights of women, but also commits new forms of sexual and gender-based violence (SGBV), such as abducting women who protest peacefully, raping them in custody, burning the hands of Panjshiri women, and lashing Hazara women. The latter are specific tortures for specific ethnic identities. These acts are also intended to dishonour the families and communities of the victims.¹

The war against women is an extension of conflict by other means. The Taliban's barbaric treatment of

women and the international community's apparent impotence to gender oppression emboldens the Taliban regime and its extremist ideology. The Taliban threatens regional and global peace and stability as extremist groups and regressive leaders in other countries are galvanized by the Taliban's success. Despite not formally recognising their regime, some regional countries, namely China, Russia, Iran, Pakistan and Qatar, have chosen to cooperate more with the Taliban by giving them control of Afghanistan's consulates. To date, diplomatic engagements to negotiate with the Taliban regarding its political and ideological gender policies have been futile and ineffective. The brutal oppression of women has been the defining characteristic of Taliban rule and a chief symbol of its grip on power.²

New Developments to Defend Women's Human Rights in Afghanistan: Mobilizing International Law - the Crime of Gender Persecution

There are new efforts to build a global movement to address what is happening to women and girls in Afghanistan. The 2023 report of the UN Special Rapporteur on the human rights situation in Afghanistan, the second since 15 August 2021, called for the International Criminal Court (ICC) to consider whether the “crime of gender persecution” is taking place in Afghanistan under Taliban rule.³ The inclusion of gender-based persecution in the 1998 Rome Statute was an acknowledgement of the observed reality that sexual and gender-based violence are the product of gendered power relations.⁴ Gender-based persecution may be experienced by women, men, girls and boys due to their gender identity and gender non-

conformity, while a broad range of ICC–related sexual and gender-based crimes that may be deliberately deployed against members of minority groups.

As soon as they took hold of power, the Taliban passed regulations to restrict the lives of women and girls to the private sphere, which seems to accord with the crime of gender persecution, defined in Article 7 (1) (h) of the Rome Statute. ICC has jurisdiction over crimes involving the intentional and severe deprivation of fundamental rights contrary to international law against a group targeted on the basis of gender. This is important not only for a potential ICC case but also for the UN Security Council mandate since the UN Secretary-General has stated that “waves of conflict-related sexual violence take place against a backdrop of structural gender-based discrimination”.⁵ And structural gender-based discrimination has again been institutionalised in Afghanistan under the Taliban, in light of the historical achievements before 2001 and contemporary struggles in the last two decades to regain gender equality and women rights. In Afghanistan, women gained suffrage in 1919 and women rights were protected under the 1964 Constitution – well ahead of some liberal countries. Yet today it is the only country in the world where secondary and tertiary education has been banned for girls, at the time of writing, for 547 days since Taliban came to power. Latest reports shows the severe psychological impacts on women and girls such as suicide, depression, and social impacts such as forced and early marriages.⁶ Afghanistan is the only country in which the United Nations (UN) cannot officially employ women.

In Afghanistan today, every woman and girl is subject to the rule of a male guardian, who themselves are held responsible by the regime for maintaining the system of gender apartheid. Moreover, the Taliban grants any man the authority to control and judge women. For instance, taxi drivers are required to assess their female passengers based on their attire, and if a woman does not conform to the Taliban’s dress code, they face punishment for transporting her. Women who defy the Taliban’s rules face harassment, intimidation, arrest, torture, and forced marriages to members of the Taliban.⁷ Any women who refuse these marriages are subjected to more torture and threats, together with their family members.

Strikingly, women activists have endured such punishment for their public defence of women’s basic freedoms. Their protests are just one indicator that ideas of gender equality did, in fact, re-emerge in Afghanistan through the twenty-year Western intervention.

Naming and Shaming – The Apartheid Approach

The development of ‘Gender Apartheid’ as a concept is a political alternative to the more legalistic definition of gender persecution. It refers to the creation of a system that institutionalises gender oppression and segregation and is synonymous with impunity for

gendered violence. Gender apartheid, per se, is not yet recognised under international law. The gender apartheid regime in Afghanistan needs critical analysis and action in light of the historical example of the racial apartheid system in South Africa, 1948-1994. The Apartheid state in South Africa systematically separated people, creating an unequal system based on constructed racial categories and subjecting black and coloured peoples to violence and oppression. Article I of the 1974 International Convention on the Suppression and Punishment of the Crime of Apartheid states that:

*The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.*⁸

Gender apartheid is analogous to racial apartheid, and in Afghanistan, it is arguably worse because it is not only a limitation on rights but the removal of any effective rights to education, freedom of movement, association and expression, socio- economic and political rights. It is also combined with racial discrimination in Afghanistan, reflecting the intersectional discrimination faced by vulnerable ethnic groups, such as the Hazaras. The Taliban authorities have engineered systematic discrimination, oppression and policies of exclusion.⁹

Apartheid is a powerful word. Using the term ‘gender apartheid’ frames the seriousness of the offence, the obligations of states and international organisations, and makes solutions incumbent on these actors. It emphasizes that systemic gender discrimination is a system of governance analogous to a crime against humanity.

The case for gender persecution against the Taliban is being pursued in ICC but any legal result will likely take decades especially given the current priority of the case against Vladimir Putin. By contrast, gender apartheid invokes a political challenge and implicates those beyond its immediate perpetrators, as states (including Australia) and international actors who interact with perpetrators or fail to respond to gender apartheid are breaching their international obligations.

In response to racial apartheid, various forms of resistance emerged both inside and outside South Africa, challenging the legitimacy and morality of the apartheid regime. One of the most significant forms of resistance was the international social movement against apartheid, which involved a diverse range of actors and strategies, such as boycotts, sanctions,

protests, solidarity campaigns, diplomatic pressure, and humanitarian aid. This mass mobilization against apartheid aimed to isolate South Africa from the global community, expose its human rights violations, support the liberation movements within the country, and demand a peaceful transition to democracy. It played a crucial role in undermining the economic, political and ideological pillars of the apartheid system, and contributed to its eventual collapse in the early 1990s.¹⁰

As in South Africa, international action in support of the local political struggle is required to enact change in Afghanistan. Using the apartheid language is a powerful way to shame the Taliban regime and its supporters, especially when a global social movement is mobilized, and boycott sanctions are prioritised. Failure to label grave and systemic sex and gender-based discrimination as 'gender apartheid' underrepresents its severity. There is a need for a unified local and international social movement against the Taliban's apartheid regime. So far, the campaign led by Afghan women to uphold women's fundamental rights in the country has prevented most states from recognising the Taliban. The normative pressure from Afghan diaspora and international civil society has also contributed to the non-recognition of the Taliban until now. This is a small win! But further action from international actors will be required to resist pressure to recognise the Taliban and turn a blind eye to persecuted women.

Women, Peace and Security - Foreign Policy Action

The current situation of women in Afghanistan requires international attention followed by concrete actions. It is not a domestic issue – the insecurity of women is a continuation of conflict and risks undermining international peace and security. States can and must use their foreign policies to take action against the gender apartheid regime in Afghanistan. Not to do so, is to condone gender apartheid.

Foreign policy that is guided by feminist principles and human rights standards can advance gender equality and women's empowerment within and across countries. The UN Women, Peace and Security agenda under UN Security Council Resolution 1325 signals state commitments to support women who are facing violation of rights and to ensure that women are involved and protected during and after conflicts in resolving and building peace and ending impunity for conflict-related sexual and gender-based violence. 104 UN Member States (54%) have adopted a UNSCR 1325 domestic National Action Plan (NAP) as of February 2023. 54 countries have developed one NAP on Women, Peace and Security (WPS); 27 have developed two; 17 have developed three; and 6 countries are on their fourth NAP. The Australian Government has committed to supporting women's meaningful participation and needs in peace processes, reducing SGBV and supporting resilience, crisis and security, law and justice efforts to meet the

needs and rights of all women and girls as three of its four priority outcomes in the second National Action Plan on Women, Peace and Security, 2021-2031. With these commitments, it should not be acceptable for Australia or other WPS states to tolerate gender apartheid in the 21st century.

A Feminist Foreign Policy Approach

A feminist foreign policy (FFP) approach can mobilize states to tackle the gender apartheid in Afghanistan to protect women and girls and global stability in the face of the Taliban. FFP is based on an alternative understanding of power that informs its approach to foreign policy. Power politics does not guarantee peace nor can states bring about security and prosperity without justice and equality. FFP promotes a logic of empowerment through diplomacy that supports ordinary women and men and a range of state and non-state organisations to deliver peace and prosperity through principles of human rights and gender equality.

Feminist principles in foreign policy provide guidance on *what* the content of foreign policies should consist of, but also on *how* foreign policy can and should be conducted. It is vital to recognise the political agency of women in Afghanistan in order to listen to their voices and understand their needs on their own terms. Afghan women have often been marginalized or instrumentalized for other political agendas (such as, legitimizing the US military invasion of Afghanistan in the name of 'rescuing' Afghan women).¹¹

By affirming the agency of Afghan women, a principled feminist foreign policy approach can empower and validate their struggle for rights and freedoms that are not subject to overnight changes due to Western withdrawal or other geopolitical shifts. It also grants Afghan women the ability to own and lead their fight for gender equality.

FFP treats fundamental human rights including women's rights as non-negotiable and not able to be traded off. With such an approach, the humanitarian crisis in Afghanistan cannot be used by international diplomatic and humanitarian actors to bypass the situation of women and girls for the sake of addressing the humanitarian need by engaging with the Taliban.¹² The international community currently faces an apparent tension between their commitments to human rights and humanitarian aid. However, delivering aid does not require recognition of the Taliban and adjustment to Taliban policies will only weaken the status of international actors and the people of Afghanistan. Moreover, upholding humanitarian principles requires the inclusion of women and diverse Afghan populations as beneficiaries of aid and taking into account the gender-specific risks and intersectional vulnerabilities. It is important not to compromise on fundamental humanitarian principles to ensure the effectiveness of

aid delivery. If aid does not benefit the most vulnerable populations, such as women and children, then its core objective is questionable.

In a gender apartheid system, a gender-neutral approach, even to humanitarian aid, is not neutral but rather reinforces the marginalisation of women and their access to aid.¹³ For example, the ban on women's employment within aid organisations violates the principle of humanity by preventing half of the population from accessing humanitarian aid directly. The restrictive environment makes it impossible for women to receive aid unless it is delivered by other women.

FFP is "pragmatic" because it directly engages with people's experiences and practical experimentation to find solutions to insecurity and guide foreign policy decisions. What happens in Afghanistan has global implications. If we ignore the complete ban on women's fundamental freedoms in this country, we cannot expect women's equality, rights and safety to be protected or secure elsewhere in the world. Therefore, the dire and exceptional situation in Afghanistan provides an opportunity to innovative a feminist foreign policy response.

Foreign Policy Options

What should states that support values of gender equality and human rights do to counter the gender apartheid system in Afghanistan and to empower the women and girls of Afghanistan? Political actions are not neutral; they convey a message to the world. FFP is a way of expressing values and principles through diplomacy. The Taliban are not only interested in military power, but also in symbolic gains, such as international recognition, access to Afghan reserve bank funds, and rights to humanitarian assistance. Therefore, FFP can be a strategic tool for diplomacy in addressing the situation of women and girls in Afghanistan under Taliban oppression. By adopting a feminist foreign policy, states and non-state actors can signal their commitment to human rights, gender equality, and peace, and put pressure on the Taliban to recognize and respect the rights and needs of women and girls.

In line with a feminist foreign policy approach we make the following recommendations for all state and non-state actors who are commitment to gender equality:

1. States and non-state actors should mobilize cohesively to advocate globally for political and legal recognition of gender injustices in Afghanistan under the Taliban rule.
2. Feminist foreign policy states and non-state actors should urge the Security Council to impose sanctions on the Taliban for their gender-based violations in Afghanistan. The existing sanctions on the Taliban or the regime are not linked to their systematic oppression of women's human rights. Therefore, states could lift the sanctions without any improvement in the conditions of women.
3. Feminist foreign policy actors should protect women activists in Afghanistan and those who have fled to neighbouring countries. This involves facilitating their escape to regional countries by negotiating diplomatically to grant them visas, providing financial assistance to the women activists and their families, and expediting their asylum cases.
4. Feminist foreign policy actors – states and universities or other institutions of higher education – should support the education of girls in Afghanistan by offering them scholarships and student visas to study abroad.
5. Feminist foreign policy should enable and encourage dialogue among Afghan women to mobilize both within the country and in exile, to shape the future of Afghanistan after the Taliban, and their participation and leadership in the country. This will empower Afghan women politically, give them opportunities, platforms, and visibility to become influential actors in the affairs of Afghanistan.

THE AUSTRALIAN FEMINIST FOREIGN POLICY COALITION

The Australian Feminist Foreign Policy Coalition is a diverse network advancing feminist foreign policy in Australia. Convened by IWDA, its members work across various sectors, including foreign policy, defence, security, women's rights, climate change and migration.

Feminist foreign policy is an approach that places gender equality as the central goal of foreign policy, recognising that gender equality is a predictor of peaceful and flourishing societies. This Issues Paper Series aims to explore the opportunities and challenges for Australia in applying a feminist lens to a range of foreign policy issues and provide practical ways forward.

Endnotes

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