

RAGAA-RAISE AGAINST GENDER APARTHEID AFGHANISTAN

NAMING IN ORDER TO ACT

FOR THE INTERNATIONAL
RECOGNITION OF
GENDER APARTHEID

Naming in order to act: for the international recognition of gender apartheid

This report has been produced by:

FIBGAR – Fundación Internacional Baltasar Garzón, in its capacity as a member of RAGAA – Raise Against Gender Apartheid in Afghanistan.

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This report has been produced by FIBGAR within the framework of its commitment to the promotion and protection of human rights, and in collaboration with the RAGAA – Raise Against Gender Apartheid in Afghanistan initiative.

The content reflects the technical and legal analysis of the drafting team and aims to contribute to the public and academic debate on gender apartheid. The opinions expressed in this document do not necessarily represent the official position of all the organisations that are members of RAGAA.

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1. INTRODUCTION

Since the Taliban's takeover of power in August 2021, Afghanistan has become the most extreme example of institutionalised discrimination against women and girls in the contemporary world.

The restrictions imposed by the de facto authorities have not only dismantled the fundamental rights gained over the past decades but have also established a structural regime of oppression that deliberately denies the autonomy, citizenship, and social participation of more than half of the Afghan population. The prohibition of access to secondary and university education, exclusion from public and private employment, restrictions on freedom of movement and expression, as well as the imposition of a male guardianship system and widespread punishments, demonstrate a policy of systematic segregation based on gender.

In response to this reality, the **RAGAA initiative (Rise Against Gender Apartheid in Afghanistan)**, led by the Fundación Internacional Baltasar Garzón (FIBGAR) and the People Help (PH) association, constitutes a coordinated effort to raise awareness of, document, and denounce the systematic violence suffered by women and girls in Afghanistan, and to promote the recognition of **gender apartheid** as an autonomous crime against humanity.

This report presents an analysis of the current situation of Afghan women and girls, demonstrating how the Taliban regime has institutionalised an architecture of domination aimed at their total exclusion from public life and their permanent subordination within the private sphere. It also outlines the progress made in global mobilisation toward the recognition of gender apartheid as an autonomous crime and identifies the mechanisms available to demand international accountability.

These pages focus specifically on the situation of women and girls in Afghanistan, who constitute the primary group affected by policies and practices of gender segregation. Nevertheless, it is important to acknowledge that persons of diverse sexual orientations and gender identities also suffer severe forms of discrimination, violence, and persecution under the same regime. Their analytical exclusion from this document responds exclusively to considerations of thematic scope and availability of sources, and in no way seeks to render invisible the depth of the human rights violations they face. Their experiences form part of the broader system of gender-based oppression that deprives of rights and dignity all those who do not conform to the norms imposed by the Taliban regime.

RAGAA's work lies at the heart of a historic effort: to articulate evidence, promote reforms, and amplify the voices of those -inside and outside Afghanistan- who resist a system that seeks to erase their existence. Recognising gender apartheid is not merely a matter of terminology, but an essential step toward activating international legal obligations, mobilising political will, and ensuring that violations of this magnitude do not remain unpunished.

2. RATIONALE

The analysis of gender apartheid in Afghanistan is not merely a descriptive exercise, but an urgent imperative from the perspective of human rights, international law, and the collective responsibility of the international community. The gravity and systematic nature of the policies imposed by the Taliban transcend the national sphere and violate fundamental principles of the international legal order, including equality, human dignity, the prohibition of discrimination, and the obligation to prevent and punish international crimes.

From a **social standpoint**, the **regime of gender segregation** directly impacts Afghanistan's social fabric, economic survival, and social cohesion. The exclusion of women and girls from education, employment, public life, and basic services perpetuates cycles of poverty, dependency, and structural violence. Moreover, denying their participation in society not only violates fundamental rights but also undermines any prospect of sustainable development, internal stability, or democratic reconstruction. This regime has also resulted in diaspora, forced migration, and the collapse of family and community structures, generating consequences that extend beyond Afghanistan's borders and affect neighbouring countries, host regions, and international organisations.

From a **legal perspective**, the use of the concept of gender apartheid responds to the need to **properly name and legally characterise** a phenomenon that goes beyond traditional frameworks of discrimination. The restrictions imposed in Afghanistan meet the **constitutive elements of the crime of apartheid**, understood as an institutionalized regime of systematic oppression and domination over an identified group, which in this case consists of women and girls. In this sense, this approach makes it possible to activate international obligations arising from customary international law, the Rome Statute, human rights treaties, and emerging standards in the field of gender justice.

Accordingly, recognising gender apartheid as an **autonomous crime** opens the door to specific legal mechanisms for investigation, prosecution, and reparation, and compels States and international organisations to adopt preventive, diplomatic, legislative, and judicial measures. It also contributes to the development of contemporary international law by incorporating a gender perspective into the classification of systematic collective crimes.

By promoting this study, the RAGAA initiative provides an essential argumentative and evidentiary framework to support future legal actions, influence normative reform processes, and strengthen accountability. The significance of this work, therefore, lies in its dual dimension: social, in making visible and documenting a reality of extreme oppression affecting millions of women and girls; and legal, in contributing to the consolidation of a legal category capable of generating international responses proportionate to the magnitude of the violations committed.

Finally, this study seeks to serve as a tool for mobilisation, advocacy, and accountability efforts, aiming to place gender apartheid in Afghanistan at the centre of the global debate on justice, equality, and human rights.

3. OBJECTIVES

The primary purpose of this report is to document, analyse, and frame gender apartheid in Afghanistan as a serious violation of international law that requires an immediate, coordinated, and binding response from the international community. To this end, the following strategic objectives are established:

- ⇒ **To make visible the magnitude of the regime of gender-based oppression.** The report compiles evidence demonstrating the systematic, institutionalised, and deliberate nature of the Taliban regime's policies against women and girls.
- ⇒ **To provide a legal foundation for classifying gender apartheid as an international crime.** Through comparative analysis with racial apartheid, interpretation of international legal instruments, and engagement with emerging doctrinal developments, this report offers a robust basis for recognising gender apartheid as an autonomous category of crime, entailing specific obligations for States and international organisations.
- ⇒ **To promote normative reforms and initiatives at the international, regional, and national levels.** The report is intended to serve as a tool to advance the incorporation of gender apartheid into existing legal frameworks, including treaties, domestic legislation, and institutional policies. Its value lies in providing arguments and guidelines for legal updating and harmonisation.
- ⇒ **To facilitate political advocacy efforts.** The content of the report is designed to support advocacy campaigns and strategies. It provides a political and legal foundation that legitimises the use of the concept of gender apartheid in international forums, regional bodies, and governmental settings.
- ⇒ **To serve as a supporting tool for strategic litigation and accountability.** The report offers key elements to underpin investigations, complaints, communications before international justice mechanisms, and national proceedings under the principle of universal jurisdiction. It identifies the principal actors and those responsible for the process of gender-based segregation unfolding in Afghanistan, outlines potential procedural avenues, and provides guidance on the use of evidence and witnesses.
- ⇒ **To strengthen the mobilisation of social actors and feminist networks.** The document aims to support the work of human rights organisations, women's collectives, Afghan diasporas, and transnational movements by providing a shared conceptual and legal framework to articulate demands and build strategic alliances.
- ⇒ **To contribute to the progressive development of international law from a gender perspective.** The report does not merely describe a reality; it proposes a necessary interpretative evolution of international criminal law and international human rights law, incorporating gender as a structural category in the analysis of international crimes.

4. AFGHANISTAN: CONTEXT AND SITUATION

4.1 Women and girls under the Taliban regime

Although different forms of gender-based segregation and subordination persist in various places and contexts, Afghanistan represents the **most extreme**, systematic, and well-documented case of a gender apartheid regime today. The scale and interconnected nature of the system of oppression imposed by the Taliban make it the paradigmatic example of this form of crime and the primary focus of this report.

Since the Taliban's takeover of power in August 2021, Afghanistan has been experiencing a **profound and multidimensional crisis**, combining human rights violations, political repression, and an unprecedented humanitarian deterioration. The most direct victims of this situation are women and girls, upon whom an institutionalised system of gender discrimination, oppression, and exclusion has been imposed; one that undermines human dignity and violates the country's international obligations.

As indicated in the reports of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett¹, and of the Committee on the Elimination of Discrimination against Women (CEDAW)², the lives of women and girls have **systematically regressed** in virtually every sphere of their existence.

The Taliban regime has enacted and enforced a series of edicts, regulations, and policies that restrict nearly all aspects of the lives of women and girls, preventing them from exercising fundamental rights such as freedom of movement, education, employment, health care, freedom of expression, and access to justice. Within this legal framework, particular note should be made of the 2024 *Law on the Promotion of Virtue and Prevention of Vice*³, enforced by the so-called "morality police"⁴. Although these oppressive measures primarily affect women

¹ United Nations, General Assembly, "Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett", A/HRC/52/84 (9 February 2023), Available at <https://digitallibrary.un.org/record/4011793?ln=en&v=pdf>; United Nations, General Assembly, "Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan", A/HRC/55/80 (22 February 2024), Available at <https://docs.un.org/en/a/hrc/55/80>; United Nations, General Assembly, "Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett", A/HRC/58/80 (20 February 2025), Available at <https://docs.un.org/en/A/HRC/58/80>

² United Nations, Committee on the Elimination of Discrimination against Women, "Fourth periodic report submitted by Afghanistan under article 18 of the Convention, due in 2024: Convention on the Elimination of All Forms of Discrimination against Women", CEDAW/C/AFG/4 (19 March 2025), Available at <https://digitallibrary.un.org/record/4083514?v=pdf>; United Nations, Committee on the Elimination of Discrimination against Women, "Concluding observations on the fourth periodic report of Afghanistan", CEDAW/C/AFG/CO/4 (10 July 2025), Available at <https://docs.un.org/en/CEDAW/C/AFG/CO/4>

³ United Nations, General Assembly, "Study on the so-called law on the promotion of virtue and the prevention of vice: Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett", A/HRC/58/74 (12 March 2025), Available at <https://docs.un.org/en/A/HRC/58/74>

⁴ United Nations, United Nations Assistance Mission in Afghanistan (UNAMA), *Statement from Special Representative of the Secretary-General and head of UNAMA*, 25 August 2024, <https://unama.unmissions.org/statement-special-representative-secretary-general-and-head-unama-0>

and girls, they deprive all people in Afghanistan of rights, with devastating and far-reaching consequences.

Those who resist these restrictions face **direct attacks, arbitrary detention, and deprivation of liberty**. In this context, the regime also exerts pressure on men and boys to become complicit through surveillance and physical violence against women and girls.

Education, which had been one of the few avenues of empowerment and personal development for women, has been severely restricted. Girls over the age of twelve and adolescents have been excluded from secondary and higher education, and universities have closed their doors to women. This decision not only limits their intellectual and professional development but also significantly reduces their future opportunities and their ability to participate in the country's social and economic life. Afghanistan has thus become the only country in the world where girls are legally excluded from secondary and higher education.⁵ The absence of education has profound long-term consequences for the autonomy, employability, and decision-making capacity of women and girls.

Access to employment, another key indicator of autonomy and well-being, has also been restricted. Women are permitted to work only in very limited sectors, such as girls' education and health care, and always under conditions of strict segregation. In addition, the authorities have prohibited women from working in non-governmental organisations and United Nations (UN) agencies, and have completely shut down certain economic sectors—such as beauty salons—that had been a vital source of income for tens of thousands of families⁶. In this way, the lack of employment opportunities reduces women's ability to support themselves and their families, increasing their vulnerability to poverty. These restrictions also heighten women's exposure to violence by creating economic dependence and excluding them from public life, thereby perpetuating structural inequalities.

In the **political and cultural sphere**, women have been excluded from all decision-making spaces. None currently holds positions of political influence at the national, provincial, or local levels, and the few who remain within Taliban structures have functions that are limited to overseeing other women. They have also been banned from participating in any type of cultural, artistic, or sporting activities, from reciting poetry, or from speaking publicly, contributing to their complete social invisibility and confinement to the private sphere⁷.

Health is another area profoundly affected. The shortage of female health personnel, the prohibition on women training as health professionals, and the restrictions imposed on their mobility hinder women's and girls' access to essential medical services. Pregnant and breastfeeding women, as well as developing girls, face extreme risks of malnutrition and illness. In addition to

⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Banned from education: A review of the right to education in Afghanistan* (Paris: UNESCO, 2025), <https://unesdoc.unesco.org/ark:/48223/pf0000393229>

⁶ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Gender Index 2024: Afghanistan*, (UN Women, 2025), <https://www.unwomen.org/sites/default/files/2025-06/gender-index-2024-afghanistan-en.pdf>

⁷ Ibid.

directly affecting maternal and child health, the inability to receive adequate medical care reduces life expectancy and overall well-being among the female population. According to United Nations estimates, by 2026, the ban on access to education is expected to increase child marriages by 25%, adolescent pregnancies by 45%, and maternal mortality by at least 50%. Women's mental health has also been severely affected: local reports describe extraordinarily high levels of depression, anxiety, and hopelessness⁸.

The **daily lives** of women and girls are marked by strict mobility restrictions and mandatory codes of conduct. The regime imposes dress codes requiring women to cover themselves from head to toe with a burqa or niqab, concealing even the face⁹. It also requires women to be accompanied at all times by a male relative (*mahram*) in order to leave their homes, and they are frequently denied access to taxis, buses, government offices, hospitals, or even markets if not escorted¹⁰. This segregation limits their freedom, restricts access to public spaces, and affects social interaction and personal development. These restrictions extend even to the symbolic sphere: women's voices have been removed from the media, limiting their participation in radio and television¹¹. All of these measures have further deepened and legitimised acts of physical and psychological violence, both in the domestic sphere and in public spaces, in the absence of any effective protection or support mechanisms.

The intensification of these restrictions has had a profound impact on women's **physical and mental well-being**. The widespread humanitarian and food crisis further exacerbates this situation: millions of people depend on food assistance, and women and girls, especially those who are pregnant or breastfeeding, are the most affected. The combination of poverty, educational restrictions, and limited employment opportunities creates a cycle of exclusion and vulnerability that severely affects the physical, emotional, and social health of the female population.

This situation is compounded by the persistence of **sexual violence** against women deprived of liberty, as well as a culture of silence surrounding sexual abuse and other gender-based crimes, stemming from harmful stereotypes, social stigmatization, and victim-blaming. According to recent data, 34.7% of Afghan women have experienced physical or sexual violence by their partner in the past year -a rate three times higher than the global average. These abuses are accompanied by other forms of violence, including the rise in forced and child

⁸ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Afghanistan: Ten facts about the world's most severe women's rights crisis*, 14 August 2025, <https://www.unwomen.org/en/news-stories/press-release/2stigmatisation025/08/afghanistan-ten-facts-about-the-worlds-most-severe-womens-rights-crisis>

⁹ United Nations, UN Women, "FAQs: What it's like to be a woman in Afghanistan today", 7 August 2025, Available at: <https://www.unwomen.org/en/articles/faqs/faqs-afghanistan>, (consulted 10 October 2025)

¹⁰ United Nations Assistance Mission in Afghanistan, UNAMA, *Update on the human rights situation in Afghanistan: JANUARY – MARCH 2025 UPDATE* (United Nations 2025), https://unama.unmissions.org/sites/default/files/unama_update_on_human_rights_in_afghanistan_january-march_2025.pdf

¹¹ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Brief No. 1: Media Restrictions and the Implications for Gender Equality in Afghanistan (United Nations 2022), https://asiapacific.unwomen.org/sites/default/files/2022-10/afg_Periodic-Briefing-no1_Media_Oct22-s.pdf

marriages, so-called “honor killings,” and the practice of *baad*, which involves giving girls away as compensation to settle tribal disputes¹².

Finally, **women activists, human rights defenders, and peaceful protesters** face particularly severe repression. The United Nations High Commissioner for Human Rights (OHCHR) has reported arbitrary arrests, enforced disappearances, and threats against women who protest or publicly express disagreement with Taliban policies. Many have been detained without judicial warrants, held incommunicado for weeks, or forced to “confess” under coercion¹³. In this context, women’s rights activism has become an act of enormous courage and personal risk, but also a symbol of resistance against a regime that seeks to eradicate women’s voices from the public sphere.

Given the magnitude, systematic nature, and persistence of these restrictions, various international organisations have described the situation as **gender apartheid**, a concept that reflects a **structural regime that systematically excludes and segregates women and girls** from nearly all areas of public and private life, consolidating a **sustained** pattern of discrimination and subordination over time.

4.2 Impact on fundamental rights

The conditions imposed by the Taliban regime’s institutionalised system of exclusion and subordination constitute a flagrant violation of the human rights of Afghan women and girls, as enshrined in multiple international conventions and normative frameworks, and a breach of Afghanistan’s international obligations. These include, among others, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁴, the International Covenant on Civil and Political Rights (ICCPR)¹⁵, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁶, as well as the International Bill of Human Rights and the Convention on the Rights of the Child¹⁷.

¹² United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Gender Index 2024: Afghanistan*, (UN Women, 2025), <https://www.unwomen.org/sites/default/files/2025-06/gender-index-2024-afghanistan-en.pdf>

¹³ “Afghanistan: OHCHR alarm over arrests of activists speaking up for women and girls”, *UN News*, 29 March 2023, Available at: <https://news.un.org/en/story/2023/03/1135132#:~:text=capital%20of%20Afghanistan.-,Afghanistan%3A%20OHCHR%20alarm%20over%20arrests%20of%20activists.up%20for%20women%20and%20girls&text=The%20de%20facto%20Taliban%20authorities.expressing%20alarm%20over%20ongoing%20arrests>, (consulted 10 October 2025)

¹⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 18 December 1979, UN Treaty Series, vol. 1249, p. 13, Available at: https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf

¹⁵ *International Covenant on Civil and Political Rights*, New York, 16 December 1966, UN Treaty Series, vol. 999, No. 14668, p. 171, Available at: https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf

¹⁶ *International Covenant on Economic, Social and Cultural Rights*, New York, 16 December 1966, UN Treaty Series, vol. 993, No. 14531, p. 3, Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/volume-993-I-14531-Other.pdf>

¹⁷ *Convention on the Rights of the Child*, New York, 20 November 1989, UN Treaty Series, vol. 1577, Available at: https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

Afghan women and girls have been **systematically excluded from secondary and higher education**, in direct violation of the right to education recognised in CEDAW Article 10 and ICESCR Article 13. Likewise, the near-total ban on access to paid employment violates the right to work and to just and favourable conditions of work, as set out in CEDAW Article 11 and ICESCR Articles 6 and 7, consolidating a model of forced economic dependence. Furthermore, the expansion of forced and child marriages infringes the right to freely consent to marriage, provided for in CEDAW Article 16 and ICCPR Article 23, while **extreme restrictions on freedom of movement** violate the right to freedom of movement under ICCPR Article 12. These practices also directly affect children's rights, including the right to protection from violence and exploitation and the right to education, as established in Articles 19, 28, and 34 of the Convention on the Rights of the Child¹⁸.

This web of restrictions constitutes a form of **structural violence** aimed at perpetuating the subordination of women and girls and consolidating a deliberate cycle of inequality, poverty, and vulnerability.

Moreover, although the system formally privileges men, it also restricts their individual freedoms and reinforces **violent and authoritarian models of masculinity**. Men who oppose these policies or support women's rights may be persecuted or punished¹⁹, demonstrating that gender apartheid erodes social cohesion and obstructs the construction of egalitarian relationships and sustainable peace.

In this context, the prohibition on training female healthcare professionals and the severe limitations on the presence of women doctors have triggered an unprecedented **health crisis** affecting the entire population. Restrictions on access to healthcare, particularly obstetric and emergency care, violate the right to the highest attainable standard of physical and mental health (CEDAW Article 12; ICESCR Article 12). The lack of essential care for pregnant women endangers the right to life (ICCPR Article 6) and significantly exacerbates maternal and infant mortality. Social exclusion, constant fear, violence, and repression have generated critical levels of depression, anxiety, and collective trauma²⁰. The impact on mental health is not a collateral effect, but a targeted structural harm, resulting from a system that turns daily life into a space of institutionalised violence.

The **systematic exclusion of women from the labour market** and the closure of entire economic sectors traditionally occupied by women, such as beauty salons and humanitarian organisations, have severely weakened the Afghan economy. These measures violate the right to work (CEDAW Article 11; ICESCR Article 6), the right to participate in the cultural and economic life of the country (ICESCR Article 15), and the right to an adequate standard of living (ICESCR Article 11). According to UNDP, the drastic reduction in women's participation in the economy has led

¹⁸ *Ibidem*, p. 3.

¹⁹ United Nations, General Assembly, "Situation of human rights in Afghanistan: Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett", A/79/330 (30 August 2024), Available at <https://documents.un.org/doc/undoc/gen/n24/253/29/pdf/n2425329.pdf>

²⁰ "Afghanistan: OHCHR alarm over arrests of activists speaking up for women and girls", *UN News*, 29 March 2023, Available at: <https://news.un.org/en/story/2023/03/1135132#:~:text=capital%20of%20Afghanistan.-Afghanistan%3A%20OHCHR%20alarm%20over%20arrests%20of%20activists.up%20for%20women%20and%20girls&text=The%20de%20facto%20Taliban%20authorities,expressing%20alarm%20over%20ongoing%20arre>sts, (consulted 10 October 2025)

to a decline in GDP and an increase in extreme poverty²¹, foreseeable consequences of a system that relies on economic marginalisation to sustain an institutionalised gender hierarchy. The exclusion of half the population from economic activity not only destroys livelihoods but also undermines the country's economic resilience and deepens its dependence on international assistance.

The Taliban regime has eliminated all **female representation in political positions** and prevented women's participation in public affairs, violating the right to take part in public life (CEDAW Articles 7(b)–(c); ICCPR Article 25). The repression of peaceful demonstrations, arbitrary detentions, and enforced disappearances of activists and women human rights defenders constitute violations of the freedoms of expression, assembly, and association (ICCPR Articles 19, 21, and 22), as well as the right to defend human rights without reprisals (Declaration on Human Rights Defenders²²). The total exclusion of women from decision-making renders the entire institutional architecture inherently incomplete and devoid of legitimacy.

In this way, Afghanistan has become a **paradigmatic case** that tests the capacity of the international system to respond to crimes against humanity based on gender. The persistence of this institutionalised system of domination of one social group over another -based on gender and affecting all aspects of life- has created the need for specific legal recognition, comparable to the recognition previously given to *apartheid* based on racial grounds.

The codification of *gender apartheid* as an international crime would not be merely symbolic, but would represent a fundamental step toward contributing to an egalitarian society and, in the case of Afghanistan, toward guaranteeing justice, reparation, and non-repetition.

4.3 Accountability and the pursuit of justice

The scale and severity of the violations committed in Afghanistan have triggered multiple, complementary accountability pathways.

In September 2024, four States -Australia, Canada, Germany, and the Netherlands- supported by an additional 22 States, announced their intention to bring proceedings against the Taliban regime before the **International Court of Justice** (ICJ) in order to seek accountability for violations of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), to which Afghanistan became a State party in 2003. In announcing their initiative, these States accused the Afghan authorities of being responsible

²¹ United Nations, United Nations Development Programme (UNPD), *UNDP warns that restrictions on women's rights will worsen economic catastrophe in Afghanistan*, 18 April 2023, <https://www.undp.org/press-releases/undp-warns-restrictions-womens-rights-will-worsen-economic-catastrophe-afghanistan>

²² General Assembly Resolution 53(144) A "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" A/RES/53/144 (8 March 1999), Available at: <https://docs.un.org/en/A/RES/53/144>

for “systematic gender discrimination”²³. Pursuant to Article 29 of CEDAW, disputes relating to the interpretation or application of the Convention shall be resolved through negotiation, arbitration, or, where the parties “are unable to agree on the organisation of the arbitration,” by submission to the ICJ.

In parallel, on 8 July 2025, **Pre-Trial Chamber II of the International Criminal Court** (ICC) issued arrest warrants against Haibatullah Akhundzada, Supreme Leader of the Taliban movement, and Abdul Hakim Haqqani, the Taliban’s Chief Justice, for their alleged responsibility for crimes against humanity consisting of persecution on gender and political grounds under Article 7(1)(h) of the Rome Statute²⁴. According to the Prosecutor, the arrest warrants focus on the crime of **gender-based persecution** against women, girls, and other persons who do not conform to Taliban policies on gender, gender identity, or gender expression, as well as political persecution against individuals perceived as “allies of women and girls”. The Prosecutor further considers that these crimes were committed in Afghanistan from the Taliban’s seizure of power on 15 August 2021 and continued at least until 20 January 2025. The decision finds reasonable grounds to believe that both leaders “ordered, solicited, or induced” the implementation of a **system of discriminatory policies** aimed at excluding women from public life and depriving them of fundamental rights in violation of international law. These policies allegedly resulted in the intentional and severe deprivation of rights, including access to education, employment, privacy, family life, and freedoms of movement, expression, thought, conscience, and religion. According to the Prosecutor, the measures adopted by the Taliban regime constitute a form of **institutionalised persecution**, carried out through edicts, decrees, and administrative orders designed to exclude women from public life and eliminate any possibility of participation in educational, professional, political, and cultural spheres.

More recently, on 6 October 2025, the **UN Human Rights Council** adopted a resolution establishing an independent mechanism to collect, preserve, and analyse evidence of international crimes and other serious violations in Afghanistan, and to prepare case files for future proceedings. Once operational, this mechanism will be mandated to examine abuses committed not only by the Taliban, but also by officials of the former government, international forces, non-State armed groups, and other actors²⁵. The **Independent International Investigative Mechanism for Afghanistan (IIM-A)** follows the model of similar mechanisms established for Syria and Myanmar, with certain variations in mandate and oversight. This UN body will not function as a court, but as a professional investigative hub tasked with collecting, storing, and analysing evidence and preparing files that may support future criminal proceedings before national, regional, or international jurisdictions. It will complement and cooperate

²³ International Service for Human Rights, *Afghanistan: Joint civil society statement on CEDAW initiative*, 2025:

<https://ishr.ch/latest-updates/afghanistan-joint-civil-society-statement-on-cedaw-initiative/>

²⁴ International Criminal Court, *Situation in Afghanistan: ICC Pre-Trial Chamber II issues arrest warrants for Haibatullah Akhundzada and Abdul Hakim Haqqani*, 2025: <https://www.icc-cpi.int/news/situation-afghanistan-icc-pre-trial-chamber-ii-issues-arrest-warrants-haibatullah-akhundzada> (consulted 20 October 2025)

²⁵ General Assembly Resolution 60(2) “Situation of human rights in Afghanistan” A/RES/60/2 (6 October 2025), Available at: <https://docs.un.org/en/A/HRC/RES/60/2>

with other UN bodies and international entities, while maintaining its independence.

In addition, in July 2025, the establishment of the **People's Tribunal for the Women of Afghanistan** was announced. This initiative, promoted by a coalition of Afghan civil society organisations—including Rawadari, the Afghanistan Human Rights and Democracy Organisation (AHRDO), the Organisation for Policy Research and Development Studies (DROPS), and Human Rights Defenders Plus—constitutes an international mechanism of an ethical and symbolic nature. Driven by civil society, it lacks a binding judicial authority but aims to document facts, establish an independent factual and legal record, give visibility to victims, and exert moral and political pressure to advance accountability before formal international legal mechanisms.

In October 2025, over the course of three consecutive days, survivors, activists, and international legal experts presented evidence and testimony before a panel of experts, creating a unique opportunity to centre the voices of Afghan women.²⁶ In its **verdict**, issued in December 2025²⁷, the Tribunal concluded that the Taliban regime has implemented a systematic, deliberate, and institutionalised campaign of oppression against women and girls, amounting to gender-based persecution as a crime against humanity and other inhumane acts under the Rome Statute, as well as grave and widespread violations of international human rights law. The Tribunal urged the international community to adopt concrete accountability measures and to recognise that the deliberate exclusion of women from public life amounts to a form of gender apartheid.

While gender discrimination exists worldwide, there is no other country in which the rights of women and girls are suppressed as systematically and comprehensively as under the Taliban regime.

However, this situation cannot be fully captured by the legal category of gender-based persecution alone. Only the category of apartheid fully reflects the intent, ideology, and degree of institutionalisation present in regimes of gender apartheid, such as that established in Afghanistan.

5. APARTHEID IN INTERNATIONAL LAW

5.1 Origins of the concept

The term **apartheid** originates from Afrikaans and literally means “separation” or “segregation”. It was first used to describe the policy of racial segregation that was institutionalised in **South Africa** under the government of the National Party,

²⁶ Rawadari, *Judgment Session: People's Tribunal for Women of Afghanistan ENG*, 2025: <https://www.youtube.com/watch?v=liXXanTAKgs>

²⁷ PERMANENT PEOPLES' TRIBUNAL, 55^o SESSION FOR THE WOMEN OF AFGHANISTAN, JUDGEMENT, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001 8-10 October 2025: https://ahrdo.org/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN.pdf

which remained in power from 1948 to 1994. Its central objective was to organise society in a manner that ensured separation between racial groups and secured the supremacy of the white minority over the Black, mixed-race, and Indian populations. From its inception, the concept of apartheid reflected the intent of the regime: through a complex framework of laws, administrative regulations, and coercive practices, the South African state created a **hierarchical structure that classified the population according to racial criteria**, restricting the rights and opportunities of those who were not white.

Although the regime was formally established in 1948, its roots can be traced back to European settlement at the Cape in 1652 and to the “separate development” plans for different racial groups devised by the South African Bureau of Racial Affairs (SABRA) in the 1930s. The term *apartheid* was coined in 1944 by Prime Minister Daniel Malan, while Hendrik Verwoerd, widely regarded as the principal architect of official racial segregation, presented it as a purported policy of “good neighbourliness” that, in reality, served to consolidate the supremacy of the white minority²⁸.

Early legislation classified the South African population into three main groups: whites, Bantu or Black Africans, and Coloured or mixed-race persons. A fourth category was later added for Indian and Pakistani communities. This classification determined where individuals could live, the jobs they could perform, the type of education they had access to, and even their political participation. Almost all forms of social contact between racial groups were prohibited; segregated public facilities -such as beaches and transport- were established; and cultural and social interaction between racialised groups was severely restricted.

White South Africans enjoyed full rights and privileges, while all other groups were subject to severe restrictions affecting virtually every aspect of life: freedom of movement, access to public services, education, property ownership, and even the ability to marry. Apartheid sought not only to physically separate communities, but also to consolidate the political and economic supremacy of the white minority over the Black, mixed-race, and Indian majority. Its defining characteristic lay in its formalisation through legislation: a state policy enforced by courts, security forces, and censorship, implemented through systematic repression and police violence. It is estimated that more than 14,500 civilians were killed, while millions were subjected to arbitrary detention, torture, and forced displacement, all legitimised by racist and pseudoscientific theories.

The regime controlled all aspects of the lives of the Black population, from education -generally limited to childhood- to labour restrictions, the prohibition of certain professions, and the inability to access public spaces freely. Police authorities were granted broad powers to enforce the law, operating with impunity under a judicial system that exercised minimal oversight. Censorship, cultural restrictions, and segregation in everyday life ensured that the Black population was prevented from exercising meaningful civil, political, economic, social, or cultural participation, trapping it within a **system of structured oppression**.

²⁸ Lingaas, Carola, *The Crime against Humanity of Apartheid in a Post-Apartheid World*, In Oslo Law Review, vol. 2, n. 2, 2015, pp. 86-115, <https://doi.org/10.5617/oslaw2566>

In this sense, South African apartheid was characterised by three essential elements:

- ⇒ **Territorial and social segregation** through the creation of separate residential, educational, and labour zones.
- ⇒ **Systematic deprivation of civil and political rights** for racialised groups.
- ⇒ **Use of the state apparatus to sustain domination** through laws, courts, security forces, and censorship.

From the 1960s onwards, the international community increasingly denounced this regime as a grave violation of the fundamental principles of equality and human dignity, emphasising that its institutionalised nature generated exclusion, discrimination, and systematic oppression of an entire population. From that point forward, the progressive incorporation of apartheid into international law transformed it into an autonomous legal category, applicable beyond its historical origin.

5.2 Legal recognition

The evolution of the concept unfolded in three main phases: political condemnation, codification as an international crime, and subsequent expansive interpretation.

In the first phase, the international community responded to South African apartheid through declarations of **moral and political condemnation**. From the 1960s onwards, the United Nations General Assembly characterised the practice as a serious violation of the principles of equality and human dignity enshrined in the UN Charter and the Universal Declaration of Human Rights. In 1966, the General Assembly formally declared apartheid to constitute a crime against humanity²⁹, anticipating its subsequent legal codification.

The most significant normative milestone was the adoption of the **International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)**³⁰, which explicitly defined apartheid as a **crime against humanity**. The Convention established that any inhuman act resulting from policies of racial segregation and discrimination, as well as analogous practices, constitutes a violation of international law. Moreover, it expanded the definition of apartheid beyond the South African regime itself, prohibiting any legislative or administrative measures designed to prevent a racial group from fully participating in the political, social, economic, and cultural life of the country, as well as any actions that obstruct its full development. These measures include the

²⁹ General Assembly Resolution 2202 (XXI) A “The policies of apartheid of the Government of the Republic of South Africa” A/RES/2202/XXI (16 December 1966), Available at: <https://docs.un.org/en/A/RES/2202/XXI>.

³⁰ *International Convention on the Suppression and Punishment of the Crime of Apartheid*, New York, 30 November 1973, New York, UN Treaty Series, vol. 1015, p. 243, Available at: https://treaties.un.org/doc/Treaties/1976/07/19760718%2003-04%20AM/Ch_IV_7p.pdf.

Article 2 defines the “crime of apartheid” as “*inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them [...]*”.

denial of fundamental rights such as work, education, freedom of movement, citizenship, association, and expression, as well as labour exploitation, including forced labour. Although the 1973 Convention does not employ the term “regime,” it requires that such policies and practices be implemented systematically, reflecting the institutional nature of the crime. The Convention (art. 6) also established States’ obligations to prevent, prosecute, and punish the crime, including through the exercise of universal jurisdiction, in order to ensure that perpetrators are held accountable regardless of their nationality or the place where the acts were committed.

Furthermore, apartheid, when committed in the context of international armed conflicts, was recognised as a war crime under **Additional Protocol I (1977) to the Geneva Conventions** (art. 85(4)(c)).³¹

The consolidation of apartheid as a crime against humanity was reinforced by the adoption of the **Rome Statute of the International Criminal Court (1998)**³², which defines it as: “*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 and committed with the intention of maintaining that regime*” (art. 7(2)(h)).

In 2001, the **United Nations International Law Commission** confirmed that the prohibition of apartheid constitutes a norm of *jus cogens*, that is, a peremptory norm of international law from which no derogation is permitted. Under Article 53 of the Vienna Convention on the Law of Treaties (1969)³³, *jus cogens* norms are accepted and recognised by the international community as norms from which no derogation is allowed, and any treaty in conflict with them is void. This peremptory status places the prohibition of apartheid alongside other indisputable international prohibitions, such as genocide and slavery. The International Law Commission has repeatedly reaffirmed its position on the fundamental nature of this prohibition, including apartheid in lists of norms attaining *jus cogens* status, thereby reflecting a broad international consensus regarding its inalienable and universal character³⁴.

5.3 Elements of the crime

The crime of apartheid, as defined in the Rome Statute (art. 7(2)(h)), is structured around the following essential elements:

⇒ Contextual element (*chapeau element*). The acts must be committed as part of a **widespread or systematic attack** directed against a civilian

³¹ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 8 June 1977, UN Treaty Series, vol. 1125, p. 3, Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-Engl-ish.pdf>

³² Rome Statute of the International Criminal Court, Rome, 17 July 1998, UN Treaty Series, vol. 2187, p. 3, Available at: https://treaties.un.org/doc/Treaties/1998/07/19980717%2006-33%20PM/Ch_XVIII_10p.pdf

³³ Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, UN Treaty Series, vol. 1155, p. 331, Available at: https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf

³⁴ United Nations, General Assembly, “Report of the International Law Commission”, A/74/10 (29 April–7 and 8 July–9 August 2019), Available at: <https://docs.un.org/en/A/74/10>

population, carried out pursuant to a State or organisational policy aimed at maintaining a regime of domination of one gender group over another. This element excludes isolated incidents or informal practices and requires an organised and sustained structure. The acts must form part of a systematic pattern rather than constitute sporadic events.

- ⇒ Objective element (*actus reus*). The commission of **inhumane acts**, such as murder, torture, enslavement, forcible displacement, sexual violence, persecution, and other serious acts causing physical or mental suffering. It is not necessary for all listed acts to occur; however, the acts committed must be of a significant nature. While each of these acts may be grave in itself, what characterises apartheid as an international crime is that they form part of a deliberate and organised scheme aimed at maintaining domination.
- ⇒ Subjective element (*mens rea*). The **intention to maintain control by the dominant group** and to perpetuate the regime of subordination imposed on the targeted group. This requires awareness of the inhumane nature of the acts, their integration within an institutional apparatus, and the intent to sustain the regime of domination. This intent distinguishes apartheid from other international crimes, including persecution: it is not merely about depriving a group of rights, but about maintaining an institutionalised system of oppression.
- ⇒ Racial groups: The existence of distinct racial groups, as defined in Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)³⁵, which expressly includes race, colour, descent, or national or ethnic origin. The crime is constituted only where a **dominant group systematically subjects another racial group** to disadvantage, exclusion, and deprivation of fundamental rights.

This definition makes clear that the current legal classification of apartheid recognises only apartheid based on race and ethnic origin, reflecting a specific historical context. The concept of apartheid emerged from experiences of racial oppression and domination in southern Africa, in the same way that the notion of genocide originated from the Holocaust.

Nevertheless, in essence, apartheid constitutes a **systematic regime of domination** and oppression of one group or groups of people, supported by laws, policies, or institutional practices, and sustained by the deliberate intention to maintain the inferiority of one group vis-à-vis the superiority of another. The architects of such a system are not merely violating rights; they are committing crimes against humanity. For this reason, only international criminal law can impose individual responsibility for designing and maintaining such a regime.

This distinction reflects the evolution of racial apartheid itself: decades of human rights condemnation did not bring the South African system to an end. It was accountability -through domestic prosecutions and the codification of apartheid

³⁵ *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 7 March 1966, UN Treaty Series, vol. 660, p. 195, Available at: https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf

in the Rome Statute- that declared apartheid a crime of concern to the international community as a whole.

By focusing exclusively on **race**, traditional legal instruments leave other systems of structural oppression that meet the core elements of the crime without recognition.

In particular, **gender-based discrimination** -when articulated through a regime of systematic exclusion and subordination of women and girls- aligns with the logic of domination that characterises apartheid, even though it is not explicitly covered by the current definition.

The consequence of this lack of recognition is a conceptual asymmetry: international criminal law condemns racial domination as a crime against humanity, while gender-based domination remains marginalised within the framework of persecution. Acknowledging this legal gap is therefore not merely a conceptual exercise, but an essential step toward **expanding the scope of international law** and providing a legal basis for identifying and sanctioning new forms of systematic oppression.

In this sense, the current analysis of **gender apartheid** emerges as a call for the **natural extension of the existing legal framework**: it preserves the essence of the crime -domination, subordination, and systematic exclusion- while applying its interpretation to a group defined by gender, thereby reflecting contemporary realities of extreme structural discrimination.

6. A GENDER PERSPECTIVE IN INTERNATIONAL CRIMINAL LAW

6.1 Advances in legal recognition

Since the adoption of the **Universal Declaration of Human Rights in 1948**³⁶, the international community has sought to establish principles of formal equality between men and women. However, in those early years, equality was conceived primarily as an abstract legal mandate, without fully recognising the structural inequalities that limited women's access to education, employment, political participation, and social life. Gender-based discrimination remained largely invisible, despite international commitments to equality before the law.

It was not until the 1970s, with the adoption of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**³⁷, that a substantial shift occurred. Often described as the "international bill of rights for women," CEDAW is the most comprehensive binding treaty on the rights of

³⁶ General Assembly Resolution 217 A (III), "Universal Declaration of Human Rights", A/RES/217(III) (10 December 1948), Available at: [https://docs.un.org/en/A/RES/217\(III\)](https://docs.un.org/en/A/RES/217(III))

³⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 18 December 1979, UN Treaty Series, vol. 1249, p. 13, Available at: https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf

women and girls³⁸. CEDAW not only explicitly prohibited gender discrimination, but also obliged States to adopt concrete measures to achieve substantive equality. It introduced a definition of “discrimination against women” (Article 1) encompassing “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise [...] of human rights and fundamental freedoms*” by women. This instrument laid the groundwork for understanding that gender discrimination is not merely a matter of unequal legal treatment, but is manifested in social, political, and economic practices that perpetuate the subordination of women and girls.

In 1993, the **Declaration on the Elimination of Violence against Women (DEVAW)**³⁹, was adopted. Although non-binding, this landmark document explicitly recognised, for the first time, gender-based violence as a violation of human rights.

During the 1990s, a gender perspective began to be systematically integrated into the international human rights and international criminal justice agenda. The **1995 Beijing Declaration and Platform for Action**⁴⁰ consolidated the recognition that women face specific forms of violence and exclusion that require differentiated responses.

In parallel, crucial developments took place in international criminal justice through the *ad hoc* tribunals established by the UN Security Council: the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993) and the International Criminal Tribunal for Rwanda (ICTR, 1994). In **Prosecutor v. Akayesu (ICTR, 1998)**, the Tribunal recognised for the first time that sexual violence could constitute an act of genocide and a crime against humanity, emphasising that rape may be used as an instrument for the destruction of a group⁴¹. In **Prosecutor v. Furundžija (ICTY, 1998)**, rape was recognised as a form of torture, consolidating the autonomous legal status of sexual crimes under international criminal law.⁴² These precedents marked a **paradigm shift**: for the first time, international criminal law treated sexual and gender-based crimes not as secondary or collateral offences, but as core international crimes.

With the entry into force of the **Rome Statute of the International Criminal Court (ICC)** in 2002, the gender perspective acquired formal and permanent recognition in international criminal law. Unlike earlier instruments, the Statute

³⁸ “CEDAW and Security Council Resolution 1325: A Quick Guide”, *United Nations Development Fund for Women (UNIFEM)*, Available at: <https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/UNIFEM/CEDAWandUNSCR1325eng.pdf>, (consulted 12 February 2026)

³⁹ General Assembly Resolution 48/104 “Declaration on the Elimination of Violence against Women” A/RES/48/104 (23 February 1994), Available at: <https://docs.un.org/en/%20A/RES/48/104>

⁴⁰ United Nations, Report of the Fourth World Conference on Women, “Beijing Declaration and Platform for Action”, A/CONF.177/20/Rev.1 (17 October 1995), Available at: <https://docs.un.org/en/A/CONF.177/20/Rev.1>

⁴¹ International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Case N.º ICTR-96-4-T, Judgement (2 September 1998), Available at: <https://www.refworld.org/jurisprudence/caselaw/ictr/1998/en/19275>

⁴² International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Anto Furundžija*, Case N.º IT-95-17/1-T, Judgement (10 December 1998), Available at: <https://www.refworld.org/jurisprudence/caselaw/icty/1998/en/20418>

does not limit itself to formal equality between men and women, but incorporates gender into the definition and prosecution of international crimes, recognising that structural inequalities may constitute part of the context or motivation for such crimes.

A particularly relevant aspect of the Statute is its **definition of “gender”**. Article 7(3) provides that the term “gender” refers to *“the two sexes, male and female, within the context of society”* and clarifies that *“[t]he term “gender” does not indicate any meaning different from the above”*⁴³. This definition, the result of intense negotiations, reflects a political compromise between two positions: those advocating for a broad understanding of gender as a social construct, and those concerned that such an interpretation might open debates regarding sexual orientation or gender identity. The final wording has been widely criticised in legal scholarship⁴⁴ for its inadequacy in capturing a sociological and structural understanding of gender as a social construct.

Nevertheless, its inclusion had historic significance: it marked the first time the concept of “gender” was incorporated into a constitutive treaty of an international court. By contrast, **CEDAW General Recommendation No. 35 (2017)**⁴⁵ later developed a **more dynamic understanding** of gender, defining it as a set of social norms, roles, and expectations that generate and perpetuate inequality and violence (in particular paragraphs 12 and 14). This theoretical divergence between international criminal law and international human rights law remains central to contemporary debates on the codification of gender apartheid, which requires a deeper understanding of gender as a structural and relational category.

Despite the conceptual limitations of Article 7(3), the Rome Statute significantly expands the scope of international crimes by recognising **persecution on grounds of gender** as a **crime against humanity (Article 7(1)(h))**. Article 7(1)(g) further includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence of comparable gravity as crimes against humanity. These developments reflect a significant normative shift: violence and persecution on gender grounds are understood not merely as consequences of conflict, but as instruments of domination and systematic repression.

In recent years, the ICC has adopted institutional policies to strengthen the prosecution of gender-based crimes.

⁴³ *Rome Statute of the International Criminal Court*, Rome, 17 July 1998, UN Treaty Series, vol. 2187, p. 6, Available at: https://treaties.un.org/doc/Treaties/1998/07/19980717%2006-33%20PM/Ch_XVIII_10p.pdf

⁴⁴ Oosterveld, Valerie, *The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?* in *Harvard Human Rights Journal*, vol. 18, 2005, pp. 55-84, Available at <https://journals.law.harvard.edu/hrij/wp-content/uploads/sites/83/2020/06/18HHRJ55-Oosterveld.pdf>

⁴⁵ United Nations, Committee on the Elimination of Discrimination against Women, “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19”, CEDAW/C/GC/35 (26 July 2017), Available at: <https://docs.un.org/es/CEDAW/C/GC/35>

In December 2022, the Office of the Prosecutor published its **Policy on the Crime of Gender Persecution**⁴⁶, aimed at guiding prosecutors and investigators in the identification, documentation, and prosecution of such crimes. One year later, in 2023, it adopted the **Policy on Gender-Based Crimes**⁴⁷, which expands the interpretative framework and integrates sexual, reproductive, and structural dimensions of violence. These policies consolidate a broader and more gender-sensitive understanding within the Court's institutional practice.

Taken together, these developments entrench gender justice as a core dimension of contemporary international criminal law and pave the way for a more robust recognition of structural gender-based crimes, including gender persecution and gender apartheid, which do not merely affect individuals but seek to sustain systems of exclusion and subordination.

6.2 The crime of gender persecution

The current arrest warrants issued by the International Criminal Court (ICC) in the Afghanistan situation are based on the crime of persecution, which, as noted above, is codified in Article 7(1)(h) of the Rome Statute. This crime entails the **intentional and severe deprivation of fundamental rights in violation of international law**, motivated by discrimination and carried out with full knowledge of such deprivation. More specifically, the Rome Statute defines persecution as:

“Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”

In this regard, the crime against humanity of persecution is considered to be established when the following **elements** are proven:

- ⇒ Contextual element (*chapeau element*). Persecution must take place as part of a **widespread or systematic attack directed against a civilian population**. It does not concern isolated incidents, but rather a series of acts that, taken together, reflect a structured plan of discrimination. Victims are selected on the basis of their membership in a protected group under the grounds listed above, and the attacks must result in serious harm to their fundamental rights or dignity.
- ⇒ Objective element (*actus reus*). The conduct consists of acts involving the **severe deprivation of fundamental rights**, deliberately directed against an identifiable **group or collectivity on political, racial, national, ethnic, cultural, religious, gender**, or other impermissible grounds under

⁴⁶ International Criminal Court, *Policy on the Crime of Gender Persecution*, 2022, Available at <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>

⁴⁷ International Criminal Court, *Policy on Gender-Based Crimes*, 2023, Available at <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>

international law. These actions do not necessarily require direct physical violence, but they must be sufficiently serious to significantly affect the victims' lives, liberty, or physical or mental integrity. Furthermore, they must be **connected to other crimes within the jurisdiction of the ICC**, thereby establishing a clear nexus between the perpetrator's conduct and the broader attack.

⇒ Subjective element (*mens rea*). The perpetrator must act with full knowledge that their actions are **directed against a specific group** and with the deliberate intent to discriminate against that group. The intention to persecute the victims on political, racial, national, ethnic, cultural, religious, or gender grounds must be conscious and central to the planning and execution of the attack.

In sum, what characterises this crime is the discriminatory intent and its connection to another crime, as it treats severe deprivations of rights as derivative acts, committed in relation to other crimes, but does not criminalise the legal and institutional framework that sustains domination.

7. WHY SHOULD WE SPEAK OF GENDER APARTHEID?

7.1 Limitations of the current legal framework

When, through legislation -as in the case of Taliban decrees in Afghanistan- women are prohibited from accessing education, employment, or freedom of movement, these are not isolated violations of individual rights. Rather, they constitute the manifestation of a system of governance deliberately structured around gender hierarchy and domination.

Existing international criminal law can sanction certain acts committed within such a regime; however, it does not yet adequately **recognise** or address the criminality of the system itself, whose institutional design seeks to perpetuate oppression and ensure its continuity over time.

Nor does it adequately reflect the underlying intent present in these contexts: the perpetuation of a regime that, under a veneer of legality and with an aspiration to permanence, seeks to maintain discrimination, oppression, and domination of one gender group over another. In other words, **persecution captures the symptoms of structural oppression, but not its legal design.**

For this reason, while the crime of gender persecution is essential, it remains **insufficient** in cases such as Afghanistan, where Taliban decrees reveal a deliberate state engineering of subordination: more than one hundred formal edicts exclude women from education and employment, impose male guardianship, and criminalise women's presence in public spaces. Each decree constitutes an act of governance, not merely an instance of discrimination.

Characterising this situation solely as persecution risks obscuring the true nature of the harm: a State whose organising principle is gender inequality.

A system whose objective is the absolute subjugation of women and girls by the governing regime warrants specific recognition and a specific legal response, which can only be achieved through the **inclusion of gender apartheid as a crime against humanity**.

Like racial apartheid, gender apartheid entails the near-total restriction of the enjoyment of fundamental rights and freedoms by the affected group. However, the interconnection of the lives of men and women, in all their diversity, through reproduction and family structures requires methods of oppression distinct from those used in racial or ethnic apartheid. Parallel systems are not necessary: women and girls are prohibited, restricted, and denied access to rights and are excluded from social, economic, cultural, and political participation.

One possible avenue is that, through a **teleological interpretation of Article 21(3) of the Rome Statute**, which requires that the Statute be interpreted “*consistent with internationally recognized human rights*”, the ICC could consider that the concept of “apartheid” set out in Article 7(1)(j) encompasses regimes of domination based on any prohibited ground, including gender. Such an interpretation would be consistent with the evolution of non-discrimination norms and with the jus cogens nature of the principle of equality. Nevertheless, the feasibility of such interpretative evolution depends on factors that may vary significantly depending on the specific situation. For this reason, many actors within the international community consider it essential that gender apartheid be recognised as an independent crime.

7.2. Operational definition

The progressive recognition of gender apartheid as an emerging legal category has highlighted the need to clearly define its normative content. Understanding what constitutes this crime and how it manifests in practice is essential for its proper inclusion and application in international law.

Accordingly, gender apartheid has been defined 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”⁴⁸**.

This definition is inspired by the crime of racial apartheid as set out in the Rome Statute (Art. 7(2)(h)), adapted to the axis of gender.

⁴⁸ United Nations, General Assembly, “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 (15 June 2023), Available at <https://docs.un.org/en/A/HRC/53/21>, p.19

Pursuant to the *Rome Statute* and the *Elements of Crimes*⁴⁹ of the International Criminal Court, the crime of apartheid -and, by extension, gender apartheid- is composed of three fundamental elements:

- ⇒ Context element (*chapeau element*). The acts must be committed as part of a **widespread or systematic attack against a civilian population**, pursuant to a State or organisational policy aimed at maintaining a regime of domination of one gender group over another. This element excludes isolated incidents or informal practices; it requires an organised and sustained structure. It does not refer to sporadic or incidental violations, but rather to the existence of an organised system supported by laws, decrees, enforcement bodies, and administrative practices designed to regulate all aspects of the life of the gender group subjected to domination. This regime of control is backed by the State apparatus, transforming discrimination into a systematic practice. Discrimination is not incidental, but rather applied in a stable, predictable, and coercive manner.
- ⇒ Objective element (*actus reus*). This element consists of the commission of **inhuman acts**, as defined in Article 7(1) of the Rome Statute: conduct that causes great suffering or seriously injures the physical or mental integrity of individuals. In the gender context, such acts may include physical or sexual violence, deprivation of liberty, systematic denial of fundamental rights, social and economic exclusion, and extreme restrictions on freedom of movement or access to education and health care, among others.
- ⇒ Subjective element (*mens rea*). This element entails the specific **intent** to maintain a regime of oppression and domination of one gender group over another. This intent distinguishes gender apartheid from other serious violations, such as gender persecution: it is not merely about causing harm, but about **sustaining a system designed to ensure the supremacy of one group**. The intentional element is manifested through laws, regulations, and practices explicitly designed to consolidate a status quo of supremacy. These norms do not merely discriminate; rather, they seek to ensure the long-term maintenance of subordination by excluding a gender group from the public sphere and limiting its autonomy. The regime is grounded in the explicit or implicit assertion that one gender group has a superior right to dominate, direct, or control the other. This is expressed through legal and physical barriers that prevent access to education, employment, health care, and cultural and political participation, confining women to the domestic sphere and denying them public agency.⁵⁰

⁴⁹ International Criminal Court, *Elements of Crimes*, ICC-ASP/1/3 (9 September 2002), “Elements of the crimes under Article 7(1)(j) (apartheid)”, Available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

⁵⁰ United Nations, General Assembly, “The phenomenon of an institutionalized system of discrimination, segregation, disrespect for human dignity and exclusion of women and girls Report of the Special Rapporteur on the situation of human rights in Afghanistan”, A/HRC/56/25 (13 May 2024), Available at <https://docs.un.org/en/A/HRC/56/25>; United Nations, General Assembly, “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 (15 June 2023), Available at <https://docs.un.org/en/A/HRC/53/21>

Recognising gender apartheid as an autonomous crime would make it possible to give legal visibility to the magnitude of the structural oppression faced, for example, by women and girls under institutionalised systems of domination, since “*One cannot prevent and punish what one does not recognise*”⁵¹. Its explicit codification would help close gaps in international criminal law, strengthen accountability, and send a clear message that the institutionalised supremacy of one gender over another constitutes a crime against humanity.

7.3 Towards the recognition of gender apartheid

The movement to recognise gender apartheid as an autonomous international crime dates back to the 1990s, when women’s rights defenders in Afghanistan began to identify and denounce the systematic nature of the restrictions imposed by the Taliban regime⁵².

During the period 1996–2001, women were excluded from education, employment, public participation, and access to essential services, under a rigid system of control over their bodies and movements. In this context, Afghan activist Sima Wali was a pioneer in popularising the term “*gender apartheid*,” arguing in 2002 that the ferocity and draconian nature of the attacks against Afghan women were so severe that a new term – “*gender apartheid*” – was needed to describe the magnitude of this horror directed specifically at them⁵³.

As early as 1999, the UN Special Rapporteur on the Elimination of Intolerance and All Forms of Discrimination Based on Religion or Belief, Abdelfattah Amor, stated before the Commission on Human Rights that Afghan women were being subjected to a form of apartheid⁵⁴.

Within the United Nations system, several mechanisms have increasingly begun to use the notion of “gender apartheid” in their reports and statements. In 2023, the Working Group on Discrimination against Women and Girls and the Special Rapporteur on Afghanistan presented a joint report (A/HRC/53/21)⁵⁵ proposing a formal legal definition of the concept and describing the situation in Afghanistan as an “institutionalized regime of systematic oppression and domination against

⁵¹ End Gender Apartheid Today, *Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid*, 2024: <https://endgenderapartheid.today/download/brief/Gender-characterisedApartheid-Expert-Legal-Brief-CAH-Treaty.pdf> (consulted 29 October 2025), p.10

⁵² Hunter D. Lyn, *Gender Apartheid Under Afghanistan's Taliban. Refugee and Women's Rights Advocate Simi Wali Sheds Light on Abuses*, 1999: <https://newsarchive.berkeley.edu/news/berkeleyan/1999/0317/taliban.html> (consulted 20 October 2025)

⁵³ Wali, Sima, *Statement by Ms. Sima Wali, President of Refugee Women in Development, at UN Panel Discussion on Support for Afghan Women*, United Nations, 2002, Available at: https://www.un.org/womenwatch/feature/iwd/2002/SW_statement.pdf (consulted 20 October 2025)

⁵⁴ Bennoune, Karima, *The International Obligation to Counter Gender Apartheid in Afghanistan*, in *Columbia Human Rights Law Review*, vol. 54, n. 1, 2022, pp. 1-88, Available at: <https://hrlr.law.columbia.edu/files/2022/12/Bennoune-Finalized-12.09.22.pdf>, pp. 28-29

⁵⁵ United Nations, General Assembly, “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 (15 June 2023), Available at <https://docs.un.org/en/A/HRC/53/21>

women.” That same year, the Secretary-General publicly characterized the situation in Afghanistan as gender apartheid for the first time, while the Executive Director of UN Women urged the Security Council to initiate a formal codification process⁵⁶.

Also in 2023, the Special Rapporteur on the situation of human rights in Afghanistan characterised Taliban policies as a form of gender apartheid, emphasising their “deliberate, systematic, and ideological nature”⁵⁷, and the UN High Commissioner for Human Rights, Volker Türk, stated that both Afghanistan and Iran are experiencing regimes of gender apartheid⁵⁸.

During the enhanced interactive dialogue on Afghanistan held in September 2025 before the Human Rights Council⁵⁹, the Deputy High Commissioner Nada Al Nashif and the Chair of the CEDAW Committee Nahla Haidar, reiterated that the restrictions imposed by the Taliban constitute an “institutionalized system of gender persecution” comparable to apartheid. Several States, including Spain, Albania, Sierra Leone, and Montenegro, explicitly characterised the situation in Afghanistan as gender apartheid, while others, such as the European Union, France, and Germany, adopted a more cautious approach, referring instead to gender persecution as a crime against humanity. Civil society organisations such as Amnesty International, Human Rights Watch, and CIVICUS likewise denounced a regime of total exclusion comparable to apartheid.

Along the same lines, the Afghanistan Women’s People’s Tribunal, applying by analogy the 1973 Apartheid Convention and the Rome Statute, currently maintains that the situation in Afghanistan meets the constitutive elements of a system akin to apartheid; an institutionalised regime of segregation, exclusion, and domination.⁶⁰ By placing the Taliban government alongside apartheid-era South Africa, the Tribunal reframes the discussion, shifting the focus from individual atrocities to the criminality of the regime itself. Its evidentiary record

⁵⁶ United Nations, UN Women, Sima Bahous, *The women’s rights crisis: Listen to, invest in, include, and support Afghan women*, speech to the Security Council on the situation in Afghanistan, New York, 26 September 2023, Available at: <https://www.unwomen.org/en/news-stories/speech/2023/09/speech-the-womens-rights-crisis-listen-to-invest-in-include-and-support-afghan-women>

⁵⁷ United Nations, General Assembly, “Study on the so-called law on the promotion of virtue and the prevention of vice: Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett”, A/HRC/58/74 (12 March 2025), Available at <https://docs.un.org/en/A/HRC/58/74>, p.16recognisable

⁵⁸ ““Build peace around human rights”: HC Volker Türk’s global update”, *United Nations*, 4 March 2025, Available at: <https://www.ohchr.org/en/stories/2025/03/build-peace-around-human-rights-hc-volker-turks-global-update>, (consulted 25 October 2025)

⁵⁹ 60th regular session of the Human Rights Council – *Enhanced interactive dialogue on Afghanistan*, 2nd meeting, (8 September 2025), Available at: <https://webtv.un.org/en/asset/k1v/k1vfrtefd7>; 60th regular session of the Human Rights Council – *Enhanced interactive dialogue on Afghanistan (Cont’d)*, 3rd meeting (9 September 2025), Available at: <https://webtv.un.org/en/asset/k1c/k1ciaoo4ew>

⁶⁰ The Panel of Judges has found that, since the discrimination is based on gender and not race, these acts fall outside the codified definition of apartheid in international law, which has not yet formally recognized gender apartheid as a specific crime. In: PERMANENT PEOPLES’ TRIBUNAL, 55^o SESSION FOR THE WOMEN OF AFGHANISTAN, JUDGEMENT, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001 8-10 October 2025, p. 64, Available at: https://ahrdo.org/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN.pdf

-official decrees, interviews, and UN reports- may eventually inform ICC or UN mechanisms, but its most significant contribution is conceptual: affirming that gender apartheid is a recognizable international crime still awaiting codification.

8. THE NEED FOR AND PATHWAYS TO CODIFY GENDER APARTHEID

In light of persistent, systematic gender-based discrimination and existing gaps in international law, urgent action is required. The fight against gender apartheid cannot be limited to isolated efforts; it demands comprehensive approaches and complementary strategies that advance on multiple fronts.

One initial pathway, as noted above, is to promote an interpretation of existing international law that incorporates a **gender perspective**. The current normative framework can be expanded and strengthened through the adoption of an International Declaration on Gender Apartheid. Such an instrument would not only raise awareness of the gravity of this form of discrimination but also consolidate its normative value by clarifying that gender apartheid constitutes a form of systematic and institutionalised oppression.

At the same time, it is crucial to **recognise gender apartheid as an independent crime**. Following the Taliban's return to power and the intensification of the regime of oppression, calls to codify gender apartheid as a crime against humanity have grown stronger. This initiative is supported by international legal scholars, civil society actors⁶¹, States, the UN Working Group on discrimination against women and girls, the Special Rapporteur on Afghanistan, and the European Parliament.

This recognition may take different forms.

One option is **codification** within a new **treaty on crimes against humanity**. Such proposals have been raised in the context of the negotiations for a **future Convention on the Prevention and Punishment of Crimes against Humanity**⁶², currently under negotiation within the UN General Assembly. This instrument is intended to become the first international treaty dedicated specifically to the prevention and punishment of such crimes. Although the current draft does not yet include gender apartheid, its possible inclusion is under consideration by various UN mechanisms.

Already in 2024, the Working Group on Discrimination against Women and Girls explicitly recommended⁶³ the codification of gender apartheid in the **Draft**

⁶¹ For example, the "End Gender Apartheid" campaign, Available at: <https://endgenderapartheid.today/>

⁶² United Nations, *United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity*, Preparatory Committee, "Draft articles on the prevention and punishment of crimes against humanity", A/C.6/79/L.2/Rev.1 (15 November 2024), Available at <https://docs.un.org/en/A/C.6/79/L.2/Rev.1>

⁶³ United Nations, General Assembly, "Draft articles on prevention and punishment of crimes against humanity: Recommendations from the Working Group on discrimination against women and girls", A/HRC/WG.11/40/1 (15 February 2024), Available at <https://docs.un.org/es/A/HRC/WG.11/40/1>

Convention on Crimes against Humanity⁶⁴, arguing that existing provisions on gender persecution do not adequately capture the magnitude of structural oppression and calling for the explicit inclusion of gender apartheid as an autonomous crime against humanity.

The first meeting of the Preparatory Committee and the Working Group for the UN Conference of Plenipotentiaries took place from 19 to 30 January 2026. During these meetings, UN experts and civil society organisations urged Member States to heed the calls of Afghan women, LGBTQ+ communities, and other activists to include the crime of gender apartheid in the new treaty and to ensure that gender-responsive provisions are respected throughout the instrument. They emphasised that all negotiating States and the UN must commit to inclusive and safe participation by women's organisations in the process, including by guaranteeing equal opportunities for the participation of organisations not accredited by ECOSOC and of individuals with speaking rights. The legitimacy of the instrument, they argued, will depend on whether it enables the meaningful participation of those who are living through the very atrocities the treaty seeks to address and prevent.⁶⁵

Over the next four years, the treaty text will take its final shape. States have until the end of April 2026 to submit amendments to the draft articles, which will be consolidated into a single "compiled text" for negotiations. A Diplomatic Conference will then be held in two three-week sessions, scheduled for early 2028 and 2029, with the possibility of an additional session if necessary. Explicitly incorporating gender apartheid within this framework would represent a decisive step toward its international recognition and punishment.

Finally, another strategic avenue is to **amend the Rome Statute** to expressly include gender apartheid. Pursuant to Article 121, States Parties could propose an amendment to Article 7(1), adding a specific subparagraph defining gender apartheid as an institutionalised regime of systematic oppression and domination of one gender over another, committed with the intent to maintain that regime. This option would not only provide legal clarity, but would also constitute an explicit condemnation of the crime, following a successful precedent: the 2010 Kampala Amendments on the crime of aggression demonstrated that States Parties can expand the catalogue of crimes under the Statute when a clear normative consensus exists.

Acting across these dimensions -interpretative, declaratory, and normative- is not only necessary, but urgent. Each step toward the recognition and codification of gender apartheid strengthens the protection of fundamental rights and reaffirms the international commitment to equality and justice.

⁶⁴ United Nations, *United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity*, Preparatory Committee, "Draft articles on the prevention and punishment of crimes against humanity", A/C.6/79/L.2/Rev.1 (15 November 2024), Available at <https://docs.un.org/en/A/C.6/79/L.2/Rev.1>

⁶⁵ United Nations, Office of the High Commissioner for Human Rights, Press releases, Special procedures, "Treaty on crimes against humanity: States must give Afghan women a central voice and recognise gender apartheid, Experts say", 19 January 2026, Available at: <https://www.ohchr.org/en/press-releases/2026/01/treaty-crimes-against-humanity-states-must-give-afghan-women-central-voice>

While momentum toward codifying gender apartheid has gained significant traction, the international debate has also raised several **objections** that warrant consideration and rebuttal.

One frequently raised argument is that creating a new crime is unnecessary because gender persecution already exists under international criminal law. However, gender persecution and gender apartheid serve distinct and complementary functions, just as racial persecution and racial apartheid coexist in the Rome Statute because they describe different forms of structural violence. While persecution focuses on the severe denial of fundamental rights on discriminatory grounds, apartheid describes an institutionalised regime of domination based on total segregation, systematic control, and the subordination of an entire group. Codifying gender apartheid would therefore capture the scale and specificity of harm that persecution alone does not fully reflect.⁶⁶

Another objection questions the appropriateness of extending the concept of “apartheid,” traditionally associated with racism, to other grounds of discrimination, arguing that doing so could dilute its meaning.⁶⁷ However, the Rome Statute defines apartheid not by the identity of the oppressed group, but by the structure of the system of oppression, allowing its application to other extreme forms of collective subordination. Moreover, if gender apartheid were incorporated into a crimes against humanity treaty, it would be subject to the same high threshold as racial apartheid: it would apply only to exceptionally grave, institutionalised, and ideologically sustained systems of domination, not to “ordinary” (though harmful) forms of gender discrimination. Far from diluting the concept, codification would preserve its rigour and ensure its strict and limited application to situations of total oppression.

A third objection concerns the principle of non-retroactivity in criminal law: even if the crime were codified, it could not be applied to abuses already committed in Afghanistan under the Taliban regime. Nevertheless, codification would generate immediate obligations for States, including the prevention, investigation, and punishment of future violations, as well as enhanced international cooperation. As with the codification of enforced disappearance or torture, formal recognition strengthens accountability and sends a clear political and legal message.⁶⁸

Taken together, these debates reflect not only the conceptual evolution of the term but also the growing need to equip international law with more precise tools to respond to extreme systems of gender-based oppression.

The arrest warrants issued by the International Criminal Court and the hearings of the Madrid People’s Tribunal jointly signal that the world now recognises the

⁶⁶ *Opinio Juris, The Growing Imperative to Recognize and Codify Gender Apartheid: Demonstrating the Need and Responding to Critics (Part II)*, 2025: <https://opiniojuris.org/2025/04/07/the-growing-imperative-to-recognize-and-codify-gender-apartheid-demonstrating-the-need-and-responding-to-critics-part-ii/#:~:text=Perhaps%20the%20most%20common%20critique,a%20subsection%20of%20a%20society>

⁶⁷ Nora Jaber, “*Gender Apartheid and the Limits of Criminalisation*”, EJIL: Talk! - Blog of the European Journal of International Law, 12 January 2026. Available at: <https://www.ejiltalk.org/gender-apartheid-and-the-limits-of-criminalisation/>

⁶⁸ Just Security, *Gender Apartheid Should Be an International Crime*, 2025: <https://www.justsecurity.org/116780/gender-apartheid-should-be-an-international-crime/>

Taliban regime as a structured system, rather than merely a series of isolated abuses. For international law, this marks a critical moment: the recognition of these systemic dynamics must translate into normative codification.

The absence of an explicit reference to gender apartheid carries significant consequences. It limits the tools available to prosecutors, reduces the symbolic and normative reach of accountability, and perpetuates a hierarchy of oppressions in which domination based on race is legally recognised as singular, while domination based on gender remains conceptually and legally diffuse.

Codifying gender apartheid would not expand the scope of international criminal law, but rather complete its symmetry: it would affirm that when domination is institutionalised and intentional, the ground of discrimination cannot mitigate the gravity of the crime nor the obligation to hold its perpetrators accountable.

9. CONCLUSION

The analysis confirms that gender apartheid constitutes a systematic, structural, and intersectional phenomenon that simultaneously affects the social, economic, cultural, and political lives of gender groups such as women and girls. In contexts such as Afghanistan, human rights violations are not isolated incidents, but rather part of an organised regime of subordination and exclusion. Oppression manifests through the denial of access to education, employment, public participation, and essential services, combining gender-based discrimination with factors such as ethnicity, religion, and sexual orientation.

While this report has focused primarily on the situation of women and girls in Afghanistan, it is essential to recognise that systems of gender apartheid also affect, directly or indirectly, individuals with diverse sexual orientations and gender identities. International strategies for accountability and reparation must progressively incorporate a more inclusive approach that guarantees the protection and rights of all persons who suffer persecution on gender-related grounds.

It is evident that the current international legal framework recognises persecution on gender grounds, but does not fully capture the intent, systematic nature, and institutionalisation that characterise gender apartheid. This gap limits the ability of States and the international community to effectively prevent, punish, and remedy these crimes.

Making gender apartheid visible and recognising it as such is essential to reflect the scale and systematic nature of the oppression exercised by institutionalised regimes. Such recognition makes it possible to understand that violence against women and girls is not episodic or isolated, but rather part of a structural regime of domination.

Formal recognition as an autonomous crime under international law provides legal tools to punish perpetrators, guarantee comprehensive reparations for

victims, and strengthen States' obligations to prevent these crimes. Moreover, recognising gender apartheid sends a clear political and social message: the international community will not tolerate systematic oppression based on gender, and acknowledging it is an indispensable step toward justice and equality.

Afghanistan is not a lost cause. It is a test. A test of whether the world will stand firm against gender persecution and gender apartheid, and a test of whether we are prepared to challenge the impunity that has perpetuated violence for decades.

10. RECOMMENDATIONS

To advance toward this objective, RAGAA proposes the following strategic recommendations:

To States:

- Formally recognise gender apartheid as a crime under international law, particularly within the negotiation process of the future Convention on the Prevention and Punishment of Crimes against Humanity, and adopt policies to ensure its prevention, investigation, and punishment.
- Strengthen the collection of evidence on systematic violations of the rights of women and girls who are victims of gender apartheid.
- Incorporate a gender and intersectional perspective into international cooperation and humanitarian assistance.
- Promote the exercise of universal jurisdiction over those responsible for gender apartheid and support international accountability mechanisms.

To international organisations:

- Develop and coordinate specific monitoring mechanisms to document gender apartheid and its systematic manifestations.
- Integrate a gender perspective into normative instruments, policies, and strategies for prevention, punishment, and reparation, ensuring that regimes of structural oppression are made visible and held accountable.
- Support multilateral partnerships that strengthen accountability, victim protection, and the implementation of preventive measures in affected countries.

To civil society and NGOs:

- Document and disseminate evidence of systematic violations, highlighting the structural and institutional nature of gender apartheid.
- Coordinate national and international advocacy and awareness-raising actions, generating political and media pressure on perpetrators and States.

- Support victims through assistance, reparation, and empowerment programs, ensuring that their rights are recognised and protected.

To the public:

- Raise awareness and disseminate information about gender apartheid, recognising it as a structural phenomenon rather than a series of isolated incidents.
- Participate in campaigns and movements that demand State and international action to protect rights and ensure accountability for perpetrators.
- Promote gender equality and respect for the rights of women and girls in all areas of social life, contributing to inclusive societies free from structural oppression.

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