

Frequently Asked Questions

Codifying Gender Apartheid as a Crime against Humanity under International Law

For decades, the term “gender apartheid” has been used to describe systematic gender-based oppression and domination, including by the Taliban regime in Afghanistan in the 1990s. Since the Taliban takeover of August 2021, there has been increased recognition of the escalating gender apartheid in Afghanistan, including by Afghan women human rights defenders, international jurists, the UN Secretary-General and multiple UN leaders, and UN Member States.¹

But gender apartheid has not been formally codified under international law. This leaves victims and survivors of gender apartheid without adequate remedy or reparation for the totality of harms perpetrated against them. In response to this accountability gap, many have called for the codification of a crime of gender apartheid under international law. In March 2023, dozens of prominent Afghan and Iranian jurists and human rights defenders launched the [End Gender Apartheid Campaign](#), urging the international community to recognize gender apartheid under international and domestic law. On 5 October 2023, the End Gender Apartheid Campaign issued a [joint letter and legal brief](#) (“Legal Brief”) endorsed by over 100 leading jurists and public figures,² specifically urging UN Member States to codify the crime of gender apartheid in the UN crimes against humanity treaty. To date, 10 UN Member States have expressed openness to the inclusion of gender apartheid in the treaty.³

This Q&A provides a snapshot of the legal and policy bases for and consequences of the proposed codification of the crime against humanity of gender apartheid. For more information, please visit <https://endgenderapartheid.today>.

1. How can gender apartheid be defined as a crime against humanity under international law?

The crime of apartheid was first recognized and codified under international law in response to the systematic oppression and domination of Black and non-white people in southern Africa from 1948 to the early 1990s. Apartheid was defined in the [Apartheid Convention](#) and the [Rome Statute](#) as a crime against humanity comprising inhumane acts aimed at maintaining systematic domination by one racial group over another. The Taliban’s ever-deepening subjugation of Afghan women, girls, and others evokes the dystopian ambition of the South African apartheid government and warrants a similar legal response.

The End Gender Apartheid Campaign proposes the following definition for the crime against humanity of gender apartheid, mirroring the core elements of the crime of apartheid in the Draft Articles on Prevention and Punishment of Crimes against Humanity (“Draft Articles”)—the proposed starting point for the UN crimes against humanity treaty, which largely replicates the Rome Statute:

“inhumane acts ... committed in the context of an institutionalised 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.”

¹ See UN Comments on Gender Apartheid, <https://endgenderapartheid.today/download/2025/UN%20Comments%20on%20Gender%20Apartheid.pdf>; Member State Comments on Gender Apartheid, <https://endgenderapartheid.today/download/2025/Member%20State%20Comments%20on%20Gender%20Apartheid.pdf>.

² The full list of signatories is available at <https://endgenderapartheid.today/legal-brief.php>.

³ Afghanistan, Australia, Austria, Brazil, Chile, Iceland, Luxembourg, Malta, Mexico, and the Philippines.

2. How is the crime of gender apartheid distinct from the crime of gender persecution?

Apartheid is legally unique because it requires the specific intent to maintain an institutionalized regime of systematic oppression and domination, as well as the animating context of such a regime. The crime of gender persecution, which entails the “severe deprivation of fundamental rights” where victims are targeted because of their (perceived) identity on the basis of gender, requires neither such intent nor context. The crimes of gender apartheid and gender persecution can and should coexist just as apartheid and racial persecution already coexist in the Rome Statute and more broadly in international law. These crimes are mutually reinforcing, and where the two crimes involve overlapping facts, they can be charged cumulatively to capture the full extent of wrongful conduct.

3. Why is the UN crimes against humanity treaty an appropriate avenue for codification?

As the first major UN treaty on core crimes since the 1998 Rome Statute, the crimes against humanity treaty offers a unique opportunity to fill the accountability gap that currently leaves victims and survivors of institutionalized, systematic gender-based oppression and domination without adequate recourse. The treaty is a particularly suitable and pragmatic avenue for international action since it presents an ongoing codification opportunity. Following the debates in the Sixth Committee, it is clear that many States view the treaty as an opportunity for both codification and progressive development. Inclusion of the crime of gender apartheid could therefore show the progress made since the Rome Statute, including emerging norms like gender apartheid.

4. How can the crime of apartheid include gender when its original context was specific to race?

The codification of the crime of apartheid sought to squarely confront and dismantle the totalizing governance infrastructure utilized to implement and uphold a system of racial superiority in southern Africa. In calling their situation “gender apartheid,” women from Afghanistan have found parallels in how, through a web of laws, regulations, and policies, the Taliban has institutionalized and enforced gender superiority.⁴ This ideological system lies at the heart of the Taliban’s governance and impacts every aspect of the daily lives of women and girls.

There are significant similarities between the institutionalized regimes of systematic race/gender-based oppression and domination of southern Africa in the past and of the Taliban regime in Afghanistan in the present. In both contexts, members of the oppressed group were/are deliberately and systematically cut off from equal education, work, healthcare, justice, political power, movement, and any opportunities for autonomy and advancement. The dystopian aim was/is to maintain an institutionalized regime that perpetuates the subjugated group’s subordinated position, whether by race or gender.

Many jurists and activists involved in dismantling apartheid in southern Africa have voiced support for the codification of gender apartheid,⁵ recognizing the parallels in the respective regimes’ projects of domination and oppression, as well as the ways that the gender apartheid codification effort can educate a new generation about the horrors of apartheid-era southern Africa. Feminist anti-apartheid activists have also highlighted their own *gendered* experiences of apartheid as a motivating factor in their understanding and support for the codification of gender apartheid.

⁴ See Afghanistan Justice Archive, <https://afghanistanjustice.org/>.

⁵ See Joint Letter from South African Jurists and Anti-Apartheid Experts, <https://endgenderapartheid.today/south-african-jurists-letter.php>.

5. *What would the legal and policy consequences of codification in the crimes against humanity treaty be for States Parties?*

Codification of the crime of gender apartheid in the crimes against humanity treaty would give victims and survivors a clear legal avenue to hold perpetrators—whether state or individual—to account for the totality of harms perpetrated against them. Based on the existing Draft Articles, if the crime of gender apartheid is included, States parties would be obligated to criminalize the crime in their domestic laws and take steps to prevent, punish, and not engage in the perpetration of gender apartheid. Alleged State violations of the treaty would be subject to inter-State dispute resolution, including potentially before the International Court of Justice.

The proposed legal obligation on the part of States parties, including third States, not to take part in the perpetration of gender apartheid can be compared to a due diligence obligation. The legal obligation does not, however, dictate specific policy responses. The international community’s response to the southern African apartheid system—comprising a suite of policy measures, including sanctions, economic, cultural, and other boycotts, and financial divestments—offers an example of the types of measures States can take in response to gender apartheid, though none would necessarily be obligatory as a matter of law. Indeed, continued engagement including for purposes of protecting and strengthening women’s rights and broader human rights safeguards, and for other protected needs such as humanitarian assistance, would remain permissible.

6. *How is gender defined in the crimes against humanity treaty?*

Gender, like all other grounds in the Draft Articles, is not defined.⁶ Under international law, gender encompasses the concept of “sex” or biological characteristics, but also takes into account social constructions, including the roles, behaviors, and attributes assigned to women, men, girls, and boys. A broad understanding of gender is utilized by the [International Criminal Court’s Office of the Prosecutor](#), as well as other accountability bodies, such as the [UN International, Impartial, and Independent Mechanism on Syria](#). A group of [UN human rights experts](#) has also underscored the importance of understanding gender broadly, emphasizing the idea that gender is a social construct that can vary and evolve within and across societies. States parties to the crimes against humanity treaty would have the flexibility to interpret gender pursuant to domestic and/or international frameworks.

7. *Will the codification of the crime against humanity of gender apartheid open the doors to State responsibility for any institutionalized gender-based discrimination?*

The proposed definition for the crime of gender apartheid stipulates a very high legal threshold due to the requirement to show specific intent to maintain an institutionalized regime of systematic gender-based oppression and domination. Although gender-based discrimination continues to pervade most governance structures and legal systems, demonstrating this intent requirement and the broader animating context requirement will be quite difficult. Indeed, the exceedingly rare finding of apartheid is a case in point. In addition, the crime of gender apartheid would also have to meet the chapeau elements of any crime against humanity, *i.e.*, it would have to be committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack.

⁶ This includes other grounds included in draft article 2, paragraph 1(h), such as “political,” “racial,” “national,” “ethnic,” “cultural,” or “religious.” See International Law Commission, Draft Articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, paras. 41-42 (2019).