

Frequently Asked Questions

Codifying Gender Apartheid as a Crime against Humanity under International Law

Since the takeover of Afghanistan in 2021, the Taliban has launched an extreme, systematic gender-based war, issuing and enforcing over 150 laws, regulations, and policies¹ that severely restrict the daily lives of women, girls, and others—systematically cutting them off from equal education, work, healthcare, justice, political power, and movement, erasing them from public life, and relegating them to child bearers, child rearers, and free domestic labor at home.

These atrocities have a name: gender apartheid. 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.² In recent years, recognizing the parallels between apartheid in southern Africa in the past and the Taliban’s institutionalized regime of systematic domination and oppression today, UN leaders, UN Member States, Afghan and international jurists, and anti-apartheid experts have warned of deepening gender apartheid in Afghanistan.³

But gender apartheid has not been legally recognized under international law. This leaves victims and survivors of gender apartheid without adequate remedy or reparation for the totality of conduct and harms committed. In response, 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,⁴ 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.⁵

¹ See generally “Afghanistan Justice Archive,” <https://afghanistanjustice.org/>.

² See, e.g., D. Lyn Hunter, “Gender Apartheid Under Afghanistan’s Taliban,” Berkeleyan, 17 March 1999 (citing the late Afghan human rights defender Sima Wali); HR/CN/908 (citing UN Special Rapporteur on the elimination of intolerance and all forms of discrimination based on religion or belief, Abdelfattah Amor).

³ See End Gender Apartheid Campaign, “UN Comments on Gender Apartheid,” <https://endgenderapartheid.today/download/2025/UN%20Comments%20on%20Gender%20Apartheid.pdf>; End Gender Apartheid Campaign, “Member State Comments on Gender Apartheid,” <https://endgenderapartheid.today/download/2025/Member%20State%20Comments%20on%20Gender%20Apartheid.pdf>; Joint Call to Amend the Draft Crimes Against Humanity Convention to Encompass Gender Apartheid, list of signatories, <https://endgenderapartheid.today/download/2025/EGA%20Joint%20Letter%20to%20Amend%20the%20Draft%20Crimes%20Against%20Humanity%20Convention%20-%20English.pdf>; A/HRC/56/25, para. 88.

⁴ The full list of signatories is available at <https://endgenderapartheid.today/legal-brief.php>.

⁵ Afghanistan, Australia, Austria, Brazil, Chile, Iceland, Luxembourg, Malta, Mexico, and the Philippines.

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 southern 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."

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

Apartheid is legally unique because it requires the institutionalization of a regime of systematic oppression and domination, as well as the intent to maintain 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 animating context nor intent.

The crimes of gender apartheid and gender persecution can and should coexist just as apartheid and race-based persecution already coexist in the Rome Statute and more broadly in international law. As the International Law Commission clarified in 1996, while the crimes of apartheid and race-based persecution both involve the "denial of the human rights and fundamental freedoms of individuals based on an unjustifiable discriminatory criterion"—and as required of all crimes against humanity, the commission of inhumane acts "in a systematic manner or on a large scale to constitute a crime against humanity"—the crime of apartheid "further requires that the discriminatory plan or policy has been institutionalized."⁶

⁶ International Law Commission, "Draft Code of Crimes against the Peace and Security of Mankind with commentaries, Yearbook of the International Law Commission," 1996, vol. 2, Part 2, p. 49, https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf. There, the ILC was referring to the

The crimes of apartheid and persecution are mutually reinforcing; when the two crimes involve overlapping facts, they can be charged cumulatively to capture the full extent of wrongful conduct.⁷

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 leaves victims and survivors of institutionalized regimes of systematic gender-based oppression and domination without adequate recourse. The treaty is a particularly suitable and pragmatic avenue for international action as it offers an ongoing opportunity for codification. 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 of law, including with respect to gender-based crimes. Inclusion of new gender-based crimes could therefore show the progress made since the Rome Statute, including emerging norms like gender apartheid.

The proposed amendment would not require reopening and amending already-adopted international instruments like the Rome Statute and/or the International Convention on the Suppression and Punishment of the Crime of Apartheid, though these complementary avenues can also be pursued.

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 have institutionalized and enforced gender superiority.⁸ This ideological system lies at the heart of the Taliban’s governance and impacts every aspect of the daily lives of women, girls, and LGBTQI+ individuals.

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, recognizing the parallels in the respective regimes’

potential enumeration of a crime of institutionalized discrimination on racial, ethnic or religious grounds, *i.e.*, the “crime of apartheid under a more general denomination.” Id.

⁷ See End Gender Apartheid Campaign, “Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid,” October 2023, Part III,

<https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief.pdf>.

⁸ See “Afghanistan Justice Archive,” <https://afghanistanjustice.org/>.

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.

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

Codifying 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 crimes committed against them. Under the existing Draft Articles, inclusion of the crime of gender apartheid would oblige States parties to criminalize it in their domestic laws and to take steps to prevent, punish, and not engage in the perpetration of gender apartheid, among other crimes against humanity. Alleged State violations of the treaty would be subject to inter-State dispute resolution, including potentially before the International Court of Justice. It is important to emphasize that codification would not apply retroactively and, therefore, could be prosecuted or litigated only with respect to ongoing or future crimes.

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, however, does not 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. However, none would necessarily be obligatory as a matter of law.

Continued engagement, including for the protection and strengthening of women’s rights and broader human rights safeguards, and for other protected needs such as humanitarian assistance, would remain permissible. Indeed, the due diligence obligation would help mitigate the risk of aid diversion and help ensure humanitarian aid reaches its intended beneficiaries.

As for refugee assistance, a finding of gender apartheid would not *newly* oblige third States to grant asylum and refugee status. For example, States are already under an international obligation to grant protection to victims and survivors of gender-based persecution.⁹

5. *How is gender defined in the Draft Articles?*

Gender, like all other grounds in the Draft Articles, is not defined.¹⁰ Under international law, gender encompasses the concept of “sex” or biological characteristics, as well as 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

⁹ See, e.g., European Court of Justice, AH & FN v. Federal Office for Immigration and Asylum, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290687&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4760698>.

¹⁰ 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 *Yearbook of the International Law Commission, 2019*, vol. 2, Part 2, paras. 41-42, https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf.

[the Prosecutor](#) and other accountability bodies, such as the [UN International, Impartial, and Independent Mechanism on Syria](#). A group of [UN experts](#) has also underscored the importance of a broad understanding of gender, emphasizing that it 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 the term “gender” in accordance with domestic and/or international frameworks.

6. *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 high legal threshold due to the requirement to demonstrate both the institutionalization of a regime of systematic gender-based oppression and domination and the intent to maintain such a regime. Although gender-based discrimination continues to pervade most governance structures and legal systems, demonstrating the intent and the broader animating context requirement will be quite difficult. Indeed, the exceedingly rare finding of apartheid is a case in point.

The distinct elements of the proposed crime of gender apartheid—and high legal threshold—also help to ensure respect for cultural differences, in line with the equal enjoyment of all human rights without discrimination. At the same time, international law is clear that cultural or religious pretexts cannot be used to justify violations of international law, including international criminal law and international human rights law.¹¹ Indeed, it is important to underscore that a core component of the effort to codify the crime of gender apartheid is in fact to protect the equal rights of women, girls, and others to participate in cultural life and practices, as long-protected under international law.

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. It is important to distinguish between the requisite widespread or systematic nature of the commission of inhuman acts and the systematic nature of the animating contextual element of gender-based oppression and domination.

7. *Who has supported the End Gender Apartheid Campaign?*

The End Gender Apartheid Campaign is part of a global movement of grassroots human rights defenders, international jurists, international human rights and gender justice organizations,¹² and UN leaders committed to dismantling and preventing gender apartheid regimes through the codification of gender apartheid as a crime against humanity under international law.

Over 100 jurists, scholars, public figures, and civil society leaders have endorsed the End Gender Apartheid Campaign’s letter to UN Member States and legal brief, including:

¹¹ See, e.g., A/HRC/56/25, para. 18; Declaration on the Elimination of Violence against Women, A/RES/48/104, art. 4 (“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”).

¹² Multiple international human rights organizations have called for gender apartheid codification, including Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), and the International Service for Human Rights (ISHR).

- Afghan women's rights defenders Shaharzad Akbar, Fawzia Koofi, and Judge Najla Ayoubi;
- Nobel laureates Shirin Ebadi, Malala Yousafzai, Nadia Murad, and Narges Mohammadi;
- South African jurists Richard Goldstone, Navi Pillay, Rashida Manjoo, and Professor Penelope Andrews;
- international criminal law experts, including former International Criminal Court (ICC) Chief Prosecutor Fatou Bensouda, former ICC judge Elizabeth Odio Benito, and former International Criminal Tribunal for Rwanda Chief of Prosecutions and former Special Court for Sierra Leone Prosecutor Stephen J. Rapp;
- public figures including former President of Ireland Mary Robinson, former President of Mongolia Tsakhiagiin Elbegdorj, former Prime Minister of Norway Gro Harlem Brundtland, former Secretary of State of the United States Hillary Clinton, and former Foreign Affairs Minister of Chile Antonia Urrejola; and
- gender justice experts Hina Jilani, Baroness Helena Kennedy, and Professors Leila Sedat, Christine Chinkin, Karima Bennoune, and Rangita de Silva de Alwis.

8. What are the next steps for the proposed crimes against humanity treaty?

April 30, 2026 marks the initial deadline for written drafting proposals from States to the UN Secretary-General for the upcoming negotiation of the crimes against humanity treaty. This represents the first opportunity for States to make technical drafting proposals to the draft articles. States should, individually or jointly, make a proposal to enumerate the crime of gender apartheid in Article 2 of the Draft Articles. The Preparatory Committee will then meet in April 2027, followed by negotiations in January 2028 and January 2029.