

Elements of the Proposed Crime against Humanity of Gender Apartheid

Background

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—both in which the dystopian intent was/is to maintain an institutionalized regime that perpetuates the subjugated group’s subordinated position—UN leaders,³ UN Member States,⁴ Afghan and international jurists,⁵ and anti-apartheid experts⁶ have warned of deepening gender apartheid in Afghanistan.

Accountability Gap

Despite increased recognition of the term “gender apartheid,” it has not been criminalized under international law. One cannot prevent and punish what one does not legally recognize. The failure to name and punish the institutionalization of a totalizing regime of systematic gender-based oppression—beyond the chapeau elements intrinsic to all crimes against humanity—and the intent to maintain such a regime results in a glaring impunity gap.

This omission calls for a gender-competent response that centers the lived experiences of victims and survivors and reflects the totality of conduct and harms committed. Gender justice advocates have long struggled to ensure full recognition of gender-based crimes, often forced to retrofit gendered experiences into legal frameworks that did not account for gender. While significant progress has been made in recognizing a broader framework of gender-based harms, including through the Rome Statute, significant gaps remain.⁷ Processes of codification, crystallization, and creation are key to the progressive development of international law, including efforts to address gaps in legal frameworks.⁸ This can be seen, for example, through the inclusion of sexual and gender-based crimes (crystallization and creation), and apartheid, persecution, and enforced disappearances (codification) in the Rome Statute.

Gender-based crimes recognize and redress diverse harms, each with distinct legal interests. For example, while the crimes of rape, forced pregnancy, and forced marriage may all involve an underlying act of sexual violence, the elements of these crimes protect distinct interests—sexual, reproductive, or relational autonomy, respectively. In the context of gender apartheid, although gender persecution and gender apartheid may share underlying acts, the crimes protect different harms and legal interests.⁹ Specifically, no existing crime against humanity, including gender persecution, captures the institutionalization of systematic gender-based oppression and domination, nor the intent to maintain such a regime. Just as the elements of the crime of apartheid distinguish it from all other international crimes, including the crime of race-based

persecution,¹⁰ the proposed crime of gender apartheid is distinct from gender-based persecution. The codification of gender apartheid would help to fill a lacuna in international law, surfacing the lived experiences of victims and survivors.

The movement to codify a crime against humanity of gender apartheid is informed by the ongoing situation in Afghanistan, but is also proposed to apply to situations of atrocity not yet in existence—situations that will, should they come into being, demand action.

Proposed Definition of Gender Apartheid

The End Gender Apartheid Campaign¹¹ is part of a global movement of grassroots human rights defenders,¹² international jurists,¹³ international human rights and gender justice organizations,¹⁴ and UN leaders¹⁵ committed to dismantling and preventing gender apartheid regimes through the codification of gender apartheid as a crime against humanity under international law, including in the proposed Crimes against Humanity Convention before the UN General Assembly Sixth Committee.¹⁶ Codification in the treaty could open the doors to robust legal and policy responses,¹⁷ obliging States parties to mobilize and take steps to prevent, punish, and not engage in the perpetration of gender apartheid.

Mirroring the core elements of the crime of apartheid under international criminal law, the End Gender Apartheid Campaign defines gender apartheid 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.”

Recommendations for UN Member States

To date, 10 Member States from across regions have expressed openness to gender apartheid codification in the crimes against humanity treaty.¹⁸ Going forward—particularly in advance of the 30 April 2026 deadline for proposals for textual amendments to the Draft Articles on Prevention and Punishment of Crimes Against Humanity (Draft Articles)—States may consider putting forward one of the following definitional recommendations:

1. Amend Article 2(2)(h) of the Draft Articles (bolded text):

“the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups, **or by one gender group over any other gender group or groups**, and committed with the intention of maintaining that regime.

2. Add new Article (2)(1)(...) and 2(2)(...):

(2)(1)(...) - gender apartheid;

(2)(2)(...) - “the crime of gender apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, 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.

Elements¹⁹

Element	Indicia ²⁰	Situation of Afghanistan ²¹
Perpetrator committed an inhumane act against one or more persons referred to in article 2(1) of the Draft Articles, or of a character similar to any of those acts	<p>Inhumane acts include</p> <ul style="list-style-type: none"> • murder;²² • imprisonment or other severe deprivation of physical liberty;²³ • enforced disappearances;²⁴ • torture²⁵ or cruel, inhuman or degrading treatment or punishment;²⁶ • rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or sexual violence;²⁷ • persecution,²⁸ including of those who oppose apartheid;²⁹ • enslavement;³⁰ • legislative and other measures calculated to prevent a group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development 	<p>The Taliban have:</p> <ul style="list-style-type: none"> • committed murder, executions, and public flogging of individuals because of their gender and/or so-called “moral” offenses, such as adultery and same-sex relations;³³ • arbitrarily detained, forcibly disappeared, and subjected women, girls, and LGBTQI+ individuals to torture and severe ill-treatment, including sexual violence, for violating Taliban decrees, peacefully protesting, and/or advocating for gender equality;³⁴ • forced marriages, including child marriages to Taliban members, notwithstanding a stated prohibition on forced marriages,³⁵ as well as potential enslavement;³⁶ and • persecuted individuals because of their gender and/or because they oppose the Taliban’s gender apartheid, depriving them of fundamental rights, such as the rights to equality and non-discrimination, access to justice, freedoms of expression and opinion, association and peaceful assembly, religion or belief, and movement, and rights to education, privacy and family life, work, and health.³⁷ <p>The Taliban have imposed legislative measures³⁸ that:</p> <ul style="list-style-type: none"> • prevent women from participation in: <ul style="list-style-type: none"> ○ political life (banned from public speech, political appointments, and public positions,³⁹ with zero women in national or local decision-making bodies⁴⁰); ○ social life (banned from free movement, free association, education, access to baths, parks, and gyms⁴¹); ○ economic life (banned from most types of employment, from working in beauty salons to non-governmental organizations,⁴² with recent restrictions including a ban on Afghan women staff and contractors from accessing UN premises⁴³); and ○ cultural life (banned from free religion or belief and participation in art, music, sports, and creative expression⁴⁴) • preclude their full development (banned from

	<p>of such a group or groups;³¹</p> <ul style="list-style-type: none"> measures, including legislative measures, designed to divide the population along gender lines by the creation of separate reserves.³² 	<p>equal healthcare, education, and employment, with 80 percent of Afghan women between the ages of 18 and 29 not in education, employment, or training and a rising mental health crisis among women and girls reporting “rising levels of anxiety, hopelessness, and despair”⁴⁵); and</p> <ul style="list-style-type: none"> divide the population along gender lines (segregated in both public and private life, with women and girls banned from most public spaces and even from being visible in their homes⁴⁶).
<p>Conduct committed in the context of an institutionalized regime of systematic oppression and domination by one gender group over any other gender group or groups</p>	<p>Institutionalization of a discriminatory plan or policy,⁴⁷ including through law and enforced by legal institutions,⁴⁸ by one gender group over any other. This may include legislative measures regulating family life, education, work, healthcare, public services, and political participation.⁴⁹</p> <p>Gender, like other enumerated grounds, is not defined in the Draft Articles.⁵⁰</p>	<p>Since seizing power, the Taliban have established a governance system premised on gender-based subjugation⁵¹ and have consistently taken steps to institutionalize and entrench this vision through laws, regulations, and policies, which are enforced by state agents.⁵²</p> <p>For instance, the Taliban have:</p> <ul style="list-style-type: none"> appointed an all-male government;⁵³ dismantled the legal infrastructure for gender equality, justice, and progress, including by suspending the constitution and dissolving independent oversight mechanisms, including the Independent Human Rights Commission and parliament;⁵⁴ dismantled the Ministry of Women’s Affairs and replaced it with the Ministry for the Promotion of Virtue and Prevention of Vice;⁵⁵ dissolved specialized courts for women and barred women from serving as judges;⁵⁶ imposed legislative measures that prevent women from participation in public life and preclude their full development⁵⁷; promulgated in the official Gazette, the Promotion of Virtue and the Prevention of Vice Law (PVPV Law),⁵⁸ which formalized many of the Taliban’s decrees and policies on gender, specified enforcement mechanisms, and proscribed punishments.⁵⁹ Key provisions include: <ul style="list-style-type: none"> imposition of strict dress and behavior codes, including full coverage for women and the prohibition of women’s voices in public;⁶⁰ restrictions on the free movement of

		<p>women, including through public and private transportation means, such as taxis;⁶¹</p> <ul style="list-style-type: none"> ○ prohibition of same-sex relations, including lesbianism;⁶² and ○ creation of broad and arbitrary authority and criteria of the PVPV Ministry and their <i>muhtasibs</i> (or “enforcers”)⁶³ to implement and enforce the law.⁶⁴
Intention of maintaining that regime	<p>Intent can be inferred from various facts and circumstances,⁶⁵ including:</p> <ul style="list-style-type: none"> ● deeds and utterances;⁶⁶ ● existence of a plan or policy;⁶⁷ ● the systematic manner of the acts;⁶⁸ ● a methodical way of planning;⁶⁹ ● the nature;⁷⁰ scale;⁷¹ and/or duration of the acts;⁷² ● the repetition of destructive and discriminatory acts;⁷³ ● knowledge of the discriminatory nature of a crime and participation in the system of discrimination;⁷⁴ and ● general context.⁷⁵ 	<p>The Taliban’s actions to progressively oppress and dominate women, girls, and LGBTQI+ individuals are intended to reinforce and further their institutionalized regime, including by:</p> <ul style="list-style-type: none"> ● statements that justify gender-discriminatory decrees and bans based on male superiority and the subordinate status of women;⁷⁶ ● systematically targeting women, girls, and LGBTQI+ individuals through the issuance and enforcement of over 150 gender-discriminatory laws, regulations, and policies;⁷⁷ ● building an enforcement system that relies not only on those deputized by the Taliban,⁷⁸ but also the coerced enforcement of gender-based rules by family, community members, and clerics,⁷⁹ thus entrenching the norms within society and extending the Taliban’s control of women and girls from the public sphere to the private sphere;⁸⁰ ● dismantling independent oversight mechanisms, relevant government bodies, and the justice system, severely limiting any recourse for actions taken by the Taliban⁸¹; ● targeting individuals perceived as opposing gender-discriminatory policies, including men and boys;⁸² ● penalizing criticism of legislative documents in the media and public;⁸³ and ● replacing traditional schools with madrassas, perpetuating the regime through the indoctrination of future generations with the Taliban’s gender ideology.⁸⁴

Frequently Asked Questions about the Codification of Gender Apartheid

1. 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.”⁸⁵

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.⁸⁶

2. 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.

3. 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.⁸⁷ 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,⁸⁸ 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. 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.⁸⁹

5. How is gender defined in the Draft Articles?

Gender, like all other grounds in the Draft Articles, is not defined.⁹⁰ 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 the Prosecutor⁹¹ and other accountability bodies, such as the UN International, Impartial, and Independent Mechanism on Syria.⁹² 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.⁹³ 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.⁹⁴

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.

¹ Permanent People’s Tribunal, 55^o Session for the Women of Afghanistan, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001, Judgement, 11 December 2025, p. 12, https://afghanistantribunal.com/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN_15-dec-2025_FINAL-VERSION.pdf. See also “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 End Gender Apartheid Campaign, “UN Comments on Gender Apartheid,” <https://endgenderapartheid.today/download/2025/UN%20Comments%20on%20Gender%20Apartheid.pdf>.

⁴ End Gender Apartheid Campaign, “Member State Comments on Gender Apartheid,” <https://endgenderapartheid.today/download/2025/Member%20State%20Comments%20on%20Gender%20Apartheid.pdf>.

⁵ A/HRC/56/25, para. 88. See also Azadah Raz Mohammad & Akila Radhakrishnan, “The Growing Imperative to Recognize and Codify Gender Apartheid: Demonstrating the Need and Responding to Critics,” *Opinio Juris*, 4 July 2025, <https://opiniojuris.org/2025/04/07/the-growing-imperative-to-recognize-and-codify-gender-apartheid-demonstrating-the-need-and-responding-to-critics-part-i/>.

⁶ See End Gender Apartheid Campaign, “Joint Letter from South African Jurists and Anti-Apartheid Expert,” 21 February 2024, <https://endgenderapartheid.today/south-african-jurists-letter.php>.

⁷ ABILA Study Group on Crimes Against Humanity, “Gender-Competency, Inclusivity, and Non-Discrimination,” ABILA, 1 December 2025, https://www.ila-americanbranch.org/wp-content/uploads/2025/12/Gender-Competency-Inclusivity-and-Non-Discrimination_ABILA_CAH_final.pdf.

⁸ Leila Nadya Sadat, “Crimes Against Humanity and Customary International Law,” Washington University in St. Louis Legal Studies Research Paper, No. 25-03-06, March 2025 (forthcoming publication), p. 12, <https://papers.ssrn.com/sol3/Delivery.cfm/5183587.pdf?abstractid=5183587&mirid=1>.

⁹ For a further explanation of the distinction between gender-based persecution and gender apartheid, see FAQs below, Question 1.

¹⁰ For example, the International Law Commission (ILC) distinguished between institutionalized discrimination (apartheid) and persecution as crimes against humanity by noting that institutionalized discrimination requires that “the discriminatory plan or policy has been institutionalized, for example, by the adoption of a series of legislative measures denying individuals who are members of a particular racial, ethnic or religious group of their human rights or freedoms.” 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.

¹¹ For more information about the End Gender Apartheid Campaign, see <https://endgenderapartheid.today/>.

¹² The End Gender Apartheid Campaign was founded by Afghan and Iranian women human rights defenders, jurists, and experts.

¹³ Supporters include South African jurists Justice Richard Goldstone, Navi Pillay, Rashida Manjoo, and Professor Penelope Andrews, 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.

¹⁴ 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).

¹⁵ See End Gender Apartheid Campaign, “UN Comments on Gender Apartheid,” <https://endgenderapartheid.today/download/2025/UN%20Comments%20on%20Gender%20Apartheid.pdf>.

¹⁶ See End Gender Apartheid Campaign, “Joint Letter to Amend the Draft Crimes Against Humanity Convention to Encompass Gender Apartheid,” 5 October 2023, <https://endgenderapartheid.today/download/2025/EGA%20Joint%20Letter%20to%20Amend%20the%20Draft%20Crimes%20Against%20Humanity%20Convention%20-%20English.pdf>.

¹⁷ See FAQs below, Question 4.

¹⁸ End Gender Apartheid Campaign, “Member State Comments on Gender Apartheid,” October 2025, <https://endgenderapartheid.today/download/2025/Member%20State%20Comments%20on%20Gender%20Apartheid.pdf>. Member State positions include express support for codification of the crime of gender apartheid (Afghanistan, Luxembourg, Malta) including enumeration of a specific definition mirroring that of apartheid (Malta) and recognition of the present accountability gap (Chile); support for criminalizing the underlying elements of gender apartheid (Brazil); and general openness to (Mexico, the Philippines) or consideration of the gender apartheid proposal (Australia, Austria, Iceland). Further States have used the term, however not in reference to the crimes against humanity treaty or codification.

¹⁹ This chart does not address the additional element requiring that the conduct be committed as part of a widespread or systematic attack directed against a civilian population, with knowledge that the conduct was part of said attack. See FAQs below, Question 6. For a more detailed exposition of the rationale to codify gender apartheid see End Gender Apartheid Campaign, “Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid,” October 2023, <https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief.pdf>.

²⁰ Due to the lack of jurisprudence on apartheid, the indicia in this chart draw from the Rome Statute, Apartheid Convention, and their respective travaux préparatoires and commentaries, as well as the text and case law of other crimes against humanity and core international crimes with analogous elements.

²¹ For a comprehensive overview of Taliban decrees and enforcement actions, see “Afghanistan Justice Archive,” <https://afghanistanjustice.org/>.

²² Rome Statute, art. 7(1)(a); Apartheid Convention, art. 2(a)(i).

²³ Rome Statute, art. 7(1)(e); see also Apartheid Convention, art. 2(a)(iii) (“arbitrary arrest and illegal imprisonment of the members of a racial group or groups”).

²⁴ Rome Statute, art. 7(1)(i).

²⁵ Rome Statute, art. 7(1)(f); Apartheid Convention, art. 2(a)(ii).

²⁶ Apartheid Convention, art. 2(a)(ii); see also *id.* (“infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity”).

²⁷ Rome Statute, art. 7(1)(g)-1-6.

²⁸ Rome Statute, art. 7 (1) (h).

²⁹ Apartheid Convention, art. 2(f).

³⁰ Rome Statute, art. 7(1)(c).

³¹ Apartheid Convention, art. 2(c).

³² Apartheid Convention, art. 2(d).

³³ A/HRC/59/25, paras. 27, 56; A/HRC/56/25, paras. 55, 76.

³⁴ See, e.g., A/HRC/53/21, paras. 29, 92; A/HRC/WG.11/40; A/HRC/59/25, paras. 56, 58; Human Rights Watch, “Afghanistan under the Taliban: The Crime against Humanity of Gender Persecution,” 6 September 2023, para. 25,

https://www.hrw.org/sites/default/files/media_2023/09/Gender%20Persecution%20final_060923.pdf.

³⁵ See, e.g., A/HRC/WG.11/40/1, para. 25; “UNAMA Update on the Human Rights Situation in Afghanistan: April - June 2025,” 10 August 2025, p. 4; Amnesty International, “Death in slow motion: Women and girls under Taliban rule,” 27 July 2022, at 63; Civic Engagement Project, “Dec6-06092023,” Afghanistan Justice Archive, <https://afghanistanjustice.org/decrees/dec6-06092023/>.

³⁶ See A/HRC/56/25, para. 85.

³⁷ A/HRC/53/21, paras. 92-94; Permanent People’s Tribunal, 55^o Session for the Women of Afghanistan, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001, Judgement, 11 December 2025, pp. 34-36, https://afghanistatribunal.com/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN_15-dec-2025_FINAL-VERSION.pdf; International Criminal Court, “Situation in Afghanistan: ICC Pre-Trial Chamber II issues arrest warrants for Haibatullah Akhundzada and Abdul Hakim Haqqani,” 8 July 2025, <https://www.icc-cpi.int/news/situation-afghanistan-icc-pre-trial-chamber-ii-issues-arrest-warrants-haibatullah-akhundzada>. See also, e.g., International Commission of Jurists, “The Taliban’s War on Women: The crime against humanity of gender persecution in Afghanistan,” March 2023, <https://www.icj.org/wp-content/uploads/2023/05/The-Talibans-war-on-women-the-crime-against-humanity-of-gender-persecution-in-Afghanistan-FINAL-VERSION.pdf>; Human Rights Watch, “Afghanistan under the Taliban: The Crime against Humanity of Gender Persecution,” 6 September 2023, para. 25, https://www.hrw.org/sites/default/files/media_2023/09/Gender%20Persecution%20final_060923.pdf.

³⁸ See generally “Afghanistan Justice Archive,” <https://afghanistanjustice.org/>.

³⁹ A/HRC/53/21, paras. 24-32.

⁴⁰ UN News, “Afghan Women Face Near Total Social, Economic and Political Exclusion,” 17 June 2025, <https://news.un.org/en/story/2025/06/1164476>.

⁴¹ A/HRC/53/21, paras. 33-43, 51-56.

⁴² A/HRC/53/21, paras. 44-50.

⁴³ UN News, “Afghanistan: New restrictions on women nationals working for UN, put aid efforts at risk,” 11 September 2025, <https://news.un.org/en/story/2025/09/1165823>.

⁴⁴ A/HRC/53/21, paras. 66-74.

⁴⁵ 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/2025/08/afghanistan-ten-facts-about-the-worlds-most-severe-womens-rights-crisis>.

⁴⁶ 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/2025/08/afghanistan-ten-facts-about-the-worlds-most-severe-womens-rights-crisis>; Sonika, “Banned Windows, Silenced Lives: Taliban Ban on Windows That Overlook Neighboring Homes,” Afghanistan Justice Archive, 17 February 2025, <https://afghanistanjustice.org/in-their-words/banned-windows-silenced-lives/>.

⁴⁷ 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.

⁴⁸ John Dugard & John Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” European Journal of International Law, vol. 24, No. 3, August 2013, p. 873.

⁴⁹ Apartheid Convention, art. 2(c). The Apartheid Convention stipulates that the crime of apartheid is perpetrated in the context of similar policies and practices of segregation and discrimination as practiced in southern Africa. See Apartheid Convention, art. 1(1).

⁵⁰ The ILC noted in its commentaries that while gender is undefined in the draft articles, so too are other terms, including “political,” “racial,” “national,” “ethnic,” “cultural,” or “religious.” The ILC also referred to some potential sources for the interpretation of gender including the ICRC’s “Addressing the Needs of Women Affected by Conflict,” General Recommendation 28 from the Committee on the Elimination of All Forms of Discrimination against Women, reports by UN experts including UN Doc. A/HRC/35/23 and A/73/152, and the ICC’s 2014 Policy Paper on Sexual and Gender-Based Crimes. International Law Commission, Draft Articles para. 42.

⁵¹ Permanent People’s Tribunal, 55^o Session for the Women of Afghanistan, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001, Judgement, 11 December 2025, pp. 12, 63, https://afghanistatribunal.com/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN_15-dec-2025_FINAL-VERSION.pdf. See also Hudson Institute, The Taliban’s Political Theory: ‘Abd al-Hakim al-Hakim al-Haqqani’s Vision for the Islamic Emirate, 29 July 2024, <https://www.hudson.org/terrorism/talibans-political-theory-abd-al-hakim-al-haqqanis-vision-islamic-emirate-cole-bunzel> (explaining how Abd al-Hakim, the supreme judge (*qadi al-qudat*) of Afghanistan, asserts that “women are physically, cognitively, and spiritually inferior to men, and this is clear from both scripture and the centuries-long Islamic scholarly tradition”). The Taliban’s gender-based subjugation also has intersectional dimensions and harms, “affect[ing] not only cisgender women and girls, but also LGBTQ+ women, girls and gender-diverse persons, ethnic and religious minority women and girls, women and

girls with disabilities, women and girls in remote and rural areas, widows and female-headed households, internally displaced and refugee women, and others from marginalized or at-risk communities.” A/HRC/59/25, Annex, para. 1.

⁵² United Nations Assistance Mission in Afghanistan, “Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan,” April 2025, p. 18, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁵³ A/HRC/51/6, paras. 14-15.

⁵⁴ Heather Barr, “For Afghan Women, the Frightening Return of ‘Vice and Virtue,’” Human Rights Watch, 29 September 2021, <https://www.hrw.org/news/2021/09/29/afghan-women-frightening-return-vice-and-virtue>.

⁵⁵ A/HRC/51/6, para. 17. See also Heather Barr, “For Afghan Women, the Frightening Return of ‘Vice and Virtue,’” Human Rights Watch, 29 September 2021, <https://www.hrw.org/news/2021/09/29/afghan-women-frightening-return-vice-and-virtue>.

⁵⁶ A/HRC/51/6, para. 23.

⁵⁷ See above element.

⁵⁸ The Islamic Emirate of Afghanistan Ministry of Justice, “The Propagation of Virtue and Prevention of Vice Law (unofficial translation),” Afghanistan Analysts Network, August 2024, <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>.

⁵⁹ Law on the Propagation of Virtue and Prevention of Vice, art. 2. The UN Special Rapporteur on human rights in Afghanistan has noted that “[t]he enactment of the PVPV law thus reaffirms the Taliban leader as the supreme authority of law under the de facto authorities, while the process of enactment confirms its intentional and institutionalized nature.” A/HRC/58/74, para. 29.

⁶⁰ The Islamic Emirate of Afghanistan Ministry of Justice, “The Propagation of Virtue and Prevention of Vice Law (unofficial translation),” Afghanistan Analysts Network, August 2024, arts. 13, 22 (10) 22(12), 22(13), <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>. See also A/HRC/58/74, paras. 41-48.

⁶¹ The Islamic Emirate of Afghanistan Ministry of Justice, “The Propagation of Virtue and Prevention of Vice Law (unofficial translation),” Afghanistan Analysts Network, August 2024, art. 20, <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>. See also A/HRC/58/74, paras. 51-52.

⁶² The Islamic Emirate of Afghanistan Ministry of Justice, “The Propagation of Virtue and Prevention of Vice Law (unofficial translation),” Afghanistan Analysts Network, August 2024, arts. 22(3), 22(4), 22(7), <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>.

⁶³ The Taliban have employed over 3,300 PVPV inspectors across the country, training them, and other “muhtasibs,” on the implementation and enforcement of the law. United Nations Assistance Mission in Afghanistan, “Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan, April 2025, p. 8, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁶⁴ The Islamic Emirate of Afghanistan Ministry of Justice, “The Propagation of Virtue and Prevention of Vice Law (unofficial translation),” Afghanistan Analysts Network, August 2024, arts. 5, 6, <https://www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2024/08/Law-on-Virtue-and-Vice-Basic.pdf>.

⁶⁵ The indicia presented here draw from jurisprudence related to other intentional crimes, including genocide, persecution, and terrorism.

⁶⁶ International Criminal Tribunal for Rwanda, Prosecutor v. Muhimana, Trial Judgment, Case No. IT-95-1B-T, 28 April 2005, para. 496.

⁶⁷ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Popović, Trial Judgment, Case No. IT-05-88-T, 10 June 2010, para. 830; International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Jelisić, Appeals Judgment, IT-95-10-A, 5 July 2001, para. 48.

⁶⁸ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Popović, Trial Judgment, Case No. IT-05-88-T, 10 June 2010, para. 823; International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Krnojelac, Appeals Judgment, Case No. IT-97-25-A, 17 September 2023, para. 184.

⁶⁹ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Popović, Trial Judgment, Case No. IT-05-88-T, 10 June 2010, para. 823.

⁷⁰ International Criminal Tribunal for Rwanda, Prosecutor v. Muhimana, Trial Judgment, Case No. IT-95-1B-T, 28 April 2005, para. 496.

⁷¹ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Popović, Trial Judgment, Case No. IT-05-88-T, 10 June 2010, para. 823.

⁷² Mechanism for International Criminal Tribunals, Prosecutor v. Mladić, Appeals Judgment, 8 June 2021, para. 313.

⁷³ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Popović, Trial Judgment, Case No.

IT-05-88-T, 10 June 2010, para. 823.

⁷⁴ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Kvočka*, Appeals Judgment, Case No. IT-98-30/1-A, 28 February 2005, para. 367.

⁷⁵ ICTY, *Prosecutor v. Popović*, Trial Judgment, Case No. IT-05-88-T, 10 June 2010, para. 823. See also ICTY, *Prosecutor v. Kvočka*, Appeals Judgment, Case No. IT-98-30/1-A, 28 February 2005, para. 366.

⁷⁶ Permanent People's Tribunal, 55^o Session for the Women of Afghanistan, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001, Judgement, 11 December 2025, p. 63, https://afghanistantribunal.com/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN_15-dec-2025_FINAL-VERSION.pdf. See also Hudson Institute, *The Taliban's Political Theory: 'Abd al-Hakim al-Hakim al-Haqqani's Vision for the Islamic Emirate*, 29 July 2024, <https://www.hudson.org/terrorism/talibans-political-theory-abd-al-hakim-al-haqqanis-vision-islamic-emirate-cole-bunzel>.

⁷⁷ Permanent People's Tribunal, 55^o Session for the Women of Afghanistan, Madrid, ICAM, C. de Serrano, 9-11, Salamanca, 28001, Judgement, 11 December 2025, p. 12, https://afghanistantribunal.com/wp-content/uploads/2025/12/PPT_JUDG_WOMEN_AFGANISTAN_15-dec-2025_FINAL-VERSION.pdf. See also "Afghanistan Justice Archive," <https://afghanistanjustice.org/>.

⁷⁸ The PVPV law established provincial councils to implement the law. 28 of 34 provinces have such a council composed of members of the Taliban's local governance structure. United Nations Assistance Mission in Afghanistan, "Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan," April 2025, p. 7, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁷⁹ United Nations Assistance Mission in Afghanistan, "Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan," April 2025, p. 6, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁸⁰ For example, the Taliban punishes not only women for violations of their strict codes, but also male family members, and has demanded "guarantees of good future members from family members" as a condition of release from detention. Data collected by the UN has shown a near doubling of enforcement actions by family members, religious leaders, and community leaders within a 2-month period in 2024. United Nations Assistance Mission in Afghanistan, "Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan," April 2025, p. 11, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁸¹ See above element.

⁸² A/HRC/56/25, para. 91; International Criminal Court, "Situation in Afghanistan: ICC Pre-Trial Chamber II issues arrest warrants for Haibatullah Akhundzada and Abdul Hakim Haqqani," 8 July 2025, <https://www.icc-cpi.int/news/situation-afghanistan-icc-pre-trial-chamber-ii-issues-arrest-warrants-haibatullah-akhundzada>.

⁸³ United Nations Assistance Mission in Afghanistan, "Report on the Implementation, Enforcement and Impact of the Law on the Propagation of Virtue and Prevention of Vice in Afghanistan," April 2025, pp. 18-19, https://unama.unmissions.org/sites/default/files/unama_pvpv_report_10_april_2025_english.pdf.

⁸⁴ A/79/330, para. 38.

⁸⁵ 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 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.*

⁸⁶ 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>.

⁸⁷ See "Afghanistan Justice Archive," <https://afghanistanjustice.org/>.

⁸⁸ See End Gender Apartheid Campaign, "Joint Letter from South African Jurists and Anti-Apartheid Experts," 21 February 2024, <https://endgenderapartheid.today/south-african-jurists-letter.php>.

⁸⁹ 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>.

⁹⁰ 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.

⁹¹ International Criminal Court, "Office of the Prosecutor Policy on Gender-Based Crimes," December 2023, pp. 10-11, <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

⁹² International, Impartial and Independent Mechanism on Syria, "IIIM Gender Strategy and Implementation Plan," 30 September 2022, p. 8, <https://iiim.un.org/wp-content/uploads/2023/02/Gender-Strategy->

[Implementation-TechnicalEnglish.pdf](#).

⁹³ Special Procedures, UN Human Rights Council, Joint Statement by UN Special Procedures Mandate Holders, “Reaffirming the Centrality of Gender as a Tool for Advancing Equality and All Human Rights,” 28 August 2025, <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/2025-08-28-joint-statement-reaffirming-the-centrality-of-gender.pdf>.

⁹⁴ 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.”).