

FACT SHEET NO. 2: ADDED VALUE OF THE GENDER APARTHEID APPROACH

“If the same restrictions were applied to men, or on the basis of race, what would we do?”
—Shaharзад Akbar, Former Chairperson, Afghan Independent Human Rights Commission¹

Gender apartheid is a system of governance, based on laws and/or policies, which imposes systematic segregation of women and men and may also systematically exclude women from public spaces and spheres. **Taliban Afghanistan** is a paradigmatic example of gender apartheid.

Apartheid is an **illegal situation to be ended**, not an object for “constructive engagement.” The apartheid framework underscores the **legal obligations of other states** to take action to end this illegal situation and not be complicit, rather than simply making statements denouncing it.

Consequences of using the term “gender apartheid”

- Using an apartheid framework implicates not only the immediate perpetrators but also the **international obligations of all states and international actors that interact with them.**
- Under apartheid law, other States have to take effective measures to suppress apartheid, and have heightened obligations to implement relevant U.N. resolutions.
- Second states must **refrain from any action that implies² recognition of**, or lends support or assistance to, the commission of apartheid.
- The apartheid framing puts pressure on governments, international organizations, and transnational corporations to avoid engaging with the Taliban in ways that show tolerance for and help perpetuate grave abuses.

Added value of the “apartheid” concept

The term apartheid offers a factually accurate description that can generate global legal accountability for the situation in Afghanistan. **(See Fact Sheet No. 3.)**

- The international legal concept of apartheid **centers the systematic nature of the abuses** and the wide-ranging global legal obligations they entail, and carries a “special stigma.”
- Racial apartheid law contributed to ending the practice in Southern Africa. The concept of “gender apartheid” can do the same in Afghanistan.
- The term “apartheid” enhances the **“mobilization of shame,”** which is a critical international law compliance tool.
- Gender apartheid should be **recognized as an international crime** just as racial apartheid is.

¹ This fact sheet is drawn from Karima Bennoune, The International Obligation to Counter Gender Apartheid in Afghanistan, 54 Columbia Human Rights Law Review (2022); Karima Bennoune, The Best Way to Mark the Anniversary of Taliban Takeover? Launch a Global Campaign Against Gender Apartheid in Afghanistan, Just Security; Dari translation available at: <https://www.justsecurity.org/82673/82673-the-best-way-to-mark-the-anniversary-of-taliban-takeover-launch-a-global-campaign-against-gender-apartheid-in-afghanistan-dari/>.

² Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, ¶ 126 (June 21, 1970).

- Traditionally, human rights treaties cast the state as the primary vehicle for implementation of human rights norms. However, under apartheid the government or de facto authorities operate as the engine of governance based on systematic discrimination. **Change is thus impossible without significant, concerted international action.**
- The concept of apartheid is necessary **when the ordinary international human rights law model**, centered on the state, **cannot work** to counter the policies of those who govern through institutionalized systematic discrimination.
- The term “apartheid” implies the **pariah status of its perpetrators** as the enemies of all humankind. It also **elevates the status of the practice’s local opponents**. The apartheid government of South Africa was ejected from the UN General Assembly while the African National Congress held observer status.
- The **failure to employ such a heightened concept** and enhanced response to a regime whose well-known policies are as relentlessly misogynistic as the Taliban sends a message to women everywhere that their rights do not matter and **undermines the international legal framework** guaranteeing women’s rights.
- The legal framework responding to racial apartheid succeeded in making the international community and the U.N. system react effectively while explicitly supporting local anti-apartheid movements. An analogous approach must be applied today to gender apartheid.

What the gender apartheid framework can add to other strategies for tackling Taliban abuses

- Gender apartheid galvanizes the international community to act, in a situation like Afghanistan, where the **de facto authorities are the engine of systematic discrimination and exclusion**.
- Gender apartheid centers the systemic nature of this type of oppression. Only such an approach adequately implicates the **institutionalized and ideological nature of the abuses** in Taliban Afghanistan. This framework complements other concepts such as “gender-based persecution³” but can also add unique dimensions to the response because it **implicates second states** and more completely characterizes the situation on the ground.

Why states must urgently adopt the gender apartheid framework

- To **fulfill states’ international legal commitments** on sex discrimination across every document in the International Bill of Human Rights.
- To meet the specific target that governments around the world have set in the Sustainable Development Goals to “achieve gender equality” by 2030
- To most effectively **tackle systematic Taliban abuses (see Fact Sheet No. 3)**: this approach marshals the resources of the international community, and is the best hope for ensuring the credibility, legitimacy, and effectiveness of the international legal response.
- The situation in Afghanistan grows worse by the day, with women human rights defenders expecting further restrictions. Engaging with the Taliban has not led to change, nor will it. **A new galvanizing framework is necessary: gender apartheid.**

For further information, see Fact Sheet No. 1, “What is Gender Apartheid?” and Fact Sheet No. 3, “Gender Apartheid in Afghanistan.”

³ See Rome Statute of the International Criminal Court art. 7(2)(g), 2187 U.N.T.S 90, 93.