

February 21, 2024

To Distinguished Representatives of Member States of the United Nations

Joint Letter from South African Jurists and Anti-Apartheid Experts on Codifying the Crime of Gender Apartheid in the Draft Crimes Against Humanity Convention

Excellencies and Country Representatives:

We are South African legal scholars, legal practitioners and jurists, who were involved in the struggle to end racial apartheid in our country and have also been engaged in the establishment of a constitutional non-racial democracy since 1994.

We address this letter to you in the hope that you will give serious consideration to codifying the crime of gender apartheid in the Draft Crimes Against Humanity Convention currently under consideration before the Sixth Committee of the UN General Assembly. The fact that gender apartheid is being perpetrated by the Taliban regime in Afghanistan has been increasingly recognized by the international community in recent years, including by legal scholars and advocates, and states from diverse regions, as well as by the UN Secretary-General Antonio Guterres, the UN High Commissioner for Human Rights, Volker Turk, the UN Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett, and the UN Working Group on Discrimination Against Women and Girls.

In the past few decades, we have observed significant global progress in addressing gender-based violence and gender equality under international law, and we believe that codifying gender apartheid is an essential component of that continued progress. This could offer significant relief to many victims and survivors who otherwise would not be entitled to adequate recourse from the international community and from state actors and could lead to a more effective and concerted international response in the face of gender-based oppression.

As has been noted, the crime of gender apartheid stands out as unique and pernicious in intent, animating context, and consequence. It is what legal scholar Patricia Williams has referred to as “spirit murder”, an institutionalized system of dehumanization and erasure, a regime of systematic oppression and domination in which victims suffer untold oppression and persecution. The distinctive elements of the crime are set out in the [October 2023 legal brief](#) issued by the Atlantic Council and Global Justice Center, and the fundamental need to recognize the particularly ruinous effect of this type of government model based on gender oppression has been persuasively argued by Karima Bennouna in her compelling [2022 piece](#) in the Columbia Human Rights Law Review.

The Taliban’s ever deepening and institutionalized oppression of Afghan women and girls is a case in point. As the government of Malta aptly noted in its [2023 written comments](#) on the Draft Crimes Against Humanity Convention: “[t]he codification of the crime of gender apartheid will enable victims and survivors – present and future – to hold perpetrators to account for the totality of crimes committed by systematized oppression which the crime of gender persecution alone cannot and does not capture.” We endorse this view.

Since the UN Secretary-General [warned](#) the international community that in Afghanistan, “unprecedented, systemic attacks on women’s and girls’ rights and the flouting of international obligations are creating gender-based apartheid,” multiple UN experts, Member States, and Afghan women’s rights defenders have warned of the deteriorating situation of women and girls in Afghanistan. In September 2023, UN Women Executive Director Sima Bahous specifically [called](#) on Member States to support an intergovernmental process to explicitly codify gender apartheid under international law. She insisted that “the tools the international community has at its disposal were not created to respond to mass, state-sponsored gender oppression. This systematic and planned assault on women’s rights is foundational to the Taliban’s vision of state and society and it must be named, defined, and proscribed in our global norms, so that we can respond appropriately”. We concur with Ms. Bahous’ assessment and reiterate her appeal for codification.

The international community responded comprehensively to the crime of racial apartheid, forcing accountability on the South Africa apartheid state, and imposing the obligation of member states at the United Nations to eradicate the institutionalized regime of systematic oppression and domination of black South Africans. Broadening the definition of the crime of apartheid to include gender would enable a structured global approach that is responsive to the institutionalized systems of domination and oppression of women, girls and others. We note that international law criminalizes both racial apartheid and racial persecution. It should do the same for gender apartheid and gender persecution.

We staunchly support the grassroots [End Gender Apartheid Campaign](#) launched last International Women’s Day (March 2023) by prominent Afghan and Iranian jurists and women’s rights defenders, urging States to expand the legal definition of apartheid in international and national laws to encompass gender, as well as the subsequent [letter and brief](#) issued by the Atlantic Council and Global Justice Center in October 2023 specifically seeking codification of the crime against humanity of gender apartheid in the Draft Crimes Against Humanity Convention. As such, we hope that the potential treaty will include the following definition (amending Article 2(2)(h) of the current draft articles): “‘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 another gender group or groups**, and committed with the intention of maintaining that regime.”

Just as the international opponents of racial apartheid played a significant role in supporting South African anti-apartheid advocates, your government could make a significant contribution to the advancement of gender justice and women’s human rights, and to supporting frontline women human rights’ defenders challenging gender apartheid at great risk to themselves. An expedient way of doing so would be proposing and supporting the inclusion of the definition of gender apartheid including through statements of support during the April 2024 meeting of the 6th Committee when the Draft Crimes Against Humanity Convention will be discussed further.

Thank you for your consideration.

Sincerely,

[In alphabetical order]

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Waheeda Amien, Professor of Law, University of Cape Town

Penelope Andrews, John Marshall Harlan II Professor of Law and Director, Racial Justice Project, New York Law School; former President and Dean, Albany Law School; former Dean, University of Cape Town.

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The Hon. Edwin Cameron, former Justice of the Constitutional Court of South Africa

The Hon. Dennis Davis, former Judge President, Competition Appeal Court; former Judge, High Court, Western Cape Division; Professor Emeritus, University of Cape Town

Jackie Dugard, Senior Lecturer, Institute for the Study of Human Rights, Columbia University; Visiting Professor of Law, University of the Witwatersrand

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