



Civic
Engagement
Project.

Gender Apartheid in Afghanistan

A Toolkit for Advocates

What is Gender Apartheid?

Gender apartheid occurs when a system of governance is deliberately designed to systematically oppress, discriminate against, and subjugate a specific gender group or groups, allowing the dominant group to maintain its dominance and benefit from their subjugation. This includes laws, regulations, policies, and practices, including enforcement methods, that seek to institutionalize a system of gender-based domination. In contexts like Afghanistan and Iran, the systematic and institutionalized nature of this oppression is designed to maintain the dominance of men and the state over women.

Understanding Apartheid: Racial Apartheid in South Africa

Apartheid, a term deeply rooted in South Africa's colonial history, denotes a period of state-sanctioned racial segregation and discrimination that lasted from 1948 to the early 1990s. Instituted by the National Party government, it established a system where non-white populations—and disproportionately, Black people—were subjected to a series of racially discriminatory and oppressive laws, policies and practices curtailing their fundamental rights and freedoms and opportunities for advancement and autonomy. This regime separated communities, restricted movement, and ensured that the white minority retained economic, political, and societal dominance over the majority black inhabitants and other racial groups.

The crime of apartheid was recognized by the General Assembly in 1966, the Security Council in 1984, and further by the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973. The latter mandates states to legislate against apartheid and recognize universal jurisdiction¹ over the offense. Later, the Rome Statute of the International Criminal Court in 1998 defined apartheid as “inhuman acts... committed within an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups... with the intention of maintaining that regime.” The International Law Commission in 2001 also recognized apartheid as a crime against humanity. Ultimately the international recognition of the crime of racial apartheid helped to mobilize legal and political efforts to ultimately dismantle the South African apartheid system.

¹ Universal jurisdiction is a legal principle that allows a national court to prosecute individuals for serious crimes against international law, such as genocide, war crimes, crimes against humanity, and torture, regardless of where the crime was committed, the nationality of the suspect, or the nationality of the victims. This principle is based on the idea that certain crimes are so grave that they affect the international community, and therefore, any state should have the authority to bring the perpetrators to justice. “that certain crimes are so serious that the duty to prosecute them transcends all borders.”

Codification of Gender Apartheid

Women of Afghanistan along with their international allies have long demanded the recognition of gender apartheid (GA) in Afghanistan, starting from the first round of the Taliban regime rule 1996-2001. This demand is rooted in historical advocacy, such as testimonies at the 1998 Tribunal of the Global Campaign for Women's Human Rights.

In January 1999, then-UN Special Rapporteur on the elimination of intolerance and all forms of discrimination based on religion or belief Abdelfattah Amor explained that the Taliban had "introduced what is in point of fact a system of apartheid in respect of women." UN Special Procedures and other UN experts have since reaffirmed the applicability of the concept of Gender Apartheid in Afghanistan over the years, with recent calls for the development of new tools and standards recognizing GA.

Codification of GA as an international crime could open up pathways to universal jurisdiction cases. Universal jurisdiction is a principle in international law that allows states to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused or victim's nationality, country of residence, or any other relation with the prosecuting entity. It is invoked for crimes considered so heinous that they affect the international community, such as genocide, crimes against humanity, and war crimes.

End Gender Apartheid Campaign Petition

Join the gender apartheid campaign and support their efforts to raise awareness & promote action.

Visit & sign the petition at:
www.endgenderapartheid.today

The Imperative of Recognizing Gender Apartheid in Afghanistan

Following the Taliban takeover in August 2021, women's fundamental human rights have been legally and systematically stripped away. The Taliban regime employs a range of governance and control mechanisms that not only dominate and subjugate but also dehumanize women. And this subjugation and oppression of women is key for sustaining the very existence of the regime because it both feeds their ideological basis and produces a mass that is resistant to control and oppression. The structure of the governance of the Taliban is based on this philosophy of control, and top-down approach.

- Since their takeover, the Taliban have issued 140 decrees, out of which 85 of them specifically aimed at curtailing women's rights - it's more than all other decrees targeting other sectors.
- We are the only country on Earth where every fundamental human rights are legally stripped away from women. These decrees have imposed bans on education, employment, freedom of movement, freedom of speech, access to aid and health services, the right to protest, and

the practice of cultural activities such as participation in sports. Even activities like going to a park or a beauty salon are prohibited.

- The Taliban systematically dismantled all existing mechanisms, laws, policies and institutions designed to eliminate violence and harassment against women.
 - This includes the Elimination of Violence Against Women Law, signed in 2009 to protect women from various abuses, including forced marriage. The Afghan Independent Human Rights Commission, the Commission to Eliminate Violence Against Women, shelters and safe houses for women victims of domestic violence, civil society-led protection and empowerment programs, and women-led organizations all are demolished. They even relocated women seeking shelter from domestic violence to prisons.

Women are left without any means of access to justice.

The highest judicial office of the previous government, the Attorney General's Office, was renamed the General Directorate for Monitoring and Follow-up of Decrees and Directives. This restructuring has played a significant role in curtailing the rights of women. The restrictions and rules imposed continue to become more brutal and draconian.

Violating these decrees can lead to violence, imprisonment, or even death. Over the past two years, women who resist have faced house raids, arbitrary arrests, imprisonment, gang rape, severe torture, and even death. The Taliban have killed some of these women, disposing of their bodies across the city as a deterrent to others, preventing them from raising their voices.

These edicts and their enforcement represent a system of governance and control mechanisms that systematically dehumanize and marginalize women, transcending mere verbal declarations.

Potential Opportunities to codify GA within International Law

The UN General Assembly's legal committee known as the Sixth Committee is currently discussing a proposed crimes against humanity treaty. The Draft Articles on the Prevention and Punishment of Crimes against Humanity, the potential basis for such a treaty, includes the crime of racial apartheid and thus serves as a potential basis for expansion to include the crime of gender apartheid.

The following amendment (in bolded text) to the definition of the "crime of apartheid" contained in Article 2(2)(h) of the Draft Crimes Against Humanity Convention is proposed:

“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

Momentum for recognizing Gender Apartheid as a crime against humanity is building. Notably, UN Secretary-General António Guterres and Sima Bahous, Executive Director of UN Women, have recognized the dire situation in Afghanistan as Gender Apartheid, with Bahous calling on Member States of the Security Council to support “an intergovernmental process to explicitly codify gender apartheid under international law.” In February 2024, the UN Working Group on discrimination against women and girls specifically called for the inclusion of gender apartheid in the potential crimes against humanity treaty. Before the Sixth Committee, nine countries including Australia, Brazil, Malta, Mexico, the United States, the Philippines, Chile, Iceland, Canada and Austria have expressed support for the consideration of this inclusion.

This means that the exploration of gender apartheid is arguably already part of the record for a future treaty. At the next Sixth Committee session on 10 October 2024, Member States will consider the International Law Commission's recommendation to proceed to negotiations of the treaty by the General Assembly or by an international diplomatic conference. Garnering sufficient international support for the treaty at large will be vital in the intervening months.

Implications of recognition of gender apartheid

The legal recognition of gender apartheid would have profound implications. For de facto authorities, it would necessitate accountability and potential legal consequences. For women in Afghanistan, it would mean acknowledgment of their suffering and steps towards justice.

- It recognizes that we are dealing with not just a set of isolated incidents or isolated bad actors, but an entire institutionalized regime that has put discrimination against women at the heart of its governing strategy.
- State parties would be obligated to take steps to prevent and punish and not to engage in gender apartheid.
- Like in South Africa, codification could prompt and mobilize a coordinated international response using all diplomatic, political, and legal modes of resistance, including sanctions,

boycotts, and isolation of the Taliban. Of course, the response does not have to be identical, and I would underscore that engagement would still be permissible – so long as such engagement does not engage in the acts of gender apartheid. For instance, recognition of gender apartheid could help bolster and strengthen the existing sanctions regime against the Taliban. Most existing sanctions are centered on counterterrorism measures rather than gender or women's rights issues.

- Acknowledging Gender Apartheid will ensure that our engagement with the Taliban is closely monitored and principled, preventing any normalization or recognition without thorough consideration. It would create an additional layer of due diligence akin to third state responsibility.
- Create awareness, raise pressure, and lead to the introduction of new laws that criminalize gender-based violence and provide a legal framework for holding the perpetrators accountable.
- State parties will be obliged to adopt legislative, judicial, and administrative measures to prosecute and punish individuals responsible for acts prohibited by the Convention.
- Enable any party to call upon the UN to take Charter-based action to prevent the crime of apartheid.

Join the Cause

Educate yourself: Engage in awareness and learning by reading about the issue and discussing it with friends and colleagues. This will provide a strong foundation for advocacy efforts, fostering empathy, mobilizing support, and influencing decision-makers.

Sign the End Gender Apartheid Campaign petition: Join the gender apartheid campaign and support their efforts to raise awareness and promote action. Visit and sign the petition at: <https://endgenderapartheid.today>

Initiate a debate at the national level: Engage foreign parliaments and government institutions in the countries you reside in to recognize gender apartheid and consider its potential codification as a crime of gender apartheid.

Engage with activists during the ongoing UN negotiations: At this critical time, collaborate with civil society and activists to influence UN member states during ongoing negotiations on an international treaty codifying crimes against humanity. Highlight the need to address gender apartheid and its severe consequences.

Organize discussions and panels: Take the initiative to organize discussions and panels on gender apartheid within your organization, think-tanks, public libraries, or small communities. If you require experts to speak on the topic, feel free to contact us.



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