



Factsheet: International Criminal Court

1. What is the International Criminal Court? What types of cases do they hear?

The [International Criminal Court \(ICC\)](#) is a permanent court based in The Hague that investigates, prosecutes, and tries individuals accused of the most serious crimes affecting the world—genocide, crimes against humanity, war crimes, and aggression. Unlike the International Court of Justice (ICJ), which focuses on state responsibility, the ICC prosecutes and holds [individuals criminally accountable](#) for their actions. Any individual accused of crimes, regardless of their political positions—be they leaders, military commanders, or heads of state—can be brought before the court under the ICC’s authority.

Individuals can be brought before the court under circumstances defined in the Rome Statute, the treaty that governs the Court, specifically when they are nationals of a country that is a party to the ICC, or when they are alleged to have committed an offense on the territory of a country that is a party to the ICC. Where a country has not joined the ICC, the Court can act in situations referred by the UN Security Council.

2. What is the ICC doing in Afghanistan? Do they have a case?

The ICC has been examining the [situation in Afghanistan](#) since November 2017. At the time, the Office of the Prosecutor (OTP) requested permission to investigate allegations that Afghan National Security Forces, the Taliban and their affiliates, and members of the US armed forces committed war crimes and crimes against humanity on Afghan territory. Initially denied, the Prosecutor was granted permission by the ICC’s Appeals Chamber in March 2020 to initiate an investigation into crimes committed in Afghanistan since May 2003 (when Afghanistan joined the Court) or offenses related to the situation in Afghanistan since July 2002.

The investigation was deferred again, at Afghanistan’s request, in 2020. It was finally resumed in October 2022, following the Taliban takeover and a request from the Prosecutor to resume in September 2021, when the Court determined that Afghanistan was not conducting “genuine” investigations adequate to meet the Court’s complementarity standards. In requesting reauthorization to open, the Prosecutor announced that he would focus his investigation on crimes committed by the Taliban and the Islamic State-Khorasan Province (IS-K), while deprioritizing investigations into other parties, including the Afghan National Security Forces and U.S. armed forces. The Prosecutor’s decision to deprioritize certain aspects of the investigation has raised concerns and been criticized by [human rights organizations](#).



In November 2024, six [State Parties](#) to the ICC—Chile, Costa Rica, France, Luxembourg, Mexico, and Spain—jointly referred the situation in Afghanistan to the ICC Prosecutor. This referral expressed deep concern over the severe deterioration of human rights in Afghanistan, particularly affecting women and girls, and urged the Prosecutor to consider crimes committed against women and girls after August 2021 within the ongoing investigation into the situation in Afghanistan.

In [January 2025](#), the ICC's OTP announced that it had requested arrest warrants for Taliban Supreme Leader Haibatullah Akhundzada and the Chief Justice of the "Islamic Emirate of Afghanistan," Abdul Hakim Haqqani, for the crime against humanity of gender persecution. Focusing on the severe deprivations of the fundamental rights of women, girls, and LGBTQI+ individuals, the request for arrest warrants highlights the dire situation of gender-based discrimination and persecution in Afghanistan, including the denials of the rights to physical integrity and autonomy, free movement and free expression, education, private and family life, and free assembly. The OTP alleges that these rights deprivations were accompanied by a litany of Rome Statute crimes, including murder, imprisonment, torture, rape, and other forms of sexual violence, enforced disappearance, and other inhumane acts.

The Pre-Trial Chamber has yet to rule on this request for arrest warrants. Still, if granted, they will form the basis for the potential arrest and transfer of Haibatullah Akhundzada and Abdul Hakim Haqqani to the ICC for trial. In addition, the OTP has indicated that these are the *first* applications for arrest warrants and that [more are forthcoming](#) for other senior Taliban members.

3. What types of violations does the ICC prosecute? Can they prosecute violations of women's rights?

The ICC prosecutes individuals for the most serious crimes of concern to the international community - genocide, crimes against humanity, war crimes, and aggression. The Rome Statute, in defining these crimes, includes a range of gender-based crimes including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity. In addition, the [OTP](#), under Article 54 of the Rome Statute, is required to give particular consideration to sexual violence, gender-based violence, and violence against children when investigating and prosecuting crimes.

However, even when gender-based crimes are defined in legal statutes, history has shown that they are often overlooked and not properly understood at all stages of legal proceedings, starting with investigations. To address these issues, the OTP has developed and issued a series



of policies related to gender-based crimes to guide the office's work. All these policies are relevant to the situation in Afghanistan.

- **Policy on Gender Based Crimes (2014 & 2023)**

In 2014, the ICC OTP first issued a policy paper on sexual and gender-based crimes, outlining the Office's approach to integrating a gender perspective into all areas of its work to fulfill its mandate to investigate and prosecute gender-based crimes effectively. This policy was updated in 2023 to reflect new court decisions, clarify and expand key concepts related to gender-based crimes, introduce the idea of a gender-competent analysis, and integrate a survivor-centric and trauma-informed approach into all its work. Notably, the new policy recognized the concept of reproductive crimes as falling within the mandate of the Court, as well as an approach to using the category for "other inhumane acts as a crime against humanity" to include types of gender-based harms not specified in the Rome Statute, demonstrating the Office's willingness to consider emerging understandings of gender-based violence, which may be helpful in the context of bringing the concept of gender apartheid to the Court.

- **Policy on the Crime of Gender Persecution (2022)**

Under the Rome Statute, gender is one of the bases for the crime against humanity of persecution—the first formal recognition of this concept in international law. The policy seeks to ensure effective investigation and prosecution of gender persecution, focusing on acts that specifically target individuals based on their gender, including violence, discrimination, and other forms of harm. Unfortunately, the ICC's first prosecution of this crime resulted in a [complex decision](#), with a majority of the Trial Chamber ultimately finding no criminal culpability for gender persecution in the *Al-Hassan* case. Considering that the two requests for arrest warrants for Taliban leaders are based solely on gender persecution, this policy and a systematic approach by the OTP to investigate and make the case for gender persecution will be necessary to deliver justice for victims of gender-based harm in Afghanistan.

- **Policy on Slavery Crimes (2024)**

The ICC's most recent policy addressing gender-based crimes is its policy on Slavery Crimes. This policy presents the first comprehensive approach to slavery crimes, including the slave trade, and puts forward a framework for recognizing, investigating, and prosecuting the institutions and practices of slavery. While this may not initially appear relevant to Afghanistan, the policy identifies certain practices, such as forced marriage and child brides, which can reveal both a servile system and the vulnerability to slavery crimes. Additionally, former Special Advisor on



Slavery Crimes, Patricia Sellers, has specifically noted that the situation of the [bacha bazi](#) may be implicated by this framework.

4. Can the ICC prosecute gender apartheid?

Currently, gender apartheid is not a crime recognized by the Rome Statute, though there are some ongoing discussions about amending the Rome Statute to include the crime. However, that doesn't mean it cannot be included in cases against the Taliban. At a minimum, gender apartheid can be brought in to help understand the context of gender-based violations committed by the Taliban—how violations that fall directly under the Rome Statute, including rape and other forms of gender-based violence, torture, murder, and arbitrary detention—create an institutionalized system of oppression and domination based on gender.

In addition, it may be possible for the OTP to charge gender apartheid as the crime against humanity of an "[other inhumane act](#)." Other inhumane acts is considered a catch-all provision that permits the prosecution of crimes that are similar in nature and gravity to other Rome Statute crimes but that are not explicitly enumerated. For example, the crime of forced marriage has been prosecuted this way [at the ICC](#) (and in other international tribunals). To meet this requirement, the OTP would need to satisfy both the contextual elements of a crime against humanity ("a widespread or systematic attack directed against any civilian population, with knowledge of the attack"), the specific definition of the crime ("the perpetrator inflicted great suffering, or serious injury to body or mental or physical health, by means of an inhumane act"), and that the inhumane act was of comparable gravity to other crimes against humanity defined in the Rome Statute.

[Proponents of the codification](#) of gender apartheid point out that, although a variety of gender-based crimes exist under the Rome Statute, it is only gender apartheid that captures the unique animating context and intent of apartheid systems—to maintain an institutionalized system of oppression and domination. Accordingly, to ensure justice for the totality of the harm suffered by victims, gender apartheid should be charged alongside other gender-based crimes, including gender-persecution, under the concept of "cumulative charging" at the ICC.

5. How can victims, individuals, and groups from Afghanistan engage with the ICC?

The Rome Statute allows [victims and survivors](#) not only to present testimony as witnesses but also to express their views and concerns about a particular situation or case directly to the ICC, including the judges, during all stages of the proceedings, including Pre-Trial and Appeals. Victim engagement is facilitated by the Victims Participation and Reparations Section, which operates under the ICC's [Registry](#). In addition to the opportunity for direct participation, the Office of Public Counsel for the Victims provides victims with legal representation and/or



support from external lawyers. Victims' lawyers, depending on the stage of the case and at the discretion of the judges, may be able to attend and participate in hearings, file written submissions, or even question witnesses.

In addition, the OTP often directly engages with victims and survivors as a part of their outreach efforts on a case, including from the initial stages. Even when the OTP isn't involved in outreach to victims, individuals, and groups can [send information to the OTP](#) about a particular situation or alleged crimes under [Article 15](#) of the Rome Statute.

In cases where the Court convicts an individual, victims may be eligible for reparations, which can include compensation, restitution, rehabilitation, or symbolic measures like apologies. These reparations may be facilitated by the ICC's [Trust Fund for Victims](#) (TVF). In addition to implementing court reparation orders, the TVF also plays a crucial role in providing support to victims and their families, including assistance at early stages of a case or even before a reparations order is made.