



POLICY BRIEF

Gender Apartheid and the Crimes against Humanity Convention Negotiations: Solidarity, History and the Politics of Naming

EXECUTIVE SUMMARY

Negotiations toward a new Crimes Against Humanity Convention have renewed debate about how international law should address systemic gender-based oppression. Calls to recognise “gender apartheid”, particularly in response to the Taliban’s treatment of women and girls in Afghanistan, reflect the urgency of ensuring credible legal responses to institutionalised gender domination. This brief affirms the importance of recognising the seriousness of gender-based harms and calls for solidarity among gender justice advocates. At the same time, it raises concerns about extending the concept of apartheid to gender without careful consideration of its historical origins and legal foundations. Apartheid emerged from specific anti-colonial struggles against racial domination, and its group-based legal structure may not fully capture the ways gendered power operates across both public and private spheres. Rather than privileging a single legal pathway, this brief calls for strengthening accountability for gender-based oppression through existing legal provisions, including the crime against humanity of gender persecution. The brief notes that the introduction of the term “gender apartheid” may lead some states to resist the Convention, potentially undermining efforts to build wider agreement on gender justice. It therefore calls for continued solidarity among gender justice advocates, including engagement with the diverse ways gender-based harms are experienced and addressed across African contexts. It highlights the importance of including African intellectual and legal leadership in shaping responses that are historically grounded and legally coherent.



INTRODUCTION

Ongoing negotiations toward a new Crimes against Humanity Convention have opened questions about how international law conceptualises, names and prosecutes systemic gender-based oppression. In this normative moment, advocates have called for the codification of “gender apartheid” as a distinct international crime, largely in response to the Taliban’s rule in Afghanistan since 2021 and its institutionalised subordination of women and girls. In December 2025, the People’s Tribunal for Women of Afghanistan characterised the Taliban’s regime as amounting to gender persecution and an “apartheid-like” system of domination, urging formal recognition of gender apartheid as a separate crime.^[1]

The proposal to recognise “gender apartheid” has emerged at an important moment in the development of the proposed Crimes Against Humanity Convention. Formal treaty negotiations are expected to begin in 2028, but current discussions are already shaping the legal direction of the Convention. This preparatory phase is where key concepts are defined and debated. It is therefore a significant moment for both advocates and States. These negotiations represent one of the most important developments in international criminal law since the adoption of the Rome Statute in 1998. Decisions taken now will shape not only how gender-based systems of domination are named, but how they are investigated, prosecuted and remedied for decades to come.

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This policy brief intervenes in these discussions through three commitments:

- 1 Systemic gender-based oppression must be addressed through international accountability mechanisms. International criminal law must be able to respond to institutionalised patterns of gender-based harm.
- 2 The Convention negotiations must clarify how gender is defined within the treaty framework. Definitions should reflect current understandings of gender and recognise diversity and intersectionality. They should avoid narrow binary formulations that may exclude victims.
- 3 Proposals to extend the term “apartheid” to gender require careful consideration. The crime of apartheid has a specific legal history rooted in the African context. That experience should inform how international law addresses structural forms of oppression.

The brief also seeks to widen and deepen Convention deliberations by bringing into view dimensions that have not received sufficient attention, particularly:

1. The anti-colonial genealogy of apartheid;
2. The geopolitical risks of selective norm development; and
3. The conceptual tensions between group-based crimes and intersectional gender realities.

[1] International Institute of Social Studies, “People’s Tribunal on Women of Afghanistan issues landmark judgement at ISS” Available at <https://www.iss.nl/en/news/peoples-tribunal-women-afghanistan-issues-landmark-judgement> iss#:~:text=Monday%2015%20Dec%202025%2C%2014,girls'%20rights%20under%20Taliban%20rule.

WHY THIS DEBATE MATTERS NOW

The Crimes against Humanity Convention process is a rare legal opening through which States can clarify and strengthen how international law responds to crimes against humanity, including sustained patterns of gender-based oppression. The proposal to codify gender apartheid has entered this space quickly, driven by urgent advocacy responding to developments in Afghanistan. Since returning to power in 2021, the Taliban have issued more than two hundred laws and regulations targeting women, girls and LGBTQI+ individuals.^[2] As the End Gender Apartheid campaign has argued, these measures constitute a legally mandated system of gender-based oppression that deprives women of fundamental rights, including education, employment and freedom of movement^[3] Their campaign has therefore called for the Convention to include provisions that capture both the institutionalised nature of this regime as well as the intent to maintain it.

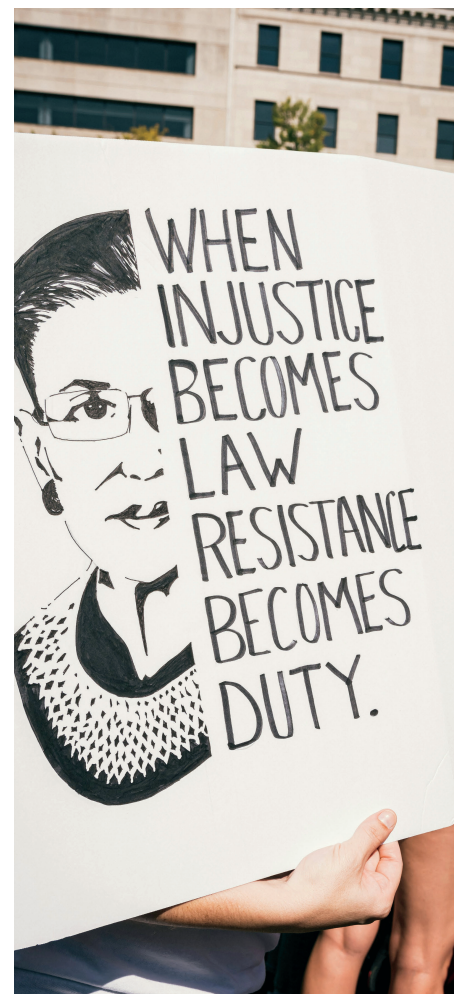
Yet Convention decisions will have long term effects: concepts adopted now will impact geo-political uses of international criminal law for decades. In particular, treaty definitions will shape how courts interpret protected groups, how prosecutors frame charges, and how victims are recognised as rights-holders entitled to reparations. Experience with genocide and apartheid jurisprudence demonstrates that definitional ambiguities can create significant evidentiary barriers. They can also delay prosecutions and exclude victims whose lived experiences fall outside rigid or outdated legal categories.

HISTORICISING “GENDER APARTHEID”: ADVOCACY LINEAGE AND CONTEMPORARY TRACTION

The term “gender apartheid” emerged in advocacy discourse in the late 1990s to describe the Taliban’s systematic exclusion of women and girls from public life during its first period of rule in Afghanistan (1996–2001).^[4] Women were barred from education and employment, restricted in movement, and subjected to public punishment for non-compliance. Following the Taliban’s return to power in 2021, policies institutionalising gender-based exclusion were rapidly reinstated and expanded, including bans on secondary and tertiary education for girls, restrictions on women’s employment and constraints on access to public spaces.^[5]

Parallel feminist mobilisation in Iran has also shaped the contemporary resonance of the framing. Iranian women have confronted compulsory veiling, morality policing and entrenched legal inequalities since 1979. The 2022–2023 “Woman, Life, Freedom” uprising reframed gender control as a structural mechanism of regime governance rather than discrete rights violations, contributing to a broader regional vocabulary about institutionalised gender domination.

In 2023, Afghan and Iranian feminist activists launched the End Gender Apartheid Campaign, calling for formal recognition of gender apartheid as a crime under international law. Their central doctrinal argument is that existing frameworks, particularly gender persecution, do not fully capture the regime-maintenance element that apartheid law foregrounds: the specific intent to maintain an institutionalised system of domination.^[6]



[2] Metra Mehran et.al., “Taking Stock of the Proposal to Codify Gender Apartheid in the Crimes against Humanity Convention” *Opinio Juris*(March,2026)

[3] See, for example, Metra Mehran et.al., “Taking Stock of the Proposal to Codify Gender Apartheid in the Crimes against Humanity Convention” *Opinio Juris* (March,2026)

[4] Karima Bennouna, “The international obligation to counter gender apartheid in Afghanistan” *Columbia Human Rights Law Review* 54 (2022)

[5] Karima Bennouna, “The international obligation to counter gender apartheid in Afghanistan.” *Feminist Dissent* 7 (2023).

[6] See <https://endgenderapartheid.today>

Iranian women confront compulsory veiling, morality policing and entrenched legal inequalities

1979 onward

The term "gender apartheid" emerges in advocacy discourse to describe the Taliban's systematic exclusion of women and girls from public life

Late 1990s

The term "gender apartheid" emerges in advocacy discourse to describe the Taliban's systematic exclusion of women and girls from public life

2022-2023

Afghan and Iranian feminist activists launch the End Gender Apartheid Campaign

2023

1996 - 2001

First period of Taliban rule in Afghanistan

2021 - present

Second period of Taliban rule in Afghanistan

The timing is significant. The convention negotiations have created a normative opening in which proposals for codification are perceived as achievable. Yet the acceleration of the proposal has not been accompanied by sufficient engagement with African gender activists specifically on the legal transposition of apartheid into a gender framework.

GENDER AND CRIMES AGAINST HUMANITY: THE CONVENTION DESIGN QUESTION

The renewed push for gender apartheid arises in a context where existing international criminal law tools are often under-utilised or unevenly applied to structural gender oppression. The 1998 Rome Statute recognises persecution on gender grounds as a crime against humanity, alongside other inhumane acts committed as part of a widespread or systematic attack against civilians.^[7] However, gender-based crimes have historically been under-charged, narrowly interpreted, or treated as secondary to other violations.

At the same time, existing jurisprudence reveals structural limitations in how international criminal law conceptualises protected groups. The crimes of genocide and apartheid were historically grounded in assumptions that protected groups, particularly racial groups, were biologically fixed or objectively identifiable.

Courts have often relied on biological, hereditary or lineage-based indicators when determining group membership. This approach has increasingly been questioned in contemporary jurisprudence because it may exclude victims whose identities are socially constructed or defined through the perpetrator's perception rather than immutable traits.

By contrast, the crime of persecution has evolved toward a more flexible approach, recognising that group identity may be established through the perpetrator's discriminatory intent and perception. This doctrinal distinction is critical to current debates. It demonstrates that international criminal law already contains interpretive pathways capable of addressing structural gender oppression without necessarily requiring the creation of a new crime, while also highlighting areas where treaty clarification could strengthen accountability.

Gender persecution

A crime against humanity defined as the intentional and severe deprivation of fundamental rights contrary to international law, committed against a group based on gender.

[7] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90

The Convention negotiations therefore raise a fundamental design question: Should States expand the catalogue of crimes, refine definitions, strengthen interpretive guidance or pursue a combination of these approaches? The gender apartheid proposal is one answer; strengthening how existing crimes (including persecution) are interpreted and applied is another; hybrid approaches are also possible. The key point is that Convention deliberations should not become narrowed to a single doctrinal pathway, particularly one carrying heavy historical and conceptual weight.



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DEEPENING CONVENTION DELIBERATIONS

1 The Anti-Colonial Genealogy of Apartheid: Why the Term Carries Specific Weight

The crime of apartheid occupies a distinct place in international criminal law. Its criminalisation emerged from the specific system of racialised settler colonial domination institutionalised in South Africa. African states played a decisive role in establishing apartheid as an international crime, through the Organisation of African Unity (now the African Union), culminating in the 1973 Apartheid Convention and its later inclusion as a crime against humanity in the Rome Statute.

Apartheid's legal definition requires proof of:

- An institutionalised regime;
- Systematic oppression and domination of one group over another; and
- Intent to maintain that regime.

Crucially, apartheid law historically operated on the assumption that racial groups could be clearly classified and legally administered as distinct and relatively stable categories. Modern human rights law has since rejected biological understandings of race, recognising race as a social construct shaped by power, perception and discrimination. This shift exposes a doctrinal tension: apartheid law retains group-based language forged within historically specific conceptions of identity, while contemporary discrimination is increasingly organised through socially constructed and intersectional identities.

Any proposal to extend apartheid into a gender framework must therefore confront this doctrinal tension directly. Without clarifying how gender groups are defined, whether through biological characteristics, social construction, or perpetrator perception, codification risks importing outdated evidentiary assumptions into a new legal framework.

2 Geopolitical Asymmetry and Selective Norm Development: the Legitimacy Question

An important consideration relates to the geo-political dynamics within which international criminal norms are developed and deployed. As noted earlier, the contemporary push to codify gender apartheid has gained particular momentum in response to the Taliban's governance in Afghanistan and has been amplified through international advocacy and diplomatic engagement. While the severity of the violations against women in Afghanistan is not in dispute, the concentration of reform efforts around regimes already politically isolated raises concerns about consistency in norm development.

[i] See <https://endgenderapartheid.today>



International criminal law has long faced criticism for patterns of selective enforcement and uneven attention. Structural forms of gender domination are not confined to a single region. Persistent and systemic gendered harms have been documented across diverse contexts, including prolonged occupation and conflict settings, caste- and descent-based servitude affecting women, entrenched femicide patterns and widespread gender-based violence and harmful property or marriage regimes. The current mobilisation to codify gender apartheid in response to Afghanistan, while justified by the gravity of violations, raises broader legitimacy concerns if similar structural gender domination elsewhere remains unaddressed.

The legitimacy of international criminal law depends not only on the strength of norms but on their universal applicability. New crimes must be articulated in ways capable of consistent application across geopolitical contexts, including those involving powerful or protected actors. Otherwise, codification risks reinforcing perceptions of selective norm development, potentially damaging to the convention's legitimacy.



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3

Intersectionality and the limits of binary framing: gender as a definitional challenge

A central question confronting the proposed Crimes Against Humanity Convention concerns how gender will be defined. Here the brief is emphatic: gender must be treated with conceptual precision and contemporary inclusivity. We acknowledge the important contribution of the CAH Now 2023 statement calling for the new convention to move beyond outdated definitions of gender to adopt a gender-competent, survivor-centric, and intersectional approach.^[8] The problem is not that gender is too complex for international law; the problem is that international law has too often approached gender through rigid binary framings that obscure intersectional realities.^[9]

[8] See CAH, Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention <https://cahtreatynow.org/joint-call-to-advance-gender-justice-in-the-draft-crimes-against-humanity-convention/>

[9] Rosemary Grey, "On Hope, Reform and Risk: The Rome Statute's Definition of 'Gender' and the Crimes Against Humanity Convention." *European Journal of International Law* 36, 2 (2025), pp.369-39

[i] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 7(3)



Draft formulations of gender apartheid referring to domination of “one gender group over another gender group or groups” risk mirroring apartheid’s group-based architecture without resolving the conceptual issues that already trouble the Rome Statute. Article 7(3) of the Rome Statute defines gender in relation to “the two sexes, male and female, within the context of society”.^[10] This formulation has been widely criticised for ambiguity and for the potential exclusion of gender-diverse persons. Incorporating gender into the apartheid framework without clarifying definitional scope risks importing these ambiguities into a crime constructed around more rigid group classifications. Failure to clarify definitions may reproduce evidentiary barriers similar to those encountered in apartheid and genocide prosecutions, where rigid group definitions have impeded accountability.

From an intersectional perspective, patriarchal domination is mediated through race, class, sexuality, ethnicity, religion, disability, nationality, lineage, age hierarchies, kinship systems and communal structures. Women and gender-diverse persons therefore occupy different positions within hierarchies of power, as was evident in apartheid South Africa where racial domination intersected with patriarchal control. However, gender oppression also operates through intimate social relations - between husbands and wives, fathers and daughters, and within family and kinship structures - were not central to racial apartheid. Unlike apartheid’s legal architecture of separation between racial groups, gender hierarchies frequently operate within shared households and intimate relationships governed through marriage, guardianship and family law. This distinction complicates efforts to apply apartheid’s group-based framework to gender, where domination often operates within intimate and social relations rather than through legally enforced segregation between groups.

The Convention negotiations therefore face a key design requirement: any move to strengthen gender justice, whether through categorising new crimes or strengthening existing categories, must include a clear, inclusive definition of gender, and must avoid entrenching colonial or culturally narrow binary assumptions.




Binary frameworks can oversimplify the layered and context-specific ways gender oppression operates, potentially narrowing accountability for transgender, non-binary, and gender-diverse persons.



DOCTRINAL SUFFICIENCY AND NORM PROLIFERATION: KEEPING OPTIONS OPEN IN CONVENTION DESIGN

Beyond historical and geo-political concerns lies a doctrinal question central to Convention negotiations: is a distinct crime of gender apartheid legally necessary to address institutionalised gender domination? The Rome Statute already recognises gender persecution as a crime against humanity, capable of addressing institutionalised systems of gender domination. The central doctrinal question is therefore not simply whether gender apartheid should be codified, but whether existing legal categories, if properly clarified and enforced, could achieve equivalent or greater accountability outcomes. Treaty drafters must assess whether codification would strengthen enforceability or instead introduce new conceptual ambiguities and evidentiary complexities.

[i] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 7(3)

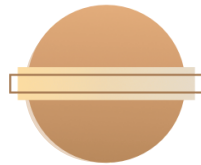


Understood in its full scope, persecution can address structural systems of exclusion maintained through law, policy and administrative practice. Advocates of gender apartheid argue that persecution does not adequately capture the regime-maintenance element embedded in apartheid. That claim deserves serious engagement. Yet it does not automatically follow that the solution is the creation of a new crime. Proliferation of overlapping legal categories can fragment accountability frameworks, especially if existing provisions remain under-utilised or narrowly interpreted in practice.

The convention process should therefore explicitly consider multiple pathways in parallel, including:



Clarifying interpretive guidance on gender persecution and its application to institutionalised systems of subordination;



Revising definitions of sexual violence to include reproductive violence and remove language that defers to national abortion laws in the context of forced pregnancy;



Ensuring robust, unambiguous definitions of "victim" that guarantee participation in legal processes and access to reparations;



Formally include the slave trade and forced marriage as specifically enumerated crimes against humanity;



Ensuring definitional clarity for gender across convention provisions; and



Evaluating, with historical awareness, the implications of extending apartheid into a gendered framework.

Crucially, this brief argues that there are several routes to advance gender justice that should not be overlooked by a singular focus on gender apartheid.

POLICY RECOMMENDATIONS

The Crimes against Humanity Convention process presents a rare opportunity to clarify how international law responds to institutionalised gender domination. Convention deliberations should therefore proceed with doctrinal clarity, flexibility and attention to enforceability. Negotiations are not simply about naming harms; they are about designing a durable, legitimate legal instrument.

RECOMMENDATIONS

Recommendations for States negotiating the Crimes against Humanity Convention

States will play a key role in ensuring that developments within the Convention strengthen accountability for gender-based harms. This requires:

1. Keeping deliberations open to multiple doctrinal pathways for addressing institutionalised gender domination, including but not limited to proposals for new crimes;
2. Clarifying and strengthening definitions of gender in ways that reflect contemporary understandings of gender diversity and intersectionality, and avoid entrenching binary assumptions;
3. Requiring principled and universally applicable criteria capable of consistent application across geopolitical contexts if considering the codification of gender apartheid;
4. Assessing doctrinal sufficiency by explicitly examining how existing categories, including gender persecution, could be clarified or strengthened to address institutionalised systems of exclusion, alongside debate on new crimes;
5. Pairing any definitional reform with concrete implementation commitments so that reform does not remain symbolic. This should include consideration of a treaty body, comparable to those established under the Convention against Torture, to oversee implementation and support progressive interpretation of the text.

Convention deliberations should therefore with doctrinal clarity, flexibility and attention to enforceability.

Recommendations for African States and AU delegations

African states played a decisive role in defining apartheid as a crime under international law. That leadership provides an important foundation for engagement in current debates on how international law should respond to systemic gender-based oppression. African states and AU delegations are therefore well placed to contribute contextually grounded perspectives on how structural injustice operates across public and private spheres. This includes:

1. Demonstrating leadership in ensuring that African legal experience informs debates on how international law recognises and responds to structural forms of oppression.
2. Supporting sustained engagement with African gender experts and activists so that regional knowledge informs legal interpretation, drafting choices and institutional design.
3. Promoting approaches that recognise the diversity of gendered harms across African contexts, including those shaped by conflict, economic exclusion and political marginalisation.
4. Encouraging careful consideration of how the historical meaning of apartheid is preserved, while strengthening legal responses to gender-based oppression through precise and workable provisions.
5. Supporting dialogue across African states to build shared positions that reflect commitment to gender justice.

African states should commit to strengthening international responses to gendered harms.

Recommendations for international institutions, expert bodies and convention drafters

International institutions, expert bodies and convention drafters should ensure attention to how existing crimes against humanity, including persecution and apartheid, can better respond to gender-based and structural harms. This requires:

1. Devising improved interpretive guidance clarifying how gender persecution can encompass institutionalised systems of exclusion maintained through law, policy and administrative practice;

2. Supporting sustained comparative legal design work on structural oppression crimes to promote coherence within the crimes against humanity framework. This work should strengthen clarity in how persecution and apartheid provisions address structural gender domination, without creating overlapping or fragmented categories.
3. Ensuring that enforcement capacity is integral to the treaty to ensure that legal reform translates into accountability. This includes drawing on existing best practices regarding gender sensitive documentation, as well as investigative and prosecutorial strategies.

Liberian Government: enact legislation that secures the court's mandate, establish stable budgetary pathways, and guarantee full cooperation with investigators and prosecutors.

CONCLUSION

The severity of systemic gender-based oppression in Afghanistan and elsewhere demands robust and credible international responses. The Crimes against Humanity Convention represents a historic opportunity to strengthen international accountability for systemic gender oppression. However, the codification of gender apartheid raises complex doctrinal, historical, and geopolitical questions, even as it reflects a legitimate effort to name and confront institutionalised regimes of gender domination.

International criminal law evolves more effectively when reform strengthens enforceability, enhances victim recognition and aligns legal definitions with contemporaneous understandings of discrimination. Treaty drafters must therefore ensure that efforts to strengthen gender justice do not inadvertently reproduce assumptions that undermine doctrinal coherence.

From a global south perspective, the challenge is not whether gender justice should be strengthened, it must be. The task is how this can be achieved in ways that preserve integrity, ensure universal applicability and strengthen the legitimacy and effectiveness of international criminal law. Nor is the core concern the revision and clarification of gender definitions, although this is critical. The key caution lies in the use and evolution of "apartheid" as a legal category forged in a specific anti-colonial struggle and embedded in a historically situated system of racialised domination.

The Crimes against Humanity Convention negotiations therefore present both an opportunity and a responsibility. The Convention should strengthen gender justice in ways that are intersectional and enforceable. It must also ensure that the evolution of international criminal norms remains historically grounded and resistant to selective deployment. The pursuit of accountability must not come at the expense of historical memory or doctrinal integrity.



AFRICAN TRANSITIONAL JUSTICE RESEARCH COALITION

Endnotes

[1] International Institute of Social Studies, "People's Tribunal on Women of Afghanistan issues landmark judgement at ISS" Available at <https://www.iss.nl/en/news/peoples-tribunal-women-afghanistan-issues-landmark-judgement-iss#:~:text=Monday%2015%20Dec%202025%2C%2014,girls'%20rights%20under%20Taliban%20rule.>

[2] Metra Mehran et.al., "Taking Stock of the Proposal to Codify Gender Apartheid in the Crimes against Humanity Convention" *Opinio Juris*(March,2026)

[3] Ibid

[4] Karima Bennoune, "The international obligation to counter gender apartheid in Afghanistan" *Columbia Human Rights Law Review* 54 (2022)

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[6] See <https://endgenderapartheid.today>

[7] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90

[8] See CAH, Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention <https://cahtreatynow.org/joint-call-to-advance-gender-justice-in-the-draft-crimes-against-humanity-convention/>

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[10] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 7(3)