



# THE RECOGNITION OF GENDER APARTHEID AS A CRIME AGAINST HUMANITY UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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| Article history:                                                                                              |                             | Abstract:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Received:                                                                                                     | 10 <sup>th</sup> March 2026 | This article examines in detail the history of such an international crime as apartheid, the emergence and problem of recognizing gender apartheid as a crime against humanity under Article 7(1)(k) of the Rome Statute of the International Criminal Court and the impact of this discrimination on the lives of millions of women around the world, provides international instruments for regulating women's rights, as well as the arguments and opinions of experts in this field regarding the recognition of any kind of apartheid as an international crime. |
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## ПРИЗНАНИЕ ГЕНДЕРНОГО АПАРТЕИДА ПРЕСТУПЛЕНИЕМ ПРОТИВ ЧЕЛОВЕЧНОСТИ В СООТВЕТСТВИИ С РИМСКИМ СТАТУТОМ МЕЖДУНАРОДНОГО УГОЛОВНОГО СУДА

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**Аннотация:** В данной статье подробно рассматривается история такого международного преступления как апартеид, возникновение и проблема признания гендерного апартеида преступлением против человечности в рамках статьи 7(1)(k) Римского статута Международного уголовного суда и влияние этой дискриминации на жизни миллионов женщин по всему миру, приведены международные инструменты регулирования прав женщин, а также аргументы и мнения специалистов этой сферы касательно признания любых разновидностей апартеида международным преступлением.

**Ключевые слова:** гендер, апартеид, дискриминация, права человека, Римский статут, Международный уголовный суд.

### INTRODUCTION

Before deepening into the scrutiny of gender apartheid, the term itself should be defined. *Gender apartheid* (also called sexual apartheid or sex apartheid) refers to the systemic oppression, discrimination and segregation of a specific group based on gender.<sup>1</sup>

Firstly, the term "*apartheid*", which comes from the Afrikaans word for "separateness", was a racial ideology with its origins in South Africa and was based on the domination of one group (Whites) over an indigenous majority (Blacks). The black majority was discriminated against, segregated, and denied rights of political participation.<sup>2</sup> Apartheid became a crime under

international law in 1973 with the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid in response to these inhumane acts in South Africa, which continued from 1948 to 1994.

Lately, apartheid was criminalized as a crime against humanity by Article 7(1)(j) of the Rome Statute of the International Criminal Court which entered into force on July 1, 2002. However, Article 7(2)(h) limited its meaning by giving the definition: "inhumane acts, committed in the context of an institutionalized regime of systematic oppression and domination *by one racial group over any other racial group or groups* and

<sup>1</sup> What is gender apartheid – and can anything be done to stop it?, The Guardian, <https://www.theguardian.com/global-development/2024/oct/09/what-is-gender-apartheid->

activists-international-law-women-girls-rights-afghanistan-iran

<sup>2</sup> Ellis, Donald. "*Apartheid*." Israel Studies 24.2 (2019): 63.



committed with the intention of maintaining that regime". This article precises that apartheid can be committed only by one race against the another due to its South African history, and this fact, unfortunately, creates issues with identifying other demonstrations of apartheid as a crime against humanity.

***The scope and interpretation of Article 7(1)(k) of the Rome Statute within international criminal law***

Nevertheless, in such situations the prosecution can use Article 7(1)(k) of the Rome Statute which broadens the scope of International Criminal Court's jurisdiction and establishes other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health to be considered as a crime against humanity.

The crime can fall under this subparagraph if it contains significant elements: the act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute; the perpetrator was aware of the factual circumstances that established the character of the act; the conduct was committed as part of a widespread or systematic attack directed against a civilian population; the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>3</sup> The terms 'widespread' and 'systematic' are not defined in the Rome Statute. According to the Commentary on the Rome Statute 'widespread' refers to 'the large-scale nature of the attack, as well as to the number of victims', whereas the term 'systematic' pertains to 'the organized nature of the acts of violence and to the improbability of their random occurrence'.

Furthermore, Pre-Trial Chamber I noted that 'inhumane acts are to be considered as serious violations of international customary law and the basic rights pertaining to human beings, drawn from the norms of international human rights law, which are of a similar nature and gravity to the acts referred to in article 7(1) of the Rome Statute'.<sup>4</sup> From this statement it follows that the concept of gender apartheid can fall under the provision of "other inhumane acts" mentioned in the Article because gender apartheid violates fundamental rights of women which are guaranteed by international law. To be more accurate, it takes many forms including

gender based violence (GBV), which is widespread in many parts of the world. It encompasses a wide range of women's human rights violations, such as threat to life, security and dignity of the victim. Some of its overt manifestations include rape, honour related crimes, forced prostitution, intimate partner violence and female genital mutilation.<sup>5</sup> Besides infringing on the private rights of women during the gender apartheid system women are deprived of their political and economic rights and they are not able to vote or to be elected to government positions and to own property.

***Case law, scholarly opinions, and international legal instruments***

Despite the efforts of the international community to prevent this crime in our age, the world, unfortunately, still observes gender apartheid in some countries. For instance, the forced separation of women from society is widely practised in Islamic Emirate of Afghanistan, since the Taliban regime reclaimed control of Afghanistan in August 2021. Repressive decrees and edicts, often justified by the Taliban under the guise of cultural and religious commitment, range from severe restrictions on women's and girls' access to education and employment to limitations on their freedom of movement and expression. According to the declaration of Minister of Foreign Affairs of the Taliban made on August 31, 2021, women would not be included in top leadership positions in the Taliban government, effectively excluding them from all political and public life in Afghanistan.<sup>6</sup> Moreover, many experts in international law argue that Islamic Republic of Iran may also be considered as an example of gender apartheid because of numerous laws and practices that institutionalize unequal treatment of women, effectively subjugating them both legally and socially. This pervasive discrimination affects nearly all spheres of women's lives, including their legal rights, personal freedoms, employment opportunities, and involvement in public life.

Observing this phenomenon in some parts of the world the UN experts said, "*Gender apartheid is not merely a theoretical possibility or legal construct, but a real threat and lived reality for millions of women and girls around the world – a reality that is currently not explicitly codified in international law*".<sup>7</sup>

<sup>3</sup> *Elements of crime* published by the International Criminal Court, 2002

<sup>4</sup> *Katanga et al.* (ICC-01/04-01/07), Decision on the Confirmation of the Charges, 30 September 2008, para. 448

<sup>5</sup> Shazia Naureen Qureshi, *Understanding the Issue of Gender Discrimination as a 'Crime' of Gender Apartheid*

*and Placing Violence against Women at the Centre of this Matrix*, South Asian Studies, [93]

<sup>6</sup> Golazin Safaeimoharad, *A Study of Gender Apartheid: Afghanistan and the Islamic Republic of Iran*, 2024, [39-40]

<sup>7</sup> *Gender apartheid must be recognised as a crime against humanity, UN experts say*, February 20, 2024,



As Agnès Callamard, French human rights activist and Amnesty International Secretary General states, *"No one should ever be permitted to violate, segregate, silence or exclude people because of their gender"*. Moreover, Professor of Law in New York Law School, Penelope Andrews, as an academic who has researched and written extensively on racial and gender equality, fully supports broadening the definition of the crime of apartheid to include gender and she finds it necessary to give the persistence and ubiquity of structural discrimination and violence against women in the world.<sup>8</sup>

In addition, international law developed legal frameworks to protect women's rights such as the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) and Convention on the Elimination of All Forms of Discrimination against Women that was adopted by the United Nations on December 18, 1979. Each of these treaties prohibit any kind of discrimination and violation of human rights. The Convention on the Elimination of All Forms of Discrimination against Women is especially important because it provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life - including the right to vote and to stand for election - as well as education, health and employment.

### ***The prospects and challenges of recognizing gender apartheid as an international crime***

In conclusion, it can be said with confidence that in the near future gender apartheid will be distinguished as an international crime. For example, United Nations member States are currently developing their stances on a proposed treaty which aims to prevent and punish crimes against humanity, in anticipation of a preparatory committee meeting scheduled for January 2026. This meeting will set the stage for potential amendments and comprehensive negotiations on a draft that has been under discussion since 2019. Certain states and advocates are particularly advocating for the inclusion of language that identifies gender apartheid as an international crime. This presents a significant opportunity to address a gap in international law,

thereby safeguarding the rights and lives of millions of women and girls.<sup>9</sup>

To my mind it will be even more sufficient to edit the definition of the crime of apartheid which is given in Article 7(2)(h) of the Rome Statute and instead of the words *'by one racial group over any other racial group or groups'* there should be written *'by one group of people over any other group or groups'* because initially "apartheid" from Afrikaans meant not only racial separateness but apartness as a whole and we must take into account that apartheid can be based not only on race or gender, but also nationalities or any other distinctions.

One of the main challenges of accepting gender apartheid as a crime against humanity will certainly be the reaching consensus among States due to different cultural interpretations of gender roles. In result, efforts to recognize gender apartheid can provoke negative reactions from conservative groups or governments that view such measures as threats to traditional values or sovereignty. Nonetheless, in our contemporary world the international society must take all the necessary actions to provide basic human rights to every person in every country despite their race, gender and nationality.

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