

FACT SHEET NO. 1: WHAT IS GENDER APARTHEID?

“ Just as slavery and colonialism were a stain on previous centuries, women’s inequality should shame us all in the 21st —António Guterres, UN Secretary-General ”

Gender apartheid is an erasure of the humanity of women, analogous to racial apartheid.¹

- Gender apartheid is the systematic segregation of the sexes imposed through law and policy as a **governing ideology**. In this construct, segregation may be accompanied by the total exclusion of women as in **Taliban Afghanistan**, the **paradigmatic example** of gender apartheid.

Why use the term gender apartheid?

- Adapted from the international law on racial apartheid, “gender apartheid” emphasizes that discrimination has been made the system of governance itself, such that the aim of government and public policy is to discriminate.
- The apartheid framework highlights the **duty of the international community and of other states to take concerted, effective action** to terminate the practice.
- In apartheid South Africa, international action and local political struggle were essential catalysts for change. Articulating the obligations of states and the international community in international instruments provided key support to these efforts.

International law and gender apartheid

- *Existing law:*
 - The UN Charter explicitly recognizes the right not to be discriminated against, including on the basis of sex. Indeed, non-discrimination is the **only substantive human right** specifically mentioned in the Charter.
 - Every substantive text in the International Bill of Human Rights requires sex equality.
- *Applying the racial apartheid paradigm:*
 - International law sets out a framework for dealing with apartheid in anti-apartheid treaties and in the Rome Statute of the International Criminal Court, which criminalizes the practice.² In 2001, after the end of apartheid in South Africa, the International Law Commission recognized the prohibition of apartheid as rising to the level of jus cogens, the highest-level norms in international law, which **override contradictory norms**.
 - The largely 20th century apartheid framework addressed only racial apartheid and has not yet been widely deployed to address gender apartheid. **It should be.** Such a logical application of international law is essential in the 21st century. It is the only way to meet the goal of achieving gender equality agreed to by all states in the SDGs, and to achieve the UN Charter’s guarantee of the equal rights of women and men.

¹ This fact sheet is drawn from Karima Bennouna, *The International Obligation to Counter Gender Apartheid in Afghanistan*, 54 Colum. Hum. Rts. L. Rev. 1 (2022); Karima Bennouna, *The Best Way to Mark the Anniversary of Taliban Takeover? Launch a Global Campaign Against Gender Apartheid in Afghanistan*, Just Security; Dari translation available at: <https://www.justsecurity.org/82673/82673-the-best-way-to-mark-the-anniversary-of-taliban-takeover-launch-a-global-campaign-against-gender-apartheid-in-afghanistan-dari/>.

² International Convention on the Suppression and Punishment of the Crime of Apartheid (entered into force July 18, 1976); Rome Statute of the International Criminal Court art. 7(1)(j), 2187 U.N.T.S 90, 93.

Gender apartheid is anathema to foundational norms of international law prohibiting sex discrimination, just as racial apartheid was to the analogous principles prohibiting race discrimination.

Gender Apartheid and Afghanistan

- During Taliban rule in the 1990s, some women human rights defenders of Muslim heritage and their allies carried out groundbreaking scholarship and advocacy about what they called “gender apartheid,” an approach the international community failed to adequately embrace. **UN expert, Abdelfatah Amor of Tunisia**, at the time explicitly framed what was happening as “apartheid.”³
- Today, the Taliban have again made systematic discrimination against women a core part of their system of governance. The Taliban have imposed gender segregation and widespread exclusion of women, including from universities and workplaces. **(See Fact Sheet No. 3.)**
- There is growing recognition among government representatives, civil society advocates, and experts, including at the UN, that what is happening in Afghanistan is gender apartheid.⁴

The Way Forward

States, international organizations, and civil society should give urgent consideration to recognizing and applying the gender apartheid framework to Taliban Afghanistan. Strategies to consider include:

- **Interpreting existing apartheid standards to include gender apartheid.** This requires simply substituting “gender” or “sex” for “race” in relevant definitions of apartheid, an approach that has been supported by prominent Black South African feminists.⁵ Doing so mirrors the way that international bodies have made the definition of genocide more gender inclusive, and how violence against women has been included in the definition of discrimination.⁶ **(See Fact Sheet No. 3.)**
- **Referencing gender apartheid** and its consequences in all relevant debates and forums.
- Calling on more international experts and bodies to **explicitly recognize the concept of gender apartheid** and apply it to Taliban Afghanistan, through reports, statements, and resolutions that also recognize the legal consequences of apartheid and the obligations of other states to take effective action against it.
- In the future, we may need a specific standard on gender apartheid, such as an optional protocol to the racial apartheid standards in existence, but much can be achieved through **forward-looking interpretation of current standards.**

For further information, see Fact Sheet No. 2, “The Added Value of the Gender Apartheid Approach,” Fact Sheet No. 3, “Gender Apartheid in Afghanistan,” and Fact Sheet No. 4, “Responses to Arguments Against Using the Gender Apartheid Approach.”

³ Press Release, Hum. Rts. Comm., Special Rapporteurs on Religious Intolerance and Judicial Independence, HR/CN/99/32 (Apr. 12, 1999) [https://perma.cc/HJ43-7565].

⁴ See Heather Barr (@heatherbarr1), Twitter (Oct. 21, 2022, 8:21 AM) [https://perma.cc/PPY5-VUUVS].

⁵ See, e.g., Penelope Andrews, *From Cape Town To Kabul: Rethinking Strategies For Pursuing Women’s Human Rights* (2012).

⁶ See *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Judgment (Sept. 2, 1998); Comm. on the Elimination of Discrimination against Women, General Recommendation No. 19, U.N. Doc. A/47/38 (1992). This approach was employed in Press Release, U.N. Off. of the High Comm’r for Hum. Rts., Afghanistan: UN experts deplore women sports ban, (Sept. 14, 2021) [https://perma.cc/54WB-H5FM].