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NAMING THE HARM: WRITING “GENDER APARTHEID” INTO THE CRIMES AGAINST HUMANITY CONVENTION

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The conversation about “**gender apartheid**” is no longer just a slogan. It describes a method of rule. In certain places, public life is being reorganised around gendered lines that control movement, work, expression, education, and access to public spaces. International criminal law has the tools to address parts of this picture, especially through persecution, but it lacks a clean way to charge the system itself. The forthcoming **Crimes Against Humanity (CAH) convention** offers a practical place to fix that gap. The [UN’s Sixth Committee](#) agreed in November 2024 to begin elaborating a [CAH treaty](#), with a mandate that now has real timelines and process details.

This post makes the case for recognising gender apartheid as a distinct crime against humanity, proposes concise treaty language, and explains how that move would improve investigations, pleadings, and enforcement without opening the door to politicised overreach.

Why persecution does not capture the whole harm

Persecution is a modal offence. It targets severe deprivations of fundamental rights that are inflicted because of a protected identity. The centre of gravity is on incidents and episodes. That frame is necessary, yet it is not sufficient where the wrong is the creation and maintenance of an institutionalised order that makes those deprivations routine and self-reproducing. In such situations, the overarching harm is a regime of domination that is designed to endure.

Racial apartheid has long been recognised as a regime crime. The law there focuses on the structure itself, the intent to maintain domination, and the implementing machinery. **Gender apartheid** follows the same logic. The protected characteristic differs, but the legal theory does not. The point is not to inflate labels but to match the charge to the architecture of wrongdoing. Where ministries, police units, budgets, and nationwide edicts are coordinated to exclude a gender or a gender-defined group from ordinary civic life, the law should allow prosecutors to

plead that system directly. Conceptually, the offence follows the [Apartheid Convention](#) and articles 7(1)(j) and 7(2)(h) of the [Rome Statute](#) (alongside article 7(1)(h) on persecution).

Why the moment is right

Three developments have sharpened the case for codification. First, the CAH treaty process has moved from expert drafting to a negotiation track, which gives states a real opportunity to refine definitions and agree on obligations to criminalise, investigate, and cooperate. Second, [UN experts](#) and major NGOs such as [Amnesty International](#) and [Human Rights Watch](#) urge recognition of gender apartheid as a crime against humanity. Third, Afghanistan provides a live, well-documented example of system-level exclusion. Together, these strands make a focused offence both principled and practical.

A workable elements test

Any new offence must be tight enough to resist politicisation and be broad enough to capture the real patterns of rule. Building on the apartheid template and the CAH architecture, the elements could be stated simply:

1. Context: The conduct occurs as part of a widespread or systematic attack directed against a civilian population, and is committed pursuant to or in furtherance of a State or organisational policy.
2. Regime: The conduct takes place in the context of an institutionalised regime of systematic oppression and domination by one gender or gender-defined group over another.
3. Intent: The perpetrator intended to maintain that regime.
4. Acts: The conduct involves inhumane acts, including severe deprivation of fundamental rights, across core domains of public life such as education, employment, movement, political participation, health, and access to public spaces and services.

Two common alternatives are often suggested. One is to fold these patterns into persecution. The other is to broaden racial apartheid to cover gender. The first leaves investigators chasing incidents instead of the machinery that makes them inevitable. The second erodes a historically specific norm. A discrete gender-apartheid offence preserves that history while naming a distinct protected characteristic. This elements test stays within the [Rome Statute](#) logic while naming the regime-level harm as **gender apartheid**.

A short model clause

Crimes against humanity of gender apartheid

For the purposes of this Convention, “gender apartheid” means inhumane acts listed in article [X], committed as part of a widespread or systematic attack directed against any civilian population, in the context of an institutionalised regime of systematic oppression and domination by one gender or gender-defined group over another, committed with the intention of maintaining that regime, pursuant to or in furtherance of a State or organisational policy.

Two drafting notes follow. First, “gender-defined group” preserves applicability to non-binary realities while still requiring a structured system of domination, not mere discriminatory laws. Second, the policy requirement acts as a gatekeeper and aligns proof with the [Elements of Crimes](#) approach to context. Tethering liability to the CAH catalogue of **inhumane acts** keeps the provision narrow, predictable, and justiciable.

What codification changes in practice

Evidence strategy. Investigators would prioritise the architecture of rule. That means collecting edicts and circulars, ministerial directives, budget lines that fund enforcement, staffing charts for morality or “virtue” police, and the records that show how national directives are translated into provincial practice. With a regime crime, these materials are not background documents. They are the heart of the case, as the [UNAMA report on the Propagation of Virtue and Prevention of Vice law](#) illustrates. That shift turns edicts and budgets into primary proof under the **institutionalised-regime** and **State or organisational policy** requirements.

Liability theory. A regime-centred offence connects criminal responsibility to architects and maintainers, not only to street-level implementers. Persecution can capture much, but it risks under-charging the central wrong when the offence is the system itself. The proposed offence lets prosecutors plead the maintenance intent and organisational policy directly, clarifying routes to senior-level liability. The [ICC’s Afghanistan warrants](#) and expert commentary emphasise gender-based persecution while showing the limits of existing labels when a governance model is at issue.

Early warning and prevention. Clear elements create earlier triggers for sanctions and travel bans, and for referrals to investigative mechanisms. The question becomes when cumulative measures, such as guardianship rules, mobility restrictions, sector-wide employment bars, and

public-space exclusions, cross the line into an institutionalised regime. [UN Women](#) and [UN human-rights](#) reporting already map these thresholds in practice.

Two common objections

“**This duplicates persecution.**” Overlap is not duplication. Persecution focuses on severe deprivations by reason of identity. Gender apartheid focuses on the order that makes such deprivation systematic across society. Coexistence is already built into the [Rome Statute](#), where **persecution** and **apartheid** sit side by side and are sorted by elements.

“**This risks politicisation.**” The answer is disciplined drafting. Require an institutionalised regime. Require systematic oppression and domination. Require a maintenance intent. Tie the underlying conduct to [inhumane acts](#) and to a State or organisational policy. These gates keep the offence for the worst patterns, not for ordinary equality litigation.

Legality and retroactivity

A predictable concern is *nullum crimen sine lege*. Codifying gender apartheid would not retroactively criminalise conduct that was never criminal. Serious abuses can already be charged as persecution, imprisonment, or other inhumane acts. A new label would operate prospectively by naming and structuring a regime crime for future cases, while also steering present investigations towards the right evidence. Foreseeability is met because the existing CAH framework, the apartheid template, and persecution jurisprudence already signal criminal responsibility for organising public life to entrench gender domination.

Complementarity, cooperation, and enforcement

A CAH convention should require States Parties to criminalise gender apartheid domestically, make available **universal jurisdiction**, and cooperate on evidence and arrests. Even before entry into force, states can update national CAH offences, align sanctions designations with the elements of the offence, and strengthen mutual legal assistance for documentary proof. Domestic incorporation, **universal jurisdiction**, and **mutual legal assistance** are the levers that make the offence enforceable in practice.

Afghanistan as proof of concept

Afghanistan shows why a regime-crime frame is needed. Since 2021, authorities have issued a sequence of measures that remove women and girls from secondary and higher education, restrict employment in most sectors, limit access to public spaces, and channel daily life through guardianship and dress rules. Recent developments include [fibre-optic internet shutdowns](#) that cut off online learning and reports of [bans on female-authored books in university curricula](#). Read together with [UNAMA's human-rights updates](#), the edicts and enforcement reproduce **a system of gender-based domination** that the new offence is designed to capture.

A final word to drafters

Treaty drafting is about fit. The goal is not to capture every wrong, but to name those that recur and that current tools systematically miss. Gender apartheid is one of those. It is a narrow offence for a narrow but devastating pattern. The proposed definition keeps the bar high and the proof practical. It refocuses investigators on policy, budgets, and command chains, rather than only on incident counts. It gives judges a clean set of elements to apply, drawn from familiar architecture. Use the [Crimes Against Humanity convention](#) to name the harm, set the elements, and build cooperation rules that states can apply in real cases.

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