

Resolution on FIDH's position on the crime of "gender apartheid"

FIDH International Board March 2024

Today, the fight against gender-based violence and discrimination is the focus of major mobilisations around the world, in particular by civil society, but also increasingly by other key stakeholders such as States and United Nations (UN) Special Rapporteurs and mechanisms. Although present in every continent, gender-based violence perpetrated by state and non-state actors in the public sphere in certain countries or regions has in some cases prompted a stronger reaction and dismay due to its scale and widespread or systematic nature.

This has notably been the case in response to the regime of oppression and domination established by the Taliban in Afghanistan since it illegally re-seized power in August 2021. This discriminatory regime has resulted in the deprivation of fundamental rights for many citizens, particularly women, girls and LGBTQI+ persons, and in a climate of constant violence, fear and persecution against them and anyone committed to protecting their rights. Several terms have been used to qualify this situation, in particular; a system of oppression and domination, discriminatory regime, gender-based persecution or "gender apartheid". While the latter has no current legal basis and does not constitute a crime under international law, it is being used exponentially on both the national and international scenes.

In March 2023, a group of Iranian and Afghan experts, activists and female leaders from around the world launched the international "[End Gender Apartheid](#)" campaign to raise awareness on the situation of women and girls in Iran and Afghanistan. This campaign calls on governments to take the necessary actions to condemn, prevent and punish acts of oppression against women and girls in Iran and Afghanistan, notably by interpreting and/or extending the legal definition of apartheid under international and national law to include serious forms of institutionalised gender-based discrimination. Since then, the use of this term has increased, including, among others, by the [United Nations Special Rapporteur on the situation of human rights in Afghanistan](#) Richard Bennett on several occasions. Many [civil society organisations](#), as well as [States](#) and the [UN Working Group on Discrimination against women and girls](#), have also mobilised to call for the inclusion of the crime of gender apartheid in the draft Convention on the Prevention and Punishment of Crimes against Humanity.

While these definitions slightly vary from one another, they offer a similar expansion of the historic apartheid definition (as codified in the [International Convention on the Suppression and Punishment of the Crime of Apartheid](#) and in the [Rome Statute of the International Criminal Court](#)). Inspired by an initial suggestion from UN Special Rapporteur Richard Bennett ([Report 2023](#)), various stakeholders including [civil society groups](#) and South African legal scholars and practitioners have proposed the following definition:

The crime of apartheid means inhumane acts of a character similar to those referred to in paragraph 1 [of Article 2 of the draft Convention on the Prevention and Punishment of Crimes Against Humanity], committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups, or by one gender group over another gender group or groups, based on gender, and committed with the intention of maintaining that regime.

Recognising the long-lasting efforts and recent success in seeking accountability for the crime against humanity of "gender-based persecution", supporters of the codification of the crime of gender apartheid have also clarified the differences between the two and how they complement each other rather than compete. While gender-based persecution can be widespread and systematic, which is acknowledged by its recognition as a crime against humanity, it does not sufficiently reflect the institutionalised and systematised nature of situations that may qualify as gender apartheid, nor does it capture the related intent in such situations, that is to maintain a regime of discrimination, oppression and domination. The crime of apartheid, including gender apartheid, legally requires a specific intent and context that can be found in no other crimes under international law, including gender-based persecution.

Being strongly committed, both with and through its member organisations, to the protection of human rights, including those of women, girls and LGBTQI+ persons, the International Board of FIDH aligns with this movement and adopts this resolution on FIDH's position on the crime of gender apartheid.

Having regard to international human rights law instruments, including the prohibition of all forms of gender-based violence and discrimination, as well as customary international law;

Whereas international law, including international criminal law, must be seen as an evolving corpus which can be revised to better reflect needs, to guarantee the protection of new rights or to condemn new violations;

Reminding that gender is a social construct based on a personal identification of being a man, a woman, or neither of these two, rather than on their biological sex; and welcoming the remarkable legal progress over the past few decades to broadly recognise and use this definition of gender and to condemn various forms of gender-based discrimination, and considering the many victories in the fight to protect the rights of women and LGBTQI+ persons;

Considering also the recent progress in taking into account intersectionality, recognising the existence of interconnected forms of discrimination in oppressive regimes, based on gender, race, ethnicity, religion, age or disability, among others, and the importance of taking all these elements into account so that no victim is excluded;

Emphasising that FIDH is a collective of human rights defenders and activists and that it develops its positions not only on existing laws but on lived experiences to serve our collective, shared values of humanity, justice and equality under the law; and

Considering lastly the current opportunities to revise, improve or at least influence the interpretation of international law, including through the process of drafting and adopting a convention on the prevention and punishment of crimes against humanity, an ideal platform to reflect progress made in recognising gender as a social construct and, *a fortiori*, to enhance efforts for meaningful gender justice.

The International Board of FIDH:

Condemns all forms of violence and discrimination based on gender, in law and in practice, and on any other grounds prohibited by international law;

Reaffirms the importance of preventing and punishing such acts, whether they constitute ordinary offences or crimes under international law;

Reminds States of their international obligation to fight against impunity and guarantee access to justice for the victims and survivors of such acts;

Welcomes the progress made in terms of the recognition of gender as a social construct, and calls on States to condemn gender-based violence and discrimination against women, girls, men, boys and LGBTQI+ persons;

Recognises the existing gap in international law to prosecute and condemn situations of institutionalised and systematised oppression and domination over a gender group or groups, or based on gender;

Therefore **aligns with** the proposal to recognise the crime of gender apartheid under international law;

Adopts, until a formal legal definition is adopted under international law, the abovementioned proposed definition;

Remains committed to use all available legal tools and to pursue its efforts to establish greater jurisprudence in the fight against sexual and gender-based violations and crimes, including the crime of gender-based persecution;

Reaffirms that the acceptance and inclusion of a crime of gender apartheid will reinforce the international legal corpus for the protection of human rights, in particular those of women, girls and LGBTQI+ persons;

Reaffirms lastly, that FIDH rejects any double standards, and **encourages** civil society, States and all other key stakeholders to make use of the instruments and tools of national, regional and international law for the benefit of all victims, regardless of the territory in which the violation is perpetrated.