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INTERNATIONAL CRIMINAL COURT
Office of the Prosecutor
The Hague, Netherlands

COMMUNICATION SUBMITTED UNDER ARTICLE 15 OF THE ROME STATUTE

**THE CRIME OF GENDER APARTHEID IN AFGHANISTAN:
A COMMUNICATION URGING RECOGNITION AND INVESTIGATION UNDER
ARTICLE 7 OF THE ROME STATUTE**

Submitted by:

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Filed pursuant to Article 15(1) of the Rome Statute, inviting the Prosecutor to receive and consider information on crimes within the jurisdiction of the Court and to analyse the seriousness of the information submitted herein.

I. Introduction

1. This communication is respectfully submitted to the Office of the Prosecutor of the International Criminal Court (“OTP” or “Prosecutor”) pursuant to Article 15(1) of the Rome Statute, which authorises the Prosecutor to “receive information on crimes within the jurisdiction of the Court” and to “analyse the seriousness of the information received.”
2. The submission is made by the Gender Apartheid Law Institute (GALI)—an independent, non-governmental legal research centre based in The Hague—whose mandate is to advance the recognition and codification of gender-based crimes under international criminal law. Drawing upon extensive documentation from the United Nations, non-governmental organisations, and expert field investigations, this communication provides verified factual and legal information concerning the institutionalised regime of gender oppression currently enforced in Afghanistan under Taliban rule.
3. The communication demonstrates that, since the Taliban’s assumption of power on 15 August 2021, Afghan women and girls have been subjected to a systematic, state-sanctioned architecture of exclusion and subjugation that penetrates every sphere of public and private life. The acts described—banning education and employment, restricting movement and dress, criminalising public visibility, and employing coercive enforcement are not isolated policies but components of a governance system designed to entrench male supremacy through legal, institutional, and coercive means.
4. The Institute submits that this organised regime of domination constitutes *gender apartheid*—a crime against humanity analogous in gravity and structure to racial apartheid as recognised under Article 7(1)(j) of the Rome Statute and customary international law. It further argues that the current limitation of the term *apartheid* to “racial” groups within Article 7 creates a normative and *doctrinal lacuna* that fails to capture contemporary manifestations of systemic gender oppression.
5. In light of the continuing and large-scale commission of these acts, this communication invites the Prosecutor to:
 - (a) Analyse the information herein as part of the Situation in Afghanistan already under preliminary analysis by the OTP;
 - (b) Determine whether the described conduct constitutes crimes against humanity under Article 7(1)(h) (persecution), (e) (imprisonment or severe deprivation of liberty), (c) (enslavement), and (k) (other inhumane acts); and
 - (c) Examine, as a matter of law and policy, the classification of such conduct as gender apartheid, warranting recognition within the interpretative framework of the Rome Statute and future codification efforts under the forthcoming *Crimes Against Humanity Treaty*.
6. This communication does not seek to duplicate factual material already in the public domain. Rather, it consolidates authoritative sources, analyses them through the lens of international criminal jurisprudence, and presents the OTP with a comprehensive

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evidentiary and doctrinal basis for treating *gender apartheid* as a crime of the same moral and legal gravity as racial apartheid.

II. Jurisdiction and Admissibility

A. Jurisdiction of the Court

7. The Court has jurisdiction over crimes committed on the territory of Afghanistan and by its nationals since the State's accession to the Rome Statute on 10 February 2003, with entry into force on 1 May 2003 pursuant to Article 126(2). Afghanistan's status as a State Party provides the Court with territorial and personal jurisdiction under Article 12(2)(a) and (b) of the Statute.
8. The conduct described in this communication has occurred continuously since 15 August 2021, following the Taliban's assumption of effective control over Afghanistan. Although the Taliban regime is not internationally recognised as the lawful government, its de facto authority over the territory satisfies the jurisdictional nexus required for the Court to exercise its mandate with respect to crimes committed within Afghanistan's territory by any actor.
9. The alleged acts – including the systematic exclusion of women and girls from education, employment, movement, and public participation – constitute crimes against humanity as defined in Article 7(1) of the Rome Statute, namely:
 - Persecution on gender grounds (Article 7(1)(h));
 - Imprisonment or other severe deprivation of physical liberty (Article 7(1)(e));
 - Enslavement (Article 7(1)(c)); and
 - Other inhumane acts of a similar character (Article 7(1)(k)).These acts appear to form part of a widespread and systematic attack directed against a civilian population, conducted pursuant to a State or organisational policy, thereby meeting the definitional threshold of crimes against humanity under Article 7(2)(a).
10. The Situation in Afghanistan has already been the subject of investigation by the OTP, as authorised by Pre-Trial Chamber II on 5 March 2020, covering crimes allegedly committed since 1 May 2003 by various actors, including the Taliban. Accordingly, the Prosecutor retains full authority to examine newly submitted information falling within the scope of the ongoing situation. On 31 October 2022, Pre-Trial Chamber II authorised the Prosecution to resume the investigation, confirming the ongoing nature of the Court's inquiry into Afghanistan.

B. Admissibility under Article 17

11. Pursuant to Article 17(1)(a)-(d) of the Rome Statute, a case is admissible before the Court where:
 - (a) the State concerned is unwilling or unable genuinely to investigate or prosecute;
 - (b) the conduct is sufficiently grave; and

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- (c) the case is not otherwise inadmissible under the complementarity or *ne bis in idem* principles.
12. The Taliban authorities are unwilling and unable to conduct genuine investigations into the alleged crimes. Their own decrees, edicts, and enforcement mechanisms constitute the foundation of the violations described herein. The de facto judicial institutions in Afghanistan operate under the Taliban’s authority and have been instrumental in enforcing gender-based segregation and punishment, precluding any prospect of impartial investigation or prosecution.
 13. The gravity requirement under Article 17(1)(d) is met. The acts concern millions of victims across the country, are systematically organised, and entail severe, long-term physical and psychological suffering. The discriminatory denial of education, employment, movement, and public participation to half the population constitutes one of the most serious and large-scale violations of human dignity in recent history.
 14. The interests of justice also favour admissibility. Recognising and investigating the institutionalised subjugation of women in Afghanistan would advance the Statute’s foundational purpose under its Preamble—to “put an end to impunity for the perpetrators of the most serious crimes of concern to the international community.”
 15. In light of the foregoing, the information contained in this communication falls squarely within the jurisdiction of the Court, satisfies the admissibility requirements of Article 17, and warrants analysis by the Prosecutor under Article 15(2) of the Rome Statute.

III. Factual Background

16. On **15 August 2021**, the Taliban seized control of Kabul and effectively assumed authority over the territory of Afghanistan. Since that date, the de facto authorities have promulgated and enforced a comprehensive system of rules and edicts that exclude women and girls from political, economic, and social life. This framework has been implemented through ministries, provincial offices, and enforcement bodies operating nationwide.
17. Within weeks of taking power, the Taliban dissolved the Ministry of Women’s Affairs and re-established the Ministry for the Propagation of Virtue and Prevention of Vice, tasking it with enforcing decrees on female conduct, dress, and movement. Male officials of this ministry and associated morality police conduct patrols, public inspections, and detentions to ensure compliance.
18. The restrictions imposed since August 2021 have been *systematic, cumulative, and institutionalised*. Key measures include:
 - **Education:** From September 2021, girls were barred from secondary schools; in December 2022, a decree suspended all female university education. UNESCO estimates more than 1.1 million girls have been excluded from formal schooling.
 - **Employment:** In December 2022, the Taliban banned women from working in domestic and international non-governmental organisations. In April 2023, this prohibition was extended to United Nations national female staff.
 - **Freedom of movement:** Women may not travel more than short distances or appear in public without a male guardian (*mahram*). Decrees require full-body covering and restrict access to public parks, gyms, and bathhouses.

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- Political and public participation: Women have been removed from nearly all public offices, judicial positions, and representative bodies. No women currently hold ministerial, provincial, or mayoral authority.
 - Access to justice: Female lawyers, prosecutors, and judges have been dismissed or targeted, leaving victims of gender-based violence without legal recourse.
19. These measures are enforced through coercive and punitive means. UNAMA and OHCHR have documented arbitrary arrests of women for “moral offences,” public beatings, incommunicado detention, and threats against relatives. The enforcement pattern demonstrates intent to ensure compliance through intimidation and fear rather than ad hoc abuse.
 20. The Taliban have formalised their decrees in written directives and public statements by senior officials, illustrating a policy of governance rather than spontaneous or localised misconduct. The cumulative effect is the systematic erasure of women and girls from public life and their confinement to the private sphere, a situation that UN experts, including the Special Rapporteur on the Situation of Human Rights in Afghanistan (A/HRC/56/75, 2024), have characterised as *gender persecution* and potentially *gender apartheid*.
 21. The scale and duration of these restrictions demonstrate that they are part of a widespread and systematic attack against a civilian population, carried out pursuant to a deliberate State or organisation-level policy, satisfying the chapeau elements of crimes against humanity under Article 7(1) and 7(2)(a) of the Rome Statute.
 22. As of mid-2025, these conditions persist. No substantive measures have been taken by the de facto authorities to rescind or mitigate the decrees. Reports by UN Women and Human Rights Watch confirm continuing enforcement and further deterioration in women’s rights, evidencing an entrenched and continuing system of gender-based subjugation.

IV. Legal Analysis

A. Existing Framework under the Rome Statute

23. Article 7(1) of the Rome Statute enumerates the *crimes against humanity* within the Court’s jurisdiction. Two provisions are directly relevant to regimes of systemic discrimination and domination:
 - Article 7(1)(h) – *Persecution*: “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law.”
 - Article 7(1)(j) – *Apartheid*: “inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”

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24. The Statute thus criminalises both targeted persecution and systemic domination, but only the latter where the oppression is *racially* defined. In consequence, while gender-based persecution is prosecutable when linked to another enumerated act, the Statute contains no stand-alone provision addressing an institutionalised system of gender-based domination equivalent in structure to racial apartheid.
25. This textual limitation has been noted by multiple authorities, including the Independent Expert on the Situation of Human Rights in Afghanistan and several academic commentators, as a *doctrinal lacuna* in the Statute’s treatment of gendered structural violence.

B. Doctrinal and Normative Gap

26. The travaux préparatoires of the Rome Statute confirm that the drafters confined “apartheid” to racial contexts to reflect then-existing treaty law—principally the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, which was limited to racial segregation. Subsequent developments in international law, however, have expanded the understanding of apartheid as a mode of governance based on group hierarchy and institutionalised domination, rather than a phenomenon confined to race.
27. Contemporary human-rights instruments—including CEDAW (1979), the Beijing Platform for Action (1995), and UN Security Council Resolution 1325 (2000)—impose obligations on States to dismantle systemic gender discrimination. These instruments, while not criminal in nature, recognise that gender-based subordination can be structural, state-sanctioned, and comparable in severity to racial apartheid.
28. International criminal law is a living system interpreted in light of evolving norms. The Vienna Convention on the Law of Treaties, Article 31(1), requires treaties to be interpreted in good faith “in light of their object and purpose.” The object and purpose of the Rome Statute—to end impunity for “the most serious crimes of concern to the international community”—supports an interpretation of Article 7 that encompasses systems of institutionalised gender oppression analogous in structure and gravity to racial apartheid.

C. Interpretative Approach and Jurisprudential Support

36. The Court and ad hoc tribunals have consistently applied teleological and evolutive interpretation to give effect to the Statute’s humanitarian purpose. In *Situation in the Democratic Republic of the Congo* (ICC-01/04-01/06-2842, ¶ 971), the Trial Chamber emphasised that crimes against humanity must be interpreted in a manner that reflects “the contemporary reality of international law and the evolving nature of human rights.” Similar reasoning appears in the jurisprudence of the ICTY (*Tadić*, IT-94-1, ¶ 562) and ICTR (*Akayesu*, ICTR-96-4, ¶ 567), which recognised gender-based persecution as encompassing patterns of domination within broader discriminatory systems.
37. Accordingly, the elements of *apartheid*—(i) institutionalised regime; (ii) systematic oppression and domination; (iii) intent to maintain that regime—may, by analogy, apply to gender where the evidentiary record demonstrates a deliberate state policy of subordinating one gender group to another.

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38. Article 21(3) of the Rome Statute mandates that the Court’s interpretation and application of law “must be consistent with internationally recognised human rights.” This provision requires that Article 7(1)(j) be read in harmony with the peremptory norm of non-discrimination and with the equality guarantees embedded in the ICCPR, ICESCR, and CEDAW. Such systemic interpretation prevents the Statute from perpetuating an anachronistic distinction that protects victims of racial apartheid but not those subjected to its gender-based analogue.

D. Comparative Analysis: From Racial to Gender Apartheid

39. The legal concept of apartheid originated in response to the institutionalised racial hierarchy enforced by the Government of South Africa between 1948 and 1994. The 1973 Apartheid Convention defined apartheid as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.” The Rome Statute adopted this language almost verbatim in Article 7(1)(j), thereby crystallising apartheid as a crime against humanity in international criminal law.
36. The defining elements of racial apartheid under both instruments were: (a) an institutionalised regime; (b) systematic oppression and domination; and (c) intent to maintain that regime. Each of these structural elements can be observed in the Taliban’s gender-based governance system, even though the basis of distinction is gender rather than race.
37. Like racial apartheid, gender apartheid operates through legal, administrative, and coercive means to sustain a hierarchy of dominance. Under both systems, the subordinated group is excluded from participation in political and public life, confined to designated spaces, and deprived of fundamental rights based solely on immutable identity characteristics. The result in both cases is the legal codification of social inequality as a governing principle.
38. The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) demonstrates that *the structural logic of apartheid—systemic exclusion and enforced inferiority—is not limited to race*. In *Tadić* (IT-94-1-T, ¶ 697), the ICTY affirmed that crimes against humanity encompass patterns of domination “directed against any civilian population on discriminatory grounds.” Similarly, in *Akayesu* (ICTR-96-4-T, ¶ 568), the ICTR recognised gender-based persecution as involving the same element of structural intent found in racial persecution.
39. The analogy between racial and gender apartheid is not rhetorical but legal. Both constitute *regimes of organised dehumanisation*, enforced through law, policy, and institutional design. Both violate peremptory norms prohibiting discrimination and slavery. And both are intended to maintain a social order predicated on the systemic subordination of one group to another.
40. Extending the concept of apartheid to encompass gender is consistent with the object and purpose of the Rome Statute and with Article 21(3), which requires the Court to interpret the Statute in conformity with internationally recognised human rights. Limiting apartheid

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to race, while excluding equally systematic forms of domination based on gender, would contradict the principle of equality before the law and the prohibition of discrimination under customary international law.

41. The recognition of gender apartheid within international criminal law would therefore not constitute the creation of a new crime, but the logical and necessary evolution of an existing one. Just as the Nuremberg principles expanded accountability from war crimes to crimes against humanity, so too must the modern interpretation of apartheid evolve to encompass regimes of systemic gender oppression that replicate the legal and moral architecture of racial apartheid.

D. Application to the Situation in Afghanistan

32. The evidence summarised above demonstrates that the Taliban have established and maintained an institutionalised regime characterised by the systematic oppression and domination of women and girls as a group. The regime’s legislative, administrative, and enforcement structures operate with the intent to maintain male supremacy and to eliminate women from public life. The resulting governance system mirrors the core elements of apartheid: legally enforced separation, denial of participation in governance, restriction of movement and residence, and coercive control through punishment and surveillance.
33. The acts in question meet the contextual elements of crimes against humanity under Article 7(1) and 7(2)(a)—a widespread and systematic attack against a civilian population pursuant to a policy. They further satisfy the constituent elements of persecution on gender grounds (Article 7(1)(h)) and other inhumane acts (Article 7(1)(k)). When viewed together, these elements describe conduct functionally equivalent to the crime of apartheid.
34. Recognising this conduct as *gender apartheid* would not create a new crime but would clarify the interpretive reach of Article 7(1)(j) and Article 21(3) in accordance with contemporary human-rights law. The Prosecutor’s analysis could thereby contribute to the consistent development of international criminal jurisprudence and inform future treaty codification efforts.
35. The Taliban’s governance structure constitutes a deliberate, institutionalised system of gender-based domination that satisfies the material and contextual elements of crimes against humanity. Interpreting Article 7(1)(j) in conformity with human-rights principles permits recognition of this conduct as *gender apartheid*, ensuring that the Rome Statute remains responsive to evolving manifestations of systemic oppression.

V. Request for Action

36. Pursuant to Article 15(1) of the Rome Statute, the Gender Apartheid Law Institute respectfully submits this communication for the Prosecutor’s consideration as part of the ongoing Situation in Afghanistan. The information presented herein establishes reasonable

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grounds to believe that crimes against humanity within the jurisdiction of the Court are being committed, and that the pattern of conduct described constitutes an *institutionalised regime of systematic oppression and domination on the basis of gender*.

37. In light of the factual and legal material contained in this communication, and consistent with the Prosecutor’s mandate under Articles 15(2) and 53(1) of the Statute, the Institute respectfully invites the Prosecutor to:
- (a) Acknowledge receipt of this communication and register it in the Office of the Prosecutor’s information database in accordance with established procedure;
 - (b) Analyse the seriousness of the information received in conjunction with other evidence already gathered in relation to the Situation in Afghanistan;
 - (c) Assess whether the acts described constitute crimes against humanity under Article 7(1), including persecution on gender grounds (h), imprisonment or other severe deprivation of liberty (e), enslavement (c), and other inhumane acts (k), carried out as part of a widespread and systematic attack against a civilian population pursuant to a policy;
 - (d) Consider, as a matter of legal interpretation and policy development, whether the conduct described fulfils the elements of the *crime of apartheid* under Article 7(1)(j) when interpreted in light of Article 21(3) and internationally recognised human rights principles;
 - (e) Engage, where appropriate, with relevant United Nations mechanisms, States Parties, and academic institutions to advance the clarification and eventual codification of *gender apartheid* within international criminal law; and
 - (f) Provide public transparency by reflecting this communication, and the Prosecutor’s subsequent analysis, within the OTP’s annual report on activities conducted under Article 15.
38. The Institute recognises and respects the Prosecutor’s independence and discretion in determining whether to initiate further examination or investigation. This submission is offered to support the Court’s broader mandate to address “the most serious crimes of concern to the international community as a whole” and to ensure that the Rome Statute remains responsive to contemporary forms of systemic oppression.
39. The Institute further requests that this communication, or a redacted summary thereof, be made public in due course, consistent with the OTP’s practice of transparency and with appropriate safeguards for the integrity of ongoing proceedings.
40. In submitting this communication, the Institute reaffirms its commitment to cooperate fully with the Office of the Prosecutor and to provide any additional documentation, expert analysis, or contextual information that may assist in the Prosecutor’s assessment under Article 15(2) of the Rome Statute.

VI. Concluding Observations

41. This communication has been submitted in furtherance of the object and purpose of the Rome Statute: to contribute to the effective prosecution of the most serious crimes of concern to the international community as a whole. The Gender Apartheid Law Institute recognises that the credibility and legitimacy of the international criminal justice system rest upon its capacity to address evolving manifestations of structural oppression with the same rigour and resolve that guided its response to historical injustices.
42. The Institute submits that the regime described herein—an institutionalised system of gender-based domination—represents a contemporary form of the crime of apartheid, in both purpose and effect. Its recognition within the interpretative and policy framework of the Court would affirm the Statute’s commitment to universality, equality, and the indivisibility of human dignity.
43. The Institute expresses its respect for the independence and discretion of the Prosecutor, and offers its full cooperation in any analytical or evidentiary follow-up that the Office may deem appropriate under Article 15(2). It remains ready to provide supplementary documentation, expert testimony, or contextual analysis that could assist the Office’s ongoing examination of the Situation in Afghanistan.
44. In closing, this submission is not only an appeal for legal recognition but an affirmation of principle: that international criminal law must evolve to reflect the lived realities of those it was created to protect. The acknowledgment of *gender apartheid* as a crime against humanity would represent not an expansion, but the completion of the Statute’s promise—to stand equally against all systems of organised dehumanisation.

VII. Annexes and Signature

A. Annexes

45. The following annexes accompany this communication and form an integral part of the submission. Each annex provides factual or legal corroboration of the information set out in the preceding sections.

Annex I – Factual Annex

Compilation of verified decrees, edicts, and public statements issued by the Taliban between August 2021 and October 2025; relevant United Nations and NGO documentation substantiating the described restrictions on women and girls.

Annex II – Legal Annex

Extracts from the *Rome Statute of the International Criminal Court*; relevant jurisprudence from

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the ICC, ICTY, and ICTR; and excerpts from applicable treaties and conventions, including CEDAW, ICCPR, ICESCR, and the 1973 *International Convention on the Suppression and Punishment of the Crime of Apartheid*.

Annex III - Scholarly Annex

Select academic publications and commentaries analysing gender persecution, apartheid, and structural discrimination within international criminal law, including peer-reviewed articles and policy analyses by recognised experts.

Annex IV - UN and NGO Reports

Reports by UNAMA, OHCHR, UN Women, Amnesty International, and Human Rights Watch (2021-2025) documenting the institutionalised exclusion of women and girls in Afghanistan.

Annex V - Table of Legal Authorities and References

Consolidated list of cited cases, treaty provisions, and materials referenced throughout this communication, formatted for ease of cross-reference by the Office of the Prosecutor.

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B. Signature

This communication is respectfully submitted to the
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pursuant to Article 15(1) of the Rome Statute.

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