

GENDER APARTHEID UNDER TALIBAN RULE: LEGAL GAPS IN  
THE ROME STATUTE AND PROSECUTING DENIAL OF WOMEN'S  
RIGHTS

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by


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## DECLARATION

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## ABSTRACT

After the Taliban took control of Afghanistan in August 2021, they systematically violated the rights of women and girls through more than fifty official decrees that restricted their access to education, employment, free movement, and participating in public activities. These measures collectively form an intentional and institutionalized system of domination that many scholars and human rights bodies describe as gender apartheid. Despite growing international recognition of this reality, international law does not explicitly recognize gender apartheid as a distinct international crime.

This research examines how the Taliban implements its policies through its administrative system to meet the legal criteria of apartheid under current provisions of international criminal law, while determining what legal and institutional changes are needed to establish accountability systems. Using qualitative methods, this study applies feminist legal theory and interdisciplinary human rights analysis to a comparative examination of the first Taliban regime (1996-2001) and the current government (2021 to present). It further assesses the Rome Statute, relevant international human rights treaties, and available judicial mechanisms through expert interviews and survey data collected from Afghan women.

The findings shows that the Taliban operates a structured and institutionalized system of gender-based discrimination that fulfill all necessary criteria for apartheid, except for racial discrimination as defined in the Rome Statute. This racial limitation creates a significant legal gap that prevents full recognition of the Taliban's system of domination. Overall, the research demonstrates the need for doctrinal development within international criminal law and contributes to feminist legal scholarship by strengthening global accountability frameworks capable of recognizing and responding to the lived realities of Afghan women.

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# TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	v
<b>LIST OF ABBREVIATIONS</b> .....	vii
<b>INTRODUCTION</b> .....	1
<i>Problem Statement and Research Question</i> .....	1
<i>Research Significance</i> .....	4
<i>Thesis Outline</i> .....	5
<b>CHAPTER 1. LITERATURE REVIEW</b>	
1.1 <i>Human Rights Treaties</i> .....	7
1.2 <i>Jurisprudence of International Criminal Tribunals</i> .....	10
1.3 <i>South African Apartheid Jurisprudence</i> .....	14
1.4 <i>Apartheid in International Criminal Law (Rome Statute Analysis)</i> .....	17
1.5 <i>Feminist Legal Theory &amp; Gendered Harm</i> .....	19
1.6 <i>Intersectionality and Multiple Forms of Oppression</i> .....	20
1.7 <i>The Problem of “Lawless Laws”</i> .....	22
<b>CHAPTER 2. THEORETICAL FRAMEWORK</b>	
2.1 <i>Feminist Theory</i> .....	25
2.2 <i>Intersectional Theory</i> .....	27
<b>CHAPTER 3. METHODOLOGY</b>	
3.1 <i>Doctrinal Legal Analysis</i> .....	31
3.2 <i>Comparative Method</i> .....	32
3.3 <i>Survey</i> .....	33
3.4 <i>Expert Interviews</i> .....	34
3.5 <i>Thematic Analysis Section</i> .....	35
3.6 <i>Ethical Consideration</i> .....	36
3.7 <i>Limitations</i> .....	37
<b>CHAPTER 4. COMPARATIVE ANALYSIS OF THE FIRST AND CURRENT TALIBAN REGIMES</b>	
4.1 <i>Context: Taliban First Era (1996–2001)</i> .....	39
4.2 <i>Context: Taliban Current Regime (2021- Present)</i> .....	41
4.3 <i>De Jure vs. De Facto Governance Under the Taliban</i> .....	42
4.4 <i>Analytical Comparison: Continuity and Intensification Across Both Regimes</i> .....	44

4.5 <i>Structural and Administrative Differences Between the Two Regimes</i> .....	46
<b>CHAPTER 5. EMPIRICAL FINDINGS</b>	
5.1 <i>Demographic Characteristics of Respondents</i> .....	50
5.2 <i>Expert Perspectives on Taliban Rule and Gender Apartheid</i> .....	53
<b>CHAPTER 6. LEGAL ANALYSIS</b>	
6.1 <i>Legal Elements of Apartheid Under International Law</i> .....	58
6.1.1 <i>Apartheid Under the Rome Statute – Article 7(2)(h)</i> .....	58
6.2 <i>Mapping Taliban Decrees onto the Legal Elements</i> .....	60
6.2.1 <i>Inhuman Acts</i> .....	60
6.2.2 <i>Institutionalized Regime</i> .....	62
6.2.3 <i>Systematic Oppression and Domination</i> .....	64
6.2.4 <i>The Targeted Group: Why Gender Must Count</i> .....	65
6.2.5 <i>Intent to Maintain the Regime of Domination</i> .....	67
6.3 <i>Why Rome Statute Cannot Capture the Taliban System (The Gap)</i> .....	69
6.4. <i>Pathways to Accountability and Legal Reforms</i> .....	71
6.4.1 <i>Amending the Rome Statute</i> .....	71
6.4.2 <i>New Crimes Against Humanity Treaty (ILC Draft)</i> .....	73
6.4.3 <i>Universal Jurisdiction</i> .....	75
6.4.4 <i>UN Action</i> .....	77
6.4.5 <i>Customary International Law</i> .....	79
<b>CHAPTER 7. CONCLUSION</b> .....	82
<b>BIBLIOGRAPHY</b> .....	84

## LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
NGO	Non-Governmental Organization
SCSL	Special Court for Sierra Leone
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNHRC	United Nations Human Rights Council
UNTAET	United Nations Transitional Administration in East Timor

# INTRODUCTION

## ***PROBLEM STATEMENT AND RESEARCH QUESTIONS***

When Taliban returned to power in August 2021, they promised a more “moderate” approach and assured the international community that women would be allowed to study, work, and participate in public life. In an early press conference, Taliban spokesperson Zabihullah Mujahid declared: “*We are going to allow women to work and study... women are going to be very active, but within the framework of Islam.*”<sup>1</sup> In reality, the opposite occurred. Within months, a wide range of strict measures were imposed on women and girls, dismantling nearly all educational, economic, and public freedoms they previously held. Afghanistan has since become the only country in the world where girls are banned from secondary and higher education, and where women are systematically excluded from government, most employment, public space, and formal political participation. What began as a series of isolated announcements has developed into a coherent governance model in which gender discrimination is not a side effect of the regime, but its organizing principle.

This pattern has been extensively documented by the United Nations and international human rights organizations. According to UN reports, by imposing educational restrictions on women beyond the sixth grade and university, at least 1.4 million female students are deprived of continuing their education at secondary and higher levels<sup>2</sup>. Women's employment has experienced a more significant decline than men's employment has. One UN survey found a 25 per cent decline in women's employment after August 2021, compared to a 7 per cent decline for men, while only about 4 per cent of women retain any form of income-generating work<sup>3</sup>. Furthermore, UN Women, UNAMA, the Special Rapporteur on the situation of human rights in Afghanistan, and Amnesty International further record that women are banned from

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<sup>1</sup> BBC News, “How Taliban rule is changing Afghanistan — and its women,” August 4, 2022, <https://www.bbc.com/news/62469204>.

<sup>2</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, UN Doc. A/HRC/58/80 (Geneva: United Nations, 20 February 2025), 8-10.

<sup>3</sup> UN Women, *Gender Alert: Women's Rights in Afghanistan – 2023 Update*, (New York: UN Women, 2023), 12–13.

most government posts, humanitarian organizations and NGOs, they are also barred from parks, gyms, public baths, beauty salons, and forbidden to travel more than 72 kilometres without a male guardian<sup>4</sup>. These policies are not symbolic, they affect millions of women and girls and cause measurable harms across education, health, income, and physical security.

Statistics on its implementation and consequences show how deeply entrenched this system is. In 2024 alone, dozens of women were flogged by court order for so-called "moral" crimes, and there is a documented increase in the number of women punished between the first and second half of the year<sup>5</sup>. At the same time, the collapse and politicization of public services disproportionately harm women<sup>6</sup>: Hundreds of health facilities have been closed, an estimated 3.3 million people are deprived of primary care, and around one million pregnant and lactating women are now acutely malnourished<sup>7</sup>. Surveys of Afghan women conducted by the Special Rapporteur show that 43 per cent identify "*all restrictions together*" as their greatest concern, 36 per cent identify the education ban as their primary fear, nearly half know a woman suffering from anxiety or depression, and almost eight percent know someone who has attempted suicide since the Taliban's return<sup>8</sup>. Together, these indicators reveal not isolated abuses but a comprehensive system that seeks to erase women from public life and to control their bodies, mobility, and futures.

Karima Bennoune and other feminist legal scholars argue that this pattern must be understood not simply as gender persecution, but as gender apartheid<sup>9</sup>. Bennoune defines gender apartheid: "Analogous to racial apartheid, gender apartheid is a system of governance, based on laws and/or policies, which imposes systematic segregation of women and men and may also systematically exclude women from public spaces and spheres<sup>10</sup>." Bennoune describes gender apartheid as a system that separates people

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<sup>4</sup> UN Women, *Gender Alert: Women's Rights in Afghanistan – 2023 Update* (New York: UN Women, 2023).

<sup>5</sup> United Nations Assistance Mission in Afghanistan (UNAMA), *Human Rights Situation in Afghanistan: October–December 2024*, sections on corporal punishment and "moral crimes."

<sup>6</sup> UNAMA, *Human Rights Situation in Afghanistan: October–December 2024*, section on corporal punishment and "moral crimes."

<sup>7</sup> UNAMA, *Human Rights Situation in Afghanistan: October–December 2024*, humanitarian impacts section.

<sup>8</sup> UNAMA, *Human Rights Situation in Afghanistan: October–December 2024*, women's survey section.

<sup>9</sup> Karima Bennoune, *The International Obligation to Counter Gender Apartheid in Afghanistan*, *Feminist Dissent*, no. 8 (2023): 1-35

<sup>10</sup> Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 24.

through segregation while maintaining a complete social structure that controls women as a social class, just as racial apartheid controlled South African society through racial discrimination<sup>11</sup>. Applying this lens to Afghanistan, the Taliban's rulings maintain a regime in which women's presence in public life is considered illegitimate and their legal status is effectively dismantled.

Yet, despite this growing scholarly consensus and the mounting empirical evidence, international law has not kept pace with existing reality. Racial apartheid is expressly criminalized as a crime against humanity in the 1973 Apartheid Convention and in Article 7(2)(h) of the Rome Statute of the International Criminal Court, which defines apartheid as "inhuman acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group<sup>12</sup>." By contrast, there is no explicit recognition of gender apartheid as a distinct crime. International human rights treaties such as the ICCPR, ICESCR, CEDAW, and the Genocide Convention establish equality and non-discrimination as foundational principles and clearly condemn the harms produced by Taliban decrees, but they rely on state reporting, monitoring, and political pressure rather than criminal accountability<sup>13</sup>.

International criminal law, the same, includes gender persecution, sexual violence, and enslavement as crimes against humanity, and tribunal jurisprudence as *Tadić*, *Kunarac*, *Akayesu*, and hybrid courts, has progressively recognized that systems of domination can be enforced through policies, administrative structures, and social restrictions<sup>14</sup>. The Rome Statute still retains its apartheid provisions, which only protect racial groups, while gender-based structural domination exists as separate individual crimes and is not recognized as an independent crime at the system level.

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<sup>11</sup> Ibid

<sup>12</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, adopted July 17, 1998, 2187 U.N.T.S. 90, art. 7(2)(h).

<sup>13</sup> International Covenant on Civil and Political Rights, adopted December 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women, adopted December 18, 1979, 1249 U.N.T.S. 13; Convention on the Prevention and Punishment of the Crime of Genocide, adopted December 9, 1948, 78 U.N.T.S. 277.

<sup>14</sup> *Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgment (Appeals Chamber), July 15, 1999*; *Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23 & IT-96-23/1-A, Judgment (Appeals Chamber), June 12, 2002*; *Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment (Trial Chamber), September 2, 1998*; *United Nations Transitional Administration in East Timor (UNTAET), Regulation No. 2000/15 (2000)*; *Statute of the Special Court for Sierra Leone (2002)*.

This analysis demonstrates that how these two situations create conflict between them because the Taliban controls Afghanistan through an institutional framework which enforces gender discrimination, yet the international legal system fails to recognize gender apartheid as a distinct violation. The research investigates two essential questions through its combination of doctrinal evaluations and its analysis of the Taliban's first and present governments and its collection of survey data and expert interview responses from Afghan women and women's rights specialists. First, can the Taliban's institutionalized restrictions against women be characterized as gender apartheid under existing international criminal law, using the elements developed for racial apartheid and related crimes against humanity? Second, if current law is inadequate, what legal and institutional reforms are needed, whether through an amendment to the Rome Statute, the development of a new Crimes Against Humanity Convention, or customary international law, to explicitly recognize and prohibit gender apartheid?

By combining feminist legal theory, intersectionality, and the concept of “lawless laws” with the quantitative and qualitative evidence produced by UN bodies and human rights organizations, the thesis argues that Taliban rule represents not a temporary crisis but a stable, systematized regime of gender domination. It claims that international criminal law, shaped historically through male-centred and racialized experiences, has failed to fully conceptualize and prosecute such systems. The following chapters begin by describing modern legal systems and conceptual frameworks before they use legal and practical evidence to determine if Afghan gender apartheid needs its own classification as a crime against humanity.

## ***RESEARCH SIGNIFICANCE***

This research examines gender apartheid as a form of systematic discrimination and addresses the limitations of international criminal law in responding to it. First, it responds to the reality that the Taliban's governance of women goes beyond individual cases of abuse, as it operates as a complete system that controls every aspect of women's existence. Second, international criminal law establishes racial apartheid as a prohibited

practice, yet it lacks specific provisions to address gender apartheid which results in inadequate protection for systems that use gender discrimination for control. Third, this thesis contributes to existing scholarship by applying the legal elements of apartheid and related crimes against humanity to the Afghan context, combining feminist legal theory with empirical evidence from UN reports, surveys, and expert interviews. Finally, the research is important not only for academic debate, but also for international accountability efforts, as it offers legal arguments that may support future prosecutions, norm development, and stronger international responses to the systematic denial of women's rights in Afghanistan.

## ***THESIS OUTLINE***

This thesis is organized to develop a clear and logical progression from theory and law to empirical analysis and reform-oriented conclusions. The overall structure is designed to guide the reader from the conceptual foundations of the research problem to a practical assessment of accountability gaps and possible legal responses to gender apartheid in Afghanistan.

The research establishes its academic basis through a review of existing academic studies that makes up the first substantial section of this work. This chapter reviews feminist legal scholarship together with theories about apartheid and persecution and previous studies of gender-based crimes which international law has recognized. The chapter presents fundamental conceptual arguments which result from legal and interdisciplinary studies to show the current knowledge deficits that this research project seeks to address.

The following chapters examine both legal aspects and scientific evidence which form the basis of this research. Another chapter contains a section which examines the legal framework that applies to this situation through the Rome Statute of the International Criminal Court, international human rights agreements, decisions from international courts and hybrid tribunals to determine how systems of domination are defined in international criminal law today. The research methodology section of this

chapter presents survey and expert interview results from Afghan women and women's rights specialists to establish evidence which supports the legal evaluation.

The final chapters shift the focus toward accountability and reform. These chapters analyse current and future solutions which combat gender apartheid through international criminal law frameworks and United Nations initiatives and customary international law systems. The thesis presents its final section which unites fundamental research findings with legal and institutional recommendations to boost international efforts against gender-based domination.

# CHAPTER 1.

## LITERATURE REVIEW

This literature review brings together four major standards of literatures that are essential for understanding the Taliban's system over women. These include international human rights treaties, case law from international criminal tribunals, comparative analysis of apartheid regime, and feminist and the intersectional legal theory. By understanding all bodies of the international system, scholars consistently recognize that Taliban policies amount to systematic and institutionalized gender discrimination. Yet they also highlight a critical gap in international law: while racial apartheid is criminalized under international law, gender apartheid is not. By examining what the existence law and international practice explains, and what it overlooks, this chapter identifies the doctrinal gaps that shape the central question of this thesis and underscores why a legal analysis of gender apartheid is urgently needed.

### ***1.1 HUMAN RIGHTS TREATIES***

International human rights treaties are known as the basis for determining whether the Taliban is violating women's rights through their policies. Key instruments, including the ICCPR, ICESCR, CEDAW, and the Genocide Convention, establish dignity, equality, and non-discrimination as fundamental principles applicable to all individuals. Scholarly research indicates that these treaties establish a worldwide standard which requires states to eliminate all systems that perpetuate women's inequality in addition to preventing discrimination. Human Rights Committee through General Comment No. 28 has clarified that equality between men and women is a “*pervasive principle*” that applies to all ICCPR provisions<sup>15</sup>. In addition, General Comment No. 16, of the Committee on Economic, Social and Cultural Rights emphasizes that, states must take positive measures to eliminate both formal and

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<sup>15</sup> UN Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights between Men and Women)*, March 29, 2000, <https://hrlibrary.umn.edu/gencomm/hrcom28.htm>.

substantive discrimination and to achieve actual equality for women<sup>16</sup>. Taken together, these interpretations demonstrate that gender equality forms an essential part of international human rights law structure.

Despite this normative strength, existing treaties fail to provide solutions for political systems built on discrimination as their fundamental structure. Instruments such as ICCPR and ICESCR provide fundamental protection for personal rights while banning discrimination, but these instruments lack the power to control or punish a complete gender-based governance system. Obligations imposed by these treaties require states to protect human rights, but they do not provide criminal penalties to establish gender-based domination by the Taliban as an international crime. As a result, although these treaties affirm women's rights, they do not provide a direct legal framework for defining the Taliban's system of governance as a criminal offense. Additionally, ICESCR principle of "*progressive realization*" enables authoritarian governments to defend discriminatory practices through claims of cultural or economic constraints<sup>17</sup>. Thus, despite clearly condemning the harmful consequences of Taliban decrees, scholars argue that these instruments remain insufficient for addressing the deliberate and comprehensive nature of the Taliban's gender-based regime.

Within this body of literature, most scholars focus on CEDAW because it stands as the single core treaty which focuses exclusively on women's equality<sup>18</sup>. Scholars such as, Hilary Charlesworth, Christine Chinkin, in *The Boundaries of International Law 2000*, criticize the male bias of international law, showing how women's exclusion from public life is normalized by legal systems<sup>19</sup>. Similarly, Karima Bennoune 2023 explicitly describes Taliban rule as a "*regime of gender apartheid*"<sup>20</sup>. Therefore, these

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<sup>16</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Article 3)*, May 11, 2005, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/f-general-comment-no-16-equal-right-men-and-women-enjoyment-all-economic-social-and-cultural-rights>.

<sup>17</sup> Rehan Abeyratne, "Overview of the Committee on Economic Social and Cultural Rights," in *International Fora for the Protection, Promotion and Enforcement of Human Rights*, accessed December 3, 2025, <https://ebooks.inflibnet.ac.in/hrdp07/chapter/overview-of-the-committee-on-economic-social-and-cultural-rights/>.

<sup>18</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted December 18, 1979, 1249 U.N.T.S. 13.

<sup>19</sup> Hilary Charlesworth and Christine Chinkin. *The Boundaries of International Law: A Feminist Analysis, with a New Introduction* (Manchester: Manchester University Press, 2022).

<sup>20</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2023): 1-85.

scholars emphasized that CEDAW demands complete elimination of discrimination which includes transforming harmful gender stereotypes.

Afghanistan has ratified CEDAW, but the Taliban established rules which block women from all spheres of life and violate every essential article of the Convention on the Elimination of All Forms of Discrimination Against Women. The absence of criminal enforcement mechanisms and reliance on state reporting make CEDAW ineffective when de facto regimes such as the Taliban choose to ignore its provisions. As a result, the treaty just shows that Taliban policies are discriminatory against women but there is a lack of sufficient power to make that regime accountable.

A further limitation arises from the Genocide Convention, because it included major restrictions since its first adoption. This Convention protects national, ethnical, racial or religious groups, but it fails to protect gender identities<sup>21</sup>. During the 1940s, the drafters did not anticipate of such a scenario that women would face such kind of oppression. Therefore, they did not protect women as an independent group that might face organized destruction. Scholars such as Strandberg Hassellind and others criticize this omission because they believe gender-based groups also experience destruction through different forms<sup>22</sup>. According to this analysis, denial of education, exclusion from employment, restrictions on movement, and bans on public participation can amount to forms of group destruction even in the absence of mass violence<sup>23</sup>. According to this perspective, patterns of harm to gender groups show similarities to group destruction. In sum, the convention does not recognize gender as a protected group, which prevents international law from applying the term genocide to extreme gender discrimination.

Additionally, the Rome Statute includes gender persecution as a crime, but experts believe that the statute does not fully address the full scope and lasting impact of the Taliban's policies<sup>24</sup>. The Genocide Convention was designed to address physical destruction of protected groups, but the Taliban uses its system to erode women's rights,

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<sup>21</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted December 9, 1948, 78 U.N.T.S. 277.

Adopted December 9, 1948. Entered into force January 12, 1951.

<sup>22</sup> Filip Strandberg Hassellind, "Groups Defined by Gender and the Genocide Convention," *Genocide Studies and Prevention: An International Journal* 14, no. 1 (2020): 60–75.

<sup>23</sup> *Ibid*

<sup>24</sup> Rome Statute of the International Criminal Court, art. 7(1)(h).

freedoms and destroy their future potential and public presence, while the convention does not recognize it as criminal conduct.

In short, the consensus among scholars is that international human rights treaties prohibit discrimination, but they fail to establish criminal penalties for gender apartheid. These instruments impose obligations on states and condemn personal discrimination but lack the authority to classify state-organized systems of gender segregation and domination as international crimes. Bennoune, Oosterveld and Stahn support the idea that human rights accountability faces an ineffective framework because these treaties lack binding status and fail to establish any enforcement systems. International law becomes ineffective when governments decide to disregard its provisions because they can ignore committee recommendations and information requests which results in no protection for victims<sup>25</sup>.

As a result, although human rights bodies clearly acknowledge that the Taliban's decrees violate women's rights, the limited authority of these treaties prevents them from holding the de facto regime accountable. This gap between human rights law and enforcement capacity raises two central research questions: if the Rome Statute has the power to identify Taliban policies as gender apartheid and what changes to the law should be made when it lacks this ability. Therefore, it becomes necessary to turn to the jurisprudence of international criminal law, which offers stronger mechanisms for addressing systematic and state-sponsored deprivation of rights.

## ***1.2 JURISPRUDENCE OF INTERNATIONAL CRIMINAL TRIBUNALS***

International criminal tribunals have played a fundamental role in shaping the legal frameworks that explain how persecution, discrimination and gender-based oppression should be interpreted under international law. Jurisprudence from ICTY, ICTR and hybrid tribunals has established the criteria for when systematic exclusion becomes an international crime. The practices of these tribunals show how international law is

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<sup>25</sup> Terry Collingsworth, "The Key Human Rights Challenge: Developing Enforcement Mechanisms," *Harvard Human Rights Journal* 15 (2002): 183–204.

adapting to new patterns of harm which directly affect discussions about gender apartheid.

Jurisprudential expansion begins with the ICTY decisions on persecution. In *Prosecutor v. Tadić* (Appeals Judgment, 1999), in this judgment, the Tribunal held that persecution is not limited to acts of physical violence but can also consist of the “*imposition of restrictive and discriminatory measures*”<sup>26</sup>. Scholars highlight this as a doctrinal turning point because it established, that a regime could commit crimes against humanity through rules, policies, and administrative structures that systematically limit a group’s basic freedoms. This interpretation moved persecution away from isolated acts toward the broader political architecture of discrimination. This created space for analysing systems of domination—not merely individual abuses.

In later jurisprudence, the ICTY reaffirmed this point. In *Prosecutor v. Mladić* (Trial Judgment, 2017), in this case, the Tribunal emphasized that persecution may be established through the intentional “*maintenance*” of discriminatory measures that deny fundamental rights<sup>27</sup>. Academic commentary notes the significance of this point: once a discriminatory regime is in place, its continued enforcement can amount to a crime against humanity even without ongoing physical violence. Jurisprudence thus recognizes that oppression can be constructed through bureaucratic decrees and administrative systems—an insight highly relevant to the de facto authority of Afghanistan.

Furthermore, the ICTY made a fundamental contribution to the recognition of gender-based crimes. In the *Kunarac Appeals Judgment* (2002), also known as the “*Foča case*,” the tribunal confirmed that rape, sexual slavery, and other forms of sexual violence can constitute crimes against humanity when they are part of a widespread or systematic attack<sup>28</sup>. Scholars such as Oosterveld and Stahn stress that *Kunarac* moved sexual violence from the margins of international law to its core<sup>29</sup>, recognizing it as a tool of domination and social control rather than a secondary harm associated with

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<sup>26</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgment, Appeals Chamber, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999, para. 697.

<sup>27</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgment, Trial Chamber, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 November 2017, para. 3536.

<sup>28</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković*, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment, Appeals Chamber, International Criminal Tribunal for the former Yugoslavia (ICTY), 12 June 2002, paras. 128–150.

<sup>29</sup> Valerie Oosterveld, “*The ICC Policy Paper on Sexual and Gender-Based Crimes: A Crucial Step for International Criminal Law.*” *William & Mary Journal of Women and the Law* 24 (2018): 443–474.

conflict<sup>30</sup>. As a result, the Foča case became the basis for understanding gender subordination as a tool for political power – an approach that later shaped debates about gender oppression and, consequently, gender apartheid.

A further development emerged through the ICTR, which built on these developments by expanding the legal significance of gender-based violence. In *Prosecutor v. Akayesu* (Trial Judgment, 1998), in this case, the Tribunal held for the first time that rape and sexual violence could constitute acts of genocide when committed with intent to destroy a protected group<sup>31</sup>. Doctrinal analysts consider this decision revolutionary: it demonstrated that international criminal law could evolve beyond the original wording of treaties when courts confront new forms of group-targeted harm<sup>32</sup>. Although the Genocide Convention does not include gender as a protected group, *Akayesu* suggests that courts should broaden their interpretation of the destruction of groups to include all relevant circumstances that affect individuals' daily lives.

Scholars frequently cite *Akayesu* as proof that courts can adapt existing legal categories to address harms that the drafters of older treaties did not foresee—including gendered forms of group destruction<sup>33</sup>. This interpretive flexibility is essential for understanding how gender apartheid might develop into a recognized international crime despite the Rome Statute's current limitations.

Hybrid tribunals further advanced this trajectory by codifying gender persecution and apartheid-like practices directly into their statutes. The UN Transitional Administration in East Timor (UNTAET), through Regulation 2000/15, explicitly listed gender-based persecution, sexual slavery, enforced prostitution, and apartheid as crimes against humanity<sup>34</sup>. Literature emphasizes that this was the first legal instrument to place gender persecution and apartheid on equal footing with genocide, war crimes, and

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<sup>30</sup> Carsten Stahn, *International Criminal Law* (Cambridge: Cambridge University Press, 2018), 62–70.

<sup>31</sup> International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (Trial Chamber), September 2, 1998,

[https://hrlibrary.umn.edu/instree/ICTR/AKAYESU\\_ICTR-96-4/Judgment\\_ICTR-96-4-T.html](https://hrlibrary.umn.edu/instree/ICTR/AKAYESU_ICTR-96-4/Judgment_ICTR-96-4-T.html)

<sup>32</sup> Saahil Gill, “Inconsistent Justice: The ICTR and ICTY’s Divergent Jurisprudence on Sexual Violence as a Means of Genocide,” *Canadian Journal for the Academic Mind* 2, no. 2 (2025): 44–46.

<sup>33</sup> Kelly D. Askin, “Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law,” *Berkeley Journal of International Law* 21, no. 2 (2003): 318–321.

<sup>34</sup> United Nations Transitional Administration in East Timor (UNTAET), *Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences*. June 6, 2000, Sec. 5.1.

other grave violations, reflecting an emerging consensus that systematic discrimination can constitute international criminal conduct<sup>35</sup>.

Similarly, the Statute of the Special Court for Sierra Leone included detailed provisions on rape, sexual slavery, enforced pregnancy, and other gender-based crimes as core crimes against humanity<sup>36</sup>. Academic commentary on the Charles Taylor judgment notes that the Special Court demonstrated the capacity of hybrid tribunals to hold political leaders accountable for gender-based persecution—proving that such crimes are not merely incidental by-products of conflict but central components of oppressive governance<sup>37</sup>.

Taken together, this body of jurisprudence shows a specific judicial approach which confirms that international criminal law is increasingly capable of recognizing discrimination systems including gender-based ones, as human rights violations which fall under crimes against humanity. The international criminal law increasingly recognizes that domination exists through official policies, administrative systems and social limitations in addition to direct physical abuse. The scholarly and judicial developments support gender apartheid development as an international crime because of its historical progression although the Rome Statute fails to establish clear legal definitions for this offense.

This body of jurisprudence is directly relevant to the Taliban context. The Taliban maintain their governance through established patterns which exclude women from society while they enforce separation and maintain control through oppressive measures<sup>38</sup>. While treaties alone offer limited tools to address such systematic gender oppression, tribunal jurisprudence demonstrates that international criminal law has the capacity to evolve and has already done so in comparable areas. Thus, the literature suggests that the existing – or at least emerging – legal structure for conceptualizing and prosecuting gender apartheid is based on established patterns of restrictive, discriminatory, domination-based practices. After examining how international courts

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<sup>35</sup> Beth Van Schaack, “The Building Blocks of Hybrid Justice,” *Denver Journal of International Law & Policy* 44, no. 2 (2016): 183–190.

<sup>36</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, annex, Statute of the Special Court for Sierra Leone, January 16, 2002.

<sup>37</sup> Valerie Oosterveld, “Gender and the Charles Taylor Case at the Special Court for Sierra Leone,” *William & Mary Journal of Women and the Law* 19, no. 1 (2012): 7–52.

<sup>38</sup> United Nations Human Rights Council, Access to Justice and Protection for Women and Girls, UN Doc. A/HRC/59/25 (Geneva: United Nations, 2025), paras. 1, 19.

have addressed systemic discrimination, it is necessary to turn to South African apartheid jurisprudence to better understand the structural logic of apartheid and its connection to the gender-based Taliban regime.

### ***1.3 SOUTH AFRICAN APARTHEID JURISPRUDENCE***

An analysis of the rulings of the South African apartheid court reveals important information about how systems of domination function. South African Constitutional jurisprudence relies on arguments of dignity, equality, and structural discrimination to address racial oppression, which scholars find highly applicable to a system of gender oppression<sup>39</sup>. This legal system presents two possible paths that either maintain social inequality or work to eliminate it. Taliban's gender-based hierarchical system needs to be assessed through the lens of the South African judicial system, as their system operates similarly to apartheid, although it uses gender instead of race for classification. South African constitutional jurisprudence allows to detect apartheid-like systems and develop legal strategies to fight against them.

First, the South African Constitution Court decided the landmark case *S v. Makwanyane* (1995), which abolished the death penalty and recognised the right to life and human dignity as fundamental elements of all constitutional systems<sup>40</sup>. Through this ruling, the Court established a fundamental principle that requires states to protect human dignity by preventing them from using their power to create social systems that discriminate against particular groups<sup>41</sup>. Principles developed in this case apply directly to the discussion of gender apartheid, as Taliban rule consistently deprives Afghan women of social dignity, autonomy, and social participation<sup>42</sup>. In this judgement, the court ruled that such forms of humiliation violate the principles of equality and constitutional values that are the foundation of a society.

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<sup>39</sup> Catherine Albertyn, “Substantive Equality and Transformation in South Africa,” *South African Journal on Human Rights* 23, no. 2 (2007): 255–260.

<sup>40</sup> *S v. Makwanyane and Another* 1995 (3) SA 391 (Constitutional Court of South Africa), para. 144.

<sup>41</sup> *Ibid*

<sup>42</sup> Amnesty International, *Amnesty International Report 2022/23: The State of the World's Human Rights* (London: Amnesty International, 2023), 64–66.

A further significant decision is *Bhe v. Judge, Khayelitsha* (2005), which dealt with male primogeniture and property vesting directly in the man<sup>43</sup>. In this case, the Court established that the rule discriminated against women and children while breaking down the core requirement for equal rights<sup>44</sup>. The Court used this opportunity to critically dismantle the legal framework which supported male supremacy<sup>45</sup>. The *Bhe* decision shows that courts have authority to remove enduring patriarchal customs which create social discrimination. By comparison, the Taliban authorities have issued decrees, they issued decrees restricting women's legal status and their freedom of movement which established a system where men maintain control over women. These bureaucratic documents create total male control over all aspects of life, a repetition of the same discriminatory social order that a South African court declared unconstitutional<sup>46</sup>.

More than that, research about apartheid in South Africa supports the analysis of Taliban oppression on women. Apartheid in South Africa was established through multiple laws which controlled all aspects of life by enforcing Pass Laws. For example, restrictions on the movement of blacks, the “*Group Areas Act*” for racial segregation of housing, the “*Bantu Education Act*” for low-level education, and job reservation laws to maintain the economic power of the dominant group. Scholars emphasize that apartheid consisted of more than its collection of discriminatory laws<sup>47</sup>. The political framework of apartheid created a permanent social hierarchy that placed one group above another.

By comparison, Taliban authorities exert their control through gender restrictions, which are similar to the racial segregation of apartheid<sup>48</sup>. Taliban enforce mahram rules

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<sup>43</sup> *Bhe and Others v. Magistrate, Khayelitsha and Others; Shibi v. Sithole and Others; South African Human Rights Commission and Another v. President of the Republic of South Africa and Another*, 2005 (1) SA 580 (CC), paras. 78–81.

<sup>44</sup> *Bhe and Others v. Magistrate, Khayelitsha and Others*, 2005 (1) SA 580 (CC), paras. 89–91.

<sup>45</sup> *Bhe and Others v. Magistrate, Khayelitsha and Others*, 2005 (1) SA 580 (CC), paras. 109–110; see also Mikateko Joyce Maluleke and Thuli Madonsela, *Women and the Law in South Africa: Gender Equality Jurisprudence in Landmark Court Decisions* (Pretoria: Department of Justice and Constitutional Development, 2004), 37–38.

<sup>46</sup> Catherine Albertyn, “Substantive Equality and Transformation in South Africa,” *South African Journal on Human Rights* 23, no. 2 (2007): 255–260.

<sup>47</sup> “The Group Areas Act of 1950,” *South African History Online*, December 19, 2014, <https://www.sahistory.org.za/article/group-areas-act-1950>

<sup>48</sup> United States Institute of Peace, *Fact Sheet: Property Rights in Afghanistan* (Washington, DC: United States Institute of Peace, 2021), URL. <https://www.usip.org/sites/default/files/2021-08/fs-property-rights-1.pdf>.

which restrict female mobility at levels comparable to South Africa's Pass Laws system<sup>49</sup>. Likewise, prohibition on female education follows the same pattern as the Bantu Education Act, because it denies women access to suitable educational opportunities<sup>50</sup>. The employment restrictions imposed on women follow the same pattern as job-reservation laws which maintained economic subjugation of marginalized groups<sup>51</sup>. and also, the restrictions imposed are intended to maintain social control through an institutionalized system that maintains male dominance over the female population and racial minority groups.

International law recognized apartheid as a criminal offense through the Apartheid Convention (1973) and the Rome Statute, but only for cases involving racial oppression. Stahn and Oosterveld show that international criminal law established legal frameworks to combat racial apartheid, but it lacked authority to prosecute gender-based oppression systems<sup>52</sup>. The Rome Statute defines apartheid through "*inhuman acts*" which occur under "*an institutionalized regime of systematic oppression and domination by one racial group over any other*" yet its racial focus creates a legal gap<sup>53</sup>. This apartheid framework reveals its doctrinal limitations when applied to the analysis of the Taliban regime, as this system has structures like apartheid but uses gender rather than race to implement its discriminatory practices.

Overall, South African constitutional jurisprudence provides two essential findings which will guide this analysis. First, this jurisprudence demonstrates that discriminatory laws without widespread physical violence, can establish an oppressive regime which violates constitutional principles<sup>54</sup>. Second, the legal system demonstrates its ability to eliminate oppressive systems through judicial decisions based on dignity principles,

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<sup>49</sup> "Afghanistan: Taliban Bar Long-Distance Travel for Women without Male Escort," *Al Jazeera*, December 26, 2021, <https://www.aljazeera.com/news/2021/12/26/afghanistan-long-distance-travel-women-without-male-escort-taliban>.

<sup>50</sup> Emma Graham-Harrison, "Taliban Ban Girls from Secondary Education in Afghanistan," *The Guardian*, September 17, 2021, <https://www.theguardian.com/world/2021/sep/17/taliban-ban-girls-from-secondary-education-in-afghanistan>

<sup>51</sup> BBC News, "Afghanistan: Taliban Suspend Women from Working for NGOs," *BBC News*, December 26, 2021, <https://www.bbc.com/news/world-asia-59368488>.

<sup>52</sup> Valerie Oosterveld, "Gender and the International Criminal Court," *Journal of International Criminal Justice* 13, no. 3 (2005): 55–57;

Carsten Stahn, *International Criminal Law* (Cambridge: Cambridge University Press, 2018), 52–73.

<sup>53</sup> International Criminal Court. *Rome Statute of the International Criminal Court*. Adopted July 17, 1998, 2187 U.N.T.S. 90, art. 7(2)(h).

<sup>54</sup> Cathi Albertyn, "Substantive Equality and Transformation in South Africa," *South African Journal on Human Rights* 23, no. 2 (2007): 255–260.

equality standards and substantive justice principles<sup>55</sup>. The absence of an independent judiciary for women in Afghanistan requires international criminal law to take responsibility for combating gender discrimination.

In short, South African legal system shows how apartheid systems functioned and how the courts dealt with these systems, but these systems only address racial oppression. The research should assess the Rome Statute as the primary legal framework for crimes against humanity to determine whether gender-based systems, as practiced by the Taliban, meet the definition of apartheid.

#### ***1.4 APARTHEID IN INTERNATIONAL CRIMINAL LAW (ROME STATUTE ANALYSIS)***

International criminal law provides a second research framework which enables scholars to determine if Taliban governance meets the criteria for gender apartheid. As outlined above, the 1973 Apartheid Convention provided the first definition of apartheid, but the Rome Statute of the International Criminal Court (ICC) provides its definitive interpretation<sup>56</sup>. Article 7(2)(h) of the Rome Statute defines apartheid as “*inhuman acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group.*”<sup>57</sup> According to scholarly analysis, the definition of apartheid includes three essential elements of systematic oppression and domination through institutionalized systems, but it only protects racial groups<sup>58</sup>. This racial restriction in the apartheid definition serves as the main legal obstacle which blocks courts from using this framework to protect gender-based discrimination.

Scholars such as Carsten Stahn, Larissa van den Herik, and Valerie Oosterveld argue that the Rome Statute's definition reflects the political context of its drafting: the international community, in response to South Africa's apartheid, established apartheid

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<sup>55</sup> Ibid., 255–260.

<sup>56</sup> United Nations, *International Convention on the Suppression and Punishment of the Crime of Apartheid*, adopted 30 November 1973, entered into force July 18, 1976, 1015, U.N.T.S. 243, art. II.

<sup>57</sup> *Rome Statute of the International Criminal Court*, art. 7(1)(h).

<sup>58</sup> Carsten Stahn, *between “Faith” and “Facts”: By What Standards Should We Assess International Criminal Justice?* (The Hague: Hague Institute for the Internationalisation of Law, 2012), 16–18.

as a racial crime<sup>59</sup>. As a result, apartheid is defined in racial terms because its drafters limited the definition to racial apartheid, leaving other forms of structural domination, including gender-based systems, outside its explicit jurisdiction. Larissa van den Herik describes this process as “*selective use of sources*,<sup>60</sup>” because international criminal law recognizes systematic domination as a crime against humanity but only recognizes racial apartheid as an official example. Researchers further point out that this creates a conceptual blind spot, where new forms of systematic oppression are precisely emerging.

The literature further highlights that, although the Rome Statute includes “*persecution*” as a crime, it does not include gender in its apartheid provisions. Scholars therefore argue that the Statute separates gender-based oppression into three distinct legal categories of persecution, enslavement and sexual violence, instead of recognizing it as a single political system<sup>61</sup>. The fragmented structure of the statute makes it challenging to prosecute state-controlled systems of gender oppression, even when they operate similarly to apartheid systems. International criminal law has often treated racial discrimination as a major system-level crime but has consistently treated gender discrimination as individual or cultural issues rather than organized oppression.

Multiple authors suggest new ways to interpret apartheid in the Rome Statute through court-based interpretation instead of changing the statute's text. These authors suggest that the Statute's definition of apartheid through domination and institutionalized oppression and systematic discrimination could work for gender cases when states create policies to maintain women subordination<sup>62</sup>. Legal foundations for

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<sup>59</sup> Carsten Stahn, *between “Faith” and “Facts”: By What Standards Should We Assess International Criminal Justice?* (The Hague: Hague Institute for the Internationalisation of Law, 2012); Larissa van den Herik, “Selective Criminalization,” in *Selective Codification* (Leiden: Leiden University, n.d.); Valerie Oosterveld, “Gender and the ICC: Assigning Individual Criminal Responsibility for Gender-Based Crimes,” *Florida Journal of International Law* 17 (2005).

<sup>60</sup> Larissa van den Herik, “Selective Criminalization and Global Justice: Some Reflections,” in *Selective Codification* (Leiden: Leiden University, n.d.), PDF file.

<sup>61</sup> Valerie Oosterveld, “The Gender Jurisprudence of the International Criminal Court,” in *Women and International Criminal Law*, ed. Christine Chinkin and Valerie Oosterveld (The Hague: T.M.C. Asser Press, 2022), 133–136.

<sup>62</sup> See, for example, Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2018), 162–166;

Larissa van den Herik, “Selective Criminalization,” in *Selective Codification* (Leiden University, n.d.); Valerie Oosterveld, “The Gender Jurisprudence of the International Criminal Court,” in *Women and International Criminal Law*, ed. Christine Chinkin and Valerie Oosterveld (The Hague: T. M. C. Asser Press, 2022), 133–138;

Beth Van Schaack, “Criminalizing Gender Apartheid,” *Yale Journal of International Law Online* (2023).

recognizing gender apartheid remain fragile, as most experts believe that it requires explicit legal recognition to avoid political disputes<sup>63</sup>. The ICC faces limitations, including the need to follow textual interpretations and obtain state approval, which make it unlikely that apartheid provisions will be expanded beyond their racial definition through new judicial approaches<sup>64</sup>.

This analysis is particularly important for Afghanistan, as the structure of the Taliban government exhibits all the core elements of apartheid, an institutionalized regime, systematic oppression, domination, and intent through gender discrimination rather than racial discrimination. This racial limitation of the Rome Statute creates an accountability deficit that this research examines, as a system that functions as apartheid but cannot be prosecuted as such under current international criminal law. The existing legal framework suggests the need for either support an amendment to the Rome Statute or the creation of a new crimes against humanity treaty that includes gender apartheid, or to establish this crime through customary international law.

In sum, International criminal law demonstrates strong normative power but lacks sufficient doctrinal development. International criminal law accepts that human rights violations through systematic oppression qualify as crimes against humanity, but it defines apartheid only through racial discrimination thus omitting gender-based systems like the Taliban's. The current legal system has a significant doctrinal limitation, as international criminal law has emerged from anthropocentric perspectives that have failed to develop methods for identifying political systems that perpetuate the oppression of women. The following section uses feminist legal theory to explain why gender apartheid remains invisible in legal definitions and why the law fails to recognize the Taliban's complete system.

### ***1.5 Feminist Legal Theory & Gendered Harm***

A central claim of feminist legal theory is that law is not neutral. Because legal frameworks developed within male-dominated institutions, women's oppression often

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<sup>63</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2022): 4–12.

<sup>64</sup> *Ibid*

remains invisible. Building on this critique, Catherine McKinnon in *“Are Women Human?”* demonstrate that how international law developed through patriarchal state systems that excluded major social harms, including movement restrictions, economic exclusion, and sexual violence from legal and criminal frameworks<sup>65</sup>. Expanding this argument, Hilary Charlesworth and Christine Chinkin demonstrate that international law views discrimination against women as a social or cultural issue, rather than as a fundamental institutional inequality that exists within political and legal frameworks<sup>66</sup>.

In line with these feminist critiques, Karima Bennoune explicitly identifies the Taliban system as a gender apartheid and acknowledge that the Taliban created an institutionalized and segregated system towards women<sup>67</sup>. As a result, existing international legal frameworks are unable to codify this system as gender apartheid, and this indicates a doctrinal gap in the international legal system. Furthermore, the combination of gender discrimination in Afghanistan with ethnic, religious, and class factors makes Hazara women even more vulnerable, according to multifaceted feminist scholars, who show that Taliban policies operate within a larger system of oppression.

## ***1.6 INTERSECTIONALITY AND MULTIPLE FORMS OF OPPRESSION***

Kimberlé Crenshaw was the first scholar to discuss intersectionality theory as a framework for illustrating how individuals with multiple marginalized identities encounter patterns of discrimination that cannot be represented through individual identity analysis<sup>68</sup>. Legal and political systems protect individual groups such as women and racial minorities, but they do not recognize people who experience various types of discrimination<sup>69</sup>. The concept of intersectional experiences, which transcend the

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<sup>65</sup> Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Belknap Press of Harvard University Press, 2006), 21–22.

<sup>66</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis, with a New Introduction* (Manchester: Manchester University Press, 2022).

<sup>67</sup> Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” *Columbia Human Rights Law Review* 54, no. 1 (2023): 24–26.

<sup>68</sup> Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* 1989, no. 1: 139–167.

<sup>69</sup> *Ibid.*, 145

combined effects of racism and sexism has become fundamental in the study of conflict and inequality and gender-based violence research<sup>70</sup>.

Building on these theoretical insights, research in war zones shows that intersectional analysis remains essential to understanding how different women experience harm. For example, in Post-invasion Iraqi society, Nadjé Al-Ali the author has found that women were more vulnerable to harm due to the integration of patriarchal traditions with sectarian political systems and the collapse of the state<sup>71</sup>. Another study, by Rose (2014), shows that discrimination against disability is exacerbated when combined with gender discrimination, as it prevents people from accessing education, healthcare and moving freely<sup>72</sup>. Humanitarian reports from Yemen, Iraq, and Palestine show that women experience violence differently based on their ethnic background, social status, religious affiliation, and displacement status<sup>73</sup>.

These findings from the literature apply directly to the situation in Afghanistan. Taliban policies affect women differently depending on individual circumstances, as intersectional analysis provides this understanding. The Taliban's gender restrictions, along with ethnic persecution, create double discrimination against Hazara women, while rural women face severe restrictions on movement due to a lack of educational and health facilities<sup>74</sup>. The mahram system disproportionately harms widows and female-headed households, while women with disabilities encounter additional challenges when trying to move safely and access service. This body of research shows that gender oppression in the Taliban de facto regime is exacerbated by multiple identity factors, which requires an interdisciplinary approach to analysing their system of governance. This structural nature of oppression explains the connection between this section, and the following analysis of how the Taliban implemented “lawless laws” to maintain their dominant system.

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<sup>70</sup> Ibid., 150

<sup>71</sup> Nadjé Al-Ali and Nicola Pratt, “Positionalities, Intersectionalities and Transnational Feminism in Researching Women in Post-Invasion Iraq,” in *Women and War in the Middle East* (London: Zed Books, 2009), 122–25.

<sup>72</sup> Lynn Rose, “Life Means My Disability: Ableism, Disability, and Gender in Iraq,” in *Gender Equality and Social Cohesion in Iraq* (Izmir: Yaşar University Publications, 2022), 9–12.

<sup>73</sup> Oxfam, *Women in Conflict Zones* (Madrid: Oxfam Intermón, 2019), 2–4.

<sup>74</sup> Canadian Hazara Advocacy Group, Briefing: *The Hazara Community Faces Targeted Atrocities* (submission to the Subcommittee on International Human Rights, House of Commons, Canada, 2023), <https://www.ourcommons.ca/Content/Committee/441/SDIR/Brief/BR13295425/br-external/CanadianHazaraAdvocacyGroup-e.pdf>

## 1.7 THE PROBLEM OF “LAWLESS LAWS”

Lon Fuller’s theory of legality enables an understanding of how the Taliban maintains its rule. According to Fuller, any system that wants to be considered “law” must fulfill eight essential requirements which include being general instead of arbitrary, having public knowledge, forward-looking application instead of retroactive effects, being clear and non-contradictory, possible to obey, relatively stable and consistently applied<sup>75</sup>. Breakdown of these conditions results in a system that resembles law but represents a distorted version of legal principles, which Fuller calls “*perversion of law*”<sup>76</sup>. The Nazi regime served as an illustrate example in Fuller’s analysis of how secret decrees, contradictory orders, and unenforceable regulations created a flawed legal framework that undermined all legal standards. In addition to their moral shortcomings, such systems, Fuller argues, are also incapable of upholding legal standards<sup>77</sup>.

The Taliban issue decrees that follow the same pattern of “*lawless laws*.” Most decrees concerning women are issued through verbal communication and media statements, rather than following established legal procedures<sup>78</sup>. Legal rules are applied inconsistently across provinces implement them at different levels. Women’s access to healthcare conflict with mahram travel requirements, which creates unenforceable conditions for compliance<sup>79</sup>. The Taliban authority imposes educational and employment restrictions on women through illegal decisions that do not follow any legal framework and have no justification<sup>80</sup>. This system violates multiple elements of Fuller's criteria, as it lacks clarity and coherence and imposes impossible rules without any reciprocal duties between rulers and governed.

Consequently, this analyse suggests that gender apartheid in Afghanistan has created a double human rights crisis because it completely dismantles all existing legal frameworks. The Rome Statute criminalizes gender persecution but does not explain how “lawless laws” support the continuation of gender-based social systems. Fuller's

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<sup>75</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 39–42.

<sup>76</sup> *Ibid.*, 39.

<sup>77</sup> *Ibid.*, 159–160.

<sup>78</sup> United Nations Assistance Mission in Afghanistan (UNAMA), *Promotion of Virtue and Prevention of Vice: Analysis of Decrees and Practices* (Kabul: UNAMA, 2025), 4–6.

<sup>79</sup> UNAMA, *Promotion of Virtue and Prevention of Vice*, 10–12.

<sup>80</sup> UNAMA, *Promotion of Virtue and Prevention of Vice*, 13–15.

theory therefor reinforces the central argument of this thesis: that the existing legal framework is inadequate and that new doctrinal developments, such as explicit recognition of gender apartheid, are necessary to hold regimes like the Taliban accountable.

## *Conclusion*

The literature review analysed human rights treaties together with international criminal tribunal decisions and South African apartheid court rulings and feminist legal concepts and intersectional analysis and the notion of “lawless laws.” The sources demonstrate that international law establishes equality as a core principle yet fails to provide sufficient legal frameworks which would enable states to face consequences for using discrimination to establish their political systems. The ICCPR, ICESCR and CEDAW and Genocide Convention establish prohibit discrimination, yet they depend on state monitoring through reports instead of using criminal penalties for enforcement.

International criminal law offers more effective legal tools, as the ICTY, ICTR and hybrid tribunals have proven through their jurisprudence that systematic oppression can be prosecuted through policies and administrative structures and restrictive measures. However, the Rome Statute defines apartheid through racial criteria which excludes gender-based systems from its direct protection. The research of feminist legal theory and intersectional scholarship demonstrate that international law has consistently disregarded systematic gender discrimination while missing the complex injuries which women from different marginalized groups including Hazara and rural and disabled and widowed women encounter. The analysis of treaties shows that Taliban governance produces various negative impacts which current legal frameworks do not recognize.

Taken as a whole, the literature demonstrates that while international law documents and condemns the consequences of Taliban decrees, it does not provide a criminal framework capable of identifying or prosecuting their gender-based system of governance. This doctrinal gap shapes the central questions of this thesis: Taliban governance fulfills gender apartheid criteria under current international criminal law and if fresh legal structures or judicial interpretations need to be developed for combating this organized discrimination against women. The following chapter

explains the theoretical framework. Research applies feminist legal theory together with intersectionality to analyse how the Taliban established a gender-based system of control.

## CHAPTER 2. THEORITICAL FRAMEWORK

This research unites different theoretical frameworks to establish connections between Afghan women's individual experiences under Taliban rule and the limitations of international legal frameworks. By combining feminist legal theory with intersectionality this research demonstrates how Taliban rule establishes gender apartheid and how present international criminal law systems lack the ability to identify this practice. However, these theories enable researchers to bypass legal obstacles because they analyse how laws operate through actual power systems and social identity patterns. Furthermore, this research demonstrates that Afghan women face deliberate gender-based oppression through a political system which international law has not established as a human rights violation.

### ***2.1 FEMINIST THEORY***

The law has never been neutral. Feminist legal theory starts with a simple but powerful point. Scholars such as Catharine MacKinnon, Hilary Charlesworth, and Christine Chinkin argue that legal systems were built around perspectives and experiences of men<sup>81</sup>. MacKinnon describes this as the “maleness of the law.” This concept suggest that the law only recognizes harms that affect men, while the suffering that women experience often remain invisible<sup>82</sup>. Charlesworth and Chinkin show that international law was created without women’s voices and participation, which is a key reason for the continuation of this blind spot<sup>83</sup>. The existing blind spots enable discrimination to become accepted as traditional practice / cultural heritage / personal matter instead of being recognized as political damage<sup>84</sup>.

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<sup>81</sup> Kerry Rittich, “*The Boundaries of International Law: A Feminist Analysis* by Hilary Charlesworth and Christine Chinkin,” *Leiden Journal of International Law* 14 (2001): 935–940.

<sup>82</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 31–33.

<sup>83</sup> Rittich, “*The Boundaries of International Law*: 936.

<sup>84</sup> Ibid

This feminist critique provides essential information about Afghanistan's current situation for understanding. The Rome Statute makes racial apartheid punishable by law because it emerged from male-dominated historical contexts, but it lacks any provision to address gender apartheid<sup>85</sup>. This is not a coincidence. It reflects the long history of sidelining women's knowledge and experiences, as hooks argues that. Feminist theory highlights what the law still fails to name: that the Taliban's decrees are not isolated acts of discrimination, but a governing system built on gender hierarchy.

Feminist theorists also expand the idea of violence. They explain that violence is not only physical; it can be carried out through laws and policies that restrict autonomy and enforce dependency<sup>86</sup>. Decrees issued by Taliban authority that ban women from education, work, movement, and public life create a type of structural violence<sup>87</sup>. These rules force Afghan women into economic, social, and physical dependence. As the UN Special Rapporteur describes, this produces a form of "civil death" for women in Afghanistan<sup>88</sup>. From a feminist perspective, these are not cultural norms—they are tools of domination that shape a political system through gender.

Lon Fuller's idea of "lawless laws" also strengthens this analysis. Although explained in the literature review, Fuller's framework becomes even more meaningful when read together with feminist theory. The Taliban issue decrees that look like laws, but they violate fundamental principle of legality—they are vague, arbitrary, inconsistent, and often impossible to follow<sup>89</sup>. Feminist legal theory emphasizes that when male-dominated authorities write laws without considering women's realities, the law becomes a tool that hides and justifies oppression<sup>90</sup>. This dynamic is visible in Afghanistan: legal rules used not to protect rights but to organize a system of gendered control. Current international criminal law is not well equipped to capture this reality because it focuses mainly on physical violence or racial systems, not on structural gender-based governance.

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<sup>85</sup> Rome Statute of the International Criminal Court, art. 7(1)(h).

<sup>86</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 237–240.

<sup>87</sup> United Nations Special Rapporteur on the Situation of Human Rights in Afghanistan, *Report on Human Rights in Afghanistan* (2025), paras. 1–5.

<sup>88</sup> United Nations, *Report on the Situation of Human Rights in Afghanistan, 2023*, A/HRC/52/62 (Geneva: United Nations Human Rights Council, 2023), 18–22.

<sup>89</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 39–42.

<sup>90</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 1–3.

In short, feminist legal theory exposes the core gap at the centre of this thesis. International criminal law treats gender persecution as an individual violation, not as a systematic political order comparable to apartheid. This theoretical lens helps explain why the absence of “gender apartheid” in the Rome Statute leaves Afghan women without full legal protection—and why legal development in this area is both possible and urgently needed.

## ***2.2 INTERSECTIONAL THEORY***

Kimberlé Crenshaw, a feminist legal scholar who introduced intersectionality theory, argues that not all women experience oppression in the same way<sup>91</sup>. This concept explains that gender discrimination is shaped by other factors such as race, class, ethnicity, geography, and family structure<sup>92</sup>. Patricia Hill Collins later developed the concept of "matrix of domination," which demonstrates how power systems including patriarchy, racism and class inequality, maintain their strength through mutual support<sup>93</sup>.

Applied to Afghanistan, Taliban’s policies harm women differently. Hazara women endure a "double apartheid," experiencing both ethnic persecution and gender-based exclusion<sup>94</sup>. Women in rural areas are disproportionately affected by mobility restrictions because services like hospitals and schools are far away<sup>95</sup>. The mahram rule makes it hard for the widows and women who head their households, because they have no male guardian to accompany them<sup>96</sup>. Poor women are more severely affected by

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<sup>91</sup> Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* 1989, no. 1 (1989): 139–167.

<sup>92</sup> *Ibid.*, 145.

<sup>93</sup> Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston: Unwin Hyman, 1990), 221–238.

<sup>94</sup> Canadian Hazara Advocacy Group, Briefing — The Hazara Community Faces Targeted Atrocities (submission to the Subcommittee on International Human Rights, House of Commons, Canada, 2023), <https://www.ourcommons.ca/Content/Committee/441/SDIR/Brief/BR13295425/br-external/CanadianHazaraAdvocacyGroup-e.pdf>

<sup>95</sup> United Nations Human Rights Council, *Situation of Women and Girls in Afghanistan*, UN Doc. A/HRC/53/21 (15 June 2023), para. 4.

<sup>96</sup> United Nations Human Rights Council, *Situation of Women and Girls in Afghanistan*, paras. 7, 17, 33.

work bans, while wealthier women may still access private tutors, online learning, or international networks<sup>97</sup>.

The reports of the UN Special Rapporteur confirm that there is multiple, overlapping forms of inequality. They show how different social characteristics, including ethnicity, class and marital status, create varying levels of suffering for distinct groups of women<sup>98</sup>. The Taliban's discriminatory system operates through a deliberate framework that, shaped by intersectional principles, excluded women based on their social background<sup>99</sup>. Legal analysis requires attention to this issue, as a system that creates different levels of harm based on gender and ethnicity produces a dominant structure that goes beyond routine oppression.

Intersectionality also strengthens the call to recognize gender apartheid as a crime against humanity. When international law does not acknowledge intersectional harms, it risks protecting only the most privileged women while ignoring those who suffer the most—poor women, rural women, Hazara women, widows, or women with disabilities. As Afghan activist Shaharзад Akbar notes, using the term “gender apartheid” is not symbolic; it is necessary to describe the full scale of layered, structural harms Afghan women face<sup>100</sup>. Intersectionality highlights these harms clearly and shows why a new legal category is needed to capture the reality of today's Afghanistan.

## ***INTEGRATION OF THE TWO THEORIES***

The analysis of the Taliban regime is strengthened through the combination of feminist legal theory and intersectional theory. According to feminist theory, international law fails to recognize gender-based political authority, but intersectional theory shows how this form of discrimination affects women through a combination of ethnicity and social and economic status. These two frameworks demonstrate that

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<sup>97</sup> Ibid., paras. 11–12, 33–35.

<sup>98</sup> Ibid., paras. 4–8, 11–12, 33–36.

<sup>99</sup> United Nations Human Rights Council, *Situation of Women and Girls in Afghanistan*, UN Doc. A/HRC/53/21 (15 June 2023), paras. 15–23.

<sup>100</sup> Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” *Feminist Dissent*, no. 7 (2023): 1–27.

Taliban governance practices act as essential components of a discriminatory framework that creates a social structure based on gender segregation.

Based on the integrated theoretical approach, the Rome Statute lack adequate legal capacity to address institutionalized discrimination and various forms of oppression. The research developed a conceptual structure that supports the recognition of gender apartheid as an autonomous international criminal violation. International criminal law remains insufficient to provide the necessary legal framework to address the full range of dimensions of the systemic and complex discrimination that Afghan women currently face.

## ***CONCLUSION***

The combination of feminist legal theory and intersectionality provides a coherent analytical lens of the Taliban system. The international legal framework does not adequately recognize gender-based oppression as an institutional system and instead treats it as separate discriminatory incidents. The analysis illustrates that the Taliban policies of gender domination produce unequal impacts because women who face additional forms of discrimination experience the most severe impact. The two theories demonstrate that Taliban decrees establish a complete political system which enforces gender hierarchy. The Rome Statute reveals its restricted ability to handle structural and intersectional oppression because it lacks doctrinal tools for such cases. The combined analytical framework supports the argument that gender apartheid must be codified as an independent international crime. Without this kind of legal development, international criminal law cannot adequately address the severe, systematic, and layered forms of gender oppression currently existing in Afghanistan.

## **CHAPTER 3. METHODOLOGY**

This research investigates two fundamental legal issues: whether the Taliban’s institutionalised restrictions against women can be classified as gender apartheid under current international law, and what legal and institutional reforms would be required to explicitly recognise such practices as a crime against humanity. These questions cannot be addressed by analysing legal texts alone. Because the harms Afghan women experience is both legal and experiential, the methodology combines doctrinal analysis with empirical insights drawn directly from women’s daily experiences under Taliban rule.

To address these questions, the research uses four separate methods which work together to answer these questions. The research applies doctrinal legal analysis to study international criminal law alongside human rights treaties and judicial decisions that interpret how the present legal system handles gender-based persecution and its ability to recognize apartheid-like systems. Second, the study carries out a comparative analysis of the Taliban’s first regime (1996–2001) and the current rule (2021–present) to identify historical continuity, evolving patterns of discrimination, and the extent to which the current system constitutes a more structured and institutionalised form of gender domination.

Since legal doctrine alone cannot fully demonstrate the scale or impact of these policies, the third research method uses empirical data from a survey of Afghan women, conducted via non-probability (snowball) sampling due to security concerns. The survey provides direct data on how Taliban regulations affect women in their daily life, education/work, healthcare access, maintain their safety and mental health. The last section includes interviews with women's rights experts and legal professionals who provide expert insights on how to link personal stories with international accountability systems and develop a legal framework.

Furthermore, this research uses a thematic analysis of survey data and expert interview responses to uncover patterns of repeated harm that are linked to legal concepts including systematic oppression, domination and discriminatory intent. This analytical approach combines the legal interpretation of gender apartheid with real-

world experiences through this analytical method, which creates a comprehensive framework for assessing the legal feasibility and fundamental need for recognizing gender apartheid under international criminal law.

### ***3.1 DOCTRINAL LEGAL ANALYSIS***

This research relies on doctrinal legal analysis as its main method. It uses document analysis to study the existing international legal content, which makes it possible to organize legal rules and identify their scope and limitations. As Terry Hutchinson explains, doctrinal research involves “*locating, analysing, and synthesizing legal rules*” to understand how law has been interpreted and applied in comparable situations<sup>101</sup>. Similarly, McConville and Wing note that doctrinal methodology involves the interpretation of official legal materials to determine both the extent and the precise boundaries of legal principles<sup>102</sup>. In this sense, the evaluation of international criminal law's current understanding of systematic gender oppression depends on rests on doctrinal analysis.

This method is essential for the present research because it allows an assessment of whether the Taliban's system of gender-based domination fits within the existing legal definitions of crimes against humanity, and whether current international law contains adequate provisions to recognise gender apartheid. International law has created rules to combat group discrimination through its prohibition of racial apartheid, but these rules do not provide adequate protection for gender equality.

To conduct this analysis, the research examines a range of core legal sources, including the ICCPR, ICESCR, CEDAW, the Genocide Convention, and the Rome Statute of the International Criminal Court<sup>103</sup>. These instruments are complemented by

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<sup>101</sup> Terry Hutchinson, “Doctrinal Research: Researching the Jury,” in *Research Methods in Law*, ed. Dawn Watkins and Mandy Burton (London: Routledge, 2013), 8.

<sup>102</sup> Mike McConville and Wing Hong Chui, “Introduction and Overview,” in *Research Methods for Law*, 2nd ed., ed. Mike McConville and Wing Hong Chui (Edinburgh: Edinburgh University Press, 2017), 4.

<sup>103</sup> *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, entered into force 3 January 1976, 993 U.N.T.S. 3; *Convention on the Elimination of All Forms of Discrimination against Women*, adopted 18 December 1979, entered into force 3 September 1981, 1249 U.N.T.S. 13; *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted 9 December 1948, entered into force 12 January 1951, 78 U.N.T.S. 277;

General Comments and decisions of international criminal tribunals, including cases such as Tadić, Kunarac, Akayesu, Taylor case, and UNTAET jurisprudence<sup>104</sup>. This analysis demonstrates how international law has established definitions for group persecution and repression and systematic discrimination, while providing examples of how other situations with similar harms have been addressed.

Overall, the doctrinal analysis uses these legal materials to achieve three aims. These aims are: First, to identify the interpretive gaps that prevent existing law from fully recognising gender apartheid as a distinct crime. Second, the analysis seeks to examine how international tribunals have interpreted elements such as “*severe deprivation of fundamental rights*,” “*systematic oppression*,” and group-based domination. Third, to compare these legal elements with the known characteristics of apartheid systems, as codified in Article 7(2)(h) of the Rome Statute. As Cane and Kritzer point out, the research approach focuses on the legal interpretation of existing laws, which, according to the authors, distinguishes it from empirical studies. Assessing the ability of current legal definitions to protect Afghan women from Taliban rule requires understanding this methodological difference between doctrinal research and empirical studies<sup>105</sup>.

Through this method, the research design enables a structured assessment that determines whether international law has sufficient mechanisms to combat institutionalized gender-based discrimination or whether new legal frameworks are needed to recognize gender apartheid as a human rights violation.

### **3.2 COMPARATIVE METHOD**

Comparing the two eras of the Taliban is another method of this research. The purpose of this comparison is to show the continuity of their logic and system, as well as the worsening of women’s situation under their rule. As comparative legal scholars

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*Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, 2187 U.N.T.S. 90.*

<sup>104</sup> Prosecutor v. Tadić, Case No. IT-94-1 (ICTY, 1995); Prosecutor v. Kunarac, Case Nos. IT-96-23 & IT-96-23/1 (ICTY, 2001); Prosecutor v. Akayesu, Case No. ICTR-96-4 (ICTR, 1998); Prosecutor v. Charles Taylor, Case No. SCSL-03-01-T (SCSL, 2012); UNTAET Regulation No. 2000/15 (2000).

<sup>105</sup> Peter Cane and Herbert M. Kritzer, eds., *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010).

such as Zweigert and Kötz argue, comparing two similar systems side by side helps reveal the underlying legal and structural principles that shape them<sup>106</sup>. Applying this approach to the Taliban shows that although these two periods occurred at different times, the same system continues to operate.

In both the first era the Taliban imposed the same restrictions affecting women in terms of school and workplace attendance, travel, and participation in activities outside the home. This is similar in both the initial period from 1996 to 2001 and in the current period from 2021 to the present. School bans, employment bans, mahram laws, and restrictions on women's freedom of movement exist in both eras. The Taliban implement the same system of government to enforce gender segregation in their government, although they operate under different circumstances and enact separate laws.

In the current era, however, the restrictions have become more systematic, organised, and comprehensive. By comparing the two eras, this research aims to show that the Taliban's treatment of women is not accidental or temporary, but part of a consistent and enduring system that has expanded over time. This comparative method helps illustrate the continuity in their practices and provides a foundation for analysing how the current situation has transformed into a more institutionalised form of gender-based oppression.

### ***3.3 SURVEY***

A survey was included as an empirical method because doctrinal legal analysis alone cannot fully answer the research questions. Crimes against humanity require showing that the harm is “*widespread*” or “*systematic*,” and feminist legal theory emphasises the importance of documenting women's lived experiences. For this reason, the research collected primary data from Afghan women to understand how Taliban policies affect their daily lives. This empirical component provides direct testimony about the harms experienced, which legal texts alone cannot capture. Following

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<sup>106</sup> Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Oxford University Press, 1998).

Creswell and Bryman, surveys are appropriate when researchers seek patterns in lived experiences<sup>107</sup>, especially in contexts involving social restrictions<sup>108</sup>.

To reach Afghan women safely, the survey used purposive and snowball sampling methods to establish secure contact. Purposive sampling was necessary because the research specifically targeted Afghan women who had lived under Taliban rule, both inside and outside Afghanistan. Following Ting et al, snowball sampling is appropriate when participants face political sensitivity, surveillance, or fear of retaliation<sup>109</sup>. Therefore, the survey was distributed online through WhatsApp, Telegram, and personal networks to maximise anonymity and safety<sup>110</sup>.

The survey included women of different ages, including those as young as 17, women living in Afghanistan, and women in exile who continue to experience Taliban restrictions indirectly through their families. These participants were selected because they represent those who directly or indirectly face the consequences of Taliban decrees. The use of anonymous online participation allowed women to respond freely without fear.

The survey questions were organised around key themes reflecting the main areas of harm under Taliban rule. These themes included: access to education, restrictions on work and employment, access to healthcare, freedom of movement and mahram requirements, safety, psychological effects, financial dependency, and intersectional factors such as ethnicity, location, and family structure. These themes were chosen because they represent the main areas where women's lives have been severely impacted since 2021. The research shows how Afghan women face different types of harms that affect all age and social groups in their society.

### ***3.4 EXPERT INTERVIEW***

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<sup>107</sup> John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, 4th ed. (Thousand Oaks, CA: Sage, 2018).

<sup>108</sup> Alan Bryman, *Social Research Methods*, 5th ed. (Oxford: Oxford University Press, 2016).

<sup>109</sup> Ting Ting, Daniel S. W., and Hiram Ting, "Snowball Sampling in Hard-to-Reach Populations," *Asian Journal of Business Research* 10, no. 2 (2020): 1–9.

<sup>110</sup> *Ibid.*, 5.

To support the survey findings, this research also conducted expert interviews to analyse the situation in Afghanistan in greater depth. The research conducted interviews to identify legal weaknesses which reveal the actual experiences of women. For this purpose, three experts were selected: one women's rights specialist, one legal scholar, and one expert on gender apartheid. The selection of these individuals was based on their professional experience which enables them to provide knowledgeable insights about Taliban policy legal aspects and the complete history of gender discrimination.

The value of these expert interviews lies in the depth of insight they add to the research. Their informing of the ongoing situation in Afghanistan contribute to analysis how Taliban rulings align with or differ from established laws that define persecution and systematic discrimination. Experts used their understanding of international law, legal tribunals, and gender-based harms to explain difficult legal issues and support the survey results. Their contributions strengthen the methodological foundation of this study, as they used personal testimonies along with official documents to create an analytical framework for assessing gender apartheid.

### ***3.5 THEMATIC ANALYSIS SECTION***

To analyse the survey findings and respondents' experiences, this research uses thematic analysis, which is a widely applied method for identifying repeated patterns in qualitative data. Following Braun and Clarke's six-step approach, the analytical process began with carefully reading the responses several times to gain familiarity with the material<sup>111</sup>. From there, initial codes were generated by observing the repeated words and phrases that participants shared with each other. The researchers organized their collected data into distinct patterns that enabled them to develop a set of themes that included both direct statements and implicit concepts.

The research utilizes Guest MacQueen and Namey's applied thematic analysis method which unites structured coding with interpretive analysis to achieve complete

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<sup>111</sup> Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology," *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101.

analytical process transparency<sup>112</sup>. Using this approach helps transform individual experiences into meaningful themes and offers a clearer understanding of how Afghan women interpret and describe their daily lives under Taliban rule.

The themes that emerged from this survey reflect the major areas where women reported facing restrictions or harm. These include education restrictions, employment restrictions, healthcare restrictions, mobility limitations and mahram requirements, location and ability to move safely, material status and economic challenges, age-related vulnerabilities, financial dependence on male relatives, experiences of direct violence and harassment, and perceptions of whether the current situation in Afghanistan represents gender oppression or gender apartheid.

Many respondents acknowledged that the situation of Afghan women after the Taliban takeover has resulted in various forms of oppression. Several research participants described their personal encounters violent treatment. For example, one woman wrote, “*A Taliban employee shouted at us to fix our hijab properly.*” Another respondent described a severe incident, saying, “*I saw a girl being taken away, and her mother ran after the Taliban car begging them to return her daughter.*”

These patterns formed the core themes of the survey. They provide the foundation for analysing how Afghan women understand and experience the current system of restrictions and help link their lived experiences to the legal arguments presented in the subsequent chapters.

### ***3.6 ETHNICAL CONSIDERATIONS***

The research design requires ethical considerations because Afghan women face sensitive situations while being vulnerable to harm. The survey participants received complete information about the research. While maintaining their right to avoid answering questions and their privacy remained protected from identification. This research follows ESRC ethical standards which prioritize safeguarding participants who face political oppression<sup>113</sup>. The research used encrypted online platforms for data

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<sup>112</sup> James W. Guest, Kathleen M. MacQueen, and Emily E. Namey, *Applied Thematic Analysis* (Thousand Oaks, CA: Sage, 2012).

<sup>113</sup> Economic and Social Research Council (ESRC), *Framework for Research Ethics* (London: ESRC, 2015).

collection while keeping all personal information including names and phone numbers and location data completely out of reach.

Furthermore, the survey questions followed Kvale and Brinkmann's ethical interviewing principles to protect participants from emotional harm and prevent traumatization while maintaining their safety<sup>114</sup>. This research will store data securely and in accordance with APA guidelines, while using it only for academic research and presenting results through data synthesis<sup>115</sup>. The research framework will uphold the core values of the ethical principles adopted for this research, including accountability, integrity, and harm reduction.

### ***3.7 LIMITATIONS***

This research contains multiple limitations which need to be recognized. The security situation in Afghanistan prevents the researchers from meeting participants face-to-face. While it restricts their ability to select study participants. The research study could not include women who lack internet access and those who live under strict household rules. The generalisability of the findings is limited because the snowball sampling method introduces difficulties for achieving wide-ranging study results. The participants might give limited responses because of political sensitivity although they were assured their answers would remain completely anonymous. Overall, the research could not fully examine all social variations. Including ethnicity, region and economic status interact because of its restricted scope. Additionally, this research stands on comparative analogies and feminist theory because there is no direct legal precedent for gender apartheid. In sum, this research faces multiple obstacles because it studies a fast-changing environment which remains heavily restricted.

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<sup>114</sup> Steinar Kvale and Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, 3rd ed. (Thousand Oaks, CA: Sage, 2015).

<sup>115</sup> American Psychological Association (APA), *Ethical Principles of Psychologists and Code of Conduct*, (Washington, DC: American Psychological Association, 2017).

## ***CONCLUSION***

In conclusion, the research design unites legal interpretation with comparative analysis, empirical and thematic analysis to study gender apartheid during Taliban governance. The legal gap becomes evident through doctrinal analysis whereas the two Taliban periods demonstrate how gender-based control evolved into more severe forms of domination. This study combines survey results with expert testimonies to show how women experienced the effects of Taliban rule. Overall, the research suggests that international criminal law needs new legal structures to establish gender apartheid as a distinct human rights crime, which can be studied through socio-legal and feminist research approaches.

## CHAPTER 4.

### Comparative Analysis of the First and Current Taliban Regimes

The Taliban emerged during the Afghan civil war, shaped ideologically by Deobandi seminaries in Pakistan where many of their leaders were educated. These religious schools contributed to the belief that Taliban were building a “true Islamic order.”<sup>116</sup> After years of conflict and the collapse of the Soviet-backed government, the Taliban captured Kabul on 27 September 1996 and established the Islamic Emirate of Afghanistan under the leadership of Mullah Mohammad Omar<sup>117</sup>. Instead of creating a democratic state, they formalised their rule through religious decrees that dismantled existing political institutions and concentrated central authority in the hands of a single religious leader, resulting in a highly centralised and exclusionary political system<sup>118</sup>.

#### ***4.1 TALIBAN FIRST ERA (1996–2001)***

Under this regime, the Taliban imposed some of the most severe restrictions on women recorded in contemporary history<sup>119</sup>. Girls were banned from education beyond early childhood, and women were excluded from almost all forms of employment<sup>120</sup>. Women were not permitted to leave their homes without a male relative, and full burqa covering became mandatory<sup>121</sup>. Even household windows were required to be blocked so that women could not be seen from outside<sup>122</sup>. Public, economic, and political life became entirely inaccessible to women, forcing them into social invisibility<sup>123</sup>.

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<sup>116</sup> Colin P. Clarke, “The Taliban’s First Regime: A Review of 1996–2001,” CTC Sentinel (Combating Terrorism Center at West Point), March 2021, <https://ctc.westpoint.edu/>.

<sup>117</sup> Ibid

<sup>118</sup> Sharif Hozoori, “Taliban 1.0 and 2.0 in Afghanistan: Same Policies, Persistent Vision,” *Journal of Strategic Security* 18, no. 2 (2025): 126–129.

<sup>119</sup> Human Rights Watch, *The Taliban’s War on Women: A Health and Human Rights Crisis* (New York: HRW, 1999), 1–5.

<sup>120</sup> United Nations, *Report of the Special Rapporteur on Afghanistan, Abdelfattah Amor*, UN Doc. E/CN.4/1999/40 (1999), paras. 68–75.

<sup>121</sup> Amnesty International, *Women in Afghanistan: A Human Rights Catastrophe* (London: Amnesty International, 1998), 9–12.

<sup>122</sup> HRW, *Taliban’s War on Women*, 14.

<sup>123</sup> United Nations, *Special Rapporteur Amor Report* (1999), para. 70.

Women who had previously worked as teachers, civil servants, or medical professionals were removed from their jobs<sup>124</sup>. Only a small number of female health workers were allowed to operate under very strict conditions<sup>125</sup>. Reports from the time document widespread violence against women, including beatings, public humiliation, forced marriages, disappearances, and sexual violence<sup>126</sup>. These abuses occurred alongside the erasure of women from Afghanistan's social, economic, and political spheres<sup>127</sup>.

The Taliban enforced these rules through the Ministry for the Promotion of Virtue and Prevention of Vice, whose officers patrolled the streets carrying whips, sticks, and cables<sup>128</sup>. Women were beaten publicly for the smallest perceived infractions, such as a burqa considered "too short" or shoes that made noise while walking<sup>129</sup>. Men could be arrested for having a beard deemed insufficiently long<sup>130</sup>. There was no judicial process, and punishments were often arbitrary, violent, and public<sup>131</sup>. Fear, shame, and surveillance were essential tools through which the Taliban maintained control<sup>132</sup>.

During this period, scholars such as Abdelfattah Amor, Ann Mayer, Karima Bennoune, and feminist writer Phyllis Chesler described the Taliban's first regime as a system of gender apartheid. They noted that the regime systematically segregated, oppressed, and subordinated women to such an extent that it constituted a form of apartheid, even though international law had no explicit category for "gender apartheid" at the time. The Taliban enforced a systematic gender-based domination through their policies which prohibited girls from school and barred women from working, required them to stay hidden from view. This first era represents the early form of the system that this thesis examines in detail in the current period.

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<sup>124</sup> HRW, *Taliban's War on Women*, 7–10.

<sup>125</sup> Amnesty International, *Women in Afghanistan*, 13.

<sup>126</sup> HRW, *Taliban's War on Women*, 16–20.

<sup>127</sup> United Nations, *Special Rapporteur Amor Report* (1999), paras. 70–80.

<sup>128</sup> HRW, *Taliban's War on Women*, 21.

<sup>129</sup> Amnesty International, *Women in Afghanistan*, 11.

<sup>130</sup> Human Rights Watch, *The Taliban's War on Women*, 23.

<sup>131</sup> United Nations, *Special Rapporteur Amor Report*, para. 72.

<sup>132</sup> Phyllis Chesler, "Gender Apartheid under the Taliban," in *Women's Rights in the Middle East* (2001), 55–60.

## 4.2 TALIBAN CURRENT REGIME (2021- PRESENT)

When the Taliban returned to power in Afghanistan in August 2021 following the withdrawal of U.S. troops, the group initially tried to present itself as more moderate than during its 1996–2001 regime<sup>133</sup>. Taliban spokesmen repeatedly assured the international community that women would be allowed to work, study, and participate actively in society “within the framework of Islam<sup>134</sup>.” However, these promises were quickly abandoned. Since their takeover, a wide range of increasingly restrictive measures have been imposed on women and girls throughout Afghanistan.

Afghan women and girls have faced a systematic erosion of their fundamental rights, especially in access to education, employment, and freedom of movement. Women have been virtually erased from all areas of public life<sup>135</sup>. Girls above Grade 6 have been denied education nationwide, and de facto authorities have also suspended higher education for women. According to UN Women’s Gender Alert 2023–2024, Afghan women now face more than 50 formal and informal decrees which restrict their daily lives<sup>136</sup>. The following restrictions exist under this system: the ban on secondary and higher education for girls, employment opportunities, strict mobility rules requiring a mahram, exclusion from public spaces such as parks, gyms, and public baths, and dress codes enforced arbitrarily through local commanders and media censorship<sup>137</sup>.

Women have also been excluded from political participation. The Ministry of Women’s Affairs was shut down and replaced by the Ministry of Vice and Virtue<sup>138</sup>. Women are prohibited from working in NGOs, most government offices, and many humanitarian organizations<sup>139</sup>. All these measures have created an extensive system of gender-based segregation across all sectors of life. According to UN Women, only 4% of women nationwide retain access to any form of income-earning activity, and nearly 100% require a male guardian for long-distance travel<sup>140</sup>. Protection mechanisms are

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<sup>133</sup> UN Women, *Gender Alert: Afghanistan 2023–2024* (New York: UN Women, 2024), 6.

<sup>134</sup> Ruqayya Vale, Alexis Margolin, and Sippi Azarbaijani-Moghaddam, *Taliban 2.0’s Governance of Women*, Policy Report (2021), 4–5.

<sup>135</sup> UNAMA, *Promotion of Virtue and Prevention of Vice: Human Rights Concerns* (April 2025), 1–4.

<sup>136</sup> UN Women, *Gender Alert 2023–2024*, 7.

<sup>137</sup> UN Women Gender Alert 2023–2024, pp. 5–9.

<sup>138</sup> Robin Vale, Anna Margolin, and Sana Akbari, *Taliban 2.0’s Governance of Women* (Kabul: Afghanistan Analysts Network, 2021), 8.

<sup>139</sup> UN Women, *Gender Alert 2023–2024*, 10.

<sup>140</sup> *Ibid.*, 12.

non-existent, and there is no functioning legal system capable of addressing abuses against women.

Although both Taliban eras share the same ideology, the current regime is far more organized and systematic<sup>141</sup>. Since 2021, the Taliban have built a stronger bureaucratic structure, issuing a far greater number of written decrees that uniformly restrict women's movement, education, work, and public life<sup>142</sup>. Reports also show the use of surveillance technologies, including internet shutdowns, monitoring of phones and social media, and digital censorship—tools that did not exist or were not widely used in the first regime<sup>143</sup>. These developments make the present system of control more coordinated, intrusive, and comprehensive than that of 1996–2001.

These restrictions demonstrate not isolated policies, but a coherent and intentional system aimed at removing women from public, political, economic, and social life<sup>144</sup>. The Taliban's bans on women working in NGOs, accessing education, or participating in public spaces all point to a deliberate strategy designed to subordinate women as a class<sup>145</sup>. This system maintains separate areas for men/women through formal decrees/oral orders and random court rulings that exist throughout the country<sup>146</sup>.

Taken together, the Taliban established a complete state-controlled system which functions to dominate women through its purposeful efforts to block their public activities. The rules follow a uniform structure which reveals a common belief that men need to defend women while women should avoid all social activities. The system operates in a similar way to apartheid because it selects women for discrimination while using state authority to remove them from all aspects of society.

#### ***4.3 DE JURE VS. DE FACTO GOVERNANCE UNDER THE TALIBAN***

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<sup>141</sup> *Taliban 1.0 and 2.0 in Afghanistan: Same Policies, Persistent Vision*, 6–7.

<sup>142</sup> United Nations Assistance Mission in Afghanistan (UNAMA), *Report on the Ministry of Vice and Virtue* (10 April 2025), 5–8.

<sup>143</sup> UNAMA, *Vice and Virtue Report 2025*, 21–23.

<sup>144</sup> UN Women, *Gender Alert 2023–2024*, 4.

<sup>145</sup> *Ibid*

<sup>146</sup> European Parliament, *Resolution on the Human Rights Situation in Afghanistan* (RC-9-2022-0506), para. 16.

Furthermore, the legal and administrative character of Taliban governance is defined not by a functioning system of formal law (*de jure*), but by a fluid and arbitrary structure of verbal decrees, media announcements, and religious edicts issued without any constitutional, legislative, or judicial authority (*de facto*)<sup>147</sup>. Multiple reports—including those of the UN, U.S. State Department, Amnesty International, Human Rights Watch, and UN Women—show that the Taliban dismantled Afghanistan’s formal legal and institutional framework after August 2021<sup>148</sup>. In its place, Taliban authority established a rule-by-decree system grounded in male guardianship (*mahram*), gender segregation, and the systematic removal of women from public, economic, and political life<sup>149</sup>.

Although there are variations in enforcement across provinces and even between individual commanders, the underlying logic of the system remains uniform: women are to be excluded, restricted, or rendered dependent in every sphere of life<sup>150</sup>. The combination of unenacted laws, unclear decision processes and insufficient legal protections for women results in an uncertain legal environment where they face arbitrary and flexible control<sup>151</sup>. In practice, the current *de facto* system operates as gender-based oppression which creates an apartheid-like situation, due to the lack of transparency and accountability the system fails to provide women with any means of legal redress and bases its governance structure on gender-based social order<sup>152</sup>.

The following sections directly compare the two regimes across key themes such as education, employment, mobility, enforcement, and public participation. This comparison reveals both continuity and intensification of gender-based domination.

Theme	First Taliban Regime (1996–2001)	Current Taliban Regime (2021–present)
Education	Girls banned beyond primary school; very limited religious schooling	Nationwide ban on secondary & higher education; university ban; expanded censorship

<sup>147</sup> UNAMA, *A/The Vice and Virtue Report*, April 2025, 3–7.

<sup>148</sup> UN Women, *Gender Alert 2023–2024*, 5–8; Amnesty International, *Afghanistan: Authorities Must Reinstate Formal Legal Frameworks*, 2024; UNAMA, *Vice and Virtue Report*, 4–6.

<sup>149</sup> UN Women, *Gender Alert 2023–2024*, 6–9; UNAMA, *Vice and Virtue Report*, 7–10.

<sup>150</sup> UN Women, *Gender Alert 2023–2024*, 8–12; UNAMA, *Vice and Virtue Report*, 10–12.

<sup>151</sup> Amnesty International, *Afghanistan: Four Years of Injustice and Impunity*, 2024, 3–6; UNAMA, *Vice and Virtue Report*, 5–7.

<sup>152</sup> UN Women, *Gender Alert 2023–2024*, 2–4; UN Special Rapporteur on Afghanistan, *Report A/HRC/53/28*, 2023.

<i>Employment</i>	Women removed from civil service; very limited medical work allowed	Women banned from government, NGOs, UN agencies, private sector; almost total exclusion
<i>Mobility &amp; Mahram</i>	Women required to travel with a male guardian; limited enforcement due to weak state administrative	Mandatory mahram for all travel; consistent enforcement; women stopped at checkpoints
<i>Public Participation</i>	Women barred from politics and most public spaces	Women erased from public life; banned from parks, gyms, baths, beauty salons, universities, NGOs
<i>Punishment &amp; Enforcement</i>	Public beatings, whips, forced disappearances; moral police active but inconsistent	Expanded security apparatus; written decrees; digital surveillance; coordinated punishment
<i>Legal Structure</i>	No constitution; reliance on religious edicts	No constitution + highly centralised rule-by-decree; dozens of written restrictions
<i>State Capacity</i>	Weak administrative capacity; uneven local enforcement	Stronger bureaucracy; uniform national decrees; monitoring, media control, internet shutdowns
<i>Ideology</i>	Gender segregation “to protect women’s honour”; early form of gender apartheid	Same ideology but more systematised; “ideal Islamic society” built on women’s exclusion
<i>Overall System</i>	Severe, violent, exclusionary	More bureaucratic, coordinated, intrusive, and comprehensive—intensified gender apartheid

*Summary Table: Comparison of the Two Taliban Eras*

#### **4.4 ANALYTICAL COMPARISON: CONTINUITY AND INTENSIFICATION ACROSS BOTH REGIMES**

After the Taliban returned to power in August 2021, the sequence of restrictions began almost identically to the first regime<sup>153</sup>. They first banned women from most forms of employment, then closed girls’ secondary schools and universities, later imposed mobility restrictions requiring a male guardian<sup>154</sup>. The public spaces of parks, gyms and public baths remained inaccessible to women during this period just as they had been during the first regime from 1996 to 2001<sup>155</sup>. These are the exact same categories of restrictions Afghan women faced during the Taliban’s first rule, showing a clear continuity of gender ideology<sup>156</sup>. This continuity demonstrates that the Taliban continue to hold their original beliefs about women and they restore their previous stance without delay after taking control again.

<sup>153</sup> UN Women, *Gender Alert 2023–24*, pp. 5–7.

<sup>154</sup> UNAMA, *Situation of Women and Girls*, pp. 10–12.

<sup>155</sup> UN Women, *Gender Alert 2023–24*, p. 7.

<sup>156</sup> CTC Sentinel, *Taliban’s First Regime 1996–2001*, pp. 16–18.

Although the first Taliban regime was severe—banning girls’ education, excluding women from employment except in minimal medical roles, imposing strict dress codes, and policing movement—enforcement in the 1990s was often inconsistent<sup>157</sup>. The Taliban lacked administrative capacity, their control varied by region, and implementation depended heavily on local commanders<sup>158</sup>. This heterogeneity suggests that oppression existed, but the state lacked the tools to enforce it uniformly<sup>159</sup>. The fact that the same policies emerged in 2021, before institutional structures had fully recovered, suggests that gender subordination functions as a core element of Taliban rule<sup>160</sup>.

Furthermore, the current regime has significantly intensified and systematized restrictions through dozens of formal decrees and repeated verbal orders<sup>161</sup>. These rules eliminate women from all public spheres: bans on secondary and higher education, bans on women’s work, exclusion from public spaces, beauty salons, and gyms, and mandatory male guardianship for all forms of travel<sup>162</sup>. Internet shutdowns, censorship, and digital monitoring further expand mechanisms of control<sup>163</sup>. This pattern indicates that oppression today is not only ideological but structurally embedded in a broader set of tools and technologies unavailable in the 1990s.

Compared to the first regime, the Taliban’s institutional system today is more formalized and coordinated<sup>164</sup>. In 2021, the Taliban issued written decrees, administrative regulations, and nationwide directives that established unified provincial control<sup>165</sup>. In the 1990s, domination relied heavily on physical punishment and moral policing with weak national coordination<sup>166</sup>. Today, national decrees reinforce the same ideology but through a more intentional and centralised administrative apparatus. This shift from informal, uneven repression to codified, bureaucratic repression shows the

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<sup>157</sup> Taliban 1.0 & 2.0 Comparison Report (uploaded), pp. 3–4.

<sup>158</sup> *The Constitution and Laws of the Taliban 1994–2001*, pp. 19–22.

<sup>159</sup> CTC Sentinel, *1996–2001 Review*, p. 18.

<sup>160</sup> UN Women, *Gender Alert 2023–24*, pp. 5–8.

<sup>161</sup> UN Women, *Gender Alert*, pp. 5–7.

<sup>162</sup> UNAMA, *Vice and Virtue 2025*, pp. 5–8.

<sup>163</sup> Human Rights Watch (HRW), *Afghanistan: Digital Control*, pp. 2–4.

<sup>164</sup> Taliban 2.0 Governance of Women (Vale, Margolin, Akbari), pp. 4–5.

<sup>165</sup> UNAMA, *Decrees & Directives Compilation 2022–2024*, pp. 3–10.

<sup>166</sup> CTC Sentinel, *1996–2001 Review*, pp. 18–21.

evolution from basic gender segregation to a more institutionalised, state-like system of apartheid<sup>167</sup>.

The restructured Ministry of Vice and Virtue further formalizes control over women's clothing, movement, and public presence<sup>168</sup>. This institutional centralisation demonstrates a clear, deliberate intention to sustain a gender-based hierarchy that is far more consistent, coordinated, and bureaucratically enforced than in the first regime<sup>169</sup>. This intensification supports the argument that the present system constitutes an expanded, more sophisticated form of gender domination rather than a repetition of past practices.

#### ***4.5 STRUCTURAL AND ADMINISTRATIVE DIFFERENCES BETWEEN THE TWO REGIMES***

Structurally, both Taliban regimes rely on a highly centralised and exclusionary model of governance, but the present regime has developed a more organised and state-like apparatus for exercising power. During the first regime (1996-2001), power was concentrated in the hands of the emir and a small religious council composed of founding clerics<sup>170</sup>. Decision-making was informal, personalised, and dependent on individual commanders, which limited the Taliban's administrative capacity and produced uneven governance across provinces<sup>171</sup>. There were no constitutional checks, no separation of powers, and no independent institutions capable of constraining the Emir's authority<sup>172</sup>.

In contrast, the current system, which began in 2021, retains central authority, but now operates through established organisational structures. The Emir has complete control of the government because he can issue official decrees that become legal documents. In addition, the Taliban authorities has created other ministries, councils, and commissions that now exist within the government structure<sup>173</sup>. Bureaucratic

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<sup>167</sup> Vale, Margolin, Akbari, *Taliban 2.0*, pp. 6–8.

<sup>168</sup> UNAMA, *Vice and Virtue Report 2025*, pp. 4–7.

<sup>169</sup> UN Women, *Gender Alert*, p. 8.

<sup>170</sup> Lakhdar Brahimi, *Taliban Ideology and Governance* (2010), 6–9.

<sup>171</sup> Antonio Giustozzi, "Have the Taliban Changed?" *CTC Sentinel* 14, no. 3 (2021): 3–5.

<sup>172</sup> International Legal Foundation, *The Constitution and Laws of the Taliban 1994–2001* (2001), 11–14.

<sup>173</sup> UNAMA, *Ruling by Decree: The Legal Architecture of the Taliban* (2025), 5–8.

growth after 2021 created a systematic decision-making system that operated through three main institutions, including the Amir's Administrative Office and provincial appointment commissions and various councils that governed specific departments<sup>174</sup>. Importantly, this centralisation enables the regime to impose policies—including gender-based restrictions—much more consistently and nationwide.

The Shura system demonstrates the historical development of Taliban governance. In the first regime, leadership Shuras were small, religiously homogenous groups that made decisions based on loyalty and ideological purity<sup>175</sup>. In the present era, the Shuras remain exclusionary but have become more structured and politically strategic<sup>176</sup>. The leaders need to handle different groups within their organization together with local political influences and international public opinion, which resulted in creating official advisory positions and administrative structures. The system has become more authoritarian because it enables the Taliban to create a unified governance structure which enforces their gender-based discrimination policies.

In both periods, the Taliban rejected constitutional and democratic law, but the current regime has moved even further toward an explicitly de facto system of rule-by-decree. During the first regime (1996–2001), the Taliban never introduced a written constitution nor validated any previous Afghan constitution<sup>177</sup>. Governance relied almost entirely on oral orders and religious interpretations delivered by the Emir and local commanders, which created inconsistent, locally variable practices. Rules were not codified, not transparent, and not legally challengeable.

After returning to power in 2021, the Taliban again dismantled the constitutional order—abolishing the 2004 Constitution, disbanding republican courts, and replacing all formal law with the Emir's decrees<sup>178</sup>. However, unlike the first era, the present regime has built a more extensive and bureaucratic rule-by-decree system. More than fifty written, verbal, and media-announced verdicts now regulate every aspect of life, including the systematic removal of women from public spaces<sup>179</sup>. These decrees are issued solely by an unelected and invisible Emir, are not publicly debated, and are

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<sup>174</sup> United States Institute of Peace, *Governance and Public Administration Under the Taliban* (2022), 7–10.

<sup>175</sup> Brahimi, *Taliban Ideology and Governance*, 6–7.

<sup>176</sup> Giustozzi, “Have the Taliban Changed?” 5–6.

<sup>177</sup> International Legal Foundation, *Constitution and Laws of the Taliban*, 11–14.

<sup>178</sup> UNAMA, *Ruling by Decree* (2025), 2–5.

<sup>179</sup> UNAMA, *Vice and Virtue Report* (2025), 5–12.

disseminated through ministries, provincial offices, radio, and social media without any legal procedure or publication standard. This transformation shows a shift from informal rule to a more organised, centralised, and state-like mechanism of authoritarian control.

Furthermore, this system has severe negative effects on women because it does not have any legal structure that protects them. Under the 2004 Constitution and international treaties such as CEDAW, ICCPR, and ICESCR, Afghan women previously held de jure rights to equality and non-discrimination<sup>180</sup>. Under the Taliban's de facto system, these rights no longer have any institutional protection. Women have no legal way to fight against discriminatory decrees or defend themselves against violations or seek court review. The rule-by-decree system operates as the legal framework that enables the Taliban to maintain gender apartheid through its established process for nationwide women's oppression.

The enforcement apparatus of the Taliban has become more bureaucratic and technologically equipped in the current regime, allowing it to monitor and punish women's behaviour far more systematically than during the first Taliban era. In 1996–2001, enforcement relied heavily on the Ministry of Vice and Virtue, which operated through visible street patrols, public beatings, and immediate physical punishments for perceived violations, especially relating to women's dress, mobility, and behaviour. Rules were implemented through fear and the physical presence of religious police, with no system of documentation, record-keeping, or central monitoring<sup>181</sup>.

Since 2021, the Taliban have re-established the Ministry of Vice and Virtue but expanded its capacity through bureaucratic and technological tools. The ministry now uses written orders and letters to exclude women through official administrative decisions instead of physical attacks. The dissemination of verbal and written verdicts occurs through provincial and district offices, yet media access remains limited because of censorship and intimidation and media bans<sup>182</sup>. The regime also uses internet shutdowns, social media monitoring, and public announcements to enforce behavioural control<sup>183</sup>. As a result, the system now enforces rules through various channels which

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<sup>180</sup> UN Women, *Gender Alert 2023–2024*, 4–6.

<sup>181</sup> Human Rights Watch, *Afghanistan: The Massacre of Women* (2001), 7–12.

<sup>182</sup> UNAMA, *Vice and Virtue Report* (2025), 8–14.

<sup>183</sup> Rafia Vale, A. Margolin, and S. Akbari, *Taliban 2.0's Governance of Women* (2021), 12–15.

include physical patrols, ministries and local offices, documentation systems that monitor and punish women throughout daily life.

This shift from visible patrol-based enforcement to a bureaucratized and technologically supplemented system makes the present regime's control over women continuous and inescapable. Unlike the first era, where enforcement varied by locality and depended on individual commanders, the current regime can impose gender apartheid through coordinated institutions and nationwide monitoring mechanisms<sup>184</sup>.

## ***CONCLUSION***

The analysis of the first Taliban regime (1996–2001) and current de facto authorities shows that gender ideology remains consistent, yet the regime now possesses enhanced power and better administrative control. The current regime enforces its rules through a centralized system which combines bureaucratic operations with decree-based governance, whereas the previous regime depended on local commanders and public punishments for enforcement. The growth of ministries, Shuras, administrative offices, written decrees and technological surveillance has turned gender discrimination into an organized system of governance. The Taliban now maintains better control to enforce women's exclusion throughout every part of Afghanistan. The current system meets the elements of the Rome Statute definition of an "*institutionalised regime of systematic oppression*" which is described in Article 7(2)(h)<sup>185</sup>. The following chapter presents the empirical findings from the survey and expert interviews, which document how Afghan women experience these restrictions in their daily lives.

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<sup>184</sup> USIP, *Governance and Public Administration Under the Taliban* (2022), 10–14.

<sup>185</sup> Rome Statute of the International Criminal Court, art. 7(2)(h).

## **CHAPTER 5.**

### **EMPIRICAL FINDINGS**

This chapter presents the empirical findings of the research, which draws on two primary methods: a survey of Afghan women and girls, and interviews with three experts in women's rights and gender apartheid. The survey was designed to capture the real and lived experiences of women under the Taliban's de-facto governance, both inside Afghanistan and, where applicable, among those living outside the country. A total of 55 women participated in the survey through snowball sampling, providing insight into their daily challenges, restrictions, safety concerns, and perceptions of the current situation. Their responses reflect a wide range of realities across different provinces, ages, and socioeconomic backgrounds.

Survey data reveal women's real-life experiences through numerical and textual responses, but expert interviews identify how these experiences are connected to legal systems and political structures and historical events. The chapter begins with survey data presentation through statistical numbers, recurring patterns and thematic findings which experts use to validate the developing research themes.

Together, the survey and expert interviews reveal the multi-layered impact of Taliban governance on Afghan women's lives and form the empirical foundation for the legal and theoretical analysis presented in the next chapter.

#### ***5.1 DEMOGRAPHIC CHARACTERISTICS OF RESPONDENTS***

A total of 55 Afghan women participated in the survey, but the number of responses for each question varies due to the formatting of the Google Form. The survey participants were predominantly young women, as 65.7% of the 35 women who answered the age question were between 18 and 24 years old, 20% were between 25 and 34 years old, and only a small number of participants were over 35 years old. The survey data shows that women between the ages of 18 to 24 are most affected by the education ban, which prevents access to secondary and higher education. The survey participants included 51.4% single women and 40% married women, while 82.9% of

them resided in urban areas that face tighter control due to increased Taliban patrolling activities. The survey results show that many participants were from large families, as 47.1% of them lived with 7 to 10 people, which makes financial management difficult for the entire family if women are unemployed or face educational obstacles.

Before August 2021, the survey found that students made up 50% of participants, while the remaining 11.8% were employed in NGOs, 11.8% in private companies, or 8.8% as teachers. Employment declined rapidly after the Taliban took over Afghanistan, and 91.4% reported having no job and no income. Employment problems arose due to Taliban work permit structures rather than individual circumstances, as 58.8% of participants attributed their job loss to Taliban restrictions, 26.5% lost their job prospects, 20.6% stayed home due to social expectations, and 20.6% cited fear and insecurity as their main challenge. The data indicates women experience economic exclusion because of decisions made by others in politics rather than their own choices.

The survey results showed that Taliban rulings primarily affected education, employment, and freedom of movement, as 71.4% of participants mentioned these items. Women explained that the combination of these restrictions, namely banning from school, severe restrictions on work, and requiring a mahram, had major consequences, as 57.1% of participants reported psychological stress and lower income. 50% also lacked access to educational opportunities. For many, the inability to leave the country alone means missing out on opportunities to study abroad and reducing their access to healthcare and services.

Most of the women experienced violence and oppression during the Taliban regime. The survey found that 21.4% of participants had directly experienced violence during the past year, while 28.6% had witnessed violence against other women and 35.7% had experienced both situations. The survey results showed that 7.1% of participants had no prior experience with violence. The qualitative descriptions provided by 15 respondents clearly illustrate these numbers. Women reported that Taliban patrols used verbal abuse, insults, during interrogations against them, and in some cases, armed members forcibly detained girls or took them away. Women faced physical attacks through pushing, grabbing, and threats for not being accompanied by a male companion or for wearing a hijab that did not meet Taliban standards “*incorrect*”. Many women expressed deep psychological fear, explaining that even stepping outside the house creates anxiety. For several, daily life under Taliban rule feels like “*living in a cage.*”

The economic situation of families has become a major concern for many people. As of 2021, 42.9% of families have seen their economic situation get “*much worse.*” while another 28.6% have experienced a slight economic decline “*a little worse*”. To cope, households used three main strategies to manage their financial problems: borrowing money (42.9%), selling personal belongings (28.6%), and cutting back on food (21.4%). The methods women adopt to survive in unemployment conditions lead to increased levels of poverty and threaten both their families' access to food and their own overall health.

The survey asked women to assess whether the Taliban's orders violated the provisions of international treaties. Despite their lack of knowledge of specific treaties, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Economic, Social and Cultural Rights, participants demonstrated their knowledge of human rights violations through their responses. Many participants (57.2%) confirmed that Taliban policies directly violate women's human rights. The survey results showed that 78.6% of participants supported the classification of present-day restrictions as gender apartheid. Participants in the survey demonstrated extensive knowledge about gender apartheid, as 42.9% of them fully understood the term and 42.9% had strong familiarity with the concept. The survey results show Afghan women understand the system functions as a single oppressive system instead of multiple discriminatory practices.

The survey contained a section which asked participants about their opinions regarding international support and fundamental needs. The survey results indicated that 64.3% of participants felt international support for Afghan women was “very weak” while 85.7% asked for the international community to support them with scholarships and education programs. Many respondents requested secure migration options, legal assistance and online work options. In open - ended responses, women emphasized repeatedly that the international community should not forget Afghan women, advocate for their right to education, and to recognize this situation as gender apartheid. Several participants expressed deep concern and fear for their future, emphasizing that they felt they would “*disappear from society*” if the world did not support them.

The survey results show that Afghan women face a complete system that blocks their access to education, work and freedom of movement while causing psychological trauma, financial struggles and attacks on their identities as women. The research evidence shows that these limitations exist as a deliberate and unified system which women call gender apartheid according to their own descriptions. The following section summarises the views of three experts who provided firsthand insights based on professional involvement and lived experience.

## ***5.2 EXPERT PERSPECTIVES ON TALIBAN RULE AND GENDER APARTHEID***

This research conducted interviews with three Afghan women who are actively working on women's rights and who directly experience Taliban restrictions in their daily lives and professional activities. The participants in the interview used their personal life experiences to answer questions instead of using legal terms. The participants observed that Afghan women experience a unified system of oppression which they call "gender apartheid."

### ***Taliban Policies and Their Impact on Women***

All three interviewees explained that the Taliban's restrictions on women are imposed through deliberate and intentional action, rather than accidental or temporary measures. One interviewee stated bluntly that the Taliban "*do not believe in women's rights or human rights at all,*" which is in itself against all rights that belong to women and their activities are against women's participation in public life. She explained that the Taliban support these bans as something they "*want from the bottom of their hearts*" because they represent their core beliefs that will remain forever.

Another interviewee explained that the Taliban pursue policies that restrict women to staying at home, while preventing women from entering public places and accessing schools, work, and social advancement. The third interviewee supported this view by explaining that these restrictions operate as an integrated system that works together as a single unit, rather than being separate laws. She explains that women are systematically removed from public view, creating an atmosphere of terror that forces women to be submissive and maintain complete silence.

All three interviewees confirmed that the government has created a complete system that restricts women from employment, education, and movement to prevent them from participating in public activities. Interview participants agreed that these practices constitute crimes against humanity and gender apartheid, as they specifically target women because of their gender. They emphasized that the bans are applied uniformly across the country, enforced continuously, and widely understood by women as policies that will not change.

One interviewee further explained that, to establish legal accountability, the international community requires “*evidence of the bans, the violence, and the way women are pushed out of society.*” She stressed that such evidence already exists and is being documented by multiple international and human rights organizations.

### ***Legal and Political Barriers to Accountability***

The interviewees did not use technical legal language, but they described barriers to accountability in clear and practical terms. One interviewee explained that “*no one can complain against the Taliban inside Afghanistan*” because there is no functioning judicial system capable of protecting women. She stated that women live in fear, legal institutions no longer exist to defend them, and the Taliban themselves are the primary violators of women’s rights.

All three interviewees also highlighted that the Taliban’s lack of international recognition creates uncertainty regarding who can legally represent Afghanistan before international courts. The Taliban refuses to recognize any law which creates a major obstacle for international legal systems to handle Afghan legal matters effectively.

In addition, the interviewees pointed out that the international community is deeply divided. The Taliban encounters different levels of state resistance because certain countries actively oppose them, yet others keep their relationships with the Taliban hidden for political or security reasons. The interview participants stated that this discrepancy between international justice systems creates problems for achieving both justice and accountability at the global level.

### ***Documentation and Remaining Gaps***

The interviewees explained that although many international organizations document violations through reports, they are unable to operate effectively inside Afghanistan. The interviewee explained that the Taliban restricts NGOs from

conducting independent fieldwork and publishing statements, “*they cannot directly support women.*”

The current documentation system contains three fundamental flaws, which she identified as follows: it does not protect women who disclose information, it relies on remote or secondary sources of information, and it contains unverifiable data because many parts of the country remain inaccessible. The third interviewee confirmed this assessment, stating that women remain silent about abuse because they fear retaliation from the abuser.

Despite the existence of documentation, one interviewee noted that “*women inside the country still feel alone,*” indicating that documentation alone does not translate into meaningful protection or support.

### ***What Afghan Women Want as Justice***

The three interviewee participants stated that Afghan women seek only basic legal frameworks which do not require complicated judicial procedures or abstract punishment systems. Instead, they demand their basic rights which will enable them to experience regular life with dignity. They maintained their focus on fundamental requirements which included access to education and employment, freedom of movement outside their homes, security in their neighbourhoods, and protection from constant surveillance and disciplinary action.

One interviewee stated that Afghan women need international support — “*the world to stand with them*” — to achieve these goals, stressing that their primary aspiration is to create a better future for their daughters. She explained that women want to experience dignity and obtain opportunities while receiving human respect instead of seeking vengeance.

The interview participant named “*guarantees of non-repetition*” as the fundamental requirement which justice needs. She explained that Afghan women need assurances that the Taliban will not be able to reinstate their current restrictions or reproduce previous systems of oppression. She believes that justice demands two essential elements which include protecting women from discrimination and continuous worldwide work to stop new discriminatory systems from developing.

The three interview participants agreed that Afghan women require immediate assistance during their current emergency while permanent protective measures need to be created to safeguard their rights from total destruction.

### ***What the International Community Should Do***

The interviewees agreed that the most important responsibility of the international community is not to forget Afghan women. They emphasized that global institutions should continue their ongoing dialogue on Afghan women, apply pressure on the Taliban to reduce their restrictions, provide educational programs like scholarships and also include online learning, support Afghan women activists, and avoid recognizing the Taliban as a legitimate governing authority.

One interviewee warned that if the world stops speaking about Afghan women, “*we will disappear.*”

### ***Message to Policymakers***

When asked for a final message, all three interviewees expressed a clear and unified appeal: “*Please do not abandon Afghan women.*” They urged policymakers to understand that women in Afghanistan are living under a system that restricts every aspect of their lives. The interviewees warned that continued silence from the international community risks allowing these restrictions to become normalized and permanent.

## ***CONCLUSION***

Survey data and findings from expert interviews indicate that the Taliban have imposed a comprehensive, targeted, and organized system that impacts all aspects of life through its impact on women’s access to education and work, and their ability to travel, feel safe, and maintain their mental health. The survey participants viewed these limitations as their regular experience of life, yet the three expert interviewees explained these patterns stem from a political initiative which seeks to exclude women from public domains.

Women in all data sources demanded their fundamental rights, including the right to human dignity and continued protection against future violations. Expert interviews revealed that the international community lacked an effective integrated response to the

crisis, but they needed ongoing international support that followed established rules and maintained ongoing coordination.

The next chapter will use the results of this research to assess how the data collected aligns with international legal requirements, including crimes against humanity and the developing legal terminology of gender apartheid.

## **CHAPTER 6.**

### **Legal Analysis**

This chapter assesses whether the Taliban’s policies and rulings can be classified as gender apartheid under international criminal law, with reference to Article 7 of the Rome Statute. The research uses doctrinal legal analysis together with comparative jurisprudence, feminist and intersectional theory, as well as empirical data from Afghan women to assess how the Taliban governs through its policies and decrees and why current international legal systems fail to hold them accountable. The chapter identifies which legal and institutional changes must occur to solve this problem.

#### ***6.1 LEGAL ELEMENTS OF APARTHEID UNDER INTERNATIONAL LAW***

##### ***6.1.1 APARTHEID UNDER THE ROME STATUTE – ARTICLE 7(2)(h)***

According to the definition of apartheid in Rome Statute “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 committed with the intention of maintaining that regime.<sup>186</sup>” This definition clarifies that apartheid is a structural crime focused on systems of domination rather than isolated acts.

In international criminal law, “inhuman acts” are not limited to physical violence<sup>187</sup>. As established in the jurisprudence of the ICTR and ICTY, inhuman acts include conduct that causes serious physical or mental suffering or severe harm to human dignity. Victims may suffer not only bodily harm, but also deep psychological distress as a result of such acts<sup>188</sup>. These actions include the denial of education, employment, freedom of movement, and participation in public life. Courts determine the severity of inhuman acts based on the severity of suffering experienced by the

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<sup>186</sup> Rome Statute of the International Criminal Court, art. 7(1)(h).

<sup>187</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Art. 7(2)(h).

<sup>188</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgment, Appeals Chamber, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999, para. 697.

victims, not the specific nature of their suffering. When such conduct is committed as part of an organized, widespread, or systematic attack against a civilian population, it may constitute a crime against humanity.

The second element under international criminal law is that the conduct must be “institutionalized<sup>189</sup>.” Institutionalization means that the discriminatory system is organized, structured, and enforced, rather than consisting of isolated or random acts<sup>190</sup>. In an institutionalized regime, discrimination is created, implemented, and maintained through laws, official policies, administrative measures, and state institutions<sup>191</sup>. This demonstrates that oppression is not accidental or individual in nature but instead reflects an official system of domination<sup>192</sup>. Accordingly, discrimination under such a regime cannot be attributed to the actions of a single individual but is carried out by a governing authority or organized group.

The third element is “systematic oppression and domination<sup>193</sup>.” The term “systematic” describes actions which happen multiple times and organized. The organization performs these actions through its existing policies which direct their work instead of taking random decisions. Systematic oppression operates through official systems which authorities use to preserve their power while they actively discriminate against specific social groups in society<sup>194</sup>. This pattern of conduct demonstrates the intent to maintain control and subordination through coordinated and continuous measures.

Furthermore, domination refers to a permanent hierarchical system that enables one group to maintain control over another group through established power structures that maintain their dominant position and subordinate status. The social order maintains its structure through established systems that restrict the rights and freedoms. Systematic oppression and domination act as a stable power structure that maintains social

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<sup>189</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Art. 7(2)(h).

<sup>190</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgment (22 November 2017).

<sup>191</sup> Ibid

<sup>192</sup> Ibid

<sup>193</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Art. 7(2)(h).

<sup>194</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995).

inequality through organized and conscious social frameworks rather than random individual events<sup>195</sup>.

Under international criminal law, the crime of apartheid is legally limited to acts committed “*against racial groups*”<sup>196</sup>. The requirement limits apartheid studies to racial oppression systems which use racial categories but omits all other types of discrimination regardless of their severity or organizational extent. In addition to the racial element, the legal definition of apartheid requires “*intent*”—specifically, the intention to establish or maintain a regime of systematic oppression and domination by one racial group over another<sup>197</sup>. The acts in question must therefore be carried out with the purpose of sustaining such a regime over time, rather than producing isolated or temporary effects. The legal system requires two conditions for prosecution which include racial discrimination and intent to establish or maintain the regime. The following sections will examine the apartheid framework through its legal restrictions which stem from this dual requirement.

## ***6.2 MAPPING TALIBAN DECREES ONTO THE LEGAL ELEMENTS***

### ***6.2.1 INHUMAN ACTS***

The first element of apartheid under Article 7(2)(h) of the Rome Statute is “inhuman acts” that result in severe physical or mental distress or severe violations of human dignity. International Criminal jurisprudence including ICTY has clarified in cases such as Tadić and Kunarac, that inhuman acts are not limited to physical violence<sup>198</sup>, as they include serious systematic violations of fundamental rights that prevent people from

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<sup>195</sup> International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995).

<sup>196</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Art. 7(2)(h).

<sup>197</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, Art. 7(2)(h), adopted 17 July 1998, entered into force 1 July 2002.

<sup>198</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment (Appeals Chamber), 15 July 1999, paras. 248–252.

living their normal lives<sup>199</sup>. The legal assessment therefore focuses on the severity and cumulative impact of harm, rather than the formal characterization of individual acts<sup>200</sup>.

Applying this standard, the Taliban's treatment of women meets the threshold of inhuman acts<sup>201</sup>. The systematic denial of access to education as well as employment restrictions, freedom of movement limitations, healthcare denial, expression suppression and legal protection denial strips women of their ability to function as independent social entities and legal persons<sup>202</sup>. Taliban authorities enforce these exclusions through coercive methods, including arbitrary police arrests, arbitrary detention, and harsh punishment for alleged moral violations that cause terror, humiliation, and ongoing psychological distress for women<sup>203</sup>.

The use of violence and intimidation, which includes physical attacks, public humiliation, and sexual forms of violence and degrading treatment, demonstrates that the system operates in a discrimination manner, as these methods help the system control women who want to resist its discriminatory nature<sup>204</sup>. The implementation of gender segregation policies together with formal barriers to justice access creates additional suffering because it establishes structural barriers which protect perpetrators from facing legal consequences<sup>205</sup>. Taken together, these acts are severe, systematic, and intentional, and are carried out to maintain a regime of domination over women. The evidence satisfies the material element of inhuman acts set out in Article 7 (2)(h) of the Rome Statute<sup>206</sup>.

The research data from this thesis support the legal assessment that these negative effects exist as permanent systematic problems rather than random occurrences. The survey shows that 71% of participants experienced exclusion from education while 91%

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<sup>199</sup> Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment (Appeals Chamber), 12 June 2002, paras. 142–150.

<sup>200</sup> Prosecutor v. Kunarac, Judgment (Appeals Chamber), paras. 142–144.

<sup>201</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–21.

<sup>202</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 20–36.

<sup>203</sup> United Nations Human Rights Council, *Situation of Human Rights in Afghanistan*, Res. 51/20, UN Doc. A/HRC/RES/51/20 (11 October 2022), paras. 1–5.

<sup>204</sup> United Nations Human Rights Council, *Situation of Human Rights in Afghanistan*, Res. 54/1, UN Doc. A/HRC/RES/54/1 (12 October 2023), paras. 2–3.

<sup>205</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 45–48.

<sup>206</sup> Rome Statute of the International Criminal Court, art. 7(1)(k) and art. 7(2)(h).

of them lost their employment as a result of gender discrimination. The mahram system imposes movement restrictions which force women to become dependent on men while blocking their path to essential services. Reports of violence at checkpoints and severe psychological consequences, including fear, depression, and suicide attempts, demonstrate sustained mental suffering. The research results validate the legal evaluation because they demonstrate that multiple severe violations of human rights produced severe damage to personal dignity which meets the level of inhuman conduct under international criminal law. The following sections examine whether the Taliban's system also satisfies the remaining elements of Article 7(2)(h) of the Rome Statute.

### **6.2.2 INSTITUTIONALIZED REGIME**

The second element of apartheid under international criminal law is the existence of an institutionalized regime. This element is satisfied when oppression is not accidental, informal, or sporadic, but instead embedded in governance structures and enforced through official mechanisms<sup>207</sup>. An institutionalized regime operates through rules, authority, and enforcement practices that produce predictable and sustained outcomes of domination.

In the context of Afghanistan, the Taliban have established such a regime by replacing the former constitutional and legal order with a centralized system of rule-by-decree<sup>208</sup>. Since August 2021, governance has been exercised through a continuous stream of religious edicts and administrative orders that regulate nearly every aspect of women's public and private lives<sup>209</sup>. These measures function as legal framework which exercise authority to enforce laws during times when there are no active legislative processes nor judicial review procedures or appeal mechanisms. The government moved from constitutional governance to rule-by-decree governance thereby creating a new governing structure rather than creating isolated policies.

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<sup>207</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–15.

<sup>208</sup> United Nations Human Rights Council, *Situation of Human Rights in Afghanistan*, Res. 54/1, UN Doc. A/HRC/RES/54/1 (12 October 2023), preambular paras. 18–19.

<sup>209</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 5, 14–16.

Crucially, the Taliban use official policies to enforce women's oppression instead of viewing it as an informal social practice. Enforcement mechanisms include religious police, local authorities, checkpoints, quasi-judicial bodies, detention facilities, and surveillance practices<sup>210</sup>. The institutions use force and penalties to enforce compliance which demonstrates that discriminatory practices continue through state-like organizations which hold public authority. As a result, women's exclusion is not dependent on individual discretion but follows standardized and mandatory norms applied across the country<sup>211</sup>.

A defining feature of this institutionalized regime is the systematic exclusion of women from the public sphere<sup>212</sup>. Taliban policies remove women's capacity to act as autonomous legal and social subjects by denying access to education, employment, movement, and participation in public life. From an apartheid framework perspective, this exclusion is not incidental; it reflects a deliberate strategy to create permanent hierarchical order and dependency, in which one group is structurally subordinated to another over time<sup>213</sup>.

This institutional logic is reinforced by empirical findings from this research. Interviewed experts described the Taliban system as one in which "there is no law, only orders," emphasizing that these orders nevertheless function as binding rules enforced through coercive institutions. Survey respondents similarly reported that restrictions are experienced as uniform, unavoidable, and enforced regardless of individual circumstances. These accounts confirm that discrimination operates through generalized governance mechanisms, rather than through case-specific or informal practices.

Taken together, the legal structure of Taliban governance, the mechanisms of enforcement, and the lived experiences documented in this research demonstrate the existence of an institutionalized regime of domination. The Taliban use discriminatory practices against women to establish a governing framework which actively works to

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<sup>210</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 41–44, 45–48.

<sup>211</sup> United Nations Human Rights Council, *Situation of Human Rights in Afghanistan*, Res. 51/20, UN Doc. A/HRC/RES/51/20 (11 October 2022), paras. 1–3.

<sup>212</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 20–36.

<sup>213</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2022): 30–35.

restrict their freedom and maintain their position of subordination. This satisfies the institutionalized regime requirement under the legal framework of apartheid and distinguishes the situation from fragmented or non-systematic forms of discrimination<sup>214</sup>. The following section investigates whether this established system functions as a form of institutionalized oppression which maintains domination.

### **6.2.3 SYSTEMATIC OPPRESSION AND DOMINATION**

The third element of apartheid under Article 7(2)(h) of the Rome Statute is systematic oppression and domination, which requires an organized, continuous pattern of subordination exercised over a targeted group<sup>215</sup>. The assessment of this element requires researchers to determine whether governing structures embed domination which is enforced throughout multiple spheres of life<sup>216</sup>. When the Taliban's system is examined in light of apartheid-era South Africa, strong functional similarities emerge<sup>217</sup>.

The mahram requirement, which prevents women from moving freely without a male guardian, operates as a mechanism of social and population control comparable to the Pass Laws used to restrict the movement of Black people under South African apartheid<sup>218</sup>. The near-total ban on girls' and women's education parallels the Bantu Education system, which deliberately limited educational opportunities for the oppressed group in order to maintain long-term subordination<sup>219</sup>. The exclusion of women from most forms of formal employment mirrors apartheid-era job reservation laws, under which access to economic opportunities was reserved for the dominant group<sup>220</sup>. Similarly, the prohibition of women from entering parks, gyms, public baths and salons established a system of physical separation which mirrored the restrictions imposed by the Group Areas Act<sup>221</sup>.

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<sup>214</sup> Rome Statute of the International Criminal Court, art. 7(2)(h).

<sup>215</sup> Ibid

<sup>216</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2022): 24–30.

<sup>217</sup> Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 30–35.

<sup>218</sup> Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 31–33.

<sup>219</sup> Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 33–34.

<sup>220</sup> Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 34–35.

<sup>221</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*,

The empirical data collected for this thesis support this assessment. Respondents consistently describe daily domination, enforced economic dependency on male relatives, and constant fear associated with ordinary activities such as moving in public or expressing opinions. These findings demonstrate that the Taliban use its policies to establish a system which discriminates against women while it also creates a network of control which affects their social activities, economic situation and their personal lives.

This conclusion is reinforced by the findings of Richard Bennett, the UN Special Rapporteur on the situation of human rights in Afghanistan. Bennett explains that the oppression of women and girls under Taliban rule is systematic because discrimination is no longer the result of isolated abuses, but is embedded across Afghanistan's legal, judicial, and administrative structures<sup>222</sup>. He emphasizes that this system operates with the clear purpose of maintaining domination over women and girls, eliminating their agency and participation in public life, and entrenching a hierarchical social order<sup>223</sup>. As such, Bennett characterizes the Taliban's governance as an institutionalized system of discrimination, oppression, and domination that may constitute crimes against humanity, including gender persecution and gender apartheid<sup>224</sup>. This raises a critical legal question: whether women constitute a 'targeted group' under international criminal law for the purposes of apartheid analysis.

#### **6.2.4 THE TARGETED GROUP: WHY GENDER MUST COUNT**

The fourth element of apartheid is the existence of a targeted group<sup>225</sup>. The key legal question is whether gender can and should be recognized as such a group for the purposes of group-based crimes under international law<sup>226</sup>. This section argues that

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Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 34–36.

<sup>222</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–15, 61–63.

<sup>223</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–21.

<sup>224</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination*, UN Doc. A/HRC/56/25 (13 May 2024), paras. 61–64.

<sup>225</sup> Rome Statute of the International Criminal Court, art. 7(2)(h).

<sup>226</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2022): 24–26.

gender not only qualifies as a targeted group but is central to understanding the Taliban's system of domination.

The analytical framework of feminist legal theory supports this conclusion. Catherine MacKinnon describes gender as a political system that creates power dynamics through its dominant and subordinate structures<sup>227</sup>. Similarly, Charlesworth and Chinkin demonstrate how international law by treating gender-based violence as a private matter that belongs to cultural traditions, has consistently ignored women's experiences of harm<sup>228</sup>. The research results support the need to establish gender as a legal classification which reveals how social oppression functions in society.

Contemporary scholarship further reinforces this position. The Taliban established a system which Karima Bennouna and other authors identify as gender apartheid and argue that gender-based oppression reaches the same level of institutionalized racial apartheid<sup>229</sup>.

Bennouna argues that women and girls in Afghanistan constitute a clearly identifiable and intentionally targeted group under Taliban rule<sup>230</sup>. The Taliban established their system through deliberate gender-based discrimination which use sex as the main factor to deny women access and maintain their authority<sup>231</sup>. The system controls how women can access education, work, freely move, receive justice and participate in public activities<sup>232</sup>. The government enforces these measures through de facto legal frameworks, policy regulations and enforcement activities which turn women into a single administrative unit instead of treating them as separate victims of abuse incidents<sup>233</sup>.

Bennouna bases her analysis on the fact that international law recognises sex-based discrimination as a fundamental violation although the crime of apartheid has

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<sup>227</sup> Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: Belknap Press of Harvard University Press, 2006), 21–22.

<sup>228</sup> Charlesworth, Hilary, and Christine Chinkin. *The Boundaries of International Law: A Feminist Analysis, with a New Introduction*. Manchester University Press, 2022.  
<http://www.jstor.org/stable/jj.21996497>.

<sup>229</sup> Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," 30–35.

<sup>230</sup> Karima Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," *Columbia Human Rights Law Review* 54, no. 1 (2022): 24–26.

<sup>231</sup> Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," 26–29.

<sup>232</sup> Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," 29–31.

<sup>233</sup> Bennouna, "The International Obligation to Counter Gender Apartheid in Afghanistan," 31–33.

traditionally been defined by racial criteria<sup>234</sup>. The legal framework of CEDAW together with ICCPR and ICESCR establishes that women must receive equal treatment under law, while there is no legal basis for the idea that racial groups should receive greater attention than gender-based discrimination<sup>235</sup>. International law would establish an unfair system of discrimination through such actions.

Moreover, intersectional analysis reveals that the government applies different levels of discrimination against various groups of women. The Hazara women must experience with dual discrimination because of their ethnicity and their gender. While rural women face enhanced restrictions on their movement and widows without male guardians are confined at home and poor women cannot access any form of education<sup>236</sup>.

Finally, recognizing women as a targeted group is essential for accountability. Without explicitly identifying women as the object of oppression, the Taliban's system risks being mischaracterized as cultural, religious, or temporary. By contrast, naming women as the targeted group reveals the Taliban's governance as an institutionalized regime of domination, that may constitute gender apartheid and crimes against humanity. The survey data from this thesis demonstrates that gender functions as an enduring social category that has faced persistent discriminatory treatment throughout history. Another argument arises here; do Taliban authorities intend to maintain this dominance through decrees.

### ***6.2.5 INTENT TO MAINTAIN THE REGIME OF DOMINATION***

Under Article 7(2)(h) of the Rome Statute, apartheid requires not only the existence of inhuman acts and a system of oppression, but also the intent to maintain that system

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<sup>234</sup> Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," 27–28;

<sup>235</sup> International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, 999 U.N.T.S. 171, arts. 2, 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, 993 U.N.T.S. 3, art. 2(2).

<sup>236</sup> Canadian Hazara Advocacy Group, *Briefing—The Hazara Community Faces Targeted Atrocities* (submission to the Subcommittee on International Human Rights, House of Commons, Canada, 2023), <https://www.ourcommons.ca/Content/Committee/441/SDIR/Brief/BR13295425/br-external/CanadianHazaraAdvocacyGroup-e.pdf>.

of domination. The existence of intent becomes visible through policies that evolve over time and their ongoing enforcement practices. International criminal jurisprudence accepts that intent can be demonstrated where discriminatory measures are deliberately sustained, expanded, and enforced despite their known harmful effects<sup>237</sup>.

The Taliban demonstrates intention to control women through their progressive implementation of gender-based restrictions that have become more severe since August 2021. The Taliban uses its decrees to create a lasting governance system, which blocks women from accessing multiple spheres of social life including public spaces, economic activities, legal systems and political processes. The government implemented successive restrictions, beginning with limitations on education and employment, followed by the near-total exclusion of women from their fundamental rights, and eventually prohibiting women from speaking in public and criminalizing their public presence<sup>238</sup>.

The government actively worked to eliminate all programs which supported women, including women-focused ministries, shelters, legal aid services and gender-based violence response systems. The Taliban authority chose to replace these institutions with ministry for the promotion of virtue and the promotion of vice, and morality enforcement agencies that function as tools for controlling women through fear and making them dependent instead of providing protection or equality. The institutional change shows that governance systems exist to achieve their purpose of maintaining domination and exclusion to women<sup>239</sup>.

Enforcement practices reinforce this conclusion. The government maintains control through its practice of arbitrary detention, corporal punishment, intimidation tactics and public enforcement by morality police that creates fear to force women into compliance. The lack of legal remedies and accountability systems proves that the government intentionally sought to maintain its control because it blocked victims from obtaining justice through legal channels<sup>240</sup>. The Taliban continues to maintain their

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<sup>237</sup> Rome Statute of the International Criminal Court, art. 7(2)(h); Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment (Appeals Chamber), 12 June 2002, paras. 96–102.

<sup>238</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–21.

<sup>239</sup> United Nations Human Rights Council, A/HRC/56/25 (13 May 2024), paras. 37–44.

<sup>240</sup> United Nations Human Rights Council, *Situation of Human Rights in Afghanistan*, Res. 54/1, UN Doc. A/HRC/RES/54/1 (12 October 2023), paras. 2–5.

policies despite worldwide criticism and evidence of damage to women which shows they understand and accept the consequences. Thus, fulfilling the mental requirement of intent in international criminal law.

Moreover, survey data supports this finding because women have demonstrated it through their personal life stories. The survey participants described these policies as deliberate attempts to silence women while they must stay home and disappear from public spaces, including statements such as “they want us silent,” “we live like prisoners,” and “they want women invisible.” Women face purposeful obstacles which block their ability to carry out their basic social activities. The Taliban continue their control over women through intentional actions including their policy structure and their enforcement methods.

Taken together, the Taliban maintain women's domination through their established policies which combine structural elements with operational methods, enduring commitment, and their ideological foundations. The requirement for mens rea in Article 7 of the Rome Statute, for crimes against humanity including apartheid-like systems of oppression, is fulfilled by this pattern of conduct.

Furthermore, the international prosecutorial practice has supported this conclusion through international accountability mechanisms. The ICC Prosecutor requested arrest warrants for senior Taliban leaders during 2024 on the basis that they committed crimes against humanity through gender-based persecution. The warrants demonstrate that Taliban rule has not received formal legal characterization as apartheid, but they confirm women face deliberate policies that stem from the Taliban's highest authority. The request for arrest warrants shows that Taliban leaders understand the damage they have caused and they continue to enforce their rule by using coercive authority and forceful methods to punish women. This international prosecutorial assessment supports the conclusion that the mental element required for apartheid and crimes against humanity is satisfied.

### ***6.3 WHY THE ROME STATUTE CANNOT CAPTURE THE TALIBAN SYSTEM (THE DOCTRINAL GAP)***

Article 7 of the Rome Statute does indirectly recognize gender-based harm, most clearly through the crime of persecution under Article 7(1)(h)<sup>241</sup>. Persecution is defined as the “intentional and severe deprivation of fundamental rights contrary to international law, committed against an identifiable group on discriminatory grounds<sup>242</sup>.” On this basis, many of the Taliban’s policies toward women qualify as persecution. Measures such as banning girls’ education, excluding women from employment, restricting their freedom of movement through the mahram system, and removing women from public life amount to serious deprivations of fundamental rights<sup>243</sup>. These rights are protected under international instruments including CEDAW, the ICCPR, and the ICESCR. The Taliban’s continued enforcement of these policies discriminatory intent, as the harm is not incidental but flows directly from official decrees and enforcement mechanisms.

However, while persecution under Article 7 captures individual violations, it remains limited in its ability to describe the Taliban’s rule over women as a governing system. Persecution treats harm primarily as a collection of abuses rather than as an institutionalized structure of domination. Article 7 includes several gender-related crimes which focus on particular types of damage through their definitions of sexual, slavery, forced marriage and other inhumane acts. Although these provisions are important, they fragment women’s lived experience into separate legal categories and fail to capture how Taliban policies operate together as a unified and organized system<sup>244</sup>.

The Taliban’s control over women is not simply a series of isolated violations. It constitutes a comprehensive regime that governs nearly every aspect of women’s lives through coordinated rules and decrees, enforcement practices, and institutional mechanisms. In this respect, the Taliban system closely resembles the logic of apartheid: an institutionalized system of domination maintained through law, policy, and coercion, with the intent to preserve a permanent hierarchy. Substantively, the

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<sup>241</sup> Rome Statute of the International Criminal Court, art. 7(2)(h);

<sup>242</sup> Ibid

<sup>243</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–21.

<sup>244</sup> Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” *Columbia Human Rights Law Review* 54, no. 1 (2022): 24–30.

Taliban regime meets the core elements of apartheid, including inhuman acts, systematic oppression, institutionalization, and intent to maintain domination<sup>245</sup>.

Despite this, the Rome Statute cannot formally classify the Taliban system as apartheid because of a significant doctrinal limitation in Article 7(2)(h)<sup>246</sup>. That provision restricts apartheid to domination by one racial group over another and does not include gender as a protected group. As a result, systems of domination that are based on gender — even when they function in a manner indistinguishable from racial apartheid — fall outside the formal legal definition. This exclusion creates a doctrinal gap in international criminal law. The situation of Afghan women under Taliban rule illustrates this gap clearly: a system that is apartheid in structure and effect cannot be legally labelled as such solely because the targeted group is defined by gender rather than race<sup>247</sup>.

## ***6.4 PATHWAYS TO ACCOUNTABILITY AND LEGAL REFORMS***

The following section reviews existing legal options that may address the accountability problem that this research has identified. The research examines how international law should address the Taliban's discriminatory system of governance, while recognizing that existing legal frameworks currently have limited capacity to respond to such forms of oppression. The section examines specific legal procedures that could enable the prosecution of Taliban systematic gender-based domination and its associated violations. The discussion starts by exploring possible approaches for amending the Rome Statute before moving on to examine different solutions at both international and domestic levels.

### ***6.4.1 AMENDMENT OF THE ROME STATUTE***

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<sup>245</sup> United Nations Human Rights Council, *The Phenomenon of an Institutionalized System of Discrimination, Segregation, Disrespect for Human Dignity and Exclusion of Women and Girls*, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc. A/HRC/56/25 (13 May 2024), paras. 14–21, 61–64.

<sup>246</sup> Rome Statute of the International Criminal Court, art. 7(2)(h);

<sup>247</sup> Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” *Columbia Human Rights Law Review* 54, no. 1 (2022): 26–28.

Article 7(2)(h) of the Rome Statute limits the crime of apartheid to domination by one racial group over another. This restriction creates a significant accountability gap for institutionalized systems of oppression that are not based on race<sup>248</sup>. As demonstrated throughout this chapter, the Taliban's governance system fulfills all substantive elements of apartheid, yet it escapes classification under Article 7(2)(h) solely because the targeted group is defined by gender rather than race.

Criminalization of gender-based persecution exists under Article 7(1)(h), but this provision only covers individual violations instead of treating the entire governance system as a whole. The Rome Statute framework uses persecution and inhumane acts to prosecute specific actions, instead of monitoring the systematic operations of a regime which controls society through punishment systems<sup>249</sup>. As a result, the Taliban issued multiple decrees which established educational restrictions, work prohibitions and travel limitations, yet these orders exist as separate legal measures without being recognized as an organized system of control.

This fragmentation prevents international criminal law from addressing the Taliban's system as a whole. Gender persecution and related crimes under Article 7 treat victims individually, while apartheid is designed to address collective and structural oppression<sup>250</sup>. The Taliban's system operates not as a collection of isolated abuses, but as an organized regime enforced through law, religious authority, and state-like institutions. Without amendment, the Rome Statute remains unable to capture such gender-based systems of domination.

One legal pathway to address this gap is to amend Article 7(2)(h) to explicitly include gender within the protected groups covered by the apartheid provision. Such an amendment could either expand the definition of apartheid to include gender-based domination or remove the exclusive racial limitation, allowing the provision to apply to any institutionalized regime of systematic oppression and domination.

While amending the Rome Statute is politically demanding, it is legally feasible. The Kampala Amendments demonstrate that States Parties have previously revised the

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<sup>248</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, adopted 17 July 1998, entered into force 1 July 2002, 2187 UNTS 90, art. 7(2)(h).

<sup>249</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, art. 7(1)(h).

<sup>250</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid*, adopted 30 November 1973, G.A. Res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force 18 July 1976, art. II.

Statute in response to evolving understandings of international criminal responsibility<sup>251</sup>. Originally, the Rome Statute included the crime of aggression without a definition or jurisdictional mechanism<sup>252</sup>. States Parties adopted amendments during the Kampala Review Conference that established the crime definition and created legal frameworks for prosecution. The established precedent shows that the Statute functions as a tool to fight modern mass oppression because it adapts to new circumstances.

Amending Article 7(2)(h) to include gender would allow international criminal law to address regimes like the Taliban's not merely as perpetrators of individual crimes, but as architects of an institutionalized system of domination. Such reform would close a critical accountability gap and align the Rome Statute with the reality of modern systems of oppression that operate through gender-based governance.

#### ***6.4.2 NEW CRIMES AGAINST HUMANITY TREATY (ILC DRAFT)***

In 2019, the International Law Commission (ILC) adopted the Draft Articles on the Prevention and Punishment of Crimes Against Humanity and submitted them to the United Nations General Assembly as the basis for a future international convention<sup>253</sup>. The present draft serves as a draft legal framework, but it lacks legal authority because states have not adopted it as a binding convention and they have not finished negotiating the treaty text and completing the ratification process. As a result, the draft currently remains a non-binding legal instrument<sup>254</sup>.

Unlike genocide and war crimes, which are regulated by dedicated global conventions, crimes against humanity lack a universal treaty that obliges states to criminalize such crimes in their domestic legal systems and to cooperate consistently in their investigation and prosecution<sup>255</sup>. This absence has created an enforcement gap, allowing perpetrators of crimes against humanity to evade accountability where

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<sup>251</sup> International Criminal Court, *Review Conference of the Rome Statute*, Kampala, 31 May–11 June 2010, *Amendments to the Rome Statute on the Crime of Aggression*, ICC-ASP/8/Res.6 (2010).

<sup>252</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, art. 5(2) (1998 version).

<sup>253</sup> International Law Commission, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, with Commentaries, adopted 2019, UN Doc. A/74/10 (2019).

<sup>254</sup> United Nations General Assembly, *Report of the International Law Commission on the Work of Its Seventy-First Session*, UN Doc. A/74/10 (2019), paras. 42–45.

<sup>255</sup> International Law Commission, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, Commentary to Draft Article 2, UN Doc. A/74/10 (2019).

domestic laws are inadequate and international jurisdiction is limited. The ILC Draft Articles seek to address this gap by requiring states to incorporate crimes against humanity into national criminal law and to establish obligations of investigation, prosecution, extradition, and mutual legal assistance<sup>256</sup>.

States must conduct investigations of suspected perpetrators who live in their territory according to a treaty to which they are party. The treaty requires states to start investigations of suspected perpetrators who live in their territory before they can decide between prosecuting them domestically or extraditing them to a jurisdiction that has a jurisdiction with competent authority. The draft establishes cooperation mechanisms which enable states to work together through evidence sharing, arrest assistance and mutual legal assistance programs. The horizontal enforcement system provides broader international criminal enforcement capacity than the ICC, because it operates when the ICC lacks investigative authority or when political barriers stop the ICC from participating.

In the context of Taliban rule in Afghanistan, this pathway is particularly relevant. Many harms committed under Taliban governance could already qualify as crimes against humanity, especially persecution and other inhumane acts committed as part of an institutionalized and systematic attack against women. These acts reflect patterns of intentional discrimination and oppression directed at a specific group, which international criminal law already recognizes under Article 7 of the Rome Statute<sup>257</sup>.

However, the ILC Draft Articles build upon the Rome Statute framework and therefore inherit its limitations. The crime of apartheid remains defined in relation to racial domination, and gender apartheid is not explicitly recognized as a distinct crime<sup>258</sup>. Consequently, even if the draft were adopted and ratified, it would not automatically criminalize gender apartheid as apartheid. Instead, accountability for Taliban practices would continue to rely primarily on the legal categories of persecution and other inhumane acts.

Despite this limitation, the ILC Draft Articles create an essential system to strengthen gender-based oppression accountability. Yet this particular limitation exists

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<sup>256</sup> International Law Commission, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, Draft Arts. 5–11, UN Doc. A/74/10 (2019).

<sup>257</sup> *Rome Statute of the International Criminal Court*, art. 7, 2187 UNTS 90 (1998).

<sup>258</sup> *Rome Statute of the International Criminal Court*, art. 7(2)(h).

in the framework. This framework allows countries to establish legal standards that will guide their future negotiations on systems of gender oppression that already exist under crimes against humanity laws. The political path to achieving this goal may be more practical than amending the Rome Statute, as the Statute focuses on the procedures of national courts and interstate cooperation mechanisms rather than increasing the powers of the International Criminal Court.

### 6.4.3 UNIVERSAL JURISDICTION

Universal jurisdiction is a specific form of extraterritorial jurisdiction based on the principle that certain crimes are so serious that they affect the international community as a whole<sup>259</sup>. Because of their gravity, all states have the authority—and, in some cases, under certain treaty regime—to prosecute those responsible, regardless of the nationality of the perpetrator or victim and regardless of where the crime was committed. The rationale behind universal jurisdiction is that such crimes must not remain unpunished and that no safe haven should exist for perpetrators of the most serious international crimes.

Universal jurisdiction is most commonly associated with core international crimes, including genocide, crimes against humanity, war crimes, and, in some legal frameworks, the crime of aggression<sup>260</sup>. In practice, however, the exercise of universal jurisdiction depends on domestic legislation. While some states allow prosecutions without any territorial or nationality link, many adopt conditional forms of universal jurisdiction, such as requiring the presence of the suspect on their territory or the approval of national prosecutorial authorities<sup>261</sup>. As a result, universal jurisdiction remains legally available but unevenly applied across jurisdictions.

Despite these limitations, universal jurisdiction provides an important accountability pathway in situations where international mechanisms are unavailable or ineffective. This is particularly relevant where the jurisdiction of the International

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<sup>259</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *What Is Universal Jurisdiction?* (Geneva: United Nations, n.d.), 1–2.

<sup>260</sup> International Law Commission, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, Commentary to Draft Article 6, UN Doc. A/74/10 (2019).

<sup>261</sup> Cedric Ryngaert, *Jurisdiction in International Law*, 2nd ed. (Oxford: Oxford University Press, 2015), 105–110.

Criminal Court is restricted or where domestic courts in the territorial state are unwilling or unable to prosecute<sup>262</sup>. In such cases, universal jurisdiction can function as an additional layer of accountability by enabling national courts to address serious international crimes committed elsewhere.

In the context of Taliban governance in Afghanistan, universal jurisdiction is especially relevant. Many Taliban policies—including the systematic denial of education, employment, freedom of movement, and participation in public life for women—may qualify as crimes against humanity under Article 7 of the Rome Statute<sup>263</sup>. These acts are not isolated incidents but form part of a widespread and systematic attack against a civilian population, implemented through institutionalized policies, enforcement mechanisms, and punishment. As such, they fall within the material scope of crimes that may trigger universal jurisdiction.

At the same time, universal jurisdiction reflects the same structural limitation identified throughout this thesis. While national prosecutors may pursue charges for persecution or other inhumane acts, they cannot prosecute gender apartheid as such, because international criminal law currently defines apartheid solely in relation to racial domination<sup>264</sup>. Consequently, even under universal jurisdiction, systemic gender oppression risks being legally fragmented into separate offenses rather than recognized as a single regime of domination.

Recent civil society initiatives further illustrate both the potential and the limits of this pathway. For example, civil society–led people’s tribunals and documentation efforts initiated by Afghan women activists in Madrid have sought to record Taliban abuses against women and frame them as systematic violations often described as gender apartheid<sup>265</sup>. Although such initiatives do not result in legally binding judgments, they contribute to evidence preservation, raise legal awareness, and support future prosecutions under universal jurisdiction by national courts.

Overall, universal jurisdiction can respond to the systematic nature of Taliban oppression by prosecuting crimes against humanity committed as part of an organized

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<sup>262</sup> International Law Commission, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity*, Commentary to Draft Article 7, UN Doc. A/74/10 (2019).

<sup>263</sup> *Rome Statute of the International Criminal Court*, art. 7, 2187 U.N.T.S. 90 (1998).

<sup>264</sup> International Criminal Court, *Rome Statute of the International Criminal Court*, art. 7(2)(h).

<sup>265</sup> Amnesty International, *Death in Slow Motion: Women and Girls under Taliban Rule* (London: Amnesty International, 2022), 12–15.

policy. However, it remains constrained by existing legal categories and cannot fully address the conceptual gap surrounding gender apartheid. This reinforces the broader accountability gap identified in this thesis: international criminal law offers mechanisms to prosecute many harms, yet continues to struggle to capture gender-based domination as a coherent structural crime.

#### **6.4.4 UN ACTION**

United Nations action refers to measures taken through UN political, legal, and human rights bodies to address serious violations of international law when judicial mechanisms are ineffective, unavailable, or unwilling to act<sup>266</sup>. The system implements various measures which include resolutions, investigative mandates, reporting systems, and documentation procedures to achieve accountability. The Taliban regime in Afghanistan requires UN intervention because standard criminal prosecution systems face significant jurisdictional limitations political barriers.

UN mechanisms are not merely political but are grounded in the UN Charter, which mandates the organization to promote international peace and security and ensure respect for human rights. Various UN bodies, including the General Assembly, the Security Council, and the Human Rights Council, different forms of authority respond to widespread or systematic violations of international law<sup>267</sup>. These organizations lack criminal authority, but they actively participate in establishing norms and tracking adherence and they support the development of future accountability systems. The UN mechanisms function to support judicial processes instead of replacing criminal court procedures.

One of the most significant forms of UN human rights machinery involves fact-finding, investigation, and documentation of violations<sup>268</sup>. Special Rapporteurs, Independent Experts, and UN-mandated investigative mechanisms collect evidence, record patterns of abuse, and identify alleged responsible actors. In the context of Afghanistan, UN reports have documented systematic restrictions on women's

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<sup>266</sup> United Nations, *Charter of the United Nations*, arts. 1(3), 55.

<sup>267</sup> United Nations, *Charter of the United Nations*, arts. 10–14, 24, 62.

<sup>268</sup> United Nations Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, GA Res. 60/251 (2006), paras. 5(f), 6.

education, employment, movement, and participation in public life<sup>269</sup>. Such documentation is essential for determining whether abuses amount to a widespread or systematic attack against a civilian population, which is a key requirement for crimes against humanity analysis.

Although UN bodies do not apply criminal labels in the same way as courts, their investigations and analyses frequently align with the elements of crimes against humanity, particularly persecution on gender grounds<sup>270</sup>. UN findings increasingly describe Taliban policies as systematic and institutionalized forms of gender-based discrimination and repression. This analysis reinforces the legal characterization of Taliban practices as part of an organized policy targeting women as a group. UN reporting thus plays a critical role in shaping legal narratives and supporting future accountability efforts.

Despite growing recognition of the severity of Taliban policies toward women, UN institutional responses have not resulted in formal legal recognition of gender apartheid as a distinct international crime<sup>271</sup>. Most UN bodies rely on existing human rights law and crimes against humanity frameworks, particularly persecution, rather than extending the legal definition of apartheid beyond racial domination. As a result, Taliban practices are generally described as gender-based persecution rather than apartheid as such. Existing UN legal frameworks fail to fully represent the established gender-based domination that exists throughout the Taliban system.

Nevertheless, UN action remains meaningful, albeit limited. It can contribute to international pressure, delegitimize abusive regimes, and prevent the normalization of systematic oppression. UN mechanisms also play a crucial role in preserving evidence, amplifying victims' voices, and strengthening the legal basis for future judicial action. However, due to the lack of direct enforcement powers and dependence on political consensus and state cooperation, UN action alone cannot deliver criminal accountability. Instead, it functions as a supportive and preparatory framework that enables other accountability pathways.

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<sup>269</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, UN Doc. A/HRC/54/1 (2023), paras. 2–15.

<sup>270</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, UN Doc. A/HRC/55/— (2024), paras. 64–70.

<sup>271</sup> United Nations General Assembly, *Situation of Human Rights in Afghanistan*, UN Doc. A/78/— (2023), paras. 22–28.

#### 6.4.5 CUSTOMARY INTERNATIONAL LAW

Customary international law develops from the consistent practice of states accompanied by their belief that such practice is legally required. Article 38(1)(b) of the Statute of the International Court of Justice, defines international custom as “evidence of a general practice accepted as law<sup>272</sup>.” Unlike treaty law, customary international law is unwritten and evolves over time, allowing it to respond to emerging forms of harm that are not yet codified in binding instruments<sup>273</sup>.

This flexibility is particularly relevant in the context of gender apartheid. While the Rome Statute restricts the crime of apartheid to racial domination, this limitation can be understood as historical context in which the provision was drafted rather than the nature of apartheid as a system of institutionalized domination. Customary international law offers a pathway to address this gap by focusing on the substance of the regime rather than the identity of the group targeted.

State practice may take many forms, including executive, legislative, and judicial actions, as well as diplomatic statements, voting behaviour in international organizations, treaty negotiations, and domestic court decisions<sup>274</sup>. Recent developments may indicate an emerging pattern in which states and national courts are increasingly willing to treat systematic and institutionalized gender-based domination as a matter of international concern. Proceedings initiated under universal jurisdiction, including domestic investigative and prosecutorial efforts related to Taliban practices, suggest an emerging engagement with forms of structural gender-based oppression within existing crimes against humanity frameworks, despite the absence of formal legal recognition of gender apartheid<sup>275</sup>. While such cases remain limited, they contribute to an evolving pattern of practice that recognizes the structural nature of gender-based oppression.

State practice alone, however, is insufficient to establish customary international law. It must be accompanied by *opinio juris*, meaning the belief that states hold that a

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<sup>272</sup> Statute of the International Court of Justice, art. 38(1)(b), 59 Stat. 1055, T.S. No. 993.

<sup>273</sup> International Law Commission, *Draft Conclusions on Identification of Customary International Law*, with Commentaries, UN Doc. A/73/10 (2018), Conclusion 2.

<sup>274</sup> International Law Commission, *Draft Conclusions on Identification of Customary International Law*, UN Doc. A/73/10 (2018), Conclusions 4–6.

<sup>275</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *What Is Universal Jurisdiction?* (Geneva: United Nations, n.d.), 2–3.

particular practice is carried out of legal obligation rather than political convenience or moral preference<sup>276</sup>. *Opinio juris* is reflected in the practice and official findings of United Nations bodies, including the Human Rights Council, the Office of the High Commissioner for Human Rights, and the UN Special Rapporteur on the situation of human rights in Afghanistan<sup>277</sup>. These bodies consistently describe Taliban policies as systematic, institutionalized, and intentional forms of domination that extend beyond cultural or religious explanations. A growing body of scholarship, particularly among feminist legal scholars such as Karima Bennoune and Valerie Oosterveld, further reinforces the view that gender apartheid constitutes a coherent legal concept rather than a rhetorical label<sup>278</sup>.

The customary prohibition of apartheid is further strengthened by its status as a *jus cogens* norm<sup>279</sup>. *Jus cogens* norms are peremptory rules of international law accepted and recognized by the international community as a whole, from which no derogation is permitted. Apartheid is widely acknowledged as such a norm because it protects against institutionalized systems of domination that fundamentally negate human dignity and equality. Arguably, *jus cogens* character of apartheid is grounded in the nature of the system rather than the racial identity of the groups involved, then regimes that impose comparable structures of gender-based domination similarly violate this peremptory norm.

Violations of *jus cogens* norms give rise to *erga omnes* obligations, meaning obligations owed to the international community as a whole<sup>280</sup>. All states therefore have a legal interest in preventing and responding to such violations, even if they are not directly affected. This framework strengthens the legitimacy of universal jurisdiction, UN action, and domestic prosecutions as mechanisms to support systemic gender oppression. Although gender apartheid has not yet been formally codified as a distinct

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<sup>276</sup> International Law Commission, *Draft Conclusions on Identification of Customary International Law*, UN Doc. A/73/10 (2018), Conclusion 9.

<sup>277</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, UN Doc. A/HRC/54/1 (2023), paras. 2–10.

<sup>278</sup> Karima Bennoune, “The International Obligation to Counter Gender Apartheid in Afghanistan,” *Feminist Dissent* 8 (2023): 1–24; Valerie Oosterveld, “Gender-Based Crimes Against Humanity,” in *The Oxford Handbook of International Criminal Law*, ed. Kevin Jon Heller et al. (Oxford: Oxford University Press, 2020), 782–800.

<sup>279</sup> International Court of Justice, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, Judgment, I.C.J. Reports 1970, 32.

<sup>280</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries, UN Doc. A/56/10 (2001), arts. 40–41.

crime under international criminal law, the convergence of state practice, *opinio juris*, *jus cogens* norms, and UN discourse indicates an ongoing normative shift<sup>281</sup>. The law is evolving toward recognition of gender-based institutionalized domination, even as the Rome Statute has yet to fully reflect this development.

### ***CONCLUDING SYNTHESIS: DOCTRINE, EMPIRICAL EVIDENCE, AND THEORY***

In summary, the complete understanding of the Taliban system emerges through the analysis of its doctrinal elements together with its empirical evidence and theoretical framework. The regime fulfills four out of the five legal requirements which define apartheid under the Rome Statute, because it performs inhuman acts and operates through a structured system which maintains systematic oppression and domination with clear purposes to sustain this regime. And also, the Statute's racial requirement stands as the single condition which the law fails to fulfill because it represents a legal restriction instead of a problem with the presented evidence.

Empirically, the research findings support this conclusion because Taliban regulations follow the exact pattern of South African apartheid through their implementation of movement restrictions and work prohibition and their denial of social participation to the affected population. The survey and interview data show that Afghan women face constant and widespread domination which manifests through their ongoing fear, their exclusion from society, lack of access to resources and male dependency on financially, and their regular experience of violent attacks.

Furthermore, the current legal situation becomes understandable through feminist and intersectional theory because society has always viewed gender-based oppression as cultural or personal thus making gender-based systems of power invisible to international criminal law. Overall, the different elements show that the Taliban established a system which implements gender apartheid through its operational structure although it does not match the defined criteria of current international legal frameworks.

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<sup>281</sup> International Law Commission, *Draft Conclusions on Identification of Customary International Law*, UN Doc. A/73/10 (2018), Conclusions 11–12.

## **CHAPTER 7.**

### **CONCLUSION**

This thesis assessed the Taliban's current system of governance to determine whether gender apartheid exists under existing international legal frameworks and identified critical legal reforms needed to combat discrimination. It also combined the assessment of legal doctrine with feminist and intersectional perspectives, analysing the two Taliban regimes through comparative methods, and using data from Afghan women and expert interviews to show a unified system that enforced gender discrimination.

The findings showed that since August 2021, the Taliban have created an organised and institutionalised framework that removes women from education, employment, healthcare, public spaces, and political life. The social control system of their government operates through official decrees, checkpoints, media broadcasts and the mahram system, which establishes a de facto regulatory framework that restricts women while making them disappear from official records. When compared to the first Taliban regime (1996–2001), it becomes clear that the ideology has remained the same, but today the enforcement is stronger, more centralised, and more bureaucratic. The current system represents a nationwide phase of gender oppression which has become more severe than before.

This thesis demonstrates that international human rights treaties including ICCPR, ICESCR, CEDAW and Genocide Convention establish equality protections while they lack criminal enforcement mechanisms, as they are not designed to have the power to prosecute systems which use gender-based discrimination for political control. The jurisprudence of the ICTY, ICTR and hybrid tribunals demonstrates international criminal law adaptability, yet the Rome Statute maintains an apartheid definition based on racial elements. The current legal system faces a critical deficiency because the Taliban's system contains all apartheid elements including an institutionalized regime, systematic oppression, domination and intentional discrimination but it criminalized racial groups instead of gender groups.

The empirical findings confirm the legal research results. Afghan women described losing education, employment, movement, security, and independence. Participants explained how their homes turned into prisons which led to their development of

psychological trauma and their experience of intense fear. The experts stated that these negative effects exist as permanent institutional problems which affect multiple social groups in the same way as they do in other apartheid systems. In addition, this study highlights that Hazara women together with rural women, widows and women with disabilities experience multiple levels of discrimination which surpass those faced by other groups.

Together, these findings answer the first research question: yes, the Taliban's system can clearly be described as gender apartheid in practice, even if international law has not yet recognised this term. The second research question addresses what legal reforms are needed. The analysis demonstrates that international law needs to define gender apartheid as an independent crime against humanity through either Rome Statute modification, either establishment of a new Crimes Against Humanity Convention or creation of new customary international law principles.

This study contributes to several groups. The research brings new insights to academic work which investigates international criminal law and feminist legal theory. The report provides operational guidance which helps UN bodies, states and policymakers to address the Afghan crisis. It also provides evidence and language that women's rights activists and Afghan civil society can use in advocacy efforts. Overall, this research establishes vital knowledge which future researchers need to study gender apartheid and every form of structural discrimination.

In conclusion, this research demonstrates that Taliban rule imposed on Afghan women requires analysis beyond discrimination and cultural barriers because it functions as an intentional political framework which seeks to systematically remove women from participating in society. International law does not possess sufficient instruments to handle this situation which requires immediate legal modifications. International law defines gender apartheid as a human rights violation which society needs to acknowledge as a criminal act. The international community needs to recognize the suffering of Afghan women while establishing methods to achieve justice and hold perpetrators accountable.

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