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Living as Second-Class Human Beings: Gender Apartheid in the Islamic Republic of Iran



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March 2024

On 4 March 2007, few days before the International Women's Day, a significant event unfolded outside Tehran's Revolutionary Court. Along with 32 women's rights activists, I was arrested while protesting the trial of five fellow activists. Charges against them included 'propaganda against the system,' 'acting against national security,' and 'participating in an illegal demonstration,' all stemming from a demonstration demanding gender equality on 12 June 2006.

After our arrest, the police swiftly transferred us to Vozara detention centre. Years down the line, Jina Mahsa Amini's story also unfolded within these walls as it was in this detention centre that she slipped into a coma leading to her eventual tragic death on 16 September 2022. In our initial moments there, female guards conducted bodily searches and confined us to two modest cells. Later that day, we were moved once more, this time to the notorious Evin prison where agents of the Ministry of Intelligence awaited.

As the clock struck midnight, it marked the commencement of relentless interrogations that spanned days. Fifteen days in Evin Prison followed, this period that included partial solitary confinement and culminated with my release on bail.

Solitary confinement, a realm of diminished agency, stripped away my basic facets of autonomy. From decisions about meals and restroom breaks to restrictions on raising one's voice, singing, and limited reading material – the Quran being the sole exception – the constraints were oppressive. The perpetual illumination, a relentless 24-hour overhead light, added to the psychological strain. As a woman in an Islamic Republic prison, the additional requirement of wearing a *chador*¹ while blindfolded outside the women's ward compounded the hardship.

It was in solitary confinement that I realised my shared experience with many women, each of us deprived of autonomy and agency. This extended to women outside the prison, from those confined by male relatives to others facing legal barriers in familial matters or sentenced to death by stoning for alleged extramarital relations – a stark reality I had confronted as a legal practitioner.

This isolation became a conduit for my deeper understanding of the plight of women in Iran where the blurred line between 'public' and 'private' had created a dystopian state. Here, male dominance and state-sponsored gendered oppressive ideologies coalesced and reinforced each other.

Solitary confinement revealed the disconcerting reality that women's agencies and bodies, considered the most private spheres, were not their own; they became the property of the state.

Released on bail on 19 March 2007, a day before Iranian new year (Nowruz), the lingering shadow of the open 2007 case haunted me. In July 2009, amidst the post-election Green Movement protests, I found myself arrested again. A subsequent indictment accused me of leading the women's branch of the 'Velvet Revolution' to overthrow the regime. Realizing the impending threat, I left Iran.

Months later, the Revolutionary Court sentenced me to six years imprisonment and 74 lashes for the 2007 case, with another pending case from my 2009 arrest still hanging over me.

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Summary

The crime of apartheid is defined as the act of systematic oppression and domination by one racial group over any other racial group or groups perpetuated through the establishment of an institutionalized regime entrenching these power structures. International law recognizes apartheid as a crime against humanity solely based on race, not gender or other critical identities. This paper applies the elements of apartheid outlined in the Rome Statute to the situation and experiences of women in Iran under the Islamic Republic. Instead of race being considered the grounds of an apartheid structure, this paper focuses on the identity of gender. Based on the presence of an institutionalised regime which perpetuates systemic oppression of women as a group and holds distinct intentions to preserve the unequal power structure, this paper decrees that pre-established gender-based crimes, particularly gender persecution, fall short of capturing the nature of oppression and domination experienced by women in Iran. This argument is formed through analysis of the Islamic Republic of Iran's laws and governing policies which serve as tools for the maintenance of gender apartheid.

This paper holds the laws and norms around mandatory hijab and gender segregation as crucial for the maintenance of the gender apartheid structure. Punitive regulations and measures demonstrate that the oppressive structure extends beyond behavioural control and instead reflects an institutionalized practice. This practice is supported by a deeply gender-discriminatory constitution, as well as civil and criminal laws that collectively position men as superior first-class human beings, relegating women to a subjugated second-class status. The paper contends why the legal framework of gender persecution proves inadequate for comprehending the systemic subjugation of women, the persistence, prevalence, and comprehensiveness of oppression, and lacks capacity to hold all perpetrators responsible for founding and maintaining such a regime.

This paper also provides a legal analysis of the distinction between the constituting elements of the crime of apartheid and crime of gender persecution, with a particular focus on their mental elements and contextual features. The submission finally reiterates that international criminal law has a long record of ignoring women's experiences since the first international tribunal in Nuremberg, which overlooked the experiences of women in the Holocaust. It emphasizes the necessity and criticality of considering the realities of women's experiences in regimes such as the Islamic Republic of Iran through the codification of gender apartheid as a crime. It urges the international community, including the UK, to accurately characterize the situation of women in Iran as a gender apartheid regime. The implications of this must also be adhered to and include, but is not limited to, effective measures undertaken to prevent, prohibit, and eradicate all gender apartheid practices by the Islamic Republic.

1. Background

In February 1979, following several months of widespread revolutionary demonstrations in Iran, the Pahlavi dynasty (1925-1979) was overthrown. The movement against the Shah was made up of a diverse coalition, united solely by opposition to the Shah regime. As the Shah was deposed, the Islamists led by Ruhollah Khomeini emerged in a dominant position. To consolidate their power further, they effectively and ruthlessly eradicated all other political groups involved in the revolution, including religious and secular nationalists, leftists, and ethnic minorities, gradually extending their control until 1984. Notably, their first target was women.

Only two weeks after toppling the Shah's regime, and with the adoption of a new government and constitution pending, Khomeini's office declared the Family Protection Law 'non-Islamic' and announced its suspension until it was replaced by a Sharia-based law.² This law had granted women the right to divorce, custody rights, and limited men to having no more than one wife. Shortly thereafter, Khomeini personally proclaimed that women were not permitted to enter government offices without Islamic veil (hijab), defined as covering the entire body except the face, and including arms up to the wrist, and legs down to the ankle. In response, women active in political parties and unions or those in independent women's groups and lawyers organised the largest women's demonstrations in the history of Iran, lasting for several days. However, in a deeply patriarchal society, they lacked support from the majority of political organisations and intellectuals who viewed hijab merely as 'a piece of cloth' unworthy of such attention.³

In the bipolar context of the Cold War, the dystopian society, or the 'new order', that the Islamists aimed to establish shaped their identity as "neither Eastern nor Western," challenging both the dominant powers of the time and the Pahlavi dynasty. Operating under the motto "our politics is the same as our religion and our religion is the same as our politics," the Islamisation process emerged as the primary strategy of the new government, employed to secure legitimacy and define the country's new identity.

Shia jurisprudence encompasses rules and regulations governing every aspect of human life, it categorises daily actions, including sexual relationships, into three main groups: *halal* (permissible and lawful), *haram* (prohibited, constituting a sin), and *mubah* (neither prohibited nor permissible, with no specific provisions in Sharia). In Iran, the intertwining of religion and politics places these concepts and their application under the control of the Islamic government. Consequently, all acts deemed *haram* are considered an offence by the government and are subject to punishment. In this context, the repercussions for one's sins are experienced in the present world, even if the acts are private or involve an individual's relationship with God. The way women were treated by extremely religious families in 'private' was now the 'public' norm which extended to include all women and girls, irrespective of their religious backgrounds or beliefs. The once distinct boundaries between the 'private' and 'public' domains were blurred as the private became a realm where the government has the authority to intervene and police. While the regime derives its legitimacy from religious traditions, it utilises all available modern state tools to impose these values as the exclusive way of life for all citizens, employing severe penalties to prohibit alternative lifestyles.

To construct such a dystopian society, based on Sharia rules, an "ideal woman" was defined as a "Muslim revolutionary woman" who is entirely covered in hijab (the black chador) and "observes chastity" by avoiding unnecessary contact with unfamiliar men, all while fulfilling her roles as a

mother and meeting social responsibilities.⁴ Central to this process of creating the ideal woman was the governance of women's bodies and sexuality, through which the regulation of men and broader society was sought. As a result, the new rulers transformed women's bodies into an ideological battleground, in both private and public, aiming to establish an institutionalized regime of 'superior' and 'subjugated' on the basis of gender. The imposition of mandatory hijab rules, coupled with highly discriminatory laws against women constituted the primary strategy to relegate them to a 'subjugated' role. Simultaneously, gender segregation rules and policies maintained a social construct where, despite ensuring the dominance of men, both men and women were compelled to comply and controlled.

Mandatory hijab became deeply embedded in the identity of the Islamic Republic to the extent that during the Iran-Iraq War (1980-1988), authorities publicised new links between the symbolic use of women's bodies and nationalism. In the state discourse, while men fought to preserve the country's territory, women were portrayed as "fighting a war" to preserve their bodies. Official slogans elevated the value of women's hijab and chastity even higher than the blood of the war's martyrs; guarding women's bodies and sexual behaviour became the symbol of preserving the identity of the Islamic regime.

By 1982, the mandatory hijab was rigorously enforced and expanded to all public places,⁵ finding its place in the Islamic Penal code where any defiance of the compulsory hijab rules became an offence punishable by up to 74 lashes.⁶ From 1980 onwards, all schoolgirls from the first grade, at the age of 7, were required to wear a uniform in compliance with Islamic hijab rules.⁷ This period marked the commencement of the codification of gender-discriminatory laws based on Sharia, instituting oppressive policies and practices which effectively relegated women to the status of second-class human beings.⁸

The extension of mandatory hijab and gender segregation to non-Muslim and non-Iranian women within the country's borders illustrates that it has evolved beyond religious prescriptions, functioning as a distinctive element of the Islamic Republic not found in any other country in the world, at least before the rise of the Taliban in Afghanistan. The severity of penalties for objections towards this fundamental element defining the identity of the Islamic Republic underscores its critical importance, reinforcing its preservation as a non-negotiable aspect of the system of oppression and dominance at any cost.

Nevertheless, women in Iran have consistently resisted these laws and policies from 1979 to the present day. No other law in the Islamic Republic of Iran has encountered as steadfast resistance as mandatory hijab.⁹ This resistance prompted the Islamic Republic to allocate significant resources towards the development of patrol police and other enforcement mechanisms, coupled with punitive measures and administrative actions. Over the past 45 years, social resistance has achieved some success, resulting in a partial easing of some of the most draconian laws and rules. However, this has often come at great personal cost, and sometimes through the sacrifice of many lives, as well as severe violations of the human rights of at least three generations of women on a daily basis.¹⁰ The most recent and remarkable instance of this resistance was witnessed in the anti-government uprisings of 2022-23, known as the 'Woman, Life, Freedom' movement. This wave of protests was sparked by the tragic death of a 22-year-old Kurdish woman, Jina Mahsa Amini. She had been arrested by the 'morality police' for not wearing hijab properly, entered a coma while in custody, and subsequently died.¹¹

From the early years after the 1979 revolution, while feeling trapped in a distinct situation, Iranian women conceived the terms 'gender apartheid' or 'sexual apartheid'¹² to characterise their circumstances.¹³ This terminology drew parallels with the South African apartheid regime, which

was still in power during that period and was being challenged by a robust global movement. In 1973, the United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid became the first binding international treaty to criminalise racial apartheid and racial segregation. According to the convention, state parties were obligated to "undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction."¹⁴ Iranian women identified apartheid as the most fitting concept to encapsulate the system of oppression they endured. Highlighting the situation's gravity, they called for dismantling measures by the international community similar to those taken against the South African apartheid regime. Those calls, however, remained unanswered.

In 1996, the International Law Commission (ILC) in the Draft Code of Crimes adopted a generic definition of apartheid as 'institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms.' This, however, made no reference to gender apartheid.¹⁵

Since the mid-1990s, when the Taliban seized control of most of Afghanistan and enforced some of the most oppressive rules faced by humanity in contemporary history, women began using the term 'gender apartheid' to articulate their situation, echoing the same demands as their Iranian counterparts.¹⁶ However, the 1998 Statute of the International Criminal Court (the Rome Statute) failed to acknowledge gender apartheid as a crime against humanity, contrasting with its recognition of racial apartheid. Contrary to what the ILC Draft Codes of Crime suggested, the Rome Statute also did not criminalise apartheid on the basis of ethnicity or religion.

Women of Afghanistan experienced a short period of relative freedom, enjoyment of rights, and dignity between 2001 and 2021 when the Taliban returned to power. Since then, they started advocating for their previous demand from international community: recognising gender apartheid as an international crime and commit to react to it to the same extent that the apartheid convention provides to prevent and eradicate racial apartheid.¹⁷

Resisting the Islamic regime's attempts to establish a state based on oppression and discrimination against women, a continuous struggle has been maintained by Iranian women for over four decades. Nevertheless, despite some minor changes and a bit of relaxations, the fundamental components of subjugating laws, rules, and practices remain intact. The next section will compare the current situation of women under the Islamic Republic of Iran's laws and policies against the constituting elements of the crime of apartheid, as defined by the Rome Statute aiming to assess whether the situation can be described as gender apartheid.

2. Elements of the Crime of Apartheid in Consideration of the Situation of Women in Iran

Article 7 of the Rome Statute defines the crime of apartheid as "inhumane acts of a character similar to those referred to in paragraph 1 [of the Statute] ¹⁸, 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."¹⁹

"Transposing the legal framework on racial apartheid to the gender apartheid context", ²⁰ the 'End Gender Apartheid' campaign proposes an amendment by adding 'gender' to the category of 'groups', resulting in the following modified definition: "the crime of apartheid means 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, or by one gender group over another gender group or groups, and committed with the intention of maintaining that regime.”²¹

To determine if Islamic Republic is practicing apartheid on the ground of gender the subsequent sub-sections scrutinise the situation of women in Iran in context of three major elements of the crime of apartheid, as defined by the Rome Statute that distinguishes it from other international crimes. These are “institutionalised regime of systematic oppression”, “dominance of one group over others”, and “intention of maintaining the regime of systematic oppression and domination”. “Inhuman acts” constitute another important element of the crime of apartheid, although they are not specific to this crime but are shared with a few other international crimes. The sub-section ultimately briefly wraps up examples of inhumane acts experienced by Iranian women.

2.1. Institutionalised Regime of Systematic Oppression

The institutionalized regime of systematic oppression within the context of Iran can be characterised as state-sanctioned control imposed on all women and girls solely based on their gender, disregarding any other distinct identity. The primary tools to maintain this regime are mandatory hijab and gender segregation, enforced through the criminalisation of defiance and the discipline of disobedience.

The Islamic veil (*hijab*), as defined by Shia jurisprudence, is a duty for Muslim women who have reached the age of puberty (9 years in the majority of clerics' decrees or *fatwas*). It mandates covering their hair and entire bodies, except for the face, hands, and feet, while in the presence of men who are not their father, grandfather, uncle, husband, brother, or son. This grouping of family members is called *mahram*, while everyone else is classified as *na-mahram* (stranger) encompassing every man whom women are allowed to marry. According to the same set of rules, any unnecessary communication or relations between women and *na-mahram* men are forbidden.

The rationale behind these rules according to the Islamic theorists is that the veil has been used as a way of curbing male sexual desire, meaning that men who are *na-mahram* might be sexually provoked, leading to sin upon seeing a *na-mahram* woman.²² Extramarital relations are considered a grave sin, leading to the crime of high value: *zina* (adultery), punishable by stoning to death. Although the punishment is equal for men and women, the likelihood of women being sentenced to death by stoning is much higher than that of men in similar situations.²³

Sexual provocation, according to the majority of Shia high ranking clergies' (*ulamas*) religious decrees (*fatwas*), could be triggered by various factors such as hearing the voice of a *na-mahram* woman, observing the shape of their bodies, their jewellery, their faces with makeup, or even their movements. Consequently, wearing clothes that attract attention, engaging in movements that reveal the body's curves, such as riding a bike or motorcycle, displaying jewellery, or having a face with makeup are deemed sinful (*haram*) acts for Muslim women. The religious decrees also prohibit women from signing in the presence of *na-mahram* men.

As a result, the complete enforcement of hijab rules requires maintaining a deeply segregated society with gender-based societal relations. This includes strict regulations for covering hair and body, along with mandates for segregation in various public places. The next section offers an overview of the mandatory hijab rules and the current enforcement mechanisms and policies. Subsequently, it will delve into the laws, regulations, and current practices concerning gender segregation.

2.1.1. Mandatory Hijab Rules and its Enforcement Mechanisms

Article 638 of the Islamic Penal Code serves as the foundation for the criminalisation of defiance of the Islamic rules on hijab:

“Anyone in public places and roads who openly commits a sinful (*harām*) act, in addition to the punishment provided for the act, shall be sentenced to two months’ imprisonment or up to 74 lashes; and if they commit an act that is not punishable but violates public prudence, they shall only be sentenced to ten days up to two months’ imprisonment or up to 74 lashes.

Note- Women, who appear in public places and roads **without** wearing an Islamic hijab, shall be sentenced to ten days to two months’ imprisonment or a fine of fifty thousand to five hundred thousand Rials”²⁴ (emphasis added).

The article applies to all women, irrespective of their personal religious beliefs, including Christians, Jews, Zoroastrians, Baha’is, and atheists, none of whose belief systems require the hijab. Girls, starting from the age of seven, their first year at school, are mandated to wear a uniform covering their entire body. The mandatory hijab laws are also imposed on non-Iranian women, including those living in or visiting the country, even foreign politicians.

Consequently, it enforces a zero-tolerance policy towards lesbians and transwomen who may, for instance, wish to cut their hair short, stop wearing the hijab, adopt androgynous or gender-neutral clothing, or express their so-called “masculine” side of their identity. The same article authorises judges to sentence those engaged in conduct deemed ‘*harām*’ (religiously forbidden) or “offensive to public morals” to 74 lashes. This article has been employed to penalize those who ‘cross-dress’ or simply act or behave against conformity with the social norms set in law. Similar restrictions are faced by gay men, trans men, and non-binary individuals wishing to express their gender identity through makeup, ‘feminine’ dress, and mannerisms typically regarded as ‘feminine’.²⁵

The term 'without' in this law does not simply mean, or at least has not been interpreted as such by the Iranian authorities, that only women who do not cover their hair and body are considered offenders. Instead, it encompasses everyone who covers their body and hair but not to the extent considered as 'Islamic hijab'. A government body called the Policy Making Commission in the Executive Affairs of the Cultural Fight against Manifestations of [Moral] Corruption comprises of representatives from various government offices, the judiciary, and the Islamic Republic Broadcasting (IRIB). They are tasked with determining a list of illegal clothing, jewellery, and makeup tools, and updating it regularly. According to the Commission's decrees, wearing a variety of items, including lace socks, hats, shoes with lights, men's suits, blouses and skirts, and makeup, is prohibited for women in public. Consequently, even if a woman covers her hair and entire body, she may still be considered as ‘*bad-hijab*’ (improperly veiled) and subject to persecution as a result.

Due to the widespread resistance against the laws pertaining to gender and morality by a significant portion of the population, the Islamic Republic has been compelled to establish various regulatory mechanisms in workplaces, educational institutions, and other public spaces. According to the current Speaker of the Parliament, 32 state bodies are allocated a government budget to enforce the mandatory hijab.²⁶ One of the most infamous examples of these enforcement mechanisms is the 'Morality Police,' an integral part of Iran's police force (FARAJA). Established in 2007, it replaced its forerunner, *Jondollah* or *Sarallah* Patrols, which, in the 1980s, was tasked with overseeing adherence to Sharia rules in public.

A research conducted by the human rights organisation, Justice for Iran, examining official records and statements spanning from 2003 to 2013 confirms that more than 30,000 women in Iran were arrested by the morality police during this decade for either not wearing hijab or wearing it improperly.²⁷ Official reports indicate the issuance of over 460,000 warnings to women, with 7,000 compelled to pledge compliance with Islamic hijab laws while a minimum of 4,385 women faced charges and legal prosecution. In the same period, more than 460,000 women received verbal notifications from the morality police.²⁸ These practices have prevailed beyond this time frame to a similar extent, barring for fluctuations due to politically significant events. Incidents of arbitrary arrest and detention have frequently been accompanied by excessive use of force, humiliation, intimidation and acts of verbal and physical abuse against women, and court ordered monetary fines. In some instances, women have also been subjected to the cruel, inhumane, and degrading punishment of lashing following unfair trials.

On 13 September 2022, a 22-year-old Kurdish woman named Jina Mahsa Amini was arrested by Tehran Morality Police for improper veiling and transported to Vozara detention centre. According to CCTV footage broadcasted on state TV, shortly after arriving and waiting with other women for processing, Jina approached a guard, presumably expressing discomfort. A few seconds later, she collapsed and slipped into a coma. Jina was subsequently moved to the nearby Kasra hospital, admitted to the ICU, and pronounced dead on 16 September. Her tragic death, occurring while in the custody of the morality police and presumably linked to the events during her transportation to the detention centre, triggered nationwide anti-government protests lasting for months. These protests, under the unifying slogan 'Woman, Life, Freedom,' highlighted the link between women's rights and need for democracy in Iran. Security forces carried out a ruthless crackdown on the demonstrations. Protesters, especially those burning their scarves and mobilising the crowds, faced torture and ill-treatment during arrests including rape and sexual assault in detention centres, and even murder at the hands of state forces.²⁹

Although the protests were brutally suppressed, since then, many women have bravely refused to wear the hijab at all costs. Due to the widespread notoriety of the morality police, authorities have introduced a new enforcement mechanism in response to the 2022-23 protests. A joint task force, named '*Hijab-baan*' (the hijab watchers), was established by the Police, the Islamic Revolutionary Guard Corps (IRGC) and its Basij paramilitary forces, municipalities, and Prosecution Offices.³⁰ Despite official claims that it comprises of volunteers, credible reports confirm that the *Hijab-baan* agents are being remunerated by the municipalities.³¹

In October 2023, Armita Garawand, a 16-year-old schoolgirl fell into a coma after allegedly being assaulted by one of the *Hijab-baan* agents in a metro station in Tehran for not wearing a headscarf.³² She was declared dead after spending 28 days in the intensive care unit in the hospital.³³ Despite calls from the UN, her death and the potential involvement of *Hijab-baan* agents have not been independently investigated.³⁴ This incident is just one example of how the cycle of government oppression has continued despite superficial changes responding to public outrage.

Hijab-baan agents also assist the police in identifying women who defy the mandatory hijab laws by reporting their vehicle registration number or sending their photos. These images are cross-referenced with the national identification database for subsequent prosecution. The police send text messages to the women, summoning them to the police station and asking them to sign a commitment letter not to repeat the offense. The vehicle of anyone who commits the offense and receives two warning text messages is confiscated the third time. The owner is then allowed to

release the car by paying a substantial amount of money for parking fees and fines. In some cases, women have to appear before the court and may be convicted.³⁵

Increasingly, surveillance cameras in public spaces are being utilised by the police in Iran to identify and penalise women who do not comply with the mandatory hijab rule. Advanced AI technology has amplified the state's surveillance capabilities, particularly with the proliferation of CCTV cameras in cities like Tehran. This heightened surveillance includes the use of traffic cameras to spot women driving without a headscarf, leading to marking of their cars in records, subsequently increasing their vulnerability to police stops, harassment, and arbitrary fines. Practices like these makes it challenging for women resisting mandatory hijab to lead a normal life, impacts their ability to sell their cars and exposes them to continuous scrutiny and control by authorities.

Surveillance itself remains a key tool through which gender apartheid is maintained in Iran. Even in women-only spaces, women are under the watch of the state through plainclothes agents or supporters of the Islamic government who act on the state's behalf. Prior to Jina Mahsa Amini's death, another young woman named Sepideh Rashnu was arrested and tortured by the state for improper hijab. Her arrest was based on the surveillance of an IRGC-affiliated woman who filmed Rashnu without hijab while in women's area of the bus. Rashnu was then arrested by the authorities and forced to make a confession on TV with clear physical marks of torture. This example shows not only the brutality that women are subjected to for violating rules which are specifically imposed upon them but also the various sources of surveillance. The overall impact of these actions is to achieve a total control on the agency and bodies of women.

Notably, with the increasing number of women refusing to wear any form of hijab, the oppression against those publicising their defiance has intensified. Kurdish activist Roya Heshmati faced a 74-lash sentence after posting a photo without a hijab on her Instagram, executed in January 2024. In her account, she detailed a female officer forcibly placing a scarf on her head and described being flogged on her shoulder, back, buttock, and leg. Heshmati shared her experience, saying: "I didn't count the blows; I was chanting in the name of the woman, in the name of life. The clothes of slavery were torn; our black night dawned; all the whips were axed."³⁶

In sum, current laws and regulations enable numerous bodies in various settings, including work, education, healthcare, and cultural institutions, to impose a wide range of disciplinary and restrictive measures against women who disobey mandatory hijab rules. In their application, mandatory hijab laws not only violate women's human rights to liberty, security of person, freedom of movement, and freedom from torture and other ill-treatment but also impair the enjoyment of their human rights on an equal basis with men. These rights include education, work, the highest attainable standard of physical and mental health, freedom of movement in public spaces, and participation in recreational activities and sports. Examples of abuse include expulsion from university, exclusion from on-campus dormitories, termination of employment, and bans on entry into public spaces such as government offices, parks, cinemas, restaurants, sports facilities, mountains, public transports and taxis, beaches, islands, free trade zones, airports, and terminals – all on grounds of '*bad hijab*' (improper veiling). Private sector businesses dealing with customers are obligated to police women for the status of their hijab, as non-compliance may result in the revocation of business licenses, temporary or permanent closure, or monetary fines.³⁷

2.1.2. Gender Segregation; Laws, Regulations and Practices

As Bennoune suggests, “the use of the systematic segregation of the sexes imposed through law and policy as a governing ideology” that is “sometimes accompanied by the total exclusion of women” is the concept and practice of gender apartheid.³⁸

As mentioned earlier, gender segregation should be understood as a requisite to fully and completely enforcing the Islamic veiling rules. These rules go beyond covering the body and hair; they also aim to prevent the voice, shape of the body and its movement, makeup on the face, and jewellery from being heard or seen by *na-mahram* men. As a result, many public places in Iran are segregated based on gender. Segregation typically entails a lesser share or an inferior experience for women in these places and is used to monitor the hijab status of women entering or using facilities, it is also imposed on men to expand control onto them. Although segregation serves as the primary tool for the state to control both men and women, regulating their sexuality and societal interactions, it also consistently reinforces the distinct hierarchical positions assigned to men and women.

Some examples of gender-segregated sites are as follow, noting that this list is not exhaustive and there may be other locations subject to segregation:

1. Entrance to judicial complexes, some government offices, and some universities is separated for men and women. The main purpose of such segregation is to have agents check the hijab status of women entering the premises and prevent those who are improperly veiled.
2. Primary and high schools, whether public or private.
3. All sports complexes, swimming pools, and water parks. Thus, a family cannot enjoy a sports facility together.
4. Some universities, such as Tabriz Islamic Art University are completely gender segregated. In most other universities, certain areas in libraries, restaurants, computer sites, etc., are designated separately for men and women.
5. Some public transportation.
6. The lines for buying bread in some cities.
7. In some religious city parks, women and men are not allowed to exercise together, and there are designated areas for each sex.
8. Some public libraries.
9. On every beach, there is a very small and completely curtained area designated for women who want to swim, men can swim everywhere else.
10. Marriage ceremonies and parties that take place in restaurants or rented venues.
11. All mosques and pilgrimages are strictly gender segregated.

Due to gender segregation regulations and policies, women are prohibited from entering sports fields during men's competitions, including football stadiums. Women attempting to enter stadiums by disguising themselves in male clothing have faced arrests, persecution, and legal proceedings. Article 638 of the Islamic Penal Code is employed to penalise women who defy gender segregation rules, prescribing sentences of imprisonment or up to 74 lashes for engaging in sinful (*harām*) acts in public or violating public prudence.³⁹

In March 2019, Sahar Khodayari, a 29-year-old known as the 'Blue Girl' for supporting Esteghlal F.C., attempted to enter Tehran's Azadi Stadium disguised as a man to watch her favourite team play against Al-Ain of the United Arab Emirates during the AFC Asian Cup. Discovered by

stadium security, she was arrested and subsequently detained in Shahr-e Rey prison, also known as Gharchak, a former chicken farm that holds women convicted of violent offenses in overcrowded and unsanitary conditions. After two days, she was released on bail. On 2 September 2019, Sahar Khodayari faced charges in a Court in Tehran related to attempting to enter the football stadium without a hijab, charged with "openly committing a sinful act" and "insulting officials." Following her court appearance, she self-immolated outside the courthouse on 9 September, suffering burns on 90% of her body, which tragically led to her death.⁴⁰

After considerable resistance, the authorities reluctantly permitted women to attend one match at the stadium in December 2023, albeit with limitations and restrictions. The government capped the number of women attendees, and their designated seats were placed far from the pitch in an unsafe corner.⁴¹ The authorities has not allowed women to enter stadiums since then.⁴²

In sum, women continually find themselves segregated into inferior and unsafe versions of services or locations enjoyed by their male counterparts, a structural reinforcement of their position as second-class human beings. Persistent resistance against these exclusionary policies has exposed women to harassment, arbitrary arrests, and torture and ill-treatment by authorities.

2.2. Dominance of One Group Over Others

Islamic Republic of Iran's laws and policies are deliberately designed to substantiate a hierarchy between men and women and perpetuate structural gender discrimination. These rules control and restrict the behaviour of both men and women and are firmly grounded in ideals of male 'superiority' and 'female inferiority' along stereotypical gender roles.

It is necessary to acknowledge that this analysis does not dismiss the potential harm a gender apartheid regime may inflict upon men by coercing compliance or fostering complicity in maintaining the regime. Parallel to South Africa, where white people were compelled to adhere to apartheid policies, coercion is part of such systems. Additionally, the author is well aware of the internal hierarchies within each gender group and the discriminations that men may experience based on their other identities, such as ethnicity or religion. For instance, Iranian Shia clerics hold a superior position over other men within Iran's internal hierarchy while Sunni men are denied high political power. However, neither the coercive nature of the apartheid regimes, nor the internal hierarchies alter the overarching domination of those belonging to the superior group in the broader context. Gender apartheid is predominantly created around "gender otherness", perceiving all individuals within a gender group through that lens. This framework encompasses everyone in that group, irrespective of their position or background. In the context of Iran, men, compared to women, remain positioned as the superior group despite experiencing fluctuations of absolute power based on intersectional identities. This power structure is perpetuated through the constitution and laws which will be discussed next.

2.2.1. Constitution and Other Public Laws

Article 4 of the Constitution of Islamic Republic of Iran designates Sharia as the primary source of laws and regulations. The Constitution provides that this article is unreformable, underscoring its centrality to the regime. The Guardian Council, consisting of 12 members – 6 clerics (*faqih*) and 6 legal experts, all mandated to be men – plays a crucial role in upholding compliance of all Iranian laws with Sharia. Appointed by the Supreme Leader, the Council determines the accordance of proposed legislations with Islamic law, effectively influencing the eligibility of these laws. Over the past four decades, the Guardian Council has consistently applied a conservative interpretation of

Sharia, perpetuating systematic gender discrimination and preventing any attempts that pose a structural challenge to male dominance in laws and policies.

The Islamic Republic Constitution reserves the highest political offices exclusively for men. These include the office of the Supreme Leader and President. Similarly, members of the Expert Assembly, tasked with selecting the Supreme Leader, are also exclusively men. In addition to these political roles, women are also excluded from all judicial positions that involve making independent decisions. Consequently, women judges only serve as members of courts alongside two male judges, or as assistant prosecutors requiring endorsement for any decision or warrant. Within the Military, women are restricted to holding healthcare-related positions. Other Government employment opportunities for women remain significantly fewer compared to those available to men.

2.2.2. Civil Code and Citizenship Laws

According to Iran's Civil Code, the legal age for marriage is 13 for girls and 15 for boys. However, the child's official guardians, restricted to either the father or paternal grandfather, can marry off children below the legal age with court permission. In practice, this law disproportionately affects girls below the legal age of marriage. Official statistics reveal that 13,487 marriages involving girls under the age of 13 were registered between 2013 and 2020.⁴³ These marriages can also be conducted without court permission and considered valid if conducted according to Sharia rules.

Virgin women, regardless of their age, are required to obtain permission from their father or paternal grandfather to marry. If they face refusal, they must seek endorsement from a judge who is also a man. In case of wanting to marry a non-Iranian man, women are obligated to obtain additional permission from the Ministry of Interior. It is important to note that marriage with non-Muslim men, whether Iranian or not, is forbidden for Muslim women, while men face no such restriction and can marry non-Muslim women who were born into Ibrahimic religions. If a woman marries a non-Iranian man, she risks losing her Iranian nationality if the husband's country grants citizenship to the wife. Additionally, women cannot transfer their Iranian nationality to their children, a privilege reserved for men. In cases of divorce, mothers have priority for custody of children only under the age of 7. After that age, custody is automatically granted to the father. If the custodial mother remarries, custody is automatically transferred to the father, regardless of the child's age.

Iran's laws give men the exclusive right to marry two permanent wives and as many temporary wives as they want. The husband is designated the head of the household and is not allowed to delegate this position to his wife or anyone else under any circumstances. The roles of father and paternal grandfather are exclusive in terms of guardianship, and this authority is not transferable. If both are absent, the court appoints a guardian, overseeing all their decisions.

The wife is obligated to reside in a place chosen by the husband and comply with his sexual demands. In return, the husband must provide her with alimony for personal expenses. Marital rape is not recognised as an offense, and disobedience, such as refusing to fulfil the husband's sexual needs or leaving his residence, results in deprivation of alimony. The husband can seek a court order to prevent the wife from having a job, and the wife needs her husband's permission to travel abroad. Married female doctors are required to obtain their husband's approval to enrol in courses to become specialists.⁴⁴

In terms of inheritance, women usually receive half the share of men. For example, brothers inherit twice as much as sisters from their deceased parents' property. A widow only inherits one-eighth of her husband's estate, but a widower inherits his wife's entire estate.

2.2.3. Islamic Penal Code

The Islamic Penal Code in Iran establishes different ages of criminal responsibility for girls and boys, the former are considered criminally responsible at the age of 9 for serious crimes such as murder, theft, and inflicting bodily injuries, while the latter are held responsible at 15. Additionally, the code assigns a lower value to a woman's blood money compared to a man's⁴⁵. In the same vein, a woman's testimony in court is valued half that of a man.

In relation to adultery, the Islamic Penal Code imposes no punishment on a man who murders his wife for engaging in sex with another man. It seemingly grants men an exclusive right to kill their wives. The law grants blanket impunity to men from specific punishments, including *qesas* (retaliation) and the payment of blood money when they commit murder or inflict bodily harm on their own children.

2.3. Intention of Maintaining the Regime of Systematic Oppression and Domination

In addition to the general mental element or *mens rea* (criminal intent or knowledge), the crime of apartheid is committed when the perpetrator has a specific intent to maintain a regime of systematic oppression and domination. Intent can be established through acts and statements of perpetrators. An example of incriminating official statements, among countless others, is the Supreme Leader of the Islamic Republic, Khamenei's, speech in December 2023, where he emphasized that women have the duty to protect the family by giving birth and safeguarding society from the perceived threat of sexual attraction. He stated that the concept of gender equality is absolutely wrong. His religious orders (*fatwas*), available on his website, align with the most oppressive and discriminatory policies against women, including but not limited to the one forbidding women to ride bicycles in public.⁴⁶

A review of legislation passed by the Islamic Republic Parliament or adopted by other legislative and governing bodies, some discussed in previous sections, further clearly demonstrate the intent to perpetuate systematic oppression based on gender. This includes mandatory hijab rules and gender segregation that control women's bodies and behaviours, along with public, civil, and criminal laws that ensure the system of gender-based discrimination and maintain women's oppression.

The new draft law on hijab being discussed in the parliament signals the intent of Islamic Republic officials to uphold gender apartheid as a system of governance, imposing even more restrictive and severe punishments on those who defy the oppressive gender discriminatory laws and segregation policies. If passed, the punishment for women without Islamic hijab in public will increase to five to ten years of imprisonment.⁴⁷ The 70-article draft law includes a range of proposals, such as the use of artificial intelligence to identify women in breach of mandatory hijab rules.⁴⁸ It criminalizes several acts, from posting unveiled photos on social media to protesting the hijab rules or colluding with foreign media and governments to promote anti-mandatory hijab materials.⁴⁹

This continuous commitment to strengthening the mandatory hijab in the context of extreme internal and international scrutiny concerning Iranian women's rights and freedoms clearly

demonstrates the Islamic government's intentional commitment to maintaining an oppressive structure that prevents women from gaining autonomy or social power, employing whatever inhumane acts it takes.

2.4. Inhumane Acts

Inhumane acts are defined under the Rome Statute Article 7 as constituting elements for the crime of apartheid. These acts include murder, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape or any other form of sexual violence of comparable gravity, gender persecution, and other acts intentionally causing great suffering or serious injury to body or mental and physical health. The evidence discussed above, and beyond this report, establishes that women and girls in Iran have been systematically subjected to these acts on a large scale and over a prolonged period.

As described in the previous sections, Iranian authorities' treatment of women detained for improper hijab has included the use of torture, including rape and other forms of sexual abuse, leading to fatalities in some cases. The severity of violence against women and girls due to their resistance to mandatory hijab rules has caused great suffering and serious injury to their bodies and mental or physical health. The government response is not a simple act which punishes law violation. Instead, these actions reflect how the Islamic government utilises gender-based laws and restrictions to maintain total control over the population. Majority of the Islamic government's oppression is faced by women who face systematic deprivation of fundamental human rights, including but not limited to the right to education, work, access to healthcare, and participation in cultural life, constituting persecution.

3. Gender Apartheid v. Gender Persecution

According to the Rome Statute, both apartheid and persecution are categorised as crimes against humanity when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." While both apartheid and persecution can be directed towards racial groups, only persecution on the grounds of gender is recognized as a crime, while gender apartheid is not.

The Rome Statute defines persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity ... on political, racial, national, ethnic, cultural, religious, gender ... or other grounds... in connection with any act referred to ... crime within the jurisdiction of the Court".⁵⁰ It defines the term 'gender' as the two sexes, male and female, within the context of society.⁵¹ The Office of Prosecutor in 'Policy Paper on Sexual and Gender-Based Crimes' suggests that under the statute, "gender refers to sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes."⁵²

Recent cases have shed light on the parameters of crime against humanity of gender persecution,⁵³ and the ICC Office of the Prosecutor addressed it further by publishing the "Policy on the Crime of Gender Persecution"⁵⁴ in December 2022, clarifying the elements of the crime along with other crucial legal and procedural aspects.

The specific requirements for persecution as a crime against humanity involves the perpetrator's conduct being of the same gravity as the listed underlying offenses of crimes against humanity,

the intent of the perpetrator or another relevant actor to discriminate based on the victim's gender, political, racial, or religious identity, and the conduct specifically targeting members of a group defined by gender, politics, race, or religion.⁵⁵

Article 7 of the Rome Statute defines the crime of apartheid as "inhumane acts of a character similar to those referred to in paragraph 1 [of the Statute]⁵⁶, 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."⁵⁷ The crime against humanity of apartheid has never been the subject of an international criminal proceeding, despite its recognition as a crime against humanity in both the 1974 International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute. According to critics, the crime is a South African phenomenon that has not reached the status of customary law."⁵⁸ The absence of case law has resulted in ambiguity surrounding the elements of the crime of racial apartheid. Moreover, the academic discourse on this subject has been modest, creating a ripple effect on scholarly debates concerning gender apartheid.

Given the uncertain status of the crime of apartheid in international law, the non-recognition of gender apartheid as an international crime, and the acknowledgment that the crime of gender persecution emphasizes widespread and systematic attacks based on gender, some may question the necessity of codifying another crime—namely, gender apartheid. There are overlaps between the two crimes in terms of physical element (*actus reus*), and the configuration of victims. In analysing the *actus reus* of the crime of apartheid, there is a considerable overlap between the inhumane acts associated with apartheid and those outlined in Article 7(1)(k) of the Rome Statute, which pertain to 'other inhumane acts' causing intentional suffering or serious harm to health that could be considered as the *actus reus* of the crime of persecution. This overlap introduces a potential connection to the crime of persecution under Article 7(1)(h), particularly when acts exhibit a discriminative intent based on group identity.⁵⁹ The severe deprivation of fundamental rights serves as an example of an inhumane act, and for apartheid, perpetrators must engage in acts such as murder, extermination, enslavement, forcible displacement, imprisonment, enforced disappearance, torture, rape, or other gender-based crimes.⁶⁰

International law recognizes that a single act can amount to two or more international crimes simultaneously, allowing for cumulative charging in international criminal law to address the spectrum of harms and intents underlying the charges brought against the accused.⁶¹ Nevertheless, while both gender persecution and gender apartheid targets individuals based on gender, the author contends that the legal framework of gender persecution proves inadequate in comprehending the systematic subjugation of women, the persistence, prevalence, and comprehensiveness of oppression, and has limited capacity to hold all perpetrators responsible for founding and maintaining such a regime.

Furthermore, gender apartheid and gender persecution differ in mental element (*mens rea*) and in nature or contextual element. To support this argument, and despite limited scholarly studies on apartheid, the following sections undertake a legal comparison between the elements of the internationally recognized crimes against humanity of apartheid and persecution as founded in Article 7 of the Rome Statute. It then extends the legal analysis from racial apartheid to the context of gender apartheid and from persecution in general to gender persecution.

3.1. Mental Element (*mens rea*)

Article 30 of the Rome Statute stipulates that the perpetrator must commit the material elements with both knowledge and intent which constitutes the mental element (*mens rea*) shared between all international crimes. Knowledge is defined as an "awareness that a circumstance exists or a consequence will occur in the ordinary course of events." Intent, as per the statute, is construed as "to engage in the conduct" or "to cause that consequence or to be aware that it will occur in the ordinary course of events." Although crimes of apartheid and persecution share the commonality of requiring a general mental element, i.e., knowledge and intent, both crimes also necessitate a specific intent (*dolus specialis*) that is distinct from each other.

In the case of apartheid, the specific intent is to maintain an institutionalised regime of oppression and domination. On the other hand, for persecution, the perpetrator or another relevant actor must harbour the intent to discriminate based on the victim's identity.⁶² In essence, the specific intent of apartheid revolves around sustaining a **discriminatory regime against a particular group** by committing the criminal act, while the additional intent of persecution is focused on committing the criminal act with the intention of **discriminating against a targeted group**.

As pointed out by Sareta Ashraph et al, perpetrators of apartheid, unlike those involved in persecution, have objectives extending beyond the mere deprivation of rights based on group identity. More significantly, they seek to perpetuate an existing system of governance grounded in the systematic domination and oppression of another group, or groups, which they inherently assign lesser value.⁶³ It is crucial to note that the systematic oppression and domination not only produces the effect but, more importantly, serve the purpose of intentionally sustaining a regime led by one group over another.⁶⁴ Therefore, a careful assessment is required to avoid confusion when determining the mental elements of these two crimes. In the case of persecution, the perpetrators' discriminatory intent may overlap with or exacerbate existing social and political constructs or criteria used to define targeted groups based on gender⁶⁵ sustaining the system of severe discrimination. However, this is only an outcome of their actions rather than their intended purpose.

3.2. Contextual Feature

As crimes against humanity, both apartheid and persecution must be committed in context of and as part of a widespread or systematic attack against a civilian population, sharing this general contextual element (the Chapeau principle).⁶⁶ However, beyond this commonality, the two crimes possess distinct and specific contextual characteristics.

Apartheid is often compared to genocide, now widely regarded as 'the crime of crimes'.⁶⁷ The International Law Commission associates the severity of apartheid with its nature or contextual element:

"It is possible to make a distinction between the most serious crimes, such as genocide and apartheid, which involve mass and systematic violations of universal values, and other crimes..."⁶⁸

The Rome Statute establishes institutionalized regime as a requirement for the crime of apartheid. However, it does not provide a definition for the term 'regime,' leading to varied interpretations among legal theorists in the absence of case law. Much of the scholarly discourse spins around the question of whether the term 'regime' should be restricted to a recognizable state or if the threshold

for an institutionalized regime can be broadened to include *de facto* control by loosely organized militias or rebel groups.⁶⁹ Byron highlights that an 'institutionalized regime' can be understood as an established law or practice by a government or prevailing order, confirming a *de facto* institutionalization. On the other hand, Bultz contends that by construing the 'regime' notion too broadly, it becomes ambiguous and unidentifiable, posing challenges regarding the principle of legality. He suggests that a non-state regime is not truly institutionalized, and any non-institutionalized discrimination would be covered by the crime of persecution rather than being embraced as a crime of apartheid. The 1996 Draft Code of Crimes by the International Law Commission distinguished crime of apartheid from persecution by demanding that the plan or policy of apartheid be proved to be 'institutionalized.'⁷⁰

The Rome Statute also prerequisites a widespread or systematic attack against a civilian population pursuant to or in furtherance of a state or organizational polity for establishment of apartheid claims. The intention for these attacks must be in pursuance of maintaining a state or any entity acting as a state polity. The state policy must further be developed with the aim of discriminating and oppressing one particular group or groups, granting superiority to another group.

The contextual role of pre-existing social constructs, discriminatory laws and practices, cultural stigmas, misogyny, or homophobia and transphobia is crucial for understanding the crime. However, unlike apartheid which is constructed based on pre-existing political and social constructs elevated to the extent of institutionalized oppression and domination, these factors are not themselves constituting elements of the crime as required contextual feature. Consequently, while apartheid typically unfolds over a prolonged duration and targets almost all aspects of the lives of victims as a system of governance, persecution can occur suddenly, temporarily, and for a short period.

While of the contextual elements of apartheid are required for the crime of persecution, it necessitates its own contextual feature. It necessitates its own contextual feature. Article 7(1)(h) of the Rome Statute stipulates that persecution only occurs "in connection with any act" recognized as an international crime by the Statute. In other words, persecution only takes place within the framework of another international crime, including crimes such as an ongoing apartheid, war crimes or crime of aggression, and genocide. Prosecutors must initially establish the occurrence of an international crime and subsequently address the question of whether persecution was also committed in connection with that crime while apartheid, and gender apartheid if codified, are standalone crimes.

4. Conclusion

Gender discrimination, as a manifestation of patriarchy, persists globally in various forms. Certain countries stand out as 'contexts of extreme gender discrimination,' based on their laws and practices that violate the universally established human rights of women and girls. Within a few of these contexts, gender-based oppression is entrenched, often enduring over extended periods, establishing a hierarchical structure where distinct levels of rights are accorded to men and women. These resultant dystopian regimes, maintained with inhumane acts, systematically degrade all women and girls, irrespective of religious or other identity factors, and assign them the role of second-class human beings (subjugated), in contrast to the elevation of all men to first-class status (superiors). This configuration can be classified as an apartheid regime based on gender.

In their thought-provoking article, 'the Gender of Jus Cogens', Charlesworth and Chinkin address the fact that "international law norms reflect a male perspective of what is fundamental to international society that may not be shared by women or supported by women's experience of life."⁷¹ Simma and Alston argue that "it must be asked whether any theory of human rights law which singles out race but not gender discrimination, is not flawed in terms both of theory of human rights and of United nation doctrine".⁷²

In reality, since the paradigm-shifting Nuremberg trial that led to the rapid emergence and widespread acceptance of new rules and doctrines of customary international law,⁷³ international criminal law has chronically overlooked women's experiences, spanning from the Holocaust to the present day. Gender-based crimes, encompassing sexual, reproductive, and other forms of gender-based violence such as rape, forced marriage, forced nudity, forced pregnancy, forced use of contraception, and forced abortion, along with gender persecution and sexual slavery, remained unrecognized until recent decades.

The crime of apartheid is a construct of international law rooted in the experiences of victims within a specific country, i.e. under the South African apartheid regime (1948-1994). However, international law appears hesitant to detach apartheid from its historical connection, hindering the pursuit of justice for perpetrators involved in similar systematic oppression in different contexts. This reluctance poses challenges in providing an appropriate response to the experiences of women under gender apartheid regimes in countries like Iran and Afghanistan. Furthermore, the fact that the victims originate in Islamic countries and are non-white could potentially exacerbate their side-lining by mainstream international law.

For over four decades, women in Iran have grappled with a unique situation, where their entire existence is shaped by a system of oppression and dominance establishing a hierarchical structure based on gender. Men, collectively deemed as superior first-class human beings, relegate women to a subjugated second-class status. This power structure is maintained with the help of discriminatory and inhumane laws whose violation can result in dire consequences, including use of excessive force, humiliation, intimidation, and derogatory actions, including arbitrary detention, torture, ill-treatment, and even murder. Mandatory hijab and gender-segregation are two inter-related policies used as tools by the Islamic government to perpetuate an unequal power structure. Moreover, laws and practices perpetuate male dominance in all interactions between men and women, spanning across familial to societal and political domains. Women and girls' fundamental human rights, including the right to education, work, freedom of movement, and the highest attainable standard of health, are consequently regularly violated, or limited, under this structure. Rather than representing persecuted individuals, women denote a persecuted identity which makes the label of gender apartheid more accurate to describe the extreme state-designed repression.⁷⁴

Despite an international campaign urging the inclusion of gender apartheid in the draft Convention on Crimes against Humanity, it has not yet been codified as a distinct crime under international law.⁷⁵ Apart from a few mentions by UN officials and vague references by some UN member states, the long-overdue demands of women in Iran and Afghanistan have remained largely ignored. It remains imperative for the crime of apartheid to extend beyond its association with the South African context and gain independent significance⁷⁶, similar to the trajectory of the crime of genocide which originated with strong association to the Holocaust. Following onto the obligations of second states in eradicating the crime of racial apartheid, international compatibility with gender apartheid states must also be forbidden and preventive measures must be taken to abolish the regimes of gender apartheid. The international community, including the UK, must

characterise the situation of women in Iran as a gender apartheid regime, and adhere to the implications of such recognition. This includes, but is not limited to, taking effective measures to prevent, prohibit, and eradicate all gender apartheid practices by the Islamic Republic, as well as codifying gender apartheid as an international crime.

¹ The chador is a semicircular piece of fabric that extends to full body length and is open along the front. Worn by pulling it over the head, the wearer holds it closed at the front without the use of hand openings, buttons, or clasps. Alternatively, it can be secured by tucking it under the wearer's arms.

² 'Regime Consolidation and Female Status in a Fledgling Theocracy: Khomeini's "Vilayet-e-Fiqh", 1979–89 on JSTOR', 211, accessed 5 February 2024, <https://www-jstor-org.ezproxy.leidenuniv.nl/stable/24583531?sid=primo>.

³ 'The Post-Revolutionary Women's Uprising of March 1979: An Interview with Nasser Mohajer and Mahnaz Matin', accessed 1 March 2024, <https://iranwire.com/en/society/60024/>.

⁴ Shadi Sadr, 'Veiled Transcripts: The Private Debate on Public Veiling in Iran', in *Sexuality in Muslim Contexts: Restrictions and Resistance*, ed. Anissa Helie and Homa Hoodfar (London & New York: Zen Books, 2012), 182–207.

⁵ Justice for Iran (JFI), 'Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran', 7 March 2014, 4, <https://justice4iran.org/wp-content/uploads/2014/03/Hejab-Report-JFI-English.pdf>.

⁶ Alison Graves, 'Women in Iran: Obstacles to Human Rights and Possible Solutions', *American University Journal of Gender, Social Policy & the Law* 5, no. 1 (1 January 1996), <https://digitalcommons.wcl.american.edu/jgspl/vol5/iss1/3>.

⁷ Justice for Iran (JFI), 'Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran', 14.

⁸ The first reported stoning was carried out in the city of Kerman in 1980. (See: "Eteraze Shadide Azam Taleghani be Sangsar Zanan dar Kerman" (Azam Taleghani's Protest against the Stoning of Women in Public), Kayhan, 19 July 1980: 3.)

⁹ Sadr, 'Veiled Transcripts: The Private Debate on Public Veiling in Iran', 182.

¹⁰ Justice for Iran (JFI), 'Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran'.

¹¹ 'Mapping Iran's Unrest: How Mahsa Amini's Death Led to Nationwide Protests | Iran | The Guardian', accessed 1 March 2024, <https://www.theguardian.com/world/ng-interactive/2022/oct/31/mapping-irans-unrest-how-mahsa-aminis-death-led-to-nationwide-protests>.

¹² 'Racism, Cultural Relativism and Women's Rights | Maryam Namazie', 14 August 2001, <https://maryamnamazie.com/racism-cultural-relativism-womens-rights/>.

¹³ 'Hoodfar and Oates: UN Must Recognize Gender Apartheid in Afghanistan', ottawacitizen, accessed 1 March 2024, <https://ottawacitizen.com/opinion/hoodfar-and-oates-un-must-recognize-gender-apartheid-in-afghanistan>.

¹⁴ 'International Convention on the Suppression and Punishment of the Crime of Apartheid', accessed 7 February 2024, <https://www.legal-tools.org/doc/d9644f/>.

¹⁵ 'Draft Code of Offences against the Peace and Security of Mankind with Commentaries, 1996', accessed 1 March 2024, <https://www.legal-tools.org/doc/5e4532/>.

¹⁶ 'Hoodfar and Oates'.

¹⁷ Patrick Wintour and Patrick Wintour Diplomatic editor, 'Campaign Calls for Gender Apartheid to Be Crime under International Law', *The Guardian*, 8 March 2023, sec. Society, <https://www.theguardian.com/society/2023/mar/08/campaign-calls-for-gender-apartheid-to-be-under-international-law>.

¹⁸ Those include murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender..., or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, enforced disappearance of persons, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

¹⁹ 'Rome Statute of the International Criminal Court, 2187 UNTS 90 (Rome Statute)', 17 July 1998, art. 7(2)(h), https://legal.un.org/icc/statute/99_corr/cstatute.htm.

²⁰ Karima Bennouna, 'The International Obligation to Counter Gender Apartheid in Afghanistan', *Columbia Human Rights Law Review (HRLR)* 54, no. 1 (2022): 16.

²¹ Sareta Ashraph et al., 'End Gender Apartheid — Legal Brief' (Atlantic Council, Global Justice Center, 5 October 2023), 1, <https://endgenderapartheid.today/download/brief/Gender%20Apartheid%20Brief.pdf>.

²² 'Chapter 4: Hijab (Veiling)', 4 February 2013, <https://www.al-islam.org/new-perspective-women-islam-fatma-saleh-sayyid-moustafa-al-qazwini/chapter-4-hijab-veiling>.

²³ In 2007, in collaboration with the Volunteer Lawyers' Network, the Campaign conducted research and identified nine women sentenced to death by stoning for adultery, compared to two men facing the same charge, emphasizing the predominantly gendered nature of this barbaric execution method. All these women were victims of varied discrimination, facing forced marriage, constant violence, and, in some cases, being compelled into prostitution by drug-addicted husbands. Devoid of legal means to escape their dire situations, some attempted divorce but faced obstacles from unsupportive families or judges rejecting their cases, forcing them back into violent environments. Two women from conservative tribes in southern Iran believed that seeking divorce would lead to their deaths by their families. In some instances, whether accidental or planned, they had assisted men in relationships to kill their husbands. The Campaign's feminist discourse emerged from these women's life stories. (See: Shadi Sadr, 'Stones Aimed at Us: An Overview of the Discourse and Strategies of the Stop Stoning Forever Campaign Stop

Stoning Forever Campaign', *AWID*, 2011, 11, https://www.academia.edu/34769525/Stones_Aimed_at_Us_An_Overview_of_the_Discourse_and_Strategies_of_the_Stop_Stoning_Forever_Campaign_Stop_Stoning_Forever_Campaign.

²⁴ 'Islamic Penal Code of the Islamic Republic of Iran – Book Five', Iran Human Rights Documentation Center, 15 July 2013, art. 638, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>.

²⁵ Justice for Iran (JFI) and 6Rang (Iranian Lesbian & Transgender Network), 'Diagnosing Identities, Wounding Bodies', 24 June 2014, 59, <https://6rang.org/english/wp-content/uploads/2016/02/Diagnosing-Identities-Paralyzing-Bodies.pdf>.

²⁶ 'به گفته قالیباف «۳۲ دستگاه» در ایران پول می گیرند تا «در حوزه حجاب کار کنند»', BBC News 9 فارسی, July 2023, <https://www.bbc.com/persian/articles/c2jrl9y8405o>.

²⁷ Justice for Iran (JFI), 'Thirty-Five Years of Forced Hijab: The Widespread and Systematic Violation of Women's Rights in Iran', 23.

²⁸ Justice for Iran (JFI), 23.

²⁹ 'Iran: Security Forces Used Rape and Other Sexual Violence to Crush "Woman Life Freedom" Uprising with Impunity', Amnesty International, 6 December 2023, <https://www.amnesty.org/en/latest/news/2023/12/iran-security-forces-used-rape-and-other-sexual-violence-to-crush-woman-life-freedom-uprising-with-impunity/>.

³⁰ 'حجاب بانها؟ «خودجوش»هایی که زیر نظر سپاه و بسیج هستند؛ اعلام حمایت وزارت کشور از حجاب بانان', صدای آمریکا, 26 November 2023, <https://ir.voanews.com/a/veilers-volunteers-who-are-under-the-supervision-of-the-irgc-and-basij/7370565.html>.

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³² Thom Poole, 'Iranian Teen Armita Geravand Dies Following Alleged Assault by Morality Police', CNN, 28 October 2023, <https://www.cnn.com/2023/10/28/world/armita-geravand-iranian-teen-dies-intl/index.html>.

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⁵⁶ Those include murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender..., or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, enforced disappearance of persons, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

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⁶⁰ They include but not limited to sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization (See: Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute) art 7(1)(g).

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