

October 5, 2023

To Distinguished Representatives of Member States of the United Nations

Joint Call to Amend the Draft Crimes Against Humanity Convention to Encompass Gender Apartheid

Excellencies and Country Representatives:

The undersigned respectfully bring your attention to a glaring and consequential gap in the current Draft Articles on Prevention and Punishment of Crimes against Humanity: the omission of the crime against humanity of gender apartheid.

By replicating the definition of “apartheid” as codified in the 1998 Rome Statute of the International Criminal Court, the draft treaty is needlessly constrained to a 25-year-old articulation of race-based apartheid. It fails to account for gender-based apartheid, which has long been recognized by the international community, including United Nations Secretary-General António Guterres. The past decades have witnessed significant progress in recognizing gendered crimes, and codifying gender apartheid should be part of that continued progress.

The failure to codify gender apartheid perpetuates an accountability vacuum that leaves many victims and survivors without remedy or reparation. The crime of gender apartheid is unique in animus and intent. It is distinct from other international crimes, including gender persecution, due to its dystopian ambition to maintain an institutionalized regime of systematic oppression and domination, where the under-class is subjugated for the dominant group’s benefit and survival, dehumanized, and cut off from the resources and access needed to overcome their choreographed oppression. The Taliban’s ever deepening and institutionalized oppression of Afghan women and girls is a case in point. The codification of gender apartheid will assist victims and survivors holding perpetrators to account for the *totality* of crimes committed against them.

The Draft Crimes Against Humanity Convention presents an important opportunity for States to act and recognize extreme, institutionalized gender-based discrimination for what it is: a type of apartheid. We understand that the draft treaty will be debated by the Sixth Committee at the UN General Assembly from 11 to 12 October 2023, and then subject to written comments and observations by Member States by the end of 2023. For the reasons set out in the attached brief, the undersigned recommend the following amendment (in bolded text) to the definition of the “crime of apartheid” contained in Article 2(2)(h) of the draft treaty:

“the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, 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.”

Codifying gender apartheid in the draft treaty does not require the creation of a completely new and separate crime; it only involves inserting gender into the definition of the “crime of apartheid.” We urge your Excellencies to consider this proposed amendment to fill the ongoing impunity gap under international law and to ensure a gender-inclusive approach that better

reflects the realities, both historical and ongoing, of institutionalized regimes of systematic oppression and domination.

We thank your Excellency's Government in advance for your attention to this pressing issue.

Sincerely,

Mahnaz Afkhami, Founder & President of Women's Learning Partnership & Iran's Former Minister of Women's Affairs

Fatema D. Ahmadi, Human Rights Defender

Firooz Khan Ahmadi, Afghan human rights defender

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Prof. Rangita de Silva de Alwis, University of Pennsylvania Law School & CEDAW Committee Member

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Wahida Amiri, Afghan woman protester

Professor Penelope (Penny) Andrews, John Marshall Harlan II Professor; Director, Racial Justice Project, New York Law School

Sareta Ashraph, international criminal law expert

Judge Najla Ayoubi, women's rights defender and lawyer, Afghanistan

Arash Azizzada, Co-Founder & Co-Director Afghans For a Better Tomorrow (AFBT)

Manizha Bakhtari, Ambassador and permanent representative of the Islamic Republic of Afghanistan in Austria and International Organizations based in Vienna

Carol Bellamy, Former Executive Director, UNICEF & GWL Voices Member

Elizabeth Odio Benito, Former judge of the International Criminal Court and of the Inter-American Court of Human Rights and ICTY

Karima Bennoune, Lewis M. Simes Professor of Law at the University of Michigan Law School & Former UN Special Rapporteur in the field of cultural rights

H.E. Dr. Fatou Bensouda, High Commissioner of The Gambia to the UK & Ambassador to eight other countries. Former ICC Chief Prosecutor

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Jessica Faieta, Former UN Assistant Secretary-General and UNDP Regional Director for Latin America and the Caribbean; GWL Voices member

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Hannah R. Garry, Executive Director, Promise Institute for Human Rights, UCLA School of Law

Justice Richard J. Goldstone, former Chief Prosecutor of the ICTY and ICTR & former Justice of the Constitutional Court of South Africa

Rahim Jami, Founder & Managing Partner Education Defenders Network (EDN), Board Member of Civil Society Joint Working Group (CSJWG) & Afghanistan National Education Coalition

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Hina Jilani, Human Rights Defender and Former UN Special Representative on Human Rights Defenders

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Nayera Kohistani, human rights defender and Afghan woman protester

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Leila Sadat, Professor & Director of Crimes Against Humanity Initiative Washington University School of Law, former Special Adviser on Crimes Against Humanity

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Habiba Sarabi, Former negotiator with Taliban, Deputy of High Peace Council, Bamyan governor, Minister of Women's Affairs

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Ahmed Shaheed, Professor of Law, University of Essex, Former Special Rapporteur of the Human Rights Council on the situation of human rights in the Islamic Republic of Iran

Kathryn Sikkink, Ryan Family Professor of Human Rights Policy, Harvard Kennedy School

Fatou Sow, Professor of sociology, University of Paris Diderot & University of Dakar & Former Director, Network of Women Living under Muslim Laws

Gloria Steinem, Writer & Feminist Organizer

Antonia Urrejola, Former President of the Inter-American Commission on Human Rights (2021), former Minister of Foreign Affairs of Chile (2022-2023)

Amb. Melanne Vermeer, Former U.S. Ambassador for Global Women's Issues & Executive Director, Georgetown Institute for Women, Peace and Security

Asila Wardak, Afghan Human Rights Defender, Harvard Fellow

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Atlantic Council Strategic Litigation Project

Australian Centre for International Justice

Center for Human Rights Advocacy

Feminist Majority Foundation

Freedom Now

Georgetown Institute for Women, Peace & Security

Global Justice Center

International Action Network for Gender Equality (IANGEL)

International Bar Association's Human Rights Institute (IBAHRI)

International Service for Human Rights (ISHR)

Leitner Center for International Law and Justice at Fordham Law School

Mukwege Foundation

Partners in Justice International

Promise Institute for Human Rights | UCLA School of Law

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Shahmama Organization for Women Studies, Human Rights and Development

Women Advocacy Committee

Women Living Under Muslim Laws (WLURL)

Women's Initiatives for Gender Justice