

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

**Shaharзад Akbar**, Executive Director, Rawadari

**Dr Farkhondeh Akbari**, Postdoctoral Research Fellow at Monash University, Australia

**Artemis Akbary**, Founder & Executive Director of Afghanistan LGBTIQ+ Organization (ALO)

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

**Diane Marie Amann**, Regents' Professor, Emily & Ernest Woodruff Chair in International Law, and Faculty Co-Director of the Dean Rusk International Law Center, University of Georgia School of Law; Special Adviser to the International Criminal Court Prosecutor on Children in & affected by Armed Conflict (2012-2021)

**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

**Almudena Bernabeu**, Barrister/Lawyer & Co-founder, Guernica 37 Group

**Anita Bhatia**, Former Assistant Secretary-General and UN Women's Deputy Executive Director for Resource Security Management, UN System Coordination, Sustainability and Partnerships; GWL Voices member

**Roya Boroumand**, Co-founder & Executive Director, Abdorrahman Boroumand Center

**Gro Harlem Brundtland**, First woman Prime Minister of Norway and former Director-General of WHO

**Teresa Casale**, Executive Director, Mina's List

**Professor Christine Chinkin**, LSE Centre for Women, Peace and Security

**Yasmine Chubin**, Legal Advocacy Director, Clooney Foundation for Justice

**Hillary Rodham Clinton**, former US Secretary of State

**Radhika Coomaraswamy**, Former Special Rapporteur on Violence Against Women & Special Representative on Children and Armed Conflict

**Atena Daemi**, Iranian human rights defender

**Pashtana Durrani**, Social and Political Rights Activist & Executive Director for LEARN Afghanistan

**Shirin Ebadi**, Nobel Peace Prize Laureate

**Tsakhigiin Elbegdorj**, former President of Mongolia, member of The Elders

**Dr. Mark S. Ellis**, Executive Director, International Bar Association

**Alda Facio**, Founding member of the Women's Caucus for Gender Justice at the ICC, former member and chair, UN Working Group on Discrimination Against Women

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

**Naheed Ahmadi Farid**, Human Rights Defender

**Stephanie Farrior**, former Legal Director of Amnesty International

**Abdul Ahad Farzam**, Afghan Human Rights Activist

**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

**Liah Ghazanfar Jawad**, Executive Director of Feminine Solidarity for Justice Organization

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

**Mehrangiz Kar**, Lawyer, Women's Rights Defender & Author

**Baroness Helena Kennedy of the Shaws KC**, Barrister, Member of the House of Lords of the United Kingdom

**Nayera Kohistani**, human rights defender and Afghan woman protester

**Fawzia Koofi**, First woman deputy speaker of Parliament in Afghanistan and former member of peace negotiation

**Ajuan Mance**, Professor of African American literature, Mills College at Northeastern University Author of "Living While Black"

**Professor Emerita Rashida Manjoo**, Faculty of Law, University of Cape Town, South Africa

**Maxine Marcus**, Co-Director and Co-Founder, Partners in Justice International

**Roshan Mashal**, Women's Human Rights activist

**Dr. Elham Manea**, Professor and Human Rights Defender

**Metra Mehran**, Human Rights Activist

**Narges Mohammadi**, Iranian human rights defender

**Azadah Raz Mohammad**, International Human Rights Lawyer

**Kobra Moradi**, Legal Analyst, Afghanistan Human Rights and Democracy Organization

**Horia Mosadiq**, Women Rights Defender from Afghanistan

**Nadia Murad**, President, Nadia's Initiative & Nobel Peace Prize Laureate

**Nancy Newman**, IANGEL Founder and President

**Gissou Nia**, Founder & Director, Atlantic Council Strategic Litigation Project

**Tamana Zaryab Paryani**, Founder, Libertarian Women Movement

**Pragna Patel**, Founding Director, Southall Black Sisters

**Justice Navi Pillay**, South African Jurist

**Akila Radhakrishnan**, President, Global Justice Center

**Hon. Stephen J. Rapp**, Former Chief of Prosecutions of the ICTR, Former Prosecutor of the Special Court for Sierra Leone & Former US Ambassador-at-Large for Global Criminal Justice

**Humaira Rasuli**, Afghan Women Rights Activist

**Maryam Rayed**, Founding Director, Afghanistan Women's Think Tank

**Javaid Rehman**, UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and Professor of Muslim Constitutionalism and Human Rights Law, Brunel University, London

**Kathleen Roberts**, Co-Director and Co-Founder, Partners in Justice International

**Mary Robinson**, Chair of The Elders

**Kenneth Roth**, former Executive Director of Human Rights Watch, Visiting Professor, Princeton School of Public and International Affairs

**Yalda Royan**, Founder, Sisterhood and Solidarity Inc & Women's Rights Activist

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

**Shadi Sadr**, Co-founder, Justice for Iran

**Sima Samar**, Former Chairperson of Afghanistan Independent Human Rights Commission and currently Visiting Scholar at Fletcher School at Tufts University

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

**Nushin Sarkarati**, Deputy Director, Atlantic Council Strategic Litigation Project

**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

**Attaullah Wesa**, Executive director, Penpath, and brother of detained activist Matiullah Wesa

**Elisabeth Wickeri**, Executive Director, Leitner Center for International Law and Justice, Fordham Law School

**Zarqa Yaftali**, Founder, Women and Children Research and Advocacy Network

**Malala Yousafzai**, Executive Chair and Co-Founder, Malala Fund

**Ziauddin Yousafzai**, Co-Founder, Malala Fund

**Lorenzo Zenteno**, Chilean former judge

**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**

**Rawadari**

**Shahmama Organization for Women Studies, Human Rights and Development**

**Women Advocacy Committee**

**Women Living Under Muslim Laws (WLUML)**

**Women's Initiatives for Gender Justice**