

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

Fatima Ahmadi, 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

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

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

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

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

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

Shirin Ebadi, Nobel Peace Prize Laureate

Tsakhiaagiin 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

Naheed Ahmadi Farid, Human Rights Defender

Stephanie Farrior, former Legal Director of Amnesty International

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

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, 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 SCSL &
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, 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 Verveer, 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

Women Advocacy Committee

Women Living Under Muslim Laws (WLUML)

Women's Initiatives for Gender Justice