

October 5, 2023

To Permanent Representatives of Member and Observer States of the United Nations

Re: Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention

Dear Excellencies,

We, the undersigned individuals and organizations, are writing regarding the [Draft Articles on Prevention and Punishment of Crimes Against Humanity](#), currently under your consideration. We applaud the Sixth Committee's leadership on and engagement with the draft articles. April's resumed session discussion was an indisputable advance. Progress is being made to form the basis for actual negotiations of a new crimes against humanity convention that would have significant potential to advance protection for civilian populations at risk as well as justice for gender-based crimes.

The current draft draws its definitional language from the [Rome Statute](#) of the International Criminal Court. The statute was an important step forward in the codification of atrocity crimes, including its explicit recognition of a range of sexual and gender-based crimes beyond rape. However, in the 25 years since the Rome Statute's adoption, there has been significant progress in our understanding of sexual and gender-based crimes and notions of gender, and a new international treaty on crimes against humanity must reflect that progress.

Indeed, the ILC itself noted that its objective in drafting the articles was not "codification of existing law," but rather, to draft "provisions that would be both effective and likely acceptable to States, based on provisions often used in widely adhered-to treaties addressing crimes, as a basis for a possible future convention."¹ In that vein, we support the ILC's decision to exclude the Rome Statute's definition of 'gender' from the draft articles in recognition of "developments in international human rights law and international criminal law" that reflect "the current understanding as to the meaning of the term 'gender.'"²

As States consider the draft articles, we urge you to approach the development of a new crimes against humanity treaty with a gender-competent, survivor-centric, and intersectional lens. Such an approach would involve ensuring the inclusion of a non-discrimination provision anchoring the obligation to apply and interpret the treaty's provisions consistent with internationally recognized human rights law and without adverse distinction on grounds including race, gender, age, disability, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.³ Relatedly, any wording which results in the exclusion or minimization of legal protection should be avoided.⁴

¹ International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, at 23.

² *Ibid*, *supra* note 1, at 45.

³ See for example: *Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06 A 5, International Criminal Court (ICC), 1 December 2014: "The Chamber held that, [Article 21(3)] requires the exercise of the jurisdiction of the Court in accordance with internationally recognized human rights norms."; Priya Gopalan, Intersectional approaches to investigating and prosecuting international crimes: Sexual and Gender-based Crimes, in *The International Criminal Court in its Third Decade: Reflecting on Law and Practices*, edited by Carsten Stahn, publisher, Koninklijke Brill NV, 2023.

⁴ References to the term 'gender' in the draft articles relate to persons of all gender identities and sexual orientations. They include cis-gender women and men as well as trans, non-binary and gender non-conforming persons, and intersex persons. See for example: International Criminal Court, The Office of the Prosecutor, [Policy on the Crime of Gender](#)

In particular, as you consider your own substantive positions on the treaty, including for submission of written comments by December 1, 2023, and in advance of the Sixth Committee's second resumed session in April 2024, we urge you to consider issues relating to strengthening the gender-progressive, survivor-centric, and intersectional nature of the draft articles, which may include:

- Improving the **reproductive violence** provisions by revising the definition of sexual violence to include reproductive violence, eliminating the unnecessary sentence in the definition of **forced pregnancy** that references national abortion laws, and using gender-inclusive language in the definition of forced pregnancy;⁵
- Including **the slave trade** as an enumerated provision;⁶
- Codifying **gender apartheid** as an international crime by adding gender as a basis for the crime against humanity of apartheid, in direct response to [calls](#) from women's civil society;⁷
- Including **forced marriage** as a specifically enumerated crime against humanity and adopting a clear definition rooted in the significant international case law to date, to reflect the development of international criminal law on this offense;⁸ and
- Ensuring provisions on **victim/survivor participation and rights** are robust, including a broad and unambiguous definition of 'victim' and expanding reparations provisions, and reflect input from affected communities.

Each of these points have been developed further by groups of international legal subject-matter experts, for your benefit and consideration. Links to those briefs are included in the footnotes to the relevant topic, other than the victim/survivor brief, which is in a consultation process with victim/survivor groups and remains forthcoming. Please note that each brief reflects the views of the authors and signatories only of that brief.

A strong, gender-progressive crimes against humanity convention would also provide for a treaty body monitoring mechanism to promote implementation of the treaty, advance progressive interpretations of the text, and monitor progress on gender justice under the treaty. States could draw from the monitoring bodies established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Elimination of All Forms of Racial Discrimination, treaties which are similarly geared toward preventing and punishing specific conduct.

While there are numerous opportunities for States to press for more gender-progressive provisions in the text of the draft articles, it is equally essential that the treaty-making process itself is inclusive. States must ensure robust participation by women and gender minorities in the delegations in all stages of the treaty-development process, including drafting, design, negotiation, implementation, and monitoring of the convention. It is equally important that survivors of crimes against humanity are part of the

[Persecution](#), 7 December 2022; [Reports on Gender 2021](#): Law of Inclusion and Practices of Exclusion by the United Nations Independent Expert on Sexual Orientation and Gender Identity and other experts in international human rights law, including Meghan Campbell, Loveday Hodson, Catherine O'Rourke, [Advancing Sexual Orientation and Gender Identity Equality Through CEDAW](#), OXFORD HUM. RTS. HUB, 2022.

⁵ Available at the following link is a brief on [reproductive violence provisions in the draft articles](#).

⁶ Available at the following link is a brief on [codifying the slave trade in the draft articles](#).

⁷ Available at the following link is a brief on [codifying gender apartheid in the draft articles](#).

⁸ Available at the following link is a brief on [including forced marriage as a specifically enumerated crime against humanity in the draft articles](#).

treaty-making process, partaking in decisions that impact them, and ensuring that survivors' voices are adequately represented in the final provisions of the treaty.

Given this unique and powerful opportunity to combat impunity and codify progressive standards of international law, we urge States to adopt a gender-competent, survivor-centric, and intersectional lens and reflect the progress made and lessons learned in the 25 years since the Rome Statute was adopted.

Sincerely,

Organizations

Amnesty International
Asian Forum for Human Rights and Development (FORUM-ASIA)
Asian Resource Foundation
Asociación de Abogadas Feministas, Abofem Chile
Athena Tech & Atrocities Advisory
Atlantic Council Strategic Litigation Project
Australian Centre for International Justice
Center for Health, Human Rights and Development
Center for Human Rights Advocacy
Center for Reproductive Rights
Centro Regional de Derechos Humanos y Justicia de Género - Corporación Humanas
Consortium on Gender, Security, and Human Rights
DIGNITY
Dr. Denis Mukwege Foundation
Ecumenical Commission for Human Rights (CEDHU)
Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)
European Center for Constitutional and Human Rights (ECCHR)
Free Yazidi Foundation
Georgetown Institute for Women, Peace and Security
Global Centre for the Responsibility to Protect
Global Doctors for Choice
Global Justice Center
Global Rights Compliance
Harvard Law School Project on Disability (HPOD)
Human Rights Now
Human Rights Watch
I(dh)eas Litigio Estratégico en Derechos Humanos
Impact: Center against Human Trafficking and Sexual Violence in Conflict
International Center for MultiGenerational Legacies of Trauma
International Federation of ACATs
International Service for Human Rights (ISHR)
Justice Access Point (JAP) Ltd
Lawyers for Justice in Libya
Legal Action Worldwide (LAW)
Leitner Center for International Law and Justice at Fordham Law School
Montreal Institute for Genocide and Human Rights Studies
Nobel Women's Initiative
Omega Research Foundation, UK

Partners in Justice International
Physicians for Human Rights
Platform for Social Justice
PROMSEX, Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos
Protection Approaches
Proyecto de Derechos Economicos, Sociales y Culturales (ProDESC, Mexico)
Rights for Peace
Sofepadi
Southern Africa Litigation Centre (SALC)
Strategic Advocacy for Human Rights (SAHR)
The International Committee for Investigation of Torture in Belarus
The Sentinel Project
The West African Transitional Justice Centre
TRIAL International
UCLA Law Promise Institute for Human Rights
Women's Initiatives for Gender Justice
Women's League of Burma
Women's Peace Network (Myanmar)
Women's Refugee Commission
Yazda
Youth Association for Development

Individuals

Aakash Chandran, international legal consultant
Alexandra Lily Kather, international criminal law expert and co-founder emergent justice collective
Anyway Mutetwa, Executive Director, Envision Zimbabwe Women's Trust
Bonita Meyersfeld, Associate Professor, University of the Witwatersrand, School of Law, Advocate of the High Court of South Africa
David Donat Cattin, Ph.D., international law expert
Hannah Garry, Professor from Practice, UCLA Law
Indira Rosenthal, Adjunct Researcher, School of Law, University of Tasmania (Australia)
Jocelyn Getgen Kestenbaum, Professor of Law, Benjamin N. Cardozo School of Law
Karima Bennoune, Lewis M. Simes Professor of Law, University of Michigan Law School
Kelly Adams, Associate, Herbert Smith Freehills LLP
Leila Nadya Sadat, James Carr Professor of International Criminal Law, Washington University School of Law
Melanie O'Brien, Professor, University of Western Australia
Melanne Vermeer, Former U.S. ambassador for global women's issues
Metra Mehran, human rights activist
Osai Justina Ojigho, independent researcher/consultant
Patricia Viseur Sellers, international criminal lawyer; Law Faculty, Visiting Fellow, University of Oxford; Special Advisor for Slavery Crimes, to the Prosecutor, International Criminal Court
Penelope Andrews, John Marshall Harlan II Professor, New York Law School
Dr. Priya Pillai, international lawyer
Rosemary Grey, Senior Lecturer, Sydney Law School, The University of Sydney
Sareta Ashraph, international criminal law expert
Valerie Oosterveld, Professor, Western University Faculty of Law (Canada)
Zubaida Akbar, woman human rights defender