

# PRINCIPLES ON GENDER PERSECUTION RESOURCE GUIDE



A call to action for civil society

**MADRE**



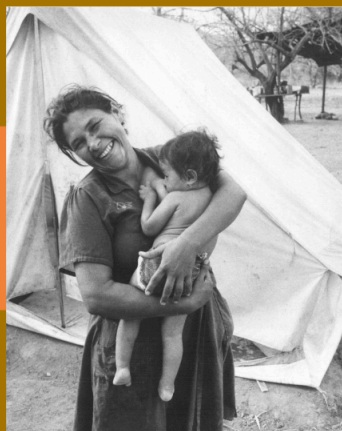
# Developing new principles on gender persecution

The International Criminal Court (ICC) Office of the Prosecutor (OTP) is developing a new set of Principles on the Crime of Gender Persecution, focusing on prevention, protection, survivor participation, and relief and recovery. **Civil society groups are being asked to add their voice at the outset of the process** to ensure that their communities and expertise are prioritized in the new Principles.

Thanks to a global grassroots movement, we have made major progress in raising greater awareness of the crime of gender persecution among key stakeholders. Accountability mechanisms like the ICC have enhanced their knowledge of gender persecution and strategies for holding perpetrators accountable. Now, the time has come to strengthen this work and expand this progress beyond accountability to other key areas of law and response to atrocities, including the pillars of prevention, protection, participation, and relief and recovery.

The Principles will develop a shared understanding of gender persecution across these pillars, serving as a new tool for human rights treaty bodies, UN peace and security experts, humanitarian actors, and human rights defenders. They will strengthen recognition of and redress for gender-based crimes and discrimination before, during, and after conflict, through shared practices designed to end cycles of violence and to help survivors access meaningful justice.

**Now is a critical time for civil society and experts to join this process.**



## What is gender persecution?

In countries and conflicts across the globe, gender-based crimes and other harms amounting to persecution take place far too often. In international criminal law, gender persecution is the main legal charge available to hold perpetrators of gender-based crimes accountable in conflicts and atrocities.

Perpetrators have committed gender persecution by, for example, attacking girls' schools in Afghanistan, torturing women in Mali because they deem their skirts too short, or subjecting people in Colombia to sexual violence because they perceive them as LGBTQI+ persons. Documenting and pursuing justice for gender persecution can help visibilize long-standing historical discrimination and fundamental rights deprivations against groups such as women, girls, and LGBTQI+ persons, as well as people targeted for multifaceted identities.

## Why develop principles on gender persecution?



Despite being on the law books for decades, there is a dearth of jurisprudence on gender persecution. For this reason, the ICC Office of the Prosecutor issued the [Policy on the Crime of Gender Persecution](#) in 2022. The first of its kind, the Policy was designed to strengthen accountability for gender persecution crimes. However, there are no guiding principles on how to prevent and protect against gender persecution or how to ensure that its survivors access their rights to reparations and participation in peace and transitional justice processes. For this reason, the ICC Office of the Prosecutor is commissioning Principles on Gender Persecution.

## Where is there progress on addressing gender persecution?

The inclusion of gender persecution as a crime against humanity in the Rome Statute, which created ICC, offered a chance for victims to access justice for gender-based crimes. The new Policy on the Crime of Gender Persecution from the OTP provided a groundbreaking framework for accountability for this crime, and has served as a technical tool for accountability mechanisms. In Colombia, the Special Jurisdiction for Peace (referred to as the JEP) has included gender persecution charges in cases, and has recognized that perpetrators can target women and LGBTQI+ persons based on both gender and ethnicity. In addition, international monitors have taken up our call for holding the Taliban accountable for gender persecution in Afghanistan.

## What is the consultation process and timeframe?

The ICC Office of the Prosecutor has opened a call for submissions from **January - November 22, 2024**, to help inform the development of the Principles. This extensive year-long civil society and key stakeholder consultative process will engage civil society, affected communities, activists, academics, and victims/survivors through workshops, briefings, and meetings before and during the drafting of the Principles. Advisers and staff of the ICC Office of the Prosecutor, other accountability mechanisms, governments, and UN experts and agencies will also inform the process. Ultimately, the Principles will blend civil society expertise with that of global legal experts, ensuring a comprehensive approach that focuses on prevention, protection, survivor participation, and relief and recovery.

In December 2024, look for the results from the global consultation on the Principles. These results will inform the drafting of the Principles that will commence in 2025. The end result will be the launch of the Principles in October 2025 during the 25<sup>th</sup> anniversary of the UN Security Council's Resolution 1325 on Women, Peace, and Security.

# Get involved!

## Prevention, protection, participation, relief & recovery

This is a pivotal moment in the history of gender justice, and the work we do now to create inclusive and intersectional Principles on gender persecution will impact generations to come. Civil society is being asked to share concrete solutions that address gender persecution by strengthening protection and prevention, and ensuring meaningful survivor participation in accountability and rebuilding.

**We need to hear from you!**

### Prevention

Preventing gender persecution requires improving strategies to prevent gender violence before conflicts or atrocities occur. Strategies can include prosecuting those responsible for violations of international law; strengthening women's rights and LGBTQI+ rights under national laws, supporting local women's peace initiatives and conflict resolution processes, and implementing laws to prevent gender-based violence, particularly against women, girls, and/ including LGBTQI+ persons. Key questions for your consideration:

- ▶ What are important strategies or activities for preventing gender persecution before conflict even begins?
- ▶ What types of laws or policies are important to prevent gender persecution before conflict begins?
- ▶ How can prevention strategies be intersectional and include all marginalized communities that are vulnerable to gender persecution?

### Protection

Protection from gender persecution requires implementation of informed strategies to protect women, girls, and/including LGBTQI+



people from gender-based violence – including sexual violence – in the contexts of conflict and atrocities, and during emergency and humanitarian settings such as refugee camps. Key questions for your consideration:

- ▶ During conflict and atrocities, how do we ensure that women, LGBTQI+ persons, and all communities are protected against acts of gender persecution?
- ▶ How can humanitarian aid systems and human rights frameworks best protect against gender persecution and all gender-based crimes?

## Participation

A survivor-centered approach to accountability and peacebuilding requires meaningful participation of women and/including LGBTQI+ people at all levels of decision-making, including in national, regional, and international governance; in peace and transitional justice mechanisms, as well as other restorative justice processes. Key questions for your consideration:

- ▶ Who are survivors of gender persecution and why is their participation in peace and transitional justice processes important?
- ▶ What do survivors of gender persecution need in order to ensure their safe and meaningful participation in humanitarian responses, in peace negotiations and in peacebuilding?
- ▶ How do we ensure that transitional and restorative justice process and other accountability mechanisms meaningfully include gender persecution survivors?

## Relief & recovery

Relief and recovery measures must address international crises through a gendered lens, including by respecting the civilian and humanitarian nature of refugee camps, and considering the needs of women, girls, and/including LGBTQI+ persons in the design of refugee camps and settlements. Key questions for your consideration:

- ▶ How do humanitarian actors reach communities and safely conduct outreach to survivors of gender persecution to ensure that they have access to relief and recovery?
- ▶ What types of relief and recovery measures do gender persecution survivors need?



# Take action and add your voice!

## ▶ SIGN THE OPEN LETTER

MADRE is serving as a clearing house for comments and has compiled feedback from grassroots feminist organizations from around the world. A summary of this compilation is available in an open letter for signatures [HERE](#).

## ▶ WRITE YOUR OWN SUBMISSION

Share your perspectives directly with the Principles' drafters by writing a submission. See the sample questions above for guidance on what topics to include in your submission. For example, your submission can detail the forms of gender persecution that occur in your region, or how gender-based crimes and human rights violations impact people who face multiple forms of oppression or discrimination. Submissions can be sent by **NOV. 22, 2024** to **OTP.Policies@icc-cpi.int**

## ▶ SPREAD THE WORD

Share this resource guide with your networks, and rally organizations in your community to make sure that your perspectives are heard in this historic process. Email **advocacy@madre.org** with questions or ideas. It is critical that we take advantage of this moment and make your voice heard.

**Join us!**

# MADRE's history bolstering the movement for justice for gender persecution

## Gender Persecution and the Rome Statute

The campaign for recognition of gender persecution continues a long struggle for gender justice within international law. In the 1990s, MADRE housed the Women's Caucus for Gender Justice (the Caucus), a worldwide coalition of women's rights activists working to address gender gaps in the draft Rome Statute (the treaty that governs the International Criminal Court). The Human Rights and Gender Justice (HRGJ) Clinic of CUNY Law School, known then as the International Women's Human Rights (IWHR) Clinic, served as secretariat for the Caucus and coordinated an effort to ensure the Statute accounted for gender in crimes, procedure, evidence, and the Court's composition. At the same time, OutRight International (then the International Gay and Lesbian Human Rights Commission) and other LGBTQI+ groups were fighting at the Beijing World Conference on Women and in the UN General Assembly for recognition of the heightened vulnerabilities experienced by LGBTQI+ people on the basis of their gender.

Largely because of efforts by the Caucus, gender persecution was codified as a crime (instead of "sex" persecution). Swapping "sex" for "gender" in the definition of persecution is considered one of the most important safeguards to happen at Rome. However, gender came with an opaque definition: "it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society." No other

protected class under persecution has a definition. The Coalition also successfully rallied Rome Statute drafters to broaden the category for sexual violence to include not only rape but also sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other undefined forms of sexual violence.





## Gender Persecution and the Draft Crimes Against Humanity Treaty

In 2017, members of the Caucus came together once again and formed a new coalition of civil society organizations and universities. The new Coalition sought to ensure the new Crimes Against Humanity (CAH) Treaty draft reflected the progress made since the formation of the Rome Statute and that it either revised or removed the outdated definition of gender.



Because of the Coalition's work, by December 2018, hundreds of activists, states, UN experts, and individuals had made their voices heard to the International Law Commission (the Commission) tasked with drafting the treaty. Nearly 600 organizations and academics, representing over 100 countries and territories, signed an open letter circulated by the Coalition. Nineteen states made submissions to the Commission affirming that the rights of women and LGBTQI+ people are protected under international criminal law and asserted that a new CAH treaty must reflect this principle. Also in response to our advocacy, over 35 UN Special Rapporteurs and experts made a submission calling on the Commission to either revise or remove the outdated definition of gender.

The Commission subsequently removed the definition from the draft CAH treaty, affirming that gender is understood as a social construct. Shortly after, we made the same arguments to the Mutual Legal Assistance Initiative, which also removed the outdated definition from its draft treaty.

In 2021 the ICC Prosecutor appointed, for the first time, a Special Adviser on Gender Persecution who developed the first Policy on the Crime of Gender Persecution. This Policy makes clear that it is a crime to target persons for persecution based on their gender – including women, girls and LGBTQI+ persons.

## Principles on Gender Persecution

Complementing and building on the 2022 Policy on the Crime of Gender Persecution, this new initiative will help to further promote accountability, transparency, and predictability in the work of the ICC's Office of the Prosecutor in this crucial area. They will also serve as broader guidance internationally, including for humanitarian responses as well as for other accountability mechanisms.

The Principles will be developed on the basis of international criminal law and human rights law. They will draw from applicable treaties and general principles and rules of international law, Court jurisprudence, and other relevant human rights and accountability mechanisms. Importantly, they will also draw on input and experiences from civil society, victims/survivors and their representatives, first responders, states, human rights and criminal law experts, academics, and advocates.

Now is the time to make your voice heard in the new Principles on Gender Persecution!

### REMEMBER!

- ▶ **Sign the open letter by clicking here.**
- ▶ **Write your own submission and send to [OTP.Policies@icc-cpi.int](mailto:OTP.Policies@icc-cpi.int) by November 22, 2024.**
- ▶ **Spread the word and share this resource guide.**

# MADRE

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[madre.org/gender-persecution](https://madre.org/gender-persecution)