

21 November 2024

## Submission to the Office of the Prosecutor of the International Criminal Court on the Development of Gender Persecution Principles

### Introduction

Women's Initiatives for Gender Justice (WIGJ) is pleased to submit recommendations on the development of Gender Persecution Principles by the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) in response to the call for public submissions.<sup>1</sup>

This submission is informed by insights from a hybrid forum held on 21 October 2024,<sup>2</sup> as part of a global consultation process led by MADRE to increase understanding of the crime of gender persecution and push national and international authorities to hold perpetrators accountable.<sup>3</sup> This submission also integrates findings from a survey<sup>4</sup> circulated with WIGJ's network in August-September 2024. Together, these insights highlight the need for robust, intersectional, and survivor-responsive principles to address gender persecution comprehensively.

### Key recommendations for the Gender Persecution Principles

Our submission reflects the feedback gathered across four core pillars: prevention, protection, participation, and relief and recovery.

#### A. Prevention

To prevent gender persecution effectively, the principles must acknowledge the systemic and intersectional nature of this crime, establish comprehensive legal accountability through multiple levels and encourage state-led initiatives for sustainable prevention.

##### A1. Intersectional prevention strategies

Survey respondents and forum participants emphasized the need to consider how intersecting identities — such as gender, ethnicity, religion, and socioeconomic status — compound the vulnerabilities of targeted groups. Without preventive measures tailored to specific contexts, the risk of perpetuating gender persecution remains high. A more nuanced understanding of gender as a non-binary and intersectional construct can help capture the experiences of structural discrimination exacerbating the risk of gender persecution. For instance, recognizing compounded harms in contexts such as Afghanistan and Myanmar, where gender persecution is exacerbated by religious and ethnic targeting, can sharpen preventive measures.

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<sup>1</sup> <https://www.icc-cpi.int/news/office-prosecutor-launches-public-principles-advance-understanding-crime-gender-persecution>

<sup>2</sup> The forum gathered 20 in-person and 35 virtual participants, including leading experts, survivors, advocates and members of civil society. The recording of the forum is available on the WIGJ Youtube account:

<https://www.youtube.com/watch?v=2qoHm6gFUfo>

<sup>3</sup> <https://www.madre.org/gender-persecution/>

<sup>4</sup> The survey was available in English, French and Spanish and was completed by 73 respondents.

<https://forms.office.com/Pages/DesignPageV2.aspx?origin=NeoPortalPage&subpage=design&id=QmDteoT5CEG52oP2PieMt8xBsbmNuRBpxKnXHYxJxtUMTFDNohYSIhJSodWTokwR1RUWVpKS1ooVY4u>

A1 Recommendation: The Gender Persecution Principles should incorporate an analysis of intersectional grounds of discrimination to identify specific risk factors for gender persecution in various contexts. This approach will enable targeted prevention, especially in conflict zones and fragile environments where gender intersects with other marginalized identities.

### A2. Legal accountability through a multi-level approach

Effectively preventing gender persecution requires a coordinated and comprehensive 'all tools' approach. This strategy, advocated by the UN Special Rapporteur on the situation of human rights in Afghanistan,<sup>5</sup> emphasizes the need for coordinated use of diverse legal and accountability mechanisms to confront and dismantle systemic gender oppression. In the context of gender persecution, this involves leveraging accountability sought through the ICC alongside complementary mechanisms such as national jurisdictions, universal jurisdiction, transitional justice mechanisms, UN monitoring bodies with a mandate to address discrimination on multiple grounds, including gender under the Committee on the Elimination of Discrimination against Women (CEDAW), and the codification of gender apartheid within the Draft articles on Prevention and Punishment of Crimes Against Humanity.

A2 Recommendation: The Gender Persecution Principles should recognize the importance of a multi-level 'all tools' approach to preventing and addressing gender persecution, which includes complementary mechanisms beyond ICC's jurisdiction. Such an acknowledgment reinforces the need for cohesive international accountability efforts to effectively prevent and respond to systemic gender oppression.

### A3. State-led initiatives to address structural drivers of gender persecution

Effective prevention of gender persecution requires more than individual legal accountability, it demands systemic changes at the national level. State-led initiatives are essential in addressing the structural, social, and economic factors that enable and perpetuate gender-based oppression. By implementing policies that target root causes of discrimination — such as discriminatory laws, cultural norms, and economic inequalities — States Parties can build resilience within communities and reduce vulnerability to gender persecution. A rights-based prevention model that includes structural reforms at the state level complements international efforts, providing a sustainable approach to protecting at-risk populations.

A3 Recommendation: The Gender Persecution Principles should recognize the importance of addressing structural drivers of gender persecution at the state level through a human rights perspective. By highlighting this need within the Principles, the OTP can encourage States Parties to consider policies that target the root causes of gender persecution, thereby supporting a more resilient and comprehensive approach to prevention.

## **B. Protection**

Comprehensive protection frameworks for survivors must go beyond immediate (physical) safety to encompass long-term security and well-being, with clear protections against retaliation, as well as flexible, culturally sensitive measures that address the needs of marginalized groups.

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<sup>5</sup> <https://www.ohchr.org/en/press-releases/2024/06/afghanistan-all-tools-approach-needed-end-systematic-gender-oppression-says>

### B1. Comprehensive protection frameworks

Effective protection requires a framework that safeguards survivors' physical, economic, legal, and psychosocial well-being. Survey responses and forum discussions stressed the importance of multi-faceted support, including safeguards to ensure confidentiality and minimize re-traumatization, as well as protections that reflect cultural nuances and the needs of marginalized groups.

B1 Recommendation: The Gender Persecution Principles should advocate for comprehensive protection measures that address the survivors' full spectrum of needs, from immediate security to economic and psychosocial support, and acknowledge the importance of cultural sensitivity in survivor protection.

### B2. Legal safeguards and protections against retaliation

Survivors of gender persecution, especially those from politically volatile regions, face a heightened risk of retaliation, re-victimization and obstacles in access to justice as a result of pre-existing marginalization, often on intersecting grounds. Ensuring their safety and well-being is essential to encourage survivor engagement. Effective protections must shield survivors from re-victimization and safeguard their identities and safety during reporting and testimony.

B2 Recommendation: The Gender Persecution Principles should emphasize the need for robust legal safeguards against retaliation and discrimination in access to justice, urging both the ICC and national authorities to prioritize protections for survivors who may be vulnerable to reprisals due to their participation in justice efforts and to pre-existing marginalization on gender and other grounds.

### B3. Tailored victim and witness protection

A one-size-fits-all approach to victim and witness protection is insufficient for survivors of gender persecution, who may belong to groups facing compounded risks, such as ethnic minorities or LGBTQI+ individuals. While we recognize that resource limitations and workload constraints may make an individualized approach challenging, actors in justice processes should strive to adapt protection measures to different cultural and social contexts. Protocols should be developed, where possible, in collaboration with organizations that work directly with affected communities to enhance support and responsiveness.

B3 Recommendation: The Gender Persecution Principles should emphasize the importance of adaptable protection measures tailored to the specific risks faced by marginalized groups, on the basis of gender and other grounds. The principles should encourage flexibility in protection approaches and collaboration with organizations working directly with affected communities to ensure responsive, context-sensitive support within resource constraints.

## **C. Participation**

Enabling meaningful survivor participation requires survivor-responsive justice processes, cumulative charging practices to accurately reflect intersecting harms, and opportunities for survivors to contribute beyond courtrooms in ways that can shape broader justice strategies.

### C1. Survivor-informed justice processes

A survivor-informed approach ensures that justice processes are attuned to the needs, insights, and safety of survivors at every stage, from investigation to post-trial support. To make these processes responsive to survivors, they must be designed with cultural sensitivity, trauma awareness and

knowledge about their intersecting vulnerabilities, allowing survivors to engage without fear of re-traumatization or undue burden.

C1 Recommendation: The Gender Persecution Principles should encourage survivor-informed practices in justice processes, ensuring that survivors' well-being, cultural contexts, and unique needs are considered, empowering them to participate meaningfully and safely.

### C2. Broader participation beyond formal justice processes

Survivor perspectives provide valuable insights not only within courtrooms but also in broader advocacy, policy development, and preventive measures that address gender persecution. Acknowledging the contributions survivors can make beyond formal justice processes can strengthen the impact of these principles, ensuring they reflect lived realities and systemic challenges.

C2 Recommendation: The Gender Persecution Principles should highlight the value of survivor-informed contributions to advocacy and policy efforts. By acknowledging survivors' roles in shaping broader strategies for addressing and preventing gender persecution, the principles can foster a more holistic approach to accountability and prevention.

## **D. Relief and recovery**

Holistic recovery is essential for survivors to regain agency and participate meaningfully in society. This includes fostering comprehensive legal accountability, ensuring survivor-responsive support, and encouraging reparations that address both individual and collective harm.

### D1. Holistic survivor-responsive recovery measures

Effective recovery for survivors of gender persecution requires a holistic approach, informed by the intersecting identities of survivors and the specific harms they suffered. This approach should not only address immediate needs but also support long-term resilience and reintegration. Survivors often need a range of services, including mental health support, economic empowerment, community support and social reintegration programs, which collectively help them regain agency and rebuild their lives. While resource and workload constraints may limit individualized support, recovery programs should strive to be adaptable, prioritizing comprehensive care where possible to meet the nuanced needs of survivors. A tailored approach considering structural discrimination on gender and other grounds, even within practical limitations, can foster a sense of empowerment and healing by addressing survivors' physical, psychological, and social well-being.

D1 Recommendation: The Gender Persecution Principles should promote a holistic approach to recovery, observant of structural gender and intersectional discrimination, that includes mental health, economic empowerment, community support and social reintegration. This survivor-responsive framework should be adaptable within resource limits to ensure that recovery efforts help survivors rebuild their lives with resilience and agency. Encouraging the adoption of these standards at the national level can foster a global network of survivor-responsive services.

### D2. Reparations for both individual and collective harm

Gender persecution frequently causes harm that extends beyond individuals to entire communities, resulting in both personal and collective impacts. Reparations programs should seek redress for the multi-faceted harms of individuals and collectivities with measures that target the gender and other discriminatory grounds underpinning persecution and address individual harm while also recognizing and addressing the broader social effects of gender-based persecution on communities.

D2 Recommendation: The Gender Persecution Principles should advocate for states and other duty-bearers to develop and implement robust reparations frameworks that meet international standards and are capable of addressing victims' needs. These frameworks should support programs that acknowledge both individual and community-level harms, fostering a more comprehensive approach to recovery that reflects the wide-ranging impact of gender persecution.

### D3. Cumulative charging to reflect intersectional harms

Experts in our forum recommended cumulative charging as a tool to fully acknowledge the multi-layered and intersecting harms that survivors of gender persecution endure. Allowing multiple charges to address distinct legal elements arising from the same conduct provides a more comprehensive legal account of the perpetrator's actions. This approach enhances accuracy in capturing the full scope of multi-faceted harm, including intersecting forms of persecution, such as gender, racial, or religious targeting, where each element reflects a unique facet of the crime and its impact on survivors. This approach enhances survivors' relief and recovery by ensuring their complex experiences are recognized within the legal process in a more nuanced manner.

D3 Recommendation: The Gender Persecution Principles should support cumulative charging in cases of gender persecution, as it allows for a more nuanced acknowledgment of intersecting harms and experiences of discrimination, contributing to survivors' sense of justice and aiding their recovery.

### **Conclusion**

WIGJ appreciates the opportunity to support the development of the ICC OTP's Gender Persecution Principles. Our recommendations underscore the need for a survivor-responsive, intersectional approach that comprehensively addresses the multi-layered harms of gender persecution.

We look forward to our continued collaboration to make these principles a powerful tool in the fight against gender-based crimes.