

ACADEMIC PAPER

# IDENTIFYING GENDER PERSECUTION IN CONFLICT AND ATROCITIES

A TOOLKIT FOR DOCUMENTERS,  
INVESTIGATORS, PROSECUTORS  
AND ADJUDICATORS OF CRIMES  
AGAINST HUMANITY

## IDENTIFYING GENDER PERSECUTION



DECEMBER 2021  
UN WOMEN

HUMAN RIGHTS &  
GENDER JUSTICE CLINIC

MAIN STREET  
LEGAL SERVICES

CUNY SCHOOL OF LAW





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**EVALUATION SECTION  
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Photo: UN Women/Allison Joyce, Kutupalong camp, March 8, 2018

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# INTRODUCTION

In conflicts and atrocities across the globe, from Iraq to Colombia, armed actors have perpetrated gender-based crimes amounting to persecution as a crime against humanity in an effort to reinforce oppressive, discriminatory gender narratives. Rarely documented, perpetrators are hardly ever held accountable for these crimes. As a result, their crimes of persecution are often excluded from consideration by international and domestic tribunals, and in effect, are left out of history.

Evidence of gender-based crimes appears in modern international criminal law judgments, dating as far back as the International Military Tribunals of World War II. However, the crime against humanity of persecution on the grounds of gender—referred to here as gender persecution—was not an enumerated crime until the adoption of the 1998 Rome Statute, which governs the International Criminal Court (ICC). Despite over twenty years of official recognition, rarely is gender persecution specifically documented. Thus, perpetrators either evade accountability or are only prosecuted and tried for the underlying crimes, which do not fully represent their criminal conduct or the crimes suffered by the victims, nor the reasons for committing such a crime.

Until recently, gender persecution had not been prosecuted, leaving a gap in the development of international criminal jurisprudence. This jurisprudential silence is compounded by the lack of enumeration of gender persecution as a crime against humanity in the statutes of international criminal tribunals, other than that of the ICC, and in national penal codes. As a result, gender persecution is rarely investigated or charged, whether in international or domestic courts. It is omitted from the historical record, despite its consistent occurrence.

The Identifying Gender Persecution in Conflicts and Atrocities Toolkit is designed to provide investigators,

lawyers, advocates, documenters, first responders and others who engage in identifying gender-based crimes or their victims in conflict and atrocity settings a framework for recognizing and understanding illicit conduct that amounts to gender persecution. There are myriad fora where accountability might be rendered, ranging from international tribunals to domestic court proceedings to restorative justice models, but a first step to any justice process is agreement on what constitutes gender persecution. The toolkit discusses the need for the recognition of gender persecution as a crime against humanity. How accountability for gender persecution should be rendered is outside its scope.

As with all forms of persecution, accountability for gender persecution requires establishment of the underlying discrimination. Targeting women, men, girls, boys, LGBTIQ+, non-binary and gender non-conforming persons on gender grounds is a crime against humanity. Redressing gender persecution would promote a survivor-centered or victim-centered approach and recognize their rights to participate in peace and transitional justice mechanisms. Finally, it would help build sustainable peace and disrupt the normalization of gender discrimination and violence institutionalized in existing law and practice.

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1 International Military Tribunals of World War II are commonly known as The Nuremberg Tribunal and the Tokyo Tribunal (1945–1948).

2 This Toolkit uses both terms “victims” and “survivors,” recognizing that some persons who have endured harms identify with the term “survivor” while others prefer the term “victim.”

# GENDER PERSECUTION

## TOOLKIT: OVERVIEW

## AND PURPOSE

This Toolkit is a resource for first responders, documenters, investigators, prosecutors and adjudicators of crimes against humanity. The Toolkit should better enable all stakeholders to understand and pursue claims of gender persecution. The aim of this Toolkit is to identify and clarify the concept of gender persecution and to show how it manifests in situations of armed conflict and atrocity. While persecution as a crime against humanity has been codified in various statutes, this Toolkit primarily relies on the persecution provision of the Rome Statute of the International Criminal Court (ICC) for the purpose of its analysis and guidance.

**Section 1** of the Toolkit provides an overview of the international crime of persecution on gender grounds as a crime against humanity. It examines how international criminal law recognizes and contextualizes the concept of gender discrimination in the intent to commit crimes. **Section 2** outlines how persecution on gender grounds manifests, including through reliance on and reinforcement of entrenched gender narratives. This section also provides past and current examples

of gender persecution across a range of geographic, cultural and political contexts, and guidance on how to identify different forms of gender-driven discriminatory crimes such as murder, torture, enslavement, rape and other forms of sexual violence. **Section 3** provides exercises and tools to assist the reader with identifying and documenting gender persecution. The Toolkit concludes, in **Section 4**, with recommendations for ensuring accountability for gender persecution.



*Photo: UN Women/Ryan Brown*



*Photo: UN Women/Ryan Brown*



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# LIST OF KEY TERMS AND ACRONYMS

Key Terms and Acronyms	Understandings
<b>AQIM</b>	Al-Qaeda in the Islamic Maghreb
<b>Gender</b>	For the purposes of this Toolkit, 'gender', refers to the definition under article 7(3) of the Rome Statute of the ICC: the two sexes, male and female, within the context of society. This definition acknowledges the social construction of gender, and the accompanying roles, behaviors, activities, and attributes assigned to women and men, and to girls and boys. <sup>t</sup>
<b>Gender narrative</b>	A set of ideas, beliefs, prejudices or stereotypes that define a social construction of an individual's or group's identity based on their perceived sex and/or gender including their roles, behaviors, activities or attributes.
<b>Gender regulation</b>	A gender narrative enforced—often through violence or other forms of fundamental human rights deprivations—on a person or group that regulates their roles, behaviors, activities or attributes.
<b>Gender non-conforming person</b>	A person who does not conform to prevailing social narratives that define accepted gender expressions.
<b>ICC</b>	International Criminal Court
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>ILC</b>	International Law Commission
<b>ISIL</b>	Islamic State of Iraq and the Levant
<b>LGBTIQ+<sup>4</sup></b>	Lesbian, gay, bisexual, transgender, intersex, and queer identified persons.
<b>Non-binary person</b>	A person who does not identify exclusively as a man or a woman, or as a boy or a girl.
<b>OTP</b>	Office of the Prosecutor for the International Criminal Court

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