

SPECIAL REPORT

Gender Persecution Principles: Civil Society Input for the International Criminal Court



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International
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Gender Persecution Principles: Civil Society Input for the International Criminal Court

By Julie Goldscheid

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(COVER) TOP: A general view of the International Criminal Court (ICC) building in The Hague, Netherlands on April 30, 2024. (Selman Aksunger / Anadolu via Getty Images.); BOTTOM: Participants at the Bogota convening in April 2024. (J. Lester Feder)

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Foreword

In January 2024, the Office of the Prosecutor of the International Criminal Court announced a new initiative to advance accountability for the crime against humanity of persecution on the grounds of gender. The prosecutor invited civil society and affected groups to guide the development of these Principles on Gender Persecution. This report presents a summary of six global civil society convenings on the topic of gender persecution that took place in Colombia, Canada, the Netherlands, South Africa, and Australia in the last year. The participants of the convenings examined the crime of gender persecution through the lens of the four pillars of the Women, Peace, and Security agenda – Prevention, Protection, Participation, and Relief and Recovery – to provide recommendations to assist the Office of the Prosecutor during the drafting process.



The flag of the International Criminal Court flies at The Hague, Netherlands (Alex Gottschalk/DeFodi Images via Getty Images)

This report highlights the importance of stakeholder consultation throughout policy processes and sheds light on best practices to prevent and protect vulnerable groups from intersecting historical and structural gender-based discrimination and persecution. Survivors of gender persecution deserve justice and accountability. Recognizing and naming the crime is the first step, but there is much more work to be done. We hope this report will help inform not only the upcoming Principles on Gender Persecution but also policymakers around the world as they formulate comprehensive and survivor-centered responses to the crime against humanity of gender persecution.

Emily Prey

Director, Gender Policy Portfolio
New Lines Institute for Strategy and Policy



Background and Introduction

In November 2022, the International Criminal Court (ICC) issued its [Policy on Gender Persecution](#) (the Policy). The Policy is designed to guide the Office of the Prosecutor (OTP) in effective investigation and prosecution of gender persecution and to help advance a culture of best practice in that regard within the OTP and more broadly. To complement and build on the Policy and to promote accountability, transparency, and predictability, the ICC is developing a set of principles on gender persecution (the Principles). The goal is to further guide the OTP in its response to gender persecution.

While the ICC's mandate centers on individual accountability, a pillar for which best practices should be consistently strengthened, states can and should address gender persecution holistically. Accountability, prevention, protection, and survivor participation are all key parts of the Women, Peace, and Security agenda (WPS), encapsulated in several U.N. Security Council resolutions.¹ Implementing WPS requires a survivor-centered approach to gender crimes, including gender persecution. This includes ensuring the meaningful inclusion of victims and survivors in peace negotiations and in the design and operation of transitional justice mechanisms. States also must uphold human rights protections and prevent and address violations. This is key as gender persecution is, at its core, the severe deprivation of fundamental rights based on gender. The Principles therefore should be expanded and directed to an audience beyond judicial actors at the ICC, to include all those who can participate in a global effort to prevent and address gender persecution, such as governments, human rights bodies, judicial actors, and humanitarian groups working to advance prevention and to ensure protection and participation by victims and survivors.²

OTP launched this process in 2024 by seeking input from grassroots civil society organizations before

the drafting process begins. Over the course of the year, MADRE and CUNY Law School's Human Rights and Gender Justice (HRGJ) Clinic, along with grassroots and academic partners around the world, organized a series of convenings spanning five continents. These brought together representatives of front-line victims' organizations and civil society organizations, with gender justice advocates and legal experts to weigh in on the Policy's recommendations. Participants included those impacted by conflict or egregious rights violations and by histories of colonization and enslavement, and those serving those communities. The Principles — and the process of developing them — can spread awareness that gender persecution is a crime against humanity, bringing the terminology beyond courtrooms in order to transform society. As a participant in a civil society convening in Bogotá, Colombia, put it, "Naming ... the crime of gender persecution is definitely an opportunity to investigate the structures of power. That's why it's so important."³

The consultations were conducted through in-person and hybrid meetings in six cities on five continents and via online discussions in Arabic, Dari/Farsi, English, French, Spanish, and Ukrainian. Participants in the consultation have focused on four key questions

- 1) How can we prevent gender persecution from happening?
- 2) How can we protect women and girls, LGBTQI+ people, and others targeted for gender-based violence, including sexual violence, during armed conflict?
- 3) How can we ensure the participation of survivors of gender persecution in peacebuilding and accountability processes?
- 4) How can relief and recovery efforts around armed conflict best respond to gender persecution victims?

1 U.N. Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106, 2122, 2422, 2467, and 2493.

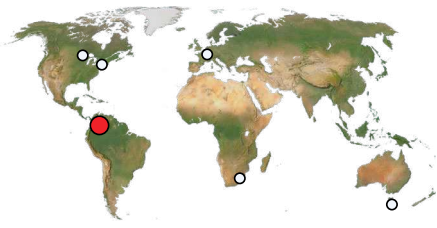
2 Persons who experience crimes or harms may identify with the term "victim" or with the term "survivor."

3 Please see full Colombia Convening report here: <https://www.madre.org/wp-content/uploads/2024/06/April-2024-Bogota-Convening-Report-EN-SP.pdf>



In Person and Hybrid Convenings

April 2024: Bogotá, Colombia



In-person and hybrid convenings began in April in Bogotá, Colombia. Activists gathered representing groups working to confront gender-based violence, protect reproductive rights, and protect the rights of Indigenous and Afro-descendent peoples and LGBTQI+ communities.

Organized by ICC Special Adviser on Complementarity Rene Fernando Urueña Hernandez and held at Universidad de los Andes, Bogotá was a powerful place to kick off these consultations. The 2016 accords that ended decades of civil war between the government and the FARC-EP included groundbreaking language requiring the participation of women and LGBTQI+ victims in the peace process.

In 2023, the court created by the peace agreement, the Special Jurisdiction for Peace, brought historic gender persecution charges for the targeting of women, girls, and LGBTQI+ people, including targeting of Afro-descendant and Indigenous individuals on the basis of both gender and ethnicity.

One participant was Yormery Avendaño Pascual, a delegate of the Indigenous Women’s Commission before the National Commission for the Coordination of the National Judicial System and the Special Indigenous Jurisdiction.

Avendaño said she would like to see the gender persecution principles recognize the importance of a differentiated approach to working with victims and



Dayana Blanco, director of the Afro-Colombian organization ILEX Legal Action, speaks during the Bogotá convening in April 2024. (J. Lester Feder)

witnesses of different backgrounds so they can more easily participate in accountability processes.⁴

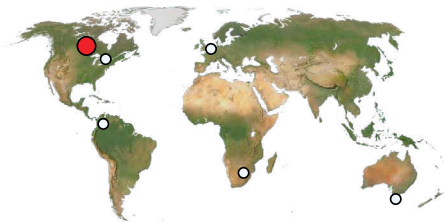
That would include interpreters who not only translate language but also demystify processes of investigators and courts, and psychosocial support that not only counsels victims on their individual trauma but also offers support through Indigenous peoples’ customs and spiritual traditions.

⁴ Please see full Colombia Convening report here: <https://www.madre.org/wp-content/uploads/2024/06/April-2024-Bogota-Convening-Report-EN-SP.pdf>



Participants at the Winnipeg convening in May 2024. (Photos courtesy of conveners)

May 2024: Winnipeg, Canada



Advocates gathered at a convening in Winnipeg, Canada, in May, organized by ICC Special Adviser on Crimes Against Humanity Valerie Oosterveld.

The event included academic experts, community advocates, practicing lawyers, and health professionals with expertise in sexual and gender-based violence, Indigenous rights, Two-Spirit and LGBTQI+ rights, immigrant and refugee rights, intergroup conflict and reconciliation, health equity (including Black health equity), international humanitarian law, and sustainable development.

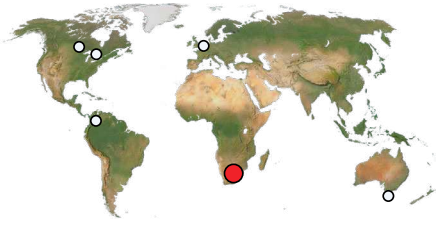
Hilda Anderson-Pyrz, a member of the Nisichawayasihk Cree Nation in Manitoba and chair of the National Family and Survivors Circle Inc., spoke about the crisis in which more than 1,100 Indigenous women and girls have been murdered or have disappeared since 1980.

Anderson-Pyrz stressed the importance of educating law enforcement on gender persecution in communities that are currently overpoliced and under-protected and access to safe spaces accessible to victims of gender persecution who are located in remote and isolated places.

“Family members who have a loved one – a mother, sister, or daughter – who is missing feel that the police are not on their side,” Anderson-Pyrz said.



July 2024: Johannesburg, South Africa



Participants from 16 African countries joined a consultation in Johannesburg in July organized by the Southern Africa Litigation Centre.

The gathering included one panel on anti-LGBTQI+ legislation in countries including Uganda, Ghana, and Kenya, and another on ways that survivors of gender persecution could meaningfully engage with accountability mechanisms.

Dr. Adrian Jjuuko, executive director of Uganda's Human Rights Awareness and Promotion Forum, spoke about techniques and strategies he applies to protect witnesses and survivors.

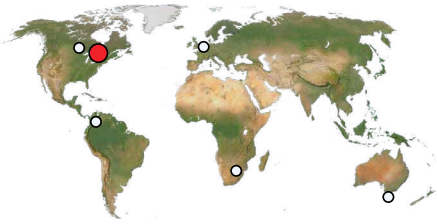
He underscored the need for documenting and preserving evidence that is relevant for any litigation and/or advocacy in relation to gender persecution.

The panel discussed how being a witness at an ICC proceeding can be challenging, especially against the backdrop of the shame and other difficulties or risks survivors face when returning to their communities.

Jjuuko emphasized the need for and willingness of accountability mechanisms to organize asylum/refugee status if needed.

Participants discussed the need to prevent gender persecution by halting and overturning anti-LGBTQI+ legislation and legal provisions, including colonial-era laws, that create a climate of repression, leading to the fear of arbitrary arrests, discrimination, and violence by the community.

September 2024: Toronto, Canada



Advocates gathered at Massey College, University of Toronto, in September, convened by ICC Special Adviser on Crimes Against Humanity Valerie Oosterveld in partnership with Massey College chair in Human Rights Payam Akhavan and Ghizal Haress, a visiting legal scholar and former Afghanistan presidential ombudsman prior to the Taliban's seizure of Kabul.

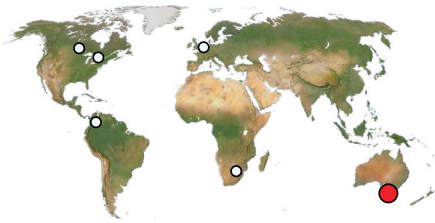
Participants included a Canadian senator, advocates from the Afghan and Iranian diasporas (including a refugee LGBTQI+ activist), and lawyers

from the University of Toronto Faculty of Law's International Human Rights Program and its Afghanistan working group.

One focus of discussion was ensuring the meaningful participation of gender persecution survivors in accountability and reparations processes, as their voices are often overshadowed by those from privileged groups. Participants called for bottom-up approaches grounded in the lived experiences of those affected. They underscored that criminal procedures should facilitate meaningful participation through ongoing consultation and gender-sensitive outreach by and with impacted communities. They called for the safety of women and girls, and other vulnerable groups such as LGBTQI+ individuals, to be prioritized to prevent revictimization.



October 2024: Lutruwita/Tasmania, Australia



A steering committee of legal experts from the University of Tasmania Law School Faculty including former ICC Special Adviser on War Crimes Tim McCormack, Indira Rosenthal, Dr. Robin Banks, Cleo Hansen-Lohry, and Dr. Tamara Wood convened in Lutruwita/Tasmania, Australia, with a research team to consult with local communities on their lived experiences of gender persecution.

They identified four cohorts to include in the research: Tasmanian First Nations peoples (*palawa*); LGBTQI+ communities; people with disabilities; and refugee, migrant, and asylum-seeker communities.

Lutruwita/Tasmania has an especially tragic history in the context of the colonization of Australia by Britain. A concerted genocidal campaign against the *palawa* very nearly succeeded in complete annihilation of the island's Aboriginal peoples. Lutruwita/Tasmania is also dubiously distinguished as the last Australian state to decriminalize consensual same-sex sexual activity. It has the highest per capita number of people with disability in Australia.

Members of each of the four communities have firsthand knowledge and understanding of the systemic causes of persecution based on gender and other categories. They identified racism, misogyny, trans- and homophobia, and ableism, and underscored the ways in which these systems deny them redress and act to protect perpetrators.

Participants shared experiences of gender persecution and discrimination ranging from sexual violence, forced sterilization, and reproductive violence to social exclusion. They described how discriminatory violence created economic hardship and other longstanding harms. They also discussed how gender discrimination often intersects with racism, ableism, homophobia, and xenophobia. These intersecting oppressions,

shaped by colonial, patriarchal, and ableist structures, continue to disenfranchise them.

The *palawa*, for example, face ongoing racialized and gendered violence rooted in the island's settler colonial history. This manifests in a continuum of violence, including reproductive and domestic violence, coupled with structural neglect in healthcare and legal protections. Migrants, refugees, and asylum seekers reported pre- and post-arrival gender persecution and discrimination, often exacerbated by their vulnerable migration status and restrictive visa conditions. The LGBTQI+ and disabled communities face both medical and social discrimination, highlighting a lack of inclusive protections and resources. The report calls for intersectional approaches to combat gender persecution and strengthen community resilience and visibility.

Some noted that gender persecution occurs within a broader context of structural inequalities at every level that marginalize women and girls, as well as many men and boys. Many viewed gender persecution not merely as acts committed by individuals against other individuals, but rather as a manifestation of an entire system of power imbalances stemming from racism, xenophobia, ableism, sexism, heterosexism, trans- and homophobia, and patriarchy.



ICC OTP Special Adviser on Complementarity, and Universidad delos Andes Associate Professor, René Urueña, listens during the Bogotá convening. (J. Lester Feder)



October 2024: The Hague, Netherlands



After surveying its civil society networks about key topics, the Women’s Initiatives for Gender Justice organized a hybrid forum in The Hague on the development of gender persecution principles. Participants included international and gender legal experts, as well as representatives of survivor and advocacy organizations. Among the speakers were survivor activists from countries such as Uganda and leaders from the women’s movement, including from the Women’s Advocacy Network and UpRights, as well as former U.N. legal advisers.

The forum highlighted the inherently intersectional nature of gender persecution, with speakers advocating for a framework that recognizes multiple, compounding forms of discrimination. Participants underscored survivors’ multifaceted needs, not only for justice but also for comprehensive support services such as mental health care, economic empowerment, safe spaces, and community reintegration. Policy frameworks should ensure survivors are consulted, with appropriate support services in place, to accurately reflect their realities and contribute to rebuilding their agency and dignity post-conflict.

Participants also called for a strong legal framework that not only prosecutes but also prevents gender persecution. They observed that criminalizing gender persecution could serve as a deterrent and provide survivors with mechanisms for seeking justice in the future. They also stressed the importance of cumulative charging of gender persecution with other crimes, including those used to enforce gender discrimination, as well as intersecting forms of persecution.



Hilda Anderson-Pyrz, a member of the Nisichawayasihk Cree Nation in Manitoba, emphasized the importance of increased training for law enforcement at the Winnipeg, Canada, convening. ‘Family members who have a loved one – a mother, sister, or daughter – who is missing feel that the police are not on their side,’ she said. (Photos courtesy of conveners)



Recommendations

This section synthesizes and summarizes recommendations that emerged from the in-person/hybrid consultative process. Detailed recommendations have been shared with the OTP, and as of the drafting of this report, civil society organizations are submitting additional written inputs for consideration during the 2025 drafting process. Recommendations are grouped according to four pillars, namely, how the Principles can best advance: Prevention; Protection; Participation by Survivors; and Relief and Recovery. While presented as distinct pillars, there is a great deal of overlap among them. While the OTP's mandate is largely limited to accountability, activists have called for a broader expansion of the Principles to cover the other pillars of the Women, Peace, and Security agenda. Activists have also called for better recognition and understanding of gender persecution under human rights law, including in general comments and recommendations produced by human rights treaty bodies.

Prevention

- Civil society has a key role to play in addressing discrimination and in preventing gender persecution and should be supported to do so. For example, public interest litigation and public awareness and education campaigns, including those focused on youth, help destigmatize marginalized people and communities and are especially effective when designed and implemented by local civil society.
- U.N. and regional human rights treaty bodies must produce general comments and recommendations to clarify that gender persecution is a violation of human rights law. States should be called to uphold their obligations to prevent and address gender persecution, including where it intersects with other forms of discrimination, and to uphold obligations protecting the rights of women, girls, and LGBTQI+ persons, who are disproportionately impacted by violence and discrimination.
- All people should receive preventive education on gender violence starting from a young age, geared toward the uprooting of discrimination based on gender, race, ethnicity, nationality, disability, and other categories. This education should reflect decolonial approaches and include the experiences of those most affected by intersecting forms of discrimination, including, for example, Indigenous and Afro-descendant peoples, and others who have faced histories of systematic sexual violence and reproductive violence committed against them as part of undermining their autonomy and self-determination.
- Where governments suppress or criminalize awareness-raising and outlaw women's and LGBTQI+ rights, creative strategies should be developed with women's and LGBTQI+ organizations to shift discriminatory views, and these should be supported by donor states and INGOs.
- Gender persecution prevention efforts should seek to eliminate discrimination against vulnerable communities that have had to flee conflict or atrocity contexts or otherwise migrate for safety.
- Robust data on gender, not just sex, is crucial for understanding and preventing gender persecution. Data must be rigorously collected and should be disaggregated according to gender, race, ethnicity, disability, and other demographic considerations.
- States should support and implement existing mechanisms focused on preventing and addressing gender persecution and all gender crimes. For example, the Preventing Sexual Violence Initiative, launched by the United Kingdom, has supported civil society and governments to create and implement prevention, documentation, and accountability best practices guides. Additionally, Canada's Truth and Reconciliation Commission's Calls to Action and the Public Inquiry into MMIWG's 231 Calls to Justice reflect advocates' calls for mechanisms to ensure their rights are realized, including a declaration that international oversight is needed. New initiatives should build on these and other existing mechanisms.



- Effective gender persecution prevention requires law enforcement and judicial actors to be trained in and adhere to best practices for investigating and ensuring accountability for gender violence, whether it occurs during or outside of conflict. Training should address gender, racial, ableist, or other biases that can cause law enforcement to ignore or dismiss gender violence and should be designed to prevent state actors' participation in discriminatory behavior and gender violence.
- Peoples and communities that face historic discrimination, including, for example, women, LGBTQI+ people, religious and ethnic minorities, Indigenous and Afro-descendant peoples, and people with disabilities, should be meaningfully consulted in constitutional reviews and for legislation meant to prevent discrimination.

Protection

- Justice processes for gender persecution must include safety guarantees for participants who use protocols designed with survivor and victim services organizations. State-level protection should include effective collaboration among police, prosecutors, and judges to recognize and respond to gender persecution.
- National and international organizations should train police, prosecutors, judges, documenters, and first responders on gender persecution and gender-based crimes. Increased policing does not equate to increased protection without education and training.
- Justice personnel, including law enforcement, should be trained to understand that survivors face the possibility of retaliation or other risks when they return to their communities. Training should include information about safe spaces accessible to survivors, especially those located in remote places.
- Protection protocols should account for the collective nature of attacks and should address the impact of gender-based crimes on peoples and communities as well as on individuals, and they should be designed with those impacted collectivities.

- Survivor- and gender-sensitive support services, including medical and psychosocial supports, should be made available to those seeking accountability.
- Legal system responses should consider the risk of retaliation against survivors and witnesses, including the fact that in some countries people may be arrested if they have opened a case alleging abuse or crimes based on gender.
- States should enact pathways to refugee and asylum status to ensure that victims and survivors of gender persecution and other atrocities can participate safely in justice mechanisms such as the ICC.

Survivor Participation

- Survivors of gender persecution must be central to all phases of transitional justice and should be consistently consulted in the design and implementation processes, and their input must actually be implemented.
- Initiatives should ensure impacted communities, particularly those facing multifaceted discrimination and histories of colonization, enslavement, or other atrocities, receive accessible information on their rights and on how to access justice, protection, and reparations for gender persecution. Gender-sensitive, trauma-informed, and culturally appropriate language and accurate translations of key terms are critical. Survivors should be trained on the legal components of gender persecution.
- Survivor participation should occur on surviving peoples' and communities' own terms and should prioritize survivor autonomy. The costs of participation should be covered to facilitate meaningful and comprehensive participation.
- Meaningful participation must go beyond representation in official transitional justice bodies alone.
- Larger organizations should ensure that smaller, less-resourced victims' and survivors groups are given a meaningful voice.
- Meaningful participation of gender persecution victims requires psychosocial support for survivors throughout any accountability process.



Support must be aligned with survivors’ culture and traditions, including those of LGBTQI+ communities, Indigenous and Afro-descendant peoples, and other historically marginalized communities. Support should acknowledge survivor and witness fears about safety and security when engaging with judicial and/or law enforcement.

- Justice systems should acknowledge connection to the land at all stages of the process, especially for Indigenous peoples.

- Investigators and prosecutors should use cumulative charging, including a thorough examination of all crimes in, for example, the Rome Statute, to determine if they are committed with gender and other animus. Different gender-related crimes are complementary to one another. All manifestations of gender-based crimes that may apply to a given situation should be charged.
- Professionals such as journalists, politicians, and humanitarians should incorporate the principle of “Do No Harm” to prevent retraumatizing survivors and adhere to best practices for working with gender violence survivors.

Relief, Recovery, and Reparations

Investigation and prosecution

- All investigative processes of gender-based crimes and rights violations, both during and outside of conflict, must be informed by survivors’ experiences of discrimination. Investigators must be trained to look for patterns of evidence that help identify discrimination.
- Education for investigators and judicial actors about how gender persecution manifests, as well as training about its legal elements and how to avoid discriminatory assumptions creeping into judicial approaches and opinions, is critical. This includes training on how to recognize sexual violence as discrimination, and understanding that preexisting gender discrimination or persecution can’t be used to justify gender persecution.
- All actors involved in investigative and justice mechanisms must be trained in the dynamics of gender-motivated violence as well as in trauma-aware and healing-informed responses. Justice personnel should be trained to anticipate that survivors may face shame for the events that occurred, even though they were not their fault.
- Investigators and other actors in transitional justice mechanisms must examine their own biases and take active measures to ensure gender violence is investigated seriously, particularly allegations by communities where gender violence complaints are historically ignored by authorities, such as Afro-descendant and Indigenous women and girls and Two-Spirit and LGBTQI+ people.

- Transitional justice processes should account for settings where domestic legal systems cannot and do not adequately address gender-based violence or provide security to those facing long-standing discrimination. To avoid retraumatizing survivors and their families, investigative and justice mechanisms should listen to survivors and honor their preferences for which strategies to employ.
- Women’s and LGBTQI+ civil society of diverse backgrounds should be supported and trained to document and preserve evidence in a manner consistent with international best practice standards, and by following local experts’ guidance.

Reparations

- Reparations must not simply “restore” gender persecution survivors to original conditions in situations where those conditions were discriminatory, but rather should be designed collaboratively with survivors to contribute to societal transformation. Reparations should address both individual and collective impacts of rights deprivations and crimes.
- All relief, repair, and reparations programs should be accessible and should be designed holistically with and for impacted individuals and their communities. The international community should prioritize “bottom-up” approaches grounded in the lived experiences of those affected. Gender persecution survivors should have access to health and other reparative services without mandatory crime reporting.



Reparative processes must be designed to avoid retraumatization or stigmatization of survivors.

- Repair and restoration programs for gender persecution should encompass both financial and nonmonetary reparations and should address structural inequalities; they should incorporate more than one-time payments and should not be limited to payments resulting from lengthy court processes for limited numbers of plaintiffs. Responses should include trauma support and should address collective healing. Reparation mechanisms should be available both inside the country where persecution has taken place as well as to those who have had to flee.
- Reparative projects should build on existing policies and mechanisms supporting domestic, regional, and international justice for those facing gender persecution. At the same time, a full range of remedies should be leveraged.
- Reparations should aim to prevent future occurrences. This may involve investment in societal development such as education, infrastructure, and other structural innovations. Any legislative or constitutional drafting processes stemming from transitional justice reparations processes should involve and reflect victim and survivor input.
- Reparations should memorialize the history of gender persecution to keep alive and honor survivors' experiences.
- Accountability mechanisms should be prepared to address survivors' asylum and/or refugee status if needed.
- Where domestic reparations and transitional strategies are not possible for gender persecution victims, survivor organizations should be supported in creating alternative justice avenues such as truth commissions in exile and the use of storytelling to empower survivors.

Biography

Julie Goldscheid is a Professor of Law Emeritus at CUNY School of Law and an Adjunct Professor of Law at NYU School of Law. She teaches courses on gender violence and has taught courses including civil procedure, legislation, gender equality and lawyering. At CUNY Law she also served as Senior Associate Dean for Academic Affairs. She has held positions including senior staff attorney and acting legal director at Legal Momentum (formerly NOW Legal Defense and Education Fund) and as general counsel at Safe Horizon, a leading victim services organization. She is a graduate of New York University Law School and has also taught at Yale, Columbia, Brooklyn and Penn State law schools. She serves on the board of directors of the Center for Survivor Agency and Justice (CSAJ) and the advisory board for the Free to Be Youth Project at the Urban Justice Center. In addition, she has served on the board of directors of the Stonewall Community Foundation, the NYC Lesbian, Gay, Bisexual & Transgender Community Center, and the Hetrick Martin Institute, and has been active in bar association committees and task forces.

Contact



For media inquiries, email media@newlinesinstitute.org



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1660 L St. NW, Ste. 450
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