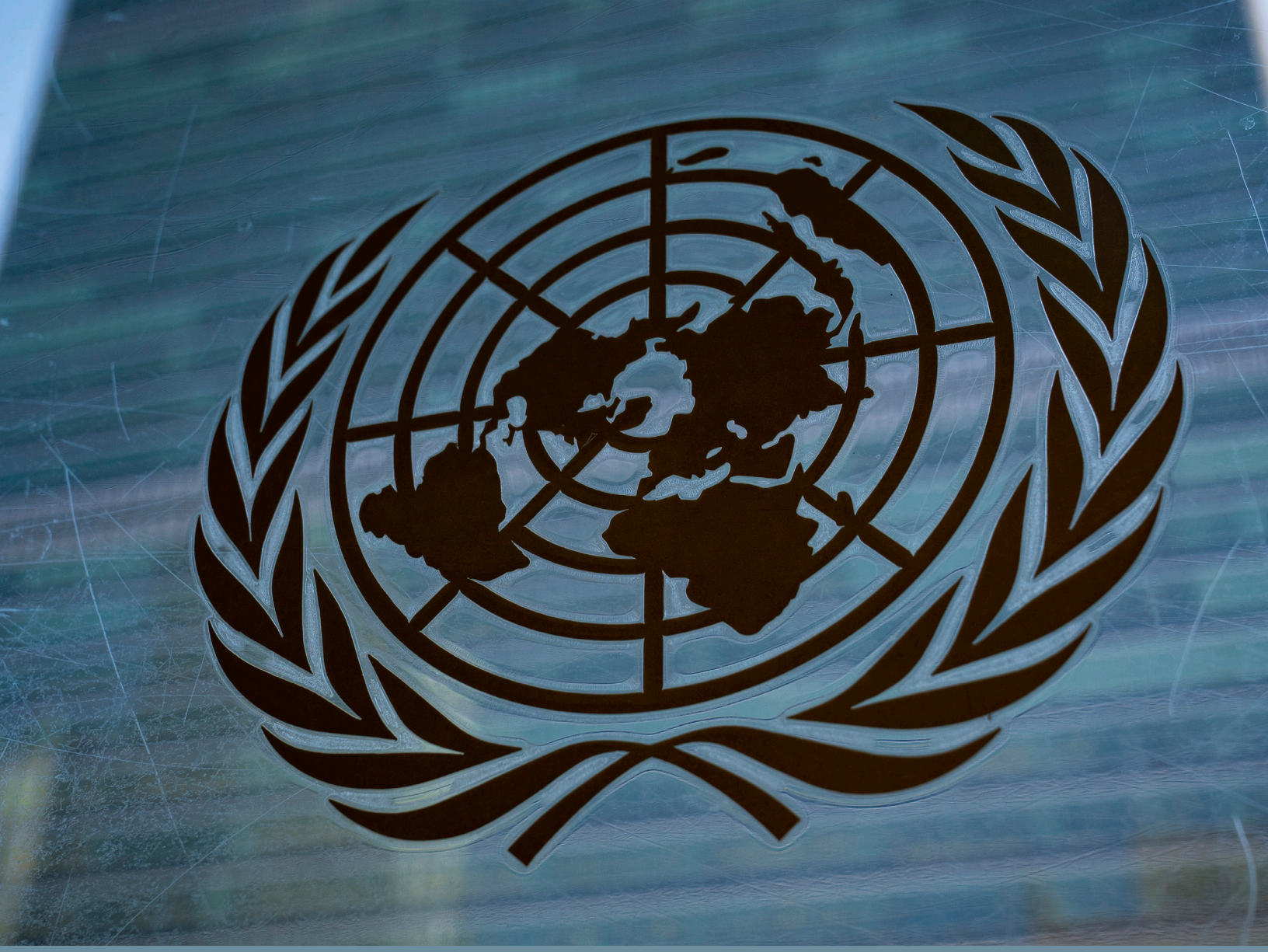

Recommendations for the International Convention on Prevention and Punishment of Crimes Against Humanity

BRIEFING PAPER | OCTOBER 2025

HUMAN RIGHTS WATCH

Columbia Law School | PREVENTION OF CRIMES AGAINST HUMANITY PROJECT

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Briefing Paper

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Introduction

A planned Convention on the Prevention and Punishment of Crimes Against Humanity, which could be adopted as soon as 2029, has the potential to enhance protections for civilians at risk globally. Participants at forthcoming meetings in New York, as part of the multi-year treaty drafting process, have a unique opportunity to shape the contours of international law. These convenings represent a long-overdue step towards addressing a gap in the global architecture to combat impunity, which does not currently have a standalone treaty dealing with this set of crimes.[1]

In late 2024, the UN General Assembly decided, through resolution 79/122, to advance efforts to negotiate a new treaty and launch a process focused on negotiating a new convention on crimes against humanity.[2] The General Assembly has laid out a timeline for this effort culminating in a "Plenipotentiary Conference" to be held for three weeks in 2028 and three weeks in 2029. To begin, in January 2026, UN member states will meet as the Preparatory Committee to discuss the existing draft and raise possible proposals for amendments. Human Rights Watch and the Prevention of Crimes against Humanity Project, Columbia Law School have developed a comprehensive set of recommendations covering both the process of negotiations as well as the substantive content of the planned treaty.

The planned convention's legitimacy will be greatly strengthened by a transparent and meaningfully inclusive negotiation process, which should go beyond symbolic or performative access. Meaningful inclusion will best be accomplished through both the active participation of individuals and groups that have been historically marginalized or effectively excluded from lawmaking processes in international law, and the active engagement of experts advancing viewpoints and critiques of international law that seek to expose the historical roots of this marginalization, including structural discrimination and coloniality.

This new instrument should both reflect today's realities and anticipate the future. It requires refinement of the 2019 International Law Commission (ILC) draft articles on crimes

[1] Richard Dicker, "Moving Ahead to a Crimes Against Humanity Treaty," Human Rights Watch, January 9, 2025, https://www.hrw.org/news/2025/01/09/moving-ahead-crimes-against-humanity-treaty (accessed October 22, 2025)

[2] United Nations General Assembly, 47th plenary meeting, 79th session, resolution A/RES/79/122 (December 4, 2024) https://documents.un.org/doc/undoc/gen/n24/400/18/pdf/n2440018.pdf (accessed October 22, 2025)

against humanity[3] that will serve as the basis for intergovernmental negotiations, along with a compilation of proposed amendments submitted by states. In this brief, we spotlight twenty recommendations on the text of the treaty organized by cluster reflecting the approach taken by Sixth Committee delegates in discussions on crimes against humanity to date. The 2019 ILC draft articles, which were prepared by preeminent public international law experts, are a valuable starting point for discussions. They represent expert consensus on key issues including *aut dedere aut judicare* (extradite or prosecute), the duty to prevent crimes against humanity, and command responsibility. Human Rights Watch and the Prevention of Crimes Against Humanity Project spotlight seven specific elements of the 2019 version of the draft articles that we believe must be retained. These provisions will require a robust and consistent defense from those member states who might seek to introduce harmful amendments that strip key protections of the ILC draft articles to weaken the scope and impact of the final text of the convention.

Even while defending these seven provisions, states should "future-proof" the text by proposing amendments that secure protections for civilians and make visible the unique needs of groups that have been historically marginalized, including Indigenous communities, women, children, people with disabilities, LGBTQ people, and survivors of crimes against humanity, among others. It is not enough to adopt any treaty: member states must seek to adopt a treaty that meaningfully improves and expands avenues for redress for survivors of crimes that are among the worst imaginable.

Human Rights Watch and the Prevention of Crimes against Humanity Project are making thirteen substantive textual proposals to strengthen the text. We hope delegations will raise and debate these proposals in the January 2026 Working Group and put forward amendments reflecting these recommendations before April 30, 2026. While proposals to revise the text can be made throughout the process, only amendments submitted by the April deadline will be included in the final compilation provided by the UN Secretariat to member states.

[3] International Law Commission, Draft Articles on Prevention and Punishment of Crimes Against Humanity, Yearbook of the International Law Commission, 2019, vol. II, Part Two, https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf (accessed October 22, 2025)

On the procedural front, states participating in the process, particularly members of the cross-regional bureau leading the Preparatory Committee, will need to be intentional about dismantling barriers in international law and lawmaking spaces, and promoting active participation by a diverse group of stakeholders. To facilitate the most inclusive and effective treaty negotiations process, we are making five procedural recommendations to member states with the hope that the process yield not only the development of an effective crimes against humanity treaty, but also a strong model for other multilateral negotiations. In doing so, states can take a preliminary step toward pioneering a more decolonial approach to international lawmaking.[4] Ideally, this process can, in turn, be replicated in the implementation of the treaty at a national level.

[4] John Reynolds and Sujith Xavier, "Dark Corners of the World: TWAIL and International Criminal Justice," *Journal of International Criminal Justice,* 14:4, September 16, 2016, pp. 959-983, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2853766 (accessed October 22, 2025); Carsten Stahn, "Reckoning with colonial injustice: International law as culprit and as remedy?" *Leiden Journal of International Law*, 33:4, December 2020, pp. 823 – 835, https://www.cambridge.org/core/journals/leiden-journal-of-international-lawLeiden (accessed October 22, 2025); Naz Khatoon Modirzadeh, "Let Us All Agree to Die a Little: TWAIL's Unfulfilled Promise," *Harvard Journal of International Law,* 65:1, Winter 2023, pp 79-131, https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/HILJ-651-Modirzadeh-1.pdf (accessed October 222, 2025).

Procedural	Key Text to Safeguard from Regressive Proposals	Amendments to ILC Text
1. Expanded non-state stakeholder participation including by non-ECOSOC CSOs and other historically marginalized groups 2. Voting as needed 3. Webcast, translation, interactive debates 4. Diverse member state delegations 5. Regional consultations	1. Implementation in national law with no primacy or priority of jurisdiction (cluster 3) 2. Non-refoulement (cluster 5) 3. No definition of gender (cluster 2) 4. Duty to extradite or prosecute (cluster 3) 5. Command responsibility (cluster 3) 6. No superior orders defense (cluster 3) 7. Liability for legal persons (cluster 3)	1. Non-discrimination (cluster 1) 2. No reservations (cluster 1) 3. No amnesties, pardons or immunities allowed for crimes against humanity (cluster 3) 4. Strengthen duty to prevent (cluster 2) 5. Bolster fair trial guarantees under national law including no military courts and excluding children from prosecution in adult system (cluster 5) 6. Set the age for a child as under 18 (cluster 5) 7. Passive personality jurisdiction (cluster 3) 8. Add treaty body mechanism (cluster 4) 9. Add 5 new crimes to list in article 2(1) including slave trade, starvation, reproductive violence, forced marriage, and use and recruitment of children by state and non-state actors. (cluster 2) 10. Amend definition of apartheid in article 2(h) to include gender as a prohibited ground (cluster 2) 11. Modify or clarify definition of 5 existing crimes in article 2(2) including persecution, extermination, deportation & forcible transfer, enforced disappearance, and forced pregnancy (cluster 2) 12. Participation by victims and survivors (cluster 5) 13. Reparations (cluster 5)

Recommendations

Procedural Recommendations

States at the Preparatory Committee in January 2026 and during the four-day resumed session in 2027 will undertake the task of developing the procedural framework and substantive groundwork for the Plenipotentiary Conference. Upon coming into force, this new treaty will strengthen the global justice architecture and help ensure that perpetrators of these crimes can be held accountable, regardless of where the crimes occur. In a moment where crimes against humanity are taking place in almost every region of the world, this treaty is essential. To support this effort, we offer five specific recommendations on best practices for inclusive negotiations.

(1) Non-state stakeholder participation

States should develop modalities for effective non-state stakeholder participation in the plenipotentiary conference and April 2027 session of the Preparatory Committee. This will be a key benchmark for the success of the Preparatory Committee's January 2026 meetings. Resolution 79/122 provides that a "limited" number of representatives from each civil society organization that already holds consultative status with the United Nations Economic and Social Council (ECOSOC) will be allowed participate in the 2028/2029 Plenipotentiary Conference and the preparatory committee in 2026 and 2027. The resolution indicates that substantive discussions will be held in a working group convened expressly for the duration of the session. To honor the intent of the language in Resolution 79/122, it is essential that the bureau make clear that the representatives from ECOSOC accredited organizations will be accorded access to these working group meetings as well.

Member states are directed to use the Preparatory Committee in January 2026 to consider the participation of non-state stakeholders who do not already have an accreditation through the ECOSOC in the rest of the process. States must extend participation privileges to these stakeholders. To be credible, the treaty will need to reflect the concerns of the global majority. Survivors' groups, experts, women, people with disabilities, children, and civil society organizations without ECOSOC accreditation can all bring expertise and lived experience of crimes against humanity into the discussion. States and other stakeholders should proactively address obstacles to wider participation in the negotiations, including

costs, language, accessibility, and location, among others. Discussions at the Preparatory Committee are expected to proceed under the General Assembly rules of procedure, so decisions on participation modalities can be taken based on a majority vote.

(a) Participation of civil society without ECOSOC accreditation

To boost the credibility of the treaty drafting process and encourage the broadest possible engagement from stakeholders, the January 2026 Preparatory Committee should decide that going forward, they will allow representatives of civil society organizations without ECOSOC accreditation to participate as observers. ECOSOC accreditation can be challenging for civil society organizations to secure and maintain, especially for groups with fewer resources, and is beholden to the whims of the notoriously byzantine[5] NGO Committee of the United Nations.[6]

Civil society organizations, whether they maintain an ECOSOC accreditation or not, should be able to attend the Preparatory Committee sessions and the Plenipotentiary Conference, receive copies of official documents, make their materials available to delegations, and address meetings through a limited number of delegates.[7] There should also be mechanisms put in place for the specific purpose of enabling civil society organizations, including non-ECOSOC organizations, to follow and participate in the process virtually; for example by ensuring that the discussions are webcast and that individuals who are not

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[5] Michelle Langrand, "A UN body is keeping NGOs locked out – states are pushing for reform," G*eneva Solutions,* July 21, 2024, https://genevasolutions.news/human-rights/a-un-body-is-keeping-ngos-locked-out-states-are-pushing-for-reform (accessed on October 22, 2025) (Data collected by the ISHR show that the situation has worsened. Only 103 NGOs were greenlighted in 2024– roughly 22 per cent of applications. That's an all-time low, according to ISHR's Pai, who also points out that human rights organizations are particularly targeted.)

[6] Maithili Pai and Francisco Pérez, "NGO Approvals by UN Could Soon See 'Long-Overdue' Reforms," *PassBlue*, March 5, 2024, https://www.passblue.com/2024/03/05/ngo-approvals-by-a-un-committee-could-finally-see-long-overdue-reform/ (accessed on October 22, 2025); Louis Charbonneau, "UN Member States Should Accredit Blocked Human Rights Groups," commentary, Human Rights Watch dispatch, July 14, 2022, https://www.hrw.org/news/2022/07/14/un-member-states-should-accredit-blocked-human-rights-groups (accessed on October 22, 2025); Eleanor Openshaw, "UN Special Rapporteur condemns practice of UN NGO Committee in silencing civil society," International Service for Human Rights, May 27, 2016, https://ishr.ch/latest-updates/un-special-rapporteur-condemns-practice-un-ngo-committee-silencing-civil-society/ (accessed on October 22, 2025).

[7] An ad hoc accreditation process managed by the President of the General Assembly has been an important channel for participation of non-state stakeholders. For example, the resolution mandating the recent High-Level Conference on the Situation of Rohingya Muslims and Other Minorities in Myanmar requested "the President of the General Assembly to draw up a list of representatives of other relevant non-governmental organizations, civil society organizations, think tanks and academic institutions, who may participate in the High-level Conference, taking into account the principle of transparency, with due regard for gender parity and youth representation, to submit the proposed list to Member States for their consideration on a non-objection basis and to bring the list to the attention of the Assembly for a final decision by the Assembly on participation in the High-level Conference." Those with ECOSOC standing were not required to go through the ad hoc process. Since the UN's Department of Global Communications civil society unit also accredits organizations entitling them access to UN grounds, the Preparatory Committee could decide that groups with these passes should be allowed to have their representatives participate in the negotiations without going through the ad hoc accreditation.

present in New York can add their name to the queue to make interventions through video link. Such measures are essential given declining funding for civil society groups and increased barriers to obtaining visas for the US.

In the context of recent intergovernmental negotiations for a Cybercrime Convention, states agreed to allow a broad range of non-state actors to participate, including non-governmental organizations without ECOSOC accreditation, academic institutions, and the private sector.[8] These "multi stakeholder" participants were allowed to attend open sessions, deliver oral statements during substantive discussions by member states, and make written submissions of up to 2,000 words.[9] In addition to having access to the main sessions as observers, multi-stakeholders were specifically consulted in the intersessional period by the chair of the ad hoc committee who organized consultations and later published a report detailing their contributions on the website of the ad hoc committee.[10]

In the context of negotiations on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ), the fourth session of the Inter-governmental Conference (IGC-4) in 2022 was criticized for not allowing non-state stakeholders to attend in-person or speak.[11] Since then, Indigenous groups, in particular, have united to urge that they be allowed greater participation in the committees and subsidiary bodies associated with the implementation

[8] UN General Assembly, Report of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes on its session on organizational matters held on 24 February 2022, UN Doc. A/AC.291/6* (March 2, 2022), https://docs.un.org/en/A/AC.291/6, (accessed on October 22, 2025).

[9] Ibid.

[10] Chair's Report of the Fifth Intersessional Consultation of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, UN Doc. A/ AC.291/CRP.17 (July 13, 2023), https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Pre-session-docs/2313717E.pdf (accessed on October 22, 2025).

[11] Biodiversity Beyond National Jurisdiction treaty negotiations allowed limited civil society participation, well below the standards adopted under other multilateral environmental negotiations, both in terms of participation and access to information. Elisa Morgera, Bernadette Snow, and Mia Strand, "Participations at BBNJ Negotiations Matters," One Ocean Hub, April 11, 2022, https://oneoceanhub.org/participation-at-bbnj-negotiations-matters/ accessed on October 22, 2025); Ambassador Rena Lee (Singapore), Reaching Shore – Multilateralism and the Value of International law, The 2023 Dag Hammarskjöld Lecture, Uppsala, September 16 2024, https://www.daghammarskjold.se/wp-content/uploads/2024/12/2023-lecture-rena-lee-digital.pdf accessed on October 22, 2025) ("While I did limit certain aspects of the negotiations to States, particularly towards the end, by and large, observers were allowed to be in the room, to express their views and to follow proceedings, either in person or through weblinks when physically not possible. And observers did more, including engaging with States, sharing position papers, helping to organize workshops, seminars, to enhance delegates' understanding of the various issues. Where I could, I tried to foster a more open, more transparent process, with greater involvement of stakeholders")

of the BBNJ.[12] This advocacy yielded dividends with access for civil society organizations in these sessions.

Outside of New York, in the context of the Hague-Ljubljana Convention negotiations, civil society observers participated in the plenary sessions of the conference and in the working group discussions.[13] This included the opportunity to make statements on the floor, as well as submit written statements and observations.[14] Participants have reflected that "the ability to provide input in the latter working group sessions was also invaluable, particularly as the negotiations entered a more complex phase."[15]

The bureau for the crimes against humanity process should aspire to the "gold standard" for participation. At UN headquarters in New York, Demark and Costa Rica lead the UNmute initiative, which is a joint effort by over sixty member states and dozens of civil society organizations to promote efforts to move away from token recognition of civil society in a shift towards equitable and meaningful participation.[16] In 2021, the member states committed to "ensure meaningful participation" of civil society at "all stages of UN meetings and processes."[17] Reasonable accommodation should be provided when necessary to facilitate the participation of people with disabilities.[18]

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[12] Sonam Lama Hyolmo, "'We belong to one ocean': Indigenous leaders push for seat at the table of high seas biodiversity treaty," Mongabay, April 29, 2025,

https://news.mongabay.com/2025/04/we-belong-to-one-ocean-indigenous-leaders-demand-seat-at-the-table-of-high-seas-biodiversity-treaty/ (accessed on October 22, 2025)

[13] Mutual Legal Assistance Diplomatic Conference Rules of Procedure, Rule 33, "General Rights of Observers," May 15, 2023, https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/MLA-Initiative-Rules-of-Procedure-English.pdf (accessed on October 22, 2025).

[14] Ibid.

[15] Priya Pillai, "Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations," *Opinio Juris*, August 4, 2023, https://opiniojuris.org/2023/08/04/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-lessons-learned-civil-society-engagement-in-treaty-negotiations/ (accessed on October 22, 2025).

[16] UNMute Civil Society, "About," https://unmuteinitiative.org/unmuteabout/ (accessed on October 22, 2025).

[17] 52 member states committed in 2021 to a set of recommendations, including a promise to enable meaningful participation. UNMute Civil Society, "Recommendations to ensure meaningful civil society participation at the United Nations: From ambition to action," June 2021, https://action4sd.org/wp-content/uploads/2021/09/UNmute-Recommendations-for-meaningful-civil-society-participation-at-the-UN.pdf accessed on October 22, 2025).

[18] During the negotiation process for the CRPD, civil society, particularly disabled peoples' organizations (DPOs), were very actively involved in the drafting. The presence of DPOs was also reflected in the 800 or so persons who registered for the Ad Hoc Committee's final session, as well as in their involvement in subsequent events, such as the signing ceremony on March 30, 2007. A broad coalition of DPOs and allied NGOs from international, regional and national levels, formed the International Disability Caucus (IDC), which developed into the negotiation's strongest civil society voice. Marianne Schulze, "Understanding the UN Convention on the Rights of Persons with Disabilities," International Disability Alliance, July 2010, https://www.internationaldisabilityalliance.org/sites/default/files/documents/hi_crpd_manual2010.pdf accessed on October 22, 2025)..

Expanded participation for non-state stakeholders is best accomplished through an open registration system managed by the President of the General Assembly. Participants should be allowed to register and be accorded temporary UN passes to access the headquarters building during the days of relevant meetings, with equal rights as other observers at both the second Preparatory Committee and the Conference of Plenipotentiaries.

While a "no-objection" procedure is considered standard practice for registration procedures involving the UN, practically, a single member state should not be allowed to unilaterally veto the participation of a civil society group without reasonable and credible justification.[19] Instead, member states committed to civil society participation should continue their ongoing practice of challenging the list of excluded civil society groups by reinstating them and then allowing other states request a vote on the reinstatement.[20] This results in an approach of reverse consensus, by which champions for civil society access would presume acceptability of any registered civil society group and seek their inclusion on the list of participants. This should yield access for most unless a majority of member states voted or voiced a concern during the vote to challenge reinstatement. [21]

(b) Participation of survivors' groups and networks

It is particularly important that victims and survivors of crimes against humanity are part of the treaty-making process and are full participants in decisions that impact them. Survivor activists and survivors' groups should be deeply involved throughout the negotiation process, and survivors' voices and priorities should be fully represented in the final provisions of the treaty.

States and the UN should map victim and survivor groups who wish to participate in the inter-governmental negotiations process and direct resources towards supporting their participation. Intentional outreach and funding for this work will better enable these

[19] Suggest requiring any state making an objection to be required to offer a rationale for its practice.

[20] UN General Assembly resolution 79/273 (OP9) provides for this framework in practice, asking requests the President of the General Assembly "to submit the proposed list to Member States for their consideration on a non-objection basis and to bring the list to the attention of the Assembly, in a timely manner, for a final decision by the Assembly on participation in the high-level meeting". UN General Assembly, March 6 2025, A/RES/79/273 (March 10, 2025), https://documents.un.org/doc/undoc/gen/n25/063/77/pdf/n2506377.pdf (accessed on October 22, 2025).

[21] Any Member State can submit a draft amendment to a draft decision in order to reinstate an NGO vetoed by another Member State during the "non-objection" process done via letter to the President of the General Assembly. Normally there is a vote on the modalities resolution and on the draft amendment. Draft decision submitted by the President of the General Assembly, UN Doc. A/79/L.102, July 3, 2025, https://docs.un.org/en/A/79/L.102 (accessed on October 22, 2025).; Switzerland:* amendment to draft decision A/79/L.102, UN Doc. A/79/L.110, July 18, 2025, https://docs.un.org/en/A/79/L.110 (accessed on October 22, 2025).

communities to take a leadership role in the development of the convention. Full and meaningful participation of survivors on a consistent and non-tokenistic basis will help ensure another key objective, which is ensuring that the convention, in both the crimes it prohibits and the procedures it lays out for ensuring accountability for those crimes, is victim and survivor-centered.

(c) Participation of Indigenous communities

Building on the recent practice in Geneva at the Human Rights Council, where Indigenous communities have been given an opportunity to participate without needing to be organized as a non-governmental organization,[22] and the recommendations of the Stocktaking Report,[23] Indigenous communities should be entitled to participate in negotiations around the crimes against humanity convention in their own right, instead of requiring that they come under the banner of a non-governmental organization. The exclusion of Indigenous voices from international legal processes has perpetuated their marginalization, a problem only further exacerbated by the fact that the mechanisms for addressing these crimes are often inaccessible to the victims themselves.[24]

Like others, the Preparatory Committee should allow representatives of Indigenous communities the opportunity to attend formal meetings, copies of official documents, make their materials available to delegations, and address meetings through a limited number of delegates. Considering the many historic[25] and contemporary[26] example of Indigenous communities being impacted by crimes against humanity and persistent

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[22] OHCHR, "Participation of Indigenous Peoples at the UN is crucial for advancing their rights," September 24, 2024, https://www.ohchr.org/en/stories/2024/09/participation-indigenous-peoples-un-crucial-advancing-their-rights (accessed on October 22, 2025).

[23] UN Office of the High Commissioner for Human Rights, A/HRC/57/35: Stocktaking report compiling existing procedures on the participation of Indigenous Peoples at the United Nations, highlighting existing gaps and good practices - Report of the Office of the United Nations High Commissioner for Human Rights, July 31, 2024, https://www.ohchr.org/en/documents/thematic-reports/ahrc5735-stocktaking-report-compiling-existing-procedures-participation (accessed on October 22, 2025).

[24] The Nations International Criminal Tribunal (NICT) provides an international mechanism to enforce UNDRIP and address genocide. 66 Indigenous nations worldwide have ratified it. The NICT holds the potential to provide Indigenous nations with a practical and enforceable avenue through which to seek justice—to charge, try, and convict those responsible for historical injustices and to address ongoing conflicts between nations and states.

Center for World Indigenous Studies, "Nations International Criminal Tribunal," https://cwis.org/nations-international-criminal-tribunal/, (accessed on October 22, 2025).

[25] Tracy Weaver, "Exploring justice for crimes against humanity perpetrated on Indigenous Peoples," Queens University, August 19, 2025, https://law.queensu.ca/news/Exploring-justice-for-crimes-against-humanity-perpetrated-on-Indigenous-Peoples (accessed on October 22, 2025).

[26] For example Yazidi community of Iraq. See: Office of the High Commissioner for Human Rights, "Ten years after the Yazidi genocide: UN Syria Commission of Inquiry calls for justice, including accountability and effective remedies, for ISIL crimes," August 2, 2024, https://www.ohchr.org/en/press-releases/2024/08/ten-years-after-yazidi-genocide-un-syria-commission-inquiry-calls-justice (accessed on October 22, 2025).

concerns about their representation at the international level, it is critical to commit to adopting modalities that promote their inclusion in these negotiations.

(d) Participation of technical experts with essential knowledge

Resolution 79/122 urges states to include within their delegations' "experts" competent in the field to be considered. However, a more robust consultation would allow experts without a governmental delegation affiliation to participate in their own personal capacities, adding their essential knowledge to the process. This is particularly important due to the extensive expertise that exists in international criminal law in academia, including among experts who may not feel comfortable joining a government delegation, or may not share their government's positions regarding the draft articles. Including a modality that provides for the participation of technical experts with essential knowledge will ensure that the process reflects the rigor that the topic demands.

(e) Participation by women and girls

Crimes against humanity are often gendered or have gendered impacts, affecting women and girls differently and sometimes disproportionately. Yet, the gendered effects of these crimes have often been overlooked or disregarded in the drafting and implementation of international law. The negotiation process for this treaty is an opportunity to correct past shortcomings that have left women and girls without adequate protections under international law.

(f) Participation of children

Children should be given a chance to share their views through meaningful participation of children or child-led organizations in the treaty drafting process, including at the Plenipotentiary Conference.[27] Children's rights are implicated in multiple articles of the draft treaty, and they deserve to be in the room where their rights are being discussed, negotiated, and codified.

We recommend drawing on the positive experiences of the open-ended inter-governmental working group on an optional protocol to the Convention on the Rights of the Child, which was tasked by the Human Rights Council in 2024 to "give children the opportunity to express their views on the topic and substance of the proposed optional protocol, to

[27] Participation goes beyond consultations, which are another important good practice. For example, Committee on the Rights of the Child heard from children in "consultations" as it drafted its general comments on children and the environment, access to justice and sustainable development but then the Human Rights Council expanded upon this practice by mandating the participation of five children in the intergovernmental negotiations around the right to pre-primary and secondary education.

facilitate their expression, including through child-friendly information, to listen to children's views and to act upon them, as appropriate."[28] In September 2025, five children were given the opportunity to attend negotiations in Geneva.[29] Speaking to the assembled delegations, the UN Deputy High Commissioner for Human Rights affirmed that the presence of children in the sessions is not just symbolic but "essential."[30]

(g) Participation of people with disabilities

More than a billion people worldwide have a disability,[31] yet their representative organizations are often excluded from the development of international legal and regulatory frameworks. This exclusion would be particularly problematic in these negotiations because crimes against humanity can disproportionately impact people with disabilities, along with the persistent barriers they face to participation. These barriers include physical, communication, institutional, and attitudinal barriers that undermine their right to a seat at the negotiating table and prevent their full and meaningful involvement in decision-making processes.

To ensure inclusive and accessible treaty negotiations, the procedural framework for the Plenipotentiary Conference and the Preparatory Committee sessions should guarantee the full and effective participation of people with disabilities and their representative organizations, including those representing women with disabilities, or children with disabilities. This includes ensuring transparency in consultation processes, providing appropriate and accessible information, and offering reasonable accommodation when required. These measures are aligned with the principles and obligations set out in the Convention on the Rights of Persons with Disabilities and UN Security Council Resolution

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[28] Children have been called on to participate in other treaty negotiations. See: UN Human Rights Council, Open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child on the rights to early childhood education, free pre-primary education and free secondary education, UN Doc. A/HRC/56/L.8/Rev.1, July 8, 2024, (para. 5: "Requests the working group to ensure the meaningful participation of children, in an ethical, safe and inclusive manner, and in particular to give children the opportunity to express their views on the topic and substance of the proposed optional protocol, to facilitate their expression, including through child-friendly information, to listen to children's views and to act upon them, as appropriate."), https://documents.un.org/doc/undoc/ltd/g24/115/10/pdf/g2411510.pdf (accessed on October 22, 2025).

[29] Child Rights Connect, "CRC Optional Protocol on free pre-primary and secondary education: Child Participation," https://childrightsconnect.org/crc-op-child-participation/ (accessed on October 22, 2025).

[30] Office of the High Commisisoner of Human Rights, First Session of the open-ended intergovernmental working group on an optional protocol to the Convention on the Rights of the Child on the rights to early childhood education, free pre-primary education and free secondary education: Statement of the Deputy High Commissioner, Ms. Nada Al-Nashif, September 1, 2025, https://www.ohchr.org/en/hr-bodies/hrc/wg-opcrc-education/session1 (accessed on October 22, 2025).

[31] World Health Organization, "Disability," March 7, 2023, https://www.who.int/news-room/fact-sheets/detail/disability-and-health (accessed on October 22, 2025).

2475.[32] In line with the inclusive equality principle enshrined in article 15 of the Convention on the Rights of Persons with Disabilities, accessibility and reasonable accommodation measures should be provided to ensure the participation of persons with disabilities with access to 'all the spaces of public decision-making, on an equal basis with others."

(2) Taking votes as needed

The consensus tradition of the Sixth Committee, which allows a single UN member state, or a small group of states, to block action on a text by refusing to join a resolution taking it forward, is uncommon in the UN where voting is the norm.[33] In the six years since the ILC submitted its draft articles to the Sixth Committee, there were multiple instances where adherence to consensus resulted in undue delay and obstacles to the negotiating process. Indeed, only when Mexico shifted the momentum by introducing a resolution in 2022 and raised the specter that opponents' tiny minority would be revealed in a vote, was the Committee able to move forward.[34] The 2024 resolution laying out the road ahead provides that the rules of procedure of the General Assembly shall apply *provisionally* at the Conference. The General Assembly rules of Procedure do allow voting. As they develop and refine the procedural modalities for the Plenipotentiary Conference, member states engaging should be willing to call votes, if required.

(3) Webcast, translation and interactive format

Human Rights Watch recommends that the Preparatory Committee incorporate the successful elements of the Sixth Committee resumed sessions, including webcast, translation into the UN's official languages, and an interactive format.[35] Implementing these elements into meetings for the Preparatory Committee and the Plenipotentiary Conference will boost inclusivity and efficiency. Webcast, translation and modalities allowing virtual participation would also help boost inclusion of groups who might

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[32] Article 4(3) of the CRPD imposes a general obligation for States to "closely consult with and actively involve persons with disabilities," throughout the Convention's national implementation and decision-making processes on "issues relating to persons with disabilities." This duty to consult is considered "one of the expressions" of the Convention's general objective and principle of the "full and effective participation" of persons with disabilities in Articles 1 and 3. Convention on the Rights of People with Disabiliteis, Article 4, General Obligations, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html (accessed on October 22, 2025).

[33] The tradition of consensus at the sixth committee is not mandated by the rules of procedure.

[34] Richard Dicker and Paloma van Groll, "UN Talks on Crimes Against Humanity Treaty Make Progress, But Also Reveal Hurdles," *Just Security,* December 5, 2022, https://www.justsecurity.org/84360/un-talks-on-crimes-against-humanity-treaty-make-progress-but-also-reveal-hurdles/ (accessed on October 22, 2025).

[35] Member states engaged in the process should ensure that the costs associated with this are covered, either through the regular budget or by voluntary contributions.

experience either financial or regulatory barriers to fparticipation in meetings being held in New York, which require travel and visas.

The "interactive" elements incorporated into meetings in 2023 and 2024 are also worth retaining. In particular, the "mini debate" structure generated key opportunities for genuine exchange. Delegations should once again be permitted to request the floor (by pressing their buttons) to speak in connection with a statement made during the regular debate. This will allow delegates to seek further clarification from the speaker who made the main statement or express a view concerning that statement.

Multiple delegations should be permitted to request the floor to speak, without restriction on the number of interventions by each delegation. Delegations should also be encouraged to comment on the views expressed by other delegations during the interactive segment. Most importantly, the delegation whose statement was the subject of the interactive debate should be permitted to respond, with no restriction on the number of such responses.

(4) Dispatching diverse member state delegations

Given how important the opportunities are for strengthening more intersectional approaches to justice and accountability through this treaty process, states should include gender, children's rights, disability, and non-discrimination experts in their negotiation teams. It is essential to bring such expertise together with criminal law expertise. When assembling their delegations, states should comply with CEDAW Committee guidance, which recommends that states should "achieve and maintain [gender] parity in…the composition of all international delegations."[36]

(5) Regional consultations outside of the planned New York meetings

Considering the main meetings associated with the negotiations are scheduled to take place at UN headquarters in New York, a series of substantive regional consultations with input from a broad range of stakeholders, including regional legal experts without affiliation to an NGO, is critical to give the process legitimacy globally. States sitting on the bureau from each regional group should lead in convening regional consultations in conjunction with the state leading the group's legal advisors at the sixth committee of the UN General Assembly.

[36] Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation 40, 2024, UN Doc. CEDAW/C/GC/40, October 25, 2024, https://docs.un.org/en/CEDAW/C/GC/40 (accessed on October 22, 2025).

It is critical that the organizers design modalities for participation in the regional consultations that actively enable robust participation by Indigenous communities, women, children, people with disabilities, LGBT people, survivors' groups, and experts in all stages of the treaty- development process. Reasonable accommodation should be provided when necessary to facilitate the participation of people with disabilities.[37]

Historically, in addition to financial constraints, securing visas and permission to travel to the US has been a challenge for those from the Global South. These constraints have only been exacerbated by the US government's ban on the issuance of visas to some nationalities and its introduction of social media screening and binary gender requirements. Absent a shift in policy, these restrictions would also apply to civil society groups seeking to travel from around the world for the treaty negotiations and Preparatory Committee sessions.[38] The US government's ban on new visas includes countries where crimes against humanity have been and are being actively committed, and there are nationals of those countries who would have important insights to share that should inform the treaty process. These perspectives are key for drafting, designing, negotiating, implementing, and monitoring a convention with global legitimacy.

Substantive Proposals by Cluster

As soon as January 2026, states will have an opportunity to debate and discuss various proposals for amendments to the existing ILC draft articles in the context of the meetings of the "working group," which will be holding discussions by "thematic cluster." The thematic clusters provided a useful organizational tool for discussions of these issues at the sixth committee. This paper follows the same structure.

All amendment proposals submitted by April 30, 2026 will be included in the compilation that the UN Secretariat will assemble for consideration by the Plenipotentiary Conference. While this phase of the amendment process represents a key opportunity to strengthen the

[37] During the negotiation process for the Convention on the Rights of Persons with Disabilities, civil society, particularly disabled peoples organizations (DPOs), were key. The presence of DPOs was also reflected in the 800 or so persons who registered for the Ad Hoc Committee's final session, as well as in their involvement in subsequent events, such as the signing ceremony on March 30, 2007. A broad coalition of DPOs and allied NGOs from international, regional and national levels, formed the International Disability Caucus (IDC), which developed into the negotiation's strongest civil society voice. Marianne Schulze, "Understanding the UN Convention on the Rights of Persons with Disabilities," International Disability Alliance, July 2010, https://www.internationaldisabilityalliance.org/sites/default/files/documents/hi_crpd_manual2010.pdf (accessed on October 22, 2025).

[38] Human Rights Watch has joined other organizations in raising concerns about the Trump administration's visa restrictions and heightened immigration screenings at borders in the context of the World Cup. See: Human Rights Watch, "FIFA Should Press US on Immigration Policies," Human Rights Watch news release, July 3, 2025, https://www.hrw.org/news/2025/07/03/fifa-should-press-us-on-immigration-policies (accessed on October 22, 2025).

convention text, it is not the sole opportunity for states to put forward amendments. Indeed, states can make proposals throughout the process until adoption by submitting them to the UN Secretariat. Human Rights Watch and the Prevention of Crimes against Humanity Project are making thirteen substantive proposals for changes to the 2019 draft articles promulgated by the International Law Commission. Taken together, these amendments will bolster the text and keep it fit for purpose into the next century. A consolidated redline including all textual suggestions is being released as a companion to this brief.

Once states receive and begin to review the compiled text of the draft articles prepared by the UN Secretariat, they will also have an important responsibility to safeguard existing elements of the draft articles that make the treaty effective and progressive. Indeed, the amendment process opens the text to potentially damaging amendments seeking to hollow out the core protections already enshrined. States must voice support for core provisions if they come under attack. If the need arises, member states should be prepared to oppose any amendments that weaken current draft provisions that enumerate important advances in the development and codification of the law.

This document spotlights seven elements of the 2019 draft articles promulgated by the International Law Commission which should be preserved without amendments. In thirteen instances we are proposing specific textual edits to the existing articles (new text in bold when under discussion, italics when not). This section includes a detailed rationale for these twenty amendments, by cluster.

(1) Cluster one on introductory provisions

(a) Add a robust consistency and non-discrimination provision

We recommend adding a new article, marked as 1 bis, confirming that the treaty will be interpreted in a non-discriminatory way and in line with international human rights and humanitarian law standards. The proposed addition would "future-proof" the treaty by enabling interpretations of the treaty to incorporate evolving progressive developments in international human rights, including the work of regional and UN human rights bodies. The mandate to interpret in line with international human rights law will also support harmonizing standards of justice across national and international courts and tribunals.

These provisions are common across international instruments and provide consistency by confirming that states will apply and interpret the treaty's provisions consistent with

international human rights and humanitarian law.[39] Over four hundred civil society organizations, including Human Rights Watch, issued a joint statement spotlighting the need for such a provision,[40] and the 2010 proposal for a draft convention on crimes against humanity from civil society and legal scholars also reflects this principle in its text.[41]

To future-proof the text, we recommend using the phrase "without discrimination of any kind or on any ground" without including a list of grounds. This phrasing avoids the ambiguities and tensions created when a basis of discrimination is not included. Since any list would necessarily be incomplete and merely illustrative, it works more elegantly to avoid a list in this article.

Textual suggestions

The text of the new article 1 *bis* should read,

> **The application and interpretation of this convention must be consistent with norms and standards of international human rights law and be without any discrimination of any kind or on any ground, without exception."**

(b) Prohibiting reservations

Reservation by states to the treaty must be prohibited.

The draft articles prepared by the International Law Commission were silent on the question of reservations. However, state practice has shown that for conventions of this nature, it is near impossible to draft reservations that do not undermine the object and

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[39] United Nations Office of the High Commissioner for Human Rights, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, December 16, 2005, https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation (accessed on October 22, 2025). (Article IX states at paragraph 25 "The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception." Article 21(3) of the Rome Statute mandates that the application and interpretation of the International Criminal Court's (ICC) law must be consistent with "internationally recognized human rights.")

[40] Global Justice Center, "Joint Statement in Support of Progress toward a Crimes Against Humanity Treaty," https://cahtreatynow.org/joint-statement-in-support-of-progress-toward-a-crimes-against-humanity-treaty/ last updated October 8, 2024 (accessed October 22, 2025) ("We urge states also to express overall support for an approach to the development of a crimes against humanity treaty that is gender-competent, survivor-centric, and deploys an intersectional lens. This includes ensuring the inclusion of a non-discrimination provision to apply and interpret the treaty's provisions consistent with international human rights law."

[41] Washington University School of Law, Whitney R. Harris World Law Institute, Crimes Against Humanity Initiative, "Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity," August 2010, Confidential Draft https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2019/02/EnglishTreatyFinal.pdf (accessed on October 22, 2025).

purpose of the treaty. The ongoing debate around reservations to the Genocide Convention is a case in point.[42]

The treaty must not allow reservations. Article 120 of the Rome Statute provides that no reservations may be made to the statute.[43] Prohibiting reservations will ensure that all state parties assume the same obligations in repressing crimes against humanity, create certainty about the extent of obligations, and prevent undermining the convention's integrity and moral authority.

Textual suggestions

Upon revision, the new text of article 1 *ter* should read "**No reservations may be made to this Convention.**"

(2) Cluster two on definitions and general obligations

(a) Include five additional "acts" as crimes against humanity

Member states should amend the draft article 2(1) of the draft convention to add five additional "acts", some as standalone sub paragraphs and some as phrases within the existing sub-paragraphs. In April 2024, Australia, Colombia, and Portugal argued that the draft articles' list of crimes in article 2 should be a "floor, not a ceiling."[44] National governments would remain free to prohibit other crimes too. However, we believe that the drafting of a new treaty represents a significant opportunity to explicitly add the following crimes to the list of "acts" that could constitute crimes against humanity, if committed as a part of a widespread and systematic attack on a civilian population.

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[42] Yonah Diamond, "The Invalidity of Art. IX Reservations to the Genocide Convention," *Opinio Juris,* March 12, 2025, https://opiniojuris.org/2025/03/12/the-invalidity-of-art-ix-reservations-to-the-genocide-convention/ (accessed on October 22, 2025); Michael A Becker, "Art. IX Reservations to the Genocide Convention Are Here To Stay: A Response to Diamond," *Opinio Juris*, March 14, 2025, https://opiniojuris.org/2025/03/14/art-ix-reservations-to-the-genocide-convention-are-here-to-stay-a-response-to-diamond/ (accessed on October 22, 2025).; Pranay Lekhi, "Another Genocide Convention case, another conundrum for interventions," *EJIL:Talk*, March 24, 2025, https://www.ejiltalk.org/another-genocide-convention-case-another-conundrum-for-interventions/ (accessed on October 22, 2025); Eugenio Carli, "The Sudan Genocide Case and the Legal Effect of Reservations to Compromissory Clauses in Disputes Concerning Obligations Erga Omnes Partes," *EJIL:Talk*, June 3, 2025 https://www.ejiltalk.org/the-sudan-genocide-case-and-the-legal-effect-of-reservations-to-compromissory-clauses-in-disputes-concerning-obligations-erga-omnes-partes/ (accessed on October 22, 2025); Veronica Botticelli, "The End of Treaty Reservations as We Know Them? Not Yet – Reflections on Sudan v. UAE and the Normative Weight of the Dissent," *Opinio Juris,* April 4, 2025, https://opiniojuris.org/2025/06/04/the-end-of-treaty-reservations-as-we-know-them-not-yet-reflections-on-sudan-v-uae-and-the-normative-weight-of-the-dissent/ (accessed on October 22, 2025).

[43] Amnesty International, "International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute," November 24, 2005, https://www.amnesty.org/en/documents/ior40/032/2005/en/ (accessed on October 22, 2025).

[44] UN General Assembly, 78th Session, "Delegates Raise Definitional Concerns and Discuss States' Obligation to Prevent and Punish Crimes against Humanity as Sixth Committee Resumed Session Continues," GA/L/3709, April 2, 2024, https://press.un.org/en/2024/gal3709.doc.htm (accessed on October 22, 2025).

(i) Add slave trade

"Slave trade" should be added to the list of enumerated acts that could amount to crimes against humanity.[45] Draft article 2(1) c already covers "enslavement," which courts have confirmed includes sexual acts and conduct. However, the "slave trade" which has been recognized as a preemptory or *jus cogens* norm, is prohibited under customary international law and treaty law, is problematically absent from the 2019 draft articles list.[46]

The "slave trade" is a distinct international crime covering the intent to reduce a person into—or maintain them in—a situation of slavery, or to acquire or dispose of an enslaved person with a view to maintaining them in a situation of enslavement.[47] This amendment is also important from a children's rights perspective, since both the historical and contemporary slave trade have deeply affected children. Sierra Leone made a written

[45] Human Rights Watch intentionally uses the terms "enslaved person or enslaved persons," or "person(s) reduced to slavery" rather than "slave" or "slaves." This linguistic distinction seeks to focus on the act of the perpetrator and on centering victims' humanity and not by the crimes committed against them. Our active support for the inclusion of the "slave" trade" to the list of enumerated acts in article 2(1) reflects the jus cogens characterization of the prohibition of the "slave trade," which is also reflected in treaty and customary international law. The "slave trade" is a peremptory norm and international crime, and, as such, as a legal term of art. Its use by us in this context, however, does not and is not intended to detract from our ongoing commitment to adopt language that better centers victims and their lived experiences, particularly in the context of access to justice, including reparations. It also does not indicate an acceptance of that usage of the word "slave" in other contexts to describe survivors and victims or "trade" to sanitize a transaction that was not in any way equitable.

[46] The commentaries to the draft articles on the law of treaties (1966) and the draft articles on state responsibility for internationally wrongful acts (2001) both refer to the prohibition of the trade in slaves as preemptory norms. International Law Commission, Commentary, Articles on responsibility of States for internationally wrongful acts Yearbook 2001, vol. II (Part Two), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed October 22, 2025) ("widespread agreement with other examples listed in the Commission's commentary to article 53: viz. the prohibitions against slavery and the slave trade, genocide, and racial discrimination and apartheid. These practices have been prohibited in widely ratified international treaties and conventions admitting of no exception. There was general agreement among Governments as to the peremptory character of these prohibitions at the Vienna Conference.") International Law Commission, Commentary to article 50 of the draft articles on the law of treaties, Yearbook … 1966, vol. II, document A/6309/Rev.1, Part II, p. 248, ("Some members of the Commission felt there might be advantage in specifying by way of illustration some of the most obvious and best settled rules of *jus cogens* in order to indicate by these examples the general nature and scope of the rule contained in the article. Examples suggested ….acts, such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to co-operate"); See also Convention to Suppress the Slave Trade (1926) 60 LNTS 254, entered into force on 9 March 1927 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), 266 UNTS 40, entered into force on 30 April 1957; Universal Declaration on Human Rights at article 4

[47] "Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum and Alexandra Lily Kather, "Including the Slave Trade in the Draft Articles on Prevention and Punishment of Crimes Against Humanity," Global Justice Center, October 2023, https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Slavery-and-Slave-Trade-Expert-Legal-Brief-CAH-Treaty.pdf. (accessed on October 22, 2025);; Patricia Viseur Sellers and others, "Time to Enumerate the Slave Trade as a Distinct Provision in the Crimes Against Humanity Treaty", Just Security, 15 November 2023, https://www.justsecurity.org/90085/time-to-enumerate-the-slave-trade-as-a-distinct-provision-in-the-crimes-against-humanity-treaty/ (accessed on October 22, 2025).

submission laying out the importance of adding the "trade" to the convention text in April 2023.[48] A similar amendment is being discussed with relation to the Rome Statue.[49]

During the April 2024 resumed sessions, Australia, Brazil, Colombia, El Salvador, Iceland, the Netherlands, Palestine, the Philippines, and Syria expressed their support for the proposal from the African Group, including Nigeria, Sierra Leone, and Uganda, to incorporate slave trade as a crime against humanity.[50]

Textual suggestions

When revised article 2(1)(c) should read **"slave trade and** enslavement**."**

The accompanying definition should be added to article 2(2) as (c) *bis* reading

> **"slave trade" means the intent to bring a person into a situation of enslavement or to acquire or dispose of an enslaved person with a view to maintaining them in a situation of enslavement.**

(ii) Add reproductive violence

Human Rights Watch recommends that existing sub paragraph (g) of article 2(1), which includes "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other forms of sexual violence of comparable gravity," should be amended to also explicitly include "reproductive violence."[51]

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[48] Statement by Michael Imran Kanu, Ambassador and Deputy Permanent Representative Resumed Session of the Sixth Committee of the United Nations General Assembly on Agenda Item 78: "Crimes Against Humanity," Second Cluster: Definition and General Obligations (Articles 2, 3 and 4), April 11, 2023, https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3A07762of9-8e27-353d-a28e-7a16dc6152f8 (accessed on October 22, 2025).

[49] On May 5, 2023, Sierra Leone sent a notification via the Secretariat of the Assembly of State Parties (ASP) informing the Working Group on Amendments (WGA) of its intention to submit proposed amendments to Articles 7 and 8 of the Rome Statute. International Criminal Court, Report of the Working Group on Amendments, Twenty-Second Session, ICC-ASP/22/29, November 30, 2023, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-29-ENG.pdf (accessed on October 22, 2025); See also: ICC, "Office of the Prosecutor Policy on Slavery Crimes," December 2024, https://www.icc-cpi.int/sites/default/files/2024-12/policy-slavery-web-eng.pdf (accessed on October 22, 2025); Jocelyn G. Kestenbaum, "All Roads Lead to Rome: Combating Impunity for Perpetration of Slave Trade and Slavery Crimes," *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence*, 5:1, June 2024, pp. 177-202(26), https://doi.org/10.7590/266644724X17174924229768 (accessed on October 22, 2025).

[50] Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf (accessed on October 22, 2025).

[51] Policy Paper of Gender Based Crimes, Office of the Prosecutor for the International Criminal Court (December 2023) https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf (accessed on October 22, 2025).

Forced pregnancy and enforced sterilization[52] are forms of reproductive violence. However, amending the draft article to include the term explicitly will ensure that the convention more effectively criminalizes other forms of reproductive violence that are not expressly named, such as forced abortion,[53] forced contraception,[54] forced breastfeeding,[55] or physical violence aimed at reproductive organs.[56]

Several actors have employed the practice of requiring a person to use contraception during armed conflict, such as ISIS[57] and the Revolutionary Armed Forces of Colombia (FARC) guerrillas in Colombia. There, the policy of forced contraception was often coupled with the policy of forced abortion when contraception failed. In Guatemala, during the armed conflict, military forces injected Indigenous women held in sexual slavery with contraceptives and subjected them to other measures intended to prevent births.[58] In Peru, over 300,000 mostly Indigenous and rural women were forcefully sterilized as part of

(Reproductive violence "violates reproductive autonomy and/or it is directed at people on account of their actual or potential reproductive capacity, or perceptions thereof.")

[52] Indigenous Peoples Rights International, "Statement: Forced Sterilization of Indigenous Women," September 5, 2023, https://iprights.org/index.php/en/all-news/forced-sterilization-of-indigenous-women-courts-should-strongly-condemn-this-persistent-form-of-gross-violence-against-indigenous-women-their-families-and-their-communities (accessed on October 22, 2025).; Ina Zoon, "Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia," Center for Reproductive Rights, 2003. https://reproductiverights.org/sites/crr.civicactions.net/files/documents/bo_slov_part1.pdf (accessed on October 22, 2025).

[53] Ciara Laverty and Dieneke de Vos, "Forced Abortion as an International Crime: Recent Reports from Northern Nigeria," *Just Security,* December 23, 2023, https://www.justsecurity.org/84524/forced-abortion-as-an-international-crime-recent-reports-from-northern-nigeria/ (accessed on October 22, 2025).

[54] Adrienne Murray, "Greenland contraception scandal victims hear Danish PM's emotional apology," *BBC,* September 24, 2025, https://www.bbc.com/news/articles/c80gxd4x0z50 (accessed on October 22, 2025); "China cuts Uighur births with IUDs, abortion, sterilization," AP News, June 29, 2020, https://apnews.com/article/ap-top-news-international-news-weekend-reads-china-health-269b3de1af34e17c1941a514f78d764c (accessed on October 22, 2025).

[55] Forced breastfeeding of white children was a key feature of slavery. See discussion in Viseur Sellers, Patricia and Getgen Kestenbaum, Jocelyn, The International Crimes of Slavery and the Slave Trade: A Feminist Critique (December 2, 2020). Cardozo Legal Studies Research Paper No. 622, Gender and International Criminal Law, Available at SSRN: https://ssrn.com/abstract=3741454 (accessed on October 22, 2025).; Hague Principles on Sexual Violence, The Civil Society Declaration on Sexual Violence (2019) https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf (accessed on October 22, 2025) (Keeping control over one's breast milk is therefore a matter of integrity and identity. Violating this control can be considered, according to the women interviewed, a form of sexual violence.)

[56] See for example Organization for Justice and Accountability in the Horn of Africa and Physicians for Human Rights, "'You Will Never Be Able to Give Birth': Conflict-Related Sexual and Reproductive Violence in Ethiopia," July 31, 2025, https://phr.org/our-work/resources/you-will-never-be-able-to-give-birth-conflict-related-sexual-and-reproductive-violence-in-ethiopia/ (accessed on October 22, 2025).

[57] Dieneke de Vos, "Can the ICC prosecute forced contraception?" *IntLawGrrls*, March 14, 2016, https://ilg2.blog/2016/03/14/can-the-icc-prosecute-forced-contraception/ (accessed on October 22, 2025).

[58] Impunity Watch, "Sepur Zarco: Breaking the silence around sexual violence," https://www.impunitywatch.org/grassroots-voices/sepur-zarco-guatemala (accessed on October 22, 2025).

an apparent government birth control plan.[59] In Gaza, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel found that the Israeli targeting and destruction of sexual and reproductive healthcare infrastructure constitutes reproductive violence, which has resulted in serious physical and mental harm to pregnant, post-partum, and lactating women.[60]

In the April 2024 discussions of the draft articles, Australia, Brazil, Colombia, and Mexico expressed support for this amendment, which would help make the implicit explicit. Spain has noted that "a future convention could provide the unique opportunity to reflect on progress in international criminal law concerning the concept of sexual crimes and gender-based violence."[61]

Feminist legal scholars have been calling for this shift for years.[62] Historically, international criminal jurisprudence has neglected reproductive violence and injuries to reproductive autonomy, but in recent years, international commissions of inquiry have included it as a framework for analysis.[63] Also, some national courts have grappled with these acts, appropriately characterizing them as crimes against humanity. For example, in 2016, a Guatemalan court found that forced contraception amounted to "crimes against the duties of humanity."[64] In December 2024, the Special Jurisdictions for Peace in Colombia issued an indictment in "Macro-Case" 07 recognizing reproductive violence as a

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[59] UN Office of the High Commissioenr for Human Rights, "Peru: Fujimori government's forced sterilisation policy violated women's rights, UN committee says in landmark ruling," October 30, 2024, https://www.ohchr.org/en/press-releases/2024/10/peru-fujimori-governments-forced-sterilisation-policy-violated-womens-rights (accessed on October 22, 2025).

[60] UN Office of the High Commissioenr for Human Rights, Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, A/HRC/60/CRP.3, September 16, 2025, https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf (accessed on October 22, 2025).

[61] Kelly Adams, "Progress on Gender Justice Continues as States Consider Next Steps on Draft Crimes Against Humanity Treaty," *Just Security,* November 14, 2024, https://www.justsecurity.org/104884/gender-progress-crimes-against-humanity-treaty/ (accessed on October 22, 2025).

[62] Akila Radhakrishnan, Ashita Alag, Paloma van Groll and Rosemary Grey, Strengthening Reproductive Autonomy in the Draft Crimes Against Humanity Treaty, *Just Security*, November 22, 2023, https://www.justsecurity.org/90219/strengthening-reproductive-autonomy-in-the-draft-crimes-against-humanity-treaty/, (accessed on October 22, 2025); "Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy," Joint legal expert brief, (October 2023) https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Reproductive-Autonomy-Expert-Brief.pdf (accessed on October 22, 2025).

[63] UN Women and Global Justice Center, "Documenting Reproductive Violence: Unveiling Opportunities, Challenges, and Legal Pathways for UN Investigative Mechanisms," September 2024, https://www.unwomen.org/sites/default/files/2024-09/research-paper-documenting-reproductive-violence-en.pdf, (accessed on October 22, 2025).

[64] Aisling Walsh, "Historic victory for women's rights and justice in Guatemala," *Trocaire,* March 7, 2016, https://www.trocaire.org/news/sepurzarco/ (accessed on October 22, 2025).

distinct category of gender-based violence.[65] Adding the term "reproductive violence" would allow courts to surface specific harms, including, but not limited to, forced abortion and forced contraception.

Textual suggestions

When revised, article 2(1)(g) should read "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, any other forms of sexual or **reproductive violence** of comparable gravity."

(iii) Add forced marriage

The crime of forced marriage should be a standalone basis for charges. This could be delineated as a new standalone subparagraph, which could be designated as article 2(1) sub paragraph (*g) bis* during negotiations to make clear that it follows sub paragraph (g) but that it would be its own standalone count. In the April 2024 sessions, Canada, Colombia, Brazil, Hungary, the Netherlands, South Africa, and the United Kingdom endorsed the need for forced marriage to be codified as an independent basis for prosecution.[66]

Both the Special Court for Sierra Leone in 2009 and the Extraordinary Chambers in the Courts of Cambodia in 2018 have successfully prosecuted forced marriage as the crime against humanity of "other inhumane acts" and in 2021 the International Criminal Court did the same.[67] An amendment explicitly acknowledging forced marriage as a standalone crime against humanity would more directly spotlight the distinct harms that the forced

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[65] Juliana Laguna Trujillo, "Colombia's transitional justice tribunal paves new ground on reproductive violence," London School of Economics Blog, https://blogs.lse.ac.uk/wps/2025/06/19/colombia-is-setting-a-path-for-intersectionality-survivor-agency-and-restorative-justice/, (accessed on October 22, 2025). Special Jurisdictions for Peace, Colombia, Auto No. 05 de 2024 (October 9, 2025), https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-005_09-octubre-2024.pdf (accessed on October 22, 2025).

[66] Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf (accessed on October 22, 2025).

[67] Valerie Oosterveld, "The Special Court for Sierra Leone: Instigating International Criminal Law's Consideration of Forced Marriage," *FIU Law Review*, 15:1, June 19, 2025, pp. 55-59, https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1476&context=lawreview (accessed on October 22, 2025).; ECCC KHIEU Samphân Appeals, No. 002/19-09-2007-ECCC/SC (December 23, 2022), https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/F76_EN.pdf (accessed on October 22, 2025).; Melanie O'Brien, Kathleen M. Maloney, Valerie Oosterveld, "Forced Marriage in the Al Hassan Trial Judgment," *Opnio Juris,* July 23, 2024, https://opiniojuris.org/2024/07/23/forced-marriage-in-the-al-hassan-trial-judgment/ (accessed on October 22, 2025). *In the Case of The Prosecutor v. Dominic Ongwen,* No. ICC-02/04-01/15 A A2 (December 22, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_11910.PDF (accessed on October 22, 2025).

ascription of the status of "spouse" can inflict on victims: forced labor (cooking, cleaning, caregiving, farming, portering); sexual violence and sexual slavery; denial of relational autonomy including the rights to consensually marry and to form a family of one's choice; forced childbearing and childrearing; violation of the right to freedom of movement; enforced exclusivity in a sexual relationship; and psychological and physical violence.[68]

Since the crime of "forced marriage" is not predicated on the commission of acts of sexual violence or crimes involving violation of sexual and reproductive health rights, it does not belong in the list delimited in sub paragraph (g) which includes "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other forms of sexual violence of comparable gravity." It requires its own standalone sub-paragraph. The forced ascription of the status of "spouse" is distinct from controlling sexual autonomy, and enumeration as a standalone basis for charges signals to investigators and prosecutors the importance of documenting and charging this crime regardless of the presence of sexual violence.[69] As eloquently outlined by the Victims groups in the ICC proceedings around forced marriage in the context of the Lords' Resistance Army, "use of the label 'wife' causes a unique psychological suffering which leads to stigmatization and rejection of the victims by their families and communities" and also "inflicts grave physical injury and results in long-term moral and psychological suffering for the victims."70

Member states interested in advancing this amendment could begin with the definition of forced marriage from the International Criminal Court's 2022 appeals chamber, which defined forced marriage as the compulsion of a person "to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment."[71] We propose an addition to that definition which we believe would better capture the need to take an intersectional approach to these harms and also address forced marriage of children by including explicit mention of

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[68] "The Draft Crimes Against Humanity Convention and Forced Marriage," joint legal expert brief, (October 2023), https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Forced-Marriage-Expert-Legal-Brief-CAH-Treaty.pdf (accessed on October 22, 2025); Mariia Zheltukha, "Reproductive Violence: Call Me By My Name," Lund University Master Thesis, Spring 2024, https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=9160882&fileOId=9160896 (accessed on October 22, 2025).

[69] Kathleen M. Maloney, Melanie O'Brien, and Valerie Oosterveld, "Forced Marriage as the Crime Against Humanity of 'Other Inhumane Acts' in the International Criminal Court's Ongwen Case," *International Criminal Law Review*, 23.5-6 (2023): pp. 705-730. https://doi.org/10.1163/15718123-bja10157

[70] International Criminal Court Appeals Chamber Transcript, February 15, 2022 Lines 11-14 https://www.legal-tools.org/doc/a4be33/pdf

[71] *In the Case of The Prosecutor v. Dominic Ongwen*, No. ICC-02/04-01/15 A (December 15, 2022), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_07146.PDF

characteristics of the individual that could expose them to coercion in that context such as young age, gender, economic status, and formal or informal guardianship.

The definition of the crime of forced marriage should consider whether a person's young age, gender, economic status, or position under formal or informal guardianship may prevent them from providing genuine consent. International law recognizes that certain circumstances can prevent genuine consent.[72] For example, the Elements of Crimes for the Rome Statute requires an assessment of whether "a person is incapable of giving genuine consent.[73] Genuine consent can also be impacted by circumstances where individuals are placed under formal or informal guardianship, where the guardian, or a person with apparent authority, exploits the position to control the person under guardianship and force them into a marriage against their will.[74]

Textual suggestions

New text should be added as a new standalone sub-paragraph in article 2(1), which could be delineated as (g)(bis). The new paragraph should read **"2(g)(bis) forced marriage."**

Language should also be included in a companion at article 2(2)(f)(bis) defining the crime,

> **"2(2)(f)(bis) forced marriage" means the compulsion of a person to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment or a person's inability to give genuine consent. Characteristics of the individual that could expose them to coercion in that context include young age, economic status, and formal or informal guardianship.**

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[72] Valerie Oosterveld, Kathleen M. Maloney, Melanie O'Brien, "Symposium in Pursuit of Intersectional Justice at the International Criminal Court: Group Two – The 'Other Inhumane Act' of Forced Marriage in Prosecutor v Ongwen," *Opinio Juris,* May 3, 2022, https://opiniojuris.org/2022/05/03/symposium-in-pursuit-of-intersectional-justice-at-the-international-criminal-court-group-two-the-other-inhumane-act-of-forced-marriage-in-prosecutor-v-ongwen/.

[73] ICC, Elements of Crimes, 2013, https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf ("It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.")

[74] Convention on the Rights of Persons with Disabilities, art. 12 (recognizing that persons under guardianship retain legal capacity); UN Committee on the Rights of the Child, General Comment No. 20, U.N. Doc. CRC/C/GC/20 (2016), para. 39 (noting that child marriage often involves exploitation of power dynamics including guardianship arrangements); "Elements of Crimes," International Criminal Court (2013) https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf (accessed on October 22, 2025) at art. 7(1)(g)-6, footnote 18 (noting that genuine consent may be prevented by circumstances including 'incapacity').

(iv) Add starvation

We propose adding a new crime against humanity at article 2(1)(j)(bis) to make explicit that intentional deprivation leading to starvation can be a crime against humanity both in the context of armed conflict and outside of armed conflict.

Starvation is already recognized as a war crime,[75] but only when it is being used as a means of warfare.[76] The 2019 amendment to the Rome Statute has recognized intentional starvation as a method of warfare as a war crime in non-international armed conflicts,.[77] However, investigations and prosecutions for suspected starvation crimes in these contexts have yet to materialize.[78] Rules 53 and 54 of the ICRC Customary Law Handbook directly prohibit the use of starvation of the civilian population as a method of warfare, and attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population.[79] It also falls under the "other inhumane acts" for crimes against humanity, but would benefit from being explicitly identified with a standalone basis for charges.

The distinctive harm associated with deprivation leading to starvation demands specific legal recognition and prohibition.[80] Unlike direct physical violence, recent examples in

[75] Federica D'Alessandra and Matthew Gillett, "The war crime of starvation in non-international armed conflict," University of Oxford Blavatnik School of Government Working Paper Series, BSG-WP-2019/031 (November 2019) https://www.bsg.ox.ac.uk/sites/default/files/2019-11/BSG-WP-2019-031.pdf (accessed on October 22, 2025); Chase Sova, "Starvation Crimes and International Law," Center for Strategic and International Studies, (December 2024), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-12/241204_Sova_Starvation_Crimes.pdf?VersionId=x.Kr3PePm7lZocROWrH72B2TqgrLmw_A (accessed on October 22, 2025) ("The guilty hand does not necessarily mean the guilty mind, and mere recklessness resulting in starvation, in the end, does not seem to meet the material threshold for the prosecution of starvation crimes.")

[76] International Committee of the Red Cross, Customary Law Handbook, Rule 53. Starvation as a Method of Warfare, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53 (accessed on October 22, 2025).

[77] As of 2025, this amendment has still been ratified by only one country, New Zealand, underscoring the ongoing challenge for the international community in bridging the gap between normative principles and institutionalization and compliance. "Mobilising Ratification of the Rome Statute Starvation Amendment," Global Rights Compliance website, https://globalrightscompliance.org/project/mobilising-ratification-of-the-rome-statute-starvation-amendment/ (accessed on October 22, 2025).

[78] Shane Goetz, "Preventing Starvation Crimes: Lessons Learned from Tigray," Stimson, February 24, 2025, https://www.stimson.org/2025/preventing-starvation-crimes-lessons-learned-from-tigray/; Bridget Conley et al., "An Unprosecuted Crime" in Bridget Conley et al, "Accountability for Mass Starvation: Testing the Limits of the Law, Oxford Monographs in International Humanitarian & Criminal Law," Oxford, 2022, December 15, 2022, https://doi.org/10.1093/oso/9780192864734.003.0004 (accessed on October 22, 2025).

[79] ICRC Customary Law Handbook Rule 53 https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53

[80] Alex de Waal, "Mass Starvation Is a Crime—It's Time We Treated It That Way," *Boston Review*, January 14, 2019, https://www.bostonreview.net/articles/alex-de-waal-starvation-crimes/(accessed on October 22, 2025).

Ukraine,[81] Haiti,[82] Sudan,[83] Gaza,[84] and Ethiopia[85] show that starvation operates gradually, with the prolonged and cumulative nature of this harm entailing a particular kind of wrong. As a consequence of these wide-ranging impacts, legal scholar Tom Dannenbaum, who is among those leading the effort to codify the standalone crime of starvation as a crime against humanity, has described siege starvation as a crime of "societal torture."[86] Starvation, in its impacts, discriminates against the most vulnerable members of society, including children, the elderly, and the disabled, who are the least able to battle for scarce resources and who are forced to watch their caregivers struggle with the impossible decision of how to divide food and water among them

The deprivation of food and water in the context of the crime of extermination (a crime against humanity) requires a showing of an intent to destroy a group.[87] The International Criminal Tribunal for the former Yugoslavia, in its ruling on *Krstic,* found that "there must be evidence that a particular population was targeted and that its members were killed

[81] Dan Sabbagh, "Russia accused of starvation in Ukraine," *The Guardian,* June 13, 2024, https://www.theguardian.com/world/article/2024/jun/13/russia-accused-of-deliberate-starvation-tactics-in-mariupol-in-submission-to-icc (accessed on October 22, 2025); Dan Sabbagh, "War Crimes Dossier to Accuse Russia of Deliberately Causing Starvation in Ukraine," *The Guardian,* September 24, 2023, https://www.theguardian.com/world/2023/sep/24/war-crimes-dossier-to-accuse-russia-of-deliberately-causing-starvation-in-ukraine (accessed on October 22, 2025).

[82] World Food Program, "Haiti on the brink: violence cuts off capital, pushing families towards starvation amidst cuts to humanitarian assistance," October 2, 2025, https://www.wfp.org/news/haiti-brink-violence-cuts-capital-pushing-families-towards-starvation-amidst-cuts-humanitarian (accessed on October 22, 2025); Integrated Phase Classification, "Haiti IPC Acute Food Insecurity Snapshot," September 2025 - June 2026,

https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Haiti_AcuteFoodInsec_Sept2025_June2026_Snapshot_English.pdf (accessed on October 22, 2025).

[83] UNICEF, "After 500 days under siege, children in Sudan's Al Fasher face starvation, mass displacement, and deadly violence," August 26, 2025, https://www.unicef.org/press-releases/after-500-days-under-siege-children-sudans-al-fasher-face-starvation-mass (accessed on October 22, 2025); Vibhu Mishra, Sudan faces unprecedented hunger and displacement as war enters third year," April 10, 2025, https://news.un.org/en/story/2025/04/1162096 (accessed on October 22, 2025).

[84] Sana Noor Haq, Rachel Wilson, Soph Warnes, et al., "How Israeli actions caused famine in Gaza, visualized," *CNN,* October 2, 2025, https://www.cnn.com/2025/10/02/middleeast/gaza-famine-causes-vis-intl (accessed on October 22, 2025); Masako Harino, Sanaa Al Najjar, Amro Tabaza, et al., "Assessment of malnutrition in preschool-aged children by mid-upper arm circumference in the Gaza Strip (January, 2024–August, 2025): a longitudinal, cross-sectional, surveillance study," *The Lancet,* October 8, 2025, https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(25)01820-3/abstract (accessed on October 22, 2025); WHO, "Famine confirmed for first time in Gaza," August 22, 2025, https://www.who.int/news/item/22-08-2025-famine-confirmed-for-first-time-in-gaza (accessed on October 22, 2025).

[85] Cara Anna, "'I Just Cry': Dying of Hunger in Ethiopia's Blockaded Tigray," *AP News*, September 20, 2021, https://apnews.com/article/africa-united-nations-only-on-ap-famine-kenya-ef9fe79ccocf35917fd190b6e9bdof46 (accessed on October 22, 2025); Alex de Waal, "Starving Tigray," World Peace Foundation, April 1, 2021, https://worldpeacefoundation.org/publication/starving-tigray-how-armed-conflict-and-mass-atrocities-have-destroyed-an-ethiopian-regions-economy-and-food-system-and-are-threatening-famine/ (accessed on October 22, 2025).

[86] Tom Dannenbaum, "Siege Starvation: A War Crime of Societal Torture," *Chicago Journal of International Law*:, 22:2, Article 1 (2021), https://cjil.uchicago.edu/print-archive/siege-starvation-war-crime-societal-torture.

[87] The Report of the ICC Preparatory Commission on the Elements of the crimes provides further guidance. It indicates that "the perpetrator [should have] killed one or more persons" and that the conduct should have taken place "as part of a mass killing of members of a civilian population." International Criminal Court,"Elements of Crimes" 2013, https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf

or otherwise subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population."[88]

The evidentiary threshold for the crime of starvation, therefore, should be more straightforward and not introduce the concept of destruction of a numerically significant part of the broader population. Instead, it would be proved by showing the intent to starve a population by depriving them of objects indispensable to their survival, including by depriving them of the systems by which they are produced and maintained in a way intended to deny objects their sustenance value.[89]

Textual suggestions

New text should be added as a new standalone sub paragraph in article 2(1), which could be delineated as (j)(bis).

The new paragraph should read **"2(1)j(bis) starvation**."

The companion language at article 2(2)i(bis) defining the crime should read

> **"2(2)(i)(bis) starvation" means depriving persons of objects indispensable to survival, in particular food, safe water, and healthcare, as well as the systems by which they are produced, maintained, or distributed, in a way calculated to deny those objects' sustenance value**.

(v) Add use or recruitment of children by state or non-state actors

Human Rights Watch and the Prevention of Crimes against Humanity Project propose adding a new crime against humanity at article 2(1)(j)(ter) to criminalize the recruitment, enlistment, conscription, or use of persons under the age of 18 by state or non-state actors when part of a widespread or systematic attack against the civilian population.[90] This crime, as formulated, can capture harms that fall outside of the scope of the war crime of recruiting and using child soldiers. The Rome Statute was the first international treaty to explicitly reference the recruitment and use of children in hostilities as a war crime. Still, its definition of the offence only applies to children under the age of 15 and its application

[88] International Criminal Tribunal for The Former Yugoslavia, Case krs-tj010802e-3, https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e-3.htm.

[89] Bridget Conley and Alex de Waal, "The Purposes of Starvation: Historical and Contemporary Uses, Journal of International Criminal Justice," 17, Issue 4 (2019), 699–722, https://doi.org/10.1093/jicj/mqz054

[90] Children and Crimes Against Humanity Coalition, "Justice for Children in the Future Convention on the Prevention and Punishment of Crimes Against Humanity," May 5, 2025, "https://www.hrw.org/news/2025/05/05/justice-children-future-convention-prevention-and-punishment-crimes-against

is limited to situations meeting the definition of armed conflict.[91] Including the recruitment and use of children as a crime against humanity would address critical accountability gaps in international law.

Since the adoption of the Rome Statute, states have expanded international prohibitions of the recruitment and use of children under 18.[92] The widely ratified Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict contains a general prohibition on compulsory recruitment and use of children under 18, including during peacetime.[93] At the regional level, the African Charter on the Rights and Welfare of the Child defines children as below the age of 18, stressing that "no child shall take a direct part in hostilities" and that states parties to the Charter shall "refrain in particular, from recruiting any child."[94] Recognizing the recruitment and use of children as a crime against humanity would extend legal protection to children ages 15 to 18, aligning international criminal law more closely with international child rights instruments. Increasingly,[95] Recruitment and use of children should be explicitly added as a separate crime to strengthen the likelihood of prosecution, acknowledge the gravity and scale of the violation, eliminate interpretive ambiguity, and respond to calls under international law to enact domestic legislation to prohibit this crime.

With respect to violations of international law, international guidance calls for children associated with armed groups and forces to be treated as victims first and foremost. It recognizes that children who carry out crimes in this context have often also been subjected to abuse (recruitment, sexual abuse, slavery, and forced drug use) and forced to act under duress.[96] Adopting this crime would affirm the status of recruited children as victims who are entitled to a right to reparations.

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[91] Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii).

[92] For example, Colombia's Constitutional Court found that the prohibition of recruitment of children under 18 is "part of international customary law" https://www.corteconstitucional.gov.co/relatoria/2018/c-007-18.htm Case c007/2018, para 478

[93] African Charter on the Rights and Welfare of the Child, art. 22.2.

[94] The proposed crime does not prohibit the lawful voluntary recruitment of persons under the age of 18. It is intended to address egregious, systematic patterns of abuse, such as the recruitment or use of children as part of broader campaigns of violence, persecution, or repression against civilians.

[95] For further information about the involvement of children in armed non-state actors operating in conflict and non-conflict situations, see UNICEF, "Children's Involvement in Organized Violence Emerging trends and knowledge gaps," October 2024, https://www.unicef.org/innocenti/reports/childrens-involvement-organized-violence].

[96] CRC, General Comment No. 24 on children's rights in the child justice system, U.N. Doc. CRC/C/GC/24 (2019), para. 100, noting the UN Security Council's emphasis "that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law," and that member states should "consider nonjudicial measures as alternatives to prosecution and detention that were focused on reintegration." See also UNICEF, Paris Principles, paras. 3.6 and 8.6.

Textual suggestions (forthcoming)

(b) Avoid attempts to push for a definition of gender in text

States must maintain the current draft articles' approach, which chooses not to include "gender" among the definitions provided in article 2(2). Including a definition of gender would add additional and unnecessary complexity to the treaty process.[97] As noted in the ILC commentaries on the 2019 draft articles, the other terms used in draft article 2, paragraph 1 (h), such as "political", "racial", "national", "ethnic", "cultural", or "religious" were also left undefined.[98]

Textual suggestion

Safeguard text from changes seeking to introduce a definition of gender

(c) Adjust the way the crime of persecution is treated

We propose three substantive amendments to the definition of the crime of persecution as currently laid out in the ILC draft articles.

(i) Persecution should be a standalone crime

States should delete the language in article 2(1)(h) requiring that persecution be pursued only in conjunction with other acts.

Uniquely among the crimes against humanity enumerated, the crime of persecution requires that the relevant acts of persecution be carried out "in connection with any act referred to in this paragraph." This limitation on the crime of persecution is not recognized in customary international law. States should correct this as they negotiate the content of this treaty.

Historically, this requirement originated in the Charter of the International Military Tribunal, which brought charges of "persecutions on political, racial or religious grounds."

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[97] Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention, October 5, 2023, ("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.'); Rosemary Grey, "On Hope, Reform and Risk: The Rome Statute's Definition of 'Gender' and the Crimes Against Humanity Convention," *The European Journal of International Law,* 36:2, May 2025, pp. 369–398, https://doi.org/10.1093/ejil/chaf026.

[98] International Law Commission, Draft Articles on Prevention and Punishment of Crimes Against Humanity, with commentaries (2019), Yearbook of the International Law Commission, vol. II, Part Two, at paragraph 42 https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf

The United States initiated the inclusion, seeking a basis to investigate persecution of Jews and others in Germany, but since persecution had not previously been charged as a crime, the inclusion of a connection to war crimes protected from an *ex post facto* challenge.[99] Decades later, this requirement, without reasonable justification, creates an additional hurdle for victims of the crime of persecution, resulting in some victims being denied access to justice and increasing the investigative, prosecutorial, and judicial resources required to bring forward persecution charges.

The ILC draft articles incorporate a problematic approach to the crime of persecution even though that limited approach was not reproduced in the Statute of the Special Court for Sierra Leone, the Law on the Extraordinary Chambers in the Courts of Cambodia, the Kosovo Law on Specialist Chambers and Specialist Prosecutor's Office, or the Statute of the African Court of Justice and Human Rights (as amended by the Malabo Protocol). The ILC draft articles would create a limitation on this crime that is even more restrictive than the Rome Statute.[100]

The restriction inappropriately implies that the intentional and severe deprivation of human rights by reason of the identity of a group is not sufficiently serious to be considered an international crime in and of itself. In the April 2024 meetings on the draft articles, Liechtenstein expressed support for this type of amendment.[101] Member states should change Article 2(1)(h)'s description of the crime of persecution to remove language suggesting that the crime of persecution can only be prosecuted alongside other acts.[102]

Textual suggestions

Once revised paragraph 2(1)(h) should read

> persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, *age, disability* or other grounds that

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[99] Roger O'Keefe, *International Criminal Law* (OUP, Oxford 2015) at 138 (noting this aim behind the 'connection' requirement in the IMT Charter).

[100] While the Rome Statute imits the crime to any other crime within that statute (i.e. including war crimes as well as crimes against humanity), the 2019 draft articles require it to be connected to any other act or crime within the proposed treaty, effectively requiring it to be concurrent with another crime against humanity.

[101] Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf.

[102] Commentaries to the draft articles suggest that "otherwise the text would bring within the definition of crimes against humanity a wide range of discriminatory practices that do not necessarily amount to crimes against humanity" but this ostensible reason ignores that all crimes against humanity must be committed as a part of a widespread or systematic policy.

are universally recognized as impermissible under international law.~~in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court~~

(ii) Add "disability" as an explicit ground for persecution

States should explicitly add "disability" to article 2(1)(h) list of the identifiable groups or collectivities that could be subjected to persecution.

The definition of the crime of persecution already includes 'other grounds that are universally recognized as impermissible under international law', which is a dynamic definition that implicitly includes many grounds and needs always to be interpreted progressively in line with international human rights law and the prohibition of all forms of discrimination. This will include 'disability'. To strengthen this framing, including by prompting investigators and prosecutors to examine the full range of grounds, we recommend shifting towards explicit inclusion of additional named grounds in the definition of this crime, including disability.

Naming "disability" directly would make the unique harms faced by people with disabilities more visible and ensure they are not overlooked in prosecutions.[103] The Nuremberg tribunals, for example, held doctors accountable for crimes against humanity committed under the Nazi "euthanasia" program, which led to the killing of an estimated 300,000 people with disabilities. Disability was not explicitly recognized as a protected group at the time. However, the prosecution of these acts established a legal precedent, and the Crimes Against Humanity treaty offers an opportunity to correct this omission by acknowledging that individuals with disabilities have historically faced, and continue to face, distinct risks of persecution and atrocity crimes.

Given the history of atrocity crimes committed against persons with disabilities, including targeted killing by the Nazis and forced sterilization;[104] involuntary and harmful medical

[103] "The ongoing effort to draft a new instrument on crimes against humanity should explicitly include disability within its scope, so that the silence of international criminal law on these issues would be dispelled for good." Aguilar CD, Knox JH. Introduction to the Symposium on William I. Pons, Janet E. Lord, and Michael Ashley Stein, "Disability, Human Rights Violations, and Crimes Against Humanity." *AJIL Unbound*. 2022;116:64-68. doi:10.1017/aju.2022.9 https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/disability-human-rights-violations-and-crimes-against-humanity/5C47D5C49E84873D74C05F1AF8B9826A

[104] Under the Nazi regime, in addition to the program of 'euthanasia', a further 400,000 people with disabilities were sterilized against their will. See: Robertson, Michael Ley, Astrid Light, Edwina, "The First Into the Dark: The Nazi Persecution of the Disabled," Broadway, Australia, 2019. See also: OHCHR, "Sterilization a form of "systemic violence" against girls with disabilities," November 3, 2017, https://www.ohchr.org/en/stories/2017/11/sterilization-form-systemic-violence-against-girls-disabilities.

experimentation in the United States,[105] and evidence of widespread targeting and serious abuses against people with disabilities in the former Yugoslavia, Rwanda, and Sierra Leone[106] without accountability, an explicit reference would reinforce protection and ensure justice for people with disabilities. Moving protection of this group from an implicit assumption to an explicit expectation would push states to adapt their own legal standards to better ensure justice for all victims.

Textual suggestions

When revised paragraph 2(1)(h) should read

> persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, *age*, **disability,** or other grounds that are universally recognized as impermissible under international law~~. in connection with any act referred to in this paragraph;"~~

(iii) Add age as an explicit ground for persecution

Similarly, we recommend adding "age" to the article 2(1)(h) list of identifiable groups or collectivities that can be subjected to persecution.

Age is already deemed a ground in the definition of the crime of persecution in custom and jurisprudence, but is not yet explicitly enumerated in the treaty definition of persecution, instead being identified as one of the "other grounds."

Specifying age will increase the visibility of this crime and the likelihood that it is included among the charges brought by national prosecutors. Individuals are targeted specifically because they are children, for example, for enslavement, forcible transfer, denial of education, sexual violence, forced marriage, and child recruitment. Individuals are also targeted because they are older persons, including for forcible transfer, and targeted killing when they have been unable or unwilling to flee fighting.

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[105] Laura I. Appleman, "The Captive Lab Rat: Human Medical Experimentation in the Carceral State," Boston College L. Rev. 1 (2020), https://bclawreview.bc.edu/articles/173/files/63a28d993e532.pdf.

[106] Kate McInnes, "Opportunities and failures to prosecute violence against persons with disabilities at the international tribunals for the former Yugoslavia, Rwanda and Sierra Leone" International Review of the Red Cross, IRRC No. 922 November 2022 https://international-review.icrc.org/articles/opportunities-and-failures-to-prosecute-violence-against-persons-with-disabilities-former-yugoslavia-rwanda-sierra-leone-922.

As recognized in the ILC Commentaries to the Draft Articles,[107], the crime of persecution prohibits age-based persecution which has been charged under "other grounds."[108] For example, in January 2024, the ICC prosecutor brought charges against Jospeh Kony that included the persecution of children on the basis of age and gender, and defined children as "persons under 18 years old."[109] In that case, the prosecutor noted "LRA [Lord's Resistance Army] perpetrators targeted children, on the basis of their age, because they were considered less likely to escape and easier to indoctrinate, or with respect to girls, to be free from sexually transmitted diseases."[110]

Older persons have been targeted in forcible transfer in ethnic cleansing and genocide in Bosnia and Herzegovina and Cambodia.[111] In other contexts, older persons have been targeted and burnt alive or summarily executed when they have been unable or unwilling to flee, including in Bosnia and Herzegovina, the Central African Republic, Mozambique,

[107] ILC Commentaries to the Draft Articles on Crimes Against Humanity, 38

[108] The Office of the Prosecutor of the International Criminal Court determined in its 2016 *Policy on Children*: "acts targeting children on the basis of age or birth may be charged as persecution on 'other grounds.' It recognizes that children may also be persecuted on intersecting grounds, such as ethnicity, religion and gender. See, ICC, The Office of the Prosecutor, *Policy on Children*, November 2016, https://www.icc-cpi.int/161115-otp-policy-children (accessed March 10, 2025), para. 51.

[109] *In the Case of the Prosecutor v. Joseph Kony*, ICC, Case No. ICC-02/04-01/05, Pre-Trial Chamber II, January 19, 2024, counts 14 and 23, paras. 82, 88: "The schoolgirls were targeted by the LRA collectively based on their age and gender."

[110] Ibid.

[111] International Criminal Tribunal for The Former Yugoslavia, *Prosecutor v. Radovan Karadžić*, Judgment of 24 March 2016, no. IT-95-5/18-T, available at https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf; Holocaust Memorial Day Trust, *Cambodia: 1975 – 1979*, https://hmd.org.uk/learn-about-the-holocaust-and-genocides/cambodia/ (accessed September 3, 2025).

Myanmar, Niger, Nigeria, and South Sudan.[112] Older Jews were among the first to be targeted in the Holocaust.[113]

Textual suggestions

When revised, paragraph 2(1)(h) should read

> persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, **age** ***or disability*****,** or other grounds that are universally recognized as impermissible under international law, ~~in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court".~~"

(iv) Add "opinion or belief" within the definition of persecution

The description of the crime of persecution recognizes that membership in a political group could be a basis for discrimination that rises to the level of persecution. However, the accompanying definition at 2(2)(g) does not clearly allow for situations where individual opinion or belief, rather than the immutable identity of the group or collectivity, are the basis for targeting. Human Rights Watch suggests revising the definition of persecution to take a more holistic approach to the possible reasons for persecution.

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[112] International Criminal Tribunal for The Former Yugoslavia, *Prosecutor v. Milan Lukić and Sredoje Lukić,* Judgment of 20 July 2009, no. IT-95-5/18-T, available at https://www.refworld.org/jurisprudence/caselaw/icty/2009/en/78033 (accessed September 9, 2025); Human Rights Watch, *Central African Republic: People with Disabilities at High Risk*, June 21, 2017, https://www.hrw.org/news/2017/06/21/central-african-republic-people-disabilities-high-risk; Amnesty International, "What I Saw Is Death: War Crimes in Mozambique's Forgotten Cape,"2-21, https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4135452021ENGLISH.pdf (accessed September 9, 2025), p.13; Amnesty International, "Myanmar/Bangladesh: Older people denied dignity in camps after facing military atrocities," June 18, 2019, https://www.amnesty.org/en/latest/news/2019/06/myanmar-bangladesh-older-people-denied-dignity-in-camps-after-facing-military-atrocities/ (accessed September 9, 2025); Human Rights Watch, *Niger: Surging Atrocities by Armed Islamist Groups, August 11, 2021, https://www.hrw.org/news/2021/08/11/niger-surging-atrocities-armed-islamist-groups;* Genocide Watch, "Muslim militants burn elderly alive in Nigeria as terrorized Christian villagers wait for help," April 3, 2020, https://www.genocidewatch.com/single-post/2020/04/03/muslim-militants-burn-elderly-alive-in-nigeria-as-terrorized-christian-villagers-wait-for (accessed September 9, 2025); Human Rights Watch, *South Sudan: People with Disabilities, Older People Face Danger*, May 31, 2017, https://www.hrw.org/news/2017/05/31/south-sudan-people-disabilities-older-people-face-danger.

[113] Joanna Sliwa, "Older Jews and the Holocaust: Persecution, Displacement, and Survival," undated, https://www.joannasliwa.com/older-jews-and-the-holocaust (accessed September 9, 2025).

Textual suggestions

When revised, paragraph 2(2)(g) should read

> 2(2)(g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the **beliefs and opinions or** identity of the group or collectivity

(d) Revise the definition of "deportation or forcible transfer of population"

(i) Make explicit that prevention of return is within the scope of forced displacement

States should revise the definition of "deportation and forcible transfer of population" to better reflect the reality of the crime, which continues as long as the persons forcibly displaced are prevented from returning to their homes. Preventing a population from returning to their rightful home is already treated as being able to rise to the level of a crime against humanity, persecution, or when it also amounts to the intentional infliction of great suffering or severe harm and has been charged as another inhumane act.[114] Adding the prevention of return explicitly to the definition of deportation or forcible transfer would capture the full life cycle of the crime.[115]

The ICC Pre-Trial Chamber has addressed the denial of the right of return for the Rohingya people to Myanmar by holding that it could constitute a crime against humanity under article 7(1)(k) of the Rome Statute, an "other inhumane act."[116] This assessment was part of the ICC's broader investigation into crimes committed against the Rohingya, where the Pre-Trial Chamber I found the court could exercise jurisdiction over acts of deportation, as part of the crime occurred in Bangladesh, a state party to the Rome Statute.[117] In finding the infliction of great suffering or serious injury by means of intentional and severe violations of the customary international law right of displaced persons to return safely and humanely to the state of origin with which they have a sufficiently close connection, the

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[114]Micheal G Kearney, "The Denial of the Right of Return as a Rome Statute Crime," *Journal of International Criminal Justice*, 18:4 (September 2020), Pages 985–999, https://doi.org/10.1093/jicj/mqaa053.

[115] As the law stands today, prevention of return can also be prosecuted as an "other inhumane act" or form a part of the 'international and severe deprivation of fundamental rights' that can amount to the crime against humanity of persecution.

[116] ICC, "ICC Pre-Trial Chamber I rules that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh," September 6, 2018, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rules-court-may-exercise-jurisdiction-over-alleged-deportation#:~:text=The%20Chamber%20ruled%20on%20this%20basis%20that,a%20State%20party%20to%20the%20Statute%20(Bangladesh).

[117] Micheal G Kearney, "The Denial of the Right of Return as a Rome Statute Crime," *Journal of International Criminal Justice*, 18:4 (September 2020), Pages 985–999, https://doi.org/10.1093/jicj/mqaa053.

ICC Pre-Trial Chamber found a reasonable basis to believe that "other inhumane acts" had taken place in Bangladesh.

While linked to deportation or forcible transfer, this crime reflects the reality that it will continue as long as those forcibly displaced are prevented from returning. In situations of prolonged forced displacement, it would protect the fundamental rights of, as the scholar Michael Kearney wrote, those who were not themselves expelled, but whose rights are nonetheless violated, including the descendants of those expelled.[118] Crimes against humanity have no time limit for prosecution. Explicitly broadening the definition of forcible transfer or deportation to include denying the right to return would give channels for redress for a much broader group of victims. "Those who had a sufficient connection with the place to which they were denied return are to be regarded as victims of a crime against humanity even if a long period has passed, and even if they currently no longer have a physical place to which to return."[119]

Textual suggestions

When revised, paragraph 2(2)(d) should read

> "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion, or other coercive acts from the area in which they are lawfully present, **or prevention of their return** without grounds permitted under international law;"

(e) Revise the definition of forced pregnancy

(i) Eliminate carveout for national laws

States must delete the sentence in paragraph 2(2)(f) which appears to create a carveout for national laws that govern pregnancy.

The draft articles include a sentence that reads "this definition shall not in any way be interpreted as affecting national laws relating to pregnancy." This caveat, copied from the Rome Statute, is regressive and unnecessary. The differential treatment of forced pregnancy in the Rome Statute was the result of a political compromise and has no functional or legal basis.

Forced pregnancy is the only act in the crimes against humanity definition which includes a caveat exempting national laws and is thus arbitrarily differentiated from other acts that

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[118] Ibid.

[119] Tomer Levinger, "Denying the Right of Return as a Crime Against Humanity," *Israel Law Review,* 54:2 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3752915.

constitute crimes against humanity. While this caveat was introduced to strike a compromise among the member states in Rome in 1999, the ICC Appeals Chamber affirmed in *Ongwen* that this caveat "does not impose a new element" to the customary understanding of the crime of forced pregnancy. During the April 2024 discussions of the draft articles, the United Kingdom expressed opposition to the national law carveout and also raised questions about the definition's focus on confinement.

Textual suggestions

When revised, article 2(2)(f) should read

> "forced pregnancy" means the unlawful confinement of a *person,* forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. ~~**This definition shall not in any way be interpreted as affecting national laws relating to pregnancy**~~**."**

(ii) Confirm crime affects children and people who do not identify as female.

We recommend replacing "woman" with "person" in paragraph 2(2)(f).

Limiting the definition to women excludes girls and people who do not identify as female. The definition should be inclusive of anyone who might be a victim of forced pregnancy. The use of the term "woman" alone in the definition of forced pregnancy could be misread to exclude people under 18, as well as gender-diverse people, who could also be subjected to this treatment.[120]

Textual suggestions

A revised paragraph 2(2)(f) should define

> "forced pregnancy" as "the unlawful confinement of a **person,** forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. ~~*This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.*~~*""*

[120] Amnesty International, Australian Centre for International Justice, Bonita Meyersfeld, Global Justice Center, Human Rights Watch, Physicians for Human Rights, Rosemary Grey, Susana SáCouto, Southern African Litigation Centre, Women's Initiative for Gender Justice, and Women's Link Worldwide, "Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy," https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Reproductive-Autonomy-Expert-Brief.pdf, para. 18.

(f) Criminalize gender apartheid

We share the view of many civil society organizations and experts that gender apartheid is an urgently needed addition to the legal canon.[121] The proposed crime of gender apartheid is unique in animus and intent. It is distinct from other international crimes, including gender persecution.

Apartheid standards in international law, developed primarily in the 20th century, in response to atrocities committed in Southern Africa, were designed solely to address apartheid committed based on race.

Women's rights defenders have demonstrated the need for a similarly internationalized response to provide accountability for abuses. They point to examples including the abuses Afghan women are being subjected to by the Taliban, which Afghan women's rights defenders and many experts including the UN High Commissioner for Human Rights describe as acts of apartheid based on gender.[122] They correctly point out that the Taliban's systematic and structural violations of the rights of all women and girls are distinct from the crime of gender persecution, which Taliban leaders are also committing.[123] Creating an international crime of gender apartheid is necessary to fill a gap in international law which has been illustrated by the Taliban's abuses, and to permit

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[121] See End Gender Apartheid Campaign, https://endgenderapartheid.today/; Feminist Majority Campaign https://feminist.org/our-work/afghan-women-and-girls/; Parliamentarians for Global Action https://www.pgaction.org/ilhr/rome-statute/gender-apartheid.html; International Federaton for Human Rights, https://www.fidh.org/en/issues/women-s-rights/fidh-joins-global-movement-to-recognise-gender-apartheid-as-crime; https://www.fidh.org/en/issues/women-s-rights/fidh-joins-global-movement-to-recognise-gender-apartheid-as-crime#:~:text=Until the crime of gender,means inhumane acts of a

Feminist Majority Campaign https://feminist.org/our-work/afghan-women-and-girls/; Amnesty International, https://www.amnesty.org/en/latest/news/2024/06/gender-apartheid-must-be-recognized-international-law/; International Service for Human Rights, https://ishr.ch/campaigns/accountability-afghanistan/; End Gender Apartheid Campaign, Joint Letter from South African Jurists and Anti-Apartheid Experts on Codifying the Crime of Gender Apartheid in the Draft Crimes Against Humanity Convention, February 21, 2024, https://endgenderapartheid.today/download/2025/EGA%20South%20African%20Jurists%20Letter%20-%20English.pdf

[122] UN Comments on Gender Apartheid as of July 2025, End Gender Apartheid Campaign, (July 2025) https://endgenderapartheid.today/download/2025/UN%20Comments%20on%20Gender%20Apartheid.pdf; Human Rights Watch, "Gender Apartheid Should be an International Crime," July 14, 2025, https://www.hrw.org/news/2025/07/14/gender-apartheid-should-be-an-international-crime (accessed September 9, 2025); Karima Bennoune, "The International Obligation to Counter Gender Apartheid in Afghanistan," Columbia Human Rights Law Review, 54.1, 2022, https://hrlr.law.columbia.edu/files/2022/12/Bennoune-Finalized-12.09.22.pdf (accessed September 9, 2025); see also, for example April 2024 survey of 3,640 women living across 19 of Afghanistan's 34 provinces, 64 percent said that the term gender apartheid fully or somewhat accurately reflects the situation in Afghanistan, and 60 percent said they wanted the UN to use this term describe Taliban abuses against women and girls. Bishnaw, "Women's Peace Brief—April 2024," https://bishnaw.com/wp-content/uploads/2024/06/Women-Peace-Brief-April-2024.pdf (accessed September 9, 2025).

[123] Human Rights Watch, "Afghanistan: Taliban's Gender Crimes Against Humanity," Human Rights Watch news release, September 8, 2023,

https://www.hrw.org/news/2023/09/08/afghanistan-talibans-gender-crimes-against-humanity.

accountability for the totality of the crimes perpetrated against women and girls in such a context.[124]

Ten countries have so far signaled in the Sixth Committee their support for including or considering the inclusion of gender apartheid in the new treaty, and other states have done so in other fora.[125] Their call is echoed by UN experts, including the High Commissioner for Human Rights, the CEDAW Committee, the Executive Director of UN Women, the Working Group on Discrimination Against Women and Girls, the Special Rapporteur on the human rights situation in Afghanistan, and about two dozen other UN experts.[126] In the discussions about creating a crime of gender apartheid, Malta has proposed a definition which has gained broad support.[127]

Textual suggestions

When revised, article 2(2)(h) would read as follows

> "the crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups, **or by one gender group over another gender group or groups,** and committed with the intention of maintaining that regime.

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[124] End Gender Apartheid, Legal Brief on Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid, " October 5, 2023, . https://endgenderapartheid.today/legal-brief.php; full text accessed on October 22, 2024 at https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief.pdf and annex at https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief%20Annex.pdf

[125] Akila Radhakrishnan and Alyssa Yamamoto, "More States Open to Considering Gender Apartheid for Draft Crimes Against Humanity Treaty," *Just Security,* May 24, 2024, https://www.justsecurity.org/96096/gender-apartheid-crimes-against-humanity-treaty/; Luxembourg at 40:24, ITEM 2: Enhanced ID on report of SR on Afghanistan, 2nd Meeting - 56th Human Rights Council https://webtv.un.org/en/asset/k1f/k1f55wmzzf.

[126] OHCHR, "High Commissioner calls for Justice and Accountability for women of Afghanistan," November 30, 2024, https://reliefweb.int/report/afghanistan/high-commissioner-calls-justice-and-accountability-women-afghanistan; CEDAW Committee, "High Commissioner calls for Justice and Accountability for women of Afghanistan," October 25, 2024, https://docs.un.org/en/CEDAW/C/GC/40; UN Women, "Speech: The women's rights crisis: Listen to, invest in, include, and support Afghan women," September 27, 2023, https://asiapacific.unwomen.org/en/stories/speech/2023/09/the-womens-rights-crisis; OHCHR, "Gender apartheid must be recognised as a crime against humanity, UN experts say," February 20, 2024, https://www.ohchr.org/en/press-releases/2024/02/gender-apartheid-must-be-recognised-crime-against-humanity-un-experts-say#:~:text=The%20experts%20urged%20Member%20and,humanity%20aimed%20at%20the%20systematic;

UNGA, Report of the Special Rapporteur on the situation of human rights in Afghanistan, UN Doc. A/HRC/56/25 (May 13, 2024), https://docs.un.org/en/A/HRC/56/25; OHCHR, "Afghanistan: International community must reject Taliban's violent and authoritarian rule, say UN experts," August 14, 2025, https://www.ohchr.org/en/press-releases/2025/08/afghanistan-international-community-must-reject-talibans-violent-and

[127] Written comments submitted by Malta on the International Law Commission's Draft articles on Prevention and Punishment of Crimes Against Humanity, (undated), https://www.un.org/en/ga/sixth/78/cah/malta_e.pdf.

Human Rights Watch and the Prevention of Crimes against Humanity Project will also consider the inclusion of other amendments to the definition of the crime of apartheid, including naming other groups who could be subjected to apartheid.

(g) Adjust the definition of extermination

States should add "safe water and sanitation" to the list of items where the "deprivation" of this item would be considered "intentional infliction on conditions of life" for the definition of "extermination" in 2(2)(b).

While the deprivation of water and sanitation are implicitly included in the definition of this crime, it would aid in prosecutions and preparing case files to make it explicit that the deprivation of water is an explicit ground for finding extermination. Deprivation of access to water can result in death even more rapidly than deprivation of food and medicine, including through malnutrition, impact on physical and cognitive growth and development, and waterborne diseases that disproportionately affect children due to their physical vulnerability.[128]

For example, Human Rights Watch research has found that Israeli authorities were responsible for the deliberate destruction of water and sanitation infrastructure, the prevention of repairs to damaged water and sanitation infrastructure, and the cutting off or severe restrictions on water, electricity and fuel, which have likely caused thousands of deaths, that is, a mass killing, and will likely continue to cause deaths into the future.[129] As a state policy, the UN Commission of Inquiry found that these acts constitute a widespread or systematic attack directed against a civilian population as a part of the crime against humanity of extermination.[130]

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[128] Convention on the Rights of the Child, art. 24 (c); The Committee on the Rights of the Child has also noted the responsibility of states to provide access to clean drinking water for young children to support early development, and to adolescents at school. UN Committee on the Rights of the Child, General Comment No. 7, Implementing child rights in early childhood, U.N. Doc. CRC/C/GC/7/Rev.1, 20 (2006), para. 27 (a); UN Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003), para. 17.

[129] Human Rights Watch, *Extermination and Acts of Genocide* (New York: 2024), https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza.

[130] OHCHR, Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, A/HRC/60/CRP.3, September 16, 2025, https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf; UNICEF, *Water Under Fire Volume 3: Attacks on water and sanitation services in armed conflict and the impacts on children* (New York: 2021), https://www.unicef.org/media/98976/file/Water%20Under%20Fire%20%20%20Volume3.pdf (accessed March 11, 2025).

Textual suggestions

Once revised, the definition of extermination in article 2(2)(b) should explicitly include deprivation of "safe water" as follows:

> "extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food, **safe water**, **sanitation** and medicine, calculated to bring about the destruction of part of a population.

(h) Adjust the definition of enforced disappearances

(i) Eliminate the intent requirement concerning removal from the protection of the law

We recommend deleting the phrase "with the intention of removing [the disappeared person] from the protection of the law" in the definition of enforced disappearance, thereby eliminating the intent requirement from the definition of the crime.

The current formulation requires proof of the perpetrator's subjective intention. The definition should be revised to eliminate this extra hurdle and better match the definition provided in the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)[131] and as well as in the 1994 Inter-American Convention on Forced Disappearance of Persons[132] and the 1992 Declaration on the Protection of all Persons from Enforced Disappearance,[133] which all exclude an intention requirement. During the April 2024 meetings, Portugal, Argentina, and others expressed support for editing the definition of enforced disappearances.[134]

The draft articles should include a definition of enforced disappearance that is aligned with the most recent developments in international law, particularly given that harmonization of national laws is an objective of the draft articles. The definition in the

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[131] Article 2 of the ICPPED defines "enforced disappearance" as: the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

[132] Inter-American Commission on the Forced Disappearance of People, adopted June 9, 1994 (entered into force March 29, 1996), https://www.oas.org/juridico/english/treaties/a-60.html.

[133] Declaration on the Protection of all Persons from Enforced Disappearance, GA Res. 47/133 of 18 Dec. 1992.

[134] Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf.

ICPPED, which is an instrument that focuses exclusively on enforced disappearance, reflects the crime as it is currently understood, containing solely objective elements. Like the ICPPED definition, the draft articles should remove the intention requirement; proof of intention should not be required to consider this conduct a crime against humanity.

Textual suggestions

Once revised, draft article 2(2)(i) should read

> "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, ~~with the intention of removing [the disappeared person] from the protection of the law~~ ~~for a prolonged period of time.~~

(ii) Eliminate the duration requirement

States should delete the phrase "for a prolonged period of time" in definition of enforced disappearance, thereby eliminating the requirement that prosecutors show the disappearance took place over a protracted period. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)[135] and as well as the 1994 Inter-American Convention on Forced Disappearance of Persons[136] and the 1992 Declaration on the Protection of all Persons from Enforced Disappearance,[137] contain no prolonged duration requirement.

If a person has been arrested, detained, or abducted by an authority, and that authority subsequently refuses to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of the person, clearly that person is already outside the protection of the law, whether the period has been "prolonged." In order to better reflect this contemporary understanding, the text should eliminate the requirement.

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[135] Article 2 of the ICPPED defines "enforced disappearance" as: the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

[136] Inter-American Convention on Forced Disappearance of Persons, https://www.oas.org/juridico/english/treaties/a-60.html

[137] Declaration on the Protection of all Persons from Enforced Disappearance, GA Res. 47/133 of 18 Dec. 1992.

Textual suggestions

Once revised, article 2(2)(i) should read

> *enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons. with the intention of removing them from the protection of the law for a prolonged period of time.*

(i) Clarify scope and nature of duty to prevent

States should amend articles 3 and 4 to clarify the content of the duty to prevent crimes against humanity. [138]

Like the Genocide Convention, the draft articles on crimes against humanity impose an obligation of prevention. Many states have recommended that the draft articles should be amended to clarify the legal content of this duty. For consistency and clarity, states should seek to apply the jurisprudential standards developed by international courts related to the duty to prevent genocide.[139]

As such, the convention should be clear that states are prohibited not just from committing crimes against humanity, but also from aiding, assisting, or instigating them. As the ILC Commentaries 3(6) explain "[s]tates have obligations under international law not to aid or assist, or to direct, control, or coerce another State in the commission of an internationally wrongful act."[140] Our proposed amendment makes these obligations explicit.

It is also necessary to make explicit that the obligation to prevent includes a prohibition on state omissions, as well as actions, that give rise to crimes against humanity. International

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[138] Draft Article 3 (1) ("Each State has the obligation not to engage in acts that constitute crimes against humanity); (2) ("Each State undertakes to prevent and to punish crimes against humanity, which are crimes under international law, whether or not committed in time of armed conflict.") (3) "No exceptional circumstances whatsoever, such as armed conflict, internal political stability or other public emergency, may be invoked as a justification of crimes against humanity.").

[139] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment, I.C.J. Reports 2015, p. 120, para. 183

[140] Commentaries to the Draft Articles, UN Doc A/74/10, pp. 48-49, Article 3 Commentaries (5)-(6) (referring to State obligations "not to commit directly such acts" and "not to aid or assist, or to direct, control or coerce" them).

law recognizes that crimes against humanity may be committed through an omission as well as a positive action and that state responsibility can arise through omissions as well as acts. For article 3 (3), which provides that exceptional circumstances may not be invoked as a justification for crimes against humanity, we recommend more closely following the model from the Convention against Torture to clarify that a "threat" of an armed conflict cannot justify crimes against humanity.

Textual suggestions

Human Rights Watch recommends that once amended, article 3 (1) should read

> *Each State has the obligation not to engage in,* ***including through the commission, aiding or assisting, or instigating*** acts ***or omissions*** that constitute or contribute to crimes against humanity.

Human Rights Watch recommends that article 3 (2) should be retained as drafted. Human Rights Watch recommends that article 3 (3) should be amended to read as follows:

> No exceptional circumstances whatsoever, such as ***the existence or threat of*** armed conflict, *internal political instability or other public emergency*, may be invoked as a justification of crimes against humanity or a ***state's failure to discharge its obligations to prevent or punish crimes against humanity.***

Human Rights Watch recommends expanding the external dimension of the obligation of prevention in draft article 4 to clarify states' duty to employ the means at their disposal to prevent crimes against humanity beyond the territorial jurisdiction of a state party. This would codify ICJ precedent interpreting the Genocide Convention holding that obligation to prevent is applied to "to a State wherever it may be acting or may be able to act in ways appropriate to meeting the obligation…in question."[141] The duty should apply

[141] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment, I.C.J. Reports 2015, p. 120, para. 183.

extraterritorially and extend beyond state action to persons or groups under their de jure or de facto control, direction, or influence.[142]

We recommend retaining the duty to cooperate in para 4 (b). As the ILC Commentary underscores, cooperation in the prevention of crimes against humanity arises from the Charter of the United Nations. There was consensus within the ILC on the importance of this provision and the centrality of cooperation to this purpose. Argentina and Ireland called for further clarification of the terms of this provision.

While Türkiye and India argued that the scope of the obligation should be narrowed, particularly by limiting cooperation to states and relevant intergovernmental organizations only, given the role of non-governmental organizations in humanitarian delivery and early warning systems for atrocities, that would be a highly regressive amendment. Article 4(b), in turn, prescribes a duty to cooperate to prevent crimes against humanity. Such cooperation concerns both other states and "relevant" intergovernmental organizations, which include international organizations such as the U.N. and its specialized agency, based on their mandate and functions. "Other organizations" may also be involved in such cooperation, including NGOs, albeit "as appropriate," which means that the obligation to cooperate "does not extend to these organizations to the same extent as it does to states and relevant intergovernmental organizations." The obligation to cooperate under article 4(b) would become especially relevant when national authorities do not have the capacity and expertise regarding the prevention of crimes against humanity, which would thus require them to seek external capacity building and other relevant forms of assistance.

Textual suggestions

When revised, article 4(a) should read

> effective legislative, administrative, judicial, or other appropriate preventive measures in any territory *or* ***with respect to any person under its jurisdiction or control.***

Article 4(b) retained as is.

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[142] See Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Judgment, I.C.J. Reports 1986, paras. 109-115 (establishing test for 'effective control'); Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022, para. 84 (noting obligations extend to acts of persons or entities under state control or influence)

(3) Cluster three on national measures

(a) Maintain the current approach to incorporating crimes at national level

We recommend retaining the current approach to incorporation of crimes against humanity at the national level in article 6. By championing this dimension of article 6, member states will be safeguarding the beating heart of the convention. Once adopted and ratified, these provisions will enable a future in which "the effective prosecution" of crimes against humanity is guaranteed by all member states, impunity is curtailed, and the rule of law is upheld even in the face of humanity's gravest offenses. By ensuring crimes against humanity are offenses under national law, article 6 reinforces existing duties to repress international crimes at the national level.

These articles do not invent new obligations out of whole cloth; they consolidate and update well-established legal standards to ensure comprehensive accountability for crimes against humanity within national legal systems. In fact, numerous member states have already incorporated at least some, if not all, of the customary crimes against humanity in their national legal frameworks, reinforcing their status as customary law, as follows:

- Germany, which codified crimes against humanity under its Völkerstrafgesetzbuch;[143]
- France, which recognized crimes against humanity in its Penal Code[144] as well as prosecuted cases, as demonstrated with the conviction of Pascal Simbikangwa;[145]
- Canada, which integrated crimes against humanity under the Crimes Against Humanity and War Crimes Act[146];
- Argentina codified its prohibition on crimes against humanity through Law 26.200[147]; and

[143] [143] Code of Crimes against International Law (CCAIL) of 26 June 2002 (Federal Law Gazette I, p. 2254), as last amended by Article 1 of the Act of 30 July 2024 (Federal Law Gazette 2024 I, no. 255), https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html (Note that the crime of apartheid is not included in this definition.)

[144] ICRC, "France, Legislative Developments on Universal Jurisdiction," https://casebook.icrc.org/case-study/france-legislative-developments-universal-jurisdiction.

[145] Bénédicte Jeannerod, "French Court Confirms Genocide Conviction of Former Rwandan Intelligence Chief," commentary, Human Rights dispatch, December 5, 2016, https://www.hrw.org/news/2016/12/05/french-court-confirms-genocide-conviction-former-rwandan-intelligence-chief.

[146] Crimes Against Humanity and War Crimes Act (S.C. 2000, c. 24), Act current to 2025-09-29 and last amended on 2024-07-20, https://laws.justice.gc.ca/eng/acts/C-45.9/.

[147] TRIAL International, "Universal Jurisdiction: Law and Practice in Argentina," April 2025, https://trialinternational.org/wp-content/uploads/2025/04/UJ-Law-Practice-Briefing-Paper_Argentina_EN.pdf

- South Africa, which recognized crimes against humanity under its Implementation of the Rome Statute Act.[148]

Textual suggestions

*S*afeguard the language in Article 6 integrating crimes against humanity into national law

(b) Maintaining the current approach to command responsibility

Human Rights Watch recommends retaining the command responsibility provisions in article 6(3) since they clarify responsibilities for both military and civilian commanders, holding them to account when they fail to prevent or punish crimes by subordinates they knew or should have known about.

To avoid any ambiguity when states implement this, the states should make clear as a part of their comments around the negotiation or adoption that they understand "*had reason to know*" means the superior possessed, or should have possessed, information that would put them on notice of crimes. Comments unpacking the "*had reason to know*" threshold would be helpful during negotiations and adoption of article 6(3), particularly considering the mixed practice around this issue in both treaty law and jurisprudence.

Command responsibility, in general, is well defined in international law but states have always had freedom in transposing it in a way that fits their legal system. The treaty codifies this, embracing different approaches by different national legal systems. Some may choose to impose command responsibility as a form of criminal liability, others as dereliction of duty or an offense of "failure to prevent/punish crimes against humanity." Several states, including those in civil law traditions, have legislated command responsibility in their ICC implementing laws, showing it is feasible across legal systems.[149] The draft article's language, specifically its directive to states to adopt "necessary measures" gives member states leeway to choose the legal mechanism. The current formulation would allow measures, including making it a criminal offense, or a

[148] ICC, International Criminal Court Questionnaire/Annex - Implementing Legislation for States Parties (Reference ICC-ASP/S/PA/07), https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP9/PoA/icc-rc-poa2010-saf-eng.pdf.

[149] States following civil law that have included command responsibility. See, e.g., Germany, Völkerstrafgesetzbuch (Code of Crimes Against International Law), June 26, 2002, § 4 (command responsibility); France, Code pénal, art. 213-4-1 (liability of military commanders); Netherlands, International Crimes Act 2003, art. 9 (command responsibility); Spain, Ley Orgánica 18/2003, art. 615 bis (command responsibility for international crimes); Belgium, Act of 5 August 2003 on Serious Violations of International Humanitarian Law, art. 7 (command responsibility).

violation of duty, or extending accessory liability by omission, as long as the result is that superiors are not immune.

Textual suggestions

Retain article 6(3) with no edits

(c) Safeguard provision confirming that superior orders cannot be a defense

States must retain article 6(4) as drafted, since it already includes an essential reiteration of the principle that superior orders are not a defense for those accused of crimes against humanity.

Article 6(4) provides that obeying a government or superior's order "is not a ground for excluding criminal responsibility," which reflects the Nuremberg principle[150] and has since been consistently applied in national courts.[151] Highly qualified international legal experts have confirmed that this norm is linked to the *jus cogens.*[152] In the context of discussions on the ILC 2019 draft articles at the resumed sessions of the Sixth Committee of the General Assembly, a number of member states have already vocally endorsed this formulation, including Italy,[153] the Philippines,[154] and Palestine. The United States [155] and India[156]generally supported the principle but requested clarification, exceptions or mitigation, particularly for situations where the order was not manifestly unlawful, or the subordinate was acting under duress.

As the commentary on the draft article by the International Law Commission explains, "While superior orders are not permitted as a defense to prosecution for an offence, some

[150] IMT Charter Article 8

[151] Argentine's Supreme Court case "Simon" https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=5863381&cache=1592145288347

[152] C. Cheriff Bassiouni, International Crimes: Jus Cogens and Obligatio Erga Omnes, Law and Contemporary Problems, Vol.59, No. 4, 63

[153] Philippines, Statement at the Resumed Session of the Sixth Committee on Crimes Against Humanity, 78th Session of the UN General Assembly, April 11, 2024, UN Web TV, timestamp 00:37:10, https://webtv.un.org/en/asset/[video-id] (supporting principle that superior orders not a defense but requesting clarification on application).

[154] Palestine, Statement at the Resumed Session of the Sixth Committee on Crimes Against Humanity, 78th Session of the UN General Assembly, April 11, 2024, UN Web TV, timestamp 00:08:31, https://webtv.un.org/en/asset/[video-id] (endorsing article 6(4) on superior orders).

[155] United States, Statement at the Resumed Session of the Sixth Committee on Crimes Against Humanity, 78th Session of the UN General Assembly, April 2024, (supporting principle that superior orders not grounds for excluding criminal responsibility while noting consideration should be given to circumstances including manifest unlawfulness and duress).

[156] India, Statement at the Resumed Session of the Sixth Committee on Crimes Against Humanity, 78th Session of the UN General Assembly, April [date needed], 2024, [available at UN document repository or Web TV with timestamp] (supporting principle while requesting exceptions or mitigation for situations where order was not manifestly unlawful or subordinate acted under duress).

of the international and national jurisdictions mentioned above allow orders from a superior to serve as a mitigating factor at the sentencing stage." This approach also mirrors the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance, which both specify that no exceptional circumstances or orders from a superior may be invoked to justify torture or an enforced disappearance.[157] Preserving this language will be important.

Textual suggestions

Retain article 6(4) as drafted

(d) Specify that immunities and amnesties are not applicable to crimes against humanity

States should amend articles 6(5) and 6(6) to make clear that immunities cannot prevent jurisdiction in national proceedings for crimes against humanity, and amnesties should not excuse this class of crimes. Pardons that do not fall under admissible grounds—such as humanitarian purposes—should also not be applied to individuals convicted of crimes against humanity.[158] Reinforcing article 6(5)'s existing language about official position not excusing liability, the draft convention should be amended to include an explicit provision on non-applicability of immunities for crimes against humanity.[159] Amnesties for international crimes of a serious nature, such as torture, genocide, or crimes against humanity, are prohibited under international law; Article 6(6) should be amended to reflect this explicitly.[160] The final version of article 6 should also make clear that no amnesty, pardon or immunity for regular crimes under national law can represent a bar to punishment for crimes against humanity.

A prohibition of amnesties is a necessary legal consequence of the peremptory character (*jus cogens*) of the prohibition of certain conduct, including crimes against humanity. International practice increasingly rejects amnesties for genocide, war crimes, and crimes against humanity as incompatible with states' duty to prosecute gross human rights

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[157] In the context of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture has criticized national legislation that permits such a defense or is ambiguous on the issue. In some instances, the problem arises from the presence in a State's national law of what is referred to as a "due obedience" defense.

[158] See Inter-American Court, *Barrios Altos Case and La Cantuta Case, Monitoring Compliance with Judgment, Order of May 30, 2018, recitals 30. 47.*)

[159] Joana de Andrade Pacheco, "Where do States Stand on Official Immunity Under International Law?" *Just Security,* April 19, 2024 https://www.justsecurity.org/94830/where-do-states-stand-on-official-immunity-under-international-law/.

[160] Statute of the Special Court for Sierra Leone, art. 10; Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgment of 10 December 1998, Trial Chamber, para. 155; Decision on Ieng Sary's Rule 89 Preliminary Objections (Ne bis in idem and Amnesty and Pardon), Case No. 002/19-09-2007/ ECCC/TC, Judgment of 3 November 2011, Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, paras. 40–53.

violations. Regional human rights bodies have also found that amnesties provided under national law violate human rights and should not be used to obstruct accountability efforts.[161]

Adding a clear statement that amnesties or similar measures shall not prevent the investigation and prosecution of crimes against humanity would match the approach taken by human rights jurisprudence. Moreover, this would ensure that article 6's promise of accountability cannot be undone by domestic political deals. Additionally, a state's granting of an amnesty for crimes against humanity would conflict with states' obligations under the draft articles to criminalize, investigate, and prosecute crimes against humanity, to comply with their *aut dedere aut judicare* obligations ("either extradite or prosecute"), and to fulfil its obligations to victims and others. Argentina included a call to this effect in its written submission.

Textual suggestions

As revised, article 6(5) should read

> Each State shall take the necessary measures to ensure that, under its law, **no person, regardless of rank or office or nationality, is immune from criminal or procedural jurisdiction in national proceedings for crimes against humanity**.

Article 6(6) should read

> Each State shall take the necessary measures to ensure that, **under its ~~criminal~~ law,** the offences referred to in this draft article shall not be subject to any statute of limitations **immunity, or amnesty**, *with regard to both prosecution and civil action on reparation*.

(e) No statutes of limitations or immunity for civil action on reparations

To avoid any ambiguity, paragraph 6(6) should be amended to specify that, in addition to not allowing any statute of limitations for these crimes, statutes of limitations shall not apply to civil or any other proceedings in which victims of crimes against humanity seek reparation.

The Inter-American Court of Human Rights addressed the issue of statutes of limitations for civil claims, specifically in relation to crimes against humanity. In its judgment on the case

[161] Barrios Altos v. Peru, Judgment of 14 March 2001 (Merits), Inter-American Court of Human Rights, Series C, No. 75, paras. 41–44; Zimbabwe Human Rights NGO Forum v. Zimbabwe, communication No. 245/02, Decision of 15 May 2006, African Commission on Human and Peoples' Rights, paras. 211–212;Marguš v. Croatia [GC], Application No. 4455/10, Judgment of 27 May 2014, ECHR 2014 (extracts), para. 139.

Órdenes Guerra et al. v. Chile, the Inter-American Court concluded that "insofar as the facts that gave rise to the civil actions for damages for acts characterized as crimes against humanity, such actions should not be subject to the statute of limitations."[162]

This type of amendment would also allow for discussion of how the widely recognized right to reparation and remedy could also be applied to address the lasting impacts of enslavement and other colonial atrocities,[163] which amount to crimes against humanity.[164]

Textual suggestions

As revised, article 6(6) should read

> Each State shall take the necessary measures to ensure that, under **its law**, the offences referred to in this draft article shall not be subject to any statute of limitations, **immunity, pardon, that are not admissible under humanitarian grounds, or amnesty, with regard to both criminal prosecution and civil action .**

(f) Maintaining the current approach to liability for legal persons

States should preserve the language in article 6 around the liability of legal persons, which would include corporations. By keeping this article in the draft that moves forward, states would be expanding accountability from solely individual perpetrators to all responsible actors. The current framing, which leaves liability "subject to the provisions of national law," and includes the caveat "where appropriate" still affords considerable discretion to member states.

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[162] Inte-American Court of Human Rights, Case of Ordenes Guerra et al. v. Chile, Judgement of November 29, 2018, (Merits, Reparations and Costs) at paragraph 89 https://www.corteidh.or.cr/docs/casos/articulos/seriec_372_ing.pdf.

[163] In 2024, a Belgian court found that the Belgian state was responsible for crimes committed during the Belgian colonial era, which amounted to crimes against humanity (the crimes: forcible abduction and segregation of mixed-race children from their mothers in Belgian Congo as part of a "general and systematic policy" during the colonial era). The court of appeal therefore deviated from the decision at first instance finding that the acts were already deemed illegal and crimes against humanity at the time they were committed. Referencing the Charter of the Nuremberg International Tribunals, the court argued that back then it was already recognized that crimes against humanity can't be time-barred, thereby rejecting the Belgian government's argument that the statute of limitations for civil claims expired before the date of Congo's independence.

Court of Appeal of Brussels, 1st Civil Chamber, Final Decision, 2022/AR/26, 2 December 2024, https://rcn-ong.be/wp-content/uploads/2024/12/Appel-Bruxelles-02.12.2024-AFFAIRES-DES-METIS_Anonyme.pdf

[164] SR on racism report on reparations (2019) - the Special Rapporteur emphasizes that the pursuit and achievement of reparations for slavery and colonialism require a genuine "decolonization" of the doctrines of international law that remain barriers to reparations. In the face of the grave historic injustices of slavery and colonialism, as well as their continuing legacies, the use of legal doctrine by Member States to impede redress is distressing. The Special Rapporteur stresses that international legal doctrine has a longer history of justifying and enabling colonial domination than it does of guaranteeing equal rights to all human beings. Law that perpetuates neocolonial dynamics – including the failure to eradicate the legacies of slavery and colonialism – must itself be recognized and condemned as neocolonial law."

Given the documented role that companies or other entities may play in both perpetrating and enabling crimes against humanity, for instance, through complicity in forced labor or supply of weapons used to attack civilians, this expansion is long overdue. The International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes determined that "sometimes it might be more appropriate to hold a corporation responsible rather than a corporate official, if an explicit and collective decision of the management of a company had facilitated the commission of the crime."[165]

States should be encouraged to keep some form of liability for legal persons in the treaty. Even if criminal corporate liability is seen as technically incompatible with some national legal systems[166], the article allows flexibility since it provides that liability can be criminal, civil, or administrative. Indeed, a country that constitutionally cannot prosecute a corporation can still comply with the provision in article 6(8) by enabling civil or administrative penalties.

States take varying approaches to the liability of corporate entities for crimes against humanity. The Netherlands criminal code provides that legal persons can commit any type of crime.[167] France[168] also allows for criminal charges, Sweden[169] provides for civil liability

[165] International Commission of Jurists, "Corporate Complicity and Legal Accountability: Vol 2, Criminal Law and International Crimes," (2008) https://www.icj.org/wp-content/uploads/2012/06/Vol.2-Corporate-legal-accountability-thematic-report-2008.pdf.

[166] US law allows corporate liability, including crimes against humanity. However, the Supreme Court ruled there's a presumption against extraterritoriality and in the 2017 U.S. Supreme Court opinion Jesner v. Arab Bank, Justice Kennedy found that there was no specific, universal, and obligatory norm of corporate liability under prevailing international law.

[167] According to Article 51 of the Dutch Criminal Code, a legal person can in principle commit any type of crime. Therefore, all crimes in the Dutch Criminal Code may — in theory — give rise to corporate liability https://www.globalcompliancenews.com/white-collar-crime/corporate-liability-in-the-netherlands/

[168] Article 121-2 French Criminal Code; Lafarge is the first company in the world to have been charged with complicity in crimes against humanity. On 16 January 2024, the French Supreme Court rejected Lafarge's request to dismiss charges and ruled that Lafarge can be charged with complicity in crimes against humanity for its activities in Syria; https://www.business-humanrights.org/en/latest-news/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria/ . https://www.courdecassation.fr/toutes-les-actualites/2021/09/07/terrorism-terrorist-financing-intention-provision-funds-knowledge

[169] While in Lundin Oil case, the two businessmen face personal charges, the company itself, Lundin Petroleum, also received a notification from the Swedish Prosecution Authority on 1 November 2018 that the company may be liable to a corporate fine and forfeiture of economic benefits. https://www.globenewswire.com/news-release/2018/11/01/1641420/0/en/Lundin-Petroleum-receives-information-regarding-a-potential-corporate-fine-and-forfeiture-of-economic-benefits-in-relation-to-past-operations-in-Sudan.html Corporate fines (*företagsbot*), regulated in Section 7 of Chapter 36 of the *Swedish Criminal Code* is not a criminal sanction, but a special legal effect with the character of a criminal sanction that targets corporations for not following the law. Swedish companies themselves may be subject to, *inter alia*, corporate fines, interim measures, and special administrative sanctions such as environmental sanctions and remuneration for damages if crimes are committed during the corporation's operations. The following list is not exhaustive and other examples exist. Furthermore, the principles of international law must be respected in all cases when dealing with crimes committed abroad. https://www.globalcompliancenews.com/white-collar-crime/corporate-liability-in-sweden/

and fines, and Germany[170] allows for administrative liability. In 2016, a European Parliament resolution called on European member states to establish criminal liability for business enterprises that commit offenses constituting serious human rights abuses.[171]

Textual suggestions

Retain article 6(8) with no edits.

(g) Rejecting attempts to assign priority jurisdiction

States must retain the current approach in the draft articles, where article 7 does not prioritize any one basis of jurisdiction. It treats territorial, active personality, passive personality, and presence-based jurisdiction as complementary without establishing a hierarchy among them. Some states, including Brazil and Singapore, have suggested that primacy or priority would be an important concept to introduce, arguing that territorial or active personality jurisdiction should take precedence.[172] However, such an approach is not supported by treaty practice, jurisprudence, or the object and purpose of the draft articles.

Article 7 is the linchpin of the proposed Convention on Crimes Against Humanity's enforcement regime. It translates the international condemnation of crimes against humanity into concrete domestic action, ensuring that every state party stands ready to prosecute or extradite offenders and that no safe haven will exist for those who commit the worst atrocities. The provision is firmly rooted in decades of international law—from Nuremberg to the ICC—and reinforces states' existing obligations to combat impunity. By encompassing all perpetrators (from direct actors to commanders and officials) and eliminating procedural bars (like immunity and statutes of limitation), it gives practical effect to the principle that justice for crimes against humanity is paramount and non-negotiable. Further, as the commentaries note, crimes against humanity are already recognized as *jus cogens* (non-derogable) obligations, with their national criminalization merely representing a logical extension of that status.

Textual suggestions

States should reject proposals to amend article 7 to assign priority jurisdiction.

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[170] Under German law, there is no criminal liability for companies as the German Criminal Code (Strafgesetzbuch or StGB) only applies to individuals. However, there is administrative liability for companies under the Act on Regulatory Offenses (Ordnungswidrigkeitengesetz or OWiG)

[171] OJ C 2018 215/125 Corporate Liability for serious human rights abuses in third countries, European Parliament resolution of 25 October 2016 on corporate liability for serious human rights abuses in third countries.

[172] UNGA, Summary record of the 9th meeting, UN Doc. A/C.6/78/SR.9, January 31, 2024, https://docs.un.org/en/A/C.6/78/SR.9.

(h) Strengthening passive personality and retaining jurisdiction over suspects on territory

Article 7(1) of the draft to should be amended to strengthen its embrace of passive personality jurisdiction, requiring that states prosecute crimes against humanity in their national courts regardless of where they were committed as long as victims are present on their territory.

Draft article 7(1)(c) makes the establishment of jurisdiction over crimes against humanity when the victim is a national of the state optional, since it conditions that jurisdiction on "if that State considers it appropriate." This creates a potential gap in redress for victims because passive personality jurisdiction is left at the state's discretion. Making passive personality jurisdiction a requirement would close the scope for impunity for those who commit crimes against humanity.

Article 7(2) requires states to "take necessary measures" to establish jurisdiction when a suspect "is present in any territory under its jurisdiction and it does not extradite or surrender the person." This creates an important requirement because, unless states take the path of extradition or surrender, they must act when suspects are in their territory. This article only creates a limited scope for jurisdiction since it requires the suspect's presence on the state's territory to establish jurisdiction. The draft articles should explicitly state that they are binding upon each party concerning its entire territory, clarifying the scope of their understanding of "territory under jurisdiction."

Textual suggestions

As revised, article 7(1)(c) should read "when the victim is a national of that State ~~if that State considers it appropriate.~~"

Article 7(2) should read

> "is present in any territory under its jurisdiction, **including those it temporarily controls or occupies, or any ship or aircraft registered in that state**."

(i) Maintaining the current approach to the duty to extradite or prosecute

Human Rights Watch and the Prevention of Crimes against Humanity Project recommend maintaining the to the current draft articles' approach, which stipulates in articles 7 and 10 that states are under an obligation to establish and exercise jurisdiction over crimes against humanity in cases where the alleged offender is present in any territory under the state's jurisdiction, unless that state extradites or surrenders the person.

This structure is necessary to ensure perpetrators cannot evade justice by crossing borders or invoking technical immunities. The 2014 ILC report on the obligation to extradite or prosecute establishes that *"*the obligation to prosecute is actually an obligation to submit the case to the prosecuting authorities," and further establishes that "extradition may only be to a State that has jurisdiction in some capacity to prosecute and try the alleged offender pursuant to an international legal obligation.*"* It operationalizes the well-established customary principle of *aut dedere aut judicare* for crimes against humanity. If every state party has criminalized these offenses, perpetrators can be caught and tried wherever found. This is crucial given the transnational nature of crimes against humanity, particularly since the orchestrators of widespread attacks may often have the means to flee abroad.

The clause "submit the case to its competent authorities for the purpose of prosecution" in article 10 recognizes the sovereignty and independence of judicial organs of states. If the offender is not extradited, the competent authorities will decide on prosecution based on the criminal law and evidence in the concerned state. The principle of *aut dedere aut judicare* has already been codified in multilateral treaties.[173] Some treaties codify the *aut dedere aut judicare principle*, with an obligation to extradite on request and only prosecute if they do not extradite,[174] or prosecute offenders with the alternative to extradite,[175] or mandatory extradition or submission to prosecution.[176]

The International Court of Justice, in Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), broadly divided the different types of treaties into two categories: (1) the primary obligation is to extradite, with the alternate being submission to prosecution; or (2) the primary obligation is to submit to prosecution with extradition being the alternative available option.[177]

Textual suggestions:

Retain article 10 as drafted, rejecting any attempt to allow amnesties or immunities.

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[173] International Law Commission, Rep. on the Work of its Seventy-First Session U.N. Doc. A/74/10 (2019) https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf

[174] 1933 Convention on Extradition.

[175] Geneva Conventions of 1949.

[176] 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

[177] Separate Opinion of Judge Yusuf in the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422, at pp. 567–568, paras. 19–22.

(4) Cluster four on international measures

(a) Establishing a treaty implementation mechanism

Human Rights Watch and the Prevention of Crimes against Humanity Project recommend adding an article, or series of articles, to create a robust treaty mechanism. While the dispute settlement pathway involving the International Court of Justice outlined in article 15 offers an important avenue for state-to-state claims, and this provision needs to be retained as drafted, a treaty mechanism would fill an important gap in the architecture.

A robust mechanism will promote implementation of the treaty and help monitor compliance. States could develop a structure for the mechanism drawing from the best practices used by the bodies established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance, treaties which are similarly geared toward preventing and punishing specific conduct. Likewise, a treaty implementation mechanism for the crimes against humanity treaty should publish general comments interpreting the scope of treaty provisions, receive individual complaints, and be composed of experts who can issue compelling decisions to member states.

The Committee Against Torture, Committee on the Elimination of Racial Discrimination, and Working Group on Enforced Disappearances have, in their own ways, each helped breathe life into the treaties they seek to monitor, through interpretive guidance, individual complaint mechanisms, and state parties regular reporting. While these types of treaty body monitoring mechanisms' interpretations are not formally binding on states, they have proven to be highly influential.[178] The International Court of Justice has affirmed this influence, noting it gives "great weight" to the interpretations of the Human Rights Committee, even though it is under no obligation to do so.[179] Such interpretations and guidance by a treaty body would also be critical for domestic courts and other institutions implementing the treaty. Since much of the purpose of the convention is national-level implementation, any treaty body should be focused on supporting that function, including by building capacity by reviewing draft legislation and providing model legislation.

Denmark has championed the need for a treaty body mechanism for crimes against humanity. During the April 2024 resumed session, the representative for Sierra Leone

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[178] See Luze Oette, 'The UN Human Rights Treaty Bodies: Impact and Future' in Gerd Oberleitner (ed), *International Human Rights, Institutions, Tribunals, and Courts* (Springer, 2018) 95, 104; Kasey McCall-Smith, *Treaty Bodies, States and the Shaping of Customary Law* (Research Paper Series No 2018.14, University of Edinburgh School of Law, 2018) 1, 3–4.

[179] *Diallo (Republic of Guinea v Democratic Republic of the Congo)* ICJ Rep 210, 639 [66].

suggested that the mandate should be drawn with an eye to the "lessons learned and best practices developed by such bodies already in existence." Sierra Leone also suggested that the body could even "be a state driven mechanism, which could be comprised of independent experts serving in their capacities to provide further support and assistance for proper monitoring and implementation of a future crimes against humanity treaty."[180] This proposal reflects some of the elements of a Committee outlined in the proposed crimes against humanity treaty draft from 2010 promulgated by the Washington University in St. Louis.[181]

Finland, speaking on behalf of the Nordic countries at the April 2024 session, when discussing article 4, indicated that it is open to conversations on whether to include a mechanism on prevention.[182] Similarly, the European Union, on behalf of its member states and a handful of others, indicated that a monitoring mechanism "is an important issue to be discussed in formal negotiating settings," noting that it could also assist states in building capacity for the implementation of a future convention.[183]

Without a treaty body, there would be no independent mechanism to assess state compliance with the crimes against humanity treaty. There is evidence that other treaty bodies' reporting, and individual complaint decisions, have improved states' human rights standards, even in repressive states. If states truly want to prevent and punish crimes against humanity, a treaty monitoring mechanism is a critical component.

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[180] Sierra Leone (Time Stamp - 02:31:35) cited in Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf.

[181] Crimes Against Humanity Initiative, Convention Text, https://sites.wustl.edu/crimesagainsthumanity/convention-text/.

[182] Finland (On behalf of the Nordic countries - Denmark, Finland, Iceland, Norway, Sweden) (Time Stamp - 02:37:40) cited in Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf.

[183] The European Union (on behalf of Member States and North Macedonia, Montenegro, Serbia, Albania, Ukraine, the Republic of Moldova, Bosnia and Herzegovina and Georgia, Liechtenstein and San Marino) (Time Stamp - 00:17:45) cited in Leila Nadya Sadat, "Compilation of Government Statements at the Sixth Committee Resumed Session on Crimes Against Humanity, April 1-5 and April 11, 2024", The Crimes Against Humanity Initiative at Washington University School of Law and the Lowenstein Human Rights Project Yale Law School, September 10, 2024, https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf.

Textual suggestions:

Human Rights Watch and the Prevention of Crimes against Humanity Project take no position on the name of the body but urges states to amend the draft articles by adding a series of articles following article 15 to create a standalone treaty body monitoring mechanism, as follows:

> **There shall be established XX (hereinafter referred to as XX)[184] which shall carry out the functions hereinafter provided to give effect to States Parties obligations under this Convention**
>
> **(a) promote and monitor states parties' implementation with treaty obligations,**
> **(b) provide authoritative interpretations and guidance on the terms of the treaty and their application, including by reviewing implementing legislation; and**
> **(c) review individual complaints**

(5) Cluster five on safeguards

(a) Retain nonrefoulement safeguard

We recommend retaining the safeguard against nonrefoulement, preventing people from being returned to places where they are likely to experience crimes against humanity, as outlined in article 5(1).

The clause in article 5(2) allowing the state in question to take into account "all relevant considerations" offers flexibility to determine the applicable considerations on a case-by-case basis. In international law, the obligation of nonrefoulement has been applied to a range of human rights violations, including torture, persecution, inhuman or degrading treatment or punishment, and the death penalty.

It is worth noting that as drafted, the additional safeguard at article 5 would only be triggered in the case of crimes that are committed "as part of a widespread or systematic attack." This caveat should alleviate state concerns of any possible expansion of the principle and ensure that the obligation is only triggered where such protection is absolutely necessary. Further, article 5(2) clarifies that the competent authorities should look for a "consistent pattern of gross, flagrant or mass violations of human rights." While people may be eligible for protection against nonrefoulement under broader standards in

[184] We leave it to negotiators to identify the correct name for this body and are focused instead on its mandate and functions.

other treaties, including protection from torture or persecution, it is also important to also explicitly prevent their return to a situation where they might face crimes against humanity as a part of a widespread systemic attack, especially for persons who may not meet strict interpretations of the refugee definition based on establishing an individualized risk of persecution.

Textual suggestions:

Retain article 5 as drafted.

(b) Strengthening procedural guarantees and due process

We recommend that article 11 be amended to incorporate the full range of rights during investigation stages.

Procedural guarantees and comprehensive rights of the accused described in the draft text fall short of internationally recognized due process standards. Specifically, member states should propose an amendment that would bolster provisions ensuring that accused persons have access to legal representation, specify that fair trial guarantees cannot be derogated from, even in emergency situations, and ensure that all procedural rights apply equally to all suspects regardless of nationality or status. Given the robust jurisprudence on these issues from regional human rights mechanisms, particularly in Europe, the Americas and Africa, it is important to refer to regional law, in addition to national and international law.

These proposed amendments aim to ensure that the convention enshrines the highest standards of international law rather than settling for minimum protections, thereby strengthening accountability while respecting fundamental rights of the accused.

Textual suggestions:

As revised, article 11(1) should read

> Any person against whom measures are being taken in connection with an offence covered by the present draft articles shall be guaranteed at all stages of the proceedings fair treatment, including a fair trial, ***access to legal representation,*** and full protection of his or her rights under applicable national, **regional**, and international law, including human rights law and international humanitarian law, ***without derogation from fair trial guarantees and procedural protections, even in times of emergency.***

(c) Civilian courts, to exclusion of military jurisdiction

We propose adding language to article 11 explicitly stating that people suspected of crimes against humanity, including military personnel, shall be tried only in competent jurisdictions of civilian courts, to the exclusion of military jurisdiction.[185] It is critical to explicitly block and deter efforts to bypass civilian legal systems in favor of other arenas, which may lack transparency, independence or procedural protections.[186]

T*extual suggestion*

When revised, article 11(1) bis should be added to the text reading

> ***Any person against whom measures are being taken in connection with an offence covered by the present draft articles shall be guaranteed trial in civilian courts, to the exclusion of military courts."***

(d) Excluding children from adult justice system

We recommend that the convention specify that states must exclude from prosecution in the adult criminal justice system crimes against humanity committed by people under age 18, hold those exercising command of these children primarily responsible, and ensure that any such cases are handled only within a dedicated child justice system that prioritizes the child's best interests and all other relevant safeguards, and respects international fair trial standards for children.

Already, some states that have either ratified the Rome Statute and adopted implementing laws in their domestic legislation, or have otherwise adopted provisions criminalizing international crimes, have excluded children from prosecution under these statutes.[187]

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[185] Military courts must only be used to try military officers for crimes and other offenses involving the rights of the military.

[186] See for example, InterAmerican Commission on Human Rights https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/071.asp ("The IACHR stresses that, in a democratic State where the rule of law is paramount, military criminal courts must have a restricted, exceptional scope and seek to protect special legal interests linked to the role that the law formally assigns to military forces. Military criminal courts should therefore not try civilians and must only try military officers for crimes and other offenses involving the rights of the military.")

[187] See, for example, New Zealand where the International Crimes and International Criminal Court Act 2000 adopts the same jurisdictional age limit for prosecution—age 18—as the Rome Statute (International Crimes and International Criminal Court Act 2000, Public Act 2000 No. 26, September 6, 2000, art. 12 (1)(a)(v)); Uganda, where the International Criminal Court Act, 2010 also applies art. 26 of the Rome Statute and excludes persons under 18 from the jurisdiction of the court (The International Criminal Court Act, 2010, Acts Supplement No. 6, June 25, 2010, art. 19 (1)(a)(v)); and Switzerland, which allows for the prosecution of genocide, crimes against humanity, and war crimes in its Criminal Code, but calls for the prosecution of children under the Juvenile Criminal Law Act of June 20, 2003 (Swiss Criminal Code of December 21, 1937 (Status as of July 1, 2020), art. 9 (2)). In addition, the criminal prosecution for international crimes committed by children below the age of 18 is unprecedented in international or internationalized courts and tribunals, which have declined to prosecute crimes

Instead, children suspected of committing international crimes should be charged in a separate and parallel child justice system that focuses on rehabilitation rather than punishment.

Textual suggestions:

When revised, article 11(2)bis should read

> **Each State shall take the necessary measures to ensure that people under age 18 at the time of the alleged commission of crime are not prosecuted in the adult legal system for crimes against humanity. States should ensure that any such cases are handled only within a dedicated child justice system that prioritizes the child's best interests, rehabilitation and reintegration, and respects international fair trial standards for children.**

(e) Set the age of a child as under age 18 and reinforce the obligation to act in their best interests

We recommend clarifying that anyone below the age of eighteen should be considered a child. The draft articles currently do not set the age of a "child." Children and the Crimes Against Humanity Coalition, an informal coalition of 37 organizations and individuals which Human Rights Watch is a part of, has proposed that the treaty use language derived from the Convention on the Rights of the Child, the most universally ratified human rights instrument. Poland has advanced a proposal to this effect.

Textual suggestions

Add a new article 12(4) stating as follows,

> **Each State shall take the necessary measures to ensure that:**
>
> **(a) For the purposes of the present Convention, a child means every human being below the age of eighteen years.**
>
> **(b) In all proceedings concerning children, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her**

committed by children. All international and internationalized courts, with one exception, have focused their limited resources on prosecuting adult perpetrators, even though only a few of these courts have had an explicit jurisdictional age limit. See Cécil Aptel, *Atrocity Crimes, Children and International Criminal Courts: Killing Childhood* (New York: Routledge, 2023), pp. 172-191. At the Special Court of Sierra Leone, which had jurisdiction over children ages 15 to 17 in a context where child soldiers were widely used, the prosecutor nevertheless chose not to prosecute children, instead focusing on individuals responsible for their recruitment. "Special Court Prosecutor Says He Will Not Prosecute Children," Public Affairs Office of the Special Court for Sierra Leone press release, November 2, 2002, https://www.rscsl.org/Documents/Press/OTP/prosecutor-110202.pdf (accessed September 24, 2024).

own views shall have the right to express those views freely with the views of the child being given due weight in accordance with the child's age and maturity.

(c) Criminal processes, including reparations, should be accessible to and protective of children.

(f) Expanding protection afforded to victims of crimes against humanity

Human Rights Watch recommends adding a definition of "victim," strengthening avenues for victims' participation with a focus on uplifting children and people with disabilities.

(i) Adding a definition of "victim"

We recommend that the convention should be amended to include a definition of a victim, such as the one used in Rule 85 of the ICC Rules of Procedure and article 81 of Ljubljana, The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. In its current form, the lack of clarity on the definition of "victim" in the Draft Crimes Against Humanity Convention could hinder victims' access to justice and entitlements pursuant to the convention at the national and transnational level and risks making participating in judicial processes a potentially traumatizing and harmful experience for victims and survivors, for example, if victims and survivors had to enter into lengthy legal processes to prove their entitlement to the guarantees provided to "victims" in the treaty.[188]

Defining victims is now common practice. Both the International Convention for the Protection of All Persons from Enforced Disappearance and General Comment No. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment articulate definitions for the victim.

The definition should be sufficiently broad to encompass all persons, of all ages, who suffer harm from acts that constitute crimes against humanity. Adopting a comprehensive and unambiguous definition of victim would ensure that people that are individually targeted, as well as those who have suffered indirect harm, including those forced to witness crimes, family members, children born of rape and descendants of victims, are all identified as victims.

[188] "Draft Crimes Against Humanity Convention Must Center Victims and Survivors," joint expert legal brief, October 5, 2023, https://www.globaljusticecenter.net/wp-content/uploads/2023/11/Victims-and-Survivors-Expert-Legal-Brief-CAH-Treaty.pdf (accessed on October 25, 2025).

Textual suggestions

When revised, article 12(1)(b)*bis* should read

> **Victims are all natural persons who have suffered harm at any time as a result of the commission of any crime to which this Convention applie**s.

(ii) Avenues for victims' views and concerns to be presented, victims' right to information

We recommend enhancing avenues for victims' views to be presented and codifying their right to information about proceedings. Article 12(2), which references national laws enabling victims' views and concerns to be presented, has several shortcomings, as follows: (a) It does not explicitly require states to provide legal representation to victims where appropriate; (b) It lacks provisions obligating states to examine complaints lodged by victims or their representatives; (c) It fails to require states to inform victims about the progress and results of investigations; and (d) It fails to require procedural due process accommodations needed to enable the effective participation of victims with disabilities and victims who are children.[189] Member states should amend it to address these concerns.

The language "in accordance with its national law" in article 12(2) of the draft articles implies that there is no minimum criteria for victim participation. Instead of requiring states to modify legal procedure to allow victims to participate, this language opens the door for states to potentially undermine the effect of the provision by simply acting under existing national law.[190] Despite the differences in national victim participation mechanisms, there are some essential concepts that should be specifically articulated. Specifically, it is critical that victims' voices be heard throughout the proceeding, they feel in control over how their cases are handled and have access to full information about the process, and that they receive support and are treated with dignity and respect.[191]

As it stands, article 12 lacks a requirement for state parties to provide information to victims. In order to facilitate victims' participation in all jurisdictions, the draft articles should be amended to include a victim's right to receive information from relevant

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[189] Under the International Principles and Guidelines on Access to Justice for Persons with Disabilities, procedural accommodation is defined as: "all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of disproportionate or undue burden. United Nations Human Rights Special Procedures, "International Principles and Guidelines on Access to Justice for Persons with Disabilities," August 2020, www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf(accessed May 19, 2021), p. 9.

[190] Ibid. at para. 45.

[191] *See* generally, Ian Edwards, *An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making*, 44 BRIT. J. OF CRIM. 967 (2004).

authorities, in accessible formats. This should include requiring state parties to communicate to victims the results regarding the investigation and examination of the complaint and give timely notifications to victims of developments in the proceedings. The right to be informed is fundamental to all other aspects of victim participation.[192] This includes receiving notification about the events in a legal process and being apprised of their legal rights.[193] Unless victims are sufficiently informed, it is impossible for them to effectively participate in legal proceedings. However, research has shown that victims are frequently frustrated by difficulties they face in staying apprised of the process and developments in their cases.[194]

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN General Assembly in 1985, a milestone for victims' rights under international law, stresses that judicial and administrative processes should address victims' needs by, *inter alia*, "informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information."[195] In addition, the Committee against Torture found that article 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are violated when the state party failed to inform the complainant of the results of an investigation.[196]

Currently, there is significant variation among various national legal systems approaches towards victims' participation. For example, victim participation is given less attention in the adversarial criminal systems of most common law jurisdictions.[197] Even in jurisdictions where victims are allowed to participate, research shows that victims' needs have not

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[192] Dean G. Kilpatrick et. al, *The Rights of Crime Victims—Does Legal Protection Make a Difference?* Report to National Institute of Justice, Dec. 1998, p. 2, https://www.ojp.gov/pdffiles/173839.pdf [accessed on October 22, 2025) *See* also, Marijke Malsch & Raphaela Carriere, *Victims' Wishes for Compensation: The Immaterial Aspect*, 27 J. CRIM. JUST. 239, 240 (1999).

[193] Dean G. Kilpatrick et. al, *The Rights of Crime Victims—Does Legal Protection Make a Difference?* Report to National Institute of Justice, Dec. 1998, p. 4, https://www.ojp.gov/pdffiles/173839.pdf [[accessed on October 22, 2025)

[194] Heather Strang & Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, 2003 UTAH L. REV. 15, 20 (2003).

[195] United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. GAOR, 40th Sess., 96th plenary mtg., Annex, ¶6, U.N. Doc. A/RES/40/34 (1985).

[196] *See* e.g., Dragan Dimitrijevic v. Serbia and Montenegro, CAT/C/33/D/207/2002, UN Committee Against Torture, 29 November 2004, https://www.refworld.org/cases,CAT,42b2ac852.html [Accessed Jan. 10, 2024] "Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the public prosecutor never informed the complainant about whether an investigation was being or had been conducted after the criminal complaint was filed on 31 January 2000.... Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. The State party also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities."

[197] Jonathan Doak, "Victims' Rights in Criminal Trials: Prospects for Participation," Journal of Law and Society (2005). 294-295.

been sufficiently taken into consideration.[198] Guarantees of a presumption of innocence and the right to a fair trial are an important consideration as well, underscoring the importance of intentional procedures for victim's participation that also respect the rights of the accused.

Textual suggestions

As revised, article 12(2) should read as follows:

> Each State shall in ~~accordance with its national law,~~ enable the views and concerns of all victims of a crime against humanity, *including children and people with disabilities,* to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner *that is accessible, with procedural and reasonable accommodations,* ***including by ensuring rights to information and legal representation,*** and not prejudicial to the rights referred to in article 11, to the rights of the accused and a fair or impartial trial, or *to the right to legal capacity. Criminal processes, including reparations, should be accessible to and protective of people with disabilities.*

(iii) Participation of victims with disabilities

Recognizing the particular barriers faced by people with disabilities in accessing justice, including access to effective remedies and, as appropriate, reparation, Human Rights Watch recommends that article 12(2) of the draft articles on crimes against humanity should be amended to explicitly require that victims with disabilities can fully participate in all stages of proceedings by making them accessible and through necessary and appropriate procedural and reasonable accommodations. This would ensure that the convention is aligned with international human rights standards and prevent barriers that could exclude persons with disabilities from seeking justice. By incorporating these provisions, the article would better reflect the rights of persons with disabilities and promote their full and equal participation in processes to seek redress for crimes against humanity.

Under the International Principles and Guidelines on Access to Justice for Persons with Disabilities, procedural accommodation is defined as: "all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis

[198] Robyn L Holder & Elizabeth Englezos, "Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review," 30 International Review of Victimology 25, 27 (2024).

with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of 'disproportionate or undue burden.'"[199]

Member states can expand participation by explicitly stating that people with disabilities have the right to participate in all stages of proceedings. Additionally, the text should reflect the right to procedural accommodations, the right to legal capacity and supported decision-making, on an equal basis with others in all aspects of life, including access to justice, and access to reparations. [200] The Convention on the Rights of Persons with Disabilities guarantees support for the exercise of legal capacity, including in judicial, administrative, and other legal proceedings. People divested of their legal capacity lose their right to appear before court and therefore may also find themselves limited in participating in proceedings meant to ensure justice for the victims. By incorporating these elements, article 12 would better align with the Convention on the Rights of Persons with Disabilities and ensure that people with disabilities can fully engage in seeking justice for crimes against humanity.

Textual suggestions

As revised, article 12(2) should read as follows:

> Each State shall~~, in accordance with its national law,~~ enable the views and concerns of victims of a crime against humanity, *including children* ***and people with disabilities,*** to be presented and considered at ***t*** appropriate stages of

[199] United Nations Human Rights Special Procedures, "International Principles and Guidelines on Access to Justice for Persons with Disabilities," August 2020, www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf

[200] The Committee on the Rights of Persons with Disabilities stated that: "Persons with disabilities must also be granted legal capacity to testify on an equal basis with others. Article 12 of the Convention guarantees support in the exercise of legal capacity, including the capacity to testify in judicial, administrative and other legal proceedings. Such support could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods. The judiciary must also be trained and made aware of their obligation to respect the legal capacity of persons with disabilities, including legal agency and standing." CRPD Committee, General Comment No. 1, para 39; According to the United Nations High Commissioner for Human Rights: "reasonable accommodation should not be confused with procedural accommodations in the context of access to justice, as this would fall short of the full provisions enshrined in the right. During the negotiations on the Convention, the term 'reasonable' was intentionally left aside in the framing of article 13. Article 13 requires 'procedural accommodations', which are not limited by the concept of 'disproportionate or undue burden'. This differentiation is fundamental, because the right of access to justice acts as the guarantor for the effective enjoyment and exercise of all rights. Failure to provide a procedural accommodation therefore constitutes a form of discrimination on the basis of disability in connection with the right of access to justice." Human Rights Council, "Equity and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights," U.N. Doc A/HRC/34/26 (2016), para. 35; See also Human Rights Council, "Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights," UN Doc. A/HRC/37/25 (2017), paras. 25-26).

criminal proceedings against alleged offenders in a manner ***that is accessible with procedural and reasonable accommodations,*** *including by assuring right to information and legal representation* and not prejudicial to the rights referred to in draft article 11 or ***of the right to legal capacity.Criminal processes, including reparations, should be accessible to and protective of people with disabilities.***

(iv) Participation of child victims

We recommend that article 12 incorporate specific measures to enable the participation of child victims and witnesses, emphasizing the best interests of the child, child-sensitive approaches, and the importance of criminal procedures designed for children.

Children are both targeted for and impacted by crimes against humanity in specific ways, this targeting may be impacted by factors like age, developmental stage, or other circumstances related to their status in society. Yet tribunals focused on the most serious crimes rarely engage children as victims and witnesses. This happens for several reasons, including: 1) misconceptions and damaging assumptions about children's credibility, memory, or capacity to understand what is being asked of them; 2) fear of re-traumatizing children; 3) failure to make processes protective of and accessible to children; 4) failure to address the needs of the individual child; and 5) failure to consider and treat children as fully-fledged rights holders. As a result, adult-centric processes have treated children as a homogeneous group and largely excluded them.

Children have a right to be heard in judicial and reparation proceedings that affect them.[201] They are entitled to special care and protection "necessary for their well-being,"[202] and "measures to promote their physical and psychological recovery and social reintegration,"[203] with the child's best interests being a primary consideration.[204]

Textual suggestions

As revised, article 12(2) should read as follows:

> Each State shall, ~~in accordance with its national law,~~ enable the views and concerns of victims of a crime against humanity, ***including children*** *and people with disabilities,* to be presented and considered at *all* stages of criminal

[201] CRC, art. 12. See also UN Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, U.N. Doc. CRC/C/GC/12 (2009), paras. 133-134.

[202] CRC, art. 3(2).

[203] CRC, art. 39.

[204] CRC, art. 3(1).

proceedings against alleged offenders in a manner *that is accessible with procedural and reasonable accommodations, including by assuring right to information and legal representation* and not prejudicial to the rights referred to in draft article 11 *or of the right to legal capacity. Criminal processes, including reparations, should be accessible to and protective of people with disabilities.*

(v) Reparations for victims who are unwilling or unable to pursue legal proceedings

We recommend revising article 12(3)'s language around reparations. As currently drafted, the draft articles' call for measures for victims "in its legal system" could be understood as limiting reparation to victims of crimes against humanity who pursue legal proceedings.

The suggested edits will ensure that victims who are unable to or unwilling to engage in judicial proceedings are still able to benefit from administrative or other reparation programs. Among other reasons, children may not be able to or willing to participate due to their age, and victims, including victims of sexual and gender-based violence, may be unwilling to engage with proceedings for reasons including stigma and the risk of re-traumatization. The current draft articles call for "reparation for material and moral damages." This wording should be expanded because it is limiting and fails to recognize the diverse forms of harm suffered by victims of crimes against humanity.[205]

The addition of special attention for children in reparation programs derives from article 39 of the Convention on the Rights of the Child which mandates states to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim.... Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Reparation measures and programs should guarantee child victims' active participation in a manner that safeguards their interests and prevents further stigmatization or exclusion. It is essential that states provide victims with free, quality and rights respecting medical, psychosocial and mental health support, while children pursue their right to reparations. Reparations programs or processes outside of court should always be victim-centered and even victim-led, where possible. UN Special Rapporteur on truth, justice, reparations and guarantees of non-repetition have stated that victims and survivors should be involved from the outset, designing the framework of the process resulting in adequate and full reparations.[206] The Committee on the Elimination of Racial

[205] Basic Principles and Guidelines on Right to Remedy and Reparation https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

[206] UNGA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, UN Doc. A/HRC/34/62, December 27, 2016, https://docs.un.org/en/A/HRC/34/62.

Discrimination has expressed concern and presented recommendations to Peru relative to the delays in the implementation of the comprehensive collective reparations plan, particularly with regard to Indigenous peoples who were victims of the armed conflict between 1990 and 2000, noting the lack of proper participation by such persons in developing and implementing reparation programs.[207]

Reparation measures should be gender inclusive, accessible and child-sensitive, including by shaping reparation policies and programs around the best interests of the child. Reparation also should be tailored, gender-sensitive, and disability inclusive. They should also be age-appropriate, including as they relate to children as children's needs vary significantly depending on their gender, age, and abilities.[208] Targeted reparations may be necessary for those who have acquired a disability including a psychosocial disability or have acquired further disability as a result of crimes against humanity.

As revised, article 12(3) should read

> Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed by any person or in any territory under its jurisdiction, have the right to obtain **prompt, full, and effective** reparation, **including through administrative and other reparation programs, through legal guarantees,** for **any physical, mental, moral, material, legal, or other harm,** on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition. **Each State shall further ensure that special attention be given to ensuring reparation for female victims, child victims and people with disabilities.**

[207] "Concluding observations on the eighteenth to twenty-first periodic reports of Peru*" Committee on the Elimination of Racial Discrimination, Peru, September 25, 2014, CERD/C/PER/CO/18-21 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CERD/C/PER/CO/18-21&Lang=En (accessed October 20, 2025)

[208] Global Survivors Fund, "Briefing on reparation for children born of conflict-related sexual violence: Exploring survivors' perspectives from the Global Reparations Study," June 2024, https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Policy_Briefs/Briefing_on_children_born_of_CRSV_web_Final.pdf (accessed October 20, 2025), p. 23.

Conclusion

In adopting their December 2024 resolution, which was co-sponsored by 99 delegations, and adopted by consensus at the General Assembly, most member states have already voiced their support, in principle, for a treaty of some kind on crimes against humanity. Since the international legal framework to prohibit and punish crimes against humanity has evolved through customary law, judicial decisions, and treaties, inconsistencies in interpretation and application persist among states, practitioners, and the public. Moreover, as crimes against humanity can be committed in situations where there is no armed conflict, existing international humanitarian law norms (or the laws of war) do not adequately cover them. While the norms underpinning crimes against humanity are drawn from customary international law, the absence of a specific treaty focused on crimes against humanity contributes to misunderstanding of the law prohibiting these crimes and the very gravity of the crimes themselves. A treaty would help achieve greater coherence and consistency.

It is true that many countries already have legislation at the national level that criminalizes these acts, but a new treaty will also make a difference by mandating that state parties incorporate the definition and prohibition of these offenses into their national laws. The treaty would provide national authorities with more tools to investigate and conduct impartial proceedings against those accused in their national courts. This will be crucial for governments whose nationals are credibly believed to have perpetrated these offenses at home or abroad. A treaty would help ensure that states that do not pursue such cases face stigma and cannot credibly claim to be upholding the rule of law.

Prevention of crimes against humanity is a key focus of the treaty, and a key motivation for the member states who have rallied behind the effort. Sweden, speaking on behalf of Nordic countries Denmark, Finland, Iceland and Norway, underscored this in its 2024 remarks at the resumed session of the Sixth Committee, noting a "lack of a convention dedicated to crimes against humanity constitutes a gap in the international treaty context impeding effective prevention and punishment of such crimes."[209] Similarly, Jordan described the "dual aspect of scope" of the treaty—that is including both prevention and

[209] 2nd resumed session (Time Stamp – 00:26:43) https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf

punishment—as "appropriate" since its delegation sees the two objectives as going "hand in hand in ensuring effectiveness of the proposed treaty regime."[210]

Professor Leila Sadat, an eminent international law expert in this space, describes an "atrocity cascade" of crimes, noting "there is a frontier between human rights violations and criminality in peacetime, which is where the role of combating impunity for the commission of crimes against humanity becomes so important, and why a new international treaty is so critical as well."[211]

Once adopted, a crimes against humanity treaty would impose a binding legal obligation to incorporate these crimes into states' domestic laws and require governments to cooperate with other treaty member states in investigating and prosecuting suspects accused of these crimes. This type of horizontal cooperation and mutual legal assistance would represent a key contribution to the architecture for the prosecution of serious international crimes globally.

To date, 125 states have ratified the Rome Statute of the International Criminal Court, which addresses crimes against humanity among other serious international crimes.[212] States parties to the Rome Statute are governed by that treaty's unique complementarity provisions, which allow for the ICC to step in where national systems are either unwilling or unable to address the alleged crimes. The ICC's personal jurisdiction is limited to crimes committed by a state party national, or in the territory of a state party, or in a state that has accepted the jurisdiction of the Court. The Court can only exercise jurisdiction outside of these circumstances if the crimes are referred to the ICC Prosecutor by the United Nations Security Council pursuant to a resolution adopted under chapter VII of the UN charter, as it has in the case of Darfur. This limited jurisdiction makes it more complex to prosecute nationals of states that are not party to the statute. As a consequence of the limitations on its reach, the ICC has not been able to address crimes against humanity in Syria, Myanmar (with the exception of those situations where the crime also took place in Bangladesh), Ethiopia, South Sudan, and much of Sudan outside of Darfur. To the extent that a crimes

[210] 2nd resumed session (Time Stamp - 00:47:10) https://bpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/b/2004/files/2024/10/2024-Second-Resumed-Session-Compilation-of-Government-Statements-1.pdf

[211] Sadat, Leila N., 2023 Klatsky Endowed Lecture in Human Rights: The Forgotten Crime: Forging a Convention for Crimes Against Humanity (October 25, 2023). Washington University in St. Louis Legal Studies Research Paper No. 23-10-01, http://dx.doi.org/10.2139/ssrn.4723542

[212] International Criminal Court, States Parties - Chronological list, https://asp.icc-cpi.int/states-parties/states-parties-chronological-list.

against humanity treaty could secure more widespread ratification, it might lead to greater prosecutions at the national level.

A crimes against humanity treaty will focus greater international understanding and attention on these offenses, create new avenues for holding perpetrators accountable, and ideally establish a dedicated body of experts focused on interpreting and monitoring its enforcement. Although they are widely recognized as preemptory norms, or *jus cogens,* the lack of a standalone treaty for crimes against humanity may also negatively affect perceptions of the seriousness of these crimes, particularly in comparison to genocide, which is hailed as the "crime of crimes" and has been prohibited by a treaty with a prevention focus which came into force in 1951.[213]

Alongside international legal experts[214] and our civil society partners,[215] Human Rights Watch and the Prevention of Crimes against Humanity Project have made a long-term commitment to engaging in the process to secure a new treaty for crimes against humanity. As member states embark on the process of inter-governmental negotiations towards a convention against crimes against humanity, we pledge to remain invested in the process.

We will stand side by side with our civil society partners and survivors of crimes against humanity from around the world, together with the supportive states leading this effort, to seek the best, most effective treaty possible.

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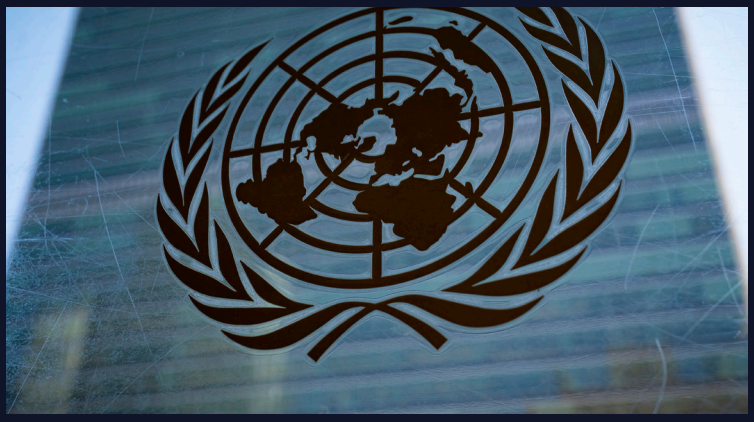
[213] Convention on the Prevention and Punishment of Genocide (1948) https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

[214] The Crimes Against Humanity Initiative at the Washington University in St. Louis has been a leading voice on the process leading to the treaty https://sites.wustl.edu/crimesagainsthumanity/

[215] Over 425 civil society organizations from around the world have rallied around this treaty https://cahtreatynow.org/joint-statement-in-support-of-progress-toward-a-crimes-against-humanity-treaty/



The symbol of the United Nations is displayed outside the Secretariat Building, February 28, 2022, at United Nations Headquarters. © 2022 AP Photo/John Minchillo, File