

## **Towards a Convention on Crimes against Humanity: Key Recommendations for Ongoing Negotiations**

Crimes against humanity are among the four core crimes under international law, encompassing acts such as murder and torture when committed as part of a widespread or systematic attack against a civilian population. Despite their gravity and prevalence, there is currently no binding international treaty dedicated to the prevention and punishment of such crimes. In an effort to address this gap, the International Law Commission proposed the [Draft Articles on the Prevention and Punishment of Crimes against Humanity](#) in 2019. Building on this work, the UN General Assembly [decided](#) in 2025 to initiate a process towards the adoption of a binding convention by 2029, based on the Draft Articles and States' proposals for amendments.

The prospective adoption of the convention is a welcome and long-overdue step, sending a strong signal against impunity. However, to fully capture the scope of the injustice involved and to ensure comprehensive protection against such crimes, States should consider several targeted amendments to the existing proposal, while preserving the important standards it already contains, as set out below.

### **Why is an international treaty needed?**

The pursuit of a binding instrument on the prevention and punishment of crimes against humanity lies within a historical continuum of the post-Second World War development of international criminal justice, beginning with the Nuremberg and Tokyo Trials. The statutes of these tribunals established that grave human rights violations committed against any civilian population [may constitute crimes against humanity](#). This recognition marked a groundbreaking judicial development and contributed significantly to the emergence of political and legal awareness of the need to prevent such crimes.

Despite this early recognition, momentum in the ensuing decades largely stagnated. While the [Genocide Convention](#) established binding obligations to prevent and punish genocide, and the [Geneva Conventions and their Additional Protocols](#) established obligations to criminalize certain grave breaches of international humanitarian law as war crimes, the development of a comparable, standalone legal regime for crimes against humanity lagged behind.

In the 1990s, crimes against humanity were codified in the statutes of the International Criminal Tribunals for the former [Yugoslavia](#) and [Rwanda](#). The most comprehensive and contemporary definition was later adopted in the 1998 [Rome Statute](#), the founding treaty of the International Criminal Court. The Rome Statute criminalizes acts such as murder, extermination, enslavement, deportation, torture, and other inhumane acts (the 'enumerated acts') when committed as part of a widespread or systematic attack directed against a civilian population.

These ‘chapeau elements’ distinguish crimes against humanity from isolated human rights violations that, while serious, do not reach the threshold of international criminality with some exceptions.

Beyond the Rome Statute, there are specialized conventions addressing certain enumerated acts – such as the crimes of [torture](#), [apartheid](#), [enforced disappearances](#), and [slavery](#). However, these instruments do not establish a comprehensive legal framework for crimes against humanity as a whole, nor do they cover other grave acts, including persecution, rape, or unlawful imprisonment, which remain unregulated by standalone treaties.

These limitations leave existing frameworks ill-equipped to address crimes against humanity comprehensively. ECCHR therefore welcomes the commitment to work toward the adoption of a Convention on Crimes Against Humanity to close this gap. Such a convention, if designed to meet its objectives, would not only strengthen states’ obligations to prevent and punish these crimes, but also enhance avenues for dispute settlement – for example, by enabling States Parties to bring cases against other States before the International Court of Justice. With respect to criminal prosecution, the convention would clarify the duty to criminalize and investigate crimes against humanity and to establish jurisdiction over alleged perpetrators present in a state’s territory, including through the exercise of universal jurisdiction in cases where extradition or surrender is not undertaken.

## **Recommendations**

Many of these standards would already be secured through the adoption of the existing Draft Articles. However, to ensure that the new convention delivers effective justice in practice, we draw on the important and comprehensive analyses by Human Rights Watch, TRIAL International, Amnesty International, Global Justice Center, and others to propose several key amendments. With delegations scheduled to meet in [January 2026 to prepare for treaty negotiations in 2028 and 2029](#), **we urge the preparatory committee to give careful consideration to the following proposals:**

With regard to **gender justice**, we call on States to consider four key amendments to the Draft Articles.

1. The systematic oppression of women and girls, as well as LGBTQI+ persons, in Afghanistan and elsewhere underscores the urgent need to include **gender apartheid** as a crime against humanity under Article 2(2)(h). This addition is [essential](#) to ensure accountability for inhumane acts committed in the context of an institutionalized regime of systematic oppression based on gender and would close the current gap in international law. While the Draft Articles recognize gender persecution as a crime against humanity – criminalizing the intentional and severe deprivation of fundamental rights on the basis of gender – this crime does not adequately capture the distinct

injustice inherent in the intent to establish and maintain an institutionalized regime of apartheid based on gender.

2. **Forced marriage** should be added as a standalone crime. The imposition of spousal status is distinct from violations of sexual autonomy and results in unique psychological harms and a range of other harms, including sexual slavery (see [HRW, Briefing Paper](#), p. 23).
3. The definition of **forced pregnancy** in Article 2(2)(f) should be amended to be more inclusive. The term ‘woman’ should be replaced with ‘person’ to recognize that girls and individuals who do not identify as female can also be victims of forced pregnancy. Further, the carve-out for national laws governing pregnancy should be removed, as it creates a loophole for States and is superfluous given that the term is already defined under customary international law (see [HRW, Briefing Paper](#), p. 37).
4. Delegations should consider explicitly adding **reproductive violence** as an enumerated act under Article 2(1)(g). Acts such as forced abortion, torture targeting reproductive capacity, and other comparable conduct – as documented in [Gaza](#), [Tigray](#), [Peru](#) and [Colombia](#) – cause severe and lasting harm and are often committed as part of widespread or systematic attacks against civilian populations. Explicit codification is necessary to reflect the gravity and distinct nature of these acts, and to align the convention with contemporary understandings of crimes against humanity (see [HRW, Briefing Paper](#), p. 20).

In addition to gender justice, we recommend four other **substantive changes** to the Draft Articles.

1. We urge States to amend the definition of **enforced disappearance** in Article 2(2)(i) by removing the requirements that the act be committed with the intent to remove a person from the protection of the law and that it occur over a prolonged period of time. Both elements are inconsistent with recent developments in international law and impose unnecessarily high thresholds for prosecution (see [HRW, Briefing Paper](#), p. 42).
2. **Persecution** should be recognized as a standalone crime, rather than only being prosecutable in connection with another enumerated act. Such a nexus requirement is not [supported by customary international law](#) and wrongly suggests that the intentional and severe deprivation of human rights on the basis of a group’s identity is not sufficiently serious to constitute an international crime on its own.
3. We propose that **starvation** be added as an enumerated act. The intentional deprivation of objects indispensable to survival constitutes a severe and particular injustice that is

not fully captured by the crime of extermination, which requires a high mens rea threshold (see [HRW, Briefing Paper](#), p. 26).

4. **Slave trade** should likewise be [included](#) as an enumerated act. It is a crime distinct from enslavement, encompassing acts that result in a person's subjugation to slavery and subsequent acquisition, transfer or disposal. Its prohibition constitutes a jus cogens norm, and its recognition as an international crime forms part of customary international law.

Turning to the **procedural aspects** of the Draft Articles, we note several provisions that should be preserved in their current form.

We commend the obligation for States Parties to establish domestic jurisdiction over alleged offenders present in their territories. This **universal jurisdiction clause** must remain unchanged and should not be modified to create a hierarchy among jurisdictional bases, [as some States have proposed](#). We also support the provision on the **liability of legal persons**. The explicit recognition that such liability may be criminal is crucial for ensuring that companies and other entities can be held accountable for crimes against humanity.

While these legal proposals are welcome, several procedural provisions nonetheless fall short of international standards. For instance, **amnesties** should be expressly prohibited, as they excuse perpetrators of crimes against humanity. Such measures of impunity not only contravene States' obligations under the Draft Articles, but are also [prohibited under international law](#).

With respect to **victims' rights**, we urge States to strengthen the Draft Articles by addressing the shortcomings as described by [Human Rights Watch](#). In its current form, Article 12(2) does not explicitly require States to provide victims with legal representation where appropriate; it contains no obligation to examine complaints submitted by victims or their representatives; and it fails to require States to inform victims about the progress and outcomes of investigations.

Finally, we encourage the creation of a **dedicated monitoring mechanism**. In addition to Article 15, which provides for an inter-State dispute settlement mechanism before the International Court of Justice, the Draft Articles should provide for a monitoring and complaints mechanism. [As demonstrated by existing UN treaty bodies](#), such a mechanism would strengthen implementation and compliance via State Reporting or by considering individual complaints and issuing comments and decisions.

The next step toward codifying the Draft Articles will be the Preparatory Committee meeting in New York in January 2026. To ensure broad and inclusive participation – including by victims and survivors, civil society, and marginalized groups – this meeting should be complemented [by regional consultations, webcasting, and logistical support](#), particularly to address visa restrictions. While [UN resolution 79/122](#) explicitly provides for the attendance of

non-governmental organisations in consultative status with the Economic and Social Council, the meaningful participation of relevant individuals and NGOs without ECOSOC status must also be ensured in order to meet the objectives of accessibility and diversity.

These coming years present a critical opportunity to advance the codification of crimes against humanity and to create broader public understanding of their nature and impact. Amid serious attacks on the international justice system, the adoption of a comprehensive Convention on Crimes Against Humanity would reaffirm a global commitment to accountability for atrocities, which is now more needed than ever.

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For questions or comments, please contact us at [info@ecchr.eu](mailto:info@ecchr.eu).

European Center for Constitutional and Human Rights (ECCHR)

Zossener Str. 55-58

10961 Berlin

Germany

Web: [www.ecchr.eu/en](http://www.ecchr.eu/en)