CRIMES AGAINST HUMANITY INITIATIVE

INITIATIVE SUR LES CRIMES CONTRE L'HUMANITÉ

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AMERICAN BRANCH
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GENDER COMPETENCY, INCLUSIVITY, AND NON-DISCRIMINATION

ABILA STUDY GROUP

CRIMES AGAINST HUMANITY

DECEMBER 1, 2025

INTERNATIONAL LAW ASSOCIATION
AMERICAN BRANCH
EST. 1922

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GENDER COMPETENCY, INCLUSIVITY, AND NON-DISCRIMINATION

As States come together to negotiate the Convention on the Prevention and Punishment of Crimes against Humanity, there is a clear need to incorporate gender expertise and competency into both the negotiation process and the content of the Convention itself. Adopting a gender-competent approach will be critically important to achieving substantive justice, equality, effective prevention, and implementation as well as ensuring compliance with obligations under international law.[1]

Recommendations

Preparatory Activities and Negotiations

- Ensure gender parity in the composition of State delegations, as well as the inclusion of gender experts.
- Develop modalities to ensure gender expertise on State delegations, such as creating expert rosters or establishing funds to support the participation of gender experts, especially from countries from the global majority.
- Ensure meaningful participation in the preparatory and negotiations processes of diverse, cross-regional civil society and gender experts, including those who are often underrepresented, such as victims and survivors, indigenous peoples, people with disabilities, and children and youth.

Convention Text

- Adopt a gender-competent, intersectional, and victim/survivor-centric approach to all parts of the treaty text to ensure that the Convention is comprehensive, humanity-inclusive, and promotes gender justice.
- Convene intersessional meetings focused on gender justice issues with the participation of relevant experts, including those from civil society. Ensure that

[1] See generally Patricia Viseur Sellers, 'Gender Strategy is Not a Luxury for International Courts Symposium: Prosecuting Sexual and Gender-Based Crimes Before International/ized Criminal Courts' (2009) 17(2) American University Journal of Gender, Social Policy & the Law 327. See also ICC OTP, 'Policy Paper on Sexual and Gender-Based Crimes' (20 June 2014), <https://www.icc-cpi.int/sites/default/files/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf;>; UN International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, 'IIIM Gender Strategy and Implementation Plan – Abridged Version' (30 September 2022) <https://iiim.un.org/wp-content/uploads/2022/10/Gender-Strategy-Implementation-AbridgedEnglish.pdf>; ICC OTP, 'Policy on Gender-Based Crimes: Crimes Involving Sexual, Reproductive and Other Gender-Based Violence' (December 2023) <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>.

gender-related issues are included in the agenda for all intersessional meetings or convenings related to the Convention.

- Use gender-inclusive language throughout the Convention.
- Include a provision that mandates that the interpretation and application of the Convention be consistent with internationally recognized human rights and the principles of non-discrimination and without adverse distinction.

Explanatory Notes

1. Adopting a gender-competent, intersectional, and non-discriminatory approach to the Convention directly aligns with commitments under the United Nations Charter,[2] the Sustainable Development Goals,[3] the Pact for the Future,[4] UN Security Council resolutions,[5] and many international instruments, including international and regional human rights treaties.[6]

2. Eliminating gender-based violence and discrimination and ensuring equal access to justice are fundamental obligations under international law.[7] These obligations

[2] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), art 13(1).
[3] See e.g. UN , Sustainable Development, 'Goal 5: Achieve Gender Equality and Empower All Women and Girls' <https://sdgs.un.org/goals/goal5#targets_and_indicators> (which includes targets to end all forms of discrimination against women and girls everywhere, eliminate all forms of violence against women and girls, ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making, and adopt and strengthen enforceable legislation for the promotion of gender equality); UN, Sustainable Development, 'Goal 16: Promote Peaceful and Inclusive Societies for Sustainable Development, Provide Access to Justice for All and Build Effective, Accountable and Inclusive Institutions at All Levels' <https://sdgs.un.org/goals/goal16#targets_and_indicators> (which provides key targets including ensuring equal access to justice for all, and promoting and enforcing non-discriminatory laws and policies for sustainable development).
[4] UN, 'Pact for the Future, Global Digital Compact and Declaration on Future Generations' (September 2024) <https://www.un.org/sites/un2.un.org/files/sotf-pact_for_the_future_adopted.pdf> 2, 7-8, 12-13, 15, 53-54.
[5] See e.g. UNSC Res 1820 (19 June 2008) UN Doc S/RES/1820 (2008) para 4 ("*calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation").
[6] See n 7-8, 11-15.
[7] See e.g. Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 3, 26; CEDAW Committee, 'General Recommendation No. 35 (2017) on Gender-Based Violence against Women, Updating General Recommendation No. 19 (1992)' (26 July 2017) UN Doc CEDAW/C/GC/35, para 2; UNGA Res 48/104, 'Declaration on the Elimination of Violence against Women' (20 December 1993) UN Doc A/RES/48/104; UN Fourth World Conference on Women, 'Beijing Declaration and Platform for Action' (15 September 1995) UN Doc A/CONF.177/20 4. See also UN Human Rights Council, 'Joint Statement by UN Special Procedures Mandate Holders: Reaffirming the Centrality of Gender as a Tool for Advancing Equality and All Human Rights' (28 August 2025)

are reinforced by regional instruments in Africa, the Americas, and Europe.[8] The International Law Commission has recognized that the prohibitions of slavery and crimes against humanity are peremptory norms of international law.[9] Regional jurisprudence has further supported a broader *jus cogens* norm of equal protection before the law and non-discrimination, including discrimination based on gender.[10]

3. States are obliged under the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), which has 189 States Parties, to take all appropriate measures to ensure that women have the opportunity to represent their Governments at the international level and to participate in the work of international organizations on an equal basis with men and without any discrimination.[11] This participation includes the process of negotiation and concluding the Convention. The CEDAW Committee has therefore recommended that all States Parties "[a]chieve and maintain parity in [...] the composition of all international delegations",[12] as well as "[i]nstitutionalize parity laws and transparent procedures at the national level for nomination and selection for

<https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/2025-08-28-joint-statement-reaffirming-the-centrality-of-gender.pdf>.

[8] See e.g. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series No 210 (adopted 11 May 2011, entered into force 1 August 2014) arts 4-5, 12(2), 49; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) arts II(1), IV(2), VIII; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) (adopted 9 June 1994, entered into force 5 March 1995) art 7.

[9] UNGA, 'Report of the International Law Commission (73st Session), Text of the Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*) (5 August 2022) UN Doc A/77/10, conclusion 23 and annex (providing a non-exhaustive list of *jus cogens* norms that the ILC had previously referred to as having that status). The prohibition of crimes against humanity includes the prohibitions of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity, as set out in Draft Article 2. See also *Prosecutor v Ntaganda* (Second Decision on the Defense's Challenge to the Jurisdiction of the Court in Relation to Counts 6 and 9) ICC-01/04-02/06 (4 January 2017) paras 51-52; Patricia Viseur Sellers, '*Jus Cogens*: Redux' (2022) 116 AJIL Unbound 281, 285-286.

[10] *Juridical Condition and Rights of Undocumented Migrants* (Advisory Opinion) IACtHR Doc OC-18/03 (17 September 2003) para 101 ("Accordingly, this Court considers that the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.").

[11] CEDAW (n 7) art 8.

[12] CEDAW Committee, 'General Recommendation No. 40 (2024) on the Equal and Inclusive Representation of Women in Decision-making Systems' (25 October 2024) UN Doc CEDAW/C/GC/40, para 55(a).

positions [...] in all delegations attending multilateral meetings".[13] Such parity must include the process of negotiating and concluding the Convention. Meaningful participation is essential not only for delivering justice and accountability for gender-based crimes, but also for the "effectiveness, sustainability, resilience, legitimacy and accountability of the multilateral system".[14]

Ensuring Participation, Parity, and Gender Expertise

4. To achieve substantive gender competency, the Convention's negotiation should guarantee the equal and inclusive[15] participation of women, gender-diverse individuals, and other underrepresented groups,[16] including victims and survivors[17] of crimes against humanity. Equal and inclusive participation requires meaningful engagement in the meetings of the Preparatory Committee, Working Group, and the UN Conference of Plenipotentiaries on the Prevention and Punishment of Crimes against Humanity ("Conference"), as well as any intersessional meetings, including those envisioned by paragraph 12 of General Assembly Resolution 79/122.[18]

5. Additionally, while gender parity is a critical aspect of ensuring gender competency, it should not be conflated with or seen as a substitute for gender expertise. Gender competence in multilateralism, including with respect to the Convention, also requires gender expertise. Such expertise includes understanding the meaning and role of gender in the context of law and policy, as a core proficiency for achieving successful outcomes in international lawmaking and policymaking. Specifically, gender competence requires the ability to apply a systematic, intersectional, analytical approach that examines what has occurred, who it has impacted, who is

[13] Ibid, para 57(a).
[14] Ibid, para 10. See also UNSC Res 2467 (23 April 2019) UN Doc S/RES/2467 (2019), para 16(d) (recognizing that "women's leadership and participation will increase the likelihood that transitional justice outcomes will constitute effective redress").
[15] The CEDAW Committee has defined "equal and inclusive representation" as "fifty-fifty parity between women and men in all their diversity in terms of equal access to and equal power within decision-making systems". It has further defined "decision-making systems" as "encompassing decision-making that takes place through formal and informal processes in all sectors, including in political [and] public [...] spaces". CEDAW Committee General Recommendation No. 40 (n 12), para 2.
[16] This can include, for example, people with disabilities, children and youth, and indigenous peoples.
[17] UNSC Res 2467 (n 14) para 16(d) ("*Encourages* concerned Member States to ensure the opportunity for the full and meaningful participation of survivors of sexual and gender-based violence at all stages of transitional justice processes, including in decision-making roles"). See also Amnesty International et al, 'Draft Crimes Against Humanity Convention Must Center Victims and Survivors', <https://www.globaljusticecenter.net/wp-content/uploads/2023/11/Victims-and-Survivors-Expert-Legal-Brief-CAH-Treaty.pdf>.
[18] UNGA Res 79/122 (4 December 2024) UN Doc A/RES/79/122, para 12 ("*Encourages* participants in the Conference to organize consultations on issues of substance, prior to the convening of the Conference, in order to facilitate the conclusion of its work").

responsible, and why, taking into account relevant intersecting factors such as gender, age, nationality, and ethnicity.[19] It also considers how diverse individuals relate to structural oppression and exacerbated violence within a given context. The ability to implement gender competence requires integrating gender expertise into the procedures, structure, planning, staffing, and technical cooperation related to multilateral processes.

6. States should, consistent with their obligations under international law, as well as best practices,[20] ensure gender parity in their delegations to the Conference and all related meetings. In addition, General Assembly Resolution 79/122 invites States to include "as far as possible" relevant experts within their delegations,[21] and this should include gender experts.

7. Capacity constraints, particularly for delegations with smaller budgets or limited personnel, may inhibit the ability to access and incorporate gender expertise. States, supported by the UN Secretariat, should explore and identify ways, including pooled resources, to ensure that all delegations have access to gender expertise. For example, existing networks, such as women mediator networks,[22] or rosters, such as the Justice Rapid Response-UN Women SGBV Justice Experts Roster,[23] may be a resource for States seeking to ensure gender expertise on their delegations.

8. In addition to State delegations, the participation of diverse and inclusive civil society[24] organizations will be essential to ensuring gender competency. As the CEDAW Committee has recognized, "[t]he representation of women in civil society is essential for integrating a gender perspective in decision-making and for advising States in the development of gender-responsive legislation and policies".[25] States should ensure that processes to decide on civil society participation give due consideration to gender equity and parity, and that any processes to object to the

[19] ICC OTP, 'Policy on Gender-Based Crimes' (n 1) paras 23-26.
[20] See generally UN, 'System-wide Strategy on Gender Parity' (6 October 2017) <https://www.un.org/gender/sites/www.un.org.gender/files/gender_parity_strategy_october_2017.pdf>.
[21] UNGA Res 79/122 (n 18) para 18 ("*Invites* the States referred to in paragraph 14 above to include as far as possible among their representatives experts competent in the field to be considered").
[22] See e.g. UN, 'Women Mediator Networks' <https://peacemaker.un.org/en/resources/women-mediator-networks>.
[23] Justice Rapid Response, 'The JRR Roster' <https://justicerapidresponse.org/the-roster>.
[24] For more on the importance of meaningful civil society participation, please see the ABILA Study Group Proposal on Civil Society Participation (16 October 2025) <https://www.ila-americanbranch.org/wp-content/uploads/2025/10/ABILA-CAH-Civil-Society-Participation-Final-with-cover-v2.pdf>.
[25] CEDAW Committee, General Recommendation No. 40 (n 12) para 21.

involvement of civil society are not instrumentalized to limit the participation of women and gender experts.[26]

9. The absence of women from key international bodies responsible for the development and interpretation of international law, such as the International Law Commission ("ILC")[27] and the International Court of Justice,[28] has frequently been criticized. Beyond mere numbers, the lack of women in these bodies has meant that "many of the foundational instruments of international law were made by men, without the voices and perspectives of women".[29] The negotiation of the Convention is an opportunity to shift this trajectory.

10. Historically speaking, in addition to an absence of gender parity, there has been a lack of gender expertise. As a consequence, efforts to ensure gender justice have been hampered by the need to rely on legal frameworks that have been developed without gender expertise. Parity within delegations, resource pooling for gender expertise, and the meaningful participation of women and gender experts in the Convention process are structural interventions that will advance inclusivity and strengthen not only gender competency but also the legitimacy and authority of the Convention.

Ensuring Gender Competence and Non-Discrimination in Convention Text

11. Over the past 30 years, significant progress has been made—at the international, regional, and domestic levels—in understanding the scope and nature of sexual and gender-based violence.[30] Incorporating these lessons and precedents into the Convention will ensure that any resulting treaty not only reflects the current status of the law but also looks forward to the future. For example, the ILC supported its decision to omit a definition of the term "gender" in the Draft Articles by the fact that "[s]ince the adoption of the Rome Statute, several developments in international human rights law and international criminal law have occurred,

[26] For further recommendations on the modalities for ensuring inclusivity in civil society participation, please see ABILA Study Group Proposal on Civil Society Participation (n 24).
[27] To date, only 10 women out of 249 members have been elected to the ILC. Women were first elected to the ILC in 2002. ILC, 'Membership: Present and Former Members of the International Law Commission (1949-present)' <https://legal.un.org/ilc/guide/annex2.shtml>.
[28] To date, only 7 women out of 117 judges have been elected to the ICJ. The first female ICJ judge was elected in 1995. International Court of Justice, 'All Members' <https://www.icj-cij.org/all-members>.
[29] Nilüfer Oral and Rashmi Raman, 'Symposium by GQUAL on CEDAW's GR40: Gender Parity in the ICJ and the ILC – About Time!' *Opinio Juris* (4 February 2025) <https://opiniojuris.org/2025/02/04/symposium-by-gqual-on-cedaws-gr40-gender-parity-in-the-icj-and-ilc-about-time>.
[30] See e.g. Indira Rosenthal, Valerie Oosterveld and Susana SáCouto (eds), *Gender and International Criminal Law* (OUP, 2022).

reflecting the current understanding as to the meaning of the term 'gender'".[31] The ILC further indicated that its approach would allow for the term to be applied in the Convention "based on an evolving understanding as to its meaning".[32]

12. All of the violations listed in the crimes against humanity definition in the Convention can have gendered[33] drivers, characteristics, and impacts, which are often subtle, intersectional, and context-specific. Gender also often informs the design and perpetration of the attack of crimes against humanity. Furthermore, reductive frameworks of gender must be resisted. "Gender" does not equal "women" or "women and girls". Gender-based violence may also be directed at men and boys, as well as gender-diverse individuals. An effective, inclusive treaty must address a broad spectrum of intersectional attributes, including those shaped by sexual orientation, gender identity, and age. Accordingly, a gender-competent approach to the substance of the Convention must be understood expansively to include all of humanity. In particular, the application of a gender perspective should not be limited to defining gender-based crimes. Indeed, all crimes affect victims and communities in ways that implicate and impact all genders. Thus, understanding that gendered implications can emerge across a variety of issues, proper attention should be given to applying a gender lens[34] throughout the provisions in the Convention, including but not limited to the definitions of violations.[35]

13. Since the ILC first took up the topic, civil society has proposed ways to enhance the gender competency of the Convention.[36] For instance, civil society actors pointed

[31] UNGA, 'Report of the International Law Commission (71st Session), Text of the Draft Articles on Prevention and Punishment of Crimes Against Humanity and Commentaries Thereto' (20 August 2019) UN Doc A/74/10 [hereinafter "ILC Draft Articles"], art 2, commentary para 41.
[32] Ibid, art 2, commentary para 42. Note that this development necessitates the inclusion of an article on the need to interpret concepts and terms in the Convention in line with international human rights law and the principle of non-discrimination. This is addressed in greater detail below in paragraph 19.
[33] While gender is not defined in the Draft Articles, for the purposes of this paper, we utilize the framework of gender set forth by the ICC's Office of the Prosecutor in the 2023 Policy on Gender-Based Crimes. ICC OTP, 'Policy on Gender-Based Crimes (n 1) paras 17, 19.
[34] "[G]ender is a vital analytical lens - essential for exposing the power disparities, structural inequalities, and discriminatory practices embedded in laws, institutions, and social norms. This lens acknowledges biological differences while also drawing attention to how gender roles are constructed, enforced, and experienced." HCR, 'Joint Statement by UN Special Procedures Mandate Holders: Reaffirming the Centrality of Gender as a Tool for Advancing Equality and All Human Rights' (n 7).
[35] See e.g. Susana SáCouto, Leila Nadya Sadat and Patricia Viseur Sellers, 'Collective Criminality and Sexual Violence: Fixing a Failed Approach' (2020) 33(1) Leiden Journal of International Law 207 (looking at the gendered implications of modes of liability).
[36] See e.g. MADRE, 'New Crimes Against Humanity Treaty' <https://www.madre.org/crimes-against-humanity>. See also Akila Radhakrishnan and Danielle Hites, 'Expanding Justice for Gender-Based Crimes with a Treaty on Crimes Against Humanity' *Just Security* (29 September 2021)

to the significant evolution of the understanding of the term "gender" over the past two decades, leading the ILC to remove the 1998 Rome Statute definition from the Draft Articles.[37] Similarly, following the adoption of General Assembly Resolution 77/249 and ahead of or during the ensuing discussions in the Sixth Committee, international justice and gender experts put forward substantive proposals on further developing the gender competency of the Convention,[38] including through the enumeration of the slave trade,[39] and the codification of gender apartheid,[40] forced marriage,[41] and reproductive violence.[42] Rather than revisit each substantive proposal, this paper aims to provide a framework for a structural gender approach to the text of the Convention using these proposals as a lens.

14. First, a structural gender perspective can help to identify and **close gaps** in the legal architecture of crimes against humanity. This is best reflected by the factual and legal gaps left by the failure to enumerate the slave trade as a crime against humanity in both the Rome Statute and, consequently, in the Draft Articles, despite its status as a *jus cogens* prohibition and international crime. Taking a gender-competent and intersectional lens to the criminal conduct of capturing, acquiring, transferring, selling, or otherwise bringing individuals into or maintaining them in situations of slavery—for their labor, fighting potential, reproductive capacity, or to exercise sexual control over them—uncovers the structural failure to enumerate

<https://www.justsecurity.org/78395/expanding-justice-for-gender-based-crimes-with-a-treaty-on-crimes-against-humanity>.

[37] Alexandra Lily Kather and Juliana Santos de Carvalho, 'On the Significance and Potential of a Non-Definition: The "Gender" Debate in the Draft Crimes Against Humanity Treaty' *Just Security* (2 October 2024) <https://www.justsecurity.org/103377/defining-gender-crimes-against-humanity>.

[38] Paloma van Groll, 'Draft Crimes Against Humanity Treaty: Toward a Gender Progressive, Survivor-Centric Intersectional Approach' *Just Security* (13 November 2023) <https://www.justsecurity.org/90076/draft-crimes-against-humanity-treaty-toward-a-gender-progressive-survivor-centric-intersectional-approach>. See also 'Joint Call to Advance Gender Justice in the Draft Crimes Against Humanity Convention' (5 October 2023) <https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Letter-to-UN-Member-States-Re_-Gender-Justice-Approach-to-Crimes-Against-Humanity-Treaty.pdf>.

[39] 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' (5 October 2023) <https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Slavery-and-Slave-Trade-Expert-Legal-Brief-CAH-Treaty.pdf>.

[40] End Gender Apartheid, 'Amending the Crime Against Humanity of Apartheid to Recognize and Encompass Gender Apartheid' (12 August 2024) <https://endgenderapartheid.today/download/2025/EGA%20Legal%20Brief.pdf>.

[41] Valerie Oosterveld et al, 'The Draft *Crimes Against Humanity Convention* and Forced Marriage' (5 October 2023) <https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Forced-Marriage-Expert-Legal-Brief-CAH-Treaty.pdf>.

[42] Amnesty International et al, 'Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy' (5 October 2023) <https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Reproductive-Autonomy-Expert-Brief.pdf>.

the slave trade in Draft Article 2. The inability to legally characterize such conduct limits the holistic redress of all victims/survivors who have endured acts of the slave trade prior to, during, and after their situations of enslavement and facilitates impunity for slave traders.[43]

15. Second, the Convention should address or **correct** existing textual provisions that hinder gender justice. For example, experts have called for the deletion of the legally unnecessary caveat to the crime of forced pregnancy:[44] "This definition shall not in any way be interpreted as affecting national laws relating to pregnancy".[45] This sentence, carried over to the Draft Articles from the Rome Statute, represented a political compromise in 1998 to assuage the concerns of certain States that criminalizing forced pregnancy in the Rome Statute could be used to invalidate national abortion laws.[46] As confirmed by the ICC Appeals Chamber, the sentence serves no legal purpose,[47] and, therefore has no relevance in the Convention. Accordingly, the sentence should be deleted from the Convention.

16. Third, the Convention should accurately **reflect the current state of jurisprudence and law** regarding sexual and gender-based crimes, which have advanced significantly since the adoption of the Rome Statute. An excellent illustration of this is the proposal to enumerate forced marriage in the list of crimes against humanity.[48] To date, while forced marriage has been successfully prosecuted at the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the ICC, it has been charged under the category of "other inhumane acts" because it had not been explicitly enumerated in those courts' statutes.[49] Enumerating forced marriage in the Convention would reflect the strength of case law recognizing it as a crime against humanity, prevent ongoing litigation about the nature of forced marriage and its status in international criminal law, and satisfy the principle of legality by providing clear legal enumeration for the act of denying victims' relational autonomy.[50] Similarly, precedents from Argentina

[43] See ABILA Study Group Proposal on Slave Trade (14 November 2025) <https://www.ila-americanbranch.org/wp-content/uploads/2025/11/Slave-Trade-art.-21c-22c_ABILA_CAH_final.pdf>.
[44] Amnesty International et al, 'Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy' (n 42) paras 17, 19-24.
[45] ILC Draft Articles, art 2(2)(f).
[46] *Prosecutor v Ongwen* (*Amici Curiae* Observations on the Rome Statute's Definition of "Forced Pregnancy" by Dr Rosemary Grey, Global Justice Center, Women's Initiatives for Gender Justice and Amnesty International) ICC-02/04-01/15-1938 (23 December 2021), paras 12-15.
[47] *Prosecutor v Ongwen* (Appeal Judgment) ICC-02/04-01/15 A (15 December 2022) para 1065 (confirming that this provision does not "impose a new element to the crime of forced pregnancy").
[48] Oosterveld et al, 'The Draft *Crimes Against Humanity Convention* and Forced Marriage' (n 41).
[49] Ibid, 1-2.
[50] Ibid, 1-4.

and Guatemala confirm that diverse forms of reproductive violence can constitute crimes against humanity, including forced abortion, forced contraception, and forced suppression of breastfeeding.[51] However, only two explicit acts of reproductive violence—both replicated from the Rome Statute—are enumerated in the Draft Articles: forced pregnancy and enforced sterilization.[52] To more accurately reflect international, regional, and domestic precedents that recognize reproductive violence as a crime against humanity, the term should be incorporated into Draft Article 2(1)(g) as follows: "and any other form of sexual or reproductive violence of comparable gravity".

17. Fourth, treaty-making processes such as that leading to the Convention on Crimes against Humanity can offer opportunities to **identify emerging harms or codify prohibitions on new punishable acts**. Forced pregnancy as a crime against humanity, for example, was first codified in the Rome Statute as a result of the atrocities committed in Bosnia and Herzegovina, experiences that directly informed the content of the Rome Statute.[53] Similarly, informed by the experiences of women, girls, and gender-diverse individuals in Afghanistan, legal experts, jurists, and women's rights activists have argued that the Convention should codify gender apartheid as a crime.[54] An enumerated provision would capture the harms, specifically perpetrated in the maintenance of an institutionalized regime of systematic gender-based oppression and domination, which are not covered by other gender-based crimes, including gender persecution. New patterns of abuse, such as gender apartheid, require forward-thinking provisions that can recognize and redress these evolving forms of harm.[55]

18. The proposals outlined above should not be considered exhaustive and are included to illuminate key modalities of how a structural, gender-competent approach to the Convention text can support the elaboration of a comprehensive, inclusive treaty that advances gender justice. This approach should be

[51] Amnesty International et al, 'Draft Articles on Prevention and Punishment of Crimes Against Humanity Should Advance Justice for Reproductive Autonomy' (n 42) para 5.
[52] ILC Draft Articles, art 2(1)(g) (including, as well, as residual category for "any other form of sexual violence of comparable gravity").
[53] *Ongwen*, '*Amici Curiae* Observations on the Rome Statute's Definition of "Forced Pregnancy"' (n 46) para 9.
[54] End Gender Apartheid, 'Joint Call to Amend the Draft Crimes Against Humanity Convention to Encompass Gender Apartheid' (5 October 2023) <https://endgenderapartheid.today/download/2025/EGA%20Joint%20Letter%20to%20Amend%20the%20Draft%20Crimes%20Against%20Humanity%20Convention%20-%20English.pdf>.
[55] See also ABILA Study Group Proposal on Martens Clause on the importance of ensuring that treaty codification does not prejudice the continuing development of international law.

complemented by the use of gender-inclusive language, reflecting harms to all persons, including men, children, and gender-diverse individuals.[56]

19. Finally, it is crucial for ensuring gender competence that a provision be included that mandates that the Convention be interpreted and applied in a manner consistent with international law without distinction of any kind or on any grounds.[57] Even with all the progress made in understanding gendered experiences of atrocity over the last 30 years, the landscape of gender and harm is continuously evolving, often in ways that cannot be fully anticipated. Accordingly, the inclusion of such an interpretation clause can both support the principle of legality by providing a bracketing framework for the incorporation of new norms into the Convention, while also providing flexibility to ensure its relevance and effectiveness as norms, contexts, and understandings evolve. Building flexibility into the treaty—through inclusive definitions, expansion of the scope of gendered harms, and a monitoring mechanism for ongoing interpretation and guidance[58]—will allow the Convention to respond to violations of gender autonomy or integrity as they arise.

Conclusion

20. The negotiation of the Convention presents an unprecedented opportunity to address blind spots that limit the realization of gender justice by bridging gaps, implementing corrections, reflecting current jurisprudence, and embracing emerging norms. A gender-competent approach is not only a matter of justice for those targeted by crimes against humanity, but a prerequisite for the legitimacy, durability, effectiveness, and authoritativeness of the Convention itself. By centering gender expertise, ensuring gender parity, and mandating meaningful inclusion, States can pioneer a new standard in international law—one that answers the call for accountability, redress, and justice for all.

[56] This includes, for example, replacing "children, women, and men" in the first clause of the preamble with "person", and replacing "women" in the definition of forced pregnancy with "person." See ILC Draft Articles, preamble para 1 ("*Mindful* that throughout history millions of children, women and men have been victims of crimes that deeply shock the conscience of humanity*")*, art 2(2)(f) ("'forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant [...]").

[57] See ABILA Study Group Proposal on Non-Discrimination Provision.

[58] See ABILA Study Group Proposal on Monitoring Mechanism (26 November 2025).